Hybridity, Holism and “Traditional” Justice:
The Case of the Gacaca Courts in Post-Genocide Rwanda

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Introduction

Hybridity is an increasingly common theme in the study and practice of transitional justice and post-conflict reconstruction. In recent years, a growing trend has emerged in institutional responses to complex conflict and post-conflict situations that advocates “legal pluralism” or hybrid structures in which “two or more legal systems coexist in the same social field.”1 Today legal pluralism in transitional justice terms usually involves some type of international criminal tribunal and a locally-directly truth commission, as in the cases of Sierra Leone, East Timor and Burundi. The primary purpose of such hybridity is to facilitate holism. A holistic approach to transitional justice contends that multiple political, social and legal institutions, operating concurrently in a system that maximises the capabilities of each one, can contribute more effectively than a single institution to the reconstruction of the entire society. Holistic approaches seek to respond to the various physical, psychological and psychosocial needs of individuals and groups during and after conflict.

The trend toward hybrid systems coincides with the greater legitimacy afforded to, and more regular use of, localised methods of accountability and conflict resolution, which are often designed to augment international and national processes. In 2004, United Nations Secretary General Kofi Annan stated that, in the context of transitional societies, “due regard must be given to indigenous and informal traditions for administering justice or settling disputes to help them to continue their often vital role and to do so in conformity with both international standards and local tradition.”2 It is becoming increasingly popular, particularly in Africa, to employ forms of local or traditional dispute resolution in response to serious atrocities. In many cases, traditional mechanisms have been co-opted by political elites and modified so that they bear only a cosmetic

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resemblance to antecedent institutions, calling into question how legitimate it is to refer to these institutions as “indigenous” or “traditional.”

This article clarifies the genesis and operation of, and situates within the broader realm of transitional justice, one such local institution, which is also embedded within a hybrid structure for responding to mass crimes: the Rwandan system of gacaca. Gacaca comprises around 9000 community-based courts, each overseen by locally-elected judges, designed to hear and judge the cases of suspected perpetrators of the 1994 genocide, during which approximately 800,000 Tutsi and Hutu and Twa considered Tutsi sympathisers were killed, many by their friends, neighbours and even family members. Gacaca operates alongside the UN International Criminal Tribunal for Rwanda (ICTR) and the Rwandan national courts. In this hybrid system, which Madeleine Morris terms one of “stratified-concurrent jurisdiction,” different judicial bodies are charged with prosecuting the same pool of suspects but, as described in greater detail below, a legal hierarchy dictates which of these bodies has priority jurisdiction over which cases.

Much confusion currently surrounds how best to define the history and operation of gacaca and how to situate it within the wider framework of transitional justice or post-conflict reconstruction processes around the world. Questions regarding gacaca abound: Is it fundamentally a legal institution, a social institution with certain quasi-legal functions or something entirely different? What is it designed to achieve and how should we judge its effectiveness as a response to the needs of the Rwandan population after the genocide?

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3 Two prime examples of such use of traditional institutions – resonating with elements of the modernised version of gacaca in Rwanda, which constitutes the focus of this article – are the mato oput and gomo tong rituals among Acholi in northern Uganda and barza hearings in eastern Democratic Republic of Congo. For a detailed exploration of these institutions in the context of mass atrocities, see, P. Clark, “Doing Justice during Conflict: the International Criminal Court, Transitional Justice and Reconciliation in the Democratic Republic of Congo and Uganda”, New York: Open Society Justice Initiative, forthcoming.

4 Pronounced ga-CHA-cha, and derived from the Kinyarwanda word meaning “grass,” referring to the outdoor setting in which the hearings take place.

5 There is significant debate over exactly how many Tutsi were killed between April and July 1994. In her comprehensive analysis of the Rwandan genocide, Alison Des Forges estimates that 500,000 Tutsi were murdered. (A.Des Forges, Leave None to Tell the Story: Genocide in Rwanda, New York: Human Rights Watch, 1999, pp.15-16.) Historian Gérard Prunier, however, calculates “the least bad possible” number of deaths to be 850,000. (G. Prunier, The Rwanda Crisis: History of a Genocide, London: Hurst and Co., 1998, p.265.) Most writers estimate the number of Tutsi deaths during the genocide to be in the range of 500,000 to 1 million. The exact numbers, however, are not crucial to this article.

6 “Tutsi sympathisers” appears a more appropriate term than the more common phrase used in this case, “moderate Hutu.” As Nigel Eltringham argues persuasively, there are major pitfalls in the usage of “moderate Hutu,” particularly the potential, erroneous implication that all Hutu who were not killed during the genocide were guilty of, or at least supportive of, crimes against Tutsi. Many Hutu were openly opposed to the genocide and in many instances saved Tutsi from certain death. (N. Eltringham, Accounting for Horror: Post-Genocide Debates in Rwanda, London: Pluto Press, 2004, ch. 4.) Furthermore, the phrase “moderate Hutu” ignores the Twa who also were killed for their perceived sympathies toward Tutsi.

This article shows that most critiques, especially those from Western legal commentators, mischaracterise what gacaca is and what it is designed to achieve. Therefore, it is not surprising that most commentaries provide highly unconvincing accounts of how effectively gacaca contributes to post-conflict reconstruction in Rwanda. In particular, many legal critics wrongly characterise gacaca as a form of mob justice, in which the rights of individuals are sacrificed for the sake of the cheap and rapid prosecution of genocide suspects. Further complicating attempts to interpret gacaca, many of the Rwandan government’s characterisations of gacaca are also highly problematic, especially its attempt to portray gacaca as an indigenous mechanism with which the population identifies and in which it readily wishes to participate. This article shows that legal critics are wrong to dismiss gacaca as an illegitimate system for punishing genocide perpetrators, while the Rwandan government (and some commentators) wrongly romanticise gacaca as a form of traditional justice automatically acceptable to all Rwandans.

Gacaca is more complex and multifaceted than most sources have so far suggested. This article shows that, while much attention has been paid to hybridity in terms of legal pluralism in responding to mass crimes, gacaca displays a form of internal hybridity (while also being embedded in the concurrent-stratified system described above) that most commentators have overlooked. This article helps clarify the nature of gacaca’s internal hybridity, to highlight its dynamism. The purpose of this article is not to critically assess the current operation of gacaca, in terms of its displayed practical ability to fulfil its objectives, but rather to more clearly define and situate gacaca, to lay a stronger foundation from which it may be critiqued.

Part I of this article provides a theoretical basis for exploring two terms that are central to the analysis of gacaca here: reconciliation and justice. The article then proceeds to identify four elements of hybridity within gacaca which current sources have not sufficiently acknowledged. Part II explores the hybrid history and mechanics of gacaca, as it has developed from a “traditional” or “customary” mode of dispute settlement, especially in rural Rwanda, to a formalised, codified, nationwide system designed to deal with complex genocide crimes, crucially combining legal and non-legal elements. Part III investigates the need for a multiplicity of approaches to analysing gacaca, paying greater attention to the Rwandan population’s interpretations of the institution than most commentators have so far. Any analysis of gacaca must be sufficiently dynamic to account for the institution’s hybridity and dynamism. Part IV explores the hybrid methods gacaca employs in responding to genocide crimes,
particularly its emphasis on popular participation and modes of communal negotiation within formal, legal boundaries. Finally, Part V shows that gacaca pursues multiple post-
genocide aims simultaneously, combining legal and non-legal objectives. This section focuses on gacaca’s pursuit of one aim (within a galaxy of objectives8) – restorative justice – which highlights gacaca’s creative approach to punishing génocidaires in deliberately reconciliatory ways. Linking the various strands of argument is the contention that gacaca responds to a variety of pragmatic and complex social needs in Rwandan society and therefore manifests a level of dynamism and complexity commensurate to that of the post-genocide situation, which most sources have failed to capture adequately. The hybridity of gacaca as an institution and of its methods and aims is necessary to facilitate the sorts of holistic responses that the post-genocide environment demands.

The research for this article is based on five months of fieldwork conducted by the author in Rwanda in 2003 and a further month in 2006, mainly in rural areas.9 During this time, the author carried out around 100 interviews concerning issues of justice and reconciliation with confessed génocidaires in the ingando or “solidarity camps”10 (civic education centres where detainees spend several months between leaving prison and being provisionally released into the community, where they will eventually face gacaca) and a further 120 interviews with survivors, the general population, NGO workers and Rwandan government officials, including with Rwandan President Paul Kagame and various cabinet ministers.11 The author also observed gacaca hearings in numerous communities around Rwanda.

A key component of the author’s research involved tracking a selected group of detainees through various stages of the release process, first in prison, then upon their release into the solidarity camps, afterwards inside the camps and finally in their home

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8 This galaxy comprises two pragmatic objectives – processing the backlog of genocide cases more rapidly than previous institutions and helping improve the living conditions in Rwanda’s prisons – and six profound objectives: restorative justice, reconciliation, peace, healing, forgiveness and truth. A detailed exploration of how gacaca pursues these multiple objectives (and multiple types of objectives) is found in P. Clark, “Justice without Lawyers: The Gacaca Courts and Post-Genocide Justice and Reconciliation in Rwanda,” unpublished PhD thesis, Politics, University of Oxford, 2005.
9 The first period of fieldwork formed the basis of the author’s PhD thesis, which the Gacaca Commission of the Rwandan Ministry of Justice claims is the first-ever completed doctorate to focus solely on the gacaca jurisdictions. Clark, “Justice without Lawyers,” op. cit.; Author’s interview, Domitilla Mukantaganzwa, Executive Secretary, Gacaca Commission, Rwandan Ministry of Justice, Kigali, 6 June 2006.
10 The Rwandan government and population use the terms “ingando” and “solidarity camps” interchangeably. However, during most of the author’s fieldwork the government and population referred more regularly to “solidarity camps”; therefore, this term is used throughout this article.
11 Throughout this article, the names of all genocide suspects and survivors and members of the general population have been changed for legal and security reasons.
communities, where they awaited their appearances at gacaca. The author was one of only a handful of non-Rwandans present on 5 May 2003 when more than 20,000 confessed perpetrators were provisionally released from prison and returned to their home towns and villages for the first time in more than a decade. In June 2006, the author returned to Rwanda to monitor developments in gacaca and to interview two of the detainees in the original group of confessed génocidaires interviewed three years earlier. These follow-up interviews provided critical insights into the plight of genocide suspects and their communities, developments in their personal circumstances and their views of gacaca over several years. This type of research is intended to overcome a serious weakness in most analyses of gacaca, as explored in greater detail later in this article, namely the lack of commentary on gacaca, especially from legal academics and human rights organisations, based on actual observations of hearings and over a significant period.

I. Defining Key Terms: Justice and Reconciliation

This section briefly defines two terms that are fundamental to the analysis of gacaca’s hybridity in this article: reconciliation and justice. Only gacaca’s pursuit of post-genocide justice is explored in detail at the end of the article. However, the close linkages between these terms also requires a brief consideration of reconciliation.

Reconciliation

Where truth and justice have traditionally been the more common objectives of post-conflict institutions, reconciliation has recently become a focal theme, largely as a result of the global resonance of the South African Truth and Reconciliation Commission. More regular considerations of reconciliation in transitional justice discourse, however, have rarely cultivated a clear understanding of what reconciliation is and how it may be achieved. It is important therefore to define what “reconciliation” means. In the broadest sense possible, reconciliation involves the rebuilding of fractured individual and communal relationships after conflict, with a view toward encouraging meaningful interaction and cooperation between former antagonists. Reconciliation entails much

12 For a more detailed account of the author’s tracking of these detainees from prison to gacaca, see, P. Clark, “When the Killers Go Home: Local Justice in Rwanda”, Dissent, Summer 2005, pp.21-28.
more than peaceful coexistence, which requires only that parties no longer act violently toward one another. Non-violence may mean that the parties concerned simply avoid each other, seeking separation rather than mended relationships. Reconciliation, however, requires the reshaping of parties’ relationships, to lay the foundation for future interactions between them. John Paul Lederach contends that a “relationship-centric” interpretation of reconciliation holds that responses to conflict must penetrate to the level of individual relationships. “To enter reconciliation processes,” Lederach argues, “is to enter the domain of the internal world, the inner understandings, fears and hopes, perceptions and interpretations of the relationship itself.”14 This internal dimension greatly affects reconciliation at the communal or national level because these structures necessarily comprise individuals who have experienced violence. In this sense, reconciliation, when defined in terms of rebuilding individual relations, lays the foundation for rebuilding wider social relations after conflict.

Reconciliation is both a process and an endpoint, requiring individuals and groups to interact and cooperate in often difficult circumstances to discover solutions to their problems and thus to build stronger future relationships. Reconciliation is both backward- and forward-looking, seeking to address the causes of past conflict to produce a more positive dynamic in the future. It must honestly and directly address the root causes of conflict, the overwhelming feelings of grievance and anger that have compounded over generations and led to violence, if the parties concerned are to overcome serious divisions in the future.

In defining reconciliation, it is also necessary to differentiate it from two terms with which it is often confused: peace and healing. First, reconciliation differs from peace or any of its related processes such as peacekeeping or peacebuilding. The Report of the Panel on United Nations Peace Operations (commonly referred to as the “Brahimi Report,” after its chief author Lakhdar Brahimi) defines peacebuilding as “activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war,” including, “promoting conflict resolution and reconciliation techniques.”15 Peace, therefore, is a prerequisite of reconciliation. If violence continues, it is nearly impossible.

14 Ibid., p.185.
for individuals and groups to consider rebuilding their relationships. The broader, systemic, society-wide peacebuilding aims of ending violence and safeguarding against future conflict therefore pave the way for reconciliation’s deeper, inter-personal, relationship-focused processes.

Second, reconciliation differs from healing, which refers to the ability of individuals and groups to deal with trauma experienced during or after conflict. Authors such as Johan Galtung often conflate reconciliation and healing: For Galtung, reconciliation entails “the process of healing the traumas of both victims and perpetrators after violence, providing a closure of the bad relation.”¹⁶ Reconciliation, however, with its focus on rebuilding broken relationships, constitutes much more than overcoming trauma, although this—like peacebuilding—is often an important prerequisite of reconciliation. Many individuals and groups may not feel that they have suffered extreme trauma after conflict. Nonetheless, their relationships may be severely damaged, for a host of reasons other than trauma, and they may therefore seek some form of reconciliation. In other cases, traumatised individuals may need to overcome feelings of anguish, loss or hatred toward others before they can feel ready to reconcile with them.

**Justice**

At the heart of discussions of transitional justice and post-conflict reconstruction are questions of what reconstructive objectives post-conflict societies should pursue and how they should pursue them. From these central considerations, two specific questions emerge: First, is it necessary and feasible to punish the perpetrators of mass crimes? Second, if it is necessary and feasible to punish them, what is this designed to achieve: to fulfil a moral obligation to bring the guilty to account, to deter future perpetrators, or to contribute to wider objectives, such as reconciliation?

These questions underline the centrality of debates regarding justice in rebuilding individual and communal lives after conflict. As with reconciliation, however, the regularity of considerations of justice in post-conflict situations has rarely led to clear or comprehensive concepts or methods of justice. In particular, it is not always clear why certain institutions pursue justice after mass violence. This uncertainty may stem from what Ruti Teitel describes as the paradox of legal responses to mass crimes. “Law is

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between the past and the future,” argues Teitel, “…between retrospective and prospective. Transitions imply paradigm shifts in the conception of justice; thus, law’s function is inherently paradoxical. In its ordinary social function, law provides order and stability, but in extraordinary periods of political upheaval, law maintains order, even as it enables transformation.” Many post-conflict legal institutions are trapped uncomfortably between backward- and forward-looking pursuits, punishing perpetrators of past crimes while claiming—though usually failing to articulate precisely how—punishment will contribute to reconstruction or reconciliation. The final section in this article explores how justice manifests in *gacaca*. The remainder of this current section outlines the theoretical contours of justice, to lay a foundation for later discussions.

First, models of justice can be divided into three categories: retributive, deterrent and restorative. Retributive justice holds that perpetrators must be punished, to bring them to account and to give them what they supposedly “deserve.” Some authors argue that retributive justice is also necessary for states to adhere to international legal conventions. The deterrent view of justice meanwhile holds that punishment is necessary, not simply because perpetrators deserve it but because it will help discourage a convicted perpetrator, or potential offenders, from committing crimes, for fear of further sanction. Finally, a restorative conception of justice differs from the retributive or deterrent models by holding that punishment alone is insufficient; punishment of criminals is necessary but should be facilitated in ways that allow perpetrators and victims to rebuild relationships. In the case of mass crimes such as genocide, restorative justice views the reconciliation of entire communities as the ultimate objective. Restorative justice therefore attempts to further explain the sorts of conceptual relationships suggested in the clichéd refrain of many commentators on post-conflict societies that “no reconciliation is possible…without justice.”

Gerry Johnstone describes restorative justice as a new approach to criminality that

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18 The Statute of the ICTR, for example, states that “prosecution…would…contribute to the process of national reconciliation and to the restoration and maintenance of peace.” (United Nations, “Statute of the International Criminal Tribunal for Rwanda”, 8 November 1994, [http://www.un.org/ictr/statute.html](http://www.un.org/ictr/statute.html).) However, the remainder of the Statute and statements by ICTR officials fail to elaborate on how precisely prosecution at the ICTR would contribute to reconciliation in Rwanda. For further discussion of these points, see J-M. Kamatali, “The Challenge of Linking International Criminal Justice and National Reconciliation: the Case of the ICTR”, *Leiden Journal of International Law*, 16, 2003, pp.115-133.
revolves around the idea that crime is, in essence, a violation of a person by another person (rather than a violation of legal rules); that in responding to a crime our primary concerns should be to make offenders aware of the harm they have caused, to get them to understand and meet their liability to repair such harm, and to ensure that further offences are prevented; that the form and amount of reparation from the offender to the victim and the measures to be taken to prevent re-offending should be decided collectively by offenders, victims and members of their communities through constructive dialogue in an informal and consensual process; and that efforts should be made to improve the relationship between the offender and victim and to reintegrate the offender into the law-abiding community.21

Second, methods of justice can be divided into two broad categories: formal and negotiated. In the formal interpretation, post-conflict institutions arrive at justice via predetermined (usually legal) statutes and procedures. Due process during criminal hearings constitutes a key component of most formal models. In the negotiated interpretation, institutions achieve justice predominantly through communal discussions of evidence related to crimes. Negotiated justice meanwhile emphasises the role of the community in discussing and debating different versions of the truth about the past and what responses that truth requires, for example whether perpetrators should be punished and what form of punishment they should receive. These two broad methods of justice—formal and negotiated—are not mutually exclusive. An institution could, theoretically, rely on very broad legal statutes that permit a large degree of communal negotiation within those formal boundaries. This article will contend that gacaca represents precisely such a hybrid system of communal negotiation within formal limits.

At the theoretical level, formal and negotiated methods may lead to some combination of retributive, deterrent or restorative outcomes. For example, retributive or deterrent justice may be achieved via both formal or negotiated means: in the first instance, independent judges operating in the controlled environment of a conventional courtroom, adhering strictly to pre-determined legal statutes governing the running, and the range of judicial outcomes, of hearings, may punish perpetrators in a fashion consistent with the requirements of retributive or deterrent justice. These requirements could also be fulfilled via a negotiated process that affords the community a central role in debating and judging cases, but that still punishes convicted perpetrators. Similarly, restorative justice could theoretically be achieved by either formal or negotiated means. For example, the formal requirements of a judicial process could dictate that punishment be systematically directed toward rebuilding relationships between parties, or in the case

of negotiated processes if the very nature of the participatory methods employed were viewed as a means toward restorative ends.

On this basis, we should view Johnstone’s account of restorative justice above—with its emphasis on restorative punishment as necessarily “decided collectively…through constructive dialogue in an informal and consensual process”—as normative, rather than strictly definitional. In a theoretical sense, we can conceive of ways to achieve restorative justice other than through collective deliberation, although Johnstone may be right to argue that, in practice, communal negotiation is the most justifiable and effective means to restoration. No prima facie reason exists to assume that one particular justice method will lead automatically to one particular justice outcome, nor that post-conflict institutions should be limited to employing either a formal or a negotiated method, rather than a hybrid of these approaches.

II. History and Mechanics of Gacaca

This section begins by tracing the historical development of gacaca from a traditional mechanism of conflict resolution, through several phases of debate and reform within Rwanda, to its current manifestation as a hybrid, traditional-modern response to genocide and crimes against humanity. This section then outlines the mechanics of gacaca, based on relevant legal documents, and the relationship between gacaca and the other two existing judicial systems charged with dealing with genocide-related cases, the national courts in Rwanda and the ICTR. While this section is largely descriptive, it aims to counter a romanticised mythology about gacaca that so far has not been widely articulated but that is becoming increasingly common, particular among non-Rwandans. In many journalistic and academic accounts of gacaca, the institution is referred to as a “traditional” or “village” practice, implying that gacaca, as a ritual and a set of ideas, is deeply entrenched in Rwandan society, particularly in rural communities, and automatically comprehensible to, and considered legitimate by, the population. Some

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elements of the Rwandan government also seek to describe gacaca in this way. This section argues that, rather than seeing gacaca as a static, traditional system, we should view it as designed specifically to meet the needs of the post-genocide environment and as a dynamic, evolving practice that in the modern context comes in various forms, both state-run and outside of any official political or judicial structure.

Even before 1994, gacaca was a constantly evolving phenomenon; the genocide represented the most radical leap in this evolution. Gacaca was not an automatic choice as an institution to deal with genocide crimes, largely because its historical methods were not designed to deal with such complex cases. The eventual decision to adopt gacaca in this context was highly controversial. Modern gacaca constitutes a hybrid of traditional elements and features; the result of a crucial political compromise among Rwandan policy-makers and an attempt to respond to the specific needs of the post-genocide environment. Rather than viewing post-genocide gacaca as *indigenous*, which connotes a native enterprise, occurring “naturally” and inevitably accepted by the local population, we should view it as *endogenous*: initiated and synthesised within Rwandan society but – because of the complicated nature of that synthesis, and how markedly current gacaca differs from the original practice that partly inspired it – viewed by much of the population as a new, and perhaps confusing or even disagreeable, entity. As we will see later in this article, the complex historical evolution of gacaca, culminating in the current hybrid, traditional-modern institution, is crucial to explaining its more specific, hybrid methods and objectives.

In the months following the genocide in Rwanda, around 120,000 genocide suspects, mostly Hutu, were rounded up and transported to jails around the country built to hold only 45,000 inmates. Most detainees were never formally charged with any crime and were forced to live in hellish conditions: underfed, drinking dirty water and crammed into tiny rooms where they were often made to sleep in latticework formations for lack of space. During the genocide, the Rwandan judicial system – which manifested signs of debilitation before 1994 – was nearly destroyed completely, as the infrastructure of the national courts was decimated and many judges and lawyers were killed or fled the country. With the existing judicial system incapable of dealing with

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24 Author’s fieldnotes, Prison Centrale de Butare, Butare, 4 February 2003, notes on file with author.

massive numbers of genocide suspects, the government needed new mechanisms to hear genocide cases. As then-Vice President and now President Paul Kagame said in 1998, “Presently, the maintenance of 120,000 prisoners costs US$20 million per year, for which we receive assistance from the international community. This cannot continue in the long-term: we have to find other solutions.”

In response to the social, political, economic and legal problems created by the overcrowded prisons, the Rwandan government in 2001 instituted gacaca to try lower-level genocide suspects, most of whom have been imprisoned for more than a decade. Broadly speaking, the purpose of gacaca is two-fold, responding to pragmatic and more complex social needs respectively: first, to decrease the prison population by processing the massive backlog of genocide cases more rapidly than is possible in conventional courts such as the Rwandan national judiciary or the ICTR; and second, to deal with a range of community-based problems arising from the genocide, such as those related to truth, reconciliation and the overall reconstruction of Rwandan society. In March 2005, gacaca entered its most crucial phase, as it began judging and sentencing the first wave of genocide suspects, many of whom, as a result of their conviction at gacaca, have now been sentenced to new prison terms. Gacaca continues to judge and sentence genocide suspects imprisoned since 1994 and has in recent years identified many new suspects who were not rounded up during the initial incarceration process but are now expected to face justice at gacaca.

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27 There is considerable debate about exactly how many new genocide suspects gacaca has identified. The Rwandan government now estimates that up to 1 million genocide suspects must be prosecuted, after gacaca has unearthed hundreds of thousands of new cases since 2003. (Author’s interview, Mukantaganzwa, op. cit.; full interview transcript forthcoming in Oxford International Review, 2006-2007.) There is little evidence so far to suggest that so many new cases – approximately an increase of 800% to the initial number of genocide suspects – have been identified. Interviews at the community level suggest that the numbers are likely to be considerably lower than the government claims. For example, Alphonse and Cypriet, two detainees who had confessed to committing crimes during the genocide and whom the author interviewed on several occasions in 2003 and again in 2006, claimed that in their communities, gacaca had led to roughly a 100% increase in the number of genocide suspects identified: In Alphonse’s community, around 50 individuals had confessed to genocide crimes while in prison after the 1994 round-up of suspects, and gacaca had subsequently identified 65 new cases; in Cypriet’s community, 55 new suspects had been identified, alongside the 40 who had initially confessed. (Author’s detainee follow-up interviews, Alphonse, Nyamata, Kigali Ngali, 11 June 2006; Cypriet, Nyamata, Kigali Ngali, 11 June 2006.)
Little has been written on how gacaca functioned before the Belgian colonial era, which lasted from 1919 until Rwanda’s independence in 1962. However, historians record that at the turn of the twentieth century gacaca did not exist as a permanent judicial institution but rather it was based on unwritten law and functioned as a body assembled whenever conflict arose within or between families, particularly in rural Rwanda. Gacaca hearings, usually held outdoors either on a patch of grass or in the village courtyard, were overseen by male heads of households, and women were forbidden from taking part, unless as claimants or defendants. The traditional aim of gacaca, according to Abbé Smaragde Mbonyintege, was to “sanction the violation of rules that [were] shared by the community, with the sole objective of reconciliation.” Such an objective drew heavily from the traditional Rwandan worldview that considered the family and the wider community as the most valuable human units. In this worldview, individuals gained their sense of worth primarily through their embeddedness in communities, from their connections first to family and then to their wider community. For this reason, punishments at gacaca were inadequate if they acted solely as punitive measures. Sentencing at gacaca was intended instead to re-establish social cohesion, incorporating restorative processes that allowed individuals found guilty to regain their standing in the community. For this reason, gacaca judges never imposed prison terms on those found guilty, although in some instances they did banish individuals from the community for a short period but always with the option for them to return eventually.

Early in the twentieth century, gacaca was the main method of ensuring social order in communities across Rwanda, dealing primarily with uncomplicated cases referring to land use, livestock, damage to property, marriage or inheritance. The methods employed in hearing these cases were relatively straightforward. Gacaca brought conflicting parties before community elders to hear grievances, to allow defendants to respond to any charges and finally to pass judgements based on the evidence heard. In an ideal gacaca hearing, defendants would first – after prompting from the judges – confess

their crimes, express remorse and ask for forgiveness from those whom they had injured. Gacaca judges would then demand that confessors provide restitution to their victims, and the process would culminate in the sharing of beer, wine or food – usually provided by the guilty party – to symbolise the reconciliation of the parties involved.31

With time, gacaca became more institutionalised and stratified, particularly as colonial powers gained greater control of the national judicial system. An important political method employed by the Belgian colonial regime in Rwanda was to appoint local, (and because of the Belgians’ perception, based on Social Darwinist ideology, of the Tutsi as a superior race to the Hutu) usually Tutsi, administrators to maintain order on the colonists’ behalf. In the case of gacaca, these local Tutsi administrators often appointed the elders in charge of hearings. Gacaca continued to function according to local, unwritten law but, whereas hearings had previously occurred in communities only as they were required and were carried out in front of judges who were usually elders of the families involved, politically-appointed judges soon began holding gacaca sessions once a week in each secteur of the country.32 All male inhabitants of the community – not only those involved directly in specific cases – were encouraged to participate.33

In 1943 – in an early form of hybrid system for dealing with common crimes – the Belgian administration in Rwanda officially recognised gacaca as a legitimate judicial mechanism functioning alongside the national court system, though this concurrence was never enshrined in law.34 The colonial regime encouraged citizens to weigh the relative strengths and weaknesses of the two systems (eg. the speed and locality of gacaca versus the greater juridical sophistication of the official courts) and to choose accordingly where they wished to have their cases heard. Filip Reyntjens argues that gacaca and the national courts each developed separate “clientele” who engaged in a type of “forum shopping”: rural claimants, who were typically farmers with cases concerning land rights, payment of debts, inheritance or personal disputes, tended to seek hearings at gacaca; urban dwellers with more complex cases, for example involving work contracts, often took their disputes to the official courts. In his analysis of gacaca in a largely agricultural region of Butare province in 1986 and 1987, Reyntjens calculates that over an

31 Vandeginste, “Justice, Reconciliation and Reparation”, p.15.
32 Karekezi, p.32.
33 Reyntjens, p.33.
35 Reyntjens, p.37.
36 Ibid., p.40.
eight month period nearly 93% of the approximately 1200 judicial cases heard took place at gacaca rather than in the more formal courts.37

The next major phase in the evolution of gacaca saw it develop from an essentially judicial structure to one fulfilling a wider administrative role, particularly after Rwanda gained independence from Belgium. Historian Charles Ntampaka argues that this change ensued as it became custom for defendants who were dissatisfied with the result of their hearings at gacaca, for example at the level of their cellule (the smallest administrative unit within Rwandan local government, which usually comprises ten or more extended families or on average 830 citizens38) to appeal the judges’ decision to the next superior administrative official such as the mayor or prefect of the secteur (comprising around six cellules or 5000 citizens39) or even to judges in the official courts. These administrators effectively became temporary gacaca judges, fulfilling the role traditionally afforded to heads of families and village elders. In the hands of these administrators, gacaca became a much more active enterprise. Whereas in the past gacaca hearings were assembled only at the behest of parties in conflict, in the post-independence era administrators often called parties to gacaca without any request being made by members of the community.40 According to Ntampaka, gacaca was “no longer a family-based forum of reflection for the renewal of social harmony but it became instead a forum in which locally-elected judges from the official courts could collect evidence, particularly in civil matters, and hand down judgements based on the testimonies they heard.”41

The post-genocide period marks the most radical evolution of gacaca, during which its internal hybridity became a central feature. Although gacaca was not officially sanctioned to hear the majority of genocide-related cases until 2001, it was debated officially as a potential mechanism soon after the end of the genocide. As early as 1995, the Rwandan government and even the UN questioned whether gacaca might be appropriate for prosecuting certain genocide crimes. At an international conference in Kigali in October 1995, the government considered both a general amnesty and gacaca as possible methods for dealing with genocide suspects. Amnesty was rejected on the grounds that it would simply inflame many genocide survivors’ perceived desire for vengeance. The government rejected gacaca on the grounds that it violated existing

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37 Ibid., p.38.
39 Ibid., p.18.
41 Ntampaka, “Juridiction Pénale Populaire”, p.8. [author’s translation]
Rwandan law regarding the need to formally prosecute serious crimes, particularly murder.\(^{42}\) In this same period, many commentators, including José Kabago, observed an increase in the use of gacaca in rural areas, most likely as a response to the breakdown of the more official court system.\(^{43}\) These gacaca courts were rarely concerned with major crimes connected to the genocide but rather with the more common infractions with which gacaca has traditionally been associated.

In 1996 and 1997, the notion of gacaca as a potential response to mass violations of human rights was sidelined in official discussions. Instead, the government, with major assistance from international NGOs such as the Belgian organisation Avocats Sans Frontières (ASF) and the Danish Centre for Human Rights (DCHR), began a major overhaul of the national courts system. The dire state of the post-genocide judicial system forced the government and international donors to embark on a nationwide campaign of training new judges and lawyers. This led to a slight increase in the number of genocide cases heard between 1996 and 1997. In an attempt to further speed the hearing and prosecution of genocide cases in the national courts, the government passed the Organic Law of August 1996, which – as explored in greater detail under the “Mechanics of Gacaca” heading later in this section – divided genocide suspects into four categories depending on the severity of their crimes and established a plea-bargaining scheme that offered decreased sentences in exchange for suspects’ confessions.\(^{44}\) Rwanda thus became the first country to enact domestic criminal legislation on genocide.

In 1997, the government considered, then rejected, the idea of using a South African-style truth commission to deal with genocide crimes, on the grounds that it would not adequately punish génocidaires.\(^{45}\) 1998 marked the re-emergence in public discourse of the potential use of gacaca for hearing and prosecuting genocide cases. Between May 1998 and March 1999, President Pasteur Bizimungu held “reflection meetings” each Saturday at Urugwiro Village in Kigali. The purpose of these meetings was to gather political, social, legal and religious authorities to discuss the most pressing issues related

\(^{42}\) Republic of Rwanda, “Minutes of the Symposium on Gacaca”, Hotel Umubano, Kigali, 6-7 March 2000, p.13, document on file with author.


\(^{45}\) For analyses of these debates regarding a truth commission in Rwanda, see, Sarkin, op. cit.; and M. Drumbl, “Sclerosis: Retributive Justice and the Rwandan Genocide”, Punishment and Society, 2, 3, 2000, p.296.
Questions of justice and reconciliation featured heavily in these discussions and in June 1998 the possibility of revitalising gacaca was again raised, primarily by a group of provincial prefects, most notably Protais Musoni, then-Prefect of Kibungo and now Minister of Local Government, Good Governance, Community Development and Social Affairs, whom Fatuma Ndangiza, Executive Secretary of the National Unity and Reconciliation Commission (NURC), describes as the “father of gacaca” and the individual chiefly responsible for convincing the government to revitalise gacaca to deal with genocide cases.

On 17 October 1998, Bizimungu established a commission to investigate the possibility of restructuring gacaca into a system appropriate to the post-genocide situation. Musoni describes the debates at Urugwiro during this period as protracted and often heated, a fact not readily expressed by most state sources who, as we shall see, tend to characterise the government’s decision to revitalise the supposedly “traditional” practice of gacaca as rapid and almost inevitable. Musoni recounts:

The debates about whether and how we could use gacaca after the genocide were long and difficult. We were all in a room for a very long time – the President, government ministers, community leaders. The commission reporting to the President was made up of three prefects and various lawyers from the government, including several senior people in the Ministry of Justice. There were serious conflicts among us about what gacaca was supposed to be. The issue of the population’s involvement in gacaca was especially difficult. The lawyers kept saying, “How can we let the people judge their own cases so soon after the genocide?” The prefects were pushing the participation angle. We believed the emphasis of gacaca should be like it was practised on the hills, where we came from: it should emphasise truth and reconciliation. Gacaca should be more than judgements. Punishment was important but it had to give us truth and reconciliation….I personally wanted less emphasis on judgement in gacaca and a freer reign for the truth to come out. We should take gacaca slowly and help overcome the reluctance of the truth-tellers in the community….At Urugwiro, we were highly conscious of the concerns of the international community. What would the rest of the world think of gacaca? We’d heard many of their concerns when gacaca was first mentioned during conferences after the genocide. We knew their fears of trusting the masses at gacaca would be very great…..Eventually, we found something that everyone in the room could agree to: a gacaca that kept the lawyers happy and gave the rest of us most of what we wanted.

In February 1999, after the UN Office of the High Commissioner for Human Rights assisted the Urugwiro study of gacaca, the UN Special Rapporteur stated, “gacaca is not competent to hear crimes against humanity, but it could be utilised for purposes of

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47 Author’s interview, Fatuma Ndangiza, Executive Secretary, National Unity and Reconciliation Commission, Kigali, 10 June 2006.
48 Author’s interview, Protais Musoni, Minister of Local Government, Good Governance, Community Development and Social Affairs, Kigali, 13 June 2006.
testifying in connection with reconciliation.” Ignoring the UN’s advice, Bizimungu’s commission produced a draft proposal in June 1999, detailing how gacaca jurisdictions might be divided among the various levels of local administration – cellule, secteur, district, province – with each level hearing and prosecuting cases according to the categories of crime outlined in the Organic Law. The newly-established NURC was charged with conducting a detailed grassroots analysis of the feelings and perceptions of the national population concerning justice and reconciliation broadly and specifically gacaca. The result of these debates and analyses was the enacting of the Gacaca Law in January 2001.

Soon after passing the Gacaca Law, the government, with the assistance of the DCHR, ran a nationwide education campaign explaining the new law to the population. Once the government believed that the population was sufficiently sensitised, it ran a “pre-gacaca” programme of displaying genocide suspects before their home communities in what was billed as a dress rehearsal for a more fully-fledged gacaca to be activated countrywide in 2002. Various local and international NGOs were permitted to observe the hearings and to provide analyses for further government consideration.

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Parallel to the government’s initiation of gacaca, unofficial versions of the institution were beginning to emerge around Rwanda. As we will see later, key features of these parallel forms of gacaca greatly influence the Rwandan population’s interpretations of the post-genocide institution’s hybrid methods and aims. In particular, observers reported after the genocide that not only did gacaca continue to operate in its more traditional form in communities across the country, especially regarding land issues, but two unofficial forms of gacaca often relating to genocide crimes had evolved. First, a form of non-state gacaca emerged in a prison in Nyamata district of Kigali Ngali province in May 1998 and began in other prisons around the country between 1998 and 2001, at a time when the government was still debating the appropriateness of gacaca for dealing with genocide crimes.\(^\text{55}\) In this “prison gacaca,” detainees divided themselves into groups according to geographical areas and elected panels of “urumuri” (Kinyarwanda for “the light”) to act effectively as gacaca judges.\(^\text{56}\) In these sessions, detainees confessed their crimes to the urumuri and those gathered at the assemblies. The urumuri recorded the confessions, asked for additional evidence from those assembled and stored the records of these sessions for use at official gacaca hearings outside of the prisons.

Second, an unofficial form of gacaca developed in many religious communities around Rwanda. “Gacaca nkiristu” or “Christian gacaca” has occurred mainly in rural Catholic communities in the provinces of Butare, Kibungo, Cyangugu, Kigali Ngali and Ruhengeri.\(^\text{57}\) Christian gacaca employs priests or other church officials in the role of gacaca judges. Parishioners are encouraged to confess their sins to the congregation – sometimes to crimes related to the genocide and sometimes to minor infractions affecting other church members – and to ask for forgiveness both from those whom they have injured and from the community as a whole. Observers such as Alice Karekezi report that embedded in Christian gacaca is the notion that, once an individual has confessed to certain sins, it is the “divine obligation” of those personally injured and of the general congregation to forgive the confessor.\(^\text{58}\) The assumption underlying this duty to forgive is that, because God has forgiven his children of the sins they have confessed to him, believers are therefore obliged to forgive those who have transgressed them in daily life.

On 4 October 2001 – with a view to beginning a pilot phase of gacaca in selected locations around the country – the first round of elections for gacaca judges or

\(^{55}\) Karekezi, p.34.

\(^{56}\) Ibid., p.34.

\(^{57}\) Ibid., p.34.

\(^{58}\) Ibid., p.34.
“inyangamugayo” (Kinyarwanda for “wise or respected elder”) occurred in every cellule in Rwanda. In preparation for the elections, the community leaders of “ten-house” groups known as “nyumbakumi” were charged with the responsibility of encouraging every adult in these households to vote for gacaca judges and to draw up lists of outstanding members of these households to be proposed as potential judges. While some questions arose regarding the level of control surrounding the elections, most observers considered the ballot a great success, citing the massive turnout of voters around the country and the peaceful way in which the elections were conducted. Many commentators remarked on the importance of the discussions that surrounded the choosing of candidates. Potential gacaca judges were elected for their standing in the community, their dedication to the wellbeing of their neighbours and for their love of truth and justice. The discussion of these criteria resulted in the denunciation of many candidates for having participated in the genocide. Many observers therefore characterised the elections as instigating an important dialogue on issues such as truth, justice and reconciliation. Some observers went further and described – with some hyperbole – the election as a “wedding party,” a form of mass celebration across the country and proof that a dynamic sense of community was alive in Rwanda. The result of the vote was the election of more than 250,000 gacaca judges in cellules across the nation. In April 2002, these judges underwent six days of training, two days per week over three weeks, under the guidance of trainers drawn from a wide range of educated elites, including experienced judges and lawyers.

On 18 June 2002, the government officially inaugurated the gacaca jurisdictions, and 73 cellules in 12 selected secteurs, one per province, began a pilot phase of gacaca. The objective of these initial hearings was to introduce the methods of gacaca to the population and to identify problems and weaknesses in the system that could be overcome before gacaca became fully operational in all cellules. Few changes were made to the running of gacaca between the end of the initial pilot phase of 73 cellules and the introduction of a further 623 cellule jurisdictions on 25 November 2002.

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60 PRI, p.30.
61 Ibid., p.29.
62 Gasibirege, p.98.
63 Ibid., p.98. [author’s translation]
65 IRIN News, “Special Report on Hopes for Reconciliation under Gacaca Court System”, 4 December
government intended to introduce gacaca in another approximately 8000 cellules in March 2003. However, this introduction was delayed by the slowness of the jurisdictions where gacaca was already operating and the spate of major political and social events, particularly the provisional release of approximately 23,000 detainees from prisons around Rwanda and the establishment of the solidarity camps in January 2003.66

In June 2004, the government responded to several perceived problems with the running of gacaca jurisdictions by enacting a modified version of the Gacaca Law, which coincided with the expansion of gacaca from 751 to more than 9000 cellule- and secteur-level jurisdictions around the country.67 The main purpose of the amended Gacaca Law was to streamline and strengthen the running of gacaca in key areas. Among other changes, the 2004 version of the Gacaca Law decreases the number of levels of gacaca jurisdictions68 and the number of judges required to run gacaca hearings69, establishes fixed sentences for individuals found guilty of harming or harassing gacaca witnesses or interfering with judges’ investigations of genocide-related crimes70, and allows victims of sexual crimes to give evidence in camera to a single judge of their choosing or, if they do not trust any of the judges concerned, to give evidence directly to the Public Prosecutor.71 These changes paved the way for the beginning of the judgement phase of gacaca in March 2005. A further significant re-writing of the Gacaca Law is slated for late 2006 and expected to greatly hasten the entire gacaca process. Explaining these further amendments, President Kagame states, “We still have a massive caseload [of genocide suspects] to deal with, so we must find new ways to address this.”72

What the above discussion of the various historical developments of gacaca – from a traditional practice for hearing cases concerning low-level crimes to the modern version intended to deal with genocide and crimes against humanity – shows is that gacaca is an organic, dynamic system that has undergone myriad changes in the last century and that a wide range of state and non-state actors has influenced its evolution. Gacaca is not a

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68 Gacaca Law (Modified 2004), Articles 33-38.
69 Ibid., Article 13.
70 Ibid., Article 30.
71 Ibid., Article 38.
72 Author’s interview, H.E. President Paul Kagame, President of the Republic of Rwanda, Kigali, 13 June 2006. (Full interview transcript forthcoming in Oxford International Review, 2006-2007.)
static, traditional institution, as some sources have contended but rather a hybrid of traditional and modern elements. Many features of gacaca – in its various incarnations, before and after colonisation, in prisons and religious communities, in preparatory phases leading to its current form and in its use regarding genocide crimes – have remained consistent, for example the conducting of hearings outdoors in communal spaces, the high value placed on public participation and the linkage of gacaca and notions of social cohesion and reconciliation. Many features of gacaca, however, have changed during this time, with the most radical phase of evolution occurring as gacaca has been restructured to deal with genocide cases and as it is continually revised to respond to difficulties encountered in gacaca jurisdictions around the country.

The current manifestation of gacaca reverts to the traditional practice of employing judges chosen by the communities in which hearings take place. As we have seen, at different periods in the twentieth century colonial and local government officials played a greater role in the selection of gacaca judges, but in this regard modern gacaca displays an important similarity to gacaca as it existed in the pre-colonial era. Modern gacaca, though, diverges from the traditional system by relying on written law, involving women both as judges and members of the General Assembly, displaying a more systematic organisation between the administrative divisions of local government, and imposing prison sentences on those found guilty. Such developments undermine the argument that gacaca in the post-genocide context is little more than a return to a well-established, widely-understood indigenous form of conflict resolution that will receive automatic acceptance by the Rwandan population.

As an endogenous rather than indigenous response to crimes, gacaca remoulds tradition to suit current circumstances. Gacaca was not an automatic choice as the primary transitional or reconstructive institution after the genocide, and the Rwandan government considered various other options before settling on gacaca. Furthermore, after gacaca was selected as a model for the main post-genocide institution, it did not inherently possess the concepts and methods necessary to address genocide crimes and therefore required major reform. As the description from Musoni above of debates within the government about the virtues of gacaca and how it may be shaped to respond to genocide crimes shows, the Gacaca Law eventually adopted was the result of a political compromise between different factions, with an apparent division between lawyers and non-lawyers in the government, particularly over the issue of popular participation in gacaca.
The government recognises that gacaca is a dynamic, evolving, hybrid process that will require constant monitoring and assessment and that is likely to require ongoing reforms such as occurred with the revision of the Gacaca Law in 2004. President Kagame states, “Gacaca does not give us everything we need [after the genocide] but it gives us most things and certainly more than other potential processes.”\textsuperscript{73} Jean de Dieu Mucyo, former Minister of Justice and Institutional Relations and former Prosecutor General, argues, “Gacaca is not perfect...[but] with time, patience, this very long process we have started will give us what we [are looking for].”\textsuperscript{74} Even during its so-called “traditional” phase, gacaca as an institution and a set of ideas evolved according to the needs of the population and the influences of external forces such as local and colonial political elites. Similar ranges of local and external influences have shaped the evolution of gacaca since 1994. The single greatest catalyst of this evolution, though, has been the government’s and the population’s need to respond holistically to the massive social, cultural, legal and economic challenges resulting from the genocide.

Mechanics of Gacaca

Having seen how gacaca has developed historically, it is now necessary to understand how the modernised version of gacaca works. Understanding the mechanics of gacaca will be important for the exploration below of its hybrid methods and objectives. Two legal documents establish the mechanics of gacaca, the Organic Law of 1996 and the Gacaca Law of 2001, with the latter modified twice, to a minimal extent in June 2001 and more substantially in June 2004. The Organic Law is organised to prosecute “the crime of genocide or crimes against humanity” or “offences...committed in connection with the events surrounding genocide and crimes against humanity.”\textsuperscript{75} The Organic Law defines “genocide” and “crimes against humanity” in accordance with three international conventions, to which Rwanda is a signatory: the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Geneva Convention on the Protection of Civilian Persons in Time of War and the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.\textsuperscript{76} The Organic Law, and subsequently the Gacaca Law of 2001, \begin{flushleft}
\textsuperscript{73} Author’s interview, Kagame, op. cit.
\textsuperscript{75} Organic Law, Article 1.
\textsuperscript{76} Ibid., Article 1.
\end{flushleft}
divides genocide suspects into four categories of crimes committed between 1 October 1990 and 31 December 1994. When the Gacaca Law was modified in 2004, a key change was the merging of the old Categories 2 and 3\textsuperscript{77} to form a synthesised Category 2, thus reducing the overall number of categories to three, which are organised in the following way:

**Category 1:**

a) The person whose criminal acts or criminal participation place [him or her] among [the] planners, organiser[s]ers, incitators (sic), supervisors and ringleaders of the genocide or crimes against humanity, together with his or her accomplices;

b) The person who, at that time, was in the organs of leadership, at the national level, at the level of Prefecture, Sub-prefecture, Commune, in political parties, army, gendarmerie, communal police, religious denominations or in [the] militia, has committed these offences or encouraged other people to commit them, together with his or her accomplices;

c) The well known murderer who distinguished himself or herself in the location where he or she lived or wherever he or she passed, because of the zeal which characterised him or her in killings or excessive wickedness with which they were carried out, together with his or her accomplices;

d) The person who committed acts of torture against others, even though they did not result into (sic) death, together with his or her accomplices;

e) The person who committed acts of rape or acts of torture against sexual organs, together with his or her accomplices;

f) The person who committed dehumanising acts on [a] dead body, together with his or her accomplices.

**Category 2:**

a) The person whose criminal acts or criminal participation place [him or her] among killers or who committed acts of serious attacks against others, causing death, together with his or her accomplices;

b) The person who injured or committed other acts of serious attacks with the intention to kill them, but who did not attain his or her objective, together with his or her accomplices;

c) The person who committed or aided to commit other offences [against] persons, without the intention to kill them, together with his or her accomplices.

**Category 3:**

\textsuperscript{77} In the original categorisation of crimes detailed in the Organic Law and the Gacaca Law of 2001, Category 2 comprised “persons whose criminal acts or whose acts of criminal participation place them among perpetrators, conspirators or accomplices of intentional homicide or of serious assault against the person causing death”, while Category 3 comprised “persons whose criminal acts or whose acts of criminal participation make them guilty of other serious assaults against the person”. (Organic Law, Article 2. Gacaca Law, Article 51.) In Gacaca Law (Modified 2004), these two categories are merged to create a new Category 2, while the old Category 4, which deals with individuals charged with property-related crimes, is now rendered as Category 3. (Gacaca Law [Modified 2004], Article 51.)
The person who only committed offences against property.\textsuperscript{78}

Gacaca has jurisdiction over suspects in Categories 2 and 3, while Category 1 cases are referred to the national court system and the ICTR. Although no explicit principles exist for the distribution of suspects between the ICTR and the national courts, an unofficial division assumes that the ICTR will hear the cases of suspects considered to be among the most important planners and perpetrators of the genocide.\textsuperscript{79}

For those suspects over whom gacaca has jurisdiction, the Gacaca Law divides the hearing of their cases, according to category, between the approximately 9000 jurisdictions at two administrative levels. Each of these levels carries out a different task in the gacaca process. The cellule is charged with the investigation of crimes committed within the cellule during the specified period and with the production of four lists: first, of all those who lived in the cellule before 1 October 1990; second, of all those who were killed in the cellule during the specified period; third, of the damage to individuals or property inflicted during this time; finally, of suspects and their category of alleged crimes. The cellule hears cases only of suspects in Category 3. Cases of suspects in Category 2 are heard at the secteur level. The secteur also functions as the jurisdiction for the appeal of cases related to Category 2 and 3 crimes and the point from which Category 1 cases are forwarded to the Public Prosecutor’s office at the national level.\textsuperscript{80}

A crucial issue for the effective running of gacaca is the election of judges. Gacaca is unique among post-conflict judicial structures around the world in its mass involvement of the population in the pursuit, and carrying out, of justice. Gacaca judges must be Rwandan nationals over the age of 21 years, without any previous criminal convictions or having ever been considered a genocide suspect (except in relation to property crimes), and an honest, trustworthy person, “free from the spirit of sectarianism” but “characterised by a spirit of speech sharing.”\textsuperscript{81} Judges cannot at any time have been an elected official, government or NGO employee, trained judge or lawyer, or a member of the police, armed services or clergy. The motivation for this exclusion is to ensure that

\textsuperscript{78} Gacaca Law (Modified 2004), Article 51.


\textsuperscript{80} Gacaca Law (Modified 2004), Article 36.

\textsuperscript{81} Ibid., Article 14. The phrase “speech sharing” appears to entail that judges should be capable of encouraging the community to participate in gacaca hearings and of facilitating peaceful, productive discussions in the General Assembly.
gacaca is a popular process, run by citizens at the local level and free from actual or perceived political or legal interference.

Both levels of gacaca – cellule and secteur – consist of a General Assembly, a bench of judges, a president and a coordinating committee. At the cellule level, the General Assembly constitutes every resident of the cellule over the age of 18 years. In October 2001, General Assemblies across the country elected 19 judges to form cellule-level benches of inyangamugayo while also nominating five representatives to form the General Assembly at the secteur level. The revised Gacaca Law in 2004 reduces the number of judges at both levels of jurisdiction to nine, with five deputies also nominated who can substitute for any of the nine judges if they are absent. In July 2004, the gacaca judges who were elected in 2001 decided among themselves which individuals would stay on as either judges or deputies, thus reducing the number of judges nationwide from approximately 250,000 to around 170,000. Surveys into the makeup of benches of gacaca judges across Rwanda show that most judges are middle-aged, professional, educated members of the community, with women constituting around 35% of all inyangamugayo at the cellule level, and judges with higher education usually nominated to the secteur level of gacaca.

Gacaca judges are empowered to carry out various tasks, including summoning witnesses to testify at hearings, issuing search warrants and imposing punishments on those found guilty. Judges usually sit once a week before a required quorum of 100 members of the General Assembly. In Phase 1 of a gacaca jurisdiction, which ideally should comprise six weekly meetings, the Assembly gathers to determine a schedule of hearings and to begin compiling the four lists mentioned above. In Phase 2, which comprises the seventh meeting, the General Assembly gathers to produce a detailed dossier of evidence on each individual accused of a crime and listed during the sixth meeting of Phase 1. The accused then have the opportunity to respond to the evidence brought against them during Phase 3 of gacaca, after which in Phase 4 the judges weigh all of the evidence they have heard and pass judgement on the accused. The president chairs all meetings and is responsible for leading an orderly, directed discussion that

82 Ibid., Articles 13 and 23.
85 In very few gacaca jurisdictions do the three phases occur as quickly as originally planned. For example, by June 2003, only 16 of the 73 pilot gacaca jurisdictions inaugurated in June 2002 had completed both Phases 1 and 2 of the gacaca process and none had yet begun Phase 3. (Republic of Rwanda, “Situation Actuelle des Juridictions Gacaca”, pp.1-2.)
encourages truthful testimony and creates a space for victims and survivors to describe their personal pain and loss.

A key role of the president in this scenario is to maintain order within the Assembly, especially as the discussion can become emotionally charged and divergent testimonies may emerge. The Ministry of the Interior is tasked with guaranteeing the security of judges, suspects and the community at large during gacaca hearings, usually by providing one or two armed security personnel for all sessions.\textsuperscript{86} The president must also encourage those who may be reluctant to speak – especially women and the young – to testify. In particularly emotional or complex cases where witnesses may be unwilling to testify in front of a large gathering, judges (or in cases involving sexual violence, a single judge) may convene \textit{in camera} with a witness to hear evidence. As discussed in greater detail below, lawyers are forbidden from assisting either suspects or witnesses at any stage of a hearing as their involvement is seen as a potential threat to the open, non-adversarial approach of gacaca. After hearing evidence against a suspect, judges may retire \textit{in camera} to consider the individual’s guilt, before which judges are expected to withdraw themselves from any cases involving friends or family members to the second degree of relation. The president will attempt to reach a consensus among the judges before deciding on the person’s guilt. However, in cases where consensus is impossible, a majority decision by the nine judges will suffice. The bench must then announce its decision concerning a suspect’s guilt to the General Assembly, either at the same meeting or the next, at which point those convicted of crimes are entitled to appeal the bench’s decision first to the gacaca jurisdiction that initially heard their case or, if they remain dissatisfied with this judgement, to the secteur level of gacaca.\textsuperscript{87}

The Gacaca Law dictates that punishment should be meted out in various ways. Individuals who refuse to testify at gacaca or are found to have provided false testimony are subject to a prison term of three to six months.\textsuperscript{88} A centrepiece of the gacaca judicial structure is a pre-determined matrix of sentences that incorporates a system of confession and plea bargaining that is foreign to the European judicial system but finds a place in some jurisdictions in the United States (see table below). According to this matrix, suspects can decrease their sentences by at least half if they confess to their crimes.


\textsuperscript{87} Gacaca Law (Modified 2004), Articles 64-70.

\textsuperscript{88} Ibid., Article 29.
Another important feature of the gacaca sentencing mechanism is the combination of prison terms and community service.

The sentencing structure, as established by the Gacaca Law, operates as follows\(^89\):

<table>
<thead>
<tr>
<th>Judgement</th>
<th>Guilty with no confession</th>
<th>Guilty with confession during trial</th>
<th>Guilty with confession before trial</th>
<th>Minors (14- to 18-years-old) when offence committed(^90)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 [Sub-categories 1 and 2]</td>
<td>25-30 year prison term</td>
<td>12-15 year prison term; possibility of commuting half to community service</td>
<td>7-12 year prison term; possibility of commuting half to community service</td>
<td>8-10 year prison term if guilty without confession; otherwise, half of adult sentence; possibility of commuting half to community service, except when no confession is made</td>
</tr>
<tr>
<td>(judged at secteur level; appeals to secteur level)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 [Sub-category 3]</td>
<td>5-7 year prison term; possibility of commuting half to community service</td>
<td>3-5 year prison term; possibility of commuting half to community service</td>
<td>1-3 year prison term; possibility of commuting half to community service</td>
<td>Half of adult sentence; possibility of commuting half to community service</td>
</tr>
<tr>
<td>(judged at secteur level; appeals to secteur level)</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>3</td>
<td>Reparations for damage caused or equivalent community service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(judged at cellule level; appeals to secteur level)</td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

\(^89\) Ibid., Articles 72-81.

\(^90\) Minors who were less than 14-years-old at the time of the offence cannot be prosecuted at gacaca but instead are placed in special solidarity camps. (Ibid., Article 79.)
III. Interpreting Gacaca: Rationale for Interpreting a Dynamic Socio-Legal Institution

Gacaca is an intricate, multifaceted social practice that draws on a wide range of legal, political and cultural influences over several generations to produce the system now designed to deal with genocide cases. Given gacaca’s complex evolution during the twentieth century and the marked reform of the institution in the post-genocide environment, it is not surprising that great confusion over the aims and objectives of the practice manifests both in the critical literature and in the daily running of gacaca. This section briefly discusses the current controversy among many observers concerning gacaca as a hybrid institution dealing with genocide and related crimes and the confusion among many participants concerning gacaca’s objectives. Various social, legal and political commentators have criticised gacaca on a number of grounds, particularly regarding perceived violations of individual rights, but what is lacking in the critical literature is a clear notion of how to judge gacaca’s effectiveness. This section offers a more appropriate basis from which to analyse gacaca than most commentators have so far employed. This rationale for interpreting gacaca recognises the need for hybrid methods of analysis that account for descriptions of gacaca in its legal statutes and the ways in which it is constantly redefined by participants. The final part of this section outlines the dominant discourse on gacaca, particularly from Western legal scholars and human rights observers, which holds that it is an institution designed essentially to punish those guilty of genocide and related crimes, to eradicate the culture of impunity and thus to safeguard against future crimes; that is, to provide for deterrent justice. A key reason for offering a more nuanced interpretation of gacaca’s objectives later in this article is to counter some of the inadequacies of the prevailing discourse on gacaca.

Controversy and Confusion over Gacaca

The introduction of gacaca to deal with genocide crimes has worried many observers, particularly international lawyers and human rights monitors concerned with due process for genocide suspects. As the creators of gacaca recognised at the outset, gacaca’s most controversial feature is the mass involvement of the population in hearing and prosecuting complex genocide cases. Lawyers are barred from all hearings because the makers of gacaca argue that to create an environment in which the community feels
comfortable to discuss the fractious issues of genocide crimes and ethnic divisions, it is necessary to avoid the adversarial nature of more conventional courts, where victims rarely have the chance to talk openly of their pain or to engage meaningfully with perpetrators. Excluding lawyers from hearings is also meant to maximise the community's sense of ownership over the process. Nevertheless, many international observers are concerned about the potential intimidation of witnesses and the likelihood of unfair trials for, or direct reprisals against, genocide suspects at gacaca. In a community that is so traumatised and riven with ethnic tensions, these critics fear that gacaca will simply lead to mob justice and potentially a return to the violence of the past.

The modernisation of gacaca has also caused great confusion among many Rwandans. Particularly in the early stages of gacaca, many participants equated the post-genocide institution with its traditional precursor. More importantly, many genocide survivors believed that those found guilty of genocide crimes would receive the sorts of relatively lenient punishments that had been handed down to perpetrators at traditional gacaca hearings or even an amnesty.

Meanwhile, the Gacaca Law is itself a complex synthesis of Western law and historical Rwandan practices, incorporating for example a plea bargaining system that has some parallels in Western legal contexts and methods of communal dialogue and deliberation drawn from traditional gacaca; a product of the array of foreign and local actors who were instrumental in reforming gacaca after the genocide. This complex genesis makes gacaca difficult to categorise. Furthermore, as it relies heavily on popular involvement at all levels of the institution, from the election of judges through to these judges’ sentencing of genocide criminals on the basis of communal discussions and provision of evidence, the population often shapes gacaca according to the needs of particular communities. This means that gacaca, especially in towns and villages far from Kigali, often diverges from the original intentions of the makers of the institution.

A concrete example from the author’s observation of a gacaca hearing in Ruhengenge district of Kigali Ville province on 6 April 2003 will help illustrate the sorts of confusions over the aims of gacaca that often manifest during hearings and their crucial

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91 Author’s interview, Mukantaganzwa, op. cit.
93 See, for example, Author’s survivor interviews, Grégoire, Butare, Kibingo, 14 May 2003; Nathan, Kigali Ngali, Nyamata, 19 May 2003; Tharcisse, Gisenyi, Gisenyi Ville, 23 May 2003.
Conflicts between the participants of gacaca constitute an important reason for more finely understanding the hybridity of gacaca’s methods and objectives. Before the start of this gacaca session, the president of the judges’ bench ordered a group of women to drag two large blue tarpaulins, containing the recently-exhumed remains of genocide victims in the cellule of Rugenge, beneath the thatched shelter where the hearing would take place. The week before, two detainees from the Prison Centrale de Kigali had confessed in front of this gacaca to the murder of several children during the genocide and to dumping their bodies in a mass grave on the edge of the cellule. On hearing this confession, the president ordered the exhumation of the site that the detainees had described and the storage of the remains discovered there.

The two tarpaulins were opened at the gacaca hearing of 6 April to display a pile of rotten clothes in one and a heap of cracked and decayed bones, evidently those of children, in the other. On seeing the remains, the General Assembly showed signs of great distress. Women and children began crying. Several men expressed anger that the president had allowed such traumatising evidence to be displayed at an already-fraught gacaca hearing, where the General Assembly was constructing a list of people who had died in the cellule during the genocide. This gacaca occurred in an especially emotional environment in early April, at the start of a month-long national remembrance of those who died during the genocide, and the day before 7 April, which marks the official anniversary of the start of the genocide in 1994. Why, several members of the General Assembly asked, was the president of the gacaca displaying these remains when many in the community were already experiencing such high levels of trauma?

Through interviews with the participants, the author discovered that over time many in the General Assembly had developed a view of gacaca as an important means of discovering the truth of what happened to their loved ones in 1994. This discovery had in turn aided many survivors’ ability to deal with emotions of anger and loss by providing the necessary facts about the death of their friends and family, thus allowing them to understand precisely what had happened and to speak more clearly and assuredly about their experiences. For these survivors, the distress of the exhumation appeared to undo much of the good associated with the hearing of gacaca testimonies to this point. The president replied that the exhumation of the children’s remains served a dual purpose: on the one hand, it verified the testimony of the two detainees at the previous gacaca

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94 Author’s gacaca observations, Kigali Ville, Ruhengenge, Rugenge, Rugenge, 6 April 2003.
95 Ibid.
regarding the location of the mass grave and, with later forensic analysis, it would help verify how many children were buried there, their identities and how they had been killed. The exhumation was also a way of publicly shaming the detainees who committed these crimes. A third purpose related to the exhumation, which the president did not mention, was that relatives of those whose remains were discovered could now bury their loved ones in an appropriate manner.96

What this situation shows is that different interpretations of the aims and purposes of gacaca can become confused and produce discord within the communities involved. For many participants in the General Assembly, the purpose of gacaca was to establish the degree of truth necessary to aid survivors’ healing. They argued that the judges should have excluded any investigations that re-traumatised survivors. The president, however, argued that an important aim of gacaca was also to verify the truth of testimonies heard at gacaca – to reach the clearest possible understanding of what occurred during the genocide, even if this resulted in increased levels of trauma for participants – and to deliver some form of justice to the perpetrators, for example through public shaming. Though the president did not argue this specifically, it was also possible that causing short-term trauma by ordering the exhumation was justified because those who had lost friends and relatives during the genocide could now experience more profound and long-lasting healing, for example by burying their loved ones in an appropriate way. This example shows that different participants can interpret gacaca’s raison d’être in a multitude of ways: in this particular instance, as a forum for the broad search for the truth, a realm of truth-discovery within the limits of healing, a means for pursuing some form of retributive or deterrent justice or as a facilitator of long-term healing.

Situations such as the one just described are unavoidable given the degree of current misunderstanding and confusion regarding gacaca’s hybrid objectives. Many participants in gacaca as well as the political leaders and commentators who help shape the system articulate a wide and often inconsistent array of interpretations of gacaca. This confusion poses difficulties both for judges and members of the General Assembly who participate directly in gacaca and for observers and commentators who monitor how effectively gacaca operates.

96 This third interpretation of the events surrounding the exhumation at Ruhengenge was suggested to the author by Martin Ngoga, Prosecutor General, Rwandan Ministry of Justice, during a panel session at the conference, “The Rwandan Genocide and Transitional Justice: Commemorating the 10th Anniversary of the Genocide”, St. Antony’s College, University of Oxford, 15 May 2004.
Popular Ethos of Gacaca

Different individuals and groups in Rwanda interpret gacaca as an institution in various ways. Therefore, it is necessary to critically examine the interpretations of all interested parties, whether from an official, popular or critical standpoint, and to assume that none of these groups possesses an inherently more valuable understanding of what gacaca should achieve. Gacaca is a dynamic, hybrid enterprise that draws on a wide range of political, cultural and religious sources. Therefore, one secondary aim of this article is to briefly explore the influences that other social forces have had on gacaca – often differing between geographical regions but underpinned by a particular Rwandan worldview – and that affect the Rwandan population’s expectations of the institution. Failing to recognise the influence that other social structures have on gacaca, as most writers in this field have so far, leads to a limited understanding of the values that gacaca embodies and in turn to an unsatisfactory conceptual framework in which to critically assess it. Any attempt to critique gacaca must address the issue of how the people engaged in this process interpret it and from which social and cultural sources – apart from the legal documents and pronouncements by government leaders that initially shape the institution – they draw these interpretations.

It is important to justify the contention that the population’s interpretations of gacaca should warrant a central status when interpreting gacaca’s objectives and judging its effectiveness. It may appear that such an approach gives undue consideration to what many observers may view as merely participants’ misunderstandings or deliberate contraventions of the laws governing gacaca – in essence, a “warping” of the original intentions of its makers that should carry no moral or practical weight in our understandings. There are, however, very good reasons for closely analysing the ways in which everyday Rwandans’ interpretations of gacaca, as manifest in their verbal discussions of the institution and in their practices and interactions during gacaca hearings, contribute to the functioning of the institution. The fundamental reason why interpreting popular perceptions of, and participation in, gacaca is important for understanding the institution as a whole – and particularly its hybrid nature and responses to genocide crimes – is because the driving ethos of gacaca is one of popular ownership and involvement. The Rwandan government emphasises the importance of popular participation, and most Rwandans, at least according to their verbal expressions, also view
themselves and not the state as the driving force behind gacaca.\footnote{Various Government and academic surveys reported near the beginning of the gacaca process that there was much enthusiasm among the Rwandan population for participating in gacaca. For example, Stella Babalola reports that 87% of interviewees claimed that they wanted to participate in hearings. (S. Babalola, “Perceptions about the Gacaca Law in Rwanda: Evidence from a Multi-Method Study” in Naganda (ed.), Les Juridictions Gacaca, op. cit., p.114.) Babalola and Simon Gasibirege report that 89.4% of interviewees believe that it is the responsibility of every Rwandan to testify at gacaca (S. Gasibirege and S. Babalola, “Perceptions about the Gacaca Law in Rwanda: Evidence from a Multi-Method Study”, Special Publication (No. 19), Baltimore: Johns Hopkins University School of Public Health, Center for Communication Programs, April 2001, p.11.). Meanwhile, according to an NURC survey, 91% of the population believes that prosecution witnesses will want to participate in gacaca in order to expose genocide and related crimes (National Unity and Reconciliation Commission, “Opinion Survey on Participation in Gacaca and National Reconciliation”, Kigali: NURC, January 2003, Annexe 4, p.13.). However, the author’s observations of gacaca hearings and those of other observers indicate that one of gacaca’s biggest problems currently is low turnouts in many communities. (Examples are described in Author’s gacaca observations, Ruhengeri, Buhoma, Mukamira, Mutovu, 4 May 2003; Butare, Save, Zivu, Musekera, 15 May 2003.)} As argued later in this article, the government and population often overstate the extent to which everyday Rwandans are free to participate in gacaca. Nonetheless, the spirit of gacaca emphasises that the community should play a central role in all aspects of the process and that the objectives of gacaca should not be pursued through the agency of national or local elites but through communal engagement in a public setting.

The government stresses that gacaca judges must allow the General Assembly, with minimal interference from judges or other community leaders, to openly discuss cases and wider (often emotional, non-legal) issues stemming from the genocide. Fatuma Ndangiza, Executive Secretary of the NURC, describes gacaca as “a form of justice originating from and serving Rwandan culture” and a demonstration of “Rwandans’ ability to manage their [own] conflicts.”\footnote{F. Ndangiza, “Transitional Justice and Reconciliation”, paper delivered to the Conference on Policy Research, Ottawa, 21 November 2002, p.7.} As the Gacaca Manual, which the government produced with the assistance of ASF to guide judges in their daily running of gacaca, exhorts: “Don’t forget that the population is the main actor in the Gacaca Jurisdictions and that you represent the population.”\footnote{Republic of Rwanda, “Manuel Explicatif sur la Loi Organique portant Création des Juridictions Gacaca”, Kigali: Supreme Court of Rwanda, 6\textsuperscript{th} Chamber (Gacaca Commission), 2001, p.10. [author’s translation] This final document is the manual used to aid judges in their carrying-out of gacaca duties. (From hereon, referred to as the “Gacaca Manual.”)} Judges are on hand primarily to encourage what Hannington Tayebwa, Head of Judicial Services at the Ministry of Justice, calls “facilitated problem-solving,”\footnote{Author’s interview, Hannington Tayebwa, Head of Judicial Services, Rwandan Ministry of Justice, Kigali, 30 January 2003.} which holds that the General Assembly should engage in a largely open discussion at gacaca hearings, in which judges act as mediators to help the community achieve certain legal and social objectives. Gacaca judges function essentially as democratically-elected officials, pursuing the good of the populace by allowing the
General Assembly to control much of the running of gacaca, except in instances when judges believe that communal discussions may lead to damaging levels of discord or violence.\textsuperscript{101}

Much of the Rwandan public shares the government’s understanding of the importance of popular participation in gacaca. During interviews, many Rwandans discuss at length the importance of public dialogue during gacaca hearings and the need for all members of the community to openly discuss their experiences and concerns. As Boniface, a genocide survivor in Kigali Ville, argues,

At gacaca the truth frees us from the weight we have carried around since the genocide. Gacaca is important because it allows us to be together and to hear the truth and to learn to live together again…I will go to gacaca and ask the prisoners who come from the jail to speak the truth about what they did…There are many lies at gacaca. But the community will refute them and the judges will get to the truth and make a record of the prisoners’ crimes. Then I will feel as if all these things have finished and life will start again.\textsuperscript{102}

Alice, a gacaca judge in Buhoma district of Ruhengeri province argues similarly, “Gacaca is important because it brings everyone together, to talk together. When we come together, we find unity…Sometimes there is even too much talking and I have to slow the people down.”\textsuperscript{103} Many Rwandans view gacaca as a forum in which all members of the community, suspects, survivors and the general population, can debate and discuss legal and non-legal issues related to the genocide.

Gacaca’s popular ethos necessitates an analysis of popular interpretations of its objectives if we are to rigorously interpret its methods and aims. This is a difficult undertaking because the dynamic nature of gacaca makes it a moving target. It is impossible to propose a single, paradigmatic interpretation of gacaca, its aims and methods because gacaca is shaped largely by the needs, beliefs and methods of local communities. These local factors vary greatly between, and within, different communities, leading inevitably to different and often-changing understandings of gacaca. This dynamism should make us wary of interpreting the aims of gacaca too rigidly. Nevertheless, to neglect the ramifications of popular ownership of gacaca is to neglect the important public spirit of the institution and thus to fail to judge it on its own terms. As argued in the following sections, most current interpretations of gacaca are flawed in critical respects – one of which is their neglect of the popular nature of the institution; a

\textsuperscript{101} Guidelines governing respectful discourse and the role of gacaca judges in maintaining order during gacaca hearings are found in the Gacaca Manual, pp.26-27.
\textsuperscript{102} Author’s survivor interview, Boniface, Kigali Ville, Kacyiru, 22 May 2003. [author’s translation]
\textsuperscript{103} Author’s gacaca participant interview, Alice, Ruhengeri, Buhoma, Mukamira, Mutovu, 4 May 2003. [author’s translation]
key component of gacaca’s hybrid method of linking communal negotiation and more formal legal procedures – and it is therefore necessary to offer a more nuanced interpretation than exists currently, recognising the internal hybridity of gacaca, however limited that nuanced interpretation may be as a result of the dynamic nature of the institution.

Dominant Discourse on Gacaca

How have most commentators interpreted gacaca? Is there a single, overriding view that drives most critiques of the institution in the existing literature? The study of gacaca is a new but growing field and already more detailed and varied accounts are beginning to emerge. A small number of Rwandan academics and observers has discussed the importance of gacaca for pursuing a variety of objectives, including reconciliation.104 The views of these authors are not incorporated into what this article describes as the dominant discourse on gacaca because, in terms of the existing literature on this topic, their work currently constitutes a minority (albeit crucial) view. This article does, however, draw on Rwandan authors’ interpretations of gacaca to critique the dominant discourse on gacaca. Over time, it is likely that the local literature on gacaca will grow and some local authors may respond more directly to the critiques of gacaca by Western legal authors.

The majority of published critiques comes from Western observers and draws on a form of human rights analysis that views justice as the primary virtue by which gacaca should be evaluated. That most Western observers of gacaca come from a legal background means that they tend to interpret gacaca strictly as a judicial remedy to the legacies of the genocide. Discerning the success of gacaca in terms of social outcomes other than deterrent justice, such as reconciliation, is thus sidelined, rendering these virtues as secondary considerations to these forms of justice, if in fact they are considered at all.

While most commentators – especially those from human rights groups like Amnesty International (AI) and Human Rights Watch (HRW), whose arguments are explored in detail below – consider justice and the protection of human rights as the primary lens through which to interpret and analyse gacaca, they define justice in a very particular fashion. The form of justice that most commentators employ when analysing gacaca is formal in method and deterrent in outcome. Regarding the formal nature of this version of justice, the dominant discourse on gacaca draws on a longstanding tradition in Western philosophy that holds that justice should be a neutrally-determined, universal virtue and free from all value-laden claims made by specific individuals or groups.\textsuperscript{105} The only way to achieve this neutrally-determined justice, this view dictates, is to follow pre-determined principles and procedures. In the context of gacaca, formal justice requires that the processes of the institution adhere to commonly accepted precepts of due process, such as those requiring defendants to have access to legal counsel of their choosing and for cases to be heard by a neutral, disinterested judiciary.

According to the dominant interpretation, the most important outcome of the gacaca process is the punishment of genocide perpetrators, which will help eradicate the culture of impunity that many Western commentators believe prevailed in Rwanda before and during the genocide. In this view, justice will be achieved and gacaca will be deemed successful only when genocide perpetrators have been found guilty and sentenced according to the severity of their crimes. Any failure to mete out punishment to those found guilty of genocide crimes, and to do so according to commonly accepted principles of due process, will render gacaca an unjust and illegitimate institution. Three recent examples of human rights critiques of gacaca illustrate the most common arguments against gacaca. All three critiques assume that gacaca is an institution aimed primarily at formal, deterrent justice. On this basis, they conclude that gacaca is an unjust and illegitimate attempt to deal with the legacies of the genocide.

In a report published in December 2002, AI argues, the legislation establishing the Gacaca Jurisdictions fails to guarantee minimum fair trial standards that are guaranteed in international treaties ratified by the Rwandese government…[G]acaca trials need to conform to international standards of fairness so that the government’s efforts to end impunity…are effective. If justice is not seen to be done, public confidence in the judiciary will not be restored and the government will have lost an opportunity to show its determination to respect human rights.\textsuperscript{106}

\textsuperscript{105} The paradigmatic example of this view comes from John Rawls in his model of distributive justice, as presented in J. Rawls, A Theory of Justice, Oxford: Clarendon Press, 1972.

\textsuperscript{106} AI, “Gacaca: A Question of Justice”, p.2.
Elsewhere, AI argues that it is

principally concerned with the extrajudicial nature of the gacaca tribunals. The gacaca legislation does not incorporate international standards of fair trial. Defendants appearing before the tribunals are not afforded applicable judicial guarantees so as to ensure that the proceedings are fair, even though some could face maximum sentences of life imprisonment.107

In July 2002, HRW analysts Kenneth Roth and Alison Des Forges published an article critical of interpretations of gacaca expressed by writer Helena Cobban. According to Cobban, deterrent justice is not gacaca’s only function and, for example, “therapy” or the healing of wounds after the genocide for both genocide perpetrators and survivors are also among gacaca’s aims.108 In response, Roth and Des Forges argue,

[It] is precisely at a time of atrocities…that a policy of trial and punishment is essential. Justice reinforces social norms and deters some would-be perpetrators…[O]ne can only imagine the long line of perpetrators who would choose therapy instead of prison cells. Before we agree to counselling instead of punishment [through gacaca], we owe it to the victims of the Rwandan genocide – and to all future victims of genocide – to contemplate the [idea of therapy at gacaca] from their perspective.109

For now, it is not necessary to question the validity of Roth’s and Des Forges’ specific critique of Cobban’s argument. What is important to note here instead is the primacy that groups such as AI and HRW afford methods of “trial and punishment” in the context of gacaca, with the aim of deterring potential criminals, and the implication that, according to this discourse, these methods must comply with international standards of judicial procedure. Nowhere in the literature do human rights critics explicitly state that deterrent justice is the only objective of gacaca, although quotes such as the one above from Roth and Des Forges come close to making such a point. However, objectives which legal

109 Des Forges and Roth, op. cit.
commentators imply do not relate to methods of punishment, and more specifically to ideas of deterrence, such as “therapy,” “healing,” “rehabilitation” or “reconciliation,” are generally treated with scepticism, if in fact they are considered at all.\textsuperscript{110} Therefore, we can conclude that the prevailing discourse considers deterrent justice to be the primary objective of gacaca.

The current academic literature on gacaca is relatively small but where such analyses have appeared – particularly from Western authors – they have largely mirrored the human rights arguments cited above. For example, Allison Corey and Sandra Joireman argue that gacaca threatens security in Rwanda by failing to adequately punish \textit{génocidaires} in two key respects.\textsuperscript{111} First, they argue that gacaca fails to punish perpetrators in a formal sense, as embodied in principles of due process such as participants’ right to legal counsel and to have their cases heard by neutral, third parties, rather than by members of the community who themselves may be involved in the cases under consideration. Second, they argue that gacaca fails to uphold principles of judicial fairness by focusing only on crimes committed by \textit{génocidaires} and neglecting crimes against Hutu committed by members of the Tutsi minority and the RPF. Corey and Joireman argue that this selectivity of cases to be heard at gacaca leads to a form of “politici[s]ed justice,”\textsuperscript{112} which intensifies “a desire for vengeance among the Hutu majority…thereby contributing to, rather than curtailing, the risk of ethnic violence in the long run.”\textsuperscript{113} Many observers, including those from AI and HRW, have criticised gacaca on these same grounds of legal due process and judicial fairness.\textsuperscript{114} Corey’s and Joireman’s argument, however, differs slightly from these critiques by claiming that the


\textsuperscript{112} Ibid., p.86.

\textsuperscript{113} Ibid., p.74.

\textsuperscript{114} Des Forges and Roth, pp.1-2; AI, “Gacaca: A Question of Justice”, pp.2-11.
politicised justice will lead to insecurity rather than simply a derogation of a moral duty to try all crimes equally or a failed attempt to eradicate the culture of impunity, which appear to be the human rights organisations’ main justifications for pursuing punishment through gacaca.

In the current literature on gacaca, there are several variations of these formal critiques of gacaca as outlined above. However, the examples from these human rights organisations and academics are representative of the dominant discourse on gacaca. Some critics emphasise either the formal or deterrent shortcomings of gacaca more than others, while some emphasise both of these aspects. Both components of this view of justice, however, predominate in the existing literature and constitute a largely coherent view among most commentators of what gacaca is and what it is designed to achieve (or more crucially, given the critical nature of most commentaries, what gacaca supposedly is not and what it supposedly fails to achieve). This article will show that the dominant discourse on gacaca is severely flawed for two main reasons: first, because it mistakenly views gacaca exclusively as a legal institution, which can be analysed solely through the legal statutes that underpin it; and second, because it interprets formal, deterrent justice as the only objective of gacaca, while neglecting more crucial aims, particularly reconciliation, and more negotiated processes during hearings. In short, the dominant discourse fails to account for the hybrid nature of gacaca and the hybrid methods and objectives it embodies. We therefore require a more nuanced interpretation of gacaca and its objectives if we are to offer more appropriate suggestions as to how gacaca may be reformed to aid its effectiveness as a tool of post-genocide reconstruction.

IV. Gacaca’s Modus Operandi: Engagement through Popular Participation

While the material and pragmatic needs of the Rwandan population after the genocide are undoubtedly immense, the fractured state of inter-personal and communal relationships is also pressing because of the current depth of enmity and mistrust throughout the population. Of course it is impossible to completely separate material and communal or psychosocial needs because invariably the same individuals and groups suffer deprivation in both of these broad areas. Furthermore, deprivation in one of these areas often increases feelings of need in the other. It is necessary therefore to seek holistic remedies that incorporate both pragmatic and profound responses to the variety
and complexity of people’s requirements after conflict. Gacaca as a response to the population’s needs operates in this holistic way.

This section focuses on the broad, hybrid methods gacaca employs to respond holistically to post-genocide requirements. The first part of this section explores the ways in which popular participation is viewed by many stakeholders in gacaca as the modus operandi of gacaca; a view opposed by many proponents of the dominant discourse on gacaca for whom only a formal, rather than a popular participatory, approach to post-conflict institutions is appropriate. This section argues that gacaca encourages modes of communal negotiation within formal, legal boundaries; a hybrid approach that gacaca’s legal critics and the Rwandan government fail to acknowledge fully. The final part of this section argues that a central component of gacaca’s modus operandi of popular participation is the need to foster genuine engagement between parties previously in conflict to rebuild fractured personal and communal relationships. Gacaca’s attempt to facilitate engagement between parties differentiates it from most other transitional mechanisms employed around the world.

Modus Operandi of Gacaca: Popular Participation

The central role that gacaca affords the population in the daily running and shaping of the institution is one of its most striking and controversial features. Many critics of gacaca – and, as we have seen, even some of its creators – have questioned the wisdom of allowing a traumatised and still heavily ethnically-divided population to drive the country’s main reconstructive institution through its electing judges, instigating cases, providing evidence, determining the guilt or innocence of suspects and engaging in open, wide-ranging dialogue. Most post-conflict structures around the world, whether war crimes tribunals, truth commissions or variations of these bodies, seek, consciously or otherwise, to limit the population’s involvement. The rationale for this exclusion is a belief that people emerging from mass conflict will have personally inflicted, or suffered, extreme trauma or grief, and consequently they may be too driven by their own experiences, desires and prejudices to help reconstruct the nation. Therefore, the argument goes, outside parties – whether elites within the conflict society itself who may not have been caught up directly in the violence or foreign bodies such as the UN – should be commissioned to plan and manage the reconstruction. External facilitators are
assumed to be more impartial in their attempts to formulate fair and effective, long-term remedies after conflict.

At gacaca, the general population plays a very different role than in more conventional post-conflict institutions. As argued in the previous section, the underlying philosophy of modern gacaca draws on the ethos of the traditional version by recognising the importance of the community’s ownership over, and direct involvement in, the institution. This current section critically evaluates the government’s, population’s and commentators’ views of popular participation in gacaca, focusing on three themes: the perceived virtues of popular ownership of gacaca; stated linkages between popular ownership and notions of “national unity” and “duty”; and legal critics’ claim that popular participation in gacaca will constitute a form of mob justice. Broadly speaking, most participants in, and observers of, gacaca interpret popular participation as the means by which gacaca pursues other objectives such as justice and reconciliation. However, many Rwandan sources overstate the extent to which the population can participate untrammelled in gacaca. Few Western commentators, most of whom express a version of the dominant discourse on gacaca, explicitly discuss popular participation. These commentators’ emphasis on gacaca as a set of legal statutes to be analysed rather than as a social practice to be observed and assessed does not require an in-depth consideration of popular participation. Where proponents of the dominant discourse on gacaca do consider the role of popular participation, it is generally to critique the level of public involvement in, and the removal of external actors such as lawyers from, gacaca. This section argues that these criticisms of popular participation in gacaca are profoundly misguided.

Importance of Popular Ownership over Gacaca

The government’s interpretations of popular involvement in gacaca emphasise the importance of this method for facilitating relatively immediate goals, while also conveying a wider ideology concerning the roots of conflict in Rwanda and the need for a stronger sense of national unity. The official perspective of popular participation draws heavily on the traditional version of gacaca, in which gacaca was an *ad hoc* institution upon which the local community called whenever conflicts arose. Before the colonial period, the local population rather than community leaders instigated gacaca hearings and the community participated directly in resolving local problems. The government views gacaca as fulfilling a similar purpose in the post-genocide environment. Ndangiza, as quoted earlier, describes gacaca as “a form of justice originating from and serving
Rwandan culture” and a demonstration of “Rwandans’ ability to manage their [own] conflicts.” One primary way in which the government has encouraged popular participation in gacaca has been to emphasise the population’s ownership over a practice with which, officials argue, Rwandans are deeply familiar. According to former Minister of Justice and Institutional Relations (when these remarks were made) and former Prosecutor General, Jean de Dieu Mucyo, “[T]he success of Gacaca largely depends on an active and unconditional participation by the population.” Judges are on hand only to encourage what, as already quoted, Tayebwa from the Ministry of Justice calls “facilitated problem-solving.” From this standpoint, the General Assembly should conduct an open discussion at gacaca hearings, in which judges act as facilitators. The government claims that its officials need to be involved in gacaca, though it rarely outlines what this should entail. “Handling the Gacaca tribunals should be the business of the grassroots populations alone,” argues Aloysie Cyanzayire, former Deputy Chief Justice of the Supreme Court and President of the Gacaca Commission. “[But] leaders, officials and workers should also be involved, especially in areas where they lived at the time of the 1994 genocide and massacres.”

The Gacaca Law stipulates, however, that the leaders charged with overseeing gacaca must not include lawyers. Though the government rarely expresses its views directly on this matter, the primary rationale behind the exclusion of lawyers from all direct involvement in gacaca, and of groups such as police officers and clergy from being judges, appears to be a desire to maintain the open, participatory spirit of gacaca. Individuals with specific expertise, such as lawyers, the argument goes, may dominate gacaca hearings and intimidate less-qualified participants. Therefore, these elites should be excluded from leadership roles in gacaca.

The government argues that giving fundamental control over the daily running of gacaca to the population will reinforce the popular understanding of traditional gacaca and fulfil the community’s subsequent expectations of ownership over the current process. In turn, the population’s ownership over gacaca is justified, the government argues, because the local population knows better than anyone what crimes were committed during the genocide and who is responsible for them. Augustin Nkusi, chief legal advisor to the

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117 Author’s interview, Tayebwa, op. cit., 30 January 2003.
Gacaca Commission, argues, “At gacaca, the truth ultimately comes from the population. We know that people will tell who is responsible because they saw what [the perpetrators] did. They stood there as it happened and they saw everything with their own eyes. There will be no confusion about who is responsible for these things.”

Mucyo, former Rwandan Prosecutor General, argues, “The most important thing about gacaca is that it finds the truth out on the hills. The truth is known there, so justice will be fast.” If truth comes primarily from the population, the argument goes, then gacaca should be organised to maximise communal participation in the pursuit and articulation of the truth.

Much of the Rwandan population echoes the government’s views, emphasising the importance of engaging in dialogue during gacaca hearings and on the need for all members of the community to publicly discuss their experiences and concerns. As Alice, the gacaca judge in Buhoma district of Ruhengeri province quoted earlier, claims,

> Gacaca is important because it brings everyone together, to talk together. When we come together, we find unity...Sometimes there is even too much talking and I have to slow the people down. The women especially talk too much because they are used to talking much more than the men.

Such positive views of popular participation are reflected in various government and academic surveys that show there is much enthusiasm within the Rwandan population for actively participating in gacaca. An important feature of several gacaca hearings observed by ASF is the extent to which some communities have instituted ad hoc procedures to punish local people who fail to attend gacaca hearings. In one cellule in Kigali Ville, gacaca judges maintained a list of habitual absentees. In a cellule in Kigali Ngali, the General Assembly discussed whether it should impose fines on those who arrived late to hearings or failed to attend altogether. PRI reports that some communities have discussed sanctioning the owners of bars and other businesses that open while gacaca hearings are underway. While underlining the extent to which many members of the community do not attend gacaca, thus necessitating these punitive measures in the first place, such actions also display many Rwandans’ view that the entire...
community should attend, and participate in, gacaca. In turn, these practices constitute one example of how local communities shape gacaca in ways that depart from the legal statutes and guiding principles outlined in the Gacaca Law or Gacaca Manual, which make no mention of punishment for absentees. This highlights the paucity of the approach of most human rights critics, who analyse gacaca solely on the basis of its legal statutes and ignore popular interpretations of the institution. Gacaca often operates very differently from how it may appear on paper and must be analysed accordingly.

It must be noted that a large section of the population expresses a degree of scepticism or fear of the level of interaction between often-antagonistic parties that gacaca entails. Marie-Claire, a survivor in Kigali Ngali whose husband and five children were killed during the genocide, said that she was fearful of meeting those who killed her loved ones. Therefore, she said, “I won’t go to gacaca unless I am forced to go.” Several other survivors interviewed by the author expressed a similar reluctance to attend or participate in gacaca, either because they did not believe that it would benefit them in any way or because they feared publicly facing perpetrators. Some family members of detainees said they did not expect to participate in gacaca hearings. “It is hard for farmers to work and also go to gacaca,” said Raoul, whose two brothers and two sisters were accused of committing genocide crimes. “We are very poor and gacaca takes many hours.” Jerôme, a 63-year-old man in Kigali Ville whose three accused brothers were not among the released detainees, said,

I am too old for gacaca. There is too much talking there. We should send the women to gacaca….They will come back and tell us what is said.

Rwandan commentators express either a moderate or a far-ranging interpretation of the virtues of popular participation in gacaca. In more moderate terms, Gasibirege argues that gacaca is above all a “space for communication” where the population discusses their mutual concerns after the genocide. Solomon Nsabiyera, coordinator of the Healing, Peace and Reconciliation Programme at World Vision Rwanda, argues that

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125 Author’s survivor interview, Marie-Claire, Kigali Ngali, Nyamata, 19 May 2003.
126 Author’s survivor interview, Nathan, Kigali Ngali, op. cit.; Juliette, Kigali Ville, Kacyiru, 22 May 2003; Augustin, Gisenyi, Gisenyi Ville, 23 May 2003.
127 Author’s general population interviews, Raoul, Kigali Ville, Kacyiru, 22 May 2003. [author’s translation]
128 Author’s general population interview, Jerôme, Kigali Ville, Kacyiru, 22 May 2003. [author’s translation]
gacaca is important for “overcoming the conspiracy of silence”\textsuperscript{130} that he believes prevails in Rwanda, as a result of survivors’ reluctance to discuss traumatic experiences and because of continued animosity between Hutu and Tutsi.

In the wider-ranging interpretation, some Rwandan commentators argue that mass involvement in gacaca increases the scope for popular decision-making within the community. They argue that public deliberation within gacaca influences the broader political realm by empowering previously disenfranchised citizens. Karekezi argues that gacaca encourages democratisation, mobilising the population to engage with national issues in ways considered impossible before gacaca. The popular elections of gacaca judges in particular, argues Karekezi, “represent an important moment for a population that was starting to think beyond the personal sphere,” raising the question, “could the general concern for the social reconstruction of Rwanda transcend people’s particular interests?”\textsuperscript{131} Gasibirege argues that, during the election of gacaca judges, the community came together in an unprecedented way and expressed a belief in important virtues such as truth and justice as they elected judges who best embodied those values. The discussion of such virtues, Gasibirege argues, will have long-lasting effects on people’s interactions in daily life and in the broader social and political realms.\textsuperscript{132}

Karekezi argues that gacaca is especially likely to empower women who have otherwise been excluded from the most important social, cultural and political spheres at both the local and national levels.\textsuperscript{133} In the past, women were excluded from being judges or providing testimony at gacaca. However, in the modernised institution women play a key role both as leaders and general participants. From the author’s observation of gacaca hearings, women drive most discussions in the General Assembly. Women are usually more forthright in expressing their views while men often have to be cajoled into speaking.\textsuperscript{134} For Rwandan commentators such as Karekezi and Gasibirege, this increased popular involvement is not only important for the pursuit of particular aims within the confines of gacaca but also for greater popular participation in public life.

\textsuperscript{130} Author’s interview, Solomon Nsabiyera, Coordinator, Healing, Peace and Reconciliation Programme, World Vision Rwanda, Kigali, 3 February 2003.
\textsuperscript{131} Karekezi, “Juridictions Gacaca”, p. 89.
\textsuperscript{134} Summary from author’s gacaca fieldnotes, 6 April – 21 May 2003.
It is necessary to critically evaluate the government’s, population’s and commentators’ views regarding the virtues of popular participation in gacaca. One major problem with the official – and some commentators’ – interpretations is their overstatement of the degree to which the community controls, and may freely participate in, gacaca. Popular participation in gacaca is not, as Mucyo argues above, unconditional. The government rarely discusses the extensive involvement of state actors in gacaca, which undermines the notion of gacaca’s being an entirely popular enterprise, driven by local agents. The government participates in numerous facets of the daily running of gacaca, including providing judges with secret dossiers detailing suspects’ crimes and confessions, and intervening when hearings are perceived to diverge from the statutes and norms of the Gacaca Law and Gacaca Manual. During several gacaca hearings the author attended, government officials intervened to correct certain judges’ statements and to halt disruptive behaviour in the General Assembly. Therefore, while the degree of popular participation in gacaca is high – and certainly higher than in most transitional institutions around the world – it is not unconditional. Gacaca’s hybrid methods involve popular participation, mediated by judges and state officials, within formal, legal boundaries.

Furthermore, it is highly questionable that popular participation in gacaca will, as Karekezi and Gasibirege argue, lead to greater democratic engagement and general political decentralisation in Rwanda. This attempt to connect democratic trends in the running of gacaca with broader political participation relies heavily, first, on the population’s feeling sufficiently empowered to engage in the wider political realm and, second, on the government’s increasing the capacity of the population to participate in public life. It is not obvious that either of these conditions will soon be fulfilled. The public’s sense of empowerment after gacaca depends heavily on its experiences at gacaca, the degree of trust generated there, and whether individuals feel that gacaca meets their needs and concerns. It also seems highly unlikely that the government will seek to develop the political capabilities of the Hutu majority. In 2003, the government dissolved the Mouvement Démocratique Républicain (MDR), the largest – and generally considered moderate – Hutu opposition party, on grounds that it was fomenting “divisionism” and “genocidal ideology.” This amounted to denying Hutu any significant, official voice in the

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135 Author’s gacaca observations, Kigali Ville, Ruhengenge, Rugenge, op. cit.; Kigali Ville, Kacyiru, Kacyiru, Karukamba, 11 May 2003; Butare, Save, op. cit.; Kigali Ngali, Nyamata, Mayange, Rukora, 19 May 2003. See also, ASF Gacaca Reports, Kigali Ngali, Ngenda, Kindama, Gikundamvura, 20 September 2002; Kigali Ville, Kanombe, Kanombe, Kamashashi, 28 May 2003.
To encourage greater democratic engagement among the majority of the population at the local level, while denying the political participation of the majority at the official level, would be highly contradictory. Gacaca affords the population a rare opportunity to debate issues related to national reconstruction and to participate in rebuilding processes. However, it is unsustainable to argue that popular participation within the confines of gacaca will lead to the community’s greater involvement in democratic enterprises outside of gacaca.

**Linking Popular Participation in Gacaca, “National Unity” and “Duty”**

Part of the government’s argument regarding the virtues of popular participation in gacaca is the perceived need to draw on Rwandan history to solve current problems. This view holds that Rwandans must regain a sense of “national unity” that colonial regimes and past “manipulative” governments destroyed, leading to mass violence. According to Ndangiza, gacaca aims “not to administer the classical system of justice, but to re-establish harmony and to bring citizens who were manipulated to commit crimes by the [Hutu] state intelligentsia, back to the right path.” Underlying this rhetoric is the view that the Rwandan people embody certain virtues, such as unity and social harmony, which previous leaders undermined. By reactivating and revitalising gacaca, the government argues that it will help the population rediscover these virtues.

The government regularly identifies the forms of dialogue and consensual decision-making practised at gacaca as means toward fostering more unified interactions in daily life. However, the theme of popular participation also gives a crucial insight into how the government explains the causes of the genocide to the population and how these sources of division and conflict should be quelled. The government blames “outsiders” for creating divisions in Rwandan society by “turning [Rwandan] tradition…on [its] head” and propagating what Patrick Mazimpaka, Presidential Advisor on the Great Lakes, calls “anti-values” in Rwandan society that require “counter-values.” According to the government, these outsiders are either the colonial administrators who sought to...

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137 Ibid., p.4.
138 P. Mazimpaka, “Reconciliation and Democratization Processes after the Genocide” in Reconciliation and Democratization: Experiences and Lessons Learned in Reconciliation and Democratization from Germany, South Africa, Namibia and Rwanda, Kigali: NURC, October 2003, p.19.
139 Ibid., p.23.
divide the community and to favour particular groups for their own political gain, or past Hutu leaders who actively excluded Tutsi from positions of influence and incited, or themselves carried out, violence against Tutsi. Aloisea Inyumba, former Executive Secretary of the NURC, describes the first interpretation of “outsiders” when she argues, “divisions were sown among Rwandans little by little by white people just as if a farmer sows his seeds.” The second view finds expression in the introduction to the Gacaca Law, which argues that a major purpose of gacaca is to reconstitute “the Rwandan Society that had been destroyed by bad leaders who incited the population into exterminating part of the Society.” Ndangiza colourfully describes all Rwandans as needing to “build within themselves a renewed sense of Rwandan nationality, in lieu of the fake identities derived of late from deforming mirrors,” in which she considers external forces to be the main deformers of Rwandan identity. To overcome the divisions created by outsiders, the government argues, Rwandans (ie. “insiders”) must look to their own history and culture for solutions.

The government also views communal involvement in gacaca as a remedy to the failures of another group of “outsiders”: leaders of international institutions such as the ICTR, which are often run by the same foreign governments perceived to have abandoned Rwanda during the genocide. The government views the ICTR as an expensive, ineffective institution that has little relevance for the population because it is so geographically removed, based in Arusha, Tanzania, and because little justice appears to have been carried out there, with only twenty cases of those suspected of orchestrating the genocide heard to date. President Kagame argues that the ICTR has performed very poorly and consumed huge amounts of resources for doing very little...The world is ready to keep wasting resources for doing nothing. The tribunal was not established to deal with the problem we are talking about, of genocide in Rwanda. It’s dealing with paying huge salaries to UN workers or other individuals.

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141 Gacaca Law (Modified 2004), Introduction, p.2.
Gacaca, on the other hand, the government argues, provides for the needs of Rwandans, thereby generating a greater sense of legitimacy among the population, which is reinforced by the community’s direct involvement.

Many everyday Rwandans also believe that greater “unity” is a likely outcome of this dialogue at gacaca, though they tend to describe this on a local rather than national level. Many Rwandans argue that parties at gacaca will carry this dialogue and the peaceful methods of conflict resolution embodied in the hearings into their everyday lives, leading to a greater sense of cohesion in previously fragmented communities. Gacaca is thus interpreted as a test-run of reconciliation. Many survivors view gacaca in a similar way to one man in Kigali Ville who described gacaca as a place where “we all sit and talk like family.” Like the traditional practice of gacaca and drawing largely on a notion of individual personhood as inextricably linked to the communities of which individuals are members, this perspective holds that the local population – essentially the “family” to which individual community members belong – owns and runs gacaca to solve problems that arise within the family. Gacaca is thus interpreted as the search for internal solutions to internal problems.

Some Rwandans express views concerning popular involvement at gacaca that are even more forceful than the government’s own enthusiastic rhetoric. Whereas the official perspective tends to trumpet the personal and communal advantages of the population’s regaining a sense of unity through participation in gacaca, many Rwandans describe this participation as fulfilling a duty to the government. This perspective manifests in practices such as some communities’ sanction of absentees from gacaca but, more importantly, in some individuals’ descriptions of gacaca “as doing the government’s work.” Many detainees in particular describe gacaca as “helping the government solve the problems of the country.” Firmin, a detainee in the solidarity camp in Gashora, admitted that he had confessed to committing genocide crimes because this was a way of “helping the government fix the country’s problems.” Sylvain, a detainee recently released from the solidarity camp in Gisenyi but whose two sons were still in prison, said, “The government says we must go to gacaca, so we will go.” It is realistic to expect that many people who express this version of participation as a duty do so not out of a

145 Author’s survivor interview, Boniface, Kigali Ville, op. cit. [author’s translation]
146 Author’s solidarity camp interview, Thomas, Kigali Ville, 12 April 2003. [author’s translation]
147 Author’s solidarity camp interview, Célestine, Ruhengeri, 3 May 2003. [author’s translation]
148 Author’s solidarity camp interview, Firmin, Gashora, 18 April 2003. [author’s translation]
149 Author’s general population interview, Sylvain, Gisenyi, Gisenyi Ville, 23 May 2003. [author’s translation]
genuine sense of loyalty to the government but rather out of fear that they may be branded as “divisive” if they are not seen to support, or to participate fully in, gacaca. It is likely that many detainees who discuss participating in gacaca as a duty also do so to curry favour with government officials either in jail or in the solidarity camps to help facilitate their early release.

In general, the linkages between popular participation and notions of “national unity” and “duty” are highly unconvincing. An overview of Rwandan history makes it difficult to accept that the apparently lost sense of unity ever existed, and that external actors such as colonial administrators are exclusively responsible for creating divisions in Rwandan society. Seeing the Rwandan population as the embodiment of key virtues that destructive elites have undermined and that now require re-discovery in the post-genocide environment is also difficult to accept, given Rwanda’s violent history and in particular the population’s mass participation in the genocide. Even before the colonial era, although divisions between Hutu and Tutsi are not recorded as leading to violence, significant socio-economic divisions existed, with the Tutsi dominant in a near-feudal class system, creating widespread resentment and animosity, which sowed the seeds of open conflict.150

The notion of a pre-existing national unity is also inconsistent with other areas of official policy, particularly the government’s emphasis on the need to establish solidarity camps for provisionally released detainees and other groups such as civil servants. The main purpose of the solidarity camps – which Ndangiza describes as “reconciliation camps”151 – is to teach civic virtues to a population that the government perceives as lacking important social values. Mazimhaka describes the basis of the solidarity camps as the Kinayarwanda concept “uburere buruta ubuvuke: people are not born with values; values can only be internali[s]ed through practice and education. And we have to have specific education for reconciliation and democratization.”152 If these virtues already exist in the community, is there any need to teach them to the population?

Furthermore, the view that the population should participate in gacaca because it has a duty to assist the government in achieving certain objectives is highly concerning. This view suggests that many people will simply go through the motions at gacaca. The

151 Author’s interview, Ndangiza, op. cit. (Full interview transcript forthcoming in Oxford International Review, 2006-2007.)
152 Mazimhaka, “Reconciliation and Democratization Processes”, p.22.
objectives with which the population identifies gacaca, when they can justifiably and feasibly be pursued, should be pursued because the population views them as important for rebuilding personal relationships and Rwandan society as a whole, not because doing so will win favour with the government. The language of “work” that surrounds some popular perceptions of participation in gacaca echoes many citizens’ and political leaders’ descriptions of their participation in the genocide or in forced labour programmes which successive regimes in Rwanda used to subjugate certain groups in society. The sense of divisive subservience that this language entails is anathema to the spirit of public ownership over gacaca and to the ways in which gacaca should help undermine genocidal ideology.

**Dominant Discourse on Popular Participation: Gacaca as Mob Justice**

While some Rwandan observers express great enthusiasm for mass participation in gacaca, many commentators – especially Western proponents of the dominant discourse on gacaca – are sceptical of it. Many human rights lawyers express doubts over the ability of a traumatised, divided population to make the sorts of careful, impartial decisions necessary for gacaca to fulfil its objectives. How, these critics ask, can genocide suspects and survivors – each group with its own set of needs and prejudices – be expected to pursue broader aims of social reconstruction?

First, many human rights observers argue that, by involving the population so extensively, gacaca fails to guarantee legal due process for genocide suspects. In granting the community such a vital role in hearing and deciding genocide cases, they argue, gacaca cannot provide judicial mechanisms that are sufficiently transparent and impartial. AI argues, “Since community members both provide the information regarding genocide offences and judge the suspected perpetrators, anything outside of their active and honest participation nullifies the fairness of gacaca tribunals.”

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153 For a discussion of génocidaires’ descriptions of committing murder and other crimes during the genocide as “work,” see Des Forges, *Leave None to Tell the Story*, p. 209.

154 After arriving in Rwanda in 1919, the Belgians soon established a nationwide system of forced labour; in effect, a more divisive version of *ubuhake*, a system used for centuries in Rwanda, in which every man had to contribute a certain amount of time each month to government-sanctioned projects. According to Philip Gourevitch, “[n]othing so vividly defined the divide [between Hutu and Tutsi] as the Belgian regime of forced labou[r], which required armies of Hutus to toil en masse…and placed Tutsis over them as taskmasters.” (P. Gourevitch, *We Wish to Inform You that Tomorrow We Will be Killed with Our Families: Stories from Rwanda*, New York: Farrar, Straus, and Giroux, 1998, p.57.)

155 AI, “Gacaca: A Question of Justice”, p.3.
human rights monitors argue, is unlikely given the level of distrust and trauma prevalent in the community. If individuals lack confidence in those with whom they interact at gacaca, or if they are too traumatised or afraid, they are unlikely to cooperate in the institution or to pass fair judgements. Many critics argue that gacaca will simply become a form of mob justice. Gacaca judges, whose role is to mediate hearings, some commentators argue, are also usually the family or neighbours of the suspects and survivors who participate in the General Assembly. Therefore, they are likely to have vested interests in the outcomes of hearings. The danger of handing down partial judgements is exacerbated by the absence of legal counsel at gacaca. Critics argue, for example, that gacaca affords no protection to an innocent suspect who is accused unfairly by a General Assembly and a panel of judges determined to see him or her punished.

The views of popular participation in gacaca expressed by most Western commentators are highly problematic. Responding to the criticisms of these authors, most of whom subscribe to the dominant discourse on gacaca, takes us to the heart of how the ethos and modus operandi of gacaca differ from those of more conventional post-conflict institutions and the importance of notions of hybridity and holism in explaining how gacaca operates. There are two main problems with Western commentators’ critique of popular participation in gacaca, one related to the critique itself and the other to the alternative modus operandi that these critics propose (often implicitly) in place of popular involvement. Together, these problems show that the overall flaw in the legal critique of gacaca is that it fails to recognise the hybridity of gacaca and its methods.

First, the criticism that gacaca will lead to mob justice as a result of greater communal participation is unconvincing. The key problem with this complaint is that it ignores the various judicial safeguards that are in place in gacaca to protect suspects from potential miscarriages of justice. This is not to argue that gacaca can protect against all miscarriages of justice but rather that it is unjustified to argue that gacaca in no way protects individual rights. That judges are required to pass judgements and sentences on the basis of a consensus (or, when failing to achieve consensus, on a majority) of nine judges, rather than on the opinion of a single judge, constructs an important layer of protection for the accused. Judges must discuss cases in camera, where they are less influenced by the views of the community, before reaching a decision and communicating

it to the General Assembly. This forces judges to debate cases in private, often at great length, thus adding a crucial element of slow, critical consideration. Furthermore, if those found guilty at gacaca believe that they have not received a fair hearing, they may appeal the decision first to the jurisdiction where they were initially tried and, if still dissatisfied, to the next higher jurisdiction. These measures are particularly important for protecting innocent suspects, who may feel that they cannot receive a fair trial in their home communities. Human rights critics who equate popular participation in gacaca with mob justice ignore these protective features that are key components of gacaca’s hybrid, negotiated-formal processes.

The Gacaca Law and Gacaca Manual also afford judges significant powers to control the content and tenor of evidence given at gacaca, to maintain decorum and security during hearings. Judges may stop individual testimony, banish antagonistic participants or halt entire hearings if they believe that certain testimony damages the overall pursuits of gacaca or if there is a threat of violence toward judges or members of the General Assembly.  The government’s discussions of a near-absolute degree of popular participation in gacaca exacerbate commentators’ concerns over the potential for miscarriages of justice. The government may be its own worst enemy in terms of defending gacaca against the criticisms of human rights observers concerning due process. The more moderate account of popular participation in gacaca proposed here – which highlights the hybridity of gacaca’s *modus operandi* – recognises the mediating role played by gacaca judges and government officials and therefore the evidence of significant protection for suspects, particularly regarding protecting the innocent from miscarriages of justice, and for all participants, in terms of protection from physical and verbal attack during gacaca hearings.

The second major problem with Western commentators’ criticisms of popular participation in gacaca is the alternative *modus operandi* they propose. As outlined earlier, the dominant discourse on gacaca criticises gacaca for failing to provide for formal justice. This critique provides an implicit, alternative view of how gacaca should operate. The formal approach to gacaca would apply what human rights critics consider a form of legal due process, such as the one assumed to operate in institutions such as the ICTR, but which they perceive as currently lacking in gacaca. Judges would limit discourse in the General Assembly to discussions of facts considered critical to

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157 Gacaca Law (Modified 2004), Article 30.
determining the guilt or innocence of suspects. Members of the General Assembly would be encouraged to respond only to questions from judges and not to debate the issues at hand with one another during hearings. Lawyers in turn would be on hand to advise survivors and suspects on how best to construct their respective arguments and to intervene in hearings if they believe that judges are not acting in accordance with the Gacaca Law and Gacaca Manual. The argument concerning the need for lawyers at gacaca is the only part of this formal alternative that the dominant discourse on gacaca outlines explicitly and consistently. However, the other components of this alternative approach just outlined are consistent with the sorts of procedural criticisms that proponents of the dominant discourse direct at gacaca. Therefore, if the orchestrators of gacaca were to reform the institution in line with the criticisms made in this discourse, then gacaca would need to incorporate all the formal elements outlined.

The formal alternative to gacaca is inadequate for both political and practical, operational reasons. At the political level, the main problem with the formal approach to gacaca is that it defies the spirit of gacaca discernible from the government’s and population’s views. The population expects to participate in largely open, undirected hearings, in front of judges whom they have elected, and to debate and discuss both legal and non-legal issues. The population expects that gacaca will function very differently from a conventional courtroom. The formal approach, implied by human rights critics, would prove alienating, distancing the population from the workings of a judicial system in which it would be entitled to participate only when called as witnesses and only in response to questions from judges and lawyers. Such strictures would greatly limit interactions between participants in gacaca.

What is embodied in the various Rwandan sources’ interpretations of popular participation in gacaca is a discursive understanding of the way gacaca is expected to operate. According to the discursive view, participants in gacaca should feel free to discuss issues that are crucial to their personal and communal experiences during and after the genocide. Whatever “truth” may be discovered in gacaca will be reached through communal dialogue, not through the views of elites imparted to the population. Such dialogue may be messy, may take a long time and may in the end produce rather inconclusive results; there can be no doubting the risks inherent in the discursive approach embodied in gacaca. However, much of the population views the action of communal dialogue as inherently valuable. It contends that gacaca draws together people who may have, for reasons of protracted conflict, found it difficult to discuss matters of individual
and mutual importance in the past. In this view, gacaca encourages participants to discuss crucial issues in an open environment where the community as a whole may benefit from hearing, and contributing to, such dialogue.

Because the formal alternative seeks to minimise communal involvement by giving an increased role to judges and lawyers, it directly opposes most Rwandans’ self-definitions and their discursive interpretation of gacaca. Viewing the discursive approach as a potential cause of further acrimony and violence, the formal version of gacaca advocates an alternative that would lack popular legitimacy. Critics who advocate a more formal approach to questions of justice generally, and who specifically criticise gacaca for failing to meet formal requirements, would undermine the popular participatory spirit of gacaca and therefore seek to impose on gacaca a set of guidelines that the population is unlikely to consider appropriate. Because the Gacaca Law and Gacaca Manual enshrine the centrality of the population’s acceptance of, and involvement in, gacaca, as argued earlier, the question of ensuring gacaca’s popular legitimacy is of the utmost importance.

Apart from the political problems already outlined, two main practical, operational problems with the formal alternative display its undesirability and unfeasibility. First, the proposal made by human rights critics that lawyers be included in the gacaca process fails for both pragmatic and moral reasons. On a pragmatic level, Rwanda lacks the number of lawyers necessary to ensure that all genocide suspects have equal representation at gacaca. Most of the country’s lawyers died during the genocide, few have since been adequately trained and even fewer international lawyers are on hand to assist. This practical constraint is in turn morally significant. To allow some individuals to benefit from the assistance of lawyers, while others, operating within the same hearing and who may be arguing against those acting on expert legal advice, are unable to gain access to lawyers for financial or other reasons, is to introduce an unacceptable form of inequality of assistance into the gacaca process. It is preferable therefore to remove lawyers completely from gacaca, thus ensuring that no participants in gacaca gain an advantage over others by having access to legal assistance that cannot possibly be available to all participants.

Second, the strictly formal approach to gacaca severely limits the range of issues that the community can discuss and debate at gacaca, thus failing to recognise gacaca’s hybrid approaches, which facilitate holistic responses to post-genocide challenges. This narrower discourse is not only problematic because it fails to meet most Rwandans’ expectations of how gacaca should operate, and therefore lacks popular legitimacy, but at
a pragmatic level it means that the community cannot pursue certain objectives (particularly those that may not necessarily relate directly to formal justice). The formal approach would limit gacaca hearings to discussions of legal facts, to the exclusion of many clarifying or emotionally-motivated expressions which, as we have seen, much of the population considers to be valuable and central functions of gacaca.

The shrinking of the dialogical space inherent in the formal approach to gacaca would be detrimental to gacaca’s hybrid pursuit of legal and non-legal ends. Regarding legal ends, communal dialogue in an open forum, where issues can be debated and discussed, is important for gacaca judges to make reasoned judgements about genocide cases. Survivors in particular can ask questions directly of those who committed crimes, which rarely occurs in more conventional legal settings, and the accused are permitted to respond. Judges may also hear evidence in an open, communal setting that they would not necessarily hear if they were limited to hearing testimony only from witnesses whom they had called. This more fluid exchange of views, in which judges act as mediators, can provide crucial information for determining the guilt or innocence of genocide suspects. The human rights interpretation, which holds that significant communal involvement in a dialogically-based legal setting automatically leads to unfair or biased decision-making, therefore neglects several important ways in which the discursive approach to discovering legal “facts” may not only be safeguarded against miscarriages of justice, as gacaca is designed to do, but may even in some instances be more legally beneficial than more conventional methods of hearing criminal cases.

Regarding non-legal ends, the problem with the limited discourse that would occur within a formal model of gacaca is that it would bar participants from expressing views and emotions that do not necessarily relate to judicial cases but that are nonetheless considered important for other reasons. As already shown, many survivors in particular view this greater sense of freedom of expression during gacaca hearings, relative to those in conventional courtrooms, as important for fulfilling their emotional needs after the genocide. Furthermore, the presence of lawyers, as the formal approach to gacaca requires, would undermine the content and tone of open, largely undirected, communal discourse otherwise possible during gacaca hearings. The presence of lawyers would significantly alter the dynamic between members of the General Assembly, increasing the use of legal language and modes of argumentation, and alter power relations as fully trained lawyers operate in a space where (often minimally trained) judges are supposed to be the primary facilitators of gacaca. In such a situation, the population will feel more
inhibited and intimidated than in a forum where they are among their neighbours, giving evidence before judges whom they have elected. In advocating the inclusion of lawyers in the gacaca process, critics of the institution risk undermining the popular ethos of gacaca and negatively altering the types and modes of dialogue that ensue at gacaca.

The view of popular participation at gacaca proposed in this article – a hybrid perspective, with its emphasis on the community’s participation in a largely open dialogical space, mediated by the state and gacaca judges, within formal legal boundaries – shows that human rights critics are wrong to criticise gacaca for failing to provide for impartial decision-making and to protect individual rights. The spirit of gacaca enshrines local actors as the most crucial participants in the search for internal solutions to internal problems. This popular ethos must be maintained if the majority of Rwandans are to view gacaca as a legitimate remedy to the legacies of the genocide. However, mediators still play a key role in helping the population achieve its intended objectives through gacaca, increasing the population’s trust in gacaca and thus further helping maintain gacaca’s popular legitimacy. The modus operandi of gacaca, therefore, entails largely unrestricted popular participation within clearly defined boundaries designed to protect individual rights and to direct communal discussions toward fulfilling gacaca’s aims. It is gacaca’s hybridity of discursive methods and formal constraints that most sources overlook.

Engagement through Gacaca – the Bridge to Reconciliation

A key outcome of the more intimate communal interactions that are possible in gacaca relative to other post-conflict institutions, and a theme crucial to understanding of how gacaca is capable of simultaneously pursuing multiple post-genocide objectives, such as justice and reconciliation, is the engagement that gacaca facilitates. A useful definition of engagement, which can be applied in the context of gacaca, comes from Norman Porter in his analysis of the potential for reconciliation in Northern Ireland. Porter emphasises the importance for reconciliation of creating fora for public discourse and debate, in which a vital element is open and fair engagement between previously antagonistic parties. Speaking in terms applicable beyond the Northern Irish context, Porter argues that meaningful engagement entails “practices involving honest, committed encounters

with others, not least those with whom we disagree most.”¹⁵⁹ In these settings, individuals make themselves vulnerable to others and the most important result is that “through [these practices] others are opened up to us and we to them, others are permitted to be heard in their terms and we in ours.”¹⁶⁰

Engagement is a critical component of gacaca, given the degree to which the entire community is encouraged to participate and to interact face-to-face at all levels of the institution. There can be no reconciliation through gacaca without genuine engagement between parties previously in conflict. Engagement occurs via different means at gacaca: from the public discussions surrounding the election of judges through the various phases of the hearings themselves; the focus of the latter being the often non-legal and largely undirected dialogue in the General Assembly in which judges act as mediators rather than direct participants. In particular, engagement entails antagonistic parties’ debating the root causes of their conflicts. It recognises that there will be deep-seated animosity between individuals and between groups after an event as destructive as genocide. Implicit in gacaca is the view that reconciliation after the genocide will require difficult dialogue, a genuine confrontation with the sources of conflict, and parties’ mutual dedication to rebuilding fractured relationships. Such a confrontation may on occasion prove detrimental to chances of reconciliation if it only produces further acrimony. Engagement is not an inherently positive dynamic; when not managed effectively, it is equally capable of fomenting discord. For engagement to produce positive results, it requires immense dedication of the parties involved, a genuine sense of trust between them and effective forms of mediation to ensure that this sense of trust is maintained. The formal, legal constraints central to gacaca’s hybrid methods are designed to help mediators direct forms of engagement to productive ends. The modes of engagement that gacaca facilitates distinguish it from other post-conflict institutions such as war crimes tribunals, which rarely allow open or meaningful interactions between victims and perpetrators and which limit discourse to legal matters to the exclusion of more emotional concerns.

One of the confessed genocide perpetrators interviewed by the author in 2003 and again in 2006, Alphonse, provides a highly illustrative account of the difficulties that engagement through gacaca entails for all participants in the process. Alphonse was a merchant from Nyamata district in Kigali Ngali province whom the author met three

¹⁵⁹ Ibid., p.108.
¹⁶⁰ Ibid., p.108.
times in 2003, when Alphonse was 36-years-old: at the inauguration of the solidarity camps in Gashora (soon after he was released from the nearby Rilima prison), toward the end of his stay in the Gashora camp and several weeks after his release into his home community. At the inauguration, Alphonse said that he had confessed to murdering several people during the genocide, which placed him in Category 2 of crimes. Although he claimed that he had been forced to kill, his Catholic faith convinced him that it was necessary to confess. However, he did not feel guilty about what he had done and he expected his community to welcome him warmly. “I did many good things in the community,” he said, “and they will remember me and will be pleased to see me again.”

By the second meeting with Alphonse, he had become a highly respected member of the solidarity camp community, identified by camp officials as a leader who could encourage other detainees to participate during lessons. Alphonse said that he had encouraged many detainees who had already confessed to confess to other crimes which they had hidden from prison and camp officials. “It is better for people to tell the truth now,” Alphonse said. “Gacaca is only worrying for those who have hidden the truth.” Alphonse claimed that he personally had no fear of gacaca. “I’m innocent of all crimes,” he said, “and my neighbours know me. I’m sure they will pardon me.”

During the third interview, after Alphonse’s release from the Gashora camp, he expressed similar optimism. He claimed to have met many survivors in Nyamata: “I sought them out and we talked for a very long time,” he said, “and they bought me drinks.” The solidarity camp lessons, he argued, had been important for teaching him how to cohabit with survivors and that “if everyone respects the local leaders, then we will live together in peace.” Alphonse said that he therefore felt calm about facing his community at gacaca. “Gacaca has not yet started here,” he said,

but I am ready to testify....Gacaca will start after the [Constitutional] referendum...I will tell the truth and the victims will forgive me. There is no question about that. I expect only good things at gacaca, no more punishment, just cohabitation.

When the author met Alphonse again in 2006, however, he described the return to his community and especially forms of engagement with genocide survivors at gacaca as extremely difficult:

161 Author’s general fieldnotes, Solidarity Camp Inauguration, Gashora, 31 January 2003. [author’s translation]
162 Author’s solidarity camp interview, Alphonse, Gashora, 18 April 2003. [author’s translation]
163 Author’s detainee follow-up interviews, Alphonse, Kigali Ngali, Nyamata, 18 May 2003. [author’s translation]
When I came back from Gashora [in 2003], I returned to a different hill [from where I had lived before the genocide]. I moved in beside a large family of genocide survivors. They were very scared by the return of the prisoners. They were worried there could be more violence. Many of us who came back from the camps were also very worried. These survivors had new houses that the government built for them but we had nothing. My father and brother died in 2003, not long after I came back, so it was a difficult time for my family….Government soldiers killed my father and brother. Those responsible are still in the military. They come back to the village sometimes and show no emotion whatsoever….Some survivors started seeking revenge. There were always stories about revenge killings. Some perpetrators saw their families killed by groups of survivors. Why aren’t these people in jail now?…Gacaca started fully here in 2005. The inyangamugayo asked me to come to gacaca and tell the truth about my crimes in 1994. I did that willingly because I had already confessed [in prison] to what I did. At gacaca, everyone was fearful. You could feel it immediately. People were scared that gacaca was going to restart conflict…Gacaca is necessary for us because perpetrators and survivors can sit together and talk, but it still brings a lot of fear. I know some of these survivors don’t want Hutu on the hills…It’s very likely there will be new problems between groups here.164

One likely product of engagement at gacaca is the largely unpredictable outcomes. As argued earlier, gacaca is a dynamic, organic enterprise that involves an ever-evolving process of people’s interactions and subsequent re-shapings of the institution to meet newly-realised needs and challenges. These interactions may not always be beneficial or even secure; instances of acrimony are unavoidable given the level of engagement that gacaca entails and the deep-seated tensions prevalent in the community after the genocide. There is an element of risk in allowing members of fractured communities to engage so closely with one another, amply displayed by accounts such as Alphonse’s. Again, mediators are critical to the direction of engagement at gacaca toward ends which, as far as possible, are beneficial for all participants. Mediators, employing formal means within gacaca’s hybrid processes, must contain antagonisms during hearings and direct the population’s engagement toward reconciliatory ends.

V. Conclusion: Pursuing Justice through Gacaca

This article concludes by showing how gacaca, encouraging engagement through popular participation, pursues one of its central objectives: justice. Gacaca’s pursuit of justice more than any of its other objectives displays the unique hybridity of the institution; in this case, the hybridity of gacaca’s aims. As the previous section argued that gacaca combines formal with negotiated methods (with emphasis on the negotiated, with the formal acting simply as legal boundaries), this section shows that gacaca

164 Author’s detainee follow-up interview, Alphonse, op. cit., 11 June 2006. [author’s translation]
represents an ingenious hybrid of retributive, deterrent and restorative justice outcomes (where the ultimate aim is restorative). This synthesis enables gacaca to achieve legal outcomes, especially punishing genocide perpetrators, in ways that facilitate important non-legal results, such as restoring fractured individual and communal relationships. The dominant discourse on gacaca lacks an appreciation of this crucial hybrid approach to post-genocide accountability.

First, all official, popular and critical sources emphasise the importance of gacaca for pursuing retributive and deterrent justice after the genocide. We have already seen, in outlining the dominant discourse on gacaca, that groups such as AI and HRW interpret gacaca foremost as the accelerated handing-down of punishments to violators of human rights. From the official perspective, the Gacaca Law emphasises the deterrent nature of punishment at gacaca by stating that gacaca is established to “eradicate forever the culture of impunity” by adopting “provisions enabling rapid prosecutions and trials of perpetrators and accomplices of genocide.” Rapid trials are necessary, the government argues – highlighting the concerns of retributive justice for fulfilling a moral obligation to try suspects and to punish the guilty – to process the immense backlog of previously untried genocide cases and to improve on other judicial structures such as the conventional courts in Rwanda and the ICTR. “Gacaca gives us a way to rebuild [Rwandan] society through law, rather than through politics or morality,” argues Professor Sam Rugege, Rwandan Deputy Chief Justice and Vice-President of the Supreme Court. “Gacaca shows how the law deters criminals and encourages others to do right.”

Among the population, survivors in particular emphasise the need for retributive justice, to give génocidaires the punishment they deserve for their crimes. As Romain, a survivor in Butare, said, “Punishment is absolutely necessary at gacaca. We must punish the bad people for what they did. We can’t simply let them go free after everything they did to us.” Meanwhile, suspects and their families are highly aware of the nature of the legal processes and likely punishments that the guilty will face at gacaca. “I know gacaca will punish me,” said Vedaste, a detainee in the solidarity camp at Butare who had confessed to committing murder during the genocide, “but it will also reconcile me to

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166 Author’s interview, Prof. Sam Rugege, Deputy Chief Justice and Vice President, Rwandan Supreme Court, Kigali, 8 June 2006. (Full interview transcript forthcoming in Oxford International Review, 2006-2007.)
167 Author’s survivor interview, Romain, Butare, Kibingo, 14 May 2003. [author’s translation]
those around me because I have confessed, because I have told them the truth….I will probably have to return to prison because of my crimes and I will probably do some community work as punishment.”168

Second, gacaca pursues restorative justice in two main ways: via the processes and outcomes of justice. Regarding restorative processes of accountability, gacaca’s modus operandi of encouraging active engagement through negotiation and collaboration during hearings is an attempt to rebuild relationships fractured by violence. Thus, the Gacaca Law states that gacaca is designed “not only with the aim of providing punishment, but also reconstituting the Rwandan Society that had been destroyed by bad leaders.”169 The government discusses restorative justice only mutedly, probably for fear of alienating survivors who may view any diminution of punishment as unjust.

The population is more explicit on this point. After a gacaca hearing in Butamwa secteur of Kigali Ville province, Michel, the president of the judges’ panel said, “Gacaca is important for reconciliation because what happens here is real justice where we are all together, criminals and the innocent, and people can talk to one another face-to-face.”170 Punishment in the communal setting of gacaca, he said, was therefore “important for reconciliation.”171 Much of the population describes the forms of dialogue and collaboration attached to the pursuit of retributive justice as helping the population to “learn to live side-by-side again.”172 Thus, negotiated processes of accountability are expected to facilitate restorative justice.

One specific participatory process at gacaca that the population argues is important for restorative justice is confession, as represented in gacaca’s plea-bargaining system. Many of the population’s views on confession in the context of gacaca are influenced by their Christian beliefs and their participation in parallel processes such as Christian gacaca. In a country where 65% of the population (both Hutu and Tutsi, though the majority Hutu) is nominally Catholic, and around 10% Protestant (predominantly among anglophone Tutsi, a large percentage of whom identify themselves as Anglican), it is perhaps not surprising that many Rwandans subsume religious principles into gacaca.173 Christian notions of atonement, restitution, redemption, forgiveness and reconciliation are

168 Author’s solidarity camp interview, Vedaste, Butare, 29 April 2003. [author’s translation]
169 Ibid., p.2.
170 Author’s gacaca participant interview, Michel, Kigali Ville, Butamwa, Butamwa, Nyarufunzo, 21 May 2003. [author’s translation]
171 Ibid. [author’s translation]
172 Author’s survivor interview, Boniface, Kigali Ville, op. cit. [author’s translation]
deeply embedded in gacaca to a degree insufficiently recognised in the current literature. Some detainees argue that confession is not only important for decreasing their sentences, as, according to the Gacaca Law, public confession and apology are necessary for detainees to benefit from plea-bargaining\textsuperscript{174}, but will also aid their chances of reconciling with genocide survivors. Onesphore, a female detainee in the solidarity camp at Gashora, said,

\begin{quote}
I confessed to killing several people during the genocide.…My main reasons for confessing were to feel cleanliness within myself…In prison I read my Bible and my personal conviction told me that I needed to confess and ask for forgiveness for my crimes…At gacaca, after I confess I will receive validation from my old community…[T]hey will forgive me and I will be part of them again.\textsuperscript{175}
\end{quote}

Not all detainees, however, view confession as contributing to restoration. Some detainees argue that confession is simply important instrumentally for decreasing their sentences. Antoine, a detainee in the solidarity camp at Gashora who had confessed to being in a group of murderers during the genocide, though he denied directly taking part in any killings, said,

\begin{quote}
Why did I confess? Some people from the government came to the prison and showed us a booklet…[which] explained how we can reduce our sentences if we confess to what we did during the genocide. If we don’t confess, the booklet said, we might receive an endless sentence. So we should help gacaca by confessing.\textsuperscript{176}
\end{quote}

Such a view emphasises, as we saw earlier concerning popular participation, the influence of external parties, such as government officials, on detainees’ confessions, and the extent to which notions of duty crucially affect many detainees’ interpretations of, and participation in, gacaca. In the author’s interviews, detainees interpret confession as important for restoration and for decreasing their sentences in roughly equal numbers. Some detainees in fact argue that confession will contribute to both of these ends, identifying personal and communal benefits.\textsuperscript{177} We should be wary of overstating the ease with which confession – and modes of negotiation at gacaca generally – can contribute to reconciliation. These processes are greatly hampered by the deep distrust and resentment that many survivors feel toward suspects. It will take many survivors a long time to trust perpetrators sufficiently to believe that they can engage actively in restorative practices and rebuild relationships with them. In many cases, gacaca will simply provide an initial, vital step in this process, allowing detainees to publicly confess

\textsuperscript{174} Gacaca Law (Modified 2004), Article 64.
\textsuperscript{175} Author’s solidarity camp interview, Onesphore, Gashora, 18 April 2003. [author’s translation]
\textsuperscript{176} Author’s solidarity camp interview, Antoine, Gashora, 18 April 2003. [author’s translation]
\textsuperscript{177} Author’s solidarity camp interviews, Serestini, Gashora, 18 April 2003; Julbert, Butare, 29 April 2003.
to their crimes in the hope that this will engender a sense of openness and trust with survivors. This may lead to a degree of restoration long after the gacaca process is completed, when survivors see further proof of perpetrators’ sincere desire to rebuild relationships.

The punitive outcomes of accountability processes at gacaca are also deliberately designed to facilitate reconciliation. Two forms of punishment in particular highlight gacaca’s pursuit of restorative justice: community service and compensation. First, gacaca’s plea-bargaining system, and in particular its use of community service as punishment for certain crimes, reintegrates perpetrators more rapidly into the community and involves them in labour programmes, for example rebuilding genocide survivors’ houses or maintaining communal gardens. The emphasis on the need to reinsert convicted perpetrators into their old communities maintains a crucial feature of traditional gacaca. PRI, which has conducted in-depth research into the role and likely outcomes of community service through gacaca, argues that this mode of punishment is in part designed to contribute to “the social rehabilitation of detainees”\(^\text{178}\); a fundamentally restorative process. Community service may contribute to economic reconstruction and may in some instances involve perpetrators and survivors working side-by-side; another form of engagement that continues after gacaca and may help parties rebuild broken bonds. For community service to contribute effectively to reconciliation, it must involve detainees in projects that the broader community views as beneficial and not simply as means for the government to punish detainees without having to return them to already crowded prisons. Furthermore, all forms of engagement among convicted perpetrators, survivors and the wider community must be carefully mediated to maximise their restorative potential.

The second form of reconciliatory punishment at gacaca focuses on compensation and reparations. Concrete acts of reparation, supporting reconciliatory statements made during gacaca hearings, are important for convincing survivors of the sincerity of perpetrators’ remorse and desire to rebuild relationships damaged by violence. In the case of property crimes, the Gacaca Law requires convicted perpetrators who have the necessary means to return looted goods.\(^\text{179}\) Where the looted property is no longer available, perpetrators must provide “repayment of the ransacked property or [carry]  

\(^{179}\) Gacaca Law (Modified 2004), Article 95.
out…work [to the value of] the property to be repaired.”\textsuperscript{180} The government has also established a Compensation Fund for survivors, which seeks to provide them with basic health and educational services as a form of restitution after the genocide. Many survivors express great confusion over exactly how they can access restitution from the Compensation Fund. Few survivors appear to have so far benefited from this scheme. Nonetheless, given a more effective mechanism, compensation – particularly when it involves direct restitution from perpetrators to survivors – could contribute to restorative justice. By combining punishment of perpetrators with tangible material benefits for survivors, compensation as a form of punishment will win favour among many survivors. It may therefore help generate trust and goodwill toward convicted perpetrators, which constitute a necessary foundation for restoration.

Most legal critics generally ignore gacaca’s capacity for combining legal and non-legal objectives. Their failure to recognise the importance of gacaca for shaping the punishment of convicted génocidaires toward reconciliatory ends shows the profound inadequacy of the dominant discourse on gacaca. On the rare occasions that Western commentators discuss restorative justice, it is usually to contrast this unfavourably with retributive or deterrent justice. British observer Elizabeth Onyango from African Rights, for example, argues that “sometimes in gacaca, justice will have to be diminished so that people can pursue reconciliation.”\textsuperscript{181} In this way, human rights commentators seek to dissolve any possible link between retributive or deterrent justice and notions of restoration or reconciliation.

The sole objective which proponents of the dominant discourse ascribe to gacaca – formal, deterrent justice – is, on its own, an insufficient response to the problems and challenges facing Rwanda after the genocide. The deficiencies of an exclusively formal approach to justice have already been explored in detail in reference to legal critics’ unfounded concerns regarding gacaca’s modus operandi of popular participation. Regarding the pursuit of solely deterrent outcomes, as the dominant discourse advocates, it is clear that punishment of perpetrators alone will not fulfil the post-genocide needs of the Rwandan population. The key problem with a singular focus on punishment is that this response amounts to the physical separation of perpetrators and survivors, thus undermining the potential for their meaningful engagement. As we have seen,

\textsuperscript{180} Ibid., Article 95.
\textsuperscript{181} Author’s interview, Elizabeth Onyango, Advocate, African Rights, Kigali, 31 January 2003. [author’s emphasis added]
engagement – and its related processes of negotiation and collaboration – is crucial for the pursuit of restorative justice, and ultimately reconciliation. By failing to assemble perpetrators and survivors to discuss face-to-face the causes of, and solutions to, their conflicts, deterrent justice, on its own, fails to provide the benefits that the pursuit of restorative justice through gacaca can facilitate.

In advocating formal, deterrent justice as the sole objective of gacaca, human rights commentators are also self-contradictory. As discussed earlier, a major problem with the dominant discourse on gacaca is that it interprets gacaca solely through its legal statutes and neglects the importance of popular interpretations for our understanding of the institution. Even if we agreed that gacaca should be analysed solely through its legal statutes, the dominant discourse remains unconvincing. The problem here is that, even on the basis of gacaca’s legal statutes, we should not interpret formal, deterrent justice as gacaca’s sole objective. The Gacaca Law, as quoted above, states that gacaca has been established “to achieve justice and reconciliation in Rwanda” and is designed “not only with the aim of providing punishment, but also reconstituting the Rwandan Society that had been destroyed by bad leaders.”

Therefore, the Gacaca Law enshrines restorative justice and reconciliation as key objectives of gacaca. These objectives are glaringly absent from the dominant discourse on gacaca, even when they appear in the same documents on which proponents of this view base their analyses. The dominant discourse is therefore founded on a highly selective reading of gacaca’s legal statutes and, consequently, it provides an inadequate view of gacaca’s aims.

The ways in which gacaca pursues justice after the genocide display clearly the unique, hybrid nature of gacaca in the realm of post-conflict institutions around the world. In particular, gacaca’s combination of formal and negotiated processes – encouraging engagement through popular participation within codified, legal constraints – that aim at punitive but ultimately restorative, ends highlights the holistic approach that gacaca takes to responding to the legacies of the genocide. Gacaca – maintaining key principles from its historical antecedent – embodies the belief that to punish perpetrators in the aftermath of conflict is not enough if Rwandans are to rebuild individual relationships and to reconstruct the entire social fabric. Punishment is a necessary initial response but it must be shaped toward more constructive, reconciliatory outcomes. Gacaca’s pursuit of restorative justice shows how legal processes can contribute meaningfully to non-legal

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182 Gacaca Law (Modified 2004), Introduction.
ends, for example as punishment, handed down in a negotiated fashion, and taking the form of community service or restitution, can help rebuild broken relationships. Thus, gacaca gives substance to the perennial cliché of post-conflict discourse that justice leads to reconciliation and to President Kagame’s claim that “[w]e cannot talk of reconciliation without justice in the context of Rwanda.”

Most existing post-conflict institutions focus on either legal or non-legal responses to violence, seeking either to punish perpetrators or to reconstruct broken relationships while offering amnesties to perpetrators, often operating side-by-side in hybrid systems that combine the approaches of legal and non-legal institutions. Gacaca internalises such attempts at hybridity. In particular, its pursuit of restorative justice entails responding to both legal and non-legal concerns after the genocide. Most commentators on gacaca have focused on only one aspect of gacaca’s nature; human rights critics, for example, focus only on gacaca’s formal, deterrent responses and argue that it contravenes internationally-accepted norms of due process. Such an emphasis misrepresents gacaca’s hybrid nature, failing to recognise the ways in which gacaca facilitates the punishment of perpetrators (thus fulfilling a necessary moral obligation to respond adequately to crimes and the expectations of survivors), while punishing them in creative ways, which nonetheless respect individual rights, to achieve wider, reconstructive outcomes. Acknowledging the ingenious hybridity of gacaca provides the necessary foundation from which to practically assess its holistic approaches to the reconstruction of post-genocide Rwanda.