



The Role of Transitional Justice and Access to Justice in Conflict Resolution and Democratic Advancement

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Introduction

The present study analyses the manner in which the subjects of transitional justice and access to justice are interlinked and can develop together as a means of achieving democratic advancement, and of facilitating sustained conflict resolution. It explores some of the key socio-legal issues surrounding the adoption of transitional justice mechanisms through the lens of the principles of the Access to Justice Movement. The legal and social developments that often occur in post-conflict societies are notable, both for their pace and for their contribution to several major legal and social reforms in different areas. On the other hand, transitional justice mechanisms have been criticised for their backward tenor – for instance, the decision of whether dispute resolution mechanisms should be left to the victims of previous conflicts can prove controversial.

It is argued here that the principles of access to justice and the recourse to alternative dispute resolution can play an important and valuable role in post-conflict society. In particular, it is proposed that transitional justice strategies should draw upon access to justice and offer the opportunity to the victims of conflict and injustices relating from it, to choose the dispute resolution processes most convenient and appropriate for their own disputes: both formal *and* informal justice need to be made available. Generally speaking, an important development of the Alternative Dispute Resolution movement has been to move beyond the word *alternative*, and towards the word *appropriate*. Therefore, the

current challenge of transitional justice strategies is to locate the appropriate dispute resolution process for each dispute involving individuals and communities in countries affected by conflict or in need of democratic progress.

The present paper is inspired by the idea that transitional strategies are not confined to the simple resolution of disputes. Instead, transitional strategies in conflict and post-conflict societies should aim at addressing broader issues involved in the conflict at hand. Conflicts and disputes do not occur within a vacuum. In parallel to procedural issues, transitional strategies also involve socio-legal discourses. Felstiner, Abel and Sarat (1980-81: 631) all point out that not all injustices end up being disputes because ‘disputes are not things: they are social constructs’. Several important *social* factors contribute to the recognition and consciousness of ‘wrong’ and to the subsequent requests for restitution or reconciliation which may follow. Felstiner, Abel and Sarat (1980-81) go so far as to set down a social paradigm of the transformation of disputes. This paradigm is based on three stages: naming, which entails *consciousness* of the wrong that has been caused; blaming, which involves the *identification* of the offender who has caused the wrong; claiming, which comprises a request for compensation for the wrong committed. Therefore, transitional strategies should pay attention to social barriers, including shame and indifference, which often limit remedial action and influence court rulings. Accordingly, the recourse to access to justice and ADR as opposed to formal justice mechanisms, represents a fundamental tool for transitional justice

strategies in contextualising strategy and addressing the wide range of issues and complexities involved in conflict and post-conflict societies.

The present study will articulate the scope of transitional justice and access to justice concepts, which are often presented either very broadly, or conversely, overly narrowly. The study will then turn to the way in which these two concepts are intertwined, and finally, it will look at selected case studies demonstrating examples of transitional justice models and selected issues in the field of access to justice. This paper offers two main themes in its explanation of the relationship between transitional justice and access to justice. Firstly, the study considers the extent and limitations of the notion of individual autonomy. It is argued that the notion of individual autonomy can and should include *procedural* autonomy. Here it suffices to say that autonomy is meant to encompass the possibility for private citizens to have their personal rights considered and vindicated in court. The autonomy of each individual includes entitlement to human rights and the possibility of litigating in court for such rights. Secondly, the study points out that an important evolution in the access to justice approach and within Alternative Dispute Resolution has been the so-called process of ‘fitting the forum to the fuss’ (Sander and Goldberg, 1994: 49), such that parties should be free to resolve their differences through the appropriate forum of dispute resolution, fitting the method of resolution to the situation in hand.

Definitions

Transitional Justice

The literature on transitional justice suggests several definitions of the term ‘transitional justice’. However, few are comprehensive enough, and many are inaccurate. Using a definition offered by Roht-Arriaza, in the present paper transitional justice is taken to include ‘that set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law’.¹ In addition, the present study suggests that transitional justice should endeavour to include *potential* sources of future conflicts and violations.

Transitional justice emerged as subject of study at the end of 1970s, with the end of dictatorships in Greece and Spain. Later on, research began to explore post-conflict and post-dictatorship societies in Latin America, Eastern Europe and Africa. The range of mechanisms and instruments adopted to undertake transitional justice is broad and today includes: truth and reconciliation commissions; criminal courts; trials (formal and informal); vetting; lustration; reparation; restorative justice; amnesty; apology; reburials of victims; compensation of victims; writing and pardon among others. It must be emphasised that the list of transitional strategies

¹ ROHT-ARRIAZA, Naomi and MARIEZCURRENA, Javier (eds) (2006) “Transitional Justice in the Twenty-First Century”, Cambridge: Cambridge University Press.

is not fixed. In addition, in several cases, the above mentioned instruments have been mixed, creating multifaced models, as those created in Colombia, Peru and Mexico,² and hybrid instruments as in the case of Timor Leste (2006). It must also be taken into account that in an era of globalisation, transitional justice strategies will be subject to the discourse of the diffusion of law.³

Access to Justice

The term 'Access to Justice' is generally interpreted under the presumption that justice can only be secured through the courts. The present study embraces the original meaning of access to justice, as provided by Mauro Cappelletti in the late 1970s. Cappelletti and Garth in a 'General Report' given in the publication *Access to Justice*⁴ consider access to justice to be 'the system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the state.

2 For a general overview on the manner in which different transitional mechanisms have been mixed see: Roht-Arriaza, N., and Mariezcurrena, J. (2006). *Transitional Justice in the Twenty-First Century*. Cambridge: Cambridge University Press.

3 TWINING, William (2009) "General Jurisprudence. Understanding Law from a Global Perspective", Cambridge: Cambridge University Press

4 *Access to Justice* as a publication consists of six books divided into four volumes. The publication gathers the findings of comparative research into access to justice, as a conclusion to the Florence Project of Access to Justice, coordinated by Mauro Cappelletti. The Florence Project was supported by the Italian Ministry of Education, the Italian Research Council, and the Ford Foundation.

First, the system must be equally accessible to all, and second, it must lead to results that are individually and socially just'.⁵ This understanding of access to justice represents both a theoretical approach and a methodological device. It is comparative in nature and inclusive of several 'modalities and diverse institutional settings crystallized with the flourishing of the Florence Access to Justice Project'.⁶ With reference to the Access to Justice Movement as a theoretical approach, the present study embraces the idea that 'what becomes predominant is the accessibility of the procedural phenomenon to the individual, to the groups, to society generally'.⁷

As Cappelletti and Garth point out, access to justice may be characterised as involving 'waves of legal reform aiming at making rights effective'.⁸ They indentify three waves of legal reform worldwide, which have come to characterise the Access to Justice Movement. The waves have not been static, and have developed alongside one another. The first wave involves legal aid to the poor; the second involves bringing so-called 'public interest' cases for the protection of diffuse interests; and the third wave, commonly named the access to justice approach, aims at reforming civil procedure and encouraging the use of alternative dispute resolution methods.

One of the main contributions of the access to justice movement to

5 CAPPELLETTI, Mauro and Bryant, GARTH (1978) "General Report" in M. CAPPELLETTI and B. GARTH (eds), *Access to Justice. A World Survey*, Vol.I, Milano: Giuffr' Editore, 1-80.

6 GALANTER, M. (2010). "Access to Justice in a World of Expanding Social Capabilit". *Fordham Urban Law Journal*, Vol. 37, 116.

7 CAPPELLETTI, M. (1992). "Access to Justice as a Theoretical Approach to Law and a Practical Programme for Reform". *South African Law Journal*, Vol. 109, pp. 22-39.

8 CAPPELLETTI, Mauro and Bryant, GARTH (1978) "General Report" in M. CAPPELLETTI and B. GARTH (eds), *Access to Justice. A World Survey*, Vol.I, Milano: Giuffr' Editore, 21.

the study of law and dispute resolution is the focus it places on the *parties* to the dispute as being the primary protagonists, on whom analysis should concentrate. As a consequence of this, the dispute resolution process now has to take into account, and be shaped according to the characteristics and goals of the parties themselves. An important evolution in the access to justice approach and in that of Alternative Dispute Resolution has been the so-called process of ‘fitting the forum to the fuss’, as described above,⁹ such that in cases of disputes the parties should be free to resolve their differences through the appropriate forum of dispute resolution.

The link between transitional justice and access to justice starts and has developed from the original three waves of the Access to Justice Movement. As such, it aims to overcome barriers to legal aid, ensure the representation of diffuse interests in court, and promote a broad understanding and implementation of different dispute resolution processes. At the same, given the social and legal complexity of many post conflict countries which experience systems of transitional justice, the scope of the original three waves expands and more legal, procedural and social limits to access to justice are individuated.

Indeed, Marc Galanter recently pointed out that the boundaries of the Access to Justice Movement are still developing.¹⁰ The Movement continues to develop in a way which expands the

9 SANDER, Frank E.A. and Stephen B. GOLBERG (1994). “Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure”, *Negotiation Journal*, January 1994, Vol.10, No.1, 49.

10 GALANTER, Marc (2010). “Access to Justice in a World of Expanding Social Capability”. *Fordham Urban Law Journal*, Vol. 37.

notions of justice and injustice and the meaning and perception of wrong, and which seeks to enlarge the range of people who take legal action. Thus, the implementation of the principles of Access to Justice helps transitional strategies to explore root causes, to tackle inequities that underlie conflict, and to take into account the needs of marginalised groups. In addition, Access to Justice brings strong support to civil society, as a way of advocating civil rights and raising awareness. Advocacy and litigation are therefore considered stages of the same strategy, to address the rights of social groups whose rights have been violated.

Selected Examples of Transitional Justice

The present section is dedicated to the analysis of examples of transitional justice. The approach to transitional justice adopted here is holistic in nature and involves measures aiming at avoiding future conflict. It is argued that transitional justice initiatives can *only* work if designed for the *local* context in question, and with the *full* and *informed* involvement of the civil society as a whole.¹¹

11 The involvement of civil society in transitional strategies has been considered as a fundamental step in any strategy by Kofi Annan: (2004). Report of the Secretary-General of Law and Transitional Justice in Conflict and Post-Conflict Societies, UN Doc. S/2004/616. Regarding the civil society participation see also: Lambourne, Wendy (2012) 'Outreach, Inreach and Civil Society Participation in Transitional Justice', in Palmer, Nicola, Clark, Phil and Granville, Danielle (eds) *Critical Perspective in Transitional Justice*, Cambridge: Intersentia.

In this regard, the selected case studies presented below represent effective examples of reconciliation initiatives at grassroots level, which also aim at re-building a sense of community and shared ownership of reconciliation processes in the aftermath of conflict.

Timor-Leste's Community Reconciliation Processes¹²

Timor-Leste's Commission for Reception, Truth and Reconciliation (CAVR)¹³ was created following the conflict and forced displacement that followed the granting of independence of what was then known as East Timor, from Indonesia in 1999. The truth commission was proposed to the United Nations by a group of main political parties within Timor-Leste, and was founded on principles gleaned from a variety of truth commission models from around the world, incorporating an inclusive and consultative approach and taking its lead from a steering committee formed of civil society actors, human rights groups, women's organisations, religious groups and representatives from the main political parties of Timor-Leste.¹⁴

12 See UNDP (2004). The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation, report for UNDP Timor-Leste by Piers Pigou. Available at: <http://www.cavrtimorleste.org/Analysis/Laporan%20Piers%20tentang%20CRP.pdf>.

13 Portuguese acronym.

14 HAYNER, P. (2001) "Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions". Routledge.

The Commission's main objective was to inquire into human rights violations committed during the political conflict that took place in Timor-Leste between 1974 and 1999, and it was given a two-year mandate.

The Community Reconciliation Processes (CRPs) of Timor-Leste were created with the specific aim of dealing with disputes between victims and perpetrators of violence, engaging individuals and communities from all sides of the conflict. Another main function was that of facilitating the return and incorporation of 'low-level' perpetrators into their communities. The possibility of recourse to CRPs was established by the United Nations Transitional Administration for East Timor (UNTAET)¹⁵ Regulation 2001/10, which provided for perpetrators of violence to present a statement to the Commission (CAVR), with the admission of responsibility regarding a past committed violent act. Statements were sent to and analysed by the national office of the CAVR, then considered by a Statement Committee, which would decide whether the case could be presented to the CRPs. Once determined as a matter that could in fact be considered by the CRPs, hearings would be organised. Hearings in Timor-Leste saw the participation of the entire community, and were supervised by a panel of local leaders. Section 32 Regulation 2001/10 rules that 'in principle, serious criminal offences, in particular murder, torture and sexual offences, shall not be dealt with in a CRP.' Almost 8,000 statements were

¹⁵ The United Nations governed Timor-Leste during the transitional period through the United Nations Transitional Administration for East Timor (UNTAET).

received in total (approximately one per cent of Timor-Leste's total population), with numerous hearings and community reconciliation meetings being held throughout the country, overseen by a staff of over 300 and approximately 12 international advisors.

The CRPs of Timor-Leste can be seen to represent a 'bargain': they offered an opportunity for many perpetrators to be reintegrated into their communities while also providing the possibility for them to offer an apology and admission of responsibility to victims and the community. In many cases, the return of perpetrators to their communities would be conditional on symbolic payment as compensation or upon undertaking periods of community service. The agreements made in the CRPs would be approved by a court, with compliance with the agreement resulting in the waiving of criminal and civil liabilities on the part of the perpetrator.

In the case of disputes between victims and perpetrators, traditional dispute resolution mechanisms called *lisan* were adopted in order to settle the dispute. Although ceremonies differed slightly from region to region, the typical ceremony was that of the *nahe biti boot* and took place with the help of people seen to have a spiritual and legal role in the community, referred to as *lia nain* ('keeper of the word'), with the presence of the community and the victim, and brokered through community-based panels organised through regional commissioners, all through the facilitation and monitoring of the Commission. Such ceremonies have their root in the indigenous East Timorese tradition of the *adat* process.

The *lian nain* (individual) would unroll a mat, signifying the start of the procedure, and it would be rolled again only when the parties have settled. The perpetrator would be asked to make a public statement and to answer questions from anyone attending (this could include members of the public/community). After all questions were asked, the panel would decide which acts of reconciliation the perpetrator must perform. These acts would be varied and would often be performed in support of the entire community. If the decision was accepted by the deponent, the agreement would then be recorded as a Community Reconciliation Agreement and registered with the appropriate District Court (Burgess, 2006).¹⁶

Results of the CRP programme have been largely evaluated as positive in making reconciliation and reparation and in terms of the level of participation by communities. Doubts on the transferability of specific traditional mechanisms of dispute resolution and on the spontaneity of settlement remain, but the significant experience of Timor Leste clearly demonstrates the fact that formal and informal justice *can* work together.

16 For a general overview on the manner in which different transitional mechanisms have been mixed see: Roht-Arriaza, Naomi. and Mariezcurrena, Javier. (eds) (2006). *Transitional Justice in the Twenty-First Century*, Cambridge: Cambridge University Press.

Gacaca Courts in Rwanda

The recourse to traditional courts, namely *Gacaca* courts in Rwanda was (among other reasons) based on the incapacity of the formal justice system to deal with the extremely large number of crimes and perpetrators resulting from the civil war and subsequent genocide there, which left a reported 800,000 Rwandans dead and more than 130,000 suspected *genocidaires* in prison, over three times the official prison capacity.¹⁷ As a result of the overflowing prisons and the disintegration of the country's judiciary, access to justice became severely hampered.¹⁸ After five years, cases were proceeding within the insufficient Rwandan Court system at a pace that would have required 100 years to complete the processing of each case.¹⁹ Justice was not accessible to victims and thousands were dying in prisons. It was in response to this situation that the Rwandan government, in 2005, implemented the formalisation of a traditional, grassroots form of justice; the *Gacaca*. These courts continued to process the cases of victims in Rwanda until their closure in May 2012.²⁰

17 TIEMESSEN, A. (2004) "After Arusha: Gacaca Justice in Post-Genocide Rwanda". *African Studies Quarterly*, Vol. 8, Issue 1, 57.

18 While the International Criminal Tribunal for Rwanda (ICTR) was successfully established following the genocide, its role was not that of a recourse to justice for the masses of victims.

19 "Justice Compromised: The legacy of Rwanda's Community Based Gacaca Courts" Human Rights Watch, 2. Available at <http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf>

20 KOK, N. (2012) "The Closing of the Gacaca Courts and the implications for Access to Justice in Rwanda", Institute for Security Studies.

Gacaca literally means ‘small grass’; and refers to the court in which the procedure takes place. *Gacaca* judges are referred to as *Inyangamugayo*, literally meaning ‘those who detest dishonesty’.²¹ Nine *Inyangamugayo* are present, each of whom will have received specialist training by the state. These judges are able to impose a variety of sentences spanning community service to life imprisonment; the death penalty cannot be imposed (unlike in national courts). Members of the community are asked to ascertain facts, and may question the defendant or speak in support of him or her. During the hearing, anyone present can ask questions. After the hearing, judges release a judgement. The judgement is then signed by both parties involved in the dispute. Lawyers are not involved in the *gacaca* process; the defendant being instead prosecuted collectively by the community members present. *Gacaca* courts operate under what is referred to as *Rwandan Organic Law* (established in 1996 to facilitate prosecution of genocide crimes). In accordance with this law, crimes are categorised as follows; the planning and organising of genocide; ‘notorious’ physical perpetrators committing or assisting in the commission of murders or attacks; serious attacks without the intent to cause death; and offences against property.²² Crimes of sexual torture or rape; planning or organising genocide and acting in positions of authority carry the sentences of life imprisonment or the death

21 For a general overview on the manner in which different transitional mechanisms have been mixed see: Roht-Arriaza, Naomi. and Mariezcurrena, Javier. (eds) (2006) *Transitional Justice in the Twenty-First Century*, Cambridge: Cambridge University Press.

22 TIEMESSEN, A. (2004) “After Arusha: Gacaca Justice in Post-Genocide Rwanda,” *African Studies Quarterly*, Vol. 8, Issue 1, 61.

penalty, and are therefore tried in the conventional court system rather than the *Gacaca*. Crimes involving the physical perpetration of genocide and conspiring to commit genocide, and the theft of property and criminal damage are tried in the *Gacaca*.²³ Sentences are based on the *Gacaca* Law 2001 and range from 25 years to life in prison, to the compensation of victims. An important aspect of the process is the apology that is offered by the defendant in front of the community, at the beginning of the hearing.

Traditionally, *Gacaca* courts did not deal with criminal offences. The idea of establishing *Gacaca* courts with jurisdiction over genocide was realised by President Pasteur Bizimungu and several stakeholders in 1998-99.²⁴ Because of this change, the procedure and the principles on which settlement is based have changed, today bringing in human rights considerations. In addition, the participation of women and young people has also been put forward as an essential requirement for the inclusivity of such courts.

The *Gacaca* court process, which is now regulated by the *Gacaca* Law 2001 (amended in 2004),²⁵ is divided into two parts:

23 TIEMESSEN, A. (2004) "After Arusha: Gacaca Justice in Post-Genocide Rwanda," *African Studies Quarterly*, Vol. 8, Issue 1, 61.

24 LONGMAN, Timothy. (2006) "Gacaca trials in Rwanda" in ROHT-ARRIAZA, Naomi and MARIEZCURRENA Javier (eds) (2006) *Transitional Justice in the Twenty-First Century*, Cambridge: Cambridge University Press.

25 Organic Law No. 16/2004 of 19/6/2004 Establishing the Organization, Competence and Functioning of Gacaca courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed between October 1, 1990 and December 31, 1994.

the first part is dedicated to gathering information regarding victims of genocide and perpetrators of crimes. The second phase of the process is the hearing itself, during which judges listen to plaintiff, witnesses, and defendant.

It has been argued that ‘by blending retributive and restorative approaches in an innovative way, *Gacaca* courts represent a unique opportunity to seek justice in an open, accessible, and participatory fashion’ (Bolocan, 2004:356). However, the work of *gacaca* courts has also been criticised because of instances of coercion of defendants, a lack of procedural fairness, inaccurate integration of local custom, which can result in a lack of legitimacy, and discrimination. Nevertheless, for our purposes it must be said that several positive aspects of the *Gacaca* remain with regards to transitional justice; namely a reduction of genocide caseload, the crucial involvement of the community and civil society as a whole, use of informal dispute resolution processes, and attempts to restore a sense of identity.

Achievements of the *Gacaca* courts in Rwanda

One of the clear successes of the *Gacaca* has been their contribution to the reduction of the enormous logistical problems faced by Rwanda’s justice system following the Genocide. Trials have been held in *Gacaca* courts in over 10,000 communities, reducing the time needed to address the total number of cases to a seven year

period; something the national court system is likely to have taken over 100 years to achieve. According to estimations, almost every Rwandan adult has taken part in a *Gacaca* court hearing during this seven year period; a statistic which demonstrates the very accessible nature of the justice the *Gacaca* have brought into communities.²⁶ This combination of increasing access to justice for the population as a whole and individual victims through their availability, and the decreasing of the backlog that created huge overpopulation within prisons²⁷ has proven to be effective. Additionally, the emphasis placed by the *Gacaca* on community service and reintegration into communities has been successful in ensuring prisons do not become overpopulated again.²⁸

Other advantages the *Gacaca* are generally seen to have over conventional justice models include their acceleration of trials (meaning both victims and suspects had a shorter waiting period to see justice served); their reduction of costs to the government in maintaining prisons; and their contribution to transforming a culture of impunity in Rwanda into one of accountability (and more rapidly than through the conventional court system).²⁹

26 CLARK, Phil. "The legacy of Rwanda's Gacaca Courts". Available at <http://thinkafricapress.com/rwanda/legacy-gacaca-courts-genocide>, accessed March 23, 2012.

27 CLARK, Phil. "The legacy of Rwanda's Gacaca Courts". Available at <http://thinkafricapress.com/rwanda/legacy-gacaca-courts-genocide>, accessed March 23, 2012.

28 CLARK, Phil. "The legacy of Rwanda's Gacaca Courts". Available at <http://thinkafricapress.com/rwanda/legacy-gacaca-courts-genocide>, accessed March 23, 2012.

29 "Eight Years On... A Record of Gacaca Monitoring in Rwanda", 14. Penal Reform International. (2010). Available at <http://www.penalreform.org/wp-content/uploads/2013/05/WEB-english-gacaca-rwanda-5.pdf>

The organisation and nature of the *Gacaca* courts are also believed to have been a factor in their success. The integration of the courts into the community and the participatory aspect of their processes have brought about concrete results; Rwandans have seen justice being done for the crimes committed throughout the country.³⁰ The *Gacaca* process is largely viewed as having facilitated effective reconciliation within Rwandan communities; during the genocide many crimes committed were by nature ‘intra-community’; an important factor in the long term reintegration of perpetrators.³¹ Today, *genocidaires* live side by side with victims, something that would have previously been unimaginable.³² Community participation has proven an effective means of establishing the truth in many of the *Gacaca* trials.

The focus placed by the *Gacaca* on forgiveness and on frank and open discussion is largely seen as positive by participants in trials, as it enables the sharing of stories and experiences by survivors of the genocide; something which can provide not only catharsis but crucial acknowledgment of the harms suffered by victims.³³ Conversely, for some participants, the *Gacaca* process may in fact

30 KOK, N. (2012) “The closing of the Gacaca Courts and the implications for Access to Justice in Rwanda”, Institute for Security Studies.

31 KOK, N. (2012) “The closing of the Gacaca Courts and the implications for Access to Justice in Rwanda”, Institute for Security Studies.

32 CLARK, Phil. “The legacy of Rwanda’s Gacaca Courts”. Available at <http://thinkafricapress.com/rwanda/legacy-gacaca-courts-genocide>, accessed March 23, 2012.

33 CLARK, Phil. “The legacy of Rwanda’s Gacaca Courts”. Available at <http://thinkafricapress.com/rwanda/legacy-gacaca-courts-genocide>, accessed March 23, 2012.

retraumatise them, and open up past wounds.³⁴ Despite this, it cannot be denied that the *Gacaca* process creates a platform for dialogue regarding the genocide among civil society, making sure that the genocide and its effects are not forgotten or undermined.³⁵ The ongoing engagement with the entire spectrum of groups within civil society in the context of the *Gacaca* has been key to maintaining a peaceful democratic state in Rwanda.³⁶ Moreover, *Gacaca* courts are seen to have significantly aided healing and reconciliation on a national level, things which are essential to long lasting peace, stability and empowerment of the Rwandan people.³⁷

Challenges faced by the *Gacaca*

While the benefits of the *Gacaca* courts are numerous, scepticism and even concern have been expressed with regards to the ability of these courts to provide access to fair justice for *all* Rwandans. Some of these concerns include their capacity to deal effectively with the extremely large caseload faced by the *Gacaca* courts; issues

34 CLARK, Phil. "The legacy of Rwanda's Gacaca Courts". Available at <http://thinkafricapress.com/rwanda/legacy-gacaca-courts-genocide>, accessed March 23, 2012.

35 BOMKAMM, P. (2012) "Rwanda's Gacaca Courts: Between Retribution and Reparation". Oxford Monographs In International Humanitarian And Criminal Law, 162.

36 BOMKAMM, P. (2012) "Rwanda's Gacaca Courts: Between Retribution and Reparation". Oxford Monographs In International Humanitarian And Criminal Law, 162.

37 "Eight Years On... A Record of Gacaca Monitoring in Rwanda", 14. Penal Reform International. (2010). Available at <http://www.penalreform.org/wp-content/uploads/2013/05/WEB-english-gacaca-rwanda-5.pdf>

surrounding the impartiality and independence of the *Gacaca*'s many 'lay' judges; and the right of defendants to a completely fair trial.³⁸

At the time of establishing the *Gacaca* courts, many international human rights organisations voiced apprehension with regards to the following, which were seen as potential obstacles to access to justice for participants in *Gacaca* processes: the fact that most genocide perpetrators did not have the financial means to offer compensation to their victims; the fact that state resources were inadequate to implement a nationwide compensation scheme and also to establish a comprehensive community service scheme; and the fact that the training of *Inyangamugayo* judges was seen to be largely insufficient.³⁹ The fact that *Gacaca* judges have no formal legal background (and often no formal education of any kind) and that the defendant has no formal legal representation, has meant that the process is often viewed as flawed when compared to international standards.⁴⁰ Another concern has been the absence of remuneration for judges, which is seen to increase the likelihood of corruption within the *Gacaca* judiciary.⁴¹

38 "Eight Years On... A Record of Gacaca Monitoring in Rwanda", 14. Penal Reform International. (2010). Available at <http://www.penalreform.org/wp-content/uploads/2013/05/WEB-english-gacaca-rwanda-5.pdf>

39 "Eight Years On... A Record of Gacaca Monitoring in Rwanda", 14. Penal Reform International. (2010). Available at <http://www.penalreform.org/wp-content/uploads/2013/05/WEB-english-gacaca-rwanda-5.pdf>

40 "Justice Compromised: The legacy of Rwanda's Community Based Gacaca Courts" Human Rights Watch, Available at <http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf>;

41 BOMKAMM, P (2012). *Rwanda's Gacaca Courts: Between Retribution and Reparation*, Oxford Monographs in International Humanitarian and Criminal

Some reports claim that the involvement of Rwanda's entire adult population has been central to the success of the *Gacaca* courts.⁴² However there is debate as to whether the *Gacaca* courts have in fact achieved the popular participation that was intended to prevent the system being abused. It was hoped that through community participation, community members would speak up when they saw false evidence being presented, either for or against the defendant. Yet some studies indicate the fact that fears of individuals, surrounding the possibility that speaking out could lead to retribution, have proven to be an obstacle to unhindered participation.⁴³ What's more, in this scenario, the outcomes of the *Gacaca* processes could be influenced by those holding the economic, political and coercive power in the community, to the detriment of the individuals involved.

A key issue of concern has been the *quality* of justice offered by the *Gacaca* courts. It has been claimed that many prisoners (suspected genocide killers) were in fact victims of false testimony.

Law, 162.

42 "Eight Years On... A Record of Gacaca Monitoring in Rwanda", 14. Penal Reform International. (2010). Available at <http://www.penalreform.org/wp-content/uploads/2013/05/WEB-english-gacaca-rwanda-5.pdf>

43 "Justice Compromised: The legacy of Rwanda's Community Based Gacaca Courts" Human Rights Watch, Available at <http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf>; BOMKAMM, P. (2012) "Rwanda's Gacaca Courts: Between Retribution and Reparation". Oxford Monographs In International Humanitarian And Criminal Law, 160.

In addition, a number of prisoners' records are said to have been incomplete or even non-existent, making it difficult to ascertain a fair trial for them.⁴⁴

The issue of reparations in the context of the *Gacaca* courts has also proved to be contentious. Reparations, including compensation, are a vital part of post-conflict reconciliation processes, and are a significant aspect of transitional justice, as they acknowledge harms done and losses suffered, and often represent healing for both individuals and communities. Most guilty verdicts in Rwanda's *Gacaca* courts have resulted in community service sentences, which came to constitute an alternative to prison sentences for many; comprising unpaid work to be performed within the community. While the community services approach has its merits; namely the fact that it has proven to be a viable solution to the overcrowding of Rwanda's prisons, some have questioned whether such sentences can be considered to be sufficiently serious for the crimes in question. A number of survivors expressed concerns relating to security; questioning for example the wisdom of reinserting so many detainees back into their communities. Many questioned the effect this approach would have on genocide survivors; for example the widows and orphans who would have to live side by side with the very people who killed their relatives.⁴⁵

44 "Eight Years On... A Record of Gacaca Monitoring in Rwanda", 14. Penal Reform International. (2010). Available at <http://www.penalreform.org/wp-content/uploads/2013/05/WEB-english-gacaca-rwanda-5.pdf>

45 "Eight Years On... A Record of Gacaca Monitoring in Rwanda", 14. Penal Reform International. (2010). Available at <http://www.penalreform.org/wp-content/uploads/2013/05/WEB-english-gacaca-rwanda-5.pdf>

There is therefore a perception by some that it is the *perpetrators*, rather than the *victims* of genocide, who have benefitted from the government's need to reduce crowding in prisons.⁴⁶ The relatively lenient sentencing given by the *Gacaca* also led to concerns that false confessions by prisoners were taking place, in order that they leave the abhorrent prison conditions and take advantage of the plea bargaining system to receive a sentence of community service.⁴⁷ Despite such concerns, finding an alternative to the community service programme offered by the *Gacaca* would have been challenging given the very immediate crisis of prison overcrowding throughout the country.

An ongoing issue of contention within the context of the *Gacaca* is that of sexual violence. Sexual crimes were originally classed as 'category one' crimes, which could only be tried in the conventional court system,⁴⁸ but in 2008 it was decided that this category of crimes would be tried in the *Gacaca*,⁴⁹ citing the fact that many victims were dying from AIDS and would not live to attend the process, as justification.

46 CLARK, Phil. "The legacy of Rwanda's Gacaca Courts". Available at <http://thinkafricapress.com/rwanda/legacy-gacaca-courts-genocide>, accessed March 23, 2012.

47 CLARK, Phil. "The legacy of Rwanda's Gacaca Courts". Available at <http://thinkafricapress.com/rwanda/legacy-gacaca-courts-genocide>, accessed March 23, 2012.

48 TIEMESSEN, A. (2004). After Arusha: Gacaca Justice in Post-Genocide Rwanda, *African Studies Quarterly*, Vol. 8, Issue 1, 61.

49 "Justice Compromised: The legacy of Rwanda's Community Based Gacaca Courts" Human Rights Watch, Available at <http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf>

One of the negative aspects of this was seen to be the subjecting of victims of sexual crimes including rape and torture, to very public community hearings,⁵⁰ something which could inhibit some victims' participation or retraumatise victims.

A final considerable issue of the *Gacaca* process is that is seen by some to deliver 'victor's justice' by Tutsis against Hutus, thus stigmatising the entire Hutu population and 'tacitly reinforcing the idea of collective guilt'.⁵¹ While it has been reported that the majority of genocide crimes were committed by Hutus, the idea of collective responsibility by all Hutus for the Rwandan genocide is erroneous, with thousands of Hutus being killed in revenge attacks towards the end of the genocide, for example.⁵² Shortly after his election, Rwanda's President Kagame launched a campaign in 2004 to remove war crimes from the jurisdiction of the *Gacaca*, deciding that the crimes of the Patriotic Front of Rwanda (RPF) should not be tried.⁵³

50 "Justice Compromised: The legacy of Rwanda's Community Based Gacaca Courts" Human Rights Watch, Available at <http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf>

51 "Eight Years On... A Record of Gacaca Monitoring in Rwanda", 14. Penal Reform International. (2010). Available at <http://www.penalreform.org/wp-content/uploads/2013/05/WEB-english-gacaca-rwanda-5.pdf>

52 "Justice Compromised: The legacy of Rwanda's Community Based Gacaca Courts" Human Rights Watch, Available at <http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf>

For comprehensive information regarding the numbers killed during the genocide see Human Rights Watch (1999), *Leave none to tell the story: Genocide in Rwanda*.

53 "Justice Compromised: The legacy of Rwanda's Community Based Gacaca Courts" Human Rights Watch, Available at <http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf>

President Paul Kagame was the military leader of the Rwandan Patriotic Front that defeated the Hutu forces in 1994. He was elected President in 2000.

Such an approach clearly raises questions surrounding access to justice for the Hutus of Rwanda; while making the *Gacaca* accessible to Tutsis.⁵⁴ It is possible that this will have lasting consequences for a peaceful and democratic Rwanda, leaving aggrieved victims exacerbated by a lack of remedy,⁵⁵ and allowing individual Hutus to abdicate responsibility for crimes committed.

54 Many Hutus were killed by other Hutus for opposing the genocide. Hutu survivors are able to seek justice in the *Gacaca* for these crimes, but for those who suffered at the hands of the RPF there is no remedy.

55 TIEMESSEN, A. (2004) "After Arusha: *Gacaca* Justice in Post-Genocide Rwanda", *African Studies Quarterly*, Vol. 8, Issue 1, 57.

Selected Issues of Access to Justice

In the following section, some key socio-legal issues of access to justice are addressed, namely those of procedural autonomy, ‘fitting the forum to the fuss’ and the recourse to ADR. It is argued that in order for transitional strategies to be effective, victims of rights violations should be able to decide *whether* and *how* to deal with the disputes in which they are involved. Transitional justice strategies must therefore include programmes which aim at implementing a wide range of dispute resolution processes, including the recourse to mechanisms of traditional justice as well as more formal justice mechanisms. In so doing, particular attention must be paid to avoiding power imbalances and coercion during the dispute resolution process. Linking together access to justice and alternative dispute resolution would mean more affordable and therefore more accessible mechanisms of settlement, it would also give the opportunity for the violation of diffuse and group interests to be dealt with. In addition to the simple resolution of disputes, transitional justice strategies, drawing upon access to justice, should include awareness programmes and should prioritise the involvement of local communities and every level of civil society.

Individual Autonomy as Procedural Autonomy⁵⁶

Individual autonomy is a broad concept. It includes the possibility for individuals to express their own identity. Nevertheless, to express one's identity requires defences that will protect against violations. The concept of 'autonomy' opens up a number of complex debates⁵⁷ and issues across several areas of research, including philosophy, politics, and economics.⁵⁸ Autonomy has been examined as a social relationship,⁵⁹ and as a characteristic of human will and personality, in addition to as a normative principle.⁶⁰ Furthermore, autonomy has been interpreted and associated with empowerment, especially in the sphere of minority groups and women's rights.⁶¹ Crucially, autonomy has opened the doors for the right to participation, especially in the case of the rights of the child. As Baynes⁶² argues, autonomy is a fluid and complex term, with several dimensions that involve both the private and public life of the individual.

56 This section is based on the published essay *Individual Autonomy, Public Wrongs and Sexual Orientation: the Italian Case in Comparative Perspective*, *Journal of Comparative Law*, Vol. IV, Issue 2, 29-43.

57 BAYNES, Kenneth. (2007) "Freedom and Autonomy" in Brian, Leiter and Michael, Rosen (eds) *The Oxford Handbook of Continental Philosophy*, Oxford: Oxford University Press, 551-587.

58 BAVETTA, Sebastiano and Francesco, GUALA (2003) "Autonomy-Freedom and Deliberation". *Journal of Theoretical Politics*, Vol. 15, 423-443.

59 OSHANA, Marina. (2006) "Personal Autonomy in Society", Aldershot: Aldgate Publishing.

60 HEYWOOD, Andrew. (1994) "Political Ideas and Concepts." London: The MacMillan Press.

61 FRIEDMAN, Marilyn (2003) "*Autonomy, Gender, Politics (Studies in Feminist Philosophy)*". Oxford: Oxford University Press.

62 BAYNES, Kenneth. (2007) "Freedom and Autonomy" in Brian, Leiter and Michael, Rosen (eds) *The Oxford Handbook of Continental Philosophy*, Oxford: Oxford University Press, 551-587.

In the present paper, the notion of individual autonomy draws upon three sources that recall issues of the expression of personal identity and access to justice. The first source is Nietzsche's⁶³ characterisation of freedom as autonomy, as synthesised in the sentence 'we, however, want to become those we are'. The approach of Nietzsche is important here because it speaks to the concepts of identity and empowerment as those exemplified by social movements seeking to gain rights for minority groups such as ethnic, national, linguistic or sexual minorities. This component of individual autonomy is both purely private and personal, and yet not entirely separate from the surrounding community.⁶⁴

Secondly, the interpretation of individual autonomy may also take inspiration from anthropological research on the relationship between the autonomy of the individual and the community in societies, such as, for example, the Igbo in Nigeria and the Bakrawallah in the Himalayas.⁶⁵ The study of these and of other traditional societies focuses attention on two main considerations. Firstly, individual autonomy and its exercise, maintained by different societies, is rooted in distinctive ideas, which different societies maintain, regarding age, gender and economic status.⁶⁶

63 NIETZSCHE, Friederich Wilhelm (2001) "The Gay Science: with a Prelude in German Rhymes and an Appendix of Songs." Edited by Bernard, Williams, Cambridge: Cambridge University Press.

64 WHITE, Richard. (1997) "Nietzsche and the Problem of Sovereignty". Urbana: University of Illinois Press.

65 RAO, Aparna. (1998) "Autonomy: Life Cycle, Gender and Status among Himalayan Pastoralists." New York: Berghahn Books.

66 RAO, Aparna. (1998) "Autonomy: Life Cycle, Gender and Status among Himalayan Pastoralists." New York: Berghahn Books.

Consequently, the concept of autonomy varies cross-culturally. Secondly, the value of preserving *harmony* (Nader, 1990) within a community, on the one hand, may limit individual autonomy, but on the other hand, may also offer opportunities for reconciliation and for compensation for harm caused. Indeed, popular justice and extra-judicial dispute resolution processes demonstrate the way in which the notion of individual autonomy also includes *procedural* autonomy (Nader and Todd, 1978). Mauro Cappelletti observes that the right of a party to initiate legal action has ‘historically emerged as a fundamental guarantee of civil procedure’ (1972-1973:652).

The final source informing the understanding of the concept of individual autonomy is to be found in international and national legal statutes dealing with self-determination, the right to legislative protection, and the right to effective remedies against violation. In particular, articles 7 and 8 of the Universal Declaration of Human Rights state that ‘all are entitled without any discrimination to equal protection of the law’ (art. 7), and that ‘everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law (art. 8). The right to equal protection of the law and the right to effective remedy are replicated in the African Charter on Human and People’s Rights, in the International Covenant on Civil and Political Rights, and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Thus, the notion of autonomy emphasises that individuals are naturally free to express their own identity. In order to protect this identity from violation, access to courts or to the remedies provided by other processes, such as those offered by alternative dispute resolution methods, should be readily available to everyone. Violations of rights in conflict affected societies impact on the rights of entire groups of people. Such violations are often not ‘transformed’ into disputes because of several social factors. Therefore, procedural autonomy means that victims of conflicts should first be made aware of the violations suffered, and then have access to a wide range of dispute resolution mechanisms. Indeed, the concept of personal autonomy is linked to the idea of ‘fitting the forum to the fuss’, discussed briefly earlier, which is analysed in greater detail in the following section.

Fitting the Forum to the Fuss

The expression ‘fitting the forum to the fuss’ was coined by Sander and Goldberg (1994: 49) to refer to the search for the appropriate dispute resolution process in each individual case. Several different factors, including the characteristics of the case, the goals of the parties and the characteristics of the parties (Sander and Rozdeiczner, 2005) need to be taken into account in choosing the most appropriate dispute resolution process in every situation. Matching cases to their appropriate dispute resolution procedures should perhaps be the most important aim of a dispute resolution

process, yet such a goal is rarely easy to implement and frequently overlooked. It is argued here that the approach of Sander, Goldberg and Rozdeiczner overlooks two important considerations, namely the existence of a legal framework entitling individuals to vindicate their rights, and the availability of different dispute resolution procedures. It is often the case that it is only when there are *legal* provisions protecting those rights that have been infringed that the parties of a dispute are able to freely decide whether, and how, to resolve their dispute. Therefore, in transitional post conflict societies, where the judiciary may have collapsed, for instance, and the framework of former legal institutions no longer exists, a legal vacuum can often represent an obstacle to the resolution of disputes. Such limitations might be overcome through the use of systems of informal justice, in the case that they are suitable. It is suggested here that such mechanisms should be shaped depending on the social and cultural context in which they are adopted. However, despite their advantages, as is explained in the following section, systems of informal justice also entail several contentious issues of their own, which must be taken into account when considering the most appropriate forum.

Alternative Dispute Resolution

The main objective of the ‘third wave’ of the Access to Justice Movement discussed earlier has been to go beyond advocacy and legal aid. The third wave can be referred to as ‘the access-to-

justice' approach, because it is comprehensive and dynamic, and aims to improve a wide variety of reforms within civil procedure and dispute processing in general. This 'wave' includes reforms of the structure of the courts, reforms in the legal profession and reforms providing the use of ADR. Taking into account the fact that disputes present different characteristics and effects, and that the parties in question must also to be taken into consideration, the third wave aims to relate and adapt the civil process to the type of dispute in question. In the acknowledgement of this third wave it came too the recognition that 'it is necessary to see the role and importance of the different factors and barriers involved in order to design effective machinery and institutions to cope with them' (Cappelletti, pp.54 General Report).

From this premise, the ADR movement began, at the end of 1960s. ADR and transitional justice are, as suggested by Alberstein (2011), inherently connected. A vitally important question for victims of conflict is how best to deal with their disputes and grievances. In jurisdictions in which recourse to courts may not be possible or is very difficult, recourse to extrajudicial dispute resolution processes can represent a favorable solution. Roberts and Palmer present a model demonstrating the differing processes used in dealing with a dispute (2005). This model can be applied to any society, and can help to understand more clearly the relationship between local culture and decisions regarding the resolution of disputes. Roberts and Palmer argue that in any society there is a range of possibilities for dealing with a perceived infringement of an individual's rights.

In particular the varieties of response include *avoidance* and *self-help* at opposite ends of the spectrum. In between these two points, there are settlement focused, talking responses which are characterised by the presence or absence of third-party intervention, and where the basic models are represented by negotiation, mediation and umpiring (Roberts and Palmer, 2005). These are subject to all sorts of particular nuances and variations in real life, and are elaborated in various ways within the ADR movement. Notwithstanding variations, these three forms should be seen as the foundational types of dispute process where communication takes place with the intention of securing some kind of resolution.

Although in the common law world it is commonly argued that ADR represents something of a new movement, alternative to the court system, Roberts and Palmer show that systems of informal justice, or out-of-court settlement, were and remain present across a wide range of cultures (2005; 2007). Several impulses towards the use of informal and popular justice can be identified. In the analysis of Roberts and Palmer, mechanisms of informal justice have the following characteristics.

Institutions that are:

- non-bureaucratic in structure and relatively undifferentiated from society, relying on small, local fora that can deal with the social relationships of the parties,
- local in nature and relying on local rather than professional or official language,
- avoid official law, and resolves disputes by means other than the public application of the rules of published law,
- rely on substantive and procedural 'rules' that are vague, unwritten, flexible, and based on good common sense and everyday language, so that 'the law' does not stand in the way of achieving substantive justice, and
- promote harmony between the parties and within local communities, and get to the 'real' cause of the problem(s) (Palmer and Roberts, 2007: 422).

Accordingly, in societies which have been affected by conflict or non democratic systems of governance, structures of informal, extrajudicial, justice can be suitable in particular for the empowerment of the local people, as demonstrated by the earlier example of *gacaca* courts in post-conflict Rwanda, wherein a community-based approach in dealing with disputes is adopted.

Despite its benefits, several critiques have also been moved against the use of ADR and systems of popular justice. It has been argued that power imbalances (Fiss, 1984), abuses towards minorities and women (Grillo, 1991), manipulations by the state (de Sousa Santos, 1982), suppression of consciousness of inequalities in social and political decisions (Nader, 1990), and unhealthy expansion of state power (Abel, 1982) can all be factors of ADR. With this in mind,

in the specific case of transitional and post conflict societies, a possible danger is that the aim of overcoming periods of violations, and the wish to restore harmony in the community where there is conflict, means that limited attention is paid to the personal choice and emotions of individuals. More specifically, disputants might be influenced to settle. Coercion and power imbalances during settlement can be avoided, however, with recourse to the principles of access to justice.

Conclusion

The present study has shown the manner in which transitional justice strategies can be more effective when recourse is made to the principles of access to justice and ADR. Such recourse first means that legal aid, public interest law, and general reforms to litigation systems must be made applicable to transitional justice strategies; and secondly, focus should be placed on the active role that victims of violations and conflict in general can play during the transitional period of a post conflict society. In particular, victims must have the possibility of resolving disputes in the manner in which they feel most comfortable and which allows greater access to justice. With this in mind, courts and informal systems of dispute resolution should be made available to individuals and groups of people.

As Cappelletti and Garth have argued, ‘the identification of barriers to effective equality of arms is the first task in giving meaning to effectiveness’ (1978: 10). Accordingly, the idea that *procedural autonomy* is involved in the broad concept of *individual autonomy* is emerging as an effective resource for the enforcement of measures against discrimination and violation of rights. The notion of individual autonomy emphasises that individuals are naturally free to express their own identity, and access to higher courts or the remedies provided by other processes, such as those offered by alternative dispute resolution, should be readily available to every individual, in order to ensure protection from violations of this identity. Procedural autonomy is therefore integral to the notion

of ‘fitting the forum to the fuss’, as it allows for the possibility of making available the most appropriate dispute resolution process.

This paper has analysed two examples of transitional justice, namely *Gacaca* courts in Rwanda, and community reconciliation processes in Timor-Leste. These case studies emphasise the importance of the involvement of post-conflict communities, and the adoption of traditional systems of dispute resolution in successful transitional justice processes.

Above all, it must be remembered that access to justice, when applied to the concept of transitional justice, means that traditional systems and fora of dispute resolution must be based on the principles of human rights, and must aim at broader reforms, which go beyond the resolution of single disputes and make justice more accessible to civil society as a whole. A first fundamental step in this direction is to make individuals aware and conscious of violations and of the remedies and fora available to them.

References

- ABEL, Richard L. (ed.) (1982) 'The Politics of Informal Justice', *Volume 1: The American Experience*, New York: Academic Press.
- ALBERSTEIN, Michal (2011) 'ADR and Transitional Justice as Reconstructing the Rule of Law', *Journal of Dispute Resolution*, 2011, pp. 127-144.
- ANNAN, Kofi (2004) 'Report of the Secretary-General of Law and Transitional Justice in Conflict and Post-Conflict Societies', UN Doc. S/2004/616.
- BAVETTA, Sebastiano and Francesco, GUALA (2003) 'Autonomy-Freedom and Deliberation', *Journal of Theoretical Politics*, Vol. 15, pp. 423-443.
- BAYNES, Kenneth (2007) 'Freedom and Autonomy', in Brian, Leiter and Michael, Rosen (eds) *The Oxford Handbook of Continental Philosophy*, Oxford: Oxford University Press, pp. 551-587.
- BOLOCAN, Maya (2004) 'Rwandan Gacaca: an Experiment in Transitional Justice', *Journal of Dispute Resolution*, Vol.2, pp.355-400.
- BOLOCAN, Maya (2004) 'Rwandan Gacaca: An Experiment in Transitional Justice', *Journal of Dispute Resolution*, Vol.2, pp. 355-400.
- BOMKAMM, P (2012), Rwanda's Gacaca Courts: Between Retribution and Reparation, *Oxford Monographs in International Humanitarian and Criminal Law*, 162.
- CAPPELLETTI, Mauro (1992) 'Access to Justice as a Theoretical Approach to Law and a Practical Programme for Reform', *South African Law Journal*, Vol. 109, pp. 22-39.

CAPPELLETTI, Mauro and Bryant, GARTH (1978) 'General Report', in Mauro, CAPPELLETTI and Bryant, GARTH (eds) *Access to Justice. A World Survey*, Vol.I, Milano: Giuffrè Editore, pp. 1-80.

CLARK, P. 'The legacy of Rwanda's Gacaca Courts'. Retrieved March 23, 2012 from <http://thinkafricapress.com/rwanda/legacy-gacaca-courts-genocide>

EZEKWONNA, Ferdinand Chukwuagozie (2005) *African Communitarian Ethic: the Basis for the Moral Conscience and Autonomy of the Individual: Igbo Culture as a Case Study*, Bern, Oxford: Peter Lang.

FELSTINER, William L. F., ABEL, Richard L., and Austin, SARAT (1980-81) 'The emergence and Transformation of Disputes: Naming, Blaming, Claiming', *Law & Society Review*, Vol. 15, pp. 631-654.

FISS, Owen (1984) 'Against Settlement', *The Yale Law Journal*, Vol. 93, pp. 1073-1090

FRIEDMAN, Marilyn (2003) *Autonomy, Gender, Politics (Studies in Feminist Philosophy)*, Oxford: Oxford University Press.

GALANTER, Marc (2010) 'Access to Justice in a World of Expanding Social Capability', *Fordham Urban Law Journal*, Vol. 37, pp. 115-128.

GRILLO, Trina (1991) 'The Mediation Alternative: Process Dangers for Women', *Yale Law Journal*, Vol. 100, pp. 1545-1580.

HAYNER, Priscilla B. (2001) *Uspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, Routledge.

HEYWOOD, Andrew (1994) *Political Ideas and Concepts*, London: The MacMillan Press.

Human Rights Watch (2011), *Justice Compromised: The legacy of Rwanda's Community Based Gacaca Courts*. Retrieved from <http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf>

KOK, N (2012) *The Closing of the Gacaca Courts and the implications for Access to Justice in Rwanda*, Institute for Security Studies.

LAMBOURNE, Wendy (2012) 'Outreach, Inreach and Civil Society Participation in Transitional Justice', in Nicola Palmer, Phil Clark and Danielle Granville (eds) *Critical Perspective in Transitional Justice*, Cambridge: Intersentia.

LEITAR, B & M, ROSES (2007) *The Oxford Handbook of Continental Philosophy*, Oxford: Oxford University Press.

LINCOLN, Jessica (2011) *Transitional justice: peace and accountability: outreach and the role of international court after conflict*, London: Routledge.

Longman, Timothy (2006) *Gacaca trials in Rwanda* in ROHT-ARRIAZA, Naomi and Javier, MARIEZCURRENA (eds) (2006) *Transitional Justice in the Twenty-First Century*, Cambridge: Cambridge University Press.

McEVOY, Kieran and Lorna, GREGOR (eds) (2008) *Transitional justice from below: grassroots activism and the struggle for change*, Oxford: Hart.

NADER, Laura & Harry F. TODD (eds) (1978) *The Disputing Process: Law in Ten Societies*, New York, Guilford: Columbia University Press.

NADER, Laura (1990) *Harmony Ideology: Justice and Control in a Zapotec Mountain Village*, Stanford, California: Stanford University Press.

NIETZSCHE, Friederich Wilhelm (2001 ed) *The Gay Science: with a Prelude in German Rhymes and an Appendix of Songs*, edited by Bernard, Williams, Cambridge: Cambridge University Press.

OSHANA, Marina (2006) *Personal Autonomy in Society*, Aldershot: Aldgate Publishing.

Organic Law No. 16/2004 of 19/6/2004 Establishing the Organization, Competence and Functioning of Gacaca courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed between October 1, 1990 and December 31, 1994.

PALMER, Michael & Simon, ROBERTS (2007) "ADR" IN David S. Clarke (ed.) *Encyclopaedia of Law and Society: American and Global Experiences*, Thousand Oaks, London and New Delhi, Sage Publications, 2007, pp.421-426

Penal Reform International (2010) *Eight Years On... A Record of Gacaca Monitoring in Rwanda*. Retrieved <http://www.penalreform.org/wp-content/uploads/2013/05/WEB-english-gacaca-rwanda-5.pdf>

RAO, Aparna (1998) *Autonomy: Life Cycle, Gender and Status among Himalayan Pastoralists*, New York: Berghahn Books.

ROBERTS, Simon and Michael, PALMER (2005) *Dispute Processes: ADR and the Primary Forms of Decision Making*, Second Edition, Cambridge: Cambridge University Press.

ROHT-ARRIAZA, Naomi and Javier, MARIEZCURRENA (eds) (2006) *Transitional Justice in the Twenty-First Century*, Cambridge: Cambridge University Press.

SANDER, Frank E. A and Lukasz, ROZDEICZER (2005) 'Selecting an Appropriate Dispute Resolution Procedure: Detailed Analysis and Simplified Solution', in Michael, Moffitt and Robert, Bordone (eds) (2005) *The Handbook of Dispute Resolution*, pp. 386-406.

SANDER, Frank E.A. and Stephen B. GOLBERG (1994) 'Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure', *Negotiation Journal*, January 1994, Vol.10, No.1, pp. 49-68.

SANTOS, B de Sousa (1982) 'Law and Community: the Changing Nature of State Power in Late Capitalism', in Richard L. Abel (ed.) *The Politics of Informal Justice, Volume 1: The American Experience*, New York: Academic Press.

TIEMESSEN, A (2004), *After Arusha: Gacaca Justice in Post-Genocide Rwanda*, African Studies Quarterly, Vol. 8, Issue 1, pp. 57.

TWINING, William (2009) *General Jurisprudence. Understanding Law from a Global Perspective*, Cambridge: Cambridge University Press.

UNDP (2004) *The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation*, report for UNDP Timor-Leste by Piers Pigou. Available at: <http://www.cavr-timorleste.org/Analysis/Laporan%20Piers%20tentang%20CRP.pdf>

WHITE, Richard (1997) *Nietzsche and the Problem of Sovereignty*, Urbana: University of Illinois Press.

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Kerim Yildiz is Director of DPI. He is an expert in international human rights law and minority rights, and is the recipient of a number of awards, including from the Lawyers Committee for Human Rights for his services to protect human rights and promote the rule of law in 1996, the Sigrid Rausing Trust's Human Rights award for Leadership in Indigenous and Minority Rights in 2005, and the Gruber Prize for Justice in 2011. Kerim has written extensively on human rights and international law, and his work has been published internationally.

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Dermot Ahern is a Former Irish Member of Parliament and Government Minister and was a key figure for more than 20 years in the Irish peace process, including in negotiations for the Good Friday Agreement and the St Andrews Agreement. He also has extensive experience at EU Council level including being a key negotiator and signatory to the Constitutional and Lisbon Treaties. In 2005, he was appointed by the then UN Secretary General Kofi Annan to be a Special Envoy on his behalf on the issue of UN Reform. Previous roles include that of Government Chief Whip, Minister for Social, Community and Family Affairs, Minister for Communications, Marine and Natural Resources, Minister for Foreign Affairs and Minister for Justice and Law Reform. Dermot Ahern also served as Co-Chairman of the British Irish Inter Parliamentary Body 1993 – 1997.

Dr Mehmet Asutay

Dr Mehmet Asutay is a Reader in Middle Eastern and Islamic Political Economy and Finance at the School of Government and International Affairs (SGIA), Durham University, UK. He researches, teaches and supervises research on Middle Eastern economic development, the political economy of Middle East including Turkish and Kurdish political economies, and Islamic political economy. He is the Honorary Treasurer of BRISMES (British Society for Middle East Studies) and of the International Association for Islamic Economics. His research has been published in various journals, magazines and also in book format. He has been involved in human rights issues in various levels for many years, and has a close interest in transitional justice, conflict resolution and development issues at academic and policy levels.

Christine Bell

Legal expert based in Northern Ireland; expert on transitional justice, peace negotiations, constitutional law and human rights law advice. Trainer for diplomats, mediators and lawyers.

Cengiz Çandar

Senior Journalist and columnist specializing in areas such as The Kurdish Question, former war correspondent. Served as special adviser to Turkish president Turgut Ozal.

Yilmaz Ensaroğlu

SETA Politics Economic and Social Research Foundation. Member of the Executive Board of the Joint Platform for Human Rights, the Human Rights Agenda Association (İHGD) and Human Rights Research Association (İHAD), Chief Editor of the Journal of the Human Rights Dialogue.

Dr. Salomón Lerner Febres

Former President of the Truth and Reconciliation Commission of Perú; Executive President of the Centre for Democracy and Human Rights of the Pontifical Catholic University of Perú.

Professor Mervyn Frost

Head of the Department of War Studies, King's College London. Previously served as Chair of Politics and Head of Department at the University of Natal in Durban. Former President of the South African Political Studies Association; expert on human rights in international relations, humanitarian intervention, justice in world politics, democratising global governance, just war tradition in an Era of New Wars and ethics in a globalising world.

Martin Griffiths

Founding member and first Executive Director of the Centre for Humanitarian Dialogue, Served in the British Diplomatic Service, and in British NGOs, Ex -Chief Executive of Action Aid. Held posts as United Nations (UN) Director of the Department of Humanitarian Affairs, Geneva and Deputy to the UN Emergency Relief Coordinator, New York. Served as UN Regional Humanitarian Coordinator for the Great Lakes, UN Regional Coordinator in the Balkans and UN Assistant Secretary-General.

Dr. Edel Hughes

Senior Lecturer, University of East London. Expert on international human rights and humanitarian law, with special interest in civil liberties in Ireland, emergency/anti-terrorism law, international criminal law and human rights in Turkey and Turkey's accession to European Union. Previous lecturer with Amnesty International and a founding member of Human Rights for Change.

Avila Kilmurray

A founder member of the Northern Ireland Women's Coalition and was part of the Coalition's negotiating team for the Good Friday Agreement. She has written extensively on community action, the women's movement and conflict transformation. Serves on the Board of Conciliation Resources (UK); the Global Fund for Community Foundations; Conflict Resolution Services Ireland and the Institute for British Irish Studies. Avila was the first Women's Officer for the Transport & General Workers Union for Ireland (1990-1994) and became Director of the Community Foundation for Northern Ireland in 1994. Avila was awarded the Raymond Georis Prize for Innovative Philanthropy through the European Foundation Centre.

Professor Ram Manikkalingam

Visiting Professor, Department of Political Science, University of Amsterdam, served as Senior Advisor on the Peace Process to President of Sri Lanka, expert and author on conflict, multiculturalism and democracy, founding board member of the Laksham Kadirgamar Institute for Strategic Studies and International Relations.

Bejan Matur

Renowned Turkey based Author and Poet. Columnist, focusing mainly on Kurdish politics, the Armenian issue, daily politics, minority problems, prison literature, and women's issues. Has won several literary prizes and her work has been translated into 17 languages. Former Director of the Diyarbakır Cultural Art Foundation (DKSV).

Professor Monica McWilliams

Professor of Women's Studies, based in the Transitional Justice Institute at the University of Ulster. Was the Chief Commissioner of the Northern Ireland Human Rights Commission from 2005-2011 and responsible for delivering the advice on a Bill of Rights for Northern Ireland. Co-founder of the Northern Ireland Women's Coalition political party and was elected to a seat at the Multi-Party Peace Negotiations, which led to the Belfast (Good Friday) Peace Agreement in 1998. Served as a member of the Northern Ireland Legislative Assembly from 1998-2003 and the Northern Ireland Forum for Dialogue and Understanding from 1996-1998. Publications focus on domestic violence, human security and the role of women in peace processes.

Jonathan Powell

British diplomat, Downing Street Chief of Staff under Prime Minister Tony Blair between 1997- 2007. Chief negotiator in Northern Ireland peace talks, leading to the Good Friday Agreement in 1998. Currently CEO of Inter Mediate, a United Kingdom -based non-state mediation organization.

Sir Kieran Prendergast

Served in the British Foreign Office, including in Cyprus, Turkey, Israel, the Netherlands, Kenya and New York; later head of the Foreign and Commonwealth Office dealing with Apartheid and Namibia; former UN Under-Secretary-General for Political Affairs. Convenor of the SG's Executive Committee on Peace and Security and engaged in peacemaking efforts in Afghanistan, Burundi, Cyprus, the DRC, East Timor, Guatemala, Iraq, the Middle East, Somalia and Sudan.

Rajesh Rai

Rajesh was called to the Bar in 1993. His areas of expertise include Human Rights Law, Immigration and Asylum Law, and Public Law. Rajesh has extensive hands-on experience in humanitarian and environmental issues in his work with NGOs, cooperatives and companies based in the UK and overseas. He also lectures on a wide variety of legal issues, both for the Bar Human Rights Committee and internationally.

Professor Naomi Roht Arriaza

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