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# Donor-Driven Justice and its Discontents: The Case of Rwanda

Barbara Oomen

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## ABSTRACT

Never before was a process of doing justice driven so strongly from the outside as in post-genocide Rwanda. Not only did the 1994 genocide lead to the founding of the International Tribunal, but it also induced intensive donor involvement in domestic attempts to ‘break the cycle of hatred’ — from the work done by the national courts and the Unity Commission to the *gacaca*. In this sense, Rwanda became the forerunner of a much wider trend, towards a judicialization of international relations, for instance through an emphasis on international criminal law. However, the past decade of donor involvement in Rwanda in general, and the case of the *gacaca* in particular, show us how this specific — technocratic, de-contextualized — emphasis on justice might seem innocuous at first glance, but carries dangers within it, particularly if it takes place in an increasingly autocratic and oppressive political environment like that of contemporary Rwanda.

## INTRODUCTION

*“If we do injustice in the course of delivering justice, we are doing something wrong”<sup>1</sup>*

These days, the office doors in Rwanda’s Ministry of Justice carry signs like ‘Belgian Technical Cooperation’, ‘European Union’ and ‘Coopération Française’. Placards on brand-new face-brick courthouses thank the Canadian, the Belgian and the Dutch people, and NGOs like Oxfam. Inside these courthouses, Cameroonian, Senegalese, French and Mauritanian lawyers funded by *Avocats sans Frontières* and *Réseau des*

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1. Binaifer Nowrojee, Human Rights Watch; public lecture at Columbia University (6 April 2004).

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Citoyens defend *génocidaires* in front of judges trained by the same organizations. The prisoners in pink who stand before them are fed by the Red Cross, while the prisons they stay in are largely managed together with organizations like Penal Reform International. The *gacaca*, the local-level courts they might be facing, are financed, organized and to a large extent conceived by international donors, and attended by a myriad of monitors from different NGOs, as well as university researchers scribbling frantically in their writing pads. The Landrovers that stick out like white mushrooms on Rwanda's thousand bright-green hills, and that have become so characteristic of the large-scale donor presence, are testimony to human rights programmes in all varieties imaginable. It is estimated that over a 100 justice-related projects have been financed in Rwanda in the past decade (Uvin, 2003: 116) and that, in the words of one project co-ordinator involved: '80 per cent of the budget of the Ministry of Justice comes from outsiders'.<sup>2</sup>

How does the fact that the justice process within Rwanda is so strongly conceived, financed and driven by that nebulous entity called the International Community — in all its guises — affect its workings and its legitimacy? What made donors decide to focus so strongly on 'doing justice', as opposed to other forms of assistance in the first place? And how has this particular form of development co-operation worked out in the context of Rwanda, with its strongly autocratic political leadership? For all that has been written on Rwanda and its 1994 genocide by scholars and policy-makers alike, these are questions that have received surprisingly little attention.

Yet they are questions that carry a wider significance than only to those who are interested, practically or academically, in the particular way in which Rwanda reconstituted itself after its majority Hutu population turned against their (predominantly) Tutsi neighbours in April to June 1994, leaving an estimated 800,000 people dead.<sup>3</sup> Justice, over the past decade, has become one of the main avenues of international co-operation all over the world. There are the far-reaching strides being made in international criminal law by the International Criminal Tribunals for Rwanda and for the Former Yugoslavia, and now in the International Criminal Court, and by semi-internationalized initiatives in Sierra Leone, East Timor and Cambodia. There are the laws, criminal and otherwise, passed and enacted in those areas under 'international administration' like Kosovo, Eastern Slavonia, Iraq and Afghanistan by the foreign powers governing them (Berdal and Caplan, 2004). But even in countries which retain more sovereignty, the paradigm of 'good governance' has caused a redirection of donor funds towards a wide range of legal activities formerly considered the prerogative of national

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2. Interview with L. Assaya, Belgian Technical Cooperation, Kigali (17 March 2003).

3. See Joint Evaluation of Emergency Assistance to Rwanda (1996: 9). Estimates of the number of dead vary from 1 million (the position of the Rwandan government, see [www.rwanda1.com](http://www.rwanda1.com)) to 500,000 (Human Rights Watch, see [www.hrw.org](http://www.hrw.org)).

states: building courts, training judges and lawyers, writing laws and enacting them. As Ignatieff put it, human rights and rights-based action have become one of the prime manifestations of globalization (1999: 13).

Rwanda not only forms a key example of this worldwide trend towards a larger emphasis on justice issues in international co-operation, but could also be considered one of the countries to have paved the way for it. There are a number of reasons for this. First of all, the sheer atrocity of the 1994 genocide, with the live coverage of machete-wielding farmers with death lists in their hands and thousands of bloated bodies on the banks of Lake Victoria, spurred human conscience towards the 'age of implementation' of those human rights treaties, like the Genocide Convention, that had laid dormant for nearly fifty years.<sup>4</sup> This sense of responsibility was heightened by the far-from-clear conscience of the international community, which not only pulled out its diplomats, peacekeepers and aid-workers when they were most needed, but also hesitated to attach the label 'genocide' to Rwanda's killings, adding legitimacy to the Hutu government's endeavour (Barnett, 2002; Power, 2003). Furthermore, practically all analyses of the genocide pointed at the prevailing 'culture of impunity', in particular concerning ethnic-based killings in the early 1960s and late 1970s, as one of the main reasons for what happened in 1994 (Mamdani, 2002; Prunier, 1995). 'Breaking the cycle of hatred', as Martha Minow put it, was deemed to be a first step towards repair (Minow and Rosenblum, 2003). Doing justice also seemed imperative as the main instigators of the genocide — the political leaders said to have drawn up the death lists, the owners of the Radio Television *Libre des Mille Collines* that incited the violence, the leaders of the militia — were so clearly identifiable. Simultaneously, the fact that hundreds of thousands of Rwandans had been involved in the killings and that, by 1995, many of them were sitting in jail awaiting some form of punishment, called for a more creative approach than classic state-led retributive justice.

The Rwandan genocide might have had specific characteristics that induced intensive donor involvement in attempts to 'break the cycle of hatred', from the work done by the International Tribunal and the national courts, to the National Unity and Reconciliation Commission (NURC) to the *gacaca*. But it also very much fitted into a global trend towards a judicialization of international relations that goes much further than criminal justice in the wake of massive human rights violations alone. In the following pages, I will first discuss how and why this process took place on a worldwide scale. Subsequently, I concentrate on the past decade of donor involvement in Rwanda in order to demonstrate that this specific — often technocratic, de-contextualized and above all apparently a-political — emphasis on justice might seem innocuous at first glance, but that it carries dangers with it.

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4. The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by Resolution 260 (III) A of the UN General Assembly on 9 December 1948.

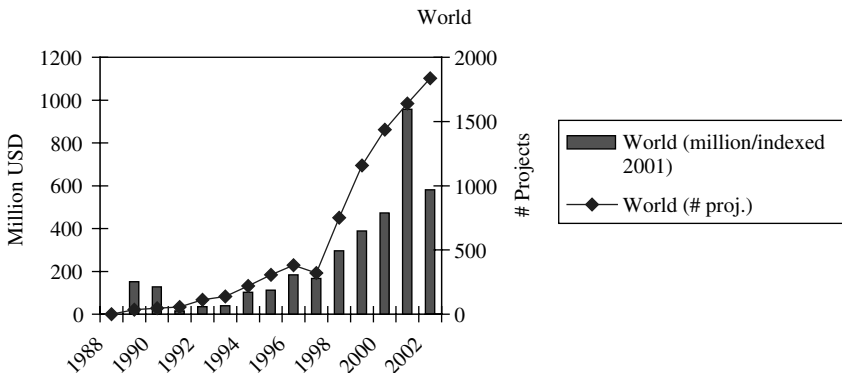
This becomes especially true when it takes place in an increasingly auto-crat and oppressive political environment like contemporary Rwanda.

## THE JUDICIALIZATION OF INTERNATIONAL RELATIONS

The past decade has brought a number of fundamental changes in international relations, many of which concern a rethinking of the notion of national sovereignty. One element of this wider process is what might be labelled a 'judicialization of international relations', an increased emphasis on the law (in particular human rights) and legal institutions in nations' dealings with one another. Over the past years, notions such as development co-operation have been reformulated in legal terms and more and more international effort has gone into building courts, writing laws, punishing perpetrators of human rights, supporting human rights NGOs and generally promoting 'the rule of law' abroad (Mokhiber, 2000).

This is a process that is difficult to quantify as, taken in its widest sense, it involves NGOs, bi- and multilateral donors and activities as diverse as attaching certain conditions in the sphere of 'good governance' to loans, to financing international tribunals or programmes to heighten local knowledge of human rights. Yet, if one merely looks at the OECD data on the amount of dollars transferred to 'developing' and 'transitional' countries under the headings of 'human rights' and 'legal and judicial development' (see Figure 1), one can see

Figure 1. OECD Data on Expenditures on Legal International Co-operation



Source: OECD CRS Database.<sup>5</sup>

5. OECD CRS Database on aid activities, <http://www.oecd.org/dac/stats/idsonline>, query for all donors, all flows with the exception of equity investment, recipients: nations and UN-organizations, CRS purpose 15030 and 15063. With thanks to Janus Oomen and Herman Lelieveldt for compiling the graphs.

an increase from less than US\$ 500,000 in 1988 to a staggering US\$ 581 million in 2002 (which is more than a million times as much). Similarly, the projects carrying these labels increased in number from one in 1988 to 1,836 in 2002. Cardenas, to quote another telling example, estimates that human rights assistance by the United Nations alone increased 100-fold in the period 1980–95 (Cardenas, 2003).

The rise to prominence of the law in international relations was manifest in a number of specific fields, each with its own dynamics and rationales. Most striking, perhaps, was the foundation of international tribunals which, for the first time, worked on the actual implementation of the Genocide Convention that had been adopted in 1948. While the International Criminal Tribunal for Former Yugoslavia (ICTY) was founded first, in 1993, its sibling, the International Criminal Tribunal for Rwanda (ICTR), was the first to convict a government leader for genocide.<sup>6</sup> In their wake, hybrid forms of semi-international tribunals arose on the debris of virtually every post-conflict setting after 1994 — the tribunals in Sierra Leone and Cambodia, the Truth Commission in Guatemala — run by the international community, NGOs and local actors. Often, there seemed to be a notable over-investment in these internationalized forums, at the expense of the domestic legal system. Marchal, for instance, reports how the Special Tribunal in Sierra Leone has an annual budget of US\$ 58 million, while there are only two judges and less than twelve lawyers in the country (Marchal, 2003: 13–14).

While these forums of international law — with the International Criminal Court (ICC) as the culmination of their efforts — could still be considered as belonging to a separate sphere and operating alongside domestic legal systems without transforming them, the arrangements made under headings such as ‘transitional justice’ and ‘nation-building’ in recent years have gone a whole lot further (Dobbins and McGinn, 2003). Governance by the United Nations Transitional Administrations in areas like Eastern Slavonia, Kosovo and East-Timor are best described with historically-sensitive labels like ‘trusteeship’ or ‘protectorate’ (Berdal and Caplan, 2004). In all cases, they are involved in drawing up laws and implementing them. The rise in the number of countries essentially governed by outside forces has also led to a lot of work being done on prefabricated ‘justice packages’ like criminal codes ready to be implemented in situations as diverse as Afghanistan, Iraq and Liberia (Henkin, 2003: 5; ICIS, 2001). That the application of these legal arrangements is far from transitional is demonstrated by Cambodia, where the UNTAC laws adopted to replace the socialist predecessors remain in place today (Mokhiber, 2000).

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6. Prime Minister Kambanda, who was sentenced to life imprisonment for genocide and other crimes against humanity on 4 September 1998; ICTR-97-23-S.

Even those countries that do retain their formal sovereignty have seen a marked increase in international input in the legal sector. No post-conflict setting is complete these days without some form of Truth Commission set up under international tutelage. National Human Rights Institutions are blossoming under international attention, and with lavish international finance, as are human rights NGOs (Cardenas, 2003). As a central activity in stimulating 'good governance', donors help to build courthouses, reform law faculties, set up legal aid clinics, train judges, write constitutions and other laws and generally create a culture characterized by the 'rule-of-law' (Abrahamsen, 2000). In many cases the rule-of-law that is promoted so enthusiastically consists of legal transplants of western and neo-liberal inspiration, destined to open the way for a free-market economy (Nader, 2002; Watson, 1993), although in some instances organizations like the UK government's Department for International Development have focused on 'indigenous' and 'customary' legal systems, often reviving the institutions they merely intended to preserve (Oomen, 2005; Rodella, 2003).

Apart from this striking boom in investments in law, in its broadest sense, by the donor industry, the judicialization of international relations has also come to saturate discourse on development. Sometimes it seems as though the twin concepts of humanitarianism and human rights have quietly replaced the tainted notion of development, which has increasingly suffered from association with broken promises, bureaucratization and western imperialism (Rieff, 2003). Even in those cases where the term is still used, it is formulated in legal terms, as a right to development, and conceptualized as working towards a realization of fundamental human rights. The much-acclaimed Millennium Declaration, formulated in terms of fundamental values with ample reference to human rights, constitutes a prime example of how the development agenda has aptly been relocated under the human rights agenda. Of course, the emphasis on individual rights opened the way for donor involvement in improving living conditions worldwide without the actual consent of national governments involved, be it under the guise of humanitarianism or otherwise.

The rise of rights talk, in all its empirical and ideological manifestations, thus amounts to a striking break with the era in which notions of national sovereignty precluded too strong an outside involvement in local law-making. How could this happen? A first, rather obvious and often-quoted, reason is the fundamental reshuffling of the international political playing field after the end of the Cold War. With the need to prop up dictators as political pawns in the war against communism, American — or at least Western — hegemony with its unwavering belief in democracy, good governance and the rule of law could go unopposed. The emphasis on governance, through conditionality and a redirection of aid flows, also came as an answer to a severe impasse in development thinking in the early 1990s. In these years, it was clearer than ever that five decades of development co-operation had resulted in little improvement in the lives of the world's

poorest and that Structural Adjustment Programmes, for instance, had only added to their hardship.

In a parallel and related development the notion of independent, sovereign states, with authoritative control over their territories, became more and more difficult to hold on to (cf. Mills, 1998). There were, on the one hand, the 'failed' and 'failing states', like Somalia and Sierra Leone, that were unable to meet even the most basic expectations of their citizens (Milliken, 2003); but there was also an unprecedented increase in alternative actors, sub-, trans- and supranational, that exercised functions commonly associated with the nation-state — from NGOS to indigenous rights' movements to large companies and international organizations. All this meant that the synoptic world of atlases, with brightly coloured countries characterized by flags, national anthems, participation in international relations on an equal footing and sovereignty in law-making, seemed hopelessly outmoded (Chua, 2004).

All these developments, of course, could be grouped under the inflated term 'globalization'. This globalization — the increase in connectedness between people, processes and polities — also led to two developments of which the Rwandan genocide can be considered a paradigmatic example. The first is an increase, both in frequency and in magnitude, of violent conflicts which were (rightly or wrongly) labelled 'ethnic' (Gurr, 1994). The second is the global flow of information, leading to the live broadcast of these conflicts as they take place and thus making the case for international involvement more powerful than ever before. Not only was the local *Radio Mille Collines* one of the main avenues through which genocidal information was passed on, but the atrocities were also spilled out over the world, live on television, as the genocide unfolded on a daily basis.

A final factor explaining why the law (be it under the name of human rights or justice) became one of the main avenues of international engagement in the late 1990s, lies in the perceived characteristics of the law itself. Often deemed neutral, universal and above all a-political, the law seemingly has qualities that other forms of intervention (military, diplomatic) lack. The rise of rights talk, and the impoverishment of political discourse that goes with it, has often been described when talking about western national politics (see, for example, Glendon, 1991). There is a parallel in the judicialization of politics in the international field, in which 'the rule-of-law' seems to be one of the safest ways in which to engage with other countries. The costs of investing in justice seem much lower, be it politically, physically or financially, than military or other interventions. For instance, while the international community has been extremely hesitant to engage in the ongoing wars in the Democratic Republic of Congo and in Northern Uganda, it has — for the most part — enthusiastically endorsed the ICC's investigations into these wars.

The way in which the international community concentrated on bringing criminal justice to post-genocide Rwanda can thus be considered indicative



of a much wider trend. A brief review of the background to the 1994 genocide, and the legal institutional responses to it, followed by an emphasis on the relation with Rwandan politics, will provide an example of how ill-founded the underlying assumptions of neutrality, and the disconnection between law and politics, can be.

## DONOR-DRIVEN JUSTICE IN RWANDA

For a tiny country in the heart of Africa, the ‘country of a thousand hills’ has always held a considerable appeal to outside forces, and it was in a dialectical relationship with these forces that Rwanda, throughout the twentieth century, developed its particular form of statehood, national identity and citizenship.<sup>7</sup> The Belgians, who ‘took over’ Rwanda from the Germans during the First World War, industriously governed the country, building on the centralist, hierarchical structure of the pre-colonial kingdom to increase its infrastructure, roads, schools and hospitals. Although it is still hotly debated whether the Hutu/Tutsi divide originated as a racial or a class difference, there is a consensus that this difference was ethnicized and made more rigid under Belgian rule (Mamdani, 2002). As part of a classic divide-and-rule strategy the colonizers elevated ‘Tutsi’ to positions of rule like chiefship, and instilled in those labelled ‘Hutu’ a sense of inferiority that prevails today. The seeds of division that were planted, or at least well-nurtured, during the colonial period did not take long to blossom, and the first killings of Tutsi started in 1959, even before Rwanda became independent in 1962.

The 1959 killings, apart from forcing tens of thousands of Tutsi into exile, set the scene for continued violence in the decades to come, erupting at times but never far from people’s minds at others, and always resonating and reverberating with events in the wider region. But, in an apparent paradox, the decades after Rwanda’s independence were not only characterized by these continued ethnic tensions but also saw the rise of the country as one of Africa’s absolute favourites in the donor community, attracting enormous flows of foreign aid until the country was littered with projects, technical assistants and NGO Landrovers. While many observers failed to link these two processes, Peter Uvin has demonstrated convincingly how aid flows — often unwittingly — legitimized this violence: ‘Aid financed much of the practices of social exclusion, shared many of the humiliating practices, and closed its eyes to the racist currencies in society. Aid was also unwilling and

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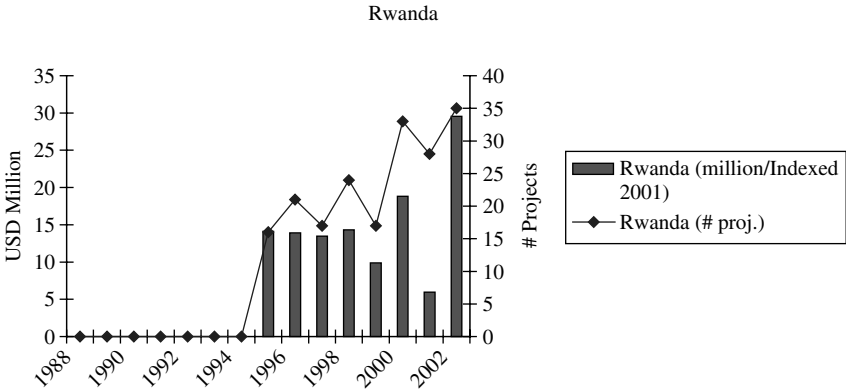
7. The appeal also applied to academics, and a great deal of insightful literature has been written on Rwanda’s history, both in general terms and in the light of the 1994 genocide. Good analyses include Berkeley (2001); Mamdani (2002); Newbury (1989); Prunier (1995); Reyntjens (1994).

possibly unable to stop the processes of radicalization that took place in the 1990s' (Uvin, 1995: 8).

The shooting of the plane carrying Rwanda's Hutu president Habyarimana on 6 April 1994 not only sparked a frenzy of centrally-organized, immaculately planned and state-sponsored killing, unprecedented both in its efficiency as in the number of people involved (African Rights, 1994; des Forges, 1999); it also led to the practically immediate withdrawal of all those representatives of the international community that could have stopped the genocide or at least mitigated its effects: the UN peace-keepers, diplomats and aid workers (Barnett, 2002; Power, 2003). They would only be back after July 1994, after the Rwandan Patriotic Front (RPF), invading from the North, had put a military end to the genocide and set up a Government of National Unity. By that time, an estimated 800,000 people had been hacked to death; the country was littered with bodies, mass graves and burnt-down churches in which only skulls and bones remained of those who had sought refuge there. In the face of these atrocities, and with over two million people fleeing the country, the twin ideals of 'humanitarianism and human rights' virtually replaced the ideology of development heralded by the International Community before the genocide. Co-operation in the fields of agriculture, health and education became secondary to an emphasis on justice and post-conflict peace-building.

The OECD data on aid flows to Rwanda demonstrate how this emphasis only increased in the course of the 1990s (see Figure 2). These figures focus

Figure 2. OECD Data on Expenditures on Legal Co-operation with Rwanda



Source: OECD CRS Database.<sup>8</sup>

8. OECD CRS Database on aid activities, <http://www.oecd.org/dac/stats/idsonline>, query for all donors, all flows with the exception of equity investment, recipients: nations and UN-organizations, CRS purpose 15030 and 15063. With thanks to Janus Oomen and Herman Lelieveldt for compiling the graphs.

on just one segment of the aid flows: the Official Aid (OA) and Official Development Assistance (ODA) given by the most important bilateral donors (like Belgium, the United Kingdom and the United States) and some multilateral donors, like UNDP. They exclude, for instance, the lavish UN funding of the International Criminal Tribunal for Rwanda, and most of the money spent by NGOs. Nevertheless, they too show an enormous increase in funding for 'legal and judicial development' and 'human rights', both in terms of projects (from 0 to 35) and in terms of millions of dollars (from 0 to US\$ 30 million).

What specific elements of justice did donors invest in? There seem to be five main categories: international justice that took place outside Rwanda; the domestic legal system; the National Unity and Reconciliation Commission; the *gacaca*; and other institutions and initiatives set up to promote a culture of human rights.

The International Criminal Tribunal for Rwanda (ICTR) is, of course, the central initiative geared towards doing justice in the international sphere.<sup>9</sup> Created by the Security Council, and based in Tanzania, it has suffered a great deal of criticism since its inception in 1995.<sup>10</sup> Too slow, too bureaucratic, corrupt at times, too detached from Rwandan reality and above all too costly, are just some of the comments (Cobban, 2003; Vokes, 2002). By 2004, for instance, the tribunal had tried a mere twenty-one detainees, and had spent an estimated US\$ 2 billion, so that each completed case had cost a mind-boggling US\$ 100 million (Baxter, 2002; Cobban, 2003). Nevertheless, the ICTR did manage to produce some groundbreaking case-law, not only convicting a government leader for genocide for the first time, but underscoring that rape and sexual violence can also constitute genocide.<sup>11</sup> But whatever its merits, it remained an institution with the international community — and not the Rwandan victims — as its audience, and the development of international criminal law as its aim. In spite of an outreach office in Kigali, ordinary Rwandans knew very little about the institution and its work and if they had heard about it at all, perceptions were (largely due to government propaganda) normally negative.

While the ICTR dealt with the 'big fish', neatly organizing case law under headings such as 'the media', 'the military' or 'government', the RPF-government had arrested an estimated 120,000 people back in Rwanda,

9. Other initiatives included the trial of those involved in the genocide under the doctrine of universal jurisdictions in countries like Belgium, Switzerland and Spain (Amnesty International, 2003).

10. The ICTR was created by Security Council Resolution 955 of 8 November 1994. For general information and case law, see [www.icttr.org](http://www.icttr.org).

11. The latter was decided in the Akayesu case, ICTR 96-4. Much credit for this decision goes to NGOs like Human Rights Watch which constantly pressured the Public Prosecutor to include rape charges in the indictment. The Kambanda case was ICTR-97-23.

and had started to try them within the domestic legal system — a system that had to be rebuilt from scratch, as most lawyers and judges had been killed, and the whole institutional structure destroyed. Again, it was the International Community which flew in lawyers, trained judges, bought stationery, built courts and helped to draw up the applicable legislation (Marysse and Reyntjens, 1997–2003). An African lawyer who was recruited by *Avocats sans Frontières* to defend those accused of participating in the genocide recalls:

In the beginning our work was very difficult because people had problems in understanding that the *genocidaires* would even have lawyers: to them they were monsters and guilty and it was an absurdity to even grant them a trial and give them the chance to talk. We sometimes needed to be escorted by security agents to do our work. Also, the quality of the process was catastrophic in the beginning. Most judges had died and the government had such a sense of urgency that they appointed people with only secondary or primary education who couldn't even read and write. We trained them in three months, but of course it takes more time to become a lawyer. So in the end the foreign lawyers really had to take a pedagogical approach, and explain the law in such a way that the judges could also understand it, and take more of a participatory attitude than they would have otherwise. (Interview, 12 March 2003)

Nevertheless, the quality of the process improved substantially in the decade after the genocide, and an average of a thousand people were tried every year, often in group trials. Although many accused still received the death sentence, this was no longer carried out after twenty-three public executions in 1998 caused uproar in the international community (US Department of State, 2004).

Apart from this classic example of retributive justice, the omnipresent donor community also actively promoted alternative mechanisms of dispute resolution. The notion of a South African style Truth and Reconciliation Commission particularly appealed to many donors, who facilitated contacts between South Africans and Rwandans (Vandeginste, 1998). The Rwandan government, however, feared for the power that an independent body with the possibility of granting amnesty would have. It settled for a watered-down National Unity and Reconciliation Commission (NURC), which sought to 'serve as a forum for Rwandan people of different categories to exchange on their problems and find solutions in truth, freedom and mutual understanding' and to 'seek all possible ways of fostering spirit of patriotism amongst Rwandan people'. This again took place with ample international funding, for instance by the Germans (NURC, 2002: 4).

The readiness demonstrated by donors to finance any form of justice eventually resulted in their massive support of the *gacaca*, which will be discussed below. It also led to many other initiatives, such as the funding of a variety of human rights NGOs, a National Human Rights Commission, a Law Reform Commission and an ombudsman. Donors helped organize a seemingly endless series of conferences with titles like 'justice and reconciliation in Rwanda', which involved hundreds of international consultants and

researchers and numerous visits and training seminars abroad for Rwanda's judges and lawyers. They were intimately involved in the work of Rwanda's Legal and Constitutional Commission, even if they were critical of the end result with its emphasis on prohibiting '*divisionisme*'.<sup>12</sup>

Typically, every individual donor, be it governmental or non-governmental, would be involved in a variety of activities in the justice sector. The Belgian Technical Co-operation, for instance, dedicated its three-year, €3.5 million programme to (amongst others): providing technical assistance to the *gacaca*; supporting the legislature (with cars, petrol and paper but also international consultants); legal documentation (reviving the *revue juridique* and putting legal information on the internet); financing state lawyers; founding a judicial training institute; providing material support to the Ministry of Justice and the public prosecutor; computerizing the Supreme Court; and providing bursaries to magistrates.<sup>13</sup> The same spread of activities could be found with other major donors, including the Americans, the British, the Canadians, the Danish, the French, the Germans, the Japanese, the Dutch, the Norwegians, the Swedish and the Swiss, and multilateral organizations like the EU, UNDP, UNHCR and UNICEF, to name but a few.

The presence of international NGOs was just as overwhelming, and their activities often just as diverse. By the end of 1994 there were already 141 international NGOs at work in the country, and their number would only increase (even if many others were thrown out at a later stage).<sup>14</sup> *Avocats sans Frontières* (ASF), as one of the many non-governmental actors at work in the country, started off by flying in over 200 lawyers and training their local counterparts and magistrates. But the organization — with an annual budget of over €3 million in 2003 — went on to compile reviews of case law, provide technical assistance to the *gacaca* and to assemble confessions of those many prisoners whose cases had not yet been tried.<sup>15</sup> In doing so, ASF sometimes collaborated with — but just as often was in competition with — other international NGOs like African Rights, Human Rights Watch, Internews, Oxfam, Penal Reform International, le Réseau des Citoyens, the Danish Institute for Human Rights and IDEA. These NGOs, in turn, funded, and at times collaborated with, the many human rights NGOs that emerged in post-genocide Rwanda, of which LIPRODHOR (Ligue Rwandaise pour la Promotion et la Défense des Droits de l'Homme) and

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12. Art 34, Constitution of Rwanda 2003.

13. See <http://www.btctb.org> Actions > Countries > Africa > Rwanda (visited 22 April 2004) and interviews with BTC's project co-ordinators in Rwanda, March 2003.

14. See 'The coordination of humanitarian assistance in Rwanda', workshop paper prepared for the July 1995 roundtable mid-term review, unpublished but accessible online: <http://129.194.252.80/catfiles/0488.pdf> (visited 22 April 2004).

15. See <http://www.asf.be> (visited 22 April 2004) and interviews in Rwanda, March 2003.

the overarching organization LDGL (Ligue des Droits de la Personne dans la Région des Grands Lacs) were the most visible.

Of course, this massive presence of donors working in one particular field generated the same problems as large-scale international involvement everywhere, including a lack of co-ordination, with many organizations funding the same initiatives without knowledge of the work done by others. ASF, for instance, was not the only organization to collect prisoners' confessions: Le Réseau des Citoyens and the Public Prosecutor did the same, resulting in double, and at times legally invalid, confessions.<sup>16</sup> Often, the lack of co-ordination amounted to a waste of funds, for instance when USAID and the European Union financed a computer network between existing courts, while new courthouses were already in the process of being built.<sup>17</sup> At times, lack of co-ordination gave way to outright competition, causing a Belgian project officer to grumble: 'I don't understand why the Americans and the British are so bent on Anglicizing the legal system. After all, they were never here before' (interview, 11 March 2003). The overwhelming donor presence also led, as in so many other countries, to an atmosphere in which Rwandans often refused to attend meetings without 'per diems' or seating allowances.

There were also problems specific to the justice sector. Truth, reconciliation and retribution are very different, at times competing aims. Bringing out the full truth (if such a thing exists) does not necessarily lead to reconciliation — in fact, the opposite is often the case. Rwanda at times came to resemble a laboratory for justice, a fertile testing ground for divergent legal responses to unspeakable agony, many of which had hardly been tested before (Baxter, 2002; Sarkin, 2001; Uvin, 2003). But the main problem with this massive involvement in the justice sector was the way in which law was perceived as a technocratic, neutral and a-political form of intervention. The project officers and consultants involved in the initiatives in the legal field in post-genocide Rwanda almost always considered themselves to be technical advisors, and their programmes to be unrelated to Rwandan politics. That this was far from the case will become clear when we discuss the example of donor involvement in the *gacaca*. Before doing so, however, it is worth briefly investigating the direction that Rwandan politics took in the decade after the genocide.

## MEANWHILE, IN RWANDAN POLITICS . . .

After the RPF had seized Kigali in July 1994 and had formally established a 'Government of National Unity' — albeit with a strong Tutsi dominance — it

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16. See <http://www.asf.be> (visited 22 April 2004) and interviews in Rwanda, March 2003.

17. Various interviews, Rwanda, March 2003.

had to deal with a country in shambles, both materially and psychologically. One-tenth of the population of 8 million had been killed, another one-fifth was estimated to have been involved in the killings and over two million people had fled to neighbouring countries (Joint Evaluation, 1996). The widespread rapes during the genocide had led to an unprecedented spread of HIV/AIDS and other diseases; much of the country's infrastructure had been ruined and virtually all its intellectuals had been killed.

On the face of it, the government did not do too badly at restoring the country. By 2004, the economy was faring well, with Rwanda's GDP about as high as before the genocide and its tea and coffee production up to the same level as in 1994. The infrastructure had largely been rebuilt, and most of the refugees had returned. The combination of lavish foreign funding and Rwanda's centralist top-down tradition of hard work and community service had seemingly led to a rapid restoration of the tissue of pre-genocide society. In 2003 Rwanda adopted its first 'democratic' constitution and held the first elections since the genocide, in which rebel leader turned president Paul Kagame received 95 per cent of the votes in the presidential elections, and his party 75 per cent of the votes in the legislative elections that were held a few months later.

However, this image of a stable democracy formed only the very thin surface of post-genocide Rwanda's political make-up (Reyntjens, 2004). The benefits of the country's economic progress have been channelled almost exclusively to the new elites living in their large villas in Kigali, while 90 per cent of the people continue to scrape together an existence below the poverty line in rural areas, with the highest population density in the whole of Africa. Just a glance at the many reports on human rights violations, or a few hours spent in the streets of Kigali where grief, reproach and trauma are still very much present, reveal a much grimmer political environment (Amnesty International, 2003; US Department of State, 2004). Reports of disappearances and killings accompanied Rwanda's first elections, from which the main opposition party was banned (Amnesty International, 2003). The Rwandan government's involvement in the war in the Congo — which it justified by pointing at the Hutu *interhamwe* and former armed forces still present there — led to the killing of an estimated 200,000 people. The government's image was also seriously tarnished when it became clear, in the course of 2004, that it had probably been President Kagame himself who was responsible for ordering the shooting of the presidential plane, and thus starting off the genocide (Rémy, 2004).

It has gradually become clearer over the past decade that the mission of Rwanda's government is to maintain a tight control and stability in the country, whilst not alienating the international community that contributes nearly half of its GDP (Human Rights Watch, 2000). It has even been argued that the government of Rwanda is 'not a government but rather a euphemism meant to attract foreign aid that benefits a clan-based mafia called the Akazu' (Willum, 2001: 2; cf. Reyntjens, 2004). The 2003 elections

provide a good example of how the RPF-government walks the thin line between staying in favour with the donors while at the same time strengthening its grip on society. These elections were held in line with the Arusha accords of 1993. Given the increasingly oppressive climate in the country, even the opposition doubted whether elections should be held in 2003, fearing that they might merely serve to entrench the position of the minority government. As one Rwandan argued:

It will just be the same as under the Hutu extremist government. We will be told up to the ten-house level who we have to vote for, and on the day of the elections we will do just that. If not, we will disappear or be killed. They can put as many monitors as they want next to the ballot boxes, but the decisions will already have been made long before that. (Discussion, Kigali, 15 March 2004)

The elections, both presidential and legislative, indeed turned out to be far from free and fair. While voter turn-out was over 90 per cent, and Paul Kagame and his party rejoiced in a 'landslide victory', the official European Union Observation Mission commented how the elections took place in an atmosphere of 'intimidations, arrests and irregularities' and actually led to 'less political pluralism than during the transitional period' (EU, 2003: 4).

Nevertheless, donor reactions to the rigging of the elections, and the banning of the opposition, were mild, just as they had been with earlier human rights' violations. This is partly due to the 'genocide credit' that the predominantly Tutsi government holds (Reyntjens, 2004). But it is also due in part to the government's amazing agility at appeasing the international community, adapting its vocabulary of 'gender', 'good governance' and 'popular participation' and playing on its (undoubtedly) guilty conscience, while simultaneously pursuing its own political agenda. An important aspect of this process, described by Pottier, was the government's monopolization of knowledge production on the history of the genocide, albeit with the assistance of 'sympathetic journalists and aid workers uninformed about the region, and academic scriptwriters without research experience in Rwanda' (Pottier, 2002: 109).

In the government's version of history:

The 1994 genocide was the result of a 100-year betrayal by the state, failure in the colonial and post-colonial governments' mandate to protect and defend all citizens. It is, therefore, a failure that has both external and local dimensions. The external policies relate to the German and Belgian colonial policies that, like elsewhere in Africa, created ethnic, tribal or clan divisions as an instrument of colonial rule. The local factors, on the other hand, became predominant after independence in 1962 when the local elite became tools of continuing colonial type of policies, this time for their own benefit. Once terror and mass murder were introduced in 1959 under the auspices of the Belgian Administration, subsequent regimes tried genocide in their exercise of power. (Kagame, 2003)

It was on this simplified version of history, with its complete neglect for the diversity and individual agency in people's experiences during the genocide that a 'new, unified Rwanda' would be built, in which ethnic identities would not matter anymore. Just as it captured history, and instrumentalized



it for domestic political purposes, the Rwandan government also made use of the justice process to entrench its power and widen its reach. This was particularly, and perhaps surprisingly, the case when it came to the *gacaca*, the much-lauded ‘customary’ courts.

### THE EXAMPLE OF THE *GACACA*

The *gacaca* have been heralded an ‘ambitious, ground-breaking’ and even ‘revolutionary’ attempt to apply traditional African methods of conflict resolution to the crime of genocide (Amnesty International, 2002; Cobban, 2002). With the classical legal system clearly incapable of dealing with the 120,000 suspects who remained in prison without trial as the years after the genocide went by, the Rwandan government devised a system of local participatory justice in which — in its ideology — neighbours would seek out the truth, reconcile and bring localized justice to each of Rwanda’s ten thousand hills (DJC, 2003a; see also Corey and Joireman, 2004; Honeyman, 2002; Sarkin, 2001). While the *gacaca* ended up being presented by the Rwandan government as a strongly homegrown, locally-devised institution, there is actually some evidence that it was representatives of the donor community who first raised the idea of using customary systems of dispute resolution to deal with the legacy of the genocide.<sup>18</sup> In any case, the *gacaca* could count on widespread international interest right from the beginning, from press, researchers and the donor community alike. Once the applicable legislation had been adopted and the first actual *gacaca* were held in twelve pilot areas in 2002, the green hills were not only filled with hundreds of villagers squatting beneath the banana and avocado trees, but also with dozens of interested outsiders.<sup>19</sup>

In spite of its widespread interest in the Rwandan initiative, the international community was sceptical at first, mainly out of fear that the *gacaca* would not comply with minimum fair trial standards (Amnesty International, 2002). Nevertheless, it soon changed tack, and by 2002 virtually all major donors supported the *gacaca* in one way or the other: they financed the training of the 250,000 *inyangamugayo* (‘persons of integrity’) who would serve as judges, funded the wooden benches on which these judges (nineteen per community) would sit, the red motorcycles on which the government monitors would go from one meeting to the other and the general,

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18. For instance, Christian Sherrer for the Copenhagen Peace Research Institute presented the possibility in his report in 1997 (see Sherrer, 1997; also Vandeginste, 1998: 134) while the Rwandan government only started debating the issue in 1998 (DJC, 2003a: 8)

19. This legislation is the *Loi Organique 40/2000* of 26/01/2001 as modified by the *Loi Organique 33/2001* of 22/6/2001. See the internet site of the Departement of Gacaca Jurisdictions: <http://www.inkiko-gacaca.gov.rw>

complicated logistics of holding trials in 11,000 jurisdictions.<sup>20</sup> The Department of *Gacaca*, which has a budget of US\$ 43 million for 2003–5, had as some of its stated aims ‘active participation of the population, telling the truth, independence of the *gacaca* jurisdictions, integrity of the judges, transparency, voluntarism, patriotism, decentralization, democracy, gender, reduction of poverty and social justice’ (DJC, 2003b: 1). It was enthusiastically supported by, amongst others, the Belgians, the Swiss, the Dutch, USAID, the British and the Swedish. A civil society initiative entitled the Programme d’Appui aux Juridictions Gacaca (PAPG) was kept afloat by international funding. There were also other initiatives, like the ‘communications intervention’ by the Johns Hopkins University consisting of ‘radio spots and talk shows, a publication, advocacy seminars, social events like theater, video film shows, billboards and training for community opinion leaders’ and followed by a survey to find out, amongst other things, how many of the respondents had heard the radio jingles encouraging community participation in the *gacaca*, and to tell the truth before the *gacaca* (Babalola et al., 2003: 2).

What lay behind this widespread international interest in what was, according to many, a very risky experiment? First of all, it was obvious to all actors that the domestic legal system and the ICTR were incapable of dealing with the numbers of accused held in Rwanda’s detention centres, or even still at large. Furthermore, the notion of participatory justice struck a chord at a time that was all about democracy, decentralization and getting away from a strong central state. This was supplemented by another international trend at the end of the 1990s: a search for alternative systems of justice. But there was also an element of Orientalism in the appeal that the *gacaca* held, all too apparent in all the reports on the subject, and zealously fed by the Rwandan government. ‘After the democracy under the palaver, here comes the justice of the lawn’, as Marchal put it (2003: 14).

While the promises of traditional authenticity and popular participation that the *gacaca* held proved very hard to resist, even for the most cynical of academics, the reality of the local-level courts was somewhat different (Uvin, 2003; Zorbas, 2004). They were not traditional in the sense that genocide, rape and sexual violence were far from the subjects that were discussed in the old days, such as land conflicts and family matters. There was also a crucial difference in terms of procedure. The procedures in the

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20. There are 9,201 *gacaca* jurisdictions at ‘cell’ level investigating the facts, classifying the accused and trying people who committed crimes against property. The 1,545 *gacaca* jurisdictions at sector level are in charge of those who committed violent acts without the intent to kill. The 106 *gacaca* jurisdictions at district level hear cases of homicide, and the 12 *gacaca* jurisdictions at provincial level or in Kigali hear the appeals of these cases. The planners, organizers etc. of the genocide and those charged with rape and sexual torture will — after having been classified in their villages — be tried in front of the ordinary criminal courts (see <http://www.penalreform.org> at ‘*gacaca* courts’ (visited 27 April 2004).

*gacaca* of old, and their equivalents in many other African countries, differed widely according to locality and occasion. The modern-day *gacaca*, in contrast, are very strictly organized. They start off with a series of fixed meetings: in the first meeting the times at which the community will gather are decided upon; in the second meeting people draw up a list of who was living in the area during the genocide; the third and the fourth meetings draw up lists of the dead; during the fifth meeting the victims are listed; the sixth meeting should result in a list of those community members involved in the genocide; and the seventh meeting should lead to the classification of their crimes (DJC, 2003a). The judges have forms to fill out for each phase, and their activities are closely followed and commented upon by government monitors with the official *gacaca* code of conduct in their hands.

Not only did the *gacaca* lack traditional authenticity, they also fell short when it came to true popular participation (Honeyman, 2002; Penal Reform International, 2003). The victims had always been sceptical of the ability of the country's 'guilty majority' to try their brothers, sisters and neighbours for crimes they could well have committed themselves (Rombouts, 2002; cf. Mamdani, 2002). Such difficulties were indeed visible in many of the *gacaca*, including one I attended in Gisoro, Nyanza:

The *gacaca* has already lasted for a few hours, with the sun burning on the women with multi-coloured umbrellas and men in tattered jackets who haven't had the luck of finding a place under a eucalyptus tree. The atmosphere is one of an unwilling schoolclass, with people looking straight ahead while the chief judge practically begs them to say something about the death of Mr R, Mr Y, Mr H. 'There are some of his neighbours here, someone must have seen something'. A sullen silence, only broken from time to time by a crying baby. Then a young woman steps forward, her jeans and straightened hair setting her apart from the village women in skirts. 'I was raped by him, and him, and him, and your husband as well', she points, her finger trembling. The women smirk and the judges accuse her of not following procedure. A. is still shaking when we offer her a lift back to Kigali. 'I could never live in that place again'.<sup>21</sup>

While many of the genocide survivors felt that the *gacaca* did justice to their experiences, the public at large seemed to increasingly consider the meetings as mandatory events to sit through, just like community service or the so-called 'ateliers de sensibilisation' — the often strongly ideologically inspired workshops to inform the general public about the *gacaca*. The few who genuinely tried to establish a record of what happened were often quickly silenced, as was the case in Butamwa:

The government monitor, complaining about 'the silence that is like a disease in this country' has just left on his red motorcycle when a young boy pulls a crumpled list, wrapped in a plastic bag, out of his pocket. 'Why won't you listen to me? People who speak the truth here are intimidated. Here are the names of the 27 people who were at the road block in those

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21. Author observations, 14 March 2003. For detailed reports on most *gacaca* held in Rwanda to date, see the reports by Avocats sans Frontières ([www.asf.be](http://www.asf.be)) and Penal Reform International ([www.penalreform.org](http://www.penalreform.org), theme 'gacaca')

days. I have included my father.' The audience hisses and the boy's father disappears in the corn field. Later we learn that the boy has had to flee the village.<sup>22</sup>

Although early opinion surveys generally reflected the hope that the *gacaca* would indeed bring justice and reconciliation (Babalola et al., 2003), public enthusiasm quickly diminished. More and more people came to see the *gacaca* as a government project, and attending them 'an act of patriotism and our civil duty', as one community member put it. She saw what the international community failed to see: that this particular form of justice had been made subservient to the government's political mission.

If the government was 'rebuilding a dictatorship under the guise of democracy', as Reyntjens (2004: 177) has put it, the *gacaca* served this essentially political purpose in many ways. The government's initial support might well have been genuinely informed by a desire to deal with the 120,000 people in prison, but it quickly saw the wider political possibilities of supporting these weekly, local-level meetings. 'Everything this government does is calculated, and for political profit', as one informant said. First and foremost, the *gacaca* allowed the government to implement a politics of harmony by unremittingly emphasizing the importance of reconciliation, as opposed to vengeance or even merely retribution (de Lame, 2003). The message which was spread by the establishment of the *gacaca*, the training of the 250,000 judges, through the radio-jingles, and by word-of-mouth of the hundreds of monitors, was 'reconcile or die'. Literally so — as became clear when nine people accused of killing a *gacaca* witness were themselves sentenced to death in March 2004 (Reuters, 2004). A significant moment in reinforcement, this message was the liberation, in January 2003 and early 2004, of tens of thousands of prisoners who had confessed, many of them to brutal killings (Africa News, 2004; African Rights, 2003). The victims who reacted with dismay at the thought of having murderers back in the village were reminded of the notion of *gacaca*, and the reconciliation they had come to symbolize.

Another indication to the wider public that the *gacaca* were not about bringing true justice, but rather about entrenching the power of the minority government, was the fact that crimes committed by the RPF were excluded from their jurisdiction. This bias made many members of the general public consider the *gacaca* to be 'victors' justice', or even 'justice against Hutu only', and could, according to many, lead to a deepening of ethnic divisions in the long run (Corey and Joireman, 2004; Marchal, 2003; Zorbas, 2004). Apart from underlining the fact that the RPF-government stood outside the law, the *gacaca* also enabled a further strengthening of a state that was already strongly centralist. The weekly meetings, nearly always with a government monitor present, the intensive training of so many people and the use of radio broadcasts were very much about strengthening

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22. Author observations, 19 March 2003.

government control. In this sense the *gacaca* could be considered a high modernist enterprise as described by James Scott (1998), all about increasing state control and heightening the legibility of society. As one government official bluntly summarized official thinking: 'People here are really used to an elite that thinks for them so if the elite can just think good things there won't be a problem' (interview with official, Department of Gacaca, 11 March 2003).

Another important political advantage that the government gained from supporting the *gacaca* lay in their appeal to the donor community. On the one hand, the initiative caused an unprecedented amount of cash to flow towards 'justice' in the country, much more than would have been the case if Rwanda had stuck to its formal justice system. On the other hand, the *gacaca* — however slow they were in taking off — also deflected the international community's attention from all the real injustice that was taking place: the unlawful disappearances, the lack of political freedom, the wars that Rwanda waged along and beyond its borders.

The notion that the *gacaca* were merely a show staged for the international community, one that appealed to its conceptions of African justice under the trees, and that soothed its guilty conscience, is underscored by the hesitance that the Rwandan government showed after 2003 to expand the *gacaca*: court sessions only started throughout the country in 2005. The pilots that were taking place in 106 sectors had also revealed some aspects of the system's potential that did not suit the government's agenda: the chance that local communities, in spite of the strong government orchestration of the process, would indeed seize hold of justice in their own communities and have genuine discussions about truth, retribution, restitution and, after that, reconciliation.

## CONCLUSION

The aim of this article is not to negate the importance of justice in a country that carries Rwanda's scars. On the contrary, its point of departure is a concern that true justice should be done. For this, it is important to point at the way in which the legal has been made subservient to the political in contemporary Rwanda. It is not without reason that Rwandans deem that 'justice is not just an issue for the Ministry of Justice in this Country: it is an issue for the Cabinet' (Vandeginste, 1998: 126). In Rwanda, even the most localized of the justice processes, the *gacaca*, are hardly about eradicating the culture of impunity but rather about tightening the control of a minority government and about passing down its imagery of Rwandan identity. As Cobban (2002) put it: 'In Rwanda, indeed, as in many or most other Third World countries, the whole edifice of a national criminal justice system sits uneasily atop a morass of unresolved but unavoidable issues of power, control, representation, legitimacy, identity, and identification: in short, of politics'.

Through its at times isolationist funding of elements of the justice process that take place in the context of increasing oppression, the international community runs the risk of complicity in this enterprise, of legitimizing the many elements of injustice in Rwandan society today and of allowing the government to use the funds it saves on justice for defence purposes. While justice is presented as a neutral, technocratic and universalistic enterprise, it is actually deeply enmeshed in local politics. Of course, this paradox is just one part of a much wider trend particularly visible in Africa today, in which nations engage in a kind of shadow book-keeping: they comply with donor exigencies in terms of decentralization, democratization, constitution-writing, while the real politics take place elsewhere and along wholly different lines.

The importance of this lesson is one that stretches far beyond the Rwandan borders, but that, so far, has been barely heeded. As justice becomes more and more important to the development project, and there is a globalization of the justice sector with its own experts, interests, dynamics, political economy, there is a real danger of losing sight of the original purpose of this industry, and other ways in which to achieve that purpose. This is underscored by the fact that 80 per cent of the Rwandan people feel that 'improving their living conditions' is their main priority, while less than 13 per cent prioritize 'the trial of genocide suspects' (Uvin, 2003). The international community's isolated emphasis on justice at times resembles its activities before the genocide, when it was building water-pumps and schools, mapping out the country, improving agricultural methods and generally strengthening a state that proved to be a killing machine (Storey, 2001; Uvin, 1995). Silence, this period teaches us, can also lead to complicity. Separating law from politics is in general impossible, and especially so in an environment that is so concerned with politicizing all the institutions of government. An isolationist emphasis on law in such an environment becomes a macabre masquerade, emphasizing the culture of impunity instead of eradicating it.

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