

Rwanda's Use of Transitional Justice After Genocide: The Gacaca Courts and the ICTR*

I. INTRODUCTION

Between April 6 and July 4 of 1994, an estimated 800,000 to 1,000,000 citizens of Rwanda were massacred in an ethnically motivated genocide.¹ In the aftermath of the civil war, this small African country was left not only with extensive physical and psychological scarring, but also the realization that countless ordinary Rwandan citizens were highly involved in the genocide.² In the words of President Paul Kagame, “[t]he genocide touched the lives of all Rwandans; no individual or community was spared. Every Rwandan is either a genocide survivor or a perpetrator, or the friend or relative of a survivor or perpetrator.”³

Immediately following the genocide, the Rwandan government began imprisoning suspected participants.⁴ By May 28, 1995, the Rwandan government “stopped arresting all but the most serious suspects” due to extreme overcrowding in the prisons that caused prisoners to suffocate.⁵ Approximately 120,000 people were in prison by 1996.⁶ By 1999, the sheer number of suspects imprisoned made apparent that Rwanda’s civil courts could not expeditiously adjudicate genocide

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1. See, e.g., Bert Ingelaere, *The Gacaca Courts in Rwanda*, in *TRADITIONAL JUSTICE AND RECONCILIATION AFTER VIOLENT CONFLICT: LEARNING FROM AFRICAN EXPERIENCES* 25, 25 (Luc Huyse & Mark Salter eds., 2008) (stating that “approximately 800,000 people died”); Paul Kagame, *Preface to AFTER GENOCIDE: TRANSITIONAL JUSTICE, POST-CONFLICT RECONSTRUCTION AND RECONCILIATION IN RWANDA AND BEYOND*, at xxi, xxi (Phil Clark & Zachary D. Kaufman eds., 2008) (stating that “an estimated one million people were murdered”).

2. Ingelaere, *supra* note 1, at 30.

3. Kagame, *supra* note 1, at xxi.

4. See *Rwanda Suspends Arrests*, *PITTSBURGH POST-GAZETTE*, May 28, 1995, at A5.

5. *Id.*

6. Arthur Baguma, *Traditional Courts Provides Solution to Genocide Cases*, *NEW VISION* (Uganda), Aug. 13, 2008.

cases.⁷ In fact, by 1999, courts had only tried 5000 of 120,000 suspects.⁸ At this rate, it would take over a century to try all the cases.⁹ Additionally, as recognized by former Rwandan President Pasteur Bizimungu, the people and government of Rwanda faced a dilemma—they truly needed an alternative form of justice, something more efficient and comprehensive than traditional criminal justice.¹⁰

The solution to the problem: transitional justice. The term “transitional justice,” as used in this Comment, describes a combination of both backward- and forward-looking elements—namely, “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes”¹¹ and recognized postconflict strategies that focus on the “rebuilding of the socioeconomic framework of the society”¹² and “reconstruction of the *enabling conditions* for a functioning peacetime society in the economy and society.”¹³ “Conflict management and, where possible, reconciliation are threads that must run through this framework to achieve a sustainable result.”¹⁴

Out of this comprehensive need for transitional justice, the current gacaca court system was born. During the same time, the United Nations formed its own answer to the Rwandan Genocide, known as the International Criminal Tribunal for Rwanda (ICTR). Each system has its own vast strengths and weaknesses. As will be discussed in this Comment, however, the gacaca courts are more effective in terms of giving the people of Rwanda the transitional justice they need. This Comment will show the strength of the gacaca courts by examining economic, psychological, sociological, and cultural considerations. The gacaca courts prevail over the ICTR as a mode of transitional justice not only because of successes in these areas but also because the ICTR has failed to strike the appropriate balance between the local culture and the international tribunal.

7. *See id.*

8. *Id.*

9. *Id.*

10. *See Genocide Conference in Kigali: President says “Alternative Forms of Justice” Needed to Deal with Genocide* (Radio Rwanda radio broadcast Nov. 2, 1995) (reported by BBC Summary of the World Broadcasts).

11. Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69, 69 (2003).

12. WORLD BANK, POST-CONFLICT RECONSTRUCTION: THE ROLE OF THE WORLD BANK 14 box 1 (1998).

13. *Id.*

14. *Id.*

Additionally, this Comment analyzes the gacaca courts at a critical time, as they recently completed the last of their trials, and the ICTR will dissolve at the end of its cases. Thus, questions will emerge regarding whether either the gacaca courts or the ICTR should be deemed a success. Further, if something similar to gacaca is used in the future in place of an international tribunal, certain issues of legitimacy will need to be addressed, such as screening of judges and protection of witnesses. This Comment begins with a brief history of Rwanda, followed by descriptions of both the current gacaca courts and the ICTR. Next, the Comment addresses the strengths and weaknesses of each system, as well as the usefulness of the gacaca courts as a tool to view legal responses in a potentially different and more comprehensive way.

II. BACKGROUND

A. *A Brief History of Rwanda*

The history of Rwanda is important both in understanding how a genocide could occur and where the concept of the postgenocide gacaca system arose. Therefore, the best place to start is with the history of Rwanda and its people and then move to the events that sparked the 1994 genocide.

Accounts of Rwandan history are somewhat varied. Rwanda is historically an agricultural society where the paramount social organization consisted of the family unit.¹⁵ In the precolonial period, “gacaca” was a gathering of respected community elders used for preserving peace and harmony in the community.¹⁶ These meetings were traditionally held on the lawn, giving the gacaca court its name—gacaca means “small grass.”¹⁷ This is why the gacaca court is often referred to as “justice on the grass.”¹⁸ The meetings adjudicated familial and community disputes, including land ownership and use, property damage, cattle ownership, inheritance, and marriage.¹⁹ This adjudication process allowed individuals and families to resolve their disputes; for example, injured parties could receive apologies, compensation, or both

15. See Ingelaere, *supra* note 1, at 26, 33.

16. See Baguma, *supra* note 6.

17. Lars Waldorf, *Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice*, 79 TEMP. L. REV. 1, 48 (2006).

18. Ingelaere, *supra* note 1, at 33.

19. Annet Birungi, *Restorative Justice Is the Only Way to Reconciliation*, NEW TIMES (Rwanda), May 11, 2005.

for loss from the wrongdoer.²⁰ Gacaca also sanctioned community-rule violations and fostered reconciliation by restoring harmony and social order and reintegrating the person who caused the disruption.²¹

Other areas of Rwandan history are more difficult to understand. The genocide in Rwanda was part of a civil war between two ethnic groups—the Hutu and the Tutsi.²² The most difficult part of Rwandan history to discern is exactly how the Hutu and Tutsi came to be two ethnically separated groups. The current Rwandan government emphasizes a unified Rwanda.²³ Thus, its version of precolonial history stresses that the Hutu and Tutsi were not originally separate racial categories but instead were socio-economic classes; the racial stratification was constructed for the convenience of Belgian colonizers.²⁴ Other readings of history stress the distinctness of the two groups—for example, that they migrated to Rwanda at separate times from separate racial and geographic areas; or, that they were separated initially by livelihood—the Hutu as agriculturalists and the Tutsi as pastoralists.²⁵

Rwanda was colonized by Germany in 1897; then Belgium acquired control in 1919.²⁶ Unfortunately, Belgian colonization twisted Rwanda's social and judicial dynamics. The Belgians classified the Rwandan people into two groups—the ruling Tutsi and the inferior Hutu.²⁷ Thus, ethnicity became institutionalized under Belgian/Tutsi rule.²⁸ Even though the Belgian colonizers introduced a western-style legal system, the gacaca court system remained in place as a lower level, subservient judicial process used to resolve local problems without involving colonial authorities.²⁹ Because the Western system was imposed over the traditional institution, the legitimacy of the gacaca courts diminished.³⁰

20. *See id.*

21. *Id.*

22. *See* NICHOLAS A. JONES, THE COURTS OF GENOCIDE: POLITICS AND THE RULE OF LAW IN RWANDA AND ARUSHA 6–7 (2010).

23. *See* Rosemary Nagy, *Traditional Justice and Legal Pluralism in Transitional Context: The Case of Rwanda's Gacaca Courts*, in RECONCILIATION(S): TRANSITIONAL JUSTICE IN POSTCONFLICT SOCIETIES 86, 88 (Joanna R. Quinn ed., 2009).

24. *See* Ingelaere, *supra* note 1, at 26.

25. *Id.* The separation, however it occurred, is dissolving under the government in modern Rwanda. *See* Nagy, *supra* note 23, at 88.

26. Ingelaere, *supra* note 1, at 26.

27. *Id.*

28. *Id.*

29. *Id.* at 34.

30. *Id.*

In 1959, the “Hutu revolution” began, which had the effect of putting the Tutsi in the inferior social position.³¹ In the following years, Tutsi rulers were ejected from their communities amid violence and sought refuge in neighboring countries.³² The Tutsi regrouped and attacked Rwanda in 1963 through 1964, but many were killed or forced back out of the country.³³ In 1962, Grégoire Kayibanda, a Hutu, became Rwanda’s first President.³⁴ President Kayibanda and his successor, President Habyarimana, sought to reverse the Belgian policies by elevating the Hutu to power and making the Tutsi the inferior class.³⁵

In 1990, the Tutsi-based Rwandan Patriotic Front (RPF) attacked Rwanda.³⁶ This attack sparked years of civil turmoil. President Habyarimana’s single political party had been carefully erected to maintain the status quo; as a result, the country fell into violence as a way of politics, generally targeting the Tutsi for being of the same ethnic identity as the rebel force.³⁷ The Hutu government began distributing weapons to local communities.³⁸ Propaganda appeared that characterized the Tutsi as cockroaches and a threat to the Hutu majority, and the slogan “Hutu pawa”—Hutu power—spread through the country.³⁹ When President Habyarimana’s plane was shot down on April 6, 1994, the state-driven genocide campaign began.⁴⁰ The militia, army, police forces, and state personnel drove the killings and incited locals to turn on their neighbors to cleanse the country of the Tutsi threat and maintain Hutu power.⁴¹ Ultimately, the 100-day genocide left approximately 800,000 dead.⁴²

After the genocide, the government imprisoned approximately 120,000 suspects.⁴³ The government-run civil judicial system had not escaped decimation by the war and could not adjudicate its caseload.⁴⁴

31. *See id.* at 27.

32. *Id.*

33. *Id.*

34. *Id.*

35. *See id.*

36. Linda Melvern, *The Past Is Prologue: Planning the 1994 Rwandan Genocide*, in *AFTER GENOCIDE: TRANSITIONAL JUSTICE, POST-CONFLICT RECONSTRUCTION AND RECONCILIATION IN RWANDA AND BEYOND*, *supra* note 1, at 21, 23.

37. Ingelaere, *supra* note 1, at 28–29.

38. Melvern, *supra* note 36, at 24–25.

39. Ingelaere, *supra* note 1, at 29.

40. *See id.* at 25.

41. *Id.* at 29–30.

42. *Id.*

43. Baguma, *supra* note 6.

44. *See* JONES, *supra* note 22, at 83–84.

Arguably, the justice system that existed in Rwanda before the genocide was little more than “a corrupt caricature of justice, and there was little to ‘rebuild’”⁴⁵ after the genocide, as the justice system had comprised about 700 judges and magistrates, less than fifty of whom had any formal legal training.⁴⁶ Thus, the Rwandan government requested that the United Nations help try those responsible for the genocide.⁴⁷ In response, the United Nations Security Council created the International Criminal Tribunal for Rwanda (ICTR) on November 8, 1994.⁴⁸ However, the ICTR was designed to deal only with the masterminds of the genocide.⁴⁹ Without much of a court system of its own, Rwanda was thus left with few options for trials of the lower-level *génocidaires*⁵⁰—criminals who participated in the genocide.⁵¹

Meanwhile, the RPF, as the victors, endeavored to begin building a new country.⁵² By 2001, the government realized that the Belgian-installed national judicial system was not working.⁵³ First, the system could not handle the massive number of trials. From 1997 to 2004, Rwandan civil courts dealt with only 10,026 cases⁵⁴ of the 120,000 suspects imprisoned.⁵⁵ Second, formal criminal trials took wrongdoers away from their accusers.⁵⁶ Moreover, the Rwandan cultural structures of family and community had not eroded, nor had the idea of *gacaca* justice.⁵⁷ Thus, through the last decade, *gacaca* has been enacted, amended, and criticized but is ultimately proving to be a successful form of transitional justice for Rwanda.

45. William A. Schabas, *Post-Genocide Justice in Rwanda: A Spectrum of Options*, in *AFTER GENOCIDE: TRANSITIONAL JUSTICE, POST-CONFLICT RECONSTRUCTION AND RECONCILIATION IN RWANDA AND BEYOND*, *supra* note 1, at 207, 212.

46. *Id.*

47. *See id.* at 209.

48. *Id.* at 208.

49. *See* Nagy, *supra* note 23, at 92.

50. *See* Ingelaere, *supra* note 1, at 35.

51. Mark A. Drumbl, Lecture, *Law and Atrocity: Settling Accounts in Rwanda*, 31 OHIO N.U. L. REV. 41, 41 (2005).

52. Ingelaere, *supra* note 1, at 31.

53. *See* Nagy, *supra* note 23, at 87.

54. Ingelaere, *supra* note 1, at 45.

55. Nagy, *supra* note 23, at 87.

56. *See id.*

57. *See* Ingelaere, *supra* note 1, at 35.

B. *Gacaca Courts Today: "Inkiko Gacaca"*

Like the traditional gacaca system, Inkiko Gacaca—the “new” gacaca process—focuses on truth and reconciliation.⁵⁸ The ultimate goal of this transitional justice system is to prevent a recurrence of genocide and allow the country to move forward through the use of reconciliation.⁵⁹ The system encourages truthfulness in the form of confessions by allowing sentence reductions for those who confess.⁶⁰ Further, it takes justice to the people; anyone can make an accusation, and the accuser will have a chance to face the wrongdoer in a judicial process held in the community.⁶¹ A panel of judges then determines the person's guilt.⁶² The process differs from traditional gacaca in that the new gacaca process is formally organized and recognized by the government⁶³ and represents “a *re-birth* of a traditional Rwandan solution.”⁶⁴ The rules are codified in the Rwandan Transitional National Assembly Organic Law 40/2000 of January 26, 2001.⁶⁵ In this overview of the latest form of gacaca, the Comment will first give a brief timeline of Inkiko Gacaca and then examine the phases of the process. Last, the Comment will discuss the gacaca sentencing guidelines.

In 1999, the Rwandan government began an initiative to modernize and formalize the gacaca process.⁶⁶ The new gacaca process has five goals: “establish the truth about what happened; accelerate the legal proceedings for those accused of genocide crimes; eradicate the culture of impunity; reconcile Rwandans and reinforce their unity; and use the capacities of Rwandan society to deal with its problems through a justice based on Rwandan custom.”⁶⁷

Also in 1999, the Kigali central prisoners' gacaca commission began a campaign in the Kigali central prison to educate prisoners about the

58. *See id.* at 38.

59. *See* Drumbl, *supra* note 51, at 48.

60. Nagy, *supra* note 23, at 94.

61. *See id.* at 93–94.

62. *See id.* at 94.

63. *See* JONES, *supra* note 22, at 8.

64. *Id.*

65. *See* Organic Law No. 40/2000 of 26/1/2001 Setting Up Gacaca Jurisdictions and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Between October 1, 1990 and December 31, 1994 (2001) [hereinafter Organic Law No. 40/2000], available at <http://www.inkiko-gacaca.gov.rw/pdf/Law.pdf> (amended in 2004 and 2007).

66. Ingelaere, *supra* note 1, at 36–37.

67. *Id.* at 38.

gacaca process.⁶⁸ As a result, about 1127 prisoners in that prison have confessed to various genocide-related crimes.⁶⁹ Meanwhile, the government continued to expand and legitimize the process. In October 2001, Rwandans elected 260,000 gacaca judges⁷⁰ based on their moral standing, integrity, and noninvolvement in the genocide.⁷¹ In June 2002, eighty pilot gacaca courts began operating.⁷² By December of that year, approximately 600 more courts were started.⁷³ At this time, nineteen judges sat on each panel.⁷⁴ The gacaca courts then took a break “intended to identify and correct weaknesses in the system.”⁷⁵ Reforms in 2004 reduced the number of judges to nine on each panel and the overall number of judges to 169,400.⁷⁶ Judges attended four days of training between November and December 2005 in anticipation of the start of gacaca courts nationwide in 2006.⁷⁷ By April 2009, Rwanda operated approximately 12,013 gacaca courts, with 169,442 judges.⁷⁸

There are two phases of the gacaca process. The first, information gathering,⁷⁹ is complicated and time consuming. In this phase, accusations, in the form of testimonials, are collected and validated.⁸⁰ This process often leads to new accusations, which also must be validated.⁸¹ At the end of the information collection, judges categorize suspects based on their alleged offenses.⁸² These categories are part of the 2004 gacaca reformation.⁸³

68. Sheena Kaliisa, *Gacaca: Genocide Suspects Look Forward to New Justice System*, INTERNEWS (Arusha), Oct. 6, 2001.

69. *Id.*

70. Julia Crawford, *Hopes and Fears as Kigali Launches Participative Justice*, HIRONDELLE NEWS AGENCY (Lausanne), Oct. 11, 2001.

71. Kaliisa, *supra* note 68.

72. *High Turn Out as Gacaca Courts Open Nationwide*, HIRONDELLE NEWS AGENCY (Lausanne), Dec. 6, 2002.

73. *Id.*

74. *See* Crawford, *supra* note 70.

75. *Rwanda: Traditional Courts Inaugurated*, UN INTEGRATED REG'L INFO. NETWORKS, June 24, 2004.

76. *Id.*

77. *Gacaca Volunteer Judges to Receive over 163 Million*, HIRONDELLE NEWS AGENCY (Lausanne), Jan. 24, 2006 [hereinafter *Gacaca Volunteer Judges*].

78. *1994 Genocide—Gacaca Trials Discharge One Million Cases So Far*, HIRONDELLE NEWS AGENCY (Lausanne), Apr. 6, 2009 [hereinafter *1994 Genocide*].

79. *See* Ingelaere, *supra* note 1, at 41.

80. *See id.*

81. *See id.* at 41–42.

82. *Id.* at 39, 42.

83. *See id.* at 39, 40 tbl.1(a).

There are three categories of criminals in the Rwandan justice system in reference to the genocide and the period between 1990 and 1994. Category-one offenders include rapists and those who occupied leadership positions.⁸⁴ Category two has three subcategories, which are separated in terms of sentencing. The first subcategory includes well-known murderers, torturers, and persons who committed dehumanizing acts on a dead body. The second subcategory covers ordinary killers and those who committed attacks with the intent of killing but were unsuccessful. The third subcategory encompasses those who committed attacks without the intention to kill.⁸⁵ Category three includes persons who engaged in property offenses.⁸⁶

The second phase of the gacaca process is the trial.⁸⁷ Trials began nationwide in July 2006⁸⁸ and were scheduled to conclude in June 2010.⁸⁹ Depending on the offense category of the accused, trials are held at various administrative levels.⁹⁰ The lowest and smallest administrative level is the cell, comparable to a neighborhood or small community.⁹¹ The next level is a sector, which "is like a small village and groups together several cells."⁹² Trials for category-two offenses are held at the sector level, while category-three offenses are tried at the cell level.⁹³ Category-one trials were held in the Rwandan civil courts until 2008.⁹⁴ At that time, the Rwandan government widened the jurisdiction of the gacaca courts to include some category-one offenses in an effort to dispose of the final cases in a timely manner.⁹⁵

The trials often take place in the accused person's home village.⁹⁶ Judges read aloud the case file, which consists of the compiled testimonies from the accusers.⁹⁷ The judges and community members also hear from the accused, from any accusers, and from any other

84. *Id.* at 40 tbl.1(b).

85. *Id.*

86. *Id.*

87. *See id.* at 42.

88. *Id.*

89. *Gacaca Closure Now Scheduled for June 30*, HIRONDELLE NEWS AGENCY, Apr. 12, 2010, <http://www.hirondellenews.com/content/view/13360/332/>.

90. *See Ingelaere, supra* note 1, at 42, 43.

91. *Id.* at 41.

92. *Id.*

93. *Id.* at 42, 43.

94. *See* Sulah Nuwamanya, *Gacaca Courts to Get More Powers*, WKLY. OBSERVER (Kampala), Mar. 6, 2008.

95. *See id.*

96. *See* Ingelaere, *supra* note 1, at 42.

97. *Id.* at 41, 42.

person who wishes to speak.⁹⁸ Judges then “deliberate among themselves and [announce] the verdict in public.”⁹⁹ Those convicted have the possibility of appeal; their case may be reviewed by a gacaca appeal court at the sector level composed of judges from the same locality.¹⁰⁰ If it is a category-three property offense, there is an additional, alternative type of dispute resolution. In these cases, the parties to the dispute are permitted to arrive at a “settlement related to the type and amount of restitution.”¹⁰¹ In this situation, the judges are present in a supervisory capacity and simply ratify the agreement if they find it appropriate.¹⁰²

Another important part of the gacaca system is sentencing. Because the gacaca courts seek truth and reconciliation,¹⁰³ confessions are taken into consideration in sentence determination.¹⁰⁴ Confessing before appearing on a list of suspects reduces the sentence by even more time.¹⁰⁵ The most recent gacaca sentencing amendments were passed in March of 2007.¹⁰⁶ On July 25, 2007, Rwanda officially abolished the death penalty,¹⁰⁷ thereby removing death from the sentencing possibilities for the worst offenders.¹⁰⁸ Currently, category-one offenders—rapists and those who occupied leadership positions—can be given life imprisonment if they are found guilty and have not given a confession, twenty-five to thirty years if confessing after appearing on a list of suspects, and twenty to twenty-four years if they confess before appearing on the list.¹⁰⁹

Category-two offenders are the mid-level offenders with a wide range of crimes and sentences. The first subcategory—well-known murderers, torturers, and persons who committed dehumanizing acts on a

98. *Id.* at 42.

99. *Id.*

100. *Id.* at 43.

101. *Id.*

102. *Id.*

103. *See id.* at 38.

104. *See High Turn Out as Gacaca Courts Open Nationwide, supra* note 72.

105. *See Ingelaere, supra* note 1, at 40 tbl.1(b).

106. *See Organic Law No. 10/2007 of 01/03/2007 Modifying and Complementing Organic Law No. 16/2004 of 19/6/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed Between October 1, 1990 and December 31, 1994 as Modified and Complemented to Date (2007) [hereinafter Organic Law 10/2007], available at <http://www.inkiko-gacaca.gov.rw/pdf/L.O%20N%2010.2007%20VERSION%FINALE.pdf>.*

107. *Rwanda Abolishes Death Penalty*, AGENCE FRANCE PRESSE, July 26, 2007.

108. *See Nuwamanya, supra* note 94.

109. Ingelaere, *supra* note 1, at 40 tbl.1(b).

dead body—can be sentenced from thirty years to life in prison if they fail to give a confession, twenty-five to twenty-nine years if confessing after appearing on a list of suspects, and twenty to twenty-four years if confessing before that appearance.¹¹⁰ If a category-two offender confesses, the sentence is broken down: half is community service on probation, one-sixth is suspended, and one-third is served in custody.¹¹¹ Subcategory two—ordinary killers and those who committed attacks with the intention of killing but without actually doing so—are sentenced from fifteen to nineteen years without a confession, twelve to fourteen years for confessing after appearing on the list of suspects, and eight to eleven years for confessing before, with the same breakdown of the sentence for those who confess.¹¹² The final subcategory—those who attacked others without the intention to kill—receives five to seven years without confession, three to four years if confessing after appearing on the list, and one to two years if confessing before appearance on the list.¹¹³ All of the sentences for offenders in this subcategory are broken down, whether or not they confess.¹¹⁴ Category-three offenders are not given prison sentences but must give civil reparations.¹¹⁵

As of April 2009, the gacaca courts had completed 1.1 million cases,¹¹⁶ the vast majority of which were completed after the formal opening in 2005.¹¹⁷ Compare this figure to the civil justice system, which between 1997 and 2004 dealt with only 10,026 cases,¹¹⁸ and the ICTR, which as of April 2010 had completed only fifty trials.¹¹⁹

C. *The International Criminal Tribunal for Rwanda*

The United Nations has engaged a different judicial format in pursuing perpetrators of genocide. The United Nations Security Council, in an effort to “contribute to the process of national reconciliation and to

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *1994 Genocide*, *supra* note 78.

117. See *Gacaca Closure Postponed One More Time*, HIRONDELLE NEWS AGENCY, Mar. 31, 2010, <http://www.hirondellenews.com/content/view/13340/332/>.

118. Ingelaere, *supra* note 1, at 45.

119. Hassan B. Jallow, Chief Prosecutor UNICTR & Under Sec'y-Gen., United Nations, Commemoration of 1994 Rwandan Genocide (Apr. 7, 2010), available at <http://69.94.11.53/ENGLISH/speeches/jallow100407.htm>.

the restoration and maintenance of peace [in Rwanda],”¹²⁰ created the ICTR on November 8, 1994.¹²¹ The ICTR was established “For the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December.”¹²²

The ICTR was largely a new idea at its formation and remains so today. Only three important precedents exist for international prosecution: the post-World War II trials held in Nuremberg and Tokyo and, more recently, the International Criminal Tribunal for the Former Yugoslavia (ICTY),¹²³ which was established only in 1993.¹²⁴ When the ICTR formed, it met with criticism from the Rwandan government, whose officials were frustrated with the slow-moving United Nations bureaucracy and its aversion to capital punishment.¹²⁵ The United Nations has taken great pains to ensure a fair trial process for those brought before the ICTR,¹²⁶ and the focus of the tribunal has been decidedly more on retribution than on reconciliation.¹²⁷

In considering whether the gacaca courts are better suited to achieve the broad goals of transition and reparations, the ICTR is a useful comparison because it was established by non-Rwandans, on the other side of the globe, to address the same problem.¹²⁸ The ICTR differs greatly in almost every way imaginable, including structure, form, sentencing, jurisdiction, and location. However, a comparison of the two models proves beneficial to an analysis seeking the most effective mode of justice. Perhaps, as will be discussed later, the ICTR could have increased its overall effectiveness in serving the Rwandan people if the United Nations had used a more cultural- and community-based model to form it.

120. S.C. Res. 955, at 2, U.N. Doc. S/RES/955 (Nov. 8, 1994).

121. *Id.*

122. *Id.* at 3.

123. See JONES, *supra* note 22, at 107.

124. See S.C. Res. 827, at 2, U.N. Doc. S/RES/827 (May 25, 1993) (establishing the ICTY).

125. See Raymond Bonner, *Rwandans Divided on War-Crimes Plan*, N.Y. TIMES, Nov. 2, 1994, at A10.

126. See, e.g., JONES, *supra* note 22, at 96–97 (discussing fair-trial considerations in the ICTR and Rwandan courts).

127. See *id.* at 125–26.

128. See *id.* at 105–09 (discussing the creation of the ICTR).

The structure of the ICTR is basically the same as the ICTY model.¹²⁹ There are three trials chambers and an appeals chamber, composed of sixteen judges, each a national from a different state.¹³⁰ Beyond this lies a massive bureaucracy of support staff and administrative groups. There is the Office of the Prosecution, which includes the Prosecution Division and the Appeals and Legal Advisory Division.¹³¹ Next, there is the Registry, which “is responsible for the overall administration and management of the [ICTR].”¹³² The bureaucracy continues with Witness Support and Protection, which “ensure[s] the timely availability of witnesses by providing impartial support and protection services to all witnesses and victims called to testify” and includes both a defense and a prosecution section.¹³³ There is the Defence Counsel and Detention Management Section to provide for “competent defence counsel to indigent accused/suspects detained under the authority of the ICTR and to ensure that the United Nations Detention Facility (UNDF) conforms with international standards.”¹³⁴ The Court Management Section contains approximately fifty employees that provide “administrative, judicial, and logistic support” to the Chamber proceedings, including court reporters and liaisons between the Chambers and Registry sections.¹³⁵ Finally, the Procurement Section “is responsible for the procurement of goods and services” to the ICTR.¹³⁶ Compare this with Rwanda’s civil courts and the gacaca courts, and it is easy to see why there is criticism of the ICTR’s bureaucracy.¹³⁷

The ICTR has jurisdiction over those accused of crimes against humanity and war crimes; specifically, the ICTR tries those who were responsible for the genocide.¹³⁸ The ICTR has concurrent but primary

129. *Id.* at 107.

130. *The Chambers*, INT’L CRIM. TRIBUNAL FOR RWANDA, <http://69.94.11.53/ENGLISH/geninfo/chambers.htm> (last visited Oct. 11, 2010).

131. *Office of the Prosecution*, INT’L CRIM. TRIBUNAL FOR RWANDA, <http://69.94.11.53/ENGLISH/geninfo/otp.htm> (last visited Oct. 11, 2010).

132. *The Registry*, INT’L CRIM. TRIBUNAL FOR RWANDA, <http://69.94.11.53/ENGLISH/geninfo/registry.htm> (last visited Oct. 11, 2010).

133. *Witness Support and Protection at ICTR*, INT’L CRIM. TRIBUNAL FOR RWANDA, <http://69.94.11.53/ENGLISH/geninfo/wvss.htm> (last visited Oct. 11, 2010).

134. *Defence Counsel & Detention Management Section*, INT’L CRIM. TRIBUNAL FOR RWANDA, <http://69.94.11.53/ENGLISH/geninfo/dcdms.htm> (last visited Oct. 11, 2010).

135. *The Court Management Section*, INT’L CRIM. TRIBUNAL FOR RWANDA, <http://69.94.11.53/ENGLISH/geninfo/cms.htm> (last visited Oct. 11, 2010).

136. *UN-ICTR Procurement Section*, INT’L CRIM. TRIBUNAL FOR RWANDA, <http://69.94.11.53/ENGLISH/procurement/procurement.htm> (last visited Oct. 11, 2010).

137. See discussion *infra* Part III.B.2.

138. See S.C. Res. 955, *supra* note 120, art. 1.

jurisdiction, meaning that it may stay proceedings in Rwanda and order the accused to be transferred for prosecution.¹³⁹ The accused are given full due process rights, including being informed of the nature of the charges, having adequate time to prepare a defense, and the right to an attorney.¹⁴⁰ Failure in due process can result in dismissal of the indictment.¹⁴¹

The ICTR is located in Arusha, Tanzania.¹⁴² It is a truly international affair—states participating in the arrest of suspects include Tanzania, Cameroon, Kenya, Benin, Côte d'Ivoire, Namibia, Togo, Zambia, Burkina Faso, Mali, Democratic Republic of Congo, South Africa, Belgium, Switzerland, the Netherlands, and the United States.¹⁴³ Because witnesses for the trials are often refugees hiding in other countries without valid traveling papers, various countries continuously assist them with documentation and travel.¹⁴⁴ Additionally, members of the ICTR staff represent eighty different nationalities;¹⁴⁵ and sentences for the convicted are enforced in places ranging from Mali, Benin, and Swaziland to France, Italy, and Sweden.¹⁴⁶

The first ICTR case began in 1997.¹⁴⁷ Thus far, the ICTR has completed thirty-six cases, acquitted eight detainees, released two, has twenty-two cases currently in progress, eight more on appeal, and two more criminals detained and awaiting trial.¹⁴⁸ Ten accused are still at large.¹⁴⁹ For the 2010 and 2011 biennial budget, the ICTR had a United Nations approved gross budget of \$245,295,800.¹⁵⁰ In comparison, this figure represents approximately eighteen percent of Rwanda's estimated

139. *See id.* art. 8.

140. *Id.* art. 20.

141. Failure to charge and failure to present a suspect in front of a judge promptly are both ICTR due-process violations that allowed one suspect to be released. *See* Prosecutor v. Jean-Bosco Barayagwiza, Case No. ICTR-97-19-AR72, Decision (Nov. 2, 1999), http://www.icty.org/x/File/Legal%20Library/jud_supplement/supp9-e/barayagwisa.htm.

142. S.C. Res. 977, U.N. Doc. S/RES/977 (Feb. 22, 1995).

143. *International Co-operation with the Tribunal*, INT'L CRIM. TRIBUNAL FOR RWANDA, <http://www.unictr.org/tabid/113/default.aspx> (last visited Oct. 11, 2010).

144. *Id.*

145. *Id.*

146. *Id.*

147. *Basic Facts on the ICTR*, HIRONDELLE NEWS AGENCY, <http://www.hirondellenews.com/content/view/9239/1152/> (last visited Oct. 11, 2010).

148. *Status of Cases*, INT'L CRIM. TRIBUNAL FOR RWANDA, <http://www.unictr.org/cases/statusofcases/tabid/204/default.aspx> (last visited Nov. 18, 2010).

149. *Id.*

150. *General Information*, INT'L CRIM. TRIBUNAL FOR RWANDA, <http://www.unictr.org/aboutict/generalinformation/tabid/101/default.aspx> (last visited Oct. 11, 2010).

national expenditures in 2009.¹⁵¹ From its inception in 1994 until 2008, the ICTR has run at a total cost of approximately \$1.1 billion.¹⁵²

III. ANALYSIS

Thus far, the background discussion has illustrated the history of Rwanda and the cause of the genocide, the workings of the gacaca courts, and the workings of the ICTR. At this point, the Comment analyzes the strengths and weaknesses of both the gacaca courts and the ICTR in terms of transitional justice. Next, it discusses how the gacaca courts are the more successful form of justice for the Rwandan people and represent a better cultural balance for the future use of transitional justice.

A. *Strengths and Weaknesses of the Gacaca Courts*

As previously mentioned, this Comment uses a broad definition of the term *transitional justice*.¹⁵³ Transitional justice, by this definition, is interdisciplinary—it addresses numerous social areas and offers judicial approaches, which is exactly what the gacaca courts in Rwanda are doing. Specifically, the gacaca court system offers economic, sociological, psychological, and cultural benefits. Each of these areas overlaps with others, but for ease of dialogue, these aspects have been separated into categories.

First, this Comment discusses the economic benefits of the gacaca system. These include the cost, timeliness, and social drain of the prison population. Second, this Comment examines the sociological and social relations that the gacaca courts successfully addressed. These include the mindset of the perpetrator and the overall social goal of building a unified country. Third, the Comment assesses the psychological benefits bestowed on both the victims and the accused. Fourth, the Comment discusses the Rwandan cultural aspects that benefit from the gacaca courts. Finally, the Comment analyzes the major weaknesses of the gacaca courts, which include procedural issues, procurement of suspects, court legitimacy problems, and lack of rights of the accused. Overall,

151. Rwanda's estimated expenditures in 2009 total \$1.392 billion. *The World Factbook: Rwanda*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/rw.html> (last visited Oct. 11, 2010) [hereinafter *World Factbook: Rwanda*].

152. *ICTR/Budget—UN Approves 267 Million Dollars ICTR Budget*, HIRONDELLE NEWS AGENCY (Lausanne), Jan. 22, 2008.

153. See *supra* notes 11–14 and accompanying text.

this discussion leads to the conclusion that while the gacaca system is not perfect, it is an effective and useful method for transitional justice and dispute resolution. With modifications, it could teach the rest of the world a more comprehensive approach to justice and serve as a model for future reconciliation-minded systems.

1. Economic Benefits of the Gacaca System

Economic advantages of the gacaca courts are somewhat more straightforward than the other categories. Many of these are found by simply looking at the gacaca system and comparing it to trials held in the Rwandan criminal courts, which are more of a westernized institution. While gacaca trials give many economic advantages to the Rwandan people, there are also negative aspects that will be acknowledged.

To begin with, it is important to look at the cost of the gacaca trials. The trials are held in the neighborhoods and communities where the offenses took place and are literally held on the grass.¹⁵⁴ Compared with costs for traditional litigation, which include court costs, housing, utilities, and transportation, community-held trials have the potential to save the government enormous overhead cost.

Additionally, the judges are paid low wages¹⁵⁵ and initially were not paid at all.¹⁵⁶ Without much financial benefit, the judges may well prefer working their fields to presiding over a gacaca court—making the low wages a point of argument against the effectiveness of the gacaca courts. Ultimately, however, the government does not have to pay high salaries for individuals with a high degree of legal training, and the judges are continuing their productive roles in their society.

The gacaca trials omit the use of lawyers or other official paid representation for the accused in favor of allowing anyone to speak for the defendant.¹⁵⁷ Failing to use official representation to defend the accused has negative aspects because due process rights, at least as recognized by a Western society, are basically nonexistent. There is no one trained in the legal process to make arguments on behalf of the accused, to ensure he is receiving fair treatment from the court, or to explain exigent circumstances in which crimes may have occurred.

154. See Ingelaere, *supra* note 1, at 33.

155. See *Gacaca Volunteer Judges*, *supra* note 77.

156. See Sheena Kaliisa, *Kigali Elect Judges for New Justice System*, INTERNEWS (Arusha), Oct. 3, 2001.

157. *Rwanda Assures Defence Rights Before the Gacacas*, HIRONDELLE NEWS AGENCY, Dec. 13, 2007, <http://www.hirondellenews.com/content/view/10416/26/> [hereinafter *Rwanda Assures*].

However, it is important to keep in mind that this is not a Western society and that this system was designed with other purposes in mind—namely, that the people of Rwanda are recovering from crimes of catastrophic proportions and that they are traditionally a society of reconciliation. If each accused had formal counsel, over one million attorneys would be needed.¹⁵⁸ Counsel would need some kind of compensation and would have to come from somewhere. Defense counsel might have to be brought from outside the community, causing mistrust amongst the villagers because the counsels are outsiders who are not accustomed to the system. Otherwise, defense counsel would have to come from the village itself. This would mean another person would be taken out of productive labor for the time of representation and would also probably have bias one way or another about the accused's guilt or innocence.

Additionally, it has been suggested that the “imposing presence of a lawyer would intimidate the gacaca judges.”¹⁵⁹ While not a specifically economic factor, the system is dependent on the workings of the judges as community members to keep it afloat. Taking this and the results of the actual trial process as a whole, it is certainly arguable that the people of Rwanda are using one of the most cost-effective ways to deliver justice to a massive amount of people.

The next economic factor is timeliness. If justice were delivered in the manner used in the first years after the genocide, it would have taken over a century to complete the trials.¹⁶⁰ The slow-moving process, coupled with the above-mentioned costs associated with a more formal trial, including overhead costs and the need for people with a high level of legal training, would immensely drain the Rwandan economy.

Closely related to the timeliness is the economic drain from the prison system. Each person in prison costs the government money to house and feed. In some areas, families bring meals to their accused and imprisoned family members.¹⁶¹ Bringing meals is a burden on those family members because it requires time and precious resources. Additionally, especially in an agricultural society, imprisoned individuals who may or may not be guilty of the crime they are accused of are not able to be productive members of society. Able bodies that are not

158. See *Gacaca Courts: 1.4 Million Cases Handled in Past Two Years*, HIRONDELLE NEWS AGENCY (Lausanne), Feb. 6, 2009.

159. *Rwanda Assures*, *supra* note 157.

160. Baguma, *supra* note 6.

161. See GACACA, *LIVING TOGETHER AGAIN IN RWANDA?* (Dominant 7/Gacaca Productions 2002).

working fields are, in essence, hurting the well-being of others and harming the country's economy. This is especially true in such a small country, and with well over 100,000 citizens imprisoned,¹⁶² there is a definite labor drain. The gacaca system, in disposing of the cases quickly, allows those people who are innocent or are accused of crimes carrying a short prison sentence to return home and resume productivity. Additionally, the sentencing requirements that allow part of the sentence to be served on work-release parole¹⁶³ are an extremely powerful advantage of the gacaca system. Again, rather than finishing out their prison sentences in full, individuals are able to rejoin the community as productive members and reconcile their crimes by helping others.

2. Sociological and Social-Relations Benefits of the Gacaca System

Society benefits on macro and micro levels from the gacaca system and its ability to take into consideration certain sociological patterns of the génocidaires. Anne Aghion, in her documentary *Gacaca, Living Together in Rwanda?*, examines the personalities of those accused of criminal acts during the genocide.¹⁶⁴ Importantly, her film reveals that at least some of these people are conformists.¹⁶⁵ They stay in prisons, even when security is minimal.¹⁶⁶ They do things that are asked of them.¹⁶⁷ Interestingly, many of the accused at the gacaca level simply do not fit the mindset of killers.¹⁶⁸ Basically, the people on the ground who committed acts of violence are generally not social deviants—in fact, they often want to be integrated and accepted in society¹⁶⁹—which makes sense when considering that the social climate leading to the genocide was comprised of propaganda and brainwashing, in addition to general social unrest.¹⁷⁰ When the higher power of government told them to go out and fix all their problems by committing acts of violence, they listened.¹⁷¹ The accused are remorseful, at least insofar as many confess to their crimes so they can apologize to their victims during the gacaca

162. Baguma, *supra* note 6.

163. *See supra* note 111 and accompanying text.

164. *See* GACACA, *LIVING TOGETHER AGAIN IN RWANDA?*, *supra* note 161.

165. *See id.*

166. *See id.*

167. *See id.*

168. *See id.*

169. *See id.*

170. *See supra* notes 36–39 and accompanying text.

171. *See* Ingelaere, *supra* note 1, at 29–30.

court.¹⁷² Gacaca encourages this by allowing reduced sentences and earlier reintegration into Rwandan society for those who confess.¹⁷³

Another societal advantage is the use of gacaca to help reintegration of citizens as part of building a unified Rwanda. The Rwandan Constitution no longer recognizes Hutu or Tutsi, eliminating these labels in favor of one "Rwandan" label.¹⁷⁴ Part of building a unified Rwanda involves forgiving those who caused harm so they can come home and resume a useful place in society. The open format of gacaca allows victims and transgressors to speak openly about wrongs committed in the hope of moving forward in unity. Of course, forgiveness is easier said than done, especially following an event as catastrophic as genocide. Nevertheless, open forgiveness is something that the system is striving toward, and perhaps it is better to confront these issues now, as opposed to allowing the hurt to pass down through the generations as a form of blood feud.

As part of building a unified Rwanda, gacaca has also given the citizens participatory justice and community involvement in the proceedings. Individual community members, including victims, attend the gacaca courts to make accusations and hear the accused.¹⁷⁵ The judges are members of the local community—they are not outsiders brought in to make judgments.¹⁷⁶ This format creates an atmosphere of a community holding its members accountable for their wrongdoings, as the original gacaca did. This makes it possible for the community to accept the outcome more readily.

3. Psychological Benefits

Conventional criminal law recognizes multiple theories of punishment, including deterrence, retribution, rehabilitation, and restitution. All of these have an impact on both the individual criminal and other individuals in society, and gacaca imbibes them all. Psychologically, there is a huge deterrent effect from having one's crimes known to the entire community and having to stand in front of them and either confess or try to refute the testimony. Although the government is working hard to reunite Rwanda, the kind of pain that

172. See GACACA, LIVING TOGETHER AGAIN IN RWANDA?, *supra* note 161.

173. See *supra* notes 104–05 and accompanying text.

174. See *supra* note 23 and accompanying text.

175. See Ingelaere, *supra* note 1, at 41.

176. See *id.*

arises from genocide is not likely to be forgotten—and so this court system stands not only as a deterrent for the criminals but also for others in the community. In Rwandan culture, the family is still important and the community is an extension of the family. Using the gacaca format discourages people from committing crimes because they may be called in front of their family to answer the accusations.

In that same cultural context, there is also a retributive aspect. People do not want to be confronted with the worst acts they have committed, especially not by their victims. Confrontation by one's victim is certainly a form of punishment. Additionally, the prison sentences impose a further retributive effect. However, because the main goal of the government is to rebuild and unify the country,¹⁷⁷ this is probably not a primary concern beyond a low level of retribution.

Rehabilitation occurs when the prisoners are released back into their communities, among the people who accused them, to try and make a life. The community as a whole is responsible for the rehabilitation. Restitution happens in much the same way—when the offender returns, he has to make amends to those who were hurt. Laboring in their fields is one form of restitution; another form is monetary repayment for the level-three property offenses that are not punished with a prison sentence.¹⁷⁸

Beyond serving interests that are important in conventional criminal law, gacaca also helps the victims to carry on with their lives and forces the génocidaires to face their crimes. Because the community is so heavily involved in every step of gacaca, from evidence gathering to communities assembled to hear charges, the community members are able to see those who wronged them and take an active role in the determination of their futures. If closure is yet too difficult for the victims, at least they can begin the process of moving on.

On the other side, the génocidaires are not left to themselves to harbor lingering feelings about the individuals they sought to hurt or eliminate. They cannot detach themselves from the outside world and the victims because they are connected through the gacaca court. Undoing the damage done to Rwandan society through propaganda and brainwashing is not a simple task, but at the very least, the accused can begin to think of their accusers and the witnesses against them as people.

177. *See id.* at 31.

178. *See id.* at 40 tbl.1(b).

4. Rwandan Culture

As already mentioned, one of the biggest benefits that gacaca bestows upon Rwanda is the unification of the country. Unification, in essence, creates a new culture for Rwanda. There are also parts of the traditional Rwandan culture that benefit from the gacaca courts more than they would benefit from Rwanda's detached civil courts.

First, gacaca is a system of justice Rwandans are comfortable with. Even though gacaca was pushed into a subservient position by the Belgian colonizers, it remained a part of the dispute-resolution system.¹⁷⁹ Using the new gacaca on a broad scale is in line with tradition, albeit with a slightly different form and function than original gacaca. However, it comes from the roots of Rwandan society and has the ability to restore a piece of culture that was almost lost in the colonization process.

Next, the gacaca system brings opportunities for reconciliation.¹⁸⁰ One Rwandan adage reads: "In Rwanda we say . . . 'The family that does not speak dies.'"¹⁸¹ In an Anne Aghion documentary of the same name, the film crew interviewed one man, Rwamfizi, a member of a Hutu night patrol who was accused of killing people in his village and has returned upon his release to await trial.¹⁸² Toward the end, the film crew brings Rwamfizi, his accusers, and other villagers to a bar, and it is the first time that they have sat down together since the genocide.¹⁸³ Some of the women who lost all of their children have a difficult time, but others make the point that "[h]e was always a son of the family, and he remains so today," and that they will try to bring him back in.¹⁸⁴ The villagers and Rwamfizi begin to talk, to find ways to live together again.¹⁸⁵ One point the people make is that mistrust is not good—people must learn to live together.¹⁸⁶ Rwamfizi's release from prison has given villagers the opportunity to do that by getting the accusations out in the open and allowing Rwamfizi to repair damaged relationships.¹⁸⁷

179. *See id.* at 34.

180. *See* IN RWANDA WE SAY . . . THE FAMILY THAT DOES NOT SPEAK DIES (Dominant 7/Gacaca Productions 2004) [hereinafter IN RWANDA WE SAY].

181. *Id.*

182. *See id.*

183. *See id.*

184. *Id.*

185. *See id.*

186. *Id.*

187. *See id.*

“By speaking with [Rwamfizi], I understand better,” says his brother-in-law, a man whose mother, wife, and family were killed during the genocide.¹⁸⁸ Rwamfizi replies: “Once what’s stuck in your throat passes, it’s a relief. If we speak, it’ll end one day.”¹⁸⁹ The brother-in-law responds: “If you don’t say what you’ve seen, families remain mistrustful. But when things are revealed, families turn to the future.”¹⁹⁰

These conversations show the importance of the gacaca message to the culture of the Rwandans. The people want to know what happened to their loved ones by having the killers confess; they want the wrongdoer to apologize, to offer to work in their fields or fix their roofs. Gacaca is giving the people a chance to have these conversations, to try and understand, without forcing them into the unhappy circumstance of far-away proceedings that they cannot comprehend. More importantly, gacaca is molded to their culture of community and openness.

Finally, the process educates and shapes the next generation’s culture. This is important today because it would be easy for hate to pass along and cast the next generation in a society of violence. The Anne Aghion documentary mentioned above also goes into schools and listens to the children whose families were torn apart.¹⁹¹ The gacaca process seems to teach the next generation the lessons of unity and forgiveness.¹⁹² One child discussed the difficulty of knowing that “the killer is alive and well” while the victims’ families are dead.¹⁹³ But, the child realized he could not think of that or the killing would start all over.¹⁹⁴ “When the killer lives just opposite you, you cannot think of all that without feeling [the] need for revenge.”¹⁹⁵ The younger generation is able to recognize that they must forgive¹⁹⁶—and the reintegration of the génocidaires, while difficult, is necessary for continued survival. The schools talk about the return of the perpetrators, the gacaca courts, and what the children’s reactions are, and it seems clear that they have listened to the gacaca messages of unity and forgiveness.¹⁹⁷ Hopefully,

188. *Id.*

189. *Id.*

190. *Id.*

191. *See id.*

192. *See id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *See id.*

197. *See id.*

this is enough to keep any future violence from arising due to continuing feelings of mistrust or hate.

5. Major Weaknesses of the Gacaca Courts

In addition to the criticisms briefly mentioned as counterarguments above, numerous problems exist in the gacaca courts, many of which are documented and recognized not only by international critics but also by the government of Rwanda. There are as many criticisms as praises for the gacaca courts, and both are limited only by the amount of creativity one has in looking at each aspect of the system. For that reason, this Comment will discuss only a select few arguments. First, this Comment will discuss various procedural difficulties, some of which are fairly unique to Rwanda. Second, this Comment will examine the problem of accused génocidaires fleeing justice, both by fleeing to other countries and by hiding within Rwanda's rural countryside. Third, this Comment will evaluate the problems of court legitimacy. Fourth, this Comment will address concerns regarding rights of the accused.

The government of Rwanda, through the National Service of Gacaca Courts, has recognized some procedural difficulties they encountered in the information-collection phase.¹⁹⁸ To begin with, the gacaca courts faced unique destruction-of-evidence problems because of the form of evidence collected and the informal environment. For example, the "[d]estruction of notebooks where collected data was recorded or notebooks thrown into latrines" is one of a long list of information-gathering problems.¹⁹⁹ Clearly, the collection of data represents unique challenges in a country that is predominantly rural and has an overall literacy rate of seventy percent.²⁰⁰ Re-collection of data because it was willfully destroyed and not stored in a more secure format or area is a waste of resources. Moreover, lost data could be unrecoverable due to the unavailability of exact repetition.

Along this same line, "[c]ollecting information from some specific areas . . . has often proved extremely difficult."²⁰¹ Without ready access to information and transportation, witnesses either do not know what is going on or do not have the capability to give testimony. Without

198. See Nat'l Serv. of Gacaca Courts, *Report on Data Collection*, INKIKO GACACA, <http://www.inkiko-gacaca.gov.rw/pdf/ikusanya%20english.pdf> (last visited Oct. 11, 2010) [hereinafter *Report on Data Collection*].

199. *Id.*

200. *World Factbook: Rwanda*, *supra* note 151.

201. *Report on Data Collection*, *supra* note 198.

witnesses to give evidence, gacaca cases against génocidaires cannot be made. If these cases were tried in Rwanda's civil courts, the courts would have more formalized, centralized processes, and government officials might be able to keep better track of information. Centralized governmental resources might also be able to better reach into the problem areas to attain information and witnesses.

Two other problems gacaca courts face are “[p]ersons going into exile allegedly because of Gacaca Courts whereas [sic] they actually flee justice” and “[p]ersons who moved from areas where they used to live during the genocide in [an] attempt to avoid being made accountable for the crimes they committed there.”²⁰² People can disappear from even the most populated and technological places in the world to elude justice. In Rwanda, where the country is small and rural, technology and information sharing can be minimal; if a person is able to escape the community or city, efforts to bring him to justice could prove futile. This problem has been somewhat remedied with the willingness of other countries to extradite génocidaires back to Rwanda to face trial, but clearly this applies only if the suspect is located and identified.

Additionally, the gacaca courts have legitimacy problems. Specifically, “[a] quite big number of persons elected as Inyangamugayo . . . were later on recognized as having committed genocide.”²⁰³ The Inyangamugayo, or judges of the gacaca courts,²⁰⁴ are tasked with upholding the basic notions of justice. If a judge's integrity is compromised, it compromises the entire system. After all, the gacaca courts focus on truth and reconciliation²⁰⁵—and if a judge cannot be trusted to take accountability, who should be? At the local level, the victims harmed by the Inyangamugayo may have a difficult time allowing those who wronged them to give justice to others.²⁰⁶ On a collective scale, the untruthful Inyangamugayo undermine the legitimacy of the gacaca courts and the government that endorses them.

Another legitimacy problem is that the Inyangamugayo have no legal training beyond a basic course on running the gacaca courts.²⁰⁷ Upholding laws is a difficult task even for educated, lifelong attorneys and judges. In Rwanda, the worst criminals in its history are being

202. *Id.*

203. *Id.*

204. JONES, *supra* note 22, at 59.

205. See Ingelaere, *supra* note 1, at 38.

206. See Crawford, *supra* note 70.

207. See Sheenah Kaliisa, *Kigali Begins Training Judges for New Justice System in December*, INTERNEWS (Arusha), Oct. 25, 2001.

brought to justice by those who have hardly any knowledge of the law.²⁰⁸ Twenty years in prison is a long time and seems more unjust when handed down by a biased or unknowledgeable judge.

The gacaca courts might also be at fault for allowing the populace to select judges based on the person's reputation for integrity, without the availability of further information or any kind of oversight.²⁰⁹ As a counterargument, however, people arguably never know everything about their elected officials. Allowing the people to choose who they want to administer justice in their court system is democratic and in line with the principle that the community ultimately holds wrongdoers accountable.

Additionally, the gacaca courts cannot be held out as a legitimate justice system if they are not even accomplishing the goals of truth and reconciliation. Mark Drumbl, a scholar who has spent a considerable amount of time studying and participating in the justice system in Rwanda, reports:

[P]risoners who acknowledge that violence took place generally believe it was necessary out of self-defense. These prisoners still do not perceive the 1994 massacres as manifestly illegal. They see themselves as honorable citizens tasked to do the dirty work of furthering the interests of the state. They do not deconstruct that state as fundamentally criminal. These prisoners, even after years in jail, have not been disabused of the propaganda fed to them by extremist Hutu leaders, according to which the Tutsi were out to attack them, so, therefore, this attack had to be preempted by killing all the Tutsi. This violence therefore is legitimized as a preemptive war of survival, not as genocide. Unsurprisingly, then, many detainees see themselves as prisoners of war, simply ending up on the losing side. With this in mind, they patiently wait for their side to regain power and then liberate them from prison.²¹⁰

If there is still some of this mindset existing in the minds of the accused, it is difficult to say how the gacaca system has served its truth and reconciliation purposes. If these goals are not being served, it seriously limits the credibility of the system as a model for transitional justice.

Yet another weakness of the gacaca system is the concern over the lack of due process rights of the accused.²¹¹ The main problem is that

208. See Crawford, *supra* note 70.

209. See Kaliisa, *supra* note 207.

210. Drumbl, *supra* note 51, at 50–51.

211. See, e.g., Erin Daly, *Between Punitive and Reconstructive Justice: The Gacaca Courts in Rwanda*, 34 N.Y.U. J. INT'L L. & POL. 355, 382 (2002).

there is so much incentive to confess to the charges that an individual may confess to crimes not committed to avoid a longer prison sentence.²¹² Another problem is that the speed at which the trials are conducted may not allow adequate time for a defendant to present his case or bring witnesses on his behalf. Additionally, the lack of counsel to help the suspect make his decision to plea bargain, or at other critical stages of the proceedings, is a potential weakness.²¹³ As a collective whole, this lack of due process rights is certainly something to be concerned about in the gacaca process. The importance of universal human rights is certainly nothing to be disregarded—perhaps with certain safeguards, the gacaca court system could free itself of this issue while maintaining the important sense of community and reconciliation.

One final weakness of the gacaca courts has come out over the course of the process—the government of Rwanda may interfere too much and undermine the courts' legitimacy.²¹⁴ As previously mentioned, the idea of gacaca is to allow justice to be served at the community level to allow the people a chance for reconciliation.²¹⁵ When the process is subject to interference by a national government, the entire system is undermined. Additionally, the Rwandan government has been accused of bringing false charges against political opponents for its own interests.²¹⁶ If the government uses the gacaca system in this way, it would harm the overall legitimacy of the courts in the eyes of the Rwandan people, the international community's view of the system, and the legitimacy of the government as a whole. Furthermore, as the gacaca process has continued, the government has often coerced participation by "round[ing] up people for *gacaca*, and prevent[ing] them from leaving."²¹⁷ Forced participation severely undermines the rights of the individuals forced to participate and, importantly, takes the power of participation and justice away from the people it is supposed to serve.

Again, these are only a few of the many problems of the gacaca courts. There are countless additional meritorious arguments for why the gacaca courts are a failure of justice and a failure to human rights. At least some of those arguments, however, fail to consider the historical, cultural, and situational context of the gacaca courts. The atrocity of

212. See Drumbl, *supra* note 51, at 49.

213. See Daly, *supra* note 211, at 382.

214. See *Controversial Assessment of the Gacaca Courts*, HIRONDELLE NEWS AGENCY (Lausanne), Jan. 3, 2008.

215. See *supra* Part II.B.

216. See Waldorf, *supra* note 17, at 42.

217. *Id.* at 68.

genocide is an extremely rare event, and there is much to consider when deciding how to “best” help the hurt society.

B. Strengths and Weaknesses of the International Criminal Tribunal for Rwanda

1. Benefits of the International Criminal Tribunal for Rwanda

Many benefits exist in using the ICTR for prosecution of génocidaires. The United Nations formed the ICTR with a well-defined structure and can amend it if the need arises.²¹⁸ The ICTR embodies a high respect for rights of the accused,²¹⁹ which may be critically lacking in the gacaca courts.²²⁰ The ICTR also provides a useful means to achieve certain goals, such as specific deterrence.²²¹ There is also a chance for international involvement in the ICTR.²²² As there is much criticism that the world stood by and merely watched during the genocide, perhaps this is helpful.

First, the Statute of the International Criminal Tribunal for Rwanda, as created and amended by various United Nations Security Council Resolutions, formally establishes the jurisdictional boundaries of the ICTR, the various chambers, provisions by which judges are to be assigned, their required qualifications, and their respective powers.²²³ This creates an extremely organized and structured environment with accountability to other parts of the tribunal as well as the United Nations. Also, such a black-and-white document makes the function of the court well defined with little left in the cracks. As seen by the document itself, numerous amendments to the Statute show that the United Nations has the capability to change pieces of the ICTR if the need arises.²²⁴

Second, many procedural aspects of the ICTR help safeguard the rights of the accused, including stringent rules of procedure and evidence.²²⁵ These create a framework to which Western justice systems

218. See, e.g., S.C. Res. 1411, U.N. Doc. S/RES/1411 (May 17, 2002) (amending Article 11 of the ICTR Statute on composition of the Chambers).

219. See S.C. Res. 955, *supra* note 120, art. 2.

220. See L. Danielle Tully, Note, *Human Rights Compliance and the Gacaca Jurisdictions in Rwanda*, 26 B.C. INT'L & COMP. L. REV. 385, 402 (2003).

221. JONES, *supra* note 22, at 185.

222. See *International Co-operation with the Tribunal*, *supra* note 143.

223. See generally S.C. Res. 955, *supra* note 120 (laying out the parameters of the ICTR).

224. See, e.g., S.C. Res. 1411, *supra* note 218.

225. See Int'l Criminal Tribunal for Rwanda, Rules of Procedure and Evidence (Mar. 14, 2008), available at <http://69.94.11.53/ENGLISH/rules/080314/080314.pdf>.

can more readily relate. They also arguably create a greater amount of legitimacy in verdicts because the means of prosecution are as important as the ends. The procedures include a directive on the assignment of defense counsel²²⁶ and a code of professional conduct for defense counsel,²²⁷ both of which help further safeguard the rights of the accused. Related to this point, the creators of the ICTR were aware of the need for witness protection and witness rights, as these are also provided for in the Statute.²²⁸

Third, it is important to note that the ICTR has achieved certain goals of a criminal justice system. The ICTR has “contributed positively to the overall situation in Rwanda” by arresting, detaining, and convicting “many of the key figures responsible for the genocide,” which “presents an application of the concept of *specific deterrence* in that key offenders are no longer in a position to attempt to continue working towards their previous goals.”²²⁹ Keeping these key offenders out of play and punishing those who are found guilty, helps prevent a recurrence of genocide and helps eradicate the “culture of impunity,” which is one of the *gacaca* goals.²³⁰

Finally, the ICTR is an international court, and many countries have lent support by arresting suspects, assisting with the travel of witnesses, and detaining those found guilty.²³¹ This is an incredible strength—the support of the world community is invaluable to the success of an undertaking like the ICTR. Developing this kind of support is not easy, and the support is truly an asset. The Statute of the International Criminal Tribunal for Rwanda requires United Nations member-states to assist in investigations and prosecutions by complying with orders to identify, arrest, detain, and surrender suspects.²³²

226. Int'l Criminal Tribunal for Rwanda, Directive on the Assignment of Defence Counsel (Mar. 14, 2008), available at <http://69.94.11.53/ENGLISH/basicdocs/080314/05-Directive%20Assignment.pdf>.

227. Int'l Criminal Tribunal for Rwanda, Code of Professional Conduct for Defence Counsel (Mar. 14, 2008), available at <http://69.94.11.53/ENGLISH/basicdocs/080314/04-Code%20of%20Conduct%20for%20Defence%20Counsel.pdf>.

228. See S.C. Res. 955, *supra* note 120, arts. 14, 19, 21; see also *Witness Support and Protection at ICTR*, *supra* note 133 (providing an overview of the ICTR's Witness and Victims Support Section).

229. JONES, *supra* note 22, at 185.

230. Ingelaere, *supra* note 1, at 38.

231. See *International Co-operation with the Tribunal*, *supra* note 143.

232. S.C. Res. 955, *supra* note 120, art. 28.

The production of witnesses also proved difficult, as

[m]any of the witnesses did not have valid legal status or documents in their countries of residence, often countries to which they had fled as refugees. The challenge was to find a way to bring witnesses to Arusha to give testimony at trials and return them to their host countries.²³³

This challenge was met with the production of necessary travel documents by multiple countries.²³⁴ Additionally, many witnesses in need of protective services were provided protection in the form of witness-support consultants and relocation assistance.²³⁵

It must also be noted that the ICTR is teaching the international community a number of valuable lessons. ICTR trials raise international awareness about the genocide in Rwanda.²³⁶ Additionally, the international community sets two important precedents through the ICTR. First, persons who commit these kinds of crimes will be held accountable for them, possibly on a world stage—a kind of general deterrence.²³⁷ Second, a person can be “held accountable in his or her personal capacity with no exceptions based on the accused’s autonomy or activities in government.”²³⁸ Further, other international-justice institutions, such as the International Criminal Court, learn operational lessons and gain valuable, although not formally binding, jurisprudence.²³⁹

2. Major Weaknesses of the ICTR

There are several serious flaws of the ICTR that must be discussed. First, the ICTR has been unable to deliver justice to the people of Rwanda and has had serious issues with being a cost-effective entity. Second, the ICTR is too far removed from Rwandan life and works against—rather than with—the culture and the people of Rwanda. Finally, and possibly most importantly, the people and government of Rwanda do not support the ICTR and have not done so since its inception.

233. *International Co-operation with the Tribunal*, *supra* note 143.

234. *Id.*

235. *Id.*

236. Drumb, *supra* note 51, at 46.

237. JONES, *supra* note 22, at 185.

238. *Id.*

239. *Id.*

First, the ICTR has been inefficient in delivering any form of transitional justice desired for the Rwandan people. There is a

discontinuity in the stated mandate of the ICTR and the actual practice of its operations. Although the mandate clearly indicates that the rebuilding of the Rwandan judicial system is one of the ICTR's goals, there is little or no concrete evidence that would suggest that this aspect . . . has been meaningfully addressed.²⁴⁰

In short, the ICTR seems to exist to help bring the high-level criminals to justice but is doing nothing else to further the future of Rwanda through reconciliation of the past or rebuilding of the society.

Additionally, the ICTR has not delivered a high quantity of justice. The sheer weight of the numbers is impossible to ignore—since its inception, the ICTR has only completed thirty-six cases.²⁴¹ Eight more cases are on appeal, eight people have been acquitted, and two individuals are awaiting trial.²⁴² Thus, in over ten years, the ICTR has “disposed of” a grand total of fifty-two cases. Conversely, the Rwandan gacaca courts have processed more than a million cases.²⁴³ The convictions at the international level cost more than \$25 million each.²⁴⁴ Without financial data on the gacaca courts, it is impossible to tell exactly how much each case costs, but it likely is substantially lower. Because the gacaca process has only just concluded in June 2010,²⁴⁵ cumulative data is not yet available.

Second, the ICTR is harmful to the people and the culture of Rwanda in several ways. One of these ways is by taking the accused away from the people. Rwanda has traditionally been a country where the family and community structure is important; the roots of gacaca show the importance of the individual as a part of the community.²⁴⁶ Within this culture, the person makes amends to those he has harmed, and the ICTR is taking that ability away. These trials are being held in Arusha,²⁴⁷ hundreds of miles away—an impossible distance for the rural, agricultural Rwandans to fathom. “For the ordinary peasant the classical

240. *Id.* at 184.

241. *Status of Cases*, *supra* note 148.

242. *Id.*

243. *1994 Genocide*, *supra* note 78.

244. Alexander Soble & Ali Weiner, *The Cost of Closure*, YALE GLOBALIST, Oct. 13, 2009, available at <http://tyglobalist.org/index.php/20091013223/Focus/The-Cost-of-Closure.html>.

245. *Gacaca Closure Now Scheduled for June 30*, *supra* note 89.

246. See *supra* notes 15–21 and accompanying text.

247. S.C. Res. 977, *supra* note 142.

tribunals are both physically and psychologically remote institutions. Although their thoughts on the ICTR may be partly mediated by the media reports and sensitization campaigns, they sincerely prefer the justice of proximity”²⁴⁸

Additionally, it is only recently—October 27, 2009—that a strong initiative has begun to inform and educate the Rwandan people “about the role of [the] ICTR in contributing to the unity and national reconciliation process in Rwanda.”²⁴⁹ This project, called the Outreach Workshop, is a three-day workshop for secondary-school students and teachers, aiming to “enhance the youth awareness about ICTR achievements and challenges” and “promote the respect of human rights values and sharing of knowledge and best practices generated by the ICTR as part of its legacy in strengthening the unity and national reconciliation in Rwanda.”²⁵⁰ The late timing of this project leaves lingering questions about why it took the ICTR and the United Nations fifteen years to put a sorely needed program in place to educate the people of Rwanda about the ongoing efforts to bring génocidaires to justice, especially when those efforts occur outside their realm of understanding. Whether the reason is bureaucracy, lack of resources, or something else, the point is that the ICTR or the United Nations could have recognized earlier that the tribunal’s removal from the people needed to be explained. More fundamentally, perhaps the ICTR should have been structured differently from the outset to meet the needs of the population it is serving, especially considering that “[t]here is some indication that the more Rwandans learn of the ICTR’s work, the more inclined they are to view the institution more favorably.”²⁵¹

Additionally, the ICTR loses legitimacy in the eyes of the people because the punishment of the génocidaires convicted at the ICTR differs drastically from those convicted in Rwandan courts.²⁵² The ICTR differs a maximum penalty of life in prison while Rwandan courts “can issue death sentences.”²⁵³ This creates a proportionality problem because “the leaders of the genocide are punished less severely than lower level offenders.”²⁵⁴ Additionally, the prisoners serve out their sentences at

248. Ingelaere, *supra* note 1, at 51.

249. Press Release, Int’l Criminal Tribunal for Rwanda, ICTR Launches a Pilot Outreach Project in Rwanda (Oct. 28, 2009), *available at* <http://69.94.11.53/ENGLISH/PRESSREL/2009/619.html>.

250. *Id.*

251. Drumbi, *supra* note 51, at 47.

252. *See id.* at 47–48.

253. *Id.*

254. *Id.* at 48.

prisons away from Rwanda that have to be approved by the ICTR.²⁵⁵ The conditions they live out their sentences in are far superior to the conditions in Rwandan prisons and villages,²⁵⁶ and they have the detached anonymity of being away from their victims and fellow Rwandans.

C. Implications for the Future: Analyzing the End of the Gacaca Courts and Possible Improvements for Both Justice Systems

Determining whether the gacaca courts or the ICTR have successfully delivered transitional justice is an issue of emerging importance and a complex policy debate. The gacaca courts concluded in June 2010.²⁵⁷ It is thus likely that cumulative data will soon become available to assess the success of gacaca, as measured by the number of people held responsible for their crimes and the victims who were able to bring the perpetrators to justice. In the years to come, it will become easier to study the after effects of the gacaca courts in accomplishing their goal of delivering transitional justice for the Rwandan people, though this is not measured quantitatively. At this unique time in their history, Rwandans may be able to show the rest of the world that their chosen system of justice merits close study for the future of conflict resolution as a more comprehensive approach to justice than a divisive justice system. This Comment argues that a future for such a reconciliatory system is possible, as shown by the gacaca courts' various positive accomplishments, while at the same time noting a few critical changes that could be made to ensure the future success of a similar system. The ICTR model is also useful. Although it has not experienced the same amount of widespread success, it is an example of what kind of response the international community is capable of producing. By integrating certain gacaca concepts, the ICTR could prove to be another tool for dispute resolution.

The gacaca courts, as shown above, meet several important needs—economic, sociological, psychological, and cultural—for the Rwandan people.²⁵⁸ Gacaca also meets the definition of transitional justice as used in this Comment—there was a period of political change as Rwanda moved toward democracy, there was a legal response to a past regime,

255. See JONES, *supra* note 22, at 173.

256. See Drumbl, *supra* note 51, at 48.

257. *Gacaca Closure Now Scheduled for June 30*, *supra* note 89.

258. See *supra* Part III.A.1–4.

gacaca worked towards rebuilding a framework of society by meeting the aforementioned needs, and gacaca reconstructed the conditions for a functioning peacetime society by allowing the truth to be brought forth and reconciliation to occur between the offenders and victims. The school scene in the Anne Aghion documentary, *In Rwanda We Say . . . The Family that Does Not Speak Dies*, shows that the country is on its way toward building a better future in the coming generations.²⁵⁹

Therefore, the gacaca process should be praised not only for what it has done for Rwanda but also for the potential the process has for other societies in today's ever-evolving world of government and politics. The ICTR is also educational because it shows that even the best-intended plans can fail to meet the needs of society. With a few adjustments, however, the ICTR could potentially cater to the needs of the Rwandan people.

1. Potential Improvements to the Gacaca Courts

The gacaca courts need to improve certain features to gain more legitimacy in the world at large and make other countries more willing to cooperate with the needs of the people. Improvements for the gacaca courts would be important if they are to be used again, either in Rwanda or as a similar transitional- or reconciliation-justice model elsewhere. The gacaca courts could be improved in one key way—by making sure the trial process is as fair as possible. This could be achieved by more carefully screening and educating judges, improving witness protection, and employing additional due process protections.

Education and screening of judges is a key improvement in either a continued use of the gacaca courts or in any community-based justice approach. Education about legal consequences is important, but it is a challenge made more difficult in Rwanda because around thirty percent of the country's population is illiterate.²⁶⁰ The solution to this problem is difficult. On the one hand, it is extremely difficult to allow a judge to sit when unable to read or write about the charges or decision; on the other hand, forcing a literacy requirement on judges would ruin the collective-representative approach of participatory, community-based justice. Perhaps the best solution involves giving judges more than the absolute minimum legal training and including some reading and writing education in the process. Alternatively, a neutral third party could be

259. See *IN RWANDA WE SAY*, *supra* note 180.

260. See *World Factbook: Rwanda*, *supra* note 151.

retained as a reader and recorder. Although further education would require additional resources and time before trials began, this appears as the easiest way to patch a serious flaw in the system. More careful screening of judges is also important, as many Inyangamugayo have been recognized as *génocidaires*.²⁶¹ Clearly, being accused of the same crimes as the people they are judging is a serious challenge to the legitimacy of the system.

Witness protection could be a way for the government to ensure further willing participation. With the release of prisoners from pretrial confinement, it is possible that they—or a family member or friend—would attempt to coerce any witnesses against them into not testifying or retracting their statements.²⁶² Without these witnesses to give testimony, the *gacaca* system fails. Government assistance in protecting witnesses could involve the assignment of security personnel to the village, relocation of the prisoner, relocation of the witness into a nearby village, or simply maintaining strict confidentiality of the identities of the accusers until the trial. However, if the person is guilty and knows the identities of victims or their survivors, confidentiality may not work. Likewise, witness relocation is difficult because Rwanda is such a family- and agriculture-based society and many people are probably less willing to move away from their land and community. A solution, therefore, is not easy. However, this is a flaw recognized by the Rwandan government—President Paul Kagame has tried to “put in place penalties for those who interfere and try to manipulate *gacaca* proceedings.”²⁶³ Perhaps the threat of further prison time or economic penalties could work, but there is no evidence whether this threat of penalties has been successful.²⁶⁴ Ideally, the goals of truth and reconciliation would protect the parties from harming one another and allow reintegration into the community, but this is probably too idealistic. Thus, the issue of witness protection could continue to create problems for this type of justice system.

Due-process improvements are also needed for the success of the *gacaca* courts. Although the *gacaca* courts are being utilized in a manner that is partially geared towards expediting the process of bringing so many accused to justice, it must not pressure innocent people to confess. In keeping with the cultural ideal of truthfulness, it is important not to

261. *Report on Data Collection*, *supra* note 198.

262. See JONES, *supra* note 22, at 158.

263. *Rwanda: Traditional Courts Inaugurated*, *supra* note 75 (quoting a 2004 speech by President Kagame).

264. See JONES, *supra* note 22, at 158.

discourage those who confess to their crimes, but it is also unfair for an accused to falsely confess for fear of receiving a worse sentence. A solution to this problem is somewhat tricky, as a country such as Rwanda that has been decimated by genocide will have to determine “which rights it can and will protect given its” still-scarce resources.²⁶⁵ One first step would probably involve an appeals system that would allow those who feel they are innocent to have their case reheard.

Another concern in the area of due process is based on the low literacy rate of the Rwandan people.²⁶⁶ The accused might not be aware of the process in any certain terms and thus might not be able to speak on his own behalf. Depending on the context in which the *gacaca* model is to be used, perhaps accused individuals should be given further education about their crimes specifically. It would also be helpful to give the accused a representative, acting as somewhat of a defense attorney, to help explain the accused's options and the court process. Another option, which would keep the idea of community involvement alive, would involve using a third party as a mediator to allow the accused and his accuser to discuss the charges and, after conviction, to determine some way to reach a level of reconciliation.

2. Potential Improvements to the International Criminal Tribunal for Rwanda

The ICTR, and international tribunals of the future, could be improved in one seemingly simple way—by working with the existing and deep-rooted cultural aspects already in place, which would lend legitimacy by being more readily identifiable to the people. A better effort could be made to involve the country in the system, both in terms of physical proximity and in tailoring the process to the educational needs of the country. This change would improve the ICTR by lending it legitimacy in the eyes of the Rwandan people without dispensing of the important support of the global community.

The simple and obvious improvement in the formation of the ICTR would have involved working with the existing culture of Rwanda. The ICTR could have accomplished this in three ways. First, the ICTR could have incorporated more of the local tradition—in this case, to take justice to the people in a community-oriented fashion. Second, the ICTR could

265. Tully, *supra* note 220, at 387.

266. See *World Factbook: Rwanda*, *supra* note 151.

have involved the everyday people in at least some aspects of the court. Third, the ICTR could have used a more accessible location.

Although there are shortcomings to the gacaca court process, it ultimately proves to be the more useful tool of transitional justice for the Rwandan people because of the failure of the ICTR to take local traditions into consideration. Perhaps an integrated approach to transitional justice would be better. As reported by Rosemary Nagy, “the UN secretary-general writes in his report on transitional justice, ‘due regard must be given to indigenous and informal traditions for administering justice or settling disputes,’ and this must be done ‘*in conformity with both international standards and local tradition.*’”²⁶⁷ This balance in transitional justice between being “effective *and* legitimate, locally forged *and* consonant with the respect owed to all human beings, is a growing and pressing challenge in the field of transitional justice.”²⁶⁸ The ICTR could have striven more towards conformity with local tradition by focusing on reconciliation rather than punishment and by giving community members a voice in the proceedings. Additionally, educational outreach and locality, discussed next, would have lent the ICTR further power to act as a transitional-justice authority.

Education could have been used from the beginning to connect the Rwandan people to the ICTR. The Outreach Workshop should have been started years before its actual inception in 2009.²⁶⁹ This would have, at the very least, explained the role of the ICTR, how it works, and why the people are not seeing the effects of the court system. Further involvement for the Rwandan people in the ICTR could have come in the form of regular reports and updates or through employment at the ICTR. Regular updates on radio, in print, or in the form of ICTR outreach personnel dispatched to the countryside, could have at least helped the Rwandan people feel informed of the stages of the process, which is especially important because they are not able to be physically present to look into the eyes of the people who masterminded the vicious genocide and caused the country so much pain. The realization that the Rwandan culture is one of reconciliation explains the need for the involvement of the people to achieve this goal. If the ICTR had employed Rwandans in

267. Nagy, *supra* note 23, at 86 (emphasis in the report’s language was added by Professor Nagy) (quoting U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Rep. of the Secretary-General*, ¶ 36, U.N. Doc. S/2004/616 (Aug. 23, 2004)).

268. *Id.*

269. *See supra* notes 249–51 and accompanying text.

some small way, it would have given those persons, and by extension their communities, a glimpse of their participatory way.

Physical relocation of the ICTR could have worked as well. Arusha, Tanzania, is an insurmountable distance for people who have so few means. If the ICTR, at the least, held court somewhere in Rwanda, more Rwandans would likely have been able to travel to watch. This could also address some of the criticisms of the ICTR's immense costs;²⁷⁰ at least the money would have a far better chance of reaching the Rwandan economy.

IV. CONCLUSION

Despite the problems of the gacaca courts, they have proven to be a successful form of transitional justice for the Rwandan people. The ICTR, though a valiant effort by the global community, is simply too far removed from society and too caught up in its own bureaucracy to make the kind of impact that gacaca has made. As the gacaca system winds up and its results become known, it will serve as a useful model on which to base future transitional-justice systems and could perhaps revolutionize the ways in which the world views legal systems. A successful, comprehensive approach to helping people and communities move beyond problems cannot be overlooked.

270. See *supra* notes 150–52 and accompanying text.