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ETHNIC PLURALISM, SOCIAL JUSTICE AND INTEGRATION POLICY IN POST CONFLICT RWANDA

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ABSTRACT

Like every war ravaged country, the Republic of Rwanda is reawakening to grapple with the challenges of post-conflict reintegration and transformation. To scholars and observers of the trend, Rwanda is recuperating at a very high speed due to socio-economic reforms and the apparent commitment of the Government of the country to rebuild a new Rwanda from the rubbles of the devastation that greeted the 1994 genocide. Expectedly, the Rwandan government generated laws and codes which govern social interaction – former ‘enemies’ that must co-habit. There is public ban on all divisionism tendencies. In Rwanda there should be no ‘Hutu’, ‘Tutsi’ or ‘Twa’. All are Rwandans. Indeed, there are sanctions against defaulters irrespective of their nationalities. The drive for identity reconstruction is fierce and the government of Rwanda is determined to obliterate the ethnic ideologies which it believes, reinforced the 1994 Genocide against the Tutsi in Rwanda. However, the questions to ask are: will suppression of ethnic identity effectively obliterate natural affinity for group relations and the right to cultural identification and association? How does the government policy against sectarianism help in the reintegration programmes in Rwanda particularly the traditional judicial option called the Gacaca? This paper seeks to address these questions based on the data collected from a field-work conducted in Rwanda in 2011 and from the observations of scholars of ethnicity and the

INTRODUCTION

Twenty six years later as the world focuses on Rwanda to make sense of the complex and tragic events of the 1994 genocide, a crucial debate in the country’s peacebuilding and social reintegration effort is the protection of democratic and cultural rights in the light of current policies to obliterate ethnic identity and ideologies. Like every war ravaged country, the Republic of Rwanda reawakened to grapple with the challenges of post-conflict reconstruction and transformation. The survivors of the genocide needed to be resettled, over 100,000 *genocidaires* had to be tried, and the prisons had

to be decongested. More importantly, institutions had to be reconstructed and relationships rebuilt. To foster reintegration, the Rwandan government generated laws and codes which govern social interaction between former ‘enemies’ that must co-habit. It placed a public ban on all divisionism tendencies. In Rwanda, there should be no ‘Hutu’, ‘Tutsi’ or ‘Twa’. All are Rwandans. Indeed, there are sanctions against defaulters be they nationals or foreigners. The official state policy is that there are no longer any tribes or ethnicities in Rwanda and it is illegal to use the words ‘Twa,’ ‘Tutsi,’ and ‘Hutu’ in public discourse. To this end, at the 15th

commemoration of the genocide, President Paul Kagame—in his speech on 7th April 2009, at the Amahoro Stadium, demonstrated the decisiveness of his government to eradicate ethnic references and discourses in Rwanda. Unlike a similar occasion in 1995, when posthumous homage was paid to Hutu and Tutsi victims (Lemarchand, 1998), this time, Kagame's discourse, though mournful and accusatory, made no mention of ethnic identities. The closest reference to it was when he stated that “*in this process of commemoration we always remember a number of things, all linked to the genocide that took place here in Rwanda, in which people were killed because of who they were born as*” (Kagame, 2009). While the ethnic dimensions of the Rwandan conflict might seem apparent, we question whether a ban on ethnic identity is an appropriate strategy for obliterating individual's natural affinity for group relations and association. Can such a policy erase decades of collective memory of cultural identity and rights? Can it prevent future ethnic clashes? What implication does it have on long-term socio-political stability and development in Rwanda?

There are no easy answers to the questions raised above, especially since the drive to outlaw ethnic diversity and ideologies comes with certain silences on the reconciliation process, including the failure to prosecute alleged Rwandan Patriotic Army (RPA) crimes, the lack of debate on the instrumentalisation of Rwanda's 'histories', maintenance of the RPA power structure, and the collective stigmatization of all Hutu as *genocidaires* (Zorbas, 2004; Takeuchi, 2011). In today's Rwanda, in order to be viewed as a survivor, a person must be Tutsi. According to the RPF-dominated government, no Hutu are survivors, even if

their Tutsi relatives, such as a spouse or child, were killed. Even those Hutu who have relatives who participated in the genocide, but did not participate themselves, can be labelled '*génocidaires*' (Bardswich, 2014). This sentiment, that only Tutsi are survivors, is also found in state laws, such as Law No69/2008 of December 30, 2008, regarding the establishment of the fund to assist survivors of the genocide (FARG). Throughout the law, and in its title, survivors are called 'survivors of genocide against the Tutsi.' This issue reveals a disconnect between the state's attempt to eradicate ethnicity from public life, and a discriminatory policy that only helps Tutsi survivors, but not Hutu or Twa. In this study, we explore and interrogate the Rwandan government policy against ethnic divisionism on the reintegration programmes in Rwanda particularly the traditional judicial courts called the *Gacaca*. We argue that the ban on ethnicity does not take into account the important underlying causes of the Rwanda conflict and the RPF-dominant politico-forces reluctance to share power and wealth within an inclusive multi-ethnic and multicultural society is a threat to the future stability and peace in the country.

This paper is divided into two sections. The first section discusses the theoretical framework, followed by a detailed historical exploration of ethnic pluralism in pre-colonial, colonial and post-independent Rwanda, and the context and methodology used. The second section discusses the role of ethnicity in the Gacaca adjudication and re-integration program.

THEORETICAL FRAMEWORK

Ethnic pluralism, nationalism and conflict

The concept of ethnicity is both amorphous and socially constructed. Literature on eth-

nicity is filled with many vague definitions of this concept. For example, Kellas (1991 p.5) defines ethnicity as a state of belonging to an ethnic group while Schermerhorn (1970 p.12) defines ethnic group as a “collectivity within a larger society having real or putative common ancestry, memories of a shared historical past, and a cultural focus on one or more symbolic elements defined as the epitome of their peoplehood”. Such symbolic elements might be objective, a given, and subjective, a creation. The subjective factor is any particular combination (of endless possibilities) of the objective factors chosen by a group to assert its identity, and then used as a common resource to achieve a certain goal (Stavenhagen, 1986). Depending on the goal and the historical context, the set, or ‘package’, of objective factors which produces different levels of ethnic identities may differ.

Ethnic identity changes in intensity over time (ethnicization, de-ethnicization, re-ethnicization). It is a variable rather than a constant, and it can be altered, contested, or manipulated for political purposes and thereby transformed (Hettne, 1993). Certain markers such as physical characteristics, race, language, cultural practices, religious beliefs, or other distinctions such as class, may either cross-cut each other or reinforce each other – affecting the degree of integration or diversity in the society (UNRISD, 1994). Ethnic diversity is a feature of many societies; it can be defined as the coexistence of a variety of distinct ethnic and racial groups that exist in one society. It could also mean the presence of at least two, sometimes, more people within the same political space. Marger (2011) notes that ethnic groups follow one of two patterns; they either increasingly blend or remain seg-

regated. When they remain culturally distinct and socially segregated - this is pluralism.

The connection between ethnic pluralism and conflict has been a long-standing debate. Some theorists believe the more ethnically diverse a society is, the higher the chances of social tensions and political instability. Morrison and Stevenson (1972) in their statistical analysis of political instability in African nations from the beginning of independence in 1955 to 1969, argued that cultural pluralism increases the likelihood of conflict between members of communal groups in black African nations, and increases the probability of both communal and elite instability in these nations. This perspective too often leads to policy of ethnocide, which is, the willful destruction of cultural groups, in attempts to forge national integration (Stavenhagen, 2008 p. 43). Whereas, political instability is neither inevitable nor a random phenomenon on the African continent as many other underlying factors such as a history of colonial repression, underdevelopment, economic marginalisation, social inequality, unequal access to state resources, and exclusion from political participation, all play a role in the outbreak of ethnic conflict (Collier and Rohner 2008; Thoms and Ron, 2007; Le Billion, 2001; Allen, 1999).

Collier (2004), in a fairly recent empirical research of all the civil wars in the world between 1965 and 1999, using measure of social, economic, political, and historical conditions for each country in the world, showed that the most important risk factors were economic inequality. Other characteristics, such as ethnic and religious fractionalization do not show up as being important. Collier argues that, if anything, societies composed of many different ethnic groups are safer than homogenous societies. Where conflicts

exist along ethnic lines, often the rhetoric deployed may well be that of ethnic grievance in connection with economic or political resources, as opposed to ethnicity alone being the main source of conflict (Collier, 2004). Fearson and Laitin (2003) therefore advised policymakers and scholars against inferring that ethnic diversity is the root cause of civil conflict when they observe insurgents in a poor country who mobilize fighters along ethnic lines. Alternatively, steps should be taken to address the structural roots of social discontent across ethnic groups.

Evidence from around the world suggests ethnic pluralism and national identity are not necessarily mutually exclusive. These two ideas can co-exist where identity is not accorded a divisive recognition but one that could integrate and strengthen the polity (Kymlicka, 1995). Mutual recognition (Taylor, 1992) and equality and freedom between and among groups are vital in a social integration in a pluralist society (Kymlicka, 1995). In the municipal law of Rwanda, Article 9 of the 2003 Constitution states expressly that 'the Government shall be committed to fighting the ideology of genocide and all its manifestations, eradication of ethnic, regional and other divisions and promotion of national unity'. Therefore, in the new spirit of reconciliation and re-integration, ethnic identification is played (pegged) down against national identity.

Ethnic pluralism in Rwanda: a political history

Rwanda is populated by two significant groups- the Hutu and the Tutsi. The Germans possessed Rwanda till 1919 and the Belgians until 1962 when Rwanda gained its independence. Unfortunately, Rwanda did not fare well politically under the colonial

rules. Mills and Norton (2002:2) opined that it could be argued that Rwanda had gone from bad to worse in terms of colonial rule'. German and Belgian policies were based on the concept of indirect rule which sought to administer colonies through their local leaders. The colonial administrators mistakenly believed that power in Rwanda should be organised primarily along ethnic lines and thus they instituted policies that subjugated the Hutu and favoured the Tutsi whom they saw as natural rulers.

In a familiar European pattern, the colonial rulers (Germany and Belgium) introduced new notions of identity and preyed upon old tribal rivalries in order to solidify their rule and profit. The Tutsi minority was used by the European powers as local elite, holding power and favoured above the more numerous Hutu (Keane, 1995:16). As independence approached, the Hutu majority launched an armed rebellion in 1959 against the Tutsi. Thousands of Tutsis fled ethnic persecution into neighbouring Uganda, Burundi and the Democratic Republic of Congo (DRC). This political violence became a constant occurrence and more Tutsis fled Rwanda seeking refuge in neighbouring countries especially Uganda. Rwanda refugees in Uganda joined forces with Yoweri Museveni's rebel forces and won the government for him [Keane, 1995:19-20]. After Museveni's victory, his Tutsi allies came together to form the Rwandan Patriotic Front [RPF], which was committed to overthrowing the Rwandan government. The Ugandan government covertly supported the RPF by supporting it with weapons, ammunition, supplies, intelligence and safe havens [Miskel and Norton, 1996:222-223].

Another military attack was launched against Rwanda in 1990 by the RPF and this gener-

ated a number of proactive reactions from the Rwanda government headed by President Habyarimana. He agreed to negotiate a power sharing arrangement with the RPF, under conditions laid out in the Arusha Peace Agreement of 1993 (Jones, 1997:136). Although many of the Rwandan government top-notches did not accede to this agreement, President Habyarimana pursued it with vigour struggling against the pitfalls created by this aggrieved counterparts in government. However, in April 1994, an aircraft bearing both President Habyarimana of Rwanda and his Burundian counterpart, President Cyprien Ntaryamira was shot down at take off at the Kigali airport. The death of the Rwandan President in the crash opened fresh hostilities which so degenerated into a genocide, wiping of almost the total population of the Tutsis and hundreds of thousand for the Hutus in Rwanda. The Rwandan military launched an extermination campaign against defenceless and 'disorganised civil population'. In one hundred days, as many as a million people were shot, strangled, clubbed and burned to death [Keane,1999;28]. This include the prime minister, Agathe Uwilingiyimana who was killed by the Rwandan Presidential guard.

On 9th April, 1994, a new militant Hutu government was formed. Meanwhile, the RPF refused to accept the legitimacy of the new government, therefore, it announced a fresh start of civil war to stop the killings and restore peace to Rwanda. By June, the RPF forces had gained control of much of the country. As the RPF tightened its grip on Kigali, violence against civilians spread, and Hutu fearing RPF retaliation fled the country in droves, [Kurt Mills and Richard Norton, 2002;4]. More than two million Hutu fled Rwanda, more than half going to

Eastern Zaire, the majority of the rest going to Tanzania and some to Burundi.

On July 18, 1994, the Rwandan Patriotic Front [RPF] proclaimed victory, declared a cease fire and proceeded to form a new government. They implemented the Arusha agreement which ceded the Presidency to Habyarimana's MRNDD party. Pasteur Bizimungu was of the same tribe as Habyarimana was named President and Major General Paul Kagame became Vice-President. Kagame was a Tutsi raised in Uganda and a leader of the military offensive that overthrew the Government. According to the Encarta Microsoft [1993-2002], of the 21 ministerial posts, 12 went to Hutu and nine to Tutsi, even though 80% of Rwandans are Hutus.

Ethnicity in Pre-colonial Rwanda

Edmund Burke reflecting on the French Revolution opined that 'A people will not look forward to posterity, who do not look backwards to their ancestry (Burke, 1987).' An understanding of ethnic diversity as well as its evolution in Rwanda is essential for understanding ethnic conflicts in the country and for developing a comprehensive and effective way of fostering social re-integration and national unity. Rwanda is a plural society with an estimated population of 11 million people divided into three ethnic groups: Hutu 84%, Tutsi 15% and the Twa 1% (CIA factbook, 2012). Though all Rwandans speak the same language-the *Kinyarwanda*, that is just as far as it holds. The people themselves have three distinct groups which however may not conform to the tribal representation of nation groups that had been imputed to the formations. The three groups are distinct to a reasonable extent physically.

The Twa, who were recognized as the origi-

nal inhabitants of the land, are an indigenous group well known in history as the pigmies of the Congo basin. They are spread across the East African countries with substantial representation in Burundi, DRC and Rwanda (Magranella, 2000). They live in the forest and were predominantly hunters and potters. Physically, these people are a member of a worn out and quickly disappearing race, with well-defined somatic characteristics: small, chunky, muscular and very hairy; particularly, on the chest (Rumiya, 1992).

The group called the Bahutu migrated and settled in Rwanda around the 5th to the 11th Century. They were farmers predominantly, and they settled in the land cohabiting with the Twa and practicing farming. In appearance, they were distinct from their hosts. They are general short and thick with a big head, a jovial expression, a wide nose and enormous lips (Harroy 1984). Harroy describes them as extroverts who like to laugh and lead a simple life (Harroy 1984 p.26).

The Tutsi on the other hand were a group of herdsmen who arrived later to Rwanda around the 14th Century but soon assumed a superior status than the Hutu and the Twa, because of their natural and economic endowments (Prunier 2010). In Harroy's word "the Mututsi of good race has nothing of the Negro, apart from his color. He is usually very tall and thin with thin nose and fine lips and gifted with a vivacious intelligence. He is a natural-born leader, capable of extreme self-control and of calculated goodwill" (Harroy, 1984). These perceived objective and subjective attributes of the three ethnic groups later became markers of class distinctions and social mobility in pre-colonial Rwanda.

Scholars writing on the historiography of Rwanda note that there are competing interpretations of the role of ethnicity in Rwanda's historical events. The version available to a stranger in Rwanda depends largely on the ethnic lineage of one's first contact in Rwanda – Hutu or Tutsi. The Tutsi narrative suggests that the people of Rwanda, called the Banyarwanda, were peacefully co-existing ethnic groups until they became subjects of colonial authorities (Corey, and Joireman 2004). Corey and Joireman (2004) commented that it was not surprising that the Tutsi version is the official position of the current Rwandan government since the government is trying to create a unifying historical narrative that will contribute to, not inhibit, political reconstruction and ethnic reconciliation. On the other hand, the Hutu account stresses that the ethnic discord among the people is rooted in the pre-colonial history of Rwanda and that these previously existing divisions were merely exacerbated by changes wrought by colonial domination. This version identified the existence of class tensions and ethnic hierarchy in the Hutu-Tutsi labour and social relations as early as the 15th century (Vansina, 2005; Takeuchi, 2000). During this period, the Tutsi, who were the minority, were said to have used their ownership of cattle and advanced combat skills to achieve economic, political, and social control over the Hutu majority. Land ownership was also taken away from the Hutu and became the property of the Tutsi King, *Mwami*. The labour relations between the groups over time took the form of a client-patron contract called the Ubuhake, which was a feudal-type class system in which, land and cattle, and therefore power, were concentrated in the hands of the Tutsi minority while the Hutu indentured their labour and agricultural product to a Tutsi lord in exchange for the

use of land and cattle. It got to a stage that Hutus who probably through dint of hard work became successful and owned cattle were referred to as 'Tutsis'. 'Tutsification' or process of ennoblement (Magranella, 2000) implies the crossing or climbing of the social ladder by a Hutu. The 'tutsification' of the Hutu was a socio-economic contrivance which developed and thrived on the naivety and generally good nature of the Hutu which unwittingly subjugated its identity to the Tutsi (Magranella, 2000; Prunier, 2010). The 'Tutsified' Hutu jettisoned his ethnic identity in a bid to move to the 'upper rung' of the social ladder created by the Tutsi and later entrenched by the colonialists for their own benefit. This in itself was a confirmation of the consciousness of class divisions and the submission of the Hutu to the Tutsi in the pre-colonial days.

Colonial influences

Evidence from Rwanda's political history suggests the German and Belgian colonial rule polarised and entrenched ethno-politics and class structures in the society. In a familiar European pattern, the colonial rulers introduced new notions of identity in Rwanda and preyed upon old tribal rivalries in order to solidify their rule and profit. When they arrived in the 1800s, their encounter with the local population was shaped by imperialist ideas about race that assumed that all people of the world fit into distinct and clearly defined groups, and that these groups could be ranked hierarchically in terms of their capacities (Longman, 2001). They found the Tutsi physical appearance as having closer evolutionary link to the Europeans and considered them naturally superior to the other groups (Harroy, 1984). This mistaken interpretation of the Rwanda society was based on a Hamitic hypothesis that the Tutsi pastoralist

from the North brought civilization to the rest of the continent through conquest or infiltration (Appiah and Gates, 2005). This hypothesis persisted into the 1960s, as evidenced by the *information Bulletin on Ruanda Urundi*, issued by the Public Relations Office in Belgium in 1960 (Collins, 2014).

Members of the Rwanda and Burundi elites and intellectuals, who had been seeking to centralise and consolidate power, reinforced this myth about the Rwanda society and many of them worked with Catholic missionaries to develop a history that would conform to European racial expectations (Longman, 2001). With race as a stabilising ideology, the Germans administered the country through an indirect rule system based on existing political structures created by the Mwami and conducted military operations against Hutu Chiefs in the North that had not come under the Mwami control. When the Belgians gained control of Rwanda and Burundi in 1923, they also favored the Mwami and his chiefs, who were mostly a Batutsi ruling elite (Keane, 1995). The Belgians did not only maintain local power structures but centralised the political system, eliminating local political variations including abolishing autonomous Hutu chieftaincies. They also institutionalised Tutsi dominance and solidified these divisions through the issuance of ethnic identity cards in 1926 (Kuperman, 1996).

The impact of identity cards on ethnic identities in Rwanda was profound. While group membership had previously been flexible and there were many criteria for ethnic identification – birth, wealth, culture, place of origin, physical attributes and social and marriage ties, the Belgian documentation of each person's group identity made the possibility of changing identities through traditional

means extremely difficult (Longman, 2001). It was during this latter period that ethnic identities became politically salient category that was elevated above regional, clan, and other identities.

Mamdani (2014) notes, that for the Hutu peasantry, Belgian colonialism was harsher than previous forms of administrative experiences. To be Hutu in Belgian Ruanda-Urundi meant to be denied opportunities for employment, to completely lack political power, to pay heavy taxes, and to be kept in an economically marginalized position. This institutionalized racism was also practised in the school systems and administration. "The policy was to restrict admission to Tutsis, but where Hutus were admitted they were streamed into an inferior system. The Tutsis were taught in French and prepared for administrative positions in government, while Hutus were taught in Kinyarwanda and prepared for little more than manual labour" (Collins, 2014). These discriminatory colonial policies transformed Hutu, Tutsi, and Twa into relatively rigid ethnic categories of great political significance, making it a determinant of people's life opportunities (Longman, 2001). The economic, social, and political privileges accrued to the Tutsi minority over the Hutu majority culminated into civil unrest in 1959 with the Hutus launching a rebellion against the Belgian colonial powers and the Tutsi elites.

Post-independence challenges and the 1994 genocide

Nationalist revolution against colonialism can be seen as a prelude to ethnic conflict over the economic and political spoils of independence. When the Hutus won the 1960 Belgian-run elections, its leaders under the administration of *Gregoire Kayibanda* saw

it as a pay-back opportunity to exclude the Tutsi from all governmental positions and to consolidate economic power. This action exacerbated existing conflict between the Hutus and Tutsi, with thousands of Tutsi's forced to flee to neighboring Burundi and Uganda.

In the face of the mounting insecurity, the army chief of staff, General Juvenal *Habyarimana*, seized power in a coup on 4 July 1973 and pledged to restore order. But instead set up a one-party state where a policy of ethnic quotas was entrenched in all public service employment. Tutsis were restricted to nine percent of available jobs and fewer political seats. This pattern of exclusion and structural violence became a constant occurrence throughout the 70s and 80s causing many more Tutsis to flee Rwanda to neighboring countries especially Uganda.

In 1986 in Uganda, Tutsi exiles were among the victorious troops of Yoweri Museveni's National Resistance Army who took power by overthrowing the dictator, Milton Obote. The exiles then formed the Rwandan Patriotic Front (RPF), a Tutsi-dominated organisation, which was committed to overthrowing the Rwandan government (Keane, 1995). A military attack launched against Rwanda in 1990 by the RPF generated a number of proactive reactions from the Rwandan government headed by President Habyarimana (Miskel & Norton, 1996). The president later agreed to negotiate a power sharing arrangement with the RPF under conditions laid out in the Arusha Peace Agreement of 1993 (Jones, 1997). Although many of the Rwandan government top-notches did not accede to this agreement, President Habyarimana pursued it with vigor struggling against the pitfalls created by this aggrieved counterparts in government. However, in April 1994, an

aircraft bearing both President Habyarimana of Rwanda and his Burundian counterpart, President Cyprien Ntaryamira was shot down at take off at the Kigali airport.

The death of the Rwandan President in the crash opened fresh hostilities which degenerated into genocide. In a period of only 100 days, an estimated 800,000 to 1 million Tutsi and moderate Hutus were murdered by their Hutu neighbours, and one-third of the Batwa community was also wiped out. People were subjected to acts of physical and emotional cruelty, rape, body mutilation, and coerced participation in the slaughter of loved ones (King, 2011). The genocide destroyed many other aspects of life including social networks, friendships, legal structure, and properties. On July 19, 1994, Kagame-led RPF gained control of the country, declared cease fire and proceeded to form a new government. Corey and Joireman (2004) noted that the violence did not quite end in the 1994 as some 6,000 civilians mostly Hutus were killed in 1997, three years after the official end of the genocide. The new government that was formed was initially led by Pastuer Bizimungu (a Hutu) but after his resignation in 2000, Paul Kagame (a Tutsi) took over the reins of power and has remained the president to date.

This historical account provides a broader context of the drive for identity reconstruction and elimination of ethnic ideologies which the Kagame-Government believes reinforced the 1994 Genocide against the Tutsi. The government's sensitivities to ethnic polarisation and divisionist ideologies are therefore understandable, but the manner in which it tries to foster national unity and reconciliation by implementing policies and laws aimed at entirely eliminating ethnic

identities and associations, has been critiqued. Of particular concern is the impact of such policies on traditional judicial reintegration programmes such as the Gacaca.

CONTEXT AND METHODOLOGY

The analysis done in this paper is based on an explorative field study of the practicality and impacts of the government imposed nationalism policy vis-à-vis ethno-cultural mechanism of conflict resolution in Rwanda. Participant observation, case studies, in-depth interviews (n=34) and focus group discussions (n=3) were adopted during data gathering in Rwanda. The in-depth interviews were conducted with a variety of people including top government officials, director of NGOs, finance personnel, educationists, conflict resolution consultants, lawyers, professors, members of the Gacaca court, and ordinary Rwandans (men and women interviewed separately). The FGD sessions were organized in Kigali, Gitarama and Rulindo among cross section of citizens comprising both insiders and outsiders in the Rwandan conflict. The group selection comprised a Hutu-(male) a Tutsi (female) two representatives of international organisations, two Rwandan youths (female/male) and three other people of mixed interests. Prior consent of participants was obtained and their right to privacy was protected throughout the session. Participant's responses were tape recorded and noted taken by the research assistants. The data collected from the in-depth interview and case studies were crossed checked with FGD participants while comments from FGD groups were compared to existing literatures to eke out areas of agreement, contention and divergence; thereby ensuring triangulation in data gathering and analysis (Tomlinson, 2013).

The first author also enlisted as an intern with the National Service for Gacaca Jurisdictions where she was able to access formal documents on the activities of the *gacaca* courts. A limitation encountered in this study is that the Gacaca Courts were winding up at the time this study began. Hence the researcher was not able to witness a life proceeding of the Gacaca court. However, through video clips and newspaper reports, the researcher was able to pick a few useful scenes of different cases handled by the Gacaca courts at different cells and sectors of the country. These were used at appropriate points to illustrate relevant issues in this paper. Another limitation is that this study was not able to access information from any traditional institution as they were practically non-existent at the time of fieldwork. Traditional institutions were destroyed along with the political identities of the Rwandans in the 1959, the time of the first Hutu onslaught on the Rwandan Tutsis who were believed to have dominated the political environment to the detriment of the Hutus (Aloys, 2012; Melvern 2009). The study gained more by adopting an interactive approach which enhanced deeper penetration into the social-cultural fabrics of the Rwandan society, by eking out salient bits of necessary information. Such grounded research can reveal subtleties and complexities that could go undetected through the use of more sophisticated quantitative measures (Ndiyo 2005 p157). Data was subjected to thematic and content analysis.

Peacebuilding and social re-integration

Since Rwanda's criminal justice system was decimated by the genocide, new judicial structures were set up to punish offenders and address victim grievances. The first legal mechanism in the Rwandan genocide context was the United Nations Interna-

tional Criminal Tribunal for Rwanda, the ICTR, which started work in 1995. This was a special court set up in neighbouring Tanzania to prosecute accused leaders of the genocide. Trials at the ICTR were extremely slow such that close to 10,000 people died in prison before they could be brought to justice (BBC, 2012). The Gacaca courts were therefore set up by the Rwanda government in 2002 to clear the backlog; giving hundreds of thousands of genocide suspects a chance at trial (Longman, 2010; UN, 2014).

Gacaca is a local, participatory legal mechanism that seeks to blend punitive and restorative justice. The *gacaca* courts was loosely based on Rwanda's customary legal institutions and the 2001 organic law. Judges are selected from local residents, and render judgment based on testimony provided by local residents. The hearings held gave communities a chance to face the accused and give evidence of what really happened, why, and how it happened. This is why the Gacaca is seen as a judicial strategy to achieve truth, justice and reconciliation among Rwandans (Rettig, 2008; Takeuchi, 2011). In fact, some scholars describe the Gacaca as a truth commission that combine the rule of law with psychosocial goals in the hope to break systemic cycles of violence and facilitate reconciliation (King, 2011). Usually the courts gave lower sentences if the accused was repentant and sought reconciliation with the community (UN, 2014). An estimated 2 million cases were tried in 10 years, and about 65% of defendants were found guilty (BBC, 2012). Some of whom received long jail sentences with hard labour, and other that confesses their guilt were released on conditions of community service. Although the courts were closed in June 18, 2012, it has not escaped criticisms and still to be fully understood was the import of the

ban on ethnic pluralism in the courts' reconciliation process.

Issues of due process, credibility and politicized justice at the Gacaca are common criticisms in the literature (Prunier, 1997; Dorsey, 2000; Mamdani, 2001). Rettig (2008), however, argued that the gacaca might have also fostered resentment and ethnic disunity in Rwanda. Starting with the adjudication of cases - this was divided along ethnic lines, although both groups had confidence in the process and some expectations about its outcomes (Longman *et al.* 2004). On the one hand, Tutsi survivors had high expectations for the Gacaca because they believe it would punish those who perpetrated hate crimes against their family and loved ones, thereby fighting against impunity. On the other hand, Hutus expected that the process would release innocent detainees who had been wrongfully jailed; they therefore preferred milder punishment (Takeuchi, 2011). Although gacaca comprised a majority of Hutu judges and general attendees, a bone of contention by some defendants is the credibility of witnesses' testimonies and memory (Pozen *et al.*, 2014) since the trials are taking place more than a decade after the events, and memories are not always a reliable tool to affirm or refute testimonies (Rettig, 2008). What is more, the administration of cases was by judges who are not trained jurist and there are no procedural safeguards in place to protect defendants from lies (Rettig, 2008; African Rights 2003). Furthermore, Hutus expected that massacres committed against the Hutu civilians by members of the RPF (mostly Tutsi) would also be tried in the Gacaca courts but this did not happen. Rather member of the RPF who participated in the genocide were tried in military tribunals, which have delivered very

mild judgments (HRW, 2008). This lopsidedness in judgment may have deepened resentment and social distrust among the two ethnic groups; thus revealing the limited contribution of the gacaca to truth, justice, and reconciliation (Rettig, 2008).

Additional criticism against the gacaca was the lack of attention to the gender dimensions of the hearings. In an in-depth interview conducted with 16 women who testified in the gacaca courts, Brounéus (2008) found that women were threatened and harassed before, during and after giving their testimony in the gacaca. Her work showed that trauma, ill-health, isolation and insecurity dominated the lives of these testifying women. Criticisms from survivors and the survivors organisation Ibuka were instrumental in bringing such sexual violence cases to the national courts in 2004. Although the government reinstated gacaca's jurisdiction over such crimes in 2008 due the backlogs of genocide and non-genocide cases tried at the national courts (Clark, 2014). The national court also investigated cases about how many people were vulnerable to genocide ideology including cases that violated the state ban on ethnic divisions and diversity. Esperance Nyirasafari (2005), a prosecutor in the Rwandan national court noted that the genocide ideology still exists in some parts of Rwanda in spite of the relative peace that is perceived. She maintains that:

The problem of the genocide ideology in Rwanda has escalated not only in Rwanda but also in several parts of the Great Lakes Region. It is indicated by acts of discrimination, verbal attacks against survivors of genocide or any potential witness in genocide trials, burning of houses, killing of livestock and sometimes, killing people.

The fear of harsher punishment particularly for the Hutus might have contributed to the

harassment of people and encouraged verbal abuse against witnesses. This perhaps was the reason why the government introduced the Organic Law n 13/2008 (amending previous organic laws), which requires suspects to ask for forgiveness as well as show remorse in exchange for lighter sentence. To some, such an approach was a favourable way to mend the wounds of the past rather than revenge seeking. Others however felt the plea bargain option available to genocide perpetrators provoked more anger among survivors – revealing the challenges of the *gacaca* faced in trying to strike a fine-balance between punitive and restorative justice.

Reconciliation, truth telling and freedom of expression

Truth is a major prerequisite for true reconciliation without which attempts to forge peaceful co-existence among citizens might prove a mirage. In an effort to rebuild the fragmented Rwandan society, all peace-building effort need be geared towards true reconciliation borne by an inclusive and participatory central government. Government of Rwanda's central role in the reconciliation process, although crucial, has been a progressive drift towards authoritarianism (Zorbas, 2004). Freedom of expression and other democratic rights are under attack (Clark, 2014). People could not publicly challenge the Rwandan government's official narrative of the genocide because it is deemed illegal under the country's genocide ideology law (HRW, 2013). Genuine reconciliation is therefore replaced with an imposed one – where it is a taboo identifying someone as either Tutsi or Hutu, and where journalists may be imprisoned when speaking of the genocide “in which Rwandans killed one another instead of the genocide

‘in which Tutsi were killed by the Hutu’”(Kok, 2012). According to one of the interview respondents:

‘that the genocide ideology exists without doubt, but help is needed in order to balance the fight against genocide and to defend the liberty of expression and to defend a free press because reconciliation can only be achieved if there is a possibility to speak about it all’ (Magsam , 2005: Interview).

This statement corroborates Thomas and Nagy (2011)'s findings which showed that the *gacaca* process tends to create a climate of fear of the government in ordinary Rwandan's lives rather than empowering their individual efforts to reconcile. Reconciliation is not achieved by seeking ways to disengage or minimize conflicting groups' affiliations and freedom of speech, but instead, it is built on mechanisms that allow both sides of a conflict to relate with each other based on mutual respect, understanding and shared humanity. People need opportunity and space to express and to share with one another the trauma of loss, and the anger of grief at that loss, and the anger that accompanies the pain and the memory of injustices experienced (Lederach, 2010). Eliminating ethnic identity and truth-telling cannot reduce the traumatic impact of the genocide on the psyche of the average Rwanda. The victim essentially needs to be able to talk about it, express shared emotions with others, relieve his/her losses, and even laugh away some comic instances that punctuated the grief.

The issues of truth-telling and democratic rights to free speech are perhaps linked to the strongest criticism of the *gacaca* raised by many scholars which is that the *gacaca* helped to further centralize and consolidate state power rather than provide meaningful justice

to survivors (Ingelaere, 2009). Takeuchi (2011) substantiating on this claim notes that *gacaca* does not only help to eradicate the culture of impunity by punishing the criminals, it also helped to cement the legitimacy of the RPF. As a state-building tool it helped in a practical sense to decongest the number of detainees in the prison (a problem international human rights organisations such as Human Rights Watch pressured Kagame address) but also in a political sense to entrench political order established by the RPF.

The criticisms made by Ingelaere and Takeuchi are not completely unwarranted. Since Kagame-RPF government came into power, political space at the national level has become restricted and citizens have few legal avenues to express dissent or to vote in free and fair elections. “The result of the 2003 election revealed an overwhelming victory for Kagame; he received 95% of the vote. This perhaps was because the biggest opposition party supporting the rival candidate Faustin Twagiramungu, the Mouvement Démocratique Républicain (MDR), had been dissolved just before the election” (Takeuchi, 2011). A similar situation occurred in the 2010 presidential election, when a Hutu woman, Victoire Ingabire, who had declared herself as a rival candidate, was arrested and charged. She was “associated with a terrorist group, propagating the Genocide ideology (Takeuchi, 2011). This appears to corroborate the suspicion of some observers who believe the prevailing peace in the land is a result of the heavy-handedness of the government. Zorbas (2004) cautions that ethnically perceived discontent may erupt someday when the political power of the RPF becomes weaker.

Balancing the story of little achieve-

ments

Clark (2014) warns against accepting the Rwandan governments’ overtly romantic depiction of the *gacaca* as an organic decentralized justice, but also says we should be skeptical of characterizations of the *gacaca* as simply another means for the state to entrench its power and influence in the country. Based on fieldwork conducted over ten years, including more than 650 interviews and observations of 105 *gacaca* hearings, he argues that both perspectives are reductionist and fail to acknowledge the complex ways in which Rwandan citizens engage with the state and participate in government-initiated community-level processes. The agency of people – their obligations to their families and clans were key structural dimensions that shaped the *gacaca*. Similarly, the government displayed some pragmatic responsiveness to forms of popular agency and locally expressed problems with the *gacaca*, which highlights that some aspect of popular particular could alter government policy (Clark, 2014 p. 206). It is also important to evaluate the *gacaca* in the light of volume of cases it tried and the resources available to it. The ICTR, for example, completed 75 cases with a staggering \$1 billion budget; in contrast, the *gacaca* processed 2 million cases at an estimated total cost of \$65 million (National Service of *Gacaca* Jurisdictions, 2012). Arguably, the *gacaca* does represent a historic victory in the administration of justice, despite its many shortcomings (Brehm *et al.*, 2014).

Socio-economic reforms, peacebuilding and recognition of cultural rights

The closure and the acclaimed success of the *Gacaca* made it imperative for the people of Rwanda to find meaningful and effective ways to coexist and work together to build a strong, prosperous and democratic nation. The current government has made incredible

socio-economic achievement but there is still a lot to be done in the area of peace-building and democratic reforms. On the socio-economic end, Rwanda's ranking on the Human Development Index¹ (HDI) out of 187 countries improved from 167th to 151th between 1980 and 2013 -signifying an increase in HDI value from 0.291 to 0.506 a gallop of 73.8 percent or an average annual increase of about 1.69 percent (UNDP, 2014). As at 2019, it has risen to 0.543, positioning it at 160 out of 189 countries. The life expectancy in Rwanda also increased from 50.44 in 2002 to 63.56 in 2012; life expectancy for women is 65.16 and for men 61.91 (WHO, 2013). Similarly, infant mortality rate decreased from 92 per 1,000 live birth in 1990 to 39 per 1,000 live birth in 2012 (UNICEF, 2014). Expected years in school have increased from 5.9 in 1995 to 13.2 in 2012 while people's Purchasing Power Parity (PPP) seen as gross national income (GNI) has also seen some slight improvement from \$590 in 1995 to \$620 in 2013 (World Bank, 2013). Rwanda is also celebrated for its attraction of foreign investment. Terms and conditions for doing business in Rwanda are considered generous. These achievements are laudable considering that the country was left in ruins after the 1994 genocide, however, stifling of political freedom and repression of cultural rights leaves much to be desired.

Relying on an ethnic ban and on the *gacaca* process to heal psychosocial trauma and eliminate divisions in Rwanda underestimates the depth of suffering that the genocide created both at the individual and collective levels in the Rwanda society (King, 2011). Rwandans identify themselves

through their cultural and ethnic identities and the essence of national unity and cohesion is to facilitate tolerance and eventual reconciliation among the different groups. Ethnic cohesion and reconciliation are long arduous processes which require creative process of socialization to achieve. Ethnic identity cannot be obliterated by mere letters of the law. It is a strong imprint on the psyche of an individual and is closely linked their cultural rights. Cultural rights – particularly those pertaining to the preservation of cultural heritage, the cultural identity of a specific people, and cultural development - are considered “peoples’ rights (Lyndel, 1998). They often shape and define their collective identities and are closely related to other individual rights and fundamental freedoms such as the freedom of expression, the freedom of religion and belief, the freedom of association, and the right to education. States have an obligation to respect, protect, and fulfil each these rights.

The Rwandan government's elimination of ethnic identity in the country infringes on the cultural rights and identity of people of particular ethnic group. It takes away their right to be different; which is the reflection of the human rights principle of equality. The right to be different implies the right not be excluded, humiliated, exploited or forcibly assimilated (Donders, 2008). Article 27 of the International Covenant on Civil and Political Rights speaks of the rights of persons belonging to ethnic, religious, or linguistic minorities to enjoy their own culture ..., in community with the other members of their group (ICCPR, Art 27). Article 15 of the International Convention on Economic, Social and Cultural Rights (ICESCR, 1976) also

¹ The HDI is a summary measure for assessing long term progress in three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living (UNDP, 2004)

refers to the right of everyone to take part in cultural life. While government's ban on ethnicity violates the cultural rights of all ethnic groups in Rwanda, the group worst hit by the government's refusal to recognize the existence of ethnicity are the minority and indigenous groups such as the Batwa. Since the Batwa have been historically marginalized and discriminated against by both the Hutus and Tutsis – recognition of its distinct identity has been extremely important (MRGI, 2008). In its 2008 report, Minority Rights Group International (MRGI), note that the main Batwa organisation, the Community of Indigenous People of Rwanda (CAURWA), was forced to change its name as the government refused to renew its charity license until it had dropped the word 'indigenous' from its title.

In the light of the above, the ban on ethnic identity can be seen as a policy of assimilation which forces people to assume either a new sense of cultural identity or embrace the cultural practices of the dominant political class (in this case the Tutsis) including their social norms, values, customary beliefs, dressing and food. In other words, people have to abandon any material or social traits to their pre-existing identities and heritage. They will also have to teach their children myths rather than the truth about the past. As mentioned earlier, different ethnicities in Rwanda hold varying historical account about Rwanda. Each account speaks to unaddressed legacies of violence and marginalization that require specific practice of moral and social repair in the Rwandan reconciliation discourse.

Beyond the issue of indigenous identity, the *Batwa* suffer severe economic and social marginalization. Rwanda's impressive economic growth rates have not trickled down

sufficiently to the *Batwa*. They have limited access to education, health, and other social services, compared to their Hutus or Tutsi counterparts. The UN Independent Expert on Minority Issues who visited Rwanda in 2011 raised concerns about the treatment of the Batwa Community stating that they live "in conditions of great hardship and poverty on the margins of mainstream society" (MRG1, 2012). This problem underscores the discrimination and social hierarchies concealed by a blind policy against ethnic diversity.

CONCLUSION

The truth of ethnic diversity in Rwanda must be acknowledged, accepted and worked with. This is the subjective impact of conflict which must be addressed.

The claim to homogeneity of the Rwandan society and the suppression of ethnic affiliation or recognition tendencies by the government of President Paul Kagame of Rwanda is a move that could portend a worse calamity in the society in the near future.

In an effort to rebuild the fragmented Rwandan society, all peacebuilding effort need be geared towards true reconciliation borne by an inclusive and participatory central government.

The truth of ethnic diversity in Rwanda must be acknowledged, accepted and worked with.

Ethnic identity cannot be obliterated by mere letters of the law. It is a strong imprint on the psyche of an individual. Rwandans need to be able to first of all identify themselves as individual entities before they can grasp the essence of cohesion which would facilitate tolerance and eventual reconciliation with other people and by extension

groups.

African nations need to come to terms with the reality of cultural diversity of their people and begin to address the issue by recognizing, accommodating, respecting and reflecting such diversities in their constitutions so that all the existing groups are catered for.

Social integration cannot be forced but encouraged. All peacebuilding skills, including persuasion and prayers, must be employed to bring the people together again. The Rwandan government would need to reappraise its laws particularly those establishing and guiding the activities of the National Commission for the Fight against Genocide (CNLG).

The power of communication in uniting fragmented ethnic groups cannot be over-emphasised. A free-flowing communication system can engender mutual trust among the people thereby fostering uninhibited interaction among them. African governments need to pay attention to this area of governance to be able to achieve peace among their people.

African traditional rulers should be more involved in conflict resolution activities in their domains through established, recognized and active traditional institutions.

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