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Rwanda's Ethnic Pressure Cooker: Justice, Access and Participation in Kagame's Society

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Contents

Abstract...

p.5

Abbreviations...

p.6

To what extent, have restrictions on Hutu access to mechanisms of transitional justice, impacted on Rwanda's democratic development?...

p.7

Chapter 1: Access and Participation: The Nexus of Democracy and Transitional Justice...

p.10

The Root of Democracy: The Beetham and Freedom House Understanding

p.10

Expanding the Root: Deliberative Democracy

p.12

The Rwandan System: The Potential for Democracy

p.14

Genocide to Proportional Representation: Transitional Justice in the Rwandan Context

p.16

Chapter 2: 'Justice is in the Eyes of the Beholder': Rwanda's Experiences of Transitional Justice...

p.19

ICTR: An External Failure

p.19

Gacaca: An Internal Failure

p.24

The Failures of Transitional Justice

p.30

Chapter 3: The Impact of Justice on Rwanda's Democratic Development

p.33

Rwanda's Genocide Denial Laws: Denying Ethnicity, Permitting Division

p.34

Access to the Media: Legal Limitations on Freedom of Speech

p.37

Disbanded Political Opposition

p.39

Unabated RPF Control: Limits on Democratic Potential

p.41

A Lack of Democratic Development

p.43

Conclusion...

p.45

Bibliography...

p.50

Acknowledgments...

p. 62

Abstract

Post genocide Rwanda is widely considered to be Africa's success story, holding regular elections and with a growing economy the Great Lakes nation is regularly praised by Western powers. This thesis however shall seek to uncover Rwanda's darker side, and will analyse the extent to which the failures of Rwanda's transitional justice mechanisms have impacted upon its democratic development. By establishing a theoretical foundation of democracy, including deliberative thought, and a framework of transitional justice, this thesis shall analyse the extent to which these concepts have been realised. This shall be done through an analysis of Rwanda's transitional justice mechanisms, the International Criminal Tribunal for Rwanda and the gacaca courts. Due to both courts having a limited realisation of access and participation, this thesis shall conclude by uncovering the effects that the failures of transitional justice have had on Rwanda's democratic development. In light of Rwanda's limited realisation of democracy and due to the marginalisation of the country's Hutu population, the future for the Great Lakes nation could be devastating.

Abbreviations

DRC	Democratic Republic of Congo
FDU	Union des Forces Démocratiques Rwandais
ICTR	International Criminal Tribunal for Rwanda
PR	Proportional Representation
RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
UN	United Nations

To what extent, have restrictions on Hutu access to mechanisms of transitional justice, impacted on Rwanda's democratic development?

Rwanda is a country haunted by its past. In the summer of 1994 the Great Lakes nation was engulfed by a brutal civil war culminating in one of the swiftest and bloodiest genocides in history. It is estimated that 800,000 Rwandans died in the genocide, with the victory of the Rwandan Patriotic Front (RPF) signalling the end of the genocide and the beginning of their lengthy period in governance. Still in power today, the RPF have been praised for their transformation of Rwanda, from genocide to unparalleled economic growth. Dubbed the 'Singapore of Africa', Rwanda's economic success has made it one of the most successful economies of the Great Lakes region (AON One, 2011). Yet despite its successes, Rwanda has a darker side.

In 2014, Freedom House (2014a) awarded Rwanda and its media sources its infamous 'not free' status amidst reports of arrests, harassment and the killing of journalists and members of the political opposition. This is despite freedom of the press being guaranteed under Rwanda's constitution (Republic of Rwanda, 2003a). Human Rights Watch (2015) has equally asserted that the RPF "continues to impose severe restrictions on freedom of expression and association and does not tolerate dissent". The Economist's Democracy Index (2012) categorises Rwanda as 136th out of 167 states and thus classifies the nation as authoritarian. In light of these reports, Rwanda does not appear as free and democratic as its government would wish the rest of the world to believe (Smith, 2012). Following from the genocide, Rwanda was involved in a high profile and complex transitional justice process, of which the result was to lead to democracy. It is thus intriguing that despite this lengthy transitional justice process that Rwanda's democratic potential is still debated.

This research shall investigate the extent to which the failures of transitional justice have impacted upon Rwanda's democratic development. In particular, this research shall focus on the extent to which the country's Hutu population is excluded from accessing justice, and

the degree to which this lack of participation has been realised within the wider democratic system. The thesis shall uncover the extent to which restrictions placed on Hutu access to methods of transitional justice have limited Rwanda's ability to obtain inclusive transitional justice for its society; and the impact this has had on Rwanda's democratic development.

As Hutus are the majority ethnic group in Rwanda, understanding their exclusion will allow for this paper to comment more widely on the magnitude of exclusion and a lack of political access within Rwanda. By analysing the extent of a lack of access and participation within Rwanda, this thesis will be contributing to a growing literature on transitional justice and its impact in post-genocide societies (Andreopolos et al, 2011) (Barahona de Brito et al, 2001) (Nickson et al, 2004) (Stover et al, 2004). It will equally contribute to the wider discussion on democracy within Rwanda (Longman 2006a) (Longman, 2006b) (Mamdani, 2001) (Reyntjens, 2004) (Reyntjens, 2015).

Ultimately, this thesis will argue that the failures of transitional justice have meant that Rwanda has been unable to develop democracy. By failing to include all sections of society within the transitional justice process, the mechanisms which were intended to unite Rwandan society have in fact aided in tearing society further apart. The exclusion of the majority Hutu population from transitional justice was only emphasised further by the RPF throughout their 2 decades in power. This thesis shall thus culminate by highlighting the potential dangers to Rwandan society of the continued exclusion of the majority Hutu, and of continuing to deny access and participation to any aspect of the governing system. The lack of success and legitimacy possessed by both the International Criminal Tribunal for Rwanda (ICTR) and gacaca resulted in a political and judiciary vacuum, which having been skilfully hijacked and manipulated by the RPF, has allowed for their current control over all aspects of Rwandan society.

As such, Chapter 1 of this study shall begin by outlining and defining the definitions and concepts of democracy and transitional justice which will be used throughout this paper.

From this, chapter 2 shall highlight Rwanda's experiences of transitional justice, and whether the mechanisms used can be classed as successful. Despite a variety of methods, due to spatial limits this thesis shall focus on the criminal trials held by the ICTR and the domestic gacaca trials as mechanisms of transitional justice. Through an analysis of both structures, this thesis will uncover that both mechanisms failed to adequately implement a procedural and substantive understanding of transitional justice.

Lastly, using the understanding of democracy unpacked in chapter 1, chapter 3 shall uncover as to what extent the failures of the transitional justice mechanisms have impacted upon Rwanda's democratic development. This chapter shall culminate by uncovering that the failures of transitional justice have severely restricted the ability for Rwanda's Hutu population to access and participate with the government. From this, Rwanda can be understood to not have realised its full democratic potential.

Chapter 1

Access and Participation: The Nexus of Democracy and Transitional Justice

Democracy can be an elusive concept. Despite its widespread usage, the concept is malleable and can differ according to social, historical, and cultural circumstances. Before unpacking the Rwandan understanding and application of democracy, it is vital to have an understanding of the theoretical basics of the concept. This chapter shall begin by defining a root understanding of democracy, as outlined by David Beetham (1993, 2005) and advanced by the nongovernmental organisation Freedom House (2015). This root definition will highlight the significance of access and participation, which will be advanced further by the inclusion of deliberative democracy: an understanding of democracy concerned primarily with total access and participation by a population (Dryzek, 2000: 8).

Once this paper has a clear understanding of democracy it is vital to acknowledge whether Rwanda's electoral system can allow for this form of democracy to be realised; in other words, the potential for Rwandans to access democracy through their electoral system must be uncovered. This chapter shall then culminate in examining the importance that transitional justice has had on Rwanda's realisation of democracy. Rwanda's history has been bloody, with 1994 being a culmination of this. The impact of transitional justice in transcending from genocide to supposed democracy is thus vital in understanding the extent to which democracy can be realised.

The Root of Democracy: The Beetham and Freedom House Understanding

Democracy can be primarily defined by the presence of popular control and political equality (Beetham, 1993: 4). Popular control is best understood as a citizenship possessing the ability to influence, access and regulate their governing force. Political equality is the ability for a populace to participate and possess the ability to fully implement that control (Beetham, 1993: 4). In other words, popular control and political equality are primarily focused on the ability for a population to access their governing forces, and then to be able

to participate in the decision making process. Access and participation are thus crucial markers of any democratic system.

Freedom House (2015) equally regards access and participation as vital to a democratic system. Publishing annual reports on the extent of democracy in each country, Freedom House's indicators expand on access and participation in both political life and civil society. For the NGO, popular control and political equality are not just limited to accessing the governing force, but are expanded to include access and participation to the media, internet and to cultural life. As such, Freedom House's primary indicators of democracy are the extent to which political rights and civil liberties are realised. This is broken into the subsections of electoral process; political pluralism and participation; functioning of government; freedom of expression and belief; associational and organisational rights; rule of law; and personal autonomy and individual rights (Freedom House, 2015). Despite being more expansive than Beetham's criteria, Freedom House's conditions seek to measure the mechanisms and institutions which can either allow for or restrict access and participation. These mechanisms equally allow for a deeper understanding on the aspects of access and participation.

Beetham's definition (1993: 4) is unique in that it establishes a base understanding of democracy as a concept. Whilst the wider literature does make attempts at constructing a base understanding of democracy, theorists can often get distracted and can define in general terms which factors make up a democratic society, falling into the trap of describing democracy in purely institutional and descriptive terms (Barro, 1999) (Dahl, 1971) (Dalton et al, 2007) (Munck, 2014) (O'Donnell, 2007). Beetham's primary definition thus allows for a basic understanding of the concept which can be further expanded upon by additional democratic frameworks. Beetham (1993) and Freedom House (2015) place emphasis on the importance of access and participation to the realisation of democracy. Beetham (1993) articulates this at a theoretical level, whilst Freedom House (2015) adapts this framework and gives it a practical understanding. By expanding on Beetham's definition, Freedom

House provides democracy with a practicable and measurable implementation method. Both definitions can thus be seen as complementarity to each other.

Expanding the Root: Deliberative Democracy

Whilst popular control and political equality, understood as access and participation, offer a root understanding of democracy, they do not themselves offer an expansive enough framework in order to analyse Rwanda's democratic development. The inclusion of a wider theoretical understanding of democracy is thus crucial for this thesis. Following from the emphasis placed on participation and access by Beetham and Freedom House's definition, deliberative democracy is a useful analytical tool for which to widen this thesis's understanding of democracy.

Deliberative democracy asserts that public discussion and collective decision making are vital and should be at the forefront of all democratic actions (Chappel, 2012: 2). Theorists assert that an open and public debate ensures a greater understanding of a topic, including all citizens, for which a collective decision can then be made (Elster, 1998: 8) (Chappel, 2012: 7) (Dryzek, 2000: 8). The goal of discussion is to reach a total consensus. Majority ruling is not adequate as it would still exclude members of society from fully participating and accessing the system (Young 1996: 126). All members of society must have access to adequate information and evidence on arguments before a decision can be arrived at through a fair debate (Fishkin, 2011: 2-4). From this, all actions are perceived to be legitimate as every member of society has been consulted and has had the opportunity to voice their opinion (Owen, 2001: 118) (Dahl, 1989: 86). Complete participation by a population and access to the discussion by all, is thus a crucial component of deliberative democracy and thus why this framework is imperative for this thesis.

Participation and access are crucial to democracy. Yet often due to financial restrictions placed on individuals to enter politics, such as party nomination fees or a lack of corporate

backing, the elite is often the only force that possesses the ability to have direct political control (Chappel, 2012: 9). A deliberative framework, however can seek to diminish financial elitism by allowing for a public to have complete access and participation. Democracy can often be at the mercy of the 'white and middle class', with a similar hierarchical structure also present in non-Western democracies (Ryfe, 2005: 51). Yet through deliberative discussion all sections, ethnicities and genders of society are included, with their views vital to participation. Through unpacking the distinctive power relations that impact upon democracy, a deliberative framework can seek to further destabilise these current power imbalances (Head, 2012: 117). This can thus allow for this thesis to view more extensively, the mechanisms and limits for which citizens can participate with and access democracy.

David Owen (2001: 122) establishes a clear framework for the criteria for deliberative democracy. There must be the presence of 'institutional limits' which can ensure that power cannot be consolidated by one particular group. Secondly, there must be equality amongst all sections of society so that all members have sufficient access to the political process, whilst lastly all decisions and discussion by a government must be made public (Owen, 2001: 122). For each of these 3 components, participation and access are crucial. Deliberative democracy can thus be seen as an expansion of the Beetham understanding of democracy.

It is necessary to highlight that despite deliberative democracy being used as a framework to analyse Rwanda's democratic development, this shall be understood purely in analytical terms and not in a normative sense. Due to the complete inclusive nature of deliberative democracy and its focus on universal societal agreement, its practical applications are extremely difficult. Currently there are no democracies or states which could be described as deliberative. It would thus be unfair and ineffective to judge Rwanda to this standard. Instead, the theory will be used in order to expand this thesis's understanding of democracy and its focus on access and participation.

Deliberative democracy was chosen as a theoretical framework due to its intrinsic focus on participation and access. Within post genocide societies, such as Rwanda, participation and access can be seen as vital factors in order to reengage broken communities and to lead to stability and reconciliation (Dyzenhaus, 2003: 164-165). Full societal participation is thus crucial in ensuring that groups are not excluded and that the hatreds which led to genocide can be prevented from resurfacing. The focus on participation and access which a deliberative model offers is useful in creating a theoretical foundation for democracy.

For the purposes of this thesis, democracy is understood as the ability of a population to be able to participate with, and access, the different spheres of governance. Deliberative thought enhances this definition by focusing on the need for complete participation by a society in order to reach consensus. Before analysis can be conducted on Rwanda's development and its attempts to obtain this definition, it is firstly important to consider whether the nation's electoral and democratic structure can allow for this definition to be realised. In other words, does Rwanda's electoral system, including its institutions, structures and foundations, allow for the potential for democracy to be realised?

The Rwandan System: The Potential for Democracy

Rwanda was a monarchy until 1962, where it transitioned to an autocracy until 1994 (Yachat Ankut, 2005: 6). Following the RPF victory, a transitional phase was then established which intended to introduce democratic standards to the Great Lakes state (Yachat Ankut, 2005: 12). This culminated in the 2003 Constitution which remains to the present (Yachat Ankut, 2005: 13). Currently, Rwanda has a presidential political system and a bicameral parliament comprising of 26 seats in the Senate and 80 seats in the Chamber of Deputies. Members of the Senate are elected to serve 8 year periods, whilst those in the Chamber of Deputies serve 5; the President serves a 7 year term (IFES, 2015). Elections are implemented through a proportional representation (PR) system and are based on the closed party list system (IPU, 2013).

The use of PR electoral systems is common amongst the African continent and is often adopted by newer democracies due to its straightforward transitioning of electoral votes (IDEA, 2005: 57). Perhaps the clearest advantage of PR is in this clear transfer of votes: if a party gets 5% of the votes they will then receive 5% of the seats. This distinction is preferred by newer democracies, and particularly those who have social cleavages such as Rwanda, as it ensures that each political party and individual receives the percentage of seats for which their vote reflects (IDEA, 2005: 57). Equally, the usage of a closed party list system allows for an additional opportunity for minority voices to be included (ACE, 2015).

The Rwandan electoral system is thus not dissimilar from other African electoral systems. In fact, by adopting PR, theoretically Rwanda's electoral system appears to ensure that a greater amount of the population should be able to participate in government. Systems such as first past the post, often eliminate minority parties and views from being elected; therefore reducing the ability for individuals who hold and express those viewpoints to be represented (ACE, 2015). As such, by using PR, the Rwandan system in fact increases the opportunity for its population to access and participate with the government.

Theoretically, Rwanda's electoral system can allow for this thesis's understanding of democracy to be realised. Access and participation are crucial to democracy, and PR allows for this to be realised. Theoretically the entire Rwandan electorate are able to access and participate with their governing forces through this system.

The electoral system cannot be seen to restrict the capacity and extent for Rwandans to realise democracy. Yet according to various reports by human rights organisations (Freedom House, 2014a) (Human Rights Watch 2015) (The Economist 2012), Rwandans are restricted in accessing democracy. Rwanda is a new democracy, having only transitioned in 1994 in conjunction with a transitional justice process. At its root, the intent of transitional justice is to allow for the movement between an old regime and the new (Boraine, 2006: 18). The successes of Rwanda's current understanding of democracy are thus rooted in the

transitional justice process. In order to understand the extent to which democracy is then limited, it is necessary to analyse Rwanda's transitional period.

Genocide to Proportional Representation: Transitional Justice in the Rwandan Context

Rwanda's political movement from genocide to PR was achieved through transitional justice mechanisms. Reserved for states who are in the process of differentiating themselves from the previous regime and responding to the challenges of this, transitional justice mechanisms operate differently to other understandings of justice (Boraine, 2006: 18) (Turner, 2013: 196).

Transitional justice is unique in that it; a) focuses its attention on confronting the abuses that occurred; b) the understanding to complement this attention with a wider movement towards obtaining "peace, democracy, equitable development and the rule of law"; c) that each of the chosen mechanisms to implement transitional justice must be complementarity and not act in isolation; and lastly d) for the victims and survivors of abuses to be at the forefront of transitional justice mechanisms (Freeman in Sottas, 2008: 371). Despite having various methods of implementation, the aim of each component of transitional justice is to aid in the healing of a society; challenge the previous regime and aid in domestic reconciliation (Boraine, 2006: 18).

In terms of implementation, transitional justice can be divided into procedural and substantive understandings (Sadurski, 1985: 49) (Nickson et al, 2014; 451) (Elster, 2004: 236). Procedural justice is primarily concerned with the technical and practical undertakings of a justice mechanism, and that these processes have been fairly undertaken (Blader & Taylor, 2003: 755). It is only if a process has been carried out justly and understood to be fair and in line with its rule base, that procedural justice can be considered to be obtained. (Sadurski, 1985: 49). John Rawls illustrated procedural justice sufficiently by attributing it to gambling; the outcome of gambling cannot always be considered fair, but insofar as the

rules that govern gambling are upheld then the procedure can be considered just (Sadurski, 1985: 49)

Substantive justice on the other hand is primarily concerned with the perception of justice having been achieved (Sadurski, 1985: 2) (Elster, 2004: 236) (Van der Merwe, 2009: 121). Substantive justice is primarily concerned with the psychological impact that justice has been obtained; if a citizenship does not feel that justice has been administered then the scars of past abuses cannot be seen to have healed (Nickson et al 2014: 450). As a victim centric approach is an essential mechanism of transitional justice, substantive justice is thus crucial to obtaining this.

It is crucial that when seeking to obtain justice that both procedural and substantive understandings of the concept are implemented (Van der Merwe, 2009: 121). As despite being distinct concepts, there needs to be an understanding of a fair process and an emotional sentiment of justice having been obtained in order for full transitional justice to be realised. It is through these mechanisms that a population can engage meaningfully with the process of transitional justice and seek to rebuild society (Osiel, 2000: 2).

Following grave crimes, public discussion by all is crucial in order to build a common narrative. It is only then that societies can seek to progress (Osiel, 2000: 6) (Boraine, 2006: 22). This must be a process that includes all sides from the conflict and can often be difficult to obtain without slipping into accusations of victor's justice (Boraine, 2006; 22) (Dyzenhaus, 2003: 166). Within a post-genocide society there are more than 2 distinct categories of clear victims and perpetrators (Zorbas, 2005: 46). In Rwanda, there are Hutus who are victims and equally Tutsis who are perpetrators (Zorbas, 2005: 32). Each experience of the bloodshed is as valuable as another's, with all viewpoints having to be considered in order to build a common narrative. The inability to include all viewpoints and to punish only one distinct group results in victor's justice (Zorbas, 2005: 46).

Accusations of victor's justice in particular have plagued the RPF and the current politics of Rwanda (Mamdani, 2001: 267) (Dyzenhaus, 2003: 166). Amidst these widespread accusations of victor's justice it can thus appear difficult for transitional justice to be achieved for all in society. By its very nature, victor's justice restricts the implementation of justice to an affected group, meaning that, another group is excluded. This fails to meet the requirement of transitional justice.

The goal of transitional justice is thus to allow societies to transition to an adequate enough point for which access and participation to the governing system can be enjoyed and realised by all. Transitional justice is the point for which nations can move towards realising a potential to access democracy. For Rwanda, its attempts to obtain this were mainly led by the UN ICTR and in the domestic gacaca. The ICTR was an exogenous structure based in Arusha in Tanzania, with the endogenous gacaca a response to this (Kaminski et al, 2006: 295). It shall be through an analysis of both structures that the impact of transitional justice on Rwanda's democratic development shall be uncovered.

Chapter 2

'Justice is in the Eyes of the Beholder': Rwanda's Experiences of Transitional Justice

Following the genocide, Rwanda's criminal justice system was on its knees. 126,000 people were held in connection with the genocide and waiting trial. At this point, Rwanda had less than 50 practicing lawyers remaining in the country, with very few seeming willing to risk their reputations and defend suspected genocidaires (Barahona de Brito et al, 2001: 11) (Minow, 1998: 124). In response and at the request of the Rwandan government, the ICTR was enacted in November 1994 with the mandate to prosecute individuals for the crimes of genocide, crimes against humanity and for violations of the Geneva Convention (UNSC, 1994: 3-5). In seeking to offer a domestic alternative, the gacaca trials were established later in 1997 and offered a community based approach in order to prosecute low level genocidaires (UN, 2014).

This chapter shall analyse the extent to which the ICTR and gacaca trials were successful in implementing transitional justice. In light of transitional justice being the process which will lead to a society being able to access and participate with their government, the failure of the ICTR and gacaca shall be considered. Taking each mechanism in turn, this chapter shall analyse the main criticisms of both courts that lead to their respective failures. The inability to obtain both procedural and substantive understandings of justice by both mechanisms shall also be analysed, with the use of secondary interview data included as further justification of this failure.

ICTR: An External Failure

In seeking to understand the extent to which the ICTR was successful in implementing transitional justice this section shall analyse the courts structure, location, and its relationship with Paul Kagame and the RPF. Through this three point analysis, the extent to which the court can be seen to have failed to implement transitional justice, and its effects on obtaining democracy, shall be shown.

In the resolution of its birth, the ICTR was stated as being expressly interested in ensuring the “justice and fairness as well as administrative efficiency” of the court (UNSC, 1994: 2). Comprising of a multitude of various international criminal lawyers with a focus on ensuring that each defendant possessed appropriate defence counsel, the ICTR was committed to ensuring the operation of fair trials that were procedurally correct (UNICTR, 2015a). Expressly concerned with the implementation of procedural justice, it would have been hoped that substantive justice would naturally have followed with prosecutions. This would thus rest on the prosecution rate, in order to highlight effectiveness.

Yet despite being primarily concerned with prosecuting senior members of the Habyarimana government, and those directly involved in designing the genocide, the results of the ICTR have been lacklustre (Minow, 1998: 124). In operation for over a decade, the court has only indicted 93 individuals and has prosecuted as few as 61 (UNICTR, 2015b). Within the first 5 years after the genocide, a crucial time frame in which to prosecute individuals and enshrine the court’s legitimacy, the court had only prosecuted 6 people (Longman, 2006b: 20). The Western style of the court system equally opened the ICTR to criticism. Victims and survivors were not given a strong opportunity for which to voice their experiences, especially when compared to the South African Truth and Reconciliation Commission, which was occurring at the same time as the ICTR. This only sought to further exclude and isolate Rwandans from the judicial process (Longman, 2006a: 206). The superior nature of the ICTR to try the gravest perpetrators of the genocide over the Rwandan domestic system, equally sought to exclude Rwandans from accessing and participating with the court (Longman, 2006b: 19) (Warburton et al, 2011: 170).

The aim of transitional justice is to ensure that societies can reach a point for which they can allow for the potential of access and participation to be realised (Freeman in Sottas, 2008: 371). Transitional justice is expressly linked to the realisation of democracy, with access and participation crucial for the implementation of both concepts. A lack of access

and participation with the ICTR would thus make it improbable to replicate this for an understanding of democracy. Moreover, despite the ICTR possessing procedural justice, through its location and low conviction rate it appeared unable to implement a substantive understanding of justice.

This failure was marked further through the locational choice for which to situate the court. Based in Arusha, Tanzania the justification was that Rwanda was too unstable a nation to hold a complex judicial trial (Longman, 2006a: 208). It was considered that by holding the court in a neighbouring country, the ICTR would still be geographically close enough to which Rwandans could engage with the court, yet be removed so far enough that it was physically secure to conduct prosecutions (Warburton et al, 2011: 170). Within Rwanda, fighting was ongoing between the RPF and genocidaires, incursions were occurring into neighbouring Democratic Republic of Congo (DRC) and human rights were continually being violated (Reyntjens, 2011: 24) (Lekha Sriram, 2004: 65). Amidst this, the ICTR was attempting to adjudicate trials and implement procedural transitional justice. It could thus seem paradoxical that the ICTR was attempting to implement justice and end impunity whilst within Rwanda violence was still occurring on a mass scale (UNICTR, 2015b). The accountability and success of the court was severely hampered by its seeming inability to provide a link to democracy (Barahona de Brito et al, 2001: 10).

Moreover the locational distance of the ICTR would only hinder the ability for the Rwandan judicial system to rebuild. In seeking to create a distinction between the previous regime and aid in the progression towards democracy, the purpose of transitional justice is to ultimately help rebuild society (Freeman in Sottas, 2008: 371). By physically removing the court from the country it is intended to aid, the ICTR was equally physically removed from having the ability to aid in reconstructing Rwanda's legal system (Warburton et al, 2011: 170). As aiding in the reconstruction of society is a vital component of transitional justice, the removal of the court from Rwandan territory can equally be viewed as a limitation of the court.

Yet perhaps the gravest critique of the ICTR is in its inability to remain neutral and ensure that all perpetrators were tried, instead the court was able to be hijacked as a vehicle for which to obtain victor's justice (Reyntjens, 2011: 18). The ICTR was unable to uphold its neutrality and prosecute any individual who the court believed had committed genocide or crimes against humanity. The court found itself unable to hear any cases of RPF crimes committed throughout the summer of 1994. Human Rights Watch (2008) has reported that the RPF are solely responsible for the deaths of thousands of Rwandans during their march towards Kigali. The United Nations Commission of Experts equally reported that the RPF had committed crimes against humanity (Human Rights Watch, 2008), whilst countless witness statements are available citing RPF crimes (Thomson, 2013: 154) (BBC, 2014: 24.13-25.10) (Human Rights Watch, 2011: 125). In light of the majority of RPF offences being committed against members of the Hutu population, the inability of the ICTR to hear these crimes only sought to marginalise Hutus from accessing justice. The court however, failed to hear any cases against any member of the RPF.

This inability has severely inhibited the court's reputation and its ability to serve as a vehicle to implement transitional justice. Transitional justice has an express focus on the victims and survivors of human rights abuses. Justice mechanisms must be intrinsically focused on bringing justice to this group (Freeman in Sottas, 2008: 371). Tasked with being the highest point of law for which to punish perpetrators of the violence of 1994, the ICTR stood as the pinnacle of transitional justice in Rwanda. However, the court's inability to try any member of the RPF for their suspected crimes resulted in the court's apparent disregard for some victims and survivors.

As such, in terms of implementing understandings of transitional justice the court was able to implement procedural understandings of justice, but not substantive. Procedural in that the trials were conducted in a fair manner in line with set legal requirements. The court, however, was unable to obtain substantive understandings of justice. The failure to

prosecute larger numbers of genocidaires, twinned with the court's inability to amount legal action against the RPF left many in Rwanda feeling that the court was unable to offer justice for the genocide (Longman, 2006a: 209). Despite requiring both understandings of justice for the concept to be considered as having been implemented (Van der Merwe, 2009: 121), the acquisition of substantive justice can arguably be of greater concern. Transitional justice is primarily concerned with victims and survivors; it is their perception of justice having been fulfilled that is most important (Freeman in Sottas, 2008: 371). The inability for the court to obtain substantive justice can thus be seen as a failure of the court, and a failed implementation of transitional justice

Transitional justice is intended to allow for the transition from one regime to another, with the understanding mainly focused on a transition to democracy (Dyzenhaus, 2003: 164). Access and participation are crucial, with these components meant to be unearthed and implemented at the transitional justice phase in order to be replicated in the establishment of democracy. The intent of the ICTR was to prosecute those responsible for the 1994 genocide and bring justice to the Rwandan people (UNICTR, 2015b); yet as a transitional justice mechanism it is also theoretically intended to act as a bridge to democracy. The success of transitional justice is thus intended to indicate the successful transition to democracy.

As access and participation are crucial aspects of democracy, the court had to be absolute in introducing these principles for the new Rwanda. The court however was frozen in its ability to do this. Through location, foreign court system and its lacklustre prosecution rate a barrier was set prohibiting Rwandans from participating with the court system. To expand, whilst geographical location proved difficult for Rwandans to travel and witness the court's proceedings, the Western style court system equally made it difficult for Rwandans to access it. The low prosecution rate twinned with the formal legal mechanisms made it difficult for Rwandans to engage, thus drastically reducing the potential for victims and survivors to access and participate with the court. The failure to implement the basic understandings of democracy through the ICTR marked the failure of the court as a

transitional justice mechanism. Its inability to express the core concept of democracy resulted in the failure for this to be transmitted into the new regime.

Gacaca: An Internal Failure

The implementation of the gacaca system was a response to this failure. Due to the multitude of individuals held in prison under charges of being a suspected genocidaire, the new Rwandan government was required to respond (Amnesty International, 2002). The community based gacaca system was introduced, based on a traditional framework in which small communities would meet to discuss and adjudicate on conflict (Longman, 2006a: 210). This process ensured that disputes were solved at the community level and did not need to involve an external authority (Longman, 2006a: 210). Each gacaca court was typically responsible for between 100 and 500 families and was officiated by 19 judges, who were comprised of ordinary members of the community (Longman, 2006b: 22).

In seeking to address the failures of the ICTR, the intent of the gacaca system as a response to the genocide was to give control back to affected communities and allow towns and survivors to take control of their own justice process (Longman, 2006: 207) (UN, 2014). In effect, gacaca sought to remove the power of deciding justice from the elite and place it firmly within communities and with those who were directly affected by the genocide. The ICTR personified control of Rwanda's transitional justice, with the ultimate decision on guilt decided in a foreign court made of foreign judges. Gacaca sought to firmly unpack this power relationship and return power to the community level. This is a key principle of deliberative democracy (Dahl, 1989: 86) (Owen, 2001; 118). In seeking to return power to communities, gacaca can be viewed as a practical understanding of deliberative democracy. Attendance at gacaca was compulsory, and so every member of the community was involved in discussing guilt and innocence at the trials (Thomson, 2013: 12). The location of the trials at the community level, equally allowed individuals the power to access and participate fully with the system.

Theoretically, gacaca appears to meet the criteria for both a root understanding and deliberative thought of democracy. The ability for a public to access and participate with a governing force is a crucial tenet of both understandings of democracy, and is at the theoretical core of gacaca. Whole participation by a community and the ease of ability for which an individual can contribute to gacaca, has allowed for the concept to appear to meet the criteria of a deliberative democracy.

Yet despite the excitement enjoyed by many scholars at gacaca's apparent success, the reality has not been able to match this (Bornkamm, 2012) (Zimmer, 2014) (Nyseth Brehm et al, 2014). Despite being held at the community level and intended to include all views and experiences of the genocide, similar to the ICTR, experiences of crimes committed by the RPF were prohibited to be discussed. There exists countless witness testimonies and reports given to NGOs and third parties indicating RPF culpability of war crimes and crimes against humanity (Longman, 2006a: 211) (Des Forges, 1999: 13) (Zorbas, 2005: 51) (Hintjens, 2008: 11). Reports equally suggest that due to the hierarchical and centralised structure of the RPF, in combination with the prevalence of crimes being committed, that Paul Kagame, leader of the Rwandan Patriotic Army (RPA), architect of gacaca and current President of Rwanda, knew of their existence (Des Forges, 1999: 14). These crimes, mostly committed against Hutu civilians, were prohibited to be discussed at gacaca (Longman, 2006a: 212). Only one experience of the genocide was permitted to be heard at gacaca: the Tutsi experience of slaughter by the Hutu. Whilst not to discredit this experience, it is imperative that when seeking to reconcile a society as damaged as that which has been torn apart by genocide, that all points and views of society are considered. Hutus, however, were restricted in their participation at gacaca.

The restrictions on discussing RPF crimes at gacaca can be seen as the biggest barrier for Rwanda's Hutu population to access and participate fully with the transitional justice mechanisms. In interviews conducted by Susan Thomson (2013) many Hutus spoke of their feelings of anger and discontent with the judicial system and in particular that the RPF had not been punished or recognised for the crimes they committed during the genocide. The

Kibeho massacre serves as an infamous example of the inability for justice to be implemented.

In April 1995, the RPF sent troops to close a camp for internally displaced people based in Kibeho, citing that the camp was being used to hide and protect genocidaires as their reasoning (Connor, 2007). The camp was subsequently attacked with reports indicating that heavy weaponry including rocket launchers were used against the camps' men, women and children (Jambo News, 2015). The RPF claimed that 338 people were killed; however the UN official figure stands at 2,000, whilst UN medics at the scene reported counting the bodies of 5,000 people (BBC, 2014: 32.46-34.19). In terms of criminal responsibility, the Colonel in charge of the military operation was charged and then acquitted of 'murder charges and the use of weapons without prior orders'; for this he was served with 18 months in prison and a \$30 fine (Jambo News, 2015).

The domestic response to the Kibeho massacre highlights the failures of transitional justice within Rwanda. The victims of the attack were predominantly Hutu, yet the lack of attention paid to the massacre highlights the exclusion and lack of political participation which would be inflicted upon the Hutu population. Citing their reasoning for the Kibeho massacre, the RPF stated that genocidaires were hiding in the camps and could be using this to mount sporadic attacks within Rwanda (ABC, 2015). This would be a similar justification which Kagame would use when the RPF subsequently twice invaded neighbouring DRC (Reyntjens, 2004: 196). Acts of violence committed against the Hutu population were seldom met with a response from Rwanda's transitional justice mechanisms. Despite 5,000 people being believed to have been killed, the maximum judiciary sentence awarded was a \$30 fine. The example set by Kibeho, including the lack of response from the UN and international powers, gave the RPF a legitimacy to continue denying access to the Hutu population. As a result of Kibeho, Hutus could expect little compassion from the justice system, or the ability to access and receive transitional justice.

In terms of transitional justice mechanisms, it can be clear that substantive justice was not implemented for the Hutu population. Whilst there are indicators that substantive justice was achieved for some members of the Tutsi population (Ingelaere, 2010: 46), for many of the Hutus this cannot be argued. Yet despite being praised and over-romanticised by political scientists for its process of enforcing transitional justice (Wielenga et al, 2011: 23) (Rettig, 2008: 26), in terms of its precedence as a procedural justice mechanism, gacaca can be seen to equally be lacking. The absence of any form of substantial legal necessity has been a heavy criticism of gacaca, with defendants often receiving little legal aid with the gacaca process often allowing for false accusations to result in convictions (Longman, 2006a: 207). Chantal, a Hutu who is in prison after being convicted of genocide at the gacaca courts stated;

“And then I got denounced. I mean I am telling the truth, and I got denounced from someone in the audience. He said that all Hutu are killers and challenged my version. I was truly amazed. No one, not the judge, not the survivor, no one said anything. Someone said that Hutu are all in it together. I didn't even know what that meant when he said that. I am innocent but am in prison now. I have no way out” (Thomson: 2013: 112).

Chantal's experience highlights the lack of procedural and substantive justice within Rwanda. Her attendance at gacaca would have been compulsory, yet due to the structure of the system her legal representation and the protection of her rights were non-existent (Bornkamm, 2012: 160). An effective implementation of procedural justice could have prevented this.

From its inception, the gacaca courts would have struggled to obtain a procedural understanding of justice. Due to both procedural and substantive understandings of justice being crucial to the implementation of transitional justice, a procedural realisation of justice was necessary (Van der Merwe, 2009: 121). The court itself was composed of 13 judges who would meet in a public space and hear evidence on individuals before deciding on a verdict and sentencing (Longman, 2006b: 22). Gacaca was intended to bridge the gap between the traditional and the legal, yet the implications of this were limiting. Those chosen to become judges were often highly respected within the community, yet received no official legal

training (Longman, 2006b: 22). As such, judges were often understandably incapable of responding to stringent legal questioning or in ensuring that correct legal procedure were carried out (African Rights, 2003: 26). This resulted in often regular interjections from members of the audience, which could often result in the sentencing of individuals on trial and witnesses, without solid proof (Thomson, 2013: 12). Procedurally, defendants were not guaranteed a fair trial, with witnesses equally not granted substantial protection. A procedural understanding of justice was thus not obtained for gacaca.

Due to the absence of strict procedural rights, members of the audience were able to speak out and counteract Chantal's version of events. She was not protected in any way by the courts from prejudice from the audience. We do not know for certain whether Chantal was involved in the genocide or not, as despite her pleas of innocence she has been found guilty by a court. Chantal's experiences, however, are corroborated further by Judith, a Hutu who stated;

“He put me in prison because I disrespected the rule about attending gacaca. I already told my truth [last week] and it was rejected by the judges they said in front of everyone that my evidence was no good; some laughed.” (Thomson, 2013: 112)

Similar to Chantal, the audience and judges of the gacaca court were unhappy with the evidence and version of the genocide that Judith was expressing. Her reference to members of the audience laughing at her evidence, furthermore emphasises the lack of procedural justice present within the gacaca system. This system does not appear to be following the criteria of conducting a fair trial or to follow set procedures, instead allowing for the active demonisation of the Hutu population.

However, with the marginalisation and criminalisation of Hutus appearing to be a pattern across Rwanda it would appear to be difficult to achieve substantive justice (Human Rights Watch, 2011: 125). Part of the criteria of transitional justice and substantive justice is, in a society finding a common narrative and a truth, which can then be used in order to rebuild society (Boraine, 2006: 22). The apparent demonisation of Hutus however, and their false

imprisonment, can only undermine this search for a common framework and hamper Rwanda's future efforts at moving forward as a society. In light of Rwanda's often violent history of conflict between Hutus and Tutsis, the further marginalisation of one group could have dramatic consequences. Furthermore, in terms of aiding in the transition to democracy, the restrictions placed on Hutus to access and participate with democracy can be seen to be severely restricted.

Participation and access including political control and political equality have been understood to be crucial components of democracy (Van der Merwe, 2008: 121). In light of the transitional justice mechanisms available to the Hutu population, there appears to be clear limitations on their ability to access and participate with this system. Vianney, a Tutsi, acknowledged this in her interview with Susan Thomson (2013: 148);

“The Hutu who killed, they know who they are, but are they able to tell their truth? No and I understand why not. If they say anything, they go straight to prison. I understand their problems; I blame this government for its lack of fairness.”

Despite being physically able to participate in gacaca, Hutus are already prejudged to be guilty due to their ethnicity. It is thus unsurprising that as Vianney states, many innocent and guilty Hutus alike avoid telling the truth of what happened during the genocide. If a Hutu knew of a neighbour or of an individual who committed a crime this could impact upon them, and result in perceived guilt for that individual. Hutus cannot be seen to be politically equal at the gacaca trials. For if they were then this occurrence would not happen, an individual would be able to give their evidence in the knowledge that they as witnesses would be secure. Equally in terms of political control, Hutus are unable to fully influence and regulate their governing force. In this instance the governing force is the gacaca trials, as this has the ability to decide their freedom or imprisonment. The inability for Hutus to be able to access gacaca in a fair and unbiased manner signifies their lack of political control.

The interview with Jean-Bosco, a Hutu doctor emphasises this lack of access and participation further;

“False allegations of committing genocide are just a form of genocide that this government practices against [educated] Hutu like me... There is no justice in this Rwanda since the genocide. So I do what I can to limit my responsibilities” (Thomson, 2013: 157)

The occurrence of false allegations at gacaca was repeated in multiple interviews and highlights the lack of procedural justice at the trials (Thomson, 2013: 172-173). They equally further highlight the lack of political control that Hutus can access. As attendance is compulsory, Hutus have no choice but to explain their version of the genocide, however, with fear that this could be overruled by any member of the audience at any point. There can appear to be a climate of fear surrounding Hutu participation at the trials. This lack of control and demonisation can equally be seen to exclude Hutus from the new Rwandan governance. Jean-Bosco asserts that there “is no justice in Rwanda”, thus signifying the ultimate failure of transitional justice within the country (Thomson, 2013: 157).

The Failures of Transitional Justice

As a response to the atrocities of the 1994 genocide there were attempts at both exogenous and endogenous mechanisms of justice (Kaminski: 2006: 295). However both mechanisms, the ICTR and gacaca, can be seen to have failed in delivering both procedural and substantive understandings of transitional justice and in their ability to allow for the progression of society from genocide to democracy. The ICTR was unable to deliver a substantive understanding of justice due to its external location to Rwanda and the complex nature of the court system. These factors equally alienated the Rwandan populace further due to the court being the highest point of the law for which to try the architects and the main perpetrators of the genocide (Rudolph, 2001: 670). Together these factors removed the legitimacy of the court in the eyes of the Rwandan populace, its inability to prosecute a significant number of the genocide’s architects only enhanced this (Longman, 2006b: 20). Whilst the court was unable to achieve substantive justice for the majority of the Rwandan population, the exclusion of RPF crimes to be prohibited at the court set to further isolate the country’s Hutu population. As Hutus were the predominant victims of RPF attacks, it was vital that the victims and survivors of these attacks were equally given attention in court

(Human Rights Watch, 2008). This failure only sought to exclude the Rwandan population and begin to mark the further exclusion of the Hutu population.

Despite the court's inability to obtain substantive justice, the ICTR can however be seen to have implemented procedural understanding of transitional justice. Fair trials and following the set guidelines of the law were guaranteed at the ICTR, with each defendant equally being guaranteed to have adequate legal defence. This is an occurrence which could not have been guaranteed at the domestic level (Minow, 1998: 124). Both understandings of transitional justice, the procedural and substantive, are both required however in order for the mechanisms to be successful (Van der Merwe, 2008: 121).

In response to the ICTR's failures, the domestic gacaca courts were established. Gacaca, however, can be seen to have failed to implement both understandings of justice. Despite possessing a positive response in the wider literature (Bornkamm, 2012) (Zimmer, 2014) (Nyseth Brehm et al, 2014), the gacaca courts had very little sense of procedural justice. Despite having set legal criteria (Republic of Rwanda, 2001), the courts were damaged by regular interjections from the audience and with judges often condemning and imprisoning individuals due to their ethnic status and not on the deliverance of guilt. Equally in terms of ensuring substantive justice, the denial of RPF crimes to equally be discussed at gacaca left Hutu victims and survivors with no legal route to obtain justice. The lack of substantive prosecution for the perpetrators of the Kibeho massacre ingrained the lack of prosecution and justice available to victims of the RPF. The failures for the court to recognise and offer substantive justice to the Hutu population have only sought to enhance their exclusion and participation from the system.

The purpose of transitional justice is to act as a period of conversion from a previous regime into democracy (Boraine, 2006: 18). The failures of Rwanda's two main mechanisms of transitional justice thus have dramatic ramifications for the transition to democracy. Within both the gacaca tribunals and the ICTR, Hutus were excluded from participating and

accessing both mechanisms. In both cases, RPF crimes were prohibited to be discussed and heard; this left thousands of Hutus unable to access justice for the crimes committed against them and their families. Furthermore, the procedural failures at gacaca twinned with the growing demonisation of the Hutu population, led many unable to participate within the justice system without fear of imprisonment or of being denounced. The failures of transitional justice thus have dramatic repercussions for Rwanda's Hutu population, repercussions which are still being felt to this day.

Chapter 3

The Impact of Justice on Rwanda's Democratic Development

For the past 21 years, the memory and influence of the genocide continues to shape Rwanda. Throughout the month of April, Rwanda becomes a nation of mourning, with attendance compulsory at a multitude of public events (BBC, 2014: 1.15-3.00). The dominant memory of the genocide, forged throughout the transitional justice period, continues to dominate. Yet with the failings of the ICTR and gacaca trials to offer substantive and procedural understandings of justice to the country's Hutu population have continued to have widespread effect. The dominant narrative focuses on genocide by Hutus against Tutsis, by setting this framework in such a black and white dichotomy it does allow for a severe marginalisation of the Hutu population.

Following from the failures of transitional justice, this chapter shall uncover the effects that the unsuccessful implementation of transitional justice have had on Rwanda's democratic potential. Following the end of the genocide the RPF found themselves to be in absolute control of the country. In response and in part of their rebuilding of Rwandan society, the RPF passed a series of laws prohibiting genocide denial and thus cementing the dominant discourse of the genocide within society. These laws in effect marginalised the Hutu population and restricted them from participating fully in society.

Through an analysis of these laws and their effects on varying sections of Rwandan society, this chapter shall uncover the extent to which Rwanda's democratic potential has been realised in the aftermath of its transitional justice period. The laws pose restrictions on ethnicity, political access, political opposition and on freedom of speech; these shall thus be discussed in further depth. In light of the Hutu population being excluded from participating and accessing Rwanda's transitional justice mechanisms, the effects of the laws on Rwanda's Hutus and their ability to access and participate with the government shall be uncovered.

Rwanda's Genocide Denial Laws: Denying Ethnicity, Permitting Division

Legislation, such as Rwanda's genocide denial laws, can have a direct impact on access and participation to democracy. A restriction in any form to discussing the memory of past events can exclude a section of a population from legally recognising their version of events. As such, their ability to express their freedom of expression, (Freedom House, 2015), and as a result enjoy political equality (Beetham, 1993) is severely restricted.

In the subsequent years after the genocide, Rwanda in addition to a new Constitution, passed several laws which prohibit denial of the events leading up to and including the summer of 1994. In a move not dissimilar to countries affected by genocide in Europe, the RPF sought to preserve the memory of the genocide by protecting it through legal means (Jansen, 2014: 192). Within its 2003 Constitution, the term genocide is explicitly highlighted 18 times, yet is referred to further throughout the remainder of the text (Republic of Rwanda, 2003a). Article 13 explicitly states that;

“The crime of genocide, crimes against humanity and war crimes do not have a period of limitation. Revisionism, negationism and trivialisation of genocide are punishable by the law.” (Republic of Rwanda, 2003a).

In establishing a new government after genocide, the RPF were establishing a feature of transitional justice by seeking to preserve a common memory of the past events (Boraine, 2006: 22). A key tenet of the mechanisms of transitional justice is to have a victim centred approach and to seek to create a common memory (Freeman in Sottas, 2008: 371). By preserving the crime and memory of the genocide without an expiry date, the Rwandan constitution does seek to have a victim centric approach and ensure that such atrocities, legally, should not be permitted to occur again. The further punishment of any attempt to deny the 1994 genocide shows further a commitment to preserving the memory of the genocide and in ensuring that the suffering of victims is not forgotten. The Constitution is thus a mechanism of transitional justice.

The passage of laws before and after the Constitution however, does undermine its efforts as a transitional justice mechanism. Law No. 47 of 2001 in effect criminalises the ethnic terms Hutu and Tutsi, passed with the intent to eradicate the ethnic hatred which motivated the genocide (Jansen, 2014: 195). Their replacement is 'Rwandan', with citizens according to this law unable to identify as Hutu or Tutsi (Beswick, 2011: 496). Ethnicity must only be referred to if it is to disregard its existence or when referring to the genocide (Hintjens, 2008:13). Responsibility for the genocide however, still firmly lies with the Hutu population as is referred to throughout public commemoration events and broadcasts (Mamdani, 2001: 267). This creates an intriguing paradox, for if ethnicity is no longer meant to exist or be freely discussed within Rwanda then there theoretically must be total political equality, and the possibility for political control.

Without ethnicity there could arguably be few barriers to the majority of Rwanda's population being sanctioned political equality. According to Beetham (1993: 4), political equality can be understood as the possibility for a population to access a government without restriction. Within the Great Lakes region, ethnicity can be seen as one of the greatest barriers to a citizen for accessing their government, having been at the root of most conflicts, and at the root of the majority of conflicts throughout Rwanda's history (Mamdani, 2001: 261). However within Rwanda, this does not appear to be the case. Hutus continue to be overwhelmingly targeted and be accused of genocide denial and for divisionism (Longman, 2006b: 4).

Ethnicity may not be permitted to be discussed in society yet ethnic politics is still very much in play in Rwanda. In interviews conducted by Human Rights Watch (2011:125) citizens within Kigali commented that transitional justice mechanisms including gacaca had "left Hutu and Tutsi even more divided than before". The failures of transitional justice to reconcile the two ethnic groups are exasperated further almost 20 years after the genocide. Denying the presence of Hutus and Tutsis does not negate from their existence, and can

instead be used to cloak and hide the marginalisation of Hutus by the elite. Within education establishments and within various sectors of employment, being recognised as a Tutsi has substantial merits with individuals more likely to attain higher paid employment and have access to exemplar educational opportunities due to their ethnicity (Longman, 2006b: 16). Hutus are thus excluded from these institutions and are unable to access or participate with the elite.

The makeup of the government is equally predominantly Tutsi (Longman, 2006b: 16) (Dyzenhaus, 2003: 166). Filip Reyntjens (2015: 210) noted that “the RPF reserved access to power, wealth and knowledge to Tutsi elites”. By reserving much of society and governance to Tutsis, Hutus have been rendered unable to access and participate with the government. Government positions for Hutus are rare occurrences and so the ability for Hutus to participate physically within government is a rarity (Longman, 2006b: 16). Of those that did hold government positions, any disagreement with the RPF can lead to dismissal and often imprisonment (Longman, 2006b: 18). At the beginning of the new millennia, 2/3rds of government positions were held by Tutsi officials, whilst some government departments including Defence and Intelligence were predominately composed of Tutsis (Reyntjens, 2015: 21). The lack of ability for Hutus to access and participate by joining the government highlights a serious limitation of democracy within Rwanda.

Access and participation are crucial components of any democracy, yet the inability for Hutus to join and participate in any form with the government highlights that Rwanda cannot be seen to be a democracy. Furthermore, this failure can be seen to be a result of transitional justice mechanisms. The constitution itself is a transitional justice mechanism ensured to enshrine the new democratic laws. Yet its failure to ensure adequate protection and participation for all civilians, despite ethnicity being banned, highlights this failure. The failures of transitional justice to bridge the divide between Hutus and Tutsi has equally allowed for the RPF to widen ethnic tensions to this date.

Access to the Media: Legal Limitations on Freedom of Speech

Returning to the root definition of democracy, Freedom House (2015) refers to freedom of expression as a crucial component of democracy. In line with Beetham's (1993: 4) criteria, freedom of expression is an essential aspect of popular control and political access. Within society, the media is a common source of expression and a means for a society to gain information on their government: another essential component of democracy (Fishkin, 2011-2-4). As such the ability for the media to report uncensored and unrestricted is a crucial component of democracy.

In Rwanda's case, the failures of transitional justice have meant that the freedom of the media has been severely restricted. In the same year as the Constitution was passed, Law No. 33 equally entered into force, formerly criminalising the core crimes 'of genocide, crimes against humanity and war crimes'. Article 4 of this law criminalised genocide negationism, attaching with it a sentence of 10 to 20 years imprisonment for perpetrators (Republic of Rwanda, 2003b). In 2008, Law No.18 was passed which defined and criminalised 'genocide ideology' (Republic of Rwanda, 2008). The criminalisation of core crimes and negationism is not an unusual act in itself. In comparison, Germany's Section 130, which criminalises genocide denial, incitement to hatred and attacks against individuals based on ethnic or religious reasons, can be viewed as a similar piece of legislation (Bundesministerium der Justiz und für Verbraucherschutz, 2013). The intrigue for Rwanda however is the methods in which these laws have been used to restrict the nation's media and the potential for freedom of speech for Rwanda's citizens.

The media within Rwanda is heavily regulated by the government, with journalists imprisoned for their reporting (Freedom House, 2014b). Writing in a Kinyarwanda publication, editor Agnes Uwimana-Nkusi was imprisoned on the grounds of endangering national security, genocide denial, divisionism and defamation of the RPF (Freedom Now, 2014). Sentenced to 17 years in total, Uwimana-Nkusi's crimes was for the use of the word 'gutemaurana' in a publication (Jansen, 2014: 201). In English, the word itself means 'killing

each other with machetes', but can also be understood to mean 'civil war'. To describe the genocide as a civil war is a negation charge under Law No. 33, with Uwimana-Nkusi convicted for this crime (Jansen, 2014: 201). This case does not occur in isolation, with other journalists inside Rwanda and in neighbouring Uganda, reported to have received threats and intimidation for their writings (Freedom House, 2014b) (Reyntjens, 2015: 23). Despite freedom of the press being guaranteed in the Constitution, the reality is that journalists can only report so long as their reports fit with the governing rhetoric. Any deviation of this can be met with intimidation or with a lengthy prison sentence. Restricted by the laws, Rwanda's journalists are prohibited in enjoying the same freedom to report as their counterparts in other nations enjoy. As such, the ability for Rwandans to access information free from government censorship is thus extremely limited.

A key tenet of democracy is in the ability for a public to be informed of public life and have the ability to access media sources (Freedom House, 2015). This access is crucial, for if a population is to participate with a government they must possess adequate information for which to judge and participate in discussion (Fishkin, 2011: 2-4). Unabated media sources are crucial to obtaining this. The denial of this through Law No. 33 can be viewed as another setback to the attainment of democracy within Rwanda. Throughout the genocide the media was used as a rallying cry for which to stir up ethnic hatred and publicise a Hutu's duty to join with the killing, Radio Télévision Libre des Mille Collines was a particularly infamous example of this (Jansen, 2014: 194). In light of this, distrust of the media could be seen as reasoning for such stringent controls on Rwanda's current sources (Jansen, 2014: 195) Yet the extent to which the country's media is regulated now includes an inability to sufficiently criticise the government. As such these restrictions yet again, highlight limits on Rwandans obtaining democracy and highlight further the failures of transitional justice.

Freedom of the press is a vital component in allowing for political access, the failures of transitional justice to allow for this are compelling. Freedom of the press allows for a society to be adequately informed, whilst equally acting as a healthy critique of a government. The press are necessary to ensure that a public has the information and tools to critique and

challenge their government, whilst also ensuring an equal understanding of access to this information. Media sources are thus a crucial component of an understanding of political control and equality (Beetham, 1993: 4). The suppression of the freedom of the press thus prevents the flow of information and the ability to mount a substantial critique. Without adequate information, a public cannot seek to influence their government nor have control over its actions. Within Rwanda, the RPF's curtailment of the press has allowed them to govern with impunity from substantial domestic critique. In doing so, Rwandans are unable to access and participate fully with their government, as they have a lack of access to information on its occurrences and a lack of substantial critique on their policies.

Disbanded Political Opposition

Paralysed by the inability to access adequate information through media sources or investigations, Rwanda's political opposition movements have been severely weakened. Similar to the restrictions placed upon the media, the existence of opposition political parties is tightly regulated with members of the opposition equally facing the threat of arrest, attack, political defamation and murder due to their opinions (Freedom House, 2015b).

The most high profile of these instances was in the detainment of Victoire Ingabire, leader of the Union des Forces Démocratiques Rwandaises (FDU) the leading political party in opposition to the RPF (BBC, 2013). Garnering significant public support, Ingabire was arrested and imprisoned for 'terrorism, threatening national security, creating an armed group, discrimination and sectarianism'; she was equally charged with genocide ideology (Jansen, 2014: 211). These charges removed Ingabire completely from the political process and sought to discredit her by casting her as a genocide denier and spreader of a genocidal discourse. Labelling members of the opposition as supporters of genocide is a common political play by the RPF against any opposing force, as it results in their complete removal of legitimacy (Freedom House, 2014). This has led to the breeding of a society in which anyone, not just members of the political opposition, are fearful of speaking out against the

RPF on any policy idea or government decision, mainly through fear as what the consequences to them will be (Beswick, 2011: 498). There exists a clear climate of fear within Rwanda with political parties unable to efficiently mobilise to oppose or critique the government.

The destruction of any opposition movement has been a process which has taken years to reach this point. Throughout the transitional justice period, political parties were steadily reforming and being created following decades of autocracy, monarchism and colonial rule (Reyntjens, 2015: 21). From this early point, evidence suggests that members of the RPF began to join other political parties in a bid to penetrate and eradicate them (Reyntjens, 2015: 21) (Freedom House, 2014b). The leaders of opposition parties, the Democratic Green Party and Social Party-Imberakuri, have reported the presence of plots to overthrow them, with the latter being successful (Freedom House, 2014b). A ban on campaigning at the local level was equally in place until 2008, dramatically limiting the capability for political parties to engage at the grassroots level and increase support (Beswick, 2011: 497).

By successfully eradicating the ability for opposition parties to form, gather support and mount credible critiques to the government, the RPF have successfully managed to stifle democracy and ensure that ultimate control can remain with them. The intent of the ICTR and gacaca was to allow for a transition from genocide to democracy and allow for access and participation to be realised. The inability for this to occur, signals an inherent failure of the nation's transitional justice mechanisms. The RPF's domination of the political sphere does not signal a move from autocracy to democracy, and instead shows a move from one autocratic government to another (King, 2010: 300). The ability for this to happen lies firmly with the failures of the transitional justice mechanisms. Their failure to create a strong enough bridge from genocide to democracy, and to ensure that justice was understood by Rwandans, left fertile ground for the RPF to sow their seeds of total political and social control. The political climate that has allowed for their success would not be able to exist had transitional justice been sufficiently implemented.

A substantial and effective opposition is crucial to democracy. In addition to a viable electoral process, association and organisation rights and to political pluralism are a crucial realisation of democracy (Freedom House, 2015). Political parties have to be permitted to form and exist within a parliament. Similarly to the freedom of the press, opposition movements are crucial to an understanding of freedom of expression and for political views to be considered. The restrictions placed on Rwanda's opposition thus have a detrimental effect on the realisation of these freedoms. The inability of any form of opposition substantially reduces the ability for Rwandans to access and participate with their government, with only one viewpoint considered legitimate: the RPFs.

Rwandans, and in particularly Hutus, cannot fully participate with their government. Any attempts at critique of the RPF are met with either a possible prison sentence or to be labelled as a genocide denier. The inability for political parties to form and thus pose a credible opposing rhetoric to the RPF, further limits the ability for Rwandans to access their governing system. For a democracy to be realised access and participation are crucial. Yet with the absence of political parties, access and participation cannot be fully realised. Citizens do not have the ability to access an array of opposition movements, nor do they have the ability to participate with a movement which can act as a vehicle to government. In light of these limitations, democracy is severely restricted within the Rwandan state.

Unabated RPF Control: Limits on Democratic Potential

In the 20 years since the genocide, the RPF have been able to monopolise political power having full control over all aspect of public life. Through passing several laws which theoretically prohibit genocide denial and sprouting genocide ideology, the RPF have been able to manipulate the legal system to punish any individual or group who seeks to criticise their governance and policies.

Initially, the RPF gained their legitimacy by being the only force capable of ending the genocide. By rooting its legitimacy within this moral framework, the RPF have been able to retain both domestic and international legitimacy for decades (King, 2010: 298). Building upon this understanding, the RPF has been able to use their moral superiority in order to consolidate their rhetoric of Tutsi victimhood and of the Tutsis as a 'single survivor group' (King, 2010: 298). Any attack on the RPF is equally viewed as an attack on Tutsis and thus akin to genocide ideology (Reyntjens, 2015: 27). Through ingenious political manoeuvring the RPF have become indistinctly attached to Tutsi victimhood and the genocide, any critique is thus firmly against the history of the genocide. Amidst this climate, any critique by members of the opposition is viewed as support of the genocide and allows the RPF to chastise individuals, such as Victoire Ingabire, with accusations of genocide ideology (Jansen, 2014: 211). In light of this framework, the RPF can successfully justify their imprisonment of opposition members.

In governing through a rigid ethnic divide, the RPF have maintained their dominance through their rhetoric as the saviours of the Tutsis, whilst warning that at some point Hutus will want revenge for this (Reyntjens, 2015: 27). The RPF are thus the only force able to stop this occurring again. This rhetoric only seeks to further marginalise Rwanda's Hutu population, stipulating a clear and systematic exclusion from public life. Through circumventing this idea, the RPF has been able to keep absolute control over Rwanda and continue to invoke politics along ethnic lines.

The rise and success of the RPF and their total consolidation on power has been ruthless, yet the ability for the political space to open and allow for this is ultimately due to the failures of transitional justice. After the genocide, Rwanda's political space was desolate with the RPF arguably having a strong position for which to insert dominance. By claiming morality for the end of the genocide the RPF were able to enjoy a legitimacy for which the transitional justice mechanisms had little opportunity to match. The weaknesses of the transitional justice mechanisms were then able to be exploited further by the RPF, thus further weakening the system. The failures of both the ICTR and gacaca to implement any

significant undertaking of substantive or procedural justice further fuelled the dominance of the RPF. The RPF by exploiting the genocide and enhancing the weaknesses of the transitional justice mechanisms, have become viewed as the only power strong enough and capable enough to mend Rwandan society (Beswick, 2011: 496). As such, the failures of transitional justice have allowed for the RPF to further exploit an already fragile society and obtain political dominance.

In terms of obtaining democracy, the RPF is a political party with the Rwandan electoral system allowing for the ability for opposition. The failures of transitional justice however, have allowed the RPF to dominate and invoke a climate which suffocates opposition. Rwandans, and in particular the country's Hutu population, are unable to have full political access and political equality. Side-lined and demonised by the RPF, Rwanda's Hutu population have little influence towards the RPF. The consistent marginalisation of Hutus has resulted in a complete lack of political equality. Hutus are unable to access public positions or be considered as the same to their Tutsi counterparts; whilst their lack of political control to the RPF has left them side-lined and unable to access the political system. Rwanda currently functions across the same dangerous ethnic lines which were in operation before the genocide (Reyntjens, 2004: 208)

A Lack of Democratic Development

The effects of the failures of Rwanda's transitional justice mechanisms have had dramatic consequences. By failing to secure a strong linkage and breakaway from autocracy to a new regime, present day Rwanda has become stuck in the same political pattern which it has endured for decades. The success of the RPF in creating a moral framework and position for which to uphold legitimacy in comparison to the weakening ICTR and gacaca, have left the RPF with the ability to hold a monopoly on every aspect of Rwandan civil and political life.

Since the passing of the Constitution and through a series of laws intended to prevent a re-emergence of genocide ideology, the RPF have been able to successfully implement their version of the genocide and stifle any opposition that disagrees. The laws themselves have banned ethnicity making it illegal to identify as or use the terms Hutu and Tutsi. Despite this, Rwanda is still governed on strict ethnic lines with political and education positions awarded to Tutsis over their Hutu counterparts. The demonisation and subjugation of Hutus continues through the limits on political opposition and through freedom of expression. Due to tight regulation of the press and political parties, only those who agree and sanction with the RPF's viewpoints are allowed. For individuals who hold any alternate view they can be charged and imprisoned for genocide denial. For Hutus in particular who were affected by RPF crimes and instances of RPF marginalisation, their ability to access the political system is severely restricted. Any attempts to access this system can prove fatal, with journalists and members of the political opposition imprisoned and even murdered for attempting to criticise the RPF. The inability for any substantial critique has made it almost impossible for information to circulate and for a substantial critique to occur.

Rwanda is still heavily governed across ethnic lines with the RPF able to govern with almost total impunity. The failures of the transitional justice mechanisms have allowed for this to occur, with the country's democratic potential severely limited.

Conclusion

Rwanda is a paradox. Held as a beacon of stability and success by Western states the reality of life in the small Great Lakes nation is far more complex than the image which its clean streets and economic growth attempt to gloss over (AON One, 2011). Over 20 years have passed since the genocide and despite proclamations stating otherwise by the RPF and laws banning its discussion, Rwanda is still heavily divided along ethnic lines with the predominantly Tutsi RPF controlling almost every aspect of public and political life. The exclusion of the majority Hutu from accessing and participating with the government has had a substantial impact on Rwanda's democratic development.

This thesis has sought to uncover the extent to which the failures of Rwanda's transitional justice mechanisms have impacted on the country's democratic potential. Of the two primary institutions tasked with ascertaining guilt and criminal liability for the genocide, the Arusha based ICTR focused on prosecuting the architects of the genocide. Whilst the gacaca system on the other hand was based at the community level and sought to hear all evidences and memories from each community and ascertain guilt at a local level. In analysing the failures of these two primary institutions, this thesis has sought to understand as to what extent this failure has impacted on Rwanda's ability to acquire and realise democracy.

Beginning with its theoretical foundation, this thesis understood democracy by the criteria established by David Beetham (1993) and Freedom House (2015), which placed emphasis on popular control and political equality. Understood to refer to access and participation to a governing force, this definition was advanced by this inclusion of deliberative democracy. Using this framework as a tool for which to strengthen the root understanding, deliberative democracy was discovered to place an emphasis on group discussion and the inclusion of all views of society (Chappel, 2012: 2). For a society that is recovering from genocide, the inclusion of a deliberative framework highlights the necessity for societies to include all opinions, Hutu and Tutsi, in order to progress into democracy. In light of using Rwanda as a

case study, this chapter proceeded to uncover if Rwanda's political and electoral systems were designed so that they had the ability for this understanding to be realised.

Rwanda operates a PR system and has regular presidential elections in addition to elections for a bicameral chamber (IPU, 2013). PR allows for a greater inclusion of party political viewpoints, with these electoral systems often allowing for a society to have a greater selection of political views with an equal transfer of votes (IDEA, 2005: 57). As such, Rwanda was understood to have the theoretical potential to obtain this thesis's understanding of democracy.

As the focus of this thesis would be on the success or failure of Rwanda's transitional justice mechanisms, it was imperative that transitional justice was equally defined. Understood to be a process of progression from a previous regime to a democracy, this study equally uncovered that transitional justice mechanisms were unique to societies which had experienced grievous human rights abuses (Boraine, 2006: 18). Transitional justice mechanisms were understood to focus on past abuses, be complementary to a wider reconciliation process, focus on the achievement of advancing "peace, democracy, equitable development and the rule of law" and lastly be expressly focused on the victims and survivors of abuses (Freeman in Sottas, 2008: 371). Through this understanding, transitional justice mechanisms were understood to be divided into procedural and substantive understandings, for which both were necessary to the obtaining of transitional justice (Sadurski, 1985: 49). Through understanding the key theoretical foundations for this research, the extent to which the ICTR and gacaca met with these criteria was analysed.

Both the ICTR and gacaca failed at their implementation of transitional justice. The ICTR's failures were marked almost instantly through its location in Arusha and in its adoption of a Western complex court system. Both factors together excluded the Rwandan population from physically accessing justice and from relating to the complexity of the system. The court's low conviction rating for the architects of the genocide further undermined the

court's ability to obtain substantive justice. Whilst its inability to hear cases of RPF crimes only sought to exclude a Hutu population suffering from the inability to gain credence for the crimes committed by their now government. Procedurally however, the court did obtain this understanding of justice, yet this was limited and obsolete due to its inability to obtain a substantive understanding.

In response, the domestic gacaca system was established, however it was equally limited in its understanding of justice. In terms of obtaining procedural justice, gacaca was unable to obtain this. Its inability to fully train its judges in legal mechanisms and the regular interjection from spectators meant that a fair trial for defendants and witnesses could not be guaranteed. Furthermore, despite being held internally and at the grass roots level, gacaca was unable to obtain a substantive understanding of justice. Similar to the ICTR, RPF crimes were not permitted to feature at gacaca, whilst any derivation from government sanctioned events were rejected. The inability for both mechanisms of transitional justice to prosecute anyone for RPF crimes furthermore awarded the RPF with impunity and an ability to govern without fear of international repercussions. Ultimately both gacaca and the ICTR were unable to implement an effective understanding of transitional justice.

In light of this failure, chapter 3 sought to understand the effects that this has had on Rwanda's democratic potential. Despite having the electoral potential to achieve this thesis's understanding of justice, practically this has been severely restricted. The failures of transitional justice created a power vacuum for which the RPF were able to firmly insert itself. They were then able to protect this position through a variety of legal mechanisms. The 2003 Constitution and a selection of subsequent laws denying genocide ideology and genocide denial intended to protect the memories of 1994 have instead been manipulated to discredit and imprison any opposition to the RPF.

Through an analysis of public and political life, it can be seen that the RPF have complete control over all aspects of Rwandan life. Through criticising any opposition to their policies

as genocide denial or sprouting genocide ideology the RPF has managed to obtain a stronghold of control over the media and the existence of opposition political parties. Furthermore despite banning ethnicities, with the terms Hutu and Tutsi forbidden to be used, the country is still stringently governed along ethnic lines. Tutsis make up the predominant of government positions whilst high ranking employment and education opportunities are reserved for Tutsis.

Hutus are unable to access and participate with the governing force, unable to access similar opportunities to Tutsis and unable to challenge this exclusion through media and opposition political sources. Currently in Rwanda, there is a very limited understanding of political control and political equality with this preserved entirely for a small Tutsi elite. The realisation of this falls to the failures of the country's transitional justice mechanisms. By failing to mend the ethnic divides between Hutus and Tutsis, and through the further exclusion and marginalisation of Hutus through the transitional process both the ICTR and gacaca allowed for the opportunity for the RPF to gain complete control. The structural and practical weaknesses of the ICTR and gacaca only appeared to further strengthen the RPF's legitimacy and have thus allowed them to govern for so long unabated by a substantial domestic or international critique. Rwanda has the electoral capacity to allow for democracy to be understood, yet the failures of the transitional justice process have ultimately rendered this impossible.

Rwanda has transitioned from autocracy and genocide into dictatorship with the RPF having an authoritarian grasp on all sectors of society. The continued exclusion and demonisation of the country's Hutu population has institutionalised ethnic division, allowing Rwanda to operate on the same ethnic divisions as the previous Habyarimana government. The future of Rwanda's democratic potential is thus precarious. Paul Kagame and the RPF hold an iron grasp on the pressure cooker that is Rwanda's ethnic tension. The continued exclusion of the majority of the population from accessing and participating substantially with any aspect of society will have dramatic repercussions.

The failures of transitional justice mark the tip of the iceberg of exclusion within Rwanda. Of concern, however, is the extent to which this bubbling exclusion can be contained. For 2 decades Rwanda's Hutu population has been continually excluded and vilified by the RPF government and have little opportunity to challenge or counter this. Systematic exclusion of a majority population can however only occur for so long, as Rwanda's often violent history has shown. Considering Rwanda's history, the future for Rwanda's Hutu and Tutsi populations is worrying. For despite the RPF possessing absolute control over the current political situation, this can only last for so long. The impact of another explosion in ethnic tension and hatred within Rwanda could result in a repeat of a horrific scale of violence and bloodshed.

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