Justice (f)or Reconciliation?

- A Study of Transitional Justice and Reconciliation in Post-Conflict Societies

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This study examines the roles of transitional justice and reconciliation in post-conflict societies and the relationship between these two concepts. There seem to be a widespread pessimism regarding the possibility of combining these two concepts in a post-conflict situation due to what is described as a fundamental tension between justice and reconciliation. However, I find that the connection and relationship between the two, in many ways, is underdeveloped. My aim is therefore to further develop and expand the bridge, which I believe must exist, between these two concepts and make this connection clearer. By doing this I wish to determine whether the two concepts might be interdependent and mutually reinforcing, rather than incompatible and impossible to combine. Rwanda is used as an empirical illustration of a post-conflict country which tries to perform a dual process of justice and reconciliation. Rwanda has used both retributive and restorative approaches to justice, via the ICTR and the Gacaca, in order to come to terms with the gruesome genocide of 1994.

Keywords: Transitional Justice, Reconciliation, Post-conflict Societies, Rwanda, Gacaca
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1 Introduction

The genocide in Rwanda claimed the lives of more than 800,000 people in just over 100 days. In the aftermath of this gruesome atrocity, the pressure has been great to prosecute the responsible and leaving no act of violence unpunished. But how can a country recover from such an atrocity, and the subsequent calls for revenge and retribution, and reach reconciliation and ultimately the goal of lasting peace? In order to come to terms with the calls of retribution and the demands that the perpetrators are prosecuted and punished, many post-conflict societies seek the path of transitional justice, as has been the case for Rwanda. But how is the concept of transitional justice related to the concept of reconciliation, which may be seen as the ultimate goal of post-conflict peacebuilding?

1.1 Statement of Purpose

The purpose of this study is to examine the roles of transitional justice and reconciliation in post-conflict societies. I wish to study the relationship between these two paradigms and discover whether they are necessary for each other, interdependent and mutually reinforcing, or if they are incompatible and impossible to combine and connect. Even if the literature on transitional justice and reconciliation has expanded enormously over the last decade, I still find the connection between the two concepts vague and, in many ways, underdeveloped. Where there are literature regarding the relationship between justice and reconciliation, this is described to be a fundamental tension. My aim is therefore to further develop and clarify the bridge which I believe must exist between these two concepts and make this connection clearer. A key purpose of this thesis is to both study the impediments known about the combination of the two paradigms, and to look closer at the opportunities that rises from simultaneously implementing justice and reconciliation. I believe that a society can be rebuild and develop in a context where reconciliation is not only viewed and handled as a by-product of justice, but as a goal in it self and a natural playmate to both retributive and restorative justice. To answer my third question, I have chosen to use Rwanda as an empirical illustration. I believe that this country’s complexity regarding history, justice and, hopefully, reconciliation, in a very interesting way can complement my thesis and highlight the questions that I aim to answer.
The questions that this thesis seeks to answer are therefore:

- How does justice and reconciliation relate to each other within the context of post-conflict peace building?
- Why do we see trouble in combining the paradigms of transitional justice and reconciliation?
- Is a simultaneous process of transitional justice and reconciliation a zero-sum game?

1.2 Methodology

The ambition of this thesis is to develop the framework of the relation between transitional justice and reconciliation within the context of post-conflict societies. When dealing with the development of a theoretical framework there are mainly two different activities to choose from. The first activity involves finding and suggesting factors of explanation which are either complementary to, or in competition with previous aspects. With the second activity the aim is to develop causal mechanisms in order to in a better way understand how a factor of interpretation causes the phenomenon which is to be examined (Esaiasson et al., 2004: 122f). My intention is to use the second approach of theory development, since I aim to study the possibilities and impediments that exist in combining reconciliation and transitional justice, and why that is.

My study also involves the case of Rwanda, as an illustration of how the relationship between justice and reconciliation can be handled and seen upon. I have chosen to exclusively look at Rwanda since I believe that it is very difficult to compare this case to any other conflict. Furthermore, when aiming at developing a framework of theory it is better to have much information on case than little information on many different once (Esaiasson, et al 2004: 122).

1.2.1 Material and Criticism of the Source

When choosing material one must be aware that it will always imply a limitation to you, for your study and for the analysis (Lundquist, 1993:107). This thesis will be entirely built upon material of secondary nature, consisting of theoretic and empirical literature as well as a number of scientific articles and studies. This will affect my results, even if I believe that I haven’t used any material with an obvious agenda or with apparent subjective analysis. To been able to avoid sources with extreme or especially angled views, it has been imperative that I, in my usage of these secondary documents, have used some guidelines that will have filtered out unsuitable material (Esaiasson et al., 2004: 303). The most important aspect is that the author or organization who has brought about the rapport is independent and that the rapport is consistent with the purpose of this thesis. In
practical terms this means that I have eliminated rapports that come from authors or organizations with ethnically based interests of portraying the situation in Rwanda in a subjective manner. I also want to mention that I find that within the abundant body of literature on Rwanda, there does tend to be a neglecting of the post-genocide period. Therefore, I have come across very little “scientific” or “theoretically informed” work on post-genocide Rwanda.

1.2.2 Delimitations

The most obvious delimitation for this thesis is my choice to focus on the relationship between transitional justice and reconciliation. Furthermore, it is a clear delimitation to my analysis that I have chosen Rwanda as an illustration of the relation between transitional justice and reconciliation. Yet, making the choice to look closer at Rwanda, and not other countries, has been a conscious choice, still being aware that the choice of using other cases and countries would have had different impacts on my study. Furthermore, within the case of Rwanda I primarily focus on the relationship between the majority Hutus and the minority Tutsi, resulting in a conscious choice of overlooking other minorities such as Twa. The most direct and obvious reason for this is the fact that Hutu and Tutsi are the largest ethnic groups and primary actors in the violent conflict. According to the 1991 census, just over 90 percent of Rwanda’s inhabitants were ethnic Hutu, while roughly 8 percent were ethnic Tutsi (Paris, 2004:69).

1.2.3 Disposition

My thesis is divided into two main parts. The first consists of the theoretical framework, where I begin to present, discuss and criticise the concept of transitional justice. Within the same framework I do the same with the concept of reconciliation, and I finish with a discussion regarding the capability of the two concepts to co-exist and enhance each other.

In the second part of the thesis I introduce Rwanda as an illustration of how different approaches to justice and reconciliation can be used, dismissed, criticised and celebrated. The illustration of Rwanda will be divided into four main categories, where my aim is to look closer at the tensions and opportunities that may arise between reconciliation and justice in a post-conflict society.
2 Theoretical Framework

2.1 Transitional Justice

The term transitional justice is commonly understood as a framework for major political transformations, such as regime change from authoritarian or repressive rule to democratic or electoral rule, or a transition from conflict to peace and stability. Central for the concept is also the confrontation of prior regimes’ past violations and abuse. Hence, transitional justice also refers to a field of activity and inquiry focused on how societies address and combat legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including civil war or even genocide, in order to build a more democratic, just or peaceful future (Bosire, 2006: 4, Fletcher & Weinstein, 2002: 574, Macmillan, 2004: 1045, Roth-Arriaza, 2006: 1). Scholars of transitional justice largely agree that for a society to be able to heal after experienced mass violence and civil conflict it is imperative to learn the truth of what has happened, and in one way or another, put individuals and groups in a position of accountability for their actions and violations. Some of the major transitional justice strategies that regimes have used to confront past wrongdoings are amnesia, amnesty, forgiveness, truth telling, reparations, purges and trials. All these various forms of strategies stems from the inclusion and reparation of the rule of law, the consolidation of democratic institutions, justice for, and protection of, human rights and their victims, political reconciliation and national peace and unity (Amstutz, 2005: 18, Fletcher & Weinstein, 2002: 586, 597, Rooney, 2007: 173f).

This said, the concept of transitional justice can be broadly or narrowly defined. Seen through its broadest conception, it can involve anything that a society sets up to deal with subsequent of conflict and widespread human rights violations. This means that transitional justice can cover everything from creation of memorials, museums and days of mourning, to police and court reform, changes in high school text books, dealing with the distributional inequities that underlie conflict. A risk involved with the broadening of any concept, also transitional justice, is that the concept can become meaningless. At the same time, the use of a more narrow definition of the concept have been criticized for ignoring root causes and privileging civil and political rights over economic, social and cultural rights and by doing so marginalizing the needs of, for example, women and the poor (Roth-Arriaza, 2006: 2). Furthermore, the concept and definition of transitional justice can be seen as somewhat problematic in itself. First of all, justice is not an easy concept to work with and does not have a
universal meaning that reaches beyond all cultures or social contexts. Furthermore, justice is closely interlinked with the notion of truth, which always must be seen through at least two different aspects and are often very hard to uncover to its fullest extent. Another problematic aspect of transitional justice is that the concept implies a defined period of instability after which a post-transitional state sets in. The reality is however that the “transition” may cover many decades, and may last longer for some issues than for others. Also, one have to be clear to articulate what is “transforming” and what it is transforming to.

Post-conflict attempts at justice are not new; war crimes tribunals go back at least to the fourteenth century. But over the past decade, during the post-Cold War era, there has been a rapidly increasing interest in the matter concerning how countries are able to recover from, and develop after, episodes of mass violence or gross human right violations (Rooney, 2007: 173, Roth-Arriaza, 2006: 2). There, it can be argued, are many reasons to why transitional justice has grown within the discussion of sustainable peace and democratization. One of these reasons is that human rights and violations against them have gained more attention and a greater space within the international community and politics. Another important reason is that, since the fall of the Berlin Wall, a great and increasing number of countries, in all parts of the world, have begun to make the journey of democratization towards a rule of law, and transfer from authoritarian and repressive rule to liberal democracy and human rights.

Within the discourse of transitional justice there are mainly two alternative directions and views of justice and how accountability can be addressed and how to best deal with past regimes and gross human rights violations. The fist direction is called retributive justice, which stresses that justice demand that offences must be redressed through either reparations, purges, trials or a combination of these. The second alternative to how accountability can be addressed is through restorative justice, which emphasizes the healing and restoration of community relationship through amnesty, forgiveness and truth telling (Amstutz, 2005: 18).

The dominant paradigm in political science regarding analysis of post-conflict societies, and also the prevailing method used governments to confront criminal offences, is the retributive justice, or legal retribution. Retributive justice is rooted in the idea that the credibility of the rule of law requires that wrongdoings are being prosecuted and punished. Because this approach views a perpetrators offence against other people as a fundamental destruction of both moral and legal equity among human beings, it aims to protect individual rights through the rule of law and more particularly through different types of punishment. This is, according to the theory, the only way to both repair shattered relationships between victims and victimizers, and to restore their fundamental equality (Amstutz, 2005: 92, 106). Legal retribution provides a legitimate and effective way to address individual crimes, but is less well equipped to address past collective violence and systematic injustices. The retributive model suffers from important limitations in regards to post-conflict societies need to deal both with its past and its future. Even if most people can agree that justice most of the time demands that perpetrators must pay for their offences, the strict focus on trials and rule of law can lead to counterproductive results and unwanted tensions in a
society. Retributivists argue that trials are desirable because they, in an effective way, settle legal claims and by being based on impartial application of the law, trials lead to an official account for the past and can also establish finality to conflicts and reduce the risk of retaliatory action (Amstutz, 2005: 107). However, critics of the retributive approach mean that the strong focus on trials does not always measure up to its expectations. One important aspect to keep in mind is that transitional regimes frequently are constitutionally weak and politically fragile, and the emphasis on rectifying past wrongs can diminish the limited resources available to confront the social, political, and economic needs of society. A great risk is also that criminal prosecution through trials may threaten an already fragile regime’s political stability through provocation of further violence and a return to undemocratic rule. This risk is especially high in societies which remain politically divided. In relation to divided societies, it is in the nature of the retributive model to focus on backward-looking accountability rather than on the forward-looking moral reconstruction of society. Even if legal retribution, in many ways, can contribute to regime accountability for state crimes and injustices, the model cannot, alone, achieve the moral reconstruction that is necessary to restore a broken and divided society.

Furthermore, even if states are obligated to prosecute individuals responsible for serious human rights violations, because the international legal order is based in part on international human rights law, history has shown that there is a great risk that focus tend to lie on the offences of low-level agents, rather than on senior leaders. Senior agents who authorized policies are spared accountability while soldiers and agents who committed acts are prosecuted and punished. In relation to this, it is very important to remember that trials often tend to oversimplify truth by focusing on the guilt of a few people. Furthermore, punishment can be very problematic, especially when the offences are committed long ago and additionally, were widespread. Therefore, trials are not always guaranteed to be fair and the difficulties regarding absence of evidence often play a very problematic role. Moreover, the design of trials is to assess individual responsibility, which make the retributive model ineffective for confronting widespread and systematic injuries, collective offences and institutional culpability (Amstutz, 2005: 106ff, 111).

Because of its many insufficiencies, many scientists consider it no longer enough to analyse transitional justice and the complexities of post-conflict societies from a retributive justice point of view. In relation to this, in resent years there has been a development of an alternative tradition known as restorative justice. In oppose to retributive justice, the restorative tradition emphasizes healing and restoration, rather than trials and punishment. In many ways restorative justice have common principles as the retributive tradition. Both stress the importance of restoration of human dignity to those whose human rights have been violated and emphasize establishing preconditions for the protection of human rights. Also, both traditions believe in legal accountability for offenders, ensuring that they are aware of the harm that they have committed. Truth-telling is an important strategy of both restorative and retributive theories of justice. What clearly distinguishes restorative justice from the retributive tradition is however
the feature of promoting reconciliation. Where retributive justice places strong focus on individual rights and the prosecution and punishment on offenders to maintain a credible justice system, restorative justice emphasizes the restoration of communal bonds and reparation of broken relationships through political reconciliation. Its main aim is therefore not to right wrongs, but rather to restore a stable social and political order (Amstutz, 2005: 110, 113, Jeong, 2005: 168). In many ways retributive justice is a conception which is contrary to forgiveness and regard reconciliation as a by-product of the enforcement of law (Amstutz, 2005: 92, 106). It is not unusual that societies, in the aftermath of deadly political violence, experience deep fragmentation, distrust and pervasive animosity. In this environment, the principal challenge may not be to capture and punish offenders but to foster rudimentary cooperation and political order rooted in a renewal of civic values. Scientist argue that a restorative approach offers the most promising hope for these societies to heal and keep their peace, because of its focus on moral rehabilitation of people and restoration of communal relationships. Furthermore, restorative justice stress the importance of healing the wounds of victims and offenders alike, and aim to de-emphasize the division of societies into perpetrators and victims, preferring instead to view most or all of society as victims or survivors (Amstutz, 2005: 110, 113). This said, some argue that restorative justice is nothing but a strategy of reconciliation and of seeking ways to create new beginnings without coming to terms with the past (Amstutz, 2005: 110). In relation to this, it is important to stress that restorative justice does neither attempt to avoid the rule of law nor to disregard past wrongdoing. Like retributive justice, the restorative model also seeks to restore the moral equality of citizens. But restorative justice does not aim to do this primarily through law, but rather demand truth-telling coupled with regret and remorse as the way to heal individual and collective injuries, and reform the moral of people (Amstutz, 2005: 111, Llewellyn, 2006: 88). Since restorative justice seeks to repair broken relationships and rehabilitation of both victims and offenders, the method emphasizes the transformation of subjective factors that impair community, such as anger, resentment, and desire for vengeance. This also makes restorative justice quite demanding. It is a difficult and challenging task to heal political communities in the aftermath of human right violations, but many scientists argue that the most effective way to succeed is through retributive justice (Amstutz, 2005: 99, 112).

2.1.1 Critique of the Transitional Justice Paradigm

Transitions are almost always very complex and are often characterized by both impediments and opportunities for new and creative democratic strategies (Macmillan, 2004: 1045). There are some problems regarding the success of transitional justice that are especially important to study and observe. Firstly, in the aftermath of conflict it is common that the societies are suffering from weak, corrupt and inefficient judicial system, if at all existing. In relation to this, it is not unusual that a transition must handle a large number of perpetrators, which might
be far beyond the capacity of the legal system to prosecute. At the same time, there might be a great quantity of victims and survivors, who like to tell their stories and/or receive financial compensation (Macmillan, 2004: 1045). Scientists argue that unmet expectations of transitional justice efforts can partly be explained through the legal and institutional understanding of transitional justice is quite demanding and not always in harmony with the quality and capacity of state institutions in times of transition (Bosire, 2006: 3, 31). This means that transitional justice measures are difficult to implement in an “institutional desert”, and that transitional justice require an institutional minimum in order to really be successful (Bosire, 2006: 32). History has shown multiple times that the judicial system, within both dictatorial states and post-conflict societies, not only fail to protect innocent people from being oppressed but, on the contrary, cooperated with the regimes in passing unjust sentences on them. It is unreasonable to expect that the state judiciary will change rapidly in the new regime while being burdened with many of the same professional staff from the previous regime (Bosire, 2006: 31, Szablowinski, 2008: 408). This also brings insecurity to the state and lead to no trust between the state and its citizens.

Furthermore, transitional justice is often part of a peace settlement in which a package of agreements and arrangements are likely to be included. These arrangements can cover all from a set date for holding elections, condemnation of war crimes, the return to rule of law; and commitment to at least the most basic human rights. One of the problems with transition and these agreements is that compromises are often made and deals are very likely to be made over the heads of ordinary people (Pankhurst, 1999: 248). The exclusion of people is often systematic on the basis of race, religion, or ethnicity. This creates a severe sense of insider/outsider, and inequalities within societies risk becoming stronger (Rooney, 2007: 175).

Another important critique regarding transitional justice is connected with the development of restorative justice. The legal aspects of transitional justice often overvalue the role of rule of legislation, instead of giving attention and awareness to the roles of education and culture. Since prosecution, not least by international tribunals, always will be limited, non-judicial methods are many times better at dealing with the multiple shades of gray that characterize most conflicts and time of transition. Trials have a tendency of dividing the universe into small groups of guilty parties and an innocent majority, who are thereby cleansed from wrongdoing. In reality, however, large numbers of people supported those committed the actual violations, and ever larger numbers turned their faces away and were silent (Roth-Arriaza, 2006: 1, 4, 10).

The notion of justice is, as I have described, very complex and it can easily create new injustices, and thereby new vicious circles. Yet, this can not prevent a regime from pursuing some form of justice, since peace cannot be achieved without it (Szablowinski, 2008: 420).
2.2 Reconciliation

There is truly no single answer to what reconciliation is, rather the concept have multiple meanings. Because reconciliation is lacking a clear and widely accepted definition, some scholars have suggested that the concept is inappropriate. However, reconciliation is not alone in being vague and contested; it shares this with many other concepts within politics, including justice, liberty, security and rights. Nonetheless, political discourse depends on them because they define fundamental elements of a good society (Amstutz, 2005: 97, Bosire, 2006: 1, 27, Roth-Arriaza, 2006: 11f, Villa-Vicencio, 2006: 59). Still, there are many aspects of reconciliation which have to be clarified, in order for the concept to be used. The aspects of individual, community and polity in relation to the reconciliation process are still not very well understood, which makes the definition of reconciliation even murkier. What has made a huge difference in the understanding and conceptualization of the concept is however that it has been decoupled from other transitional justice processes. It is no longer required to conceive reconciliation as a code-word for impunity, or as an automatic by-product of other processes, especially of knowing the truth (Bosire, 2006: 27, Roth-Arriaza, 2006: 11f). However, reconciliation is still a very complex concept, not least since it is simultaneously a goal as it is a process, equally a precondition as an outcome (Villa-Vicencio, 2006: 60, 68). Nevertheless, reconciliation can generally be viewed as the building and/or restoration of relationships in divided societies (Jeong, 2005: 156, Ramsbotham et al, 2005: 231, Szablowinski, 2008: 405). Within the process of reconciliation the aim is to recognize guilt and responsibility for atrocities in order to acknowledge past wrongdoing. Reconciliation as a goal is associated with the notion that restored relationships will provide individuals and societies to live and co-exist non-violently.

Some scientists argue that it is helpful to define reconciliation in terms of trust. They suggest that this presents a concrete way of conceiving the concept especially since it calls attention to truth telling, promise keeping and social solidarity. It is clear that the reality of reconciliation requires that citizens can trust each other as citizens again (or for the first time). Added to this, the trust must be based on shared norms both among citizens and between citizens and governing institutions (Amstutz, 2005: 98, Bosire, 2006: 1, Ramsbotham et al, 2005: 231).

It is imperative that people have the same norms and values, which the country’s institutions are built upon. But conversely it is also important that the institutions carry out their work in lines with these norms and values.

Connected with the notion of trust, is also the importance of creating shared future goals within communities, through building renewed ties between groups and individuals (Amstutz, 2005: 98, Jeong, 2005: 155). To be able to create a common future, societies are often required to overcome sharp political polarities as well as ethnic, religious or ideological divides that might remain as a legacy of conflict (Jeong, 2005: 157, Ramsbotham et al, 2005: 234, 244).
In order to make a shared future more important than a divided past there are often a need of transformation in basic identities, not least in how groups view and conceptualize each other. It is often required to both overcome the notion of victims and perpetrators, and to go through a process of re-humanization by rival parties (Ramsbotham et al, 2005: 233, 243f). With all this said, it is still crucial to remember that every process of reconciliation is different, depending on the various roots of conflict and the diverse understandings of truth, fairness, justice, punishment, human rights and forgiveness (Szablowinski, 2008: 420).

However, when analyzing war-torn and deeply divided societies, recovering from atrocities and a bitter past, one can chose to view reconciliation and harshly generalize the concept through two extreme levels: minimal and maximal reconciliation. The first extreme, the minimalist view, can also be called a “non-lethal co-existence” and can be defined as the absence of war. Through the establishment of minimal order, there is no creation of a harmonious society through the transformation of attitudes and values, or a restoration of relations among enemies. Rather, the minimalist view argues that peace and a sustainable society are achieved through the establishment of order based on a negotiated settlement or cease-fire (Amstutz, 2005: 100, 105).

The opposite extreme view of political reconciliation is the maximalist view. This standpoint is a very demanding and difficult process, and far rarer than the minimalist model. Where the minimalist view seeks to build cohesion through shared ideological values, the rule of law and democratic structures, the maximalist version of reconciliation emphasizes tolerance of past injuries and the promise to avoid repeating injurious actions, restoration of relationships through forgiveness and the renewal of relationships. The maximalist stand argues that the deep social, psychological and political divisions that are found in transitional societies, can be over-bridged through the development of shared aspirations, moral values and social habits. Thus, the goal is to end the animosity among individuals and groups and restore friendships through the reformation of people’s political attitudes and cultural values (Amstutz, 2005: 99f, 102, Pankhurst, 1999: 244). I have earlier explained that there are aspects of reconciliation that is unclear and that one of these are the relation between reconciliation and the aspects of individual, community and polity. Scientists argue that what is required psychologically for an individual to recover from trauma and be reconciled with the past may not bear any resemblance to what might be required for a society, or a nation to do so. This also means that the individual reconciliation process might have to be distinctly different from a national reconciliation process. Where a national reconciliation process usually means a political project of establishing state institutions which work for ensuring a respect for rule of law and human rights, the individual reconciliation process is likely to represent individuals’ abilities to forgive and forget (Bosire, 2006: 28, Pankhurst, 1999: 240f). Even though forgiveness among individuals can not be mandated by neither the state nor the international community, there is a general belief that measures of more inclusive political representation and more equitable economic opportunity increasingly meet the basic needs of individuals, which is a requirement for
feelings of inclusiveness and therefore also a necessity of individual reconciliation (Ramsbotham et al, 2005: 232, 244, Fletcher & Weinstein, 2002: 637).

2.2.1 Critique of the Reconciliation Paradigm

I have, throughout this chapter, discussed a numerous different challenges regarding reconciliation, both as a goal and as a process. However, I aver that there are a few obstacles regarding the concept that need some special attention.

Firstly, reconciliation suffers from a great impediment, due to its difficulty to be measured. There is no accurate way to really study forgiveness or trust. Added to this, is the fact that the concept covers and involves many different levels. To work around this issue, there is a possibility to conceive the reconciliation process through different dimensions, such as breadth and depth, scope and intensity. The level of breadth reflects the number of people involved in reconciliation; the depth of reconciliation reflects the degree to which trust and cooperation have been restored (Amstutz, 2005: 98).

Secondly, it can be argued that reconciliation is in it self a morally doubtful concept, since it proposes unconditional equality between the two radically different groups of victims and perpetrators. It is hard to assume that the members of a victimized group would agree to reconcile with the people in whose name atrocity was done (Dimitrijevic’, 2006: 374f). However, it is important to emphasize differences within groups. Not all victims must have suffered from gross human rights violations or suffered severely from a physical or mental injury. At the same time, there are shades of grey regarding perpetrators in regard to different agrees of responsibility and activity in supporting human rights abuses. Many perpetrators must, themselves, be seen as victims of one kind or another – of propaganda, religious indoctrination, fear, disillusionment, or a culture of submission (Bosire, 2006: 20f, Villa-Vicencio, 2006: 72). In relation to this, Szablowinski argues that […] “we must never forget that there is no real justice without giving (wherever possible) another chance to those who have gone astray; there is no future without forgiveness“(Szablowinski, 2008: 420)

Third, reconciliation is not always something that becomes reality without restraint. The “losers” of a conflict may feel as though they are forced to “reconcile” themselves to the outcome because it is unavoidable. Furthermore, Ramsbotham, Woodhouse and Miall declare that if it is […] “hard to forgive a defeated enemy, and harder to forgive a finally victorious enemy, it is harder still to forgive an enemy who is still seen to be an immediate and potent threat“ (Ramsbotham et al, 2005: 243). This insecurity can be viewed as a type of suffering in societal terms, and this is often an effect by shortcomings in one, or all three, of the basic elements which build and sustain any fair and prosperous society, namely truth, justice and forgiveness. History has shown that failure to seek and acknowledge the truth, act justly, and failure to override revenge with forgiveness has contributed to great suffering in many societies (Jeong, 2005: 157, Szablowinski, 2008: 406).
A forth predicament regarding reconciliation is that, even if it regarded as a legitimate goal of political communities, there are often a significant disagreement over the priority of such a goal in relative to other political concerns (Amstutz, 2005: 103).

The final problem is related to the prior dilemma. Some scientists argue that emerging democratic regimes should seek to institutionalize structures for managing conflict, rather than to promote national unity. They aver that a liberal society demand that you learn to live with unresolved conflicts among values and interests, and that conflict is a central feature of a dynamic and political life. Consequently, these scientists argue, is the pursuit of a comprehensive political reconciliation an unrealistic, if not counterproductive goal, since reconciliation and unity is likely to impede the creation and maintenance of a free, vibrant political society (Amstutz, 2005: 101f, Graybill & Lanegran, 2004: 4).

2.3 First Justice, Then Peace?

There seem to be a widespread pessimism regarding the combination of justice and reconciliation. Among others, Amstutz claims that reconciliation, like forgiveness, is in fundamental tension with the concept of justice (Amstutz, 2005: 92). In many ways, this might be true. Undoubtedly, there are many serious political and practical obstacles regarding the simultaneous process of justice and reconciliation. It can be argued that these obstacles are impossible to avoid since the concepts are essentially different, justice being of a backward-looking nature and reconciliation a quest of forward-looking healing (Amstutz, 2005: 18). In relation to this, a very vivid strategy called “first justice, then peace” has emerged. This strategy assumes that the pursuit of justice and the quest for peace are in fundamental tension and that the former must be fulfilled before the latter can be undertaken. A problem with this is that reconciliation is regarded to be an automatic and even inevitable by-product of justice. Furthermore, in addition to its conceptual limitations, this strategy must also be seen as unrealistic. Since justice is an ongoing quest, the demand that justice must be fulfilled before the public authorities can pursue reconciliation would mean that political quests for national unity and domestic tranquillity will not be undertaken (Amstutz, 2005: 104f, Bosire, 2006: 27). Yet another problem with suggesting that reconciliation is but a by-product of justice, is that this would be to relegate community healing and ascribe national unity a subsidiary role. This can be argued, since strict justice never really can be fully fulfilled. Thus, it would be unrealistic to try and make reconciliation conditional on the prior success of justice, since this can never be reality. Furthermore, the stakes are quite high in criminal prosecutions. If the process ends up being partial or incomplete and is not conceived as just, or being seen in that way (from any reason such as fear or poor information), there is great risk that the process is regarded as making the situation worse (Amstutz, 2005: 104, Pankhurst, 1999: 242).
It is often hard to imagine an appropriate type of judgement where reconciliation also is hoped for. But at the same time, the absence of some process of public truth-telling is a major inhibition to reconciliation, and therefore also to long-term or positive peace (Pankhurst, 1999: 241, 244). Even if commission rapports or perpetrators’ testimony not necessarily lead to neither regrets, forgiveness nor national unity, the seeking the truth of what happened still must be seen as a precondition for socially acknowledging the significance of the injury. Furthermore, truth-seeking also establishes recognition of victims and creates a platform where their statements can be heard and used as legitimate sources of truth (Amstutz, 2005: 101, Jeong, 2005: 164f).

To not use any kind of retribution in the aftermath of atrocity, but to practice impunity can be an obstacle in relation to creating a new harmony in a country. In a way impunity allows violators of human rights to go on holding positions in the armed forces or the police, and to be treated as if the crimes they committed were only part of their duty. It is therefore of grave importance that truth is acknowledged and past acts of violence accounted for, if for nothing else then for preventing future atrocities. Yet, it can be dangerous to assume that the punishment of perpetrators alone will heal the hurt and the pain of the survivors. This is only an illusion. Moral order cannot be reconstructed through judicial instruments alone and a society cannot build a future exclusively on the corpses of perpetrators and collaborators, no matter how guilty (Dimitrijevic’, 2006: 374, Jeong, 2005: 155ff, 168, Szablowinski, 2008: 410).

Finally, the traditional dichotomy between justice and reconciliation can possibly be exceeded if we distinguishing between social reconciliation (based on fairness and justice, which protect the social order and the common good) and personal reconciliation (based on forgiveness, mercy and love). These two types of reconciliation may enrich and support one another, but one cannot override the other. Where there are no legal restrictions keeping checks-and-balance, public order would cease to exist, and honest people would be limited in their rights and freedoms. In turn, where there is no forgiveness of perpetrators by victims, true reconciliation on the individual level can not take place. If individuals continue to be un-reconciled, the cycle of violence may remain and reconciliation on the social level becomes impossible. Therefore, while retributive justice is necessary to be incorporated into reconciliation processes, by dealing with hard-core criminals and masterminds of atrocity, it can not be viewed as the only way of dealing with human rights abuses. Retributive justice may never fully replace or overshadow other types of justice, especially restorative justice, which takes the betterment of the victim into account and tries to enhance or restore harmony in society (Jeong, 2005: 168f, Szablowinski, 2008: 411, Villa-Vicencio, 2006: 60).
3 Case of Rwanda

3.1 Conflict Background

Rwanda, one of the world’s poorest countries, is situated in central Africa and was in 1994 object to one of the most horrifying and quickest genocides of our history. In little over one hundred days somewhere between five hundred thousand and one million Rwandan Tutsis, and moderate Hutus, were massacred by their Hutu fellow-citizens. These numbers indicate that an estimated 80 percent of Rwanda’s Tutsi population was killed (Graybill, 2004: 1120, Graybill & Lanegran, 2004: 8, Paris, 2004: 73f, Schabas, 2005: 879f). In addition to this, there are more staggering numbers to be accounted for. More than two million people became refugees and an estimated four million people (roughly half of Rwanda’s pre-war population) was displaced from their homes. Furthermore, the genocide left 400,000 widows, 500,000 orphans, and 130,000 imprisoned upon suspicion of committing acts of genocide (Tiemessen, 2004: 57ff). There is a wide consensus that the genocide was carefully planned and orchestrated by a relatively small group of Hutus, belonging to the very top of Rwanda’s political, military and economic elite (Paris, 2004: 74, Zorbas, 2004: 31f). The genocide finally ended when the Tutsi-led Rwandan Patriotic Front (RPF), without help from the international community, eventually defeated the Hutu-led government (Paris, 2004: 74).

There are many different reasons that are used to explain why this horrible event occurred. I will present a few, but I will not further investigate or make any guesses to why, I believe, this gruesome genocide could occur.

There are some who argues that the foundation of the genocide began as early as the fifteenth century, when the Tutsi domination of Rwanda began. But at this time there were no Hutu, Tutsi or Twa, this was an “invention” by the Belgians during their period of colonial rule. The Belgians introduced cards of identification which divided the Rwandan people into three. These identities were artificial, since there were no cultural, religious or regional differences between the groups. During the period of colonial rule prior to 1959, virtually all top positions within Rwandan political and economic life had been dominated by Tutsi. Therefore, some argue, can the genocide be translated into a tradition of tit-for-tat oppression and violations by Hutus and Tutsis throughout the post independence period from 1962 (Paris, 2004: 70, 75).

Another, and more frequently used, explanation to why the genocide took place is that is was a desperate effort to thwart the implementation of the Arusha
Accords which the president, Juvenal Habyarimana, had agreed to. During and immediately after the negotiation of the Arusha Accords, the killing of Tutsi civilians became more frequent, and on April 6, only minutes after Habyarimana was killed, his plane struck by a missile near the Kigali airport, members of the Presidential Guard and Coalition pour la Défense de la République (CDR)\(^1\) militias established roadblocks throughout the capital and Hutus went on a killing spree of Tutsis (Paris, 2004: 73f).

The Arusha Accords, which followed a cease-fire agreement from July 1992, was signed in Tanzania in 1993. The Arusha Accords provided for the creation of a transitional government in which the Tutsis would share power with Hutus. Its principal purpose was to create a participatory, multi-party democracy in which a government could be voted out of power and opposition parties could function freely. Between 1975 and 1990 the only legal party in existence had been Habyarimana and his supporters’ party, the Mouvement Révolutionnaire National pour le Développement (MRND) (Paris, 2004: 70f).

When talking about root causes of genocide it is important to remember that there is rarely exclusively one factor of explanation. The origins of conflicts are often much more complex than that. Rwanda is, as I mentioned earlier, one of the poorest countries in the world. Before the genocide, there had been an explosive population growth parallel to stagnation in the economy. This contributed to an increased competition of cultivable land. The poverty, unequal distribution of income and a traditional hierarchic society, where one group had been given benefits by the colonial power, raised the feelings being outsider, powerless and insecurity, which may have contributed to the dreadful events of 1994.

In the decade that has past since 1994 genocide and war, the government of Rwanda has carried out a variety of different programs in efforts to promote reconciliation, combat impunity, and prevent future communal violence (Longman, 2006: 206).

### 3.2 Justice?

Rwanda’s practises and experiments with different types of transitional justice have much to teach us about the strengths and weakness of these structures. Rwanda has experienced both international and domestic ways of justice, and used both retributive and restorative structures to address the atrocities of the genocide (Graybill & Lanegran, 2004: 9).

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\(^1\) In 1992 a new Hutu-based party was formed with an openly anti-Tutsi platform, the CDR. The CDR foremost used a private radio station, Radio-Télévision Libres des Milles Collines (RTLM), for spreading its concepts of Hutu ethnic supremacy to the population of Rwanda. This was the most effective encouragement to hatred and violence (Paris, 2004: 72f).
Since the end of the genocide, Rwanda has embarked upon a course of transitional justice that seems committed to leaving no genocide-related crime unpunished. Rwanda has showed a determination not to compromise with holding everyone accountable, that are suspected of having contributed to the 1994 genocide (Schabas, 2005: 880, 882, 895, Tiemessen, 2004: 57, 71).

However, the plan of not leaving anyone who was a part of the genocide unpunished has shown to be a struggle and quite problematic. Firstly, the plan would have been to prosecute more than 1,000,000 individuals, which seem almost impossible (Schabas, 2005: 894, Tiemessen, 2004: 57ff). In relation to Rwanda’s total population, which totals about 8,000,000, this is a staggering percentage. In relation to this it is important to ask one self what this would mean to the country’s development, democratization and reconciliation. Furthermore, throughout the 1990s more than 120,000 people were living in prisons and cachots (communal lockups) all over the country, this account to nearly two percent of the total population (Longman, 2006: 208, Zorbas, 2004: 32f). Despite the release of 25,000 prisoners in 2003, it was estimated that almost 90,000 (roughly one-tenth of the adult male Hutu population) were still being detained as of January 2005. Many of these prisoners must have been in custody for the best part of a decade and many have still not had any charges brought against them (Graybill, 2004: 1121f, Schabas, 2005: 880).

Secondly, the prospects of full accountability put an enormous burden on the Rwandan judicial system. The enormity of the crimes and the large numbers of people involved has overwhelmed the capacity of the courts (Graybill, 2004: 1121f, Longman, 2006: 206). As a result of the atrocity the judicial infrastructure was largely destroyed, as the judiciary was one of the major targets during the genocide. Once the massacre was over, most of the judges lawyers and prosecutors were killed or in exile. It is estimated that, after the genocide, there were only between ten to fifty lawyers left in Rwanda (Tiemessen, 2004: 58f, Longman, 2006: 208, Zorbas, 2004: 34f). As a result of this, the government needed to train hundreds of new judges, prosecutors, court clerks, police investigators, secretaries, and other judicial officers, to replace those killed, in exile, or in prison (Longman, 2006: 208). Even if there are those who argue that there was little to be “rebuild”, since the Rwandan judicial system had never been more than a corrupt caricature of justice, the legal system had to struggle to get back on its feet, since there were no equipment to work with, people had to work for low pay and sometimes no pay, with very short training periods and no trial experience (Schabas, 2005: 883).

Furthermore, very little international support has been forthcoming to assist in rebuilding or reinforcing the legal system, partly because the Rwandan government made it clear that large numbers of foreign jurists were not what were required and that justice in Rwanda would be done by Rwandans, with assistance from abroad playing only a secondary role (Pankhurst, 1999: 252, Schabas, 2005: 883).

Perhaps the most well known legal mechanism in the Rwandan context is the International Criminal Tribunal for Rwanda, the ICTR, which was authorised through UN Security Council Resolution 955 in November 1994. The ICTR’s
mandate was to prosecute acts of genocide and other systematic and widespread violations of the Geneva Conventions, that were committed between January and December 1994. Also, the ICTR was supposed to contribute to the process of national reconciliation and to the restoration and maintenance of peace (Graybill, 2004: 1121, Zorbas, 2004: 33f). The tribunal was set up in neighbouring Arusha, in Tanzania, both because of security concerns and because it was felt that an outside court, staffed largely by outsiders, would have the advantages of impartiality, credibility and expertise that were missing in the national legal systems (Roth-Arriaza, 2006: 6). However, when the Rwandans learned that the tribunal would not be held in their country, that they would not be able to influence which suspects that would be tried, and that the death penalty would not be used, they became very disappointed².

The ICTR has generated some profound ill will during its time in Rwanda. Among the biggest critiques are that the tribunal is too time-consuming and enormously expensive. In the other words: it is doing to little at a too high cost. In 2002 the ICTR had a budget which was USD 177,739,400, in relation to the Gacaca courts which had an estimated annual budget of USD 2,200,000. Critics have noted that the same resources might have been better spent on rebuilding the national legal systems (Roth-Arriaza, 2006: 7, Zorbas, 2004: 34). The money spend on the ICTR does not show in numbers of prosecutions. The first trial at the ICTR did not begin until January 1997, and by March 2003, only 11 individuals had been judged. By December 2005, the number judged had ridden to 26, with an additional 26 accused with cases in progress, and 17 others charged and in detention. Furthermore, the ICTR has made very little in attempt to influence the reconciliation process, despite its mandate to do so (Longman, 2006: 208, Tiemessen, 2004: 57).

3.2.1 The Gacaca Courts

When the ICTR’s was confronted with limitations and it became clear that the formal judicial system in Rwanda would require more than a century to prosecute the more than hundred thousand prisoners in custody, Rwanda devised a second approach known as Gacaca (Graybill, 2004: 1121f). Gacaca is a word in kinyarwanda, the national language of Rwanda, and it means ‘the grass’ or ‘the lawn’, referring to the fact that members of the Gacaca sit on the grass when listening to and considering matters before them. Gacaca is an ancient method, which was used during the pre-colonial time, to resolve disputes on a local level and was administered by respected local leaders or elders (Longman, 2006: 209, Schabas, 2005: 891, Tiemessen, 2004: 60). The Gacaca courts are based on

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² Ironically, Rwanda cast the one opposing vote to the Security Council resolution establishing the tribunal (Graybill, 2004: 1121).
customary law, but are implemented to represent a compromise between traditional Gacaca and Western legal practices and standards (Longman, 2006: 210f, 213). These new Gacaca courts are not meant to take over the role of ICTR, but rather work as a complement and be used alongside the formal judicial system at the local level (Graybill & Lanegran, 2004: 8f). The Gacaca courts have been set up throughout the country in an organized network of about 11,000 community courts and are to try suspects of crimes related to genocide in the communities where these were committed (Tiemessen, 2004: 58). The Gacaca courts consists of 260,000 elected judges - both male and female, Hutu and Tutsi, and are estimated to prosecute more than 1,000,000 suspects (Schabas, 2005: 879, 881f, 891). This has been an unexpected result, and some people are worried that, instead of bringing closure, the Gacaca appear to have opened Pandora’s Box. Moreover, the Gacaca courts are only to focus on lower and less monstrous level of participation in genocide, such as crimes including looting or destruction of property and assault without intention to kill. The Western-style national or international courts will continue to hear and judge those accused for sexual torture or being involved in planning the genocide (Graybill, 2004: 1123, Longman, 2006:207, 211, Tiemessen, 2004: 61).

Another reason to why the government of Rwanda decided to establish Gacaca courts was that there was a need to meld the desire for justice with the need for reconciliation (Graybill & Lanegran, 2004: 8, Longman, 2006: 207). Gacaca was created to constitute a middle path somewhere between the strictness of full-blown criminal prosecution and the moderate truth commission approach. The Gacaca courts are different from the ICTR, not only in a matter of procedures, but also in a context of retributive versus restorative justice. The Gacaca courts reflects local traditions and the characteristics of restorative justice, since it focuses on the healing of victims and perpetrators, confessions, plea-bargains, and reintegration (Longman, 2006: 213, Tiemessen, 2004: 57f, 61). Gacaca is considered to carry an enormous potential to promote reconciliation and healing since it provides a platform for victims to express themselves, encouraging acknowledgements and apologies from the perpetrators, and facilitating the coming together of both victims and perpetrators every week on the grass (Tiemessen, 2004: 64, Zorbas, 2004: 36, 41). However, in order for Gacaca to be successful and be able to provide a fair trial, it is required that the participation numbers are extremely high, which puts the Rwandans to a great responsibility (Longman, 2006: 221, Tiemessen, 2004: 69).

There are three distinctly important features of the Gacaca courts in order for a broader experience of reconciliatory justice to occur. First, those who confess their crimes are rewarded with the halving of their prison sentences. As a result of this, more than 60,000 prisoners have confessed to participating in the genocide. However, confessions are only acceptable if they include: all information about the crime and crucially and the incrimination of one’s co-conspirators. While confession is seen as cornerstone of the Gacaca courts and important for its success, it also brings obvious problems. The fact that confessions are rewarded with reduced sentences and early release is a great incentive for prisoners to confess. Yet, a confession does not equal truth, rather, some may confess to lesser
crimes and those who are innocent of any crime still have a strong inducement to confess to something, just in order to win their release (Longman, 2006: 222, Zorbas, 2004: 36).

Second, Gacaca highlights apologies, seen as a vital connection to the traditional Gacaca and an important ingredient to promote reconciliation. The third cornerstone of Gacaca is reparations to victims. Those who are found guilty must contribute to a compensation fund and/or perform community service (Graybill & Lanegran, 2004: 9, Longman, 2006: 222, Zorbas, 2004: 36).

Gacaca has received a mixed response both inside and outside of Rwanda. Its supporters believe that it is the superior method for getting at the truth, reintegrating perpetrators, encouraging apology and forgiveness, and promoting reconciliation in the country (Graybill, 2004: 1123, Longman, 2006: 207, Tiemessen, 2004: 60, 62). Moreover, Gacaca, as a local-level justice process, have the capability of creating a much tighter sense of community ownership of the process and its outcome, than those that takes place in far-off capital cities, or worse still, foreign countries. People can feel that they have greater control over the Gacaca process, since it is familiar and recognizable, drawing on indigenous and traditional ceremonies, using spiritual symbols that are non-Western. Also, the process might be seen as more understandable if the Rwandese problems become solved in a Rwandese fashion, rather than exclusively through formal legal structures that are often inherited from a colonial power. There has been a noticeable hostility towards “Wite People’s” or Western justice, since these have been perceived as both unfair and very distant (Longman, 2006: 212, Roth-Arriaza, 2006: 10f, Zorbas, 2004: 36f).

But, as I said, the Gacaca has received a mixed response. Both human rights groups and international jurists have raised serious concerns about the trials (Longman, 2006: 212f). One major area of concern is the level of competence of the Gacaca judges. Even if they have “contextual competence” and are well respected members of the community, they are not legal professionals and they only receive very limited training although they are expected to decide on very complex legal questions (Longman, 2006: 214). Moreover, the Gacaca courts have been criticized regarding their impartiality and independence and the lack of a right to defence counsel and of equality between the prosecution and the defence (Bosire, 2006: 28, Longman, 2006: 213, Tiemessen, 2004: 64, Zorbas, 2004: 36).

Also, there are concerns about how well Gacaca courts will be able to contribute to the process of reconciliation in Rwanda, since there are elements within the practice of the Gacaca courts which risk making it a dangerous venue of refuelling ethnic tensions (Longman, 2006: 220). The Gacaca courts are not independent from the Rwandan government, but rather serve its interests, and can therefore serve as an instrument of “Tutsi power” (Tiemessen, 2004: 57). There is a grave danger if Gacaca assigns guilt collective guilt to Hutus (Graybill & Lanegran, 2004: 9, Pankhurst, 1999: 252). In order for the Gacaca courts to be successful, not least as an instrument of reconciliation, there need to be awareness regarding the dangers of victor’s justice, which created the tensions of pre-genocide Rwanda (Amstutz, 2005: 110, Longman, 2006: 209, Tiemessen, 2004: 64). I will discuss this matter further under my section of Reconciliation.
I mentioned earlier that in order for Gacaca to be successful it is of considerable importance that the participation numbers are high. In addition to this, the willingness to testify is also essential to the success of the Gacaca courts. It has been considered that the genocide survivors would be likely to provide the most important testimony, and their testimony is essential to both justice and reconciliation. However, survivors are not automatically the best sources of information. First of all, they were not involved in the planning and execution of the genocide. Second, the fact that they are survivors indicates that they were hiding during the violence and can therefore not be expected to have a lot of information to give. Also, even if the assumption that most genocide crimes were committed at the local level is true, much of the killing in Rwanda was not, in fact, “intimate violence”, where perpetrators and victims knew each other (Longman, 2006: 220). Furthermore, a survivor might be reluctant to participate in trials because of the risk of re-traumatisation. In relation to this it is also important to remember that where the genocide was most brutal, there may be no survivors (Longman, 2006: 220f). Hence, testimony from Hutus is also essential to the success of Gacaca. However, relatives will probably be reluctant to testify against their own family members, and there are concerns regarding that Hutu in general will be under social pressure to show loyalty by not testifying against their own group.

This said, we must remember that the full impact of the Gacaca courts is yet to be felt by the Rwandans. Only time will tell whether they offer a platform for genuine exchange and debate at the grass roots level about what happened in 1994 (Zorbas, 2004: 39).

But if it is true, what is frequently said, that reconciliation in post-conflict societies is impossible without justice, Rwanda will find a way, or another to bring the Hutus and Tutsis together. Rwanda’s commitment of fighting impunity seems consistent with the understanding that inaction leaves grievances and creates fear, which is a starting-point for cyclical outbursts of violence. Silence of past crimes does not mean forgiveness, but rather makes us complicit bystanders to the perpetrators of yesterday and encouraging the perpetrators of tomorrow. To forget atrocity gives a victory to the perpetrators and memory constitutes the best safeguard against a recurrence of violence (Zorbas, 2004: 30, 40).

3.3 Reconciliation?

It has been said that the Rwandan genocide of 1994 is an act of so pure evil that moral redemption is beyond reach. This might be the reason to why more than a decade has shown not to be nearly enough for Rwandan national reconciliation (Amstutz, 2005: 73, Zorbas, 2004: 51). One of the most important lessons of Rwanda’s reconciliation process is that the path from justice to reconciliation is not necessarily linear or even obvious.

One concern regarding Rwanda’s reconciliation process is that it is presumed that it is the genocide which the Rwandans need to be reconciled after. This is,
however, not the whole truth and definitely not all that has to be dealt with in order for “national unity” to be achieved (Zorbas, 2004: 41). Perhaps the justice of Rwanda, today, should be related to and reflecting the nature of Rwanda’s post-genocide society, rather than on what type of violence that occurred more than a decade ago. There may be no chance of repairing the past, but there are still ways of changing the future. However, there are serious impediments for Rwanda to overcome.

If it is difficult to announce anyone a winner in any war or conflict, it is beyond this in the case of Rwanda. But if we are to this, identify the victors of the genocide, we need to put the Rwandan history in the context of civil war, in which the victors are undoubtedly the RPF. With victory come power, in this case Tutsi power, and this power includes control over the processes of justice by the government. If punitive actions are perceived as victor’s justice there is a great risk that tension between the two groups intensifies (Tiemessen, 2004: 65, 68f). An important indicator of willingness to accept each other can be power sharing. Inclusiveness and the acceptance of the need for coexistence are necessary to overcome an insecure political environment. Even though Rwanda has seen a significant progress in terms of power sharing, the feelings are still that the government has been camouflaging the increasing Tutsification of state institutions. Tutsi enjoy a disproportionately large representation in the higher political and economic power in Rwanda, which indicates an obstacle for reconciliation (Jeong, 2005: 79, Tiemessen, 2004: 66, Zorbas, 2004: 44f).

Another impediment to Rwandan reconciliation is that the population is still divided into five main categories: victims, survivors, refugees, returnees and perpetrators. Even if the Rwandan government denies the continuing distinction of Rwandans as either Hutus or Tutsi, its use of national and local judicial processes to label participants as survivors and perpetrators further strengthen their ethnic identities (Tiemessen, 2004: 57, 68). Gacaca, seen by many as the process best suited to combine justice with reconciliation, offers very little hope for the latter mentioned if the responsibility is assigned to a collective and not individualized. If the blame is not individualized, there’s a risk that all Hutus becomes stereotyped as evil monsters and that the ethnic identities of Hutus as perpetrators and Tutsis as victims or survivors becomes even further entrenched. For reconciliation to be possible in Rwanda, both individuals and the Gacaca courts, must overcome these limiting and ethnically charged characterisations. Not only must the notions of both survivor and perpetrators include both Hutu and Tutsi, they must also be recognized as not necessarily mutually exclusive (Graybill, 2004: 1124, Tiemessen, 2004: 68ff).

What I believe is another important impediment for Rwanda’s ability to reconcile with the past is that since 1994 there has been no history lessons taught in Rwanda. The reason for this is, perhaps not too surprisingly, that there is simply no consensus on which “version” to put on the national curriculum. There are several versions of Rwanda’s history, and these usually diverge in their account of the Hutu/Tutsi/Twa cleavages and the origin of Tutsi privilege. In order for both national and individual reconciliation to occur, all groups must develop an acceptable shared memory and reconstruct a common narrative.
Hence, without a settlement and a compromise with history, it will also be difficult to come to terms with the truth of the genocide. By coming to terms with history, the chances increases that people are able to recognise their role in the reconciliation process, which can bring their identity beyond that of victimisation (Amstutz, 2005: 28, Tiemessen, 2004: 63, 68, Zorbas, 2004: 39, 40ff).

As I have said before, it is not exclusively the truth of the genocide that has to be dealt with in order for reconciliation to be possible in Rwanda. I described earlier that Rwanda is one of the poorest countries in the world, and there is a wide consensus that poverty reduction and national unity goes hand-in-hand (Zorbas, 2004: 37). After the genocide it was estimated that about 70 percent of the Rwandan population was living in extreme poverty. This number has decreased since then, but 60 percent of the population is still accounted to live on less than a dollar a day. If poverty and inequality was part of the dynamics behind the genocide, it is only natural that notions of economic development, equity, participation, tolerance and human rights are necessary to both national unity and reconciliation (Sida, 2000, Zorbas, 2004: 38).
The purpose of this study has been to examine how justice and reconciliation relate to each other within the context of post-conflict peace building, why it is difficult to combine these two concepts and if a simultaneous process of transitional justice and reconciliation is a zero-sum game. I have discussed that both transitional justice and reconciliation are difficult to implement and analyse, also when they are separate. Putting them together and making them equals within a process of state-building and state-recovery is bound to have its impediments. However difficult, I do not believe that the combining of the two paradigms would mean a zero-sum game; rather I argue that justice and reconciliation is inherently intertwined. Perhaps the biggest obstacle of the two concepts’ interdependence is that they too often are connected with unrealistic goals. It is a potentially impossible quest to combine maximum justice with maximum reconciliation, simultaneously and within the same timeframe. What Rwanda has taught us is that a process of justice and reconciliation is not a linear path, but rather an ongoing quest which requires different amounts of attention, and time, at different periods. Finally, it is also important to recognise that the optimal combination of the two concepts also differs from society to society.
5 Bibliography


