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FACULTY OF LAW

DEPARTMENT OF CRIMINAL JUSTICE AND PROCEDURE

‘Social Truth’ as an Approach to Transitional Justice in Gacaca Courts in post-genocide Rwanda

A mini-thesis submitted in partial fulfilment of the requirements for the LLM in Transnational Criminal Justice and Crime Prevention – An International and African Perspective

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DECLARATION

I, Viola Karungi declare that '"Social Truth" as an approach to transitional justice in Gacaca Courts in post-genocide Rwanda' is my own work and that it has not been submitted for any degree or examination in any other university or institution. I have duly acknowledged all sources referred to or quoted.

Student: Karungi Viola

Signed: 

Date: 7th January 2022

Supervisor: Professor John-Mark Iyi

Signed: .....

Date: .....

DEDICATION

This mini-thesis is dedicated to you Mama Jolly Tushemereirwe and Daddy Sotel Tumusiime. Even though you are long gone, you still live in my fond memories.

ACKNOWLEDGMENT

To God be the Glory!

I acknowledge you all who have encouraged me to pursue whatever education I can.

Thank you, Professor John-Mark Iyi, for the supervision and enormous guidance. Thank you, my cohort, for the encouragement, inspiration, and assistance in the various ways. I appreciate you Counsel Jesse Mugero and Counsel Kato Mpanga for your unconditional support even when we have never met in person.

ABSTRACT

This mini-thesis makes a claim that when Rwanda established the rule of Gacaca court system as a communal mechanism of transitional justice in the aftermath of the 1994 genocide, it accordingly enabled space for the 'social truth' to take centre stage as opposed to the legal truth. As such, testimonies by perpetrators and accounts by witnesses could only be permissible in Gacaca courts if they were socially acceptable by the community, and any evidence only needed to be orally validated by community members but not verified through formal legal procedures. The principal objective of this mini-thesis, therefore, is to examine how the 'social truth' was employed by Gacaca courts and how this kind of truth resonated with the communal nature of the courts.

The research makes this examination drawing on secondary data in two texts, one text being an ethnographic study by Ananda Breed (2014) and the other an anthropological one by Kristin Doughty (2015). Both texts are a result of research conducted among ordinary Rwandans during and after Gacaca court processes. The mini-thesis considers these texts to contain information which permits description and explanation of instances from testimonies and witness accounts that facilitate an understanding of how the 'social truth' was applied.

The mini- thesis employs a social-legal type of legal research methodology to explore the intersection between sociology and law and uses qualitative research method to analyse the concept 'social truth.' This methodology is against the background that society and law are interconnected, because while law is a tool used to regulate society, it is in society that the practical utility of law is entrenched. The study concludes that if 'social truth' had been the only measure of the success of Gacaca courts, then the approach was a great accomplishment which moreover resounded with the communal nature of Gacaca courts.

KEY WORDS

Social truth

Gacaca Courts

Transitional Justice

International Criminal Law

Genocide

Victims

Rwanda

ABBREVIATIONS

ICC International Criminal Court

ICL International Criminal Law

ICTR International Criminal Tribunal for Rwanda

ICTY International Criminal Tribunal for the Former Yugoslavia

ICTRJ International Center for Transitional Justice

INGO International Non-governmental Organisation

NGO Non-Governmental Organisation

TRC South African Truth and Reconciliation Commission

UN United Nations

CHAPTER 1

GENERAL INTRODUCTION TO THE STUDY

This chapter of the mini-thesis is a general introduction of the study and gives overviews of the study's various aspects. It discusses the motivation for the study shown through the statement of the problem and gives a background of the Rwanda genocide and Gacaca courts (Gacaca hereafter). It then discusses the evolution of transitional justice and how Gacaca fits into this framework. It discusses the conceptual framework of the 'social truth,' and introduces the research methodology which is discussed later in chapter three in greater detail. It debates the significance of the study, aims and objectives, research questions and the scope of the research. Finally, it gives an outline of the mini-thesis chapters.

1.1 Overview

'The inyangamugayo frequently addressed the audience for verification of his testimony.' This statement is in Ananda Breed's text when she narrates proceedings of a Gacaca trial of one Richard Magyambere, a perpetrator of the Rwanda genocide.[1] The trial took place in Rugenge, Nyarugenge District in central Kigali in 2005.[2] The statement expresses the very concern of this mini-thesis that Gacaca employed the 'social truth' in such a way that when an accused testified, members of the community present in that Gacaca session, who would have witnessed in whole or in part the perpetration of genocide by the specific accused person, would be consulted by the Inyangamugayo (judge) to orally ascertain whether the testifier was telling the truth. As such, the truth admissible in Gacaca was that which could be verified through oral social procedures and the Gacaca judges, often, relied on the confirmation by communities to make the final ruling in a case.

The procedure of verifying the truth orally and based on community views is contrary to the practice in formal courts and international tribunals. These formal courts require truth that can be verifiable through legal means such that the prosecutor can assess the available evidence to ascertain that it is beyond reasonable doubt before making a ruling. Thus, this

[1] Ananda B *Performing the Nation: Genocide, Justice, Reconciliation* (2014) 109.

[2] Ananda B (2014) 109.

mini-thesis is prompted by my observation that the concept of truth was applied from a social perspective rather than a legal one during Gacaca proceedings, contrary to the normal practice of truth-seeking in formal courts. This is what I refer to as the 'social truth' in contrast to the legal truth. For emphasis, by 'social truth', I mean the honesty and proof of information regarding perpetration of the crime of genocide. Such truth was seen through testimonies of people presumed to be responsible for organising and conducting the genocide, witnesses, as well as community members who sought to counter given testimonies or witness accounts during Gacaca in post-genocide Rwanda.

I formulated the term 'social truth' drawing on Yvette Hutchison.[3] She writes about how personal narratives were told in the South African Truth and Reconciliation Commission (TRC 1995-1998) which was created to deal with the human rights' abuses that happened during the apartheid regime within the time scope of 1960 to 1994.[4] Hutchison advances that the TRC's search for 'truth' relied on personal narratives which were in effect testimonies by perpetrators and survivors alike, and 'did not require proof, as in a law court.'[5] Moreover, narratives in TRC included 'shifting from the personal code of meaning to a shared public "meaning."'[6] This means it was important for testimonies to make sense to the entire community.

Hutchison further suggests and elaborates that obtaining and giving the 'truth' in TRC followed the African oral law 'of consensualising conflictual discourses to achieve communal unity, coherence, and reconciliation.'[7] She explains the process of consensualising as below:

> 'The process of consensualising in traditional African law bears strong resemblance to the TRC. It is complex and here I give a simplified outline. The litigant lodges a complaint with the chief, in ritualised formula, notice is served on the defendant regarding place and time of the hearing, which is in itself performative and formalised. The court is made of councillors, any male who cares to attend, including outsiders. They may interrupt the witness giving testimony and ask additional

[3] Hutchison Y 'Truth or Bust: Consensualising a Historic Narrative or Provoking through Theatre –the Place of the Personal Narrative in the Truth and Reconciliation Commission.' *Contemporary Theatre Review* (2005).
[4] Hutchison Y (2005) 354. Also see Mamdani M 'Amnesty or Impunity? A preliminary critique of the report of the Truth and Reconciliation Commission of South Africa' (TRC) *Diacritics* (2002) 33.
[5] Hutchison Y (2005) 356.
[6] Hutchison Y (2005) 355, double quotes in original.
[7] Hutchison Y (2005) 354.

> questions. The complainant and defendant are present throughout. When the chief announces 'We have heard', the case is closed and all are then requested to withdraw. The next case is then heard. At the end of the day the chief decides all cases, after conferring with his councillors.'[8]

From Hutchison's submissions, three elements are particularly relevant to my derivation of the term 'social truth.' First, is that testimonies in TRC did not require legal proof. Secondly, the testimonies were required to be sensible to the community but not individuals. Thirdly, is that the process of consensualising she explains is like what happened in Gacaca with the Inyangamugayo allowing community participation, consulting other judges (equivalent of concillors) and making the final verdict in a case.[9] The report by the Republic of Rwanda describes the process of proceedings which I have reproduced below, and the chronology is similar to Hutchison's about the African oral law described:

> 'During this process, the judges asked defendants and witnesses for clarity or to comment on testimony when it was given. Once all parties had the opportunity to speak, the general assembly had their turn and were free to discuss testimony by refuting, affirming, or questioning evidence. When members of the general assembly wished to ask the defendant or victim questions, the judges could intervene and supersede the general assembly's actions. After testimony was given, judges would deliberate amongst themselves to arrive at a majority decision. Decisions were typically decided the day of the hearing but sometimes went additional days if the case was particularly complex. Sometimes cases would drag out over the month as sessions were held once or twice during the week, causing frequent interruptions. Verdicts were delivered in front of the general assembly at the end of the day or the beginning of the next session. Punishments ranged from community service to life imprisonment and were fixed dependent upon the crime.'[10]

Considering this chronology and in view of the 'social truth,' I note that this type of truth was engraved within the Gacaca process as a communal court by allowing community members to actively comment on testimonies by alleged perpetrators. The same chronology shows that defendants, witnesses, and the entire community could freely intervene by questioning statements and even asking questions, albeit under the

[8] Hutchison Y (2005) 357-358.
[9] Republic of Rwanda (2008b). Law No. 18/2008 of 23/ 07/2008.
[10] Republic of Rwanda (2008b). Law No. 18/2008 of 23/ 07/2008 Relating to the punishment of the crime of genocide ideology.

stewardship of the judges. It is important to keep in mind that such intervention is largely unpermitted in formal courts and international tribunals. The interventions reveal flexibility in Gacaca like that described by Breed which I mention in the introduction that in Majyambere's case, the Inyangamugayo 'frequently' consulted the audience to confirm his testimony. The word 'frequently' here suffices to emphasize that Gacaca greatly relied on community for truth, thus underscoring the concern of my study. In effect, the truth in TRC just like that in Gacaca is one which a community could identify with, which means it was *socially constructed* by a group of people thus becoming the *social truth*. Therefore, deriving the term 'social truth' from Hutchison's perception of proceedings in the TRC and relating it to Gacaca is relevant and useful since both frameworks had to establish the truth (among other aims) about the respective repressions by apartheid and the genocide, and to promote cohesion in communities.[11]

Hayner expresses reasonable doubt about truth resulting from trials like Gacaca asserting that such criminal trials are primarily purposed to establish whether the 'criminal standard of proof has been satisfied on specific charges' but not necessarily to reveal honesty of information.[12] I agree with this author's perspective, and I argue that the same perspective reinforces my argument for the need to examine the sort of proof applied in Gacaca, in line with the set standards of testifying and giving witness accounts. Hence, my qualification of the 'social truth' is strictly in line with the social organisation of Gacaca which set the standard of proof and does not exceed those boundaries.

To arrive at my findings about this kind of truth, I examine two texts; Kristin Doughty's 2015 article titled, 'Law and the architecture of social repair: Gacaca days in post-genocide Rwanda,'[13] and Ananda Breed's 2014 book *Performing the Nation: Genocide, Justice and Reconciliation.*[14] Doughty's text studies the process of Gacaca in post-genocide Rwanda paying attention to how genocide suspects were tried in a setting that involved neighbours trying and witnessing against each other.[15] It navigates how the cultural relevance of law conceals an understanding of the political uses of culture and

[11] See for instance Mamdani M (2002) for aims of the South African TRC.
[12] Hayner P *Unspeakable truths: Facing the challenge of truth commissions* (2002) 100.
[13] Doughty K 'Law and the architecture of social repair: *Gacaca* days in post-genocide Rwanda' *Journal of the Royal Anthropological Institute* (N.S.) (2015).
[14] Ananda B (2014).
[15] Doughty K (2015) 420.

the law.[16] The author observes that Gacaca was unique for how it intensely dealt with post-conflict reconstruction in a context where justice structures were based on oral testimony and extensively entrenched in the daily life of Rwandans.[17] The entrenchment in turn influenced the micropolitics of repairing a broken society.[18] The author bases their research on an ethnographic approach in Rwanda carried out in a period of over eighteen months between 2002 and 2008, her observations from fifty-six Gacaca sessions as well as her analysis of other researchers' work about Gacaca.[19]

On the other hand, Breed, relying on over ten years of experience conducting anthropological research in Rwanda in the aftermath of the genocide, offers perspective about the efforts made to rebuild Rwanda into a new national identity as seen through the 'performance' of Gacaca.[20] 'Performance' in Breed's text first refers to the daily acts by various stakeholders in the country showing that they were making all possible efforts to transition from genocide to harmonious living.[21] Secondly, it means theatrical activities created to promote Gacaca and reconciliation[22] drawing on the researcher's experience when making theatre workshops in prisons which was her other method of understanding transitional needs of Rwandans besides interviews.[23] My mini-thesis however pays more attention to the first viewpoint of performance. Breed discusses the complexities in everyday performances either by the State or citizens to fulfill the obligation of using Gacaca to transform a situation that both national courts and the International Criminal Tribunal for Rwanda (ICTR)[24] could not easily address.[25] She gives insights into the government's endeavour to abolish ethnic differences in the pursuit of reconciliation.[26]

The two texts are suitable for this study because they are based on ethnographic and anthropological study respectively by the authors and they contain information which enables me to describe and explain instances from testimonies and witness accounts that

[16] Doughty K (2015) 420, 422.
[17] Doughty K (2015) 432.
[18] Doughty K (2015) 432.
[19] Doughty K (2015) 424.
[20] Breed A (2014) 10.
[21] Breed A (2014) 10, 15.
[22] Breed A (2014) 15, 63-79.
[23] Breed A (2014) 63-79, 130-168.
[24] United Nations *Statute of the International Criminal Tribunal for Rwanda (as amended on 13 October 2006)* 8 November 1994.
[25] Breed A (2014) 10-14, 87, 92,169.
[26] Breed A (2014) 86-90.

facilitate an understanding of how the 'social truth' was applied. Ethnography and anthropology studies as subfields of social sciences have the advantage of being able to capture and represent both broad-based and detailed accounts about human experiences in context.[27] Moreover, they are normally unstructured which makes them open for multiple interpretations.[28] Since I am relying on data from the author's extensive fieldworks, my mini-thesis has a component of 'paraethnographic' which means I am observing what they observed, only giving it a different interpretation and perspective.[29] Thus, I recognize that the accounts in both texts were originally intended for different research goals, and I propose to view them instead from a different perspective to arrive at how the 'social truth' was applied.

The *law* of the 'social truth' seen in Gacaca can be equated to the law on *Rules of Procedure and Evidence* applied in formal courts and in international tribunals that are the ICTR and the ICC in the case of my study. To make arguments about the nature of the 'social truth' in Gacaca, then, I occasionally refer to the Statute of the ICTR as well as the Rome Statute of the ICC[30] since both courts have the mandate to prosecute the crime of genocide. The intention of the references is to show distinction between how Gacaca operated versus how these formal courts would operate. This will reinforce my arguments about how processes in Gacaca were radically different from the formal courts, resulting in the 'social truth' but not the legal truth. The comparison should, however, not be mistaken as an intention to explore case law as that is outside the scope of this mini-thesis. Only when essential, I refer to case law.

1.2 Statement of the Problem

The term 'truth' as employed in transitional justice contexts has been criticized because it holds varying meanings for the different actors as some authors have debated.[31] Elster

[27] Doughty K (2015) 424; Breed A (2014) 15-17.
[28] See for instance Doughty K (2015) 420, 424.
[29] Riles A 'Anthropology, Human Rights, and Legal Knowledge: Culture in the Iron Cage' *American Anthropologist* (2006) 57.
[30] United Nations *Rome Statute of the International Criminal Court (last amended 2010)* 17 July 1998. Article 69.
[31] Olsen et al *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (2010) 131; Nagy R 'Transitional Justice as Global Project: critical reflections' *Third World Quarterly* (2008) 277-278; Rushton B 'Truth and reconciliation? The experience of truth commissions' *Australian Journal of*

has for instance argued that the mission to 'close the books' through offering one dominant narrative about the truth of the conflict is profoundly problematic and 'should provoke careful interrogation of the story told and the way in which it is 'corrected' during transition.'[32] Elster's argument is relevant to my study because Gacaca was required to operate under one dominant State sanctioned truth that the Tutsi were victims while the Hutu were perpetrators yet both tribes were on either side of the divide as I explain further shortly in the next section. This means, Gacaca dealt with partial facts, and its dealing was in part aided by the 'social truth.' Similar to Elster, Ingelaere has observed that 'the truth is an elusive and multidimensional concept' and I agree with her.[33] This is why my study brings to the fore an argument that the truth enabled by Gacaca should not go unquestioned because it is important to interrogate it through defining and describing it. The interrogation will then contribute to scholarship on the developing dynamics of truth-telling in transitional justice contexts around the world.

Moreover, it has been observed that ascertaining truth through legal evidence to achieve transitional justice has continuously become problematic and failed in various transitional justice processes.[34] This then creates a need to explore whether social evidence is less problematic and to what effect. Wiebelhaus-Brahm notes that until lately, there has been inadequate evaluation of the impact and supposed success of transitional justice interventions.[35] In this case, an assessment of Gacaca is necessary. Sriram has likewise reasoned that transitional justice can easily have undesired results since it can be politically and culturally unsuitable for a given post-conflict context.[36] I find it vital, then, to examine the extent of the suitability of the 'social truth' in the context of Gacaca which was communally organised.

International Affairs (2006) 128, 133; McEvoy K (2008) 'Letting go of Legalism: Developing a 'Thicker' version of Transitional justice' in eds McEvoy K and McGregor L *Transitional justice from below: grassroots activism and the struggle for change* (2008) 19-20; Humphrey M. *The politics of atrocity and reconciliation: From terror to Trauma*. (2002)108-111.

[32] Elster J *Closing the Books: Transitional Justice in Historical Perspective* (2004).

[33] Ingelaere B 'Assembling Styles of Truth in Rwanda's Gacaca Process' *Journal of Humanitarian Affairs* (2020) 22.

[34] See Kaminski MM & Nalepa M 'Judging Transitional Justice: A New Criterion for Evaluating Truth Revelation Procedures' *The Journal of conflict resolution* (2006); Karstedt S 'From absence to presence, from silence to voice: Victims in international and transitional justice' *International review of victimology* (2010); Lundy P & McGovern M 'Whose Justice? 'Rethinking Transitional Justice from the Bottom Up' *Journal of law and society* (2008); May L (ed) *Jus post bellum and transitional justice* (2013).

[35] Weibelhous-Brahm E 'The Impact of Transitional Justice in Post-Conflict Environments' in *Program on States and Security* (2008) 6.

[36] Sriram CL 'Justice as peace? Liberal peacebuilding and strategies of transitional justice.' *Global Society (2007)* 579-580, 586-588.

In view of these observations by previous scholars, it is not to be taken for granted that a chosen approach of transitional justice is automatically appropriate and successful, and post-genocide Rwanda is no exception. Rather, academia needs to study why Rwanda chose Gacaca over formal courts and how this choice in turn directly or indirectly shaped the kind of truth therein. By acknowledging that Gacaca was designed as community rather than legal court where the 'social truth' and not legal truth was employed, my mini-thesis helpfully traces the connection between the communal nature of the Gacaca and the social approach it deemed suitable for truth-telling to achieve transitional justice.

1.3 Rwanda Genocide, Gacaca and Transitional Justice

There is well-established academic literature concerning the history of the 1994 Rwanda genocide and the resultant Gacaca.[37] Hence, to avoid excessive repetition of the widely available information, this mini-thesis only gives details that pertain to the topic of the study as a way of setting the ground for subsequent discussions in the mini-thesis.

Rwanda experienced Genocide in 1994 which led to the death of hundreds of thousands of people, and the militia group known as Interahamwe was particularly responsible for many of the deaths mostly targeting the minority Tutsi ethnic group along with some moderate Hutu.[38] It should also be noted that in the aftermath of the genocide and during Gacaca, the Rwanda government imposed a single dominant narrative which says that the Tutsi were entirely victims, while the Hutu were entirely perpetrators, contrary to the fact that some Tutsi were perpetrators while some Hutu were victims too.[39] The imposition, I attest, eventually influenced how the 'social truth' was told in Gacaca.

The genocide resulted in the need for justice to victims, and Gacaca was born out of this quest since it was considered a mechanism to achieve transitional justice. Before Gacaca

[37] See for instance: Clark P *The gacaca courts, post-genocide justice and reconciliation in Rwanda: justice without lawyers* (2010); Minow M. *Between vengeance and forgiveness: Facing history after genocide and mass violence* (1998); Brehm HN & Smith C et al 'Producing Expertise in a Transitional Justice Setting: Judges at Rwanda's Gacaca Courts' *Law & Social Inquiry* (1990); Brouwer A & Ruvebana E 'The Legacy of the *Gacaca Courts* in Rwanda: Survivors' Views' *International Criminal Law Review* (2013).

[38] For the history of the genocide, see for example: Des Forges A *Leave None To Tell the Story: genocide in Rwanda* (1999); Fisanick C *The Rwanda genocide* (2004); Gourevitch P *We Wish To Inform You That Tomorrow We Will Be Killed With Our Families* (1999); Magnarella JP *Justice in Africa: Rwanda's genocide, its courts, and the UN Criminal Tribunal* (2000).

[39] Des Forges A (1999); Fisanick C (2004); Ingelaere (2020).

was established however, Rwanda attempted to achieve transitional justice by retributive means in formal national court systems and in the ICTR which was established by the ICTR statute and the UN Security Council Resolution.[40] However, the formal court systems were not successful for reasons that I explain further below. Jones[41] and Longman[42] note that the national courts became unpopular because they were based on the Belgian legal system and Rwandans related them to colonial rule which had a negative impact on how they were perceived. Additionally, citizens had to incur high financial costs to travel and attend these formal courts, yet they could not afford such expenses, since most of them were financially constrained owing to the economic impact of the genocide.[43]

With the limitations of national courts, the government of Rwanda requested the UN to create the ICTR to help in administering the needed justice for a more efficient process of transition.[44] The ICTR was accordingly established and conducted its proceedings in Arusha, Tanzania, alongside the national courts that also continued to operate, albeit in the midst of the mentioned challenges.[45] However, the ICTR was also constrained due to the fact that it was based in Tanzania which made it extremely costly in terms of finances and time for the accused to attend court hearings.[46] Yet in the midst of such unaffordable costs, Rwandan political leaders were resolute to try as many alleged genocidaires as possible.[47] Haskell recounts that only 1292 persons had been tried in national courts with over 100,000 presumed offenders pending trial, yet the government of Rwanda was spending approximately as $20 million per year in administration of national courts and the ICTR proceedings, a cost that would not be afforded to try all perpetrators.[48] There was also a claim that some 'high-level perpetrators' avoided being in direct contact with

[40] UN Security Council resolution 995 (1994) [Establishment of the International Criminal Tribunal for Rwanda] 8 November 1994, SRES/955 (1994).
[41] Jones N (2010).
[42] Longman T (2010).
[43] Jones N (2010); Longman T (2010).
[44] Brehm HN & Smith C et al (1990) 83; Meyerstein A 'Between Law and Culture: Rwanda's Gacaca and Postcolonial Legality' *Law & Social Inquiry* (2007) 494; Thomson S & Nagy R 'Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda's Gacaca Courts' *The International Journal of Transitional Justice* (2011) 16.
[45] Meyerstein A (2007) 494; Thomson S & Nagy R (2011) 16.
[46] Thomson S & Nagy R (2011) 16.
[47] Meyerstein A (2007); Thomson S & Nagy R (2011).
[48] Haskell L *Justice compromised: The legacy of Rwanda's community-based gacaca courts* (2011) 14.

communities which was their way of evading justice according to Neuffer.[49] Considering the challenges of delivering justice by both the national courts and the ICTR, which were costly, had a limitation in terms of how many people they could prosecute, and seemed an escape route for some high profile perpetrators, the country leaders sought an alternative local means to speed up hearings and trials.[50]

Consequently, in 2001 Gacaca, a local mechanism based on a traditional approach that enabled community participation during the prosecution and hearing of cases of the perpetrators of the genocide was established and operated concurrently with the ICTR.[51] Gacaca operated at the lowest administrative level of the Rwandan society and Ingelaere argues that this was meant to 'achieve the popularisation or decentralisation of justice,'[52] an argument I claim directly speaks to the social nature of the truth employed. Nowotny submits that over 11,000 Gacaca courts were formed to superintend nearly 120,000 cases,[53] and Jones notes that it was hoped Gacaca would achieve both retributive and restorative justice.[54] Distributive justice was also a target and would be concerned with (re)distributing tangible and intangible resources between the previously deprived and privileged.[55] Therefore, Gacaca was considered victim-centred and largely forward-looking[56] compared to formal courts that tend to be perpetrator-centred and mostly backward-looking.

Meyerstein accounts that Gacaca was driven by various objectives, to: 1) reveal the truth about what had occurred, 2) speed up the justice process, 3) eradicate the culture of impunity, 4) reconcile and unite the inter-group cleavages within Rwanda, and 5) prove

[49] Neuffer E (2002) *The key to my neighbor's house: Seeking justice in Bosnia and Rwanda.* (2002) 377.
[50] Meyerstein A (2007) 494; Thomson S & Nagy R (2011) 16.
[51] See for instance Brehm HN & Smith C et al (1990) 83, Brouneus K 'Truth-telling as talking cure? Insecurity and Retraumatization in the Rwandan gacaca courts' *Security Dialogue* (2008) 57; Lahiri K 'Rwanda's 'Gacaca' Courts A Possible model for local Justice in International Crime?' *International Criminal Law Review* (2009) 321; Meyerstein A (2007) 476; Thomson, S & Nagy R (2011) 16.
[52] Ingelaere B (2020) 23.
[53] Nowotny J 'The limits of post-genocide justice in Rwanda: assessing gacaca from the perspective of survivors.' *Contemporary Justice Review* (2020) 407.
[54] Jones N (2010) 36.
[55] Mani R *Beyond Retribution: Seeking Justice in The Shadows Of War* (2002).
[56] This is opposed to retributive justice whose goal is to penalise perpetrators on behalf of victims, therefore is perpetrator centred and backward-looking as was the case with the national courts and the ICTR. See Jeffery R and Kim HJ 'New Horizons: Transitional Justice in the Asia-Pacific' in Jeffery R and Kim JH *Transitional Justice in the Asia-Pacific* (2014) 13-14; Walgrave L et al 'Why restorative justice matters for criminology.' *Restorative Justice* (2013) 160.

that Rwanda could settle its own problems.[57] With these objectives, it can be seen that Gacaca was created to make communities self-sufficient without relying on formal judicial systems. This means Gacaca had specific values to promote, and my study argues that these were social and not legal values. Considering the objectives, Doughty observes that the proponents of Gacaca hypothesised them as a compromise between western legal approaches and the rule of law as a way of accentuating the significance of law in governing communities.[58] Gacaca was also established to enforce national unity known as ubumwe in Rwandan language.[59]

Gacaca was also a strategic approach to mobilise popular support for transition because genocide was considered a mass crime committed by many community members, which made it appropriate that a mass community approach be adopted for transitional justice. Waldorf appropriately refers to this resonance as 'mass justice for mass atrocity.'[60] That is to say; it was imperative for the government to employ an enormous horizontal approach to attaining justice in line with the massive design, scale, execution styles and impact of the genocide on communities. This way, the process of pursuing and delivering justice would be a part of the people's daily lives, just like the crime and its after-effects had become. In this light, my own term for Gacaca is *popular justice for a popular crime* – with proximity of families, friends and neighbours judging each other publicly.

Dumas discusses usefully that the value of bringing justice into neigbhorhoods, just like genocide had happened was explained at the start of Gacaca.[61] In 2001 the national prosecutor, while addressing a crowd of prisoners said, 'Your prosecutor will be your neighbor, your lawyer will be your neighbor, your judge will be your neighbor.'[62] The statement brings to mind Gacaca's focus on neighbourhoods being spaces for justice just as they were spaces for injustice since the crime was popularly public with massacres happening in open places, and in institutions like churches and schools. Between the time

[57] Meyerstein A (2007) 473; Also see Breed A (2014) 91.
[58] Doughty K (2015).
[59] Clark P (2014) 196; Bornkamm PC *Rwanda's gacaca courts: Between retribution and reparation* (2011) 38.
[60] Waldorf L 'Like Jews waiting for Jesus:' Posthumous justice in post-genocide Rwanda.' In: Shaw R and Waldorf L (eds*) Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (2010) 183.
[61] Dumas H 'Judging neighbors: the gacaca courts in Rwanda' *South Central Review* (2020) 133.
[62] Dumas H (2020) 133. The author notes that they extracted the statement from Anne Aghion's documentary, a Gacaca production of 2009 titled: *My Neighbor, My Killer.*

when the genocide happened in 1994 and 2001 when Gacaca started, it is conceivable that people who had perpetrated the genocide still lived with survivors as I have not come across literature suggesting separation of these people, except those who were imprisoned. The notion of neighbourhood which Dumas raises, therefore, is very logical and my reasoning is that Gacaca only came in to reinforce the fact that neighbourly relations needed to be safeguarded through the 'social truth.'

Clark and Kaufman advance that Gacaca was not an entirely new approach because it had been used in precolonial Rwanda as a method for dispute resolution in indigenous communities.[63] It facilitated and mediated confession, accountability, forgiveness, and reconciliation at grassroots level[64] to enable the restoration of perpetrators back to their communities. The reminder about the use of Gacaca in precolonial Rwanda is important in informing us that Rwanda found it beneficial to fall back to indigenous knowledge about justice rather than sticking to formal systems of justice which were proving problematic for their legal focus in a context where social concerns mattered more than legal concerns. Here, we see that Rwanda chose to address a socially broken country by trivialising legal matters.

Having chosen to use a community approach, lay people without training in law as opposed to legal professionals were preferred to superintend Gacaca as judges. The judges were known as 'Inyangamugayo' which means a person of 'integrity' or 'honesty'[65] and 250,000 judges were elected by communities in October 2001, with elections in every cell throughout the country.[66] The judges were considered to be mainly either survivors or eyewitnesses of the genocide but not perpetrators; and in a few circumstances, if a judge was implicated during Gacaca proceedings, they would no longer serve in this position. Politicians, lawyers, and police officers were barred by law from becoming judges.[67] Nine Inyangamugayo were selected for each court and given basic training in the law and procedure of Gacaca. One out of the nine was nominated by fellows to be president and to keep order during hearings. Judges worked in cells or sectors where they

[63] Clark P & Kaufman ZD *After genocide: Transitional justice, post-conflict reconstruction and reconciliation in Rwanda and beyond* (2010).
[64] Breed B (2014) 33-36; Hutchison Y (2005) 337.
[65] Ingelaere B (2020) 23, Dumas H (2020) 133.
[66] Clark P & Kaufman ZD (2008) 67.
[67] Haskell L (2011).

lived. A person suspected to have committed crimes in various localities would appear before the respective committee of Inyangamugayo of that locality. Neither the accused nor defendants used the assistance of lawyers during Gacaca proceedings.

In terms of implementation, Gacaca started operating in 2002 in different parts of the country and ended in 2013 and approximately 400,000 suspected perpetrators were prosecuted.[68] Gacaca operated in two phases and the first was for information gathering while the second was for trials.[69] All people aged 18 who resided in a cell or sector were required to attend the court session every Tuesday which was the designated day for hearings across the country.[70] However, as some people could not attend certain hearings for varying reasons, a quorum of 100 community members was decided for any hearing.[71]

Gacaca spaces in rural settings were set-up like pre-colonial Gacaca with judges, defendants, and community members seated together in a cleared open place; at the base of a hill, under a tree, in a stadium or church compound, with people seated around the bench of the judges.[72] On the other hand, Gacaca in urban settings, were habitually conducted indoors 'in spaces akin to American court rooms.'[73] It was also common sight for Gacaca spaces to be in close proximity with places that had been gazetted as genocide memorials.[74] Every court session began with an introduction by the president, who welcomed the community, and set or re-echoed the court rules.[75] Judges would then categorise and inform involved parties about their roles in the trial and defendants would be informed of their charges.[76] The charges were in line with the categorisations of suspects shown in the table below.[77]

[68] Clark P (2014) 193.
[69] Longman T (2010) 50-51.
[70] Doughty K (2015) 42; Meyerstein A (2007) 475.
[71] Dumas H (2020) 136.
[72] Breed A (2014) 93.
[73] Bornkamm PC (2011) 66.
[74] Dumas H (2020) 136.
[75] Breed A (2014) 93.
[76] Bornkamm PC (2011) 66.
[77] Nowotny J. (2020) 408, 409. I created the table basing on two separate illustrations by the same author: Gacaca suspect classifications after 2004 amendment (Gacaca community justice, 2015) and (Decisions at gacaca from 2002–2012 (Gacaca community justice, 2015).

Table 1: Gacaca suspect classifications after 2004 amendment and Decisions at Gacaca from 2002–2012 (Gacaca community justice, 2015)

Category	Description	Convicted	Confessed	Acquitted	%
Category One	Planners, organisers, instigators, supervisors and ringleaders of the genocide or crimes against humanity such as rape or sexual torture.	53,426	22,137	7,126	11.8%
Category Two	Perpetrators, co-perpetrators or accomplices to murder acts; A person who injured others or committed other acts of violence with the intention to kill, but who did not succeed; Those who committed other acts of serious violence without the intention to kill.	361,590	108,821	215,938	37%
Category Three	A person who caused damage to property.	1,266,632	94,054	54,002	4.1%

These classifications are important in informing us about what sort of people were tried in Gacaca. The statistics draw our attention to the scope of Gacaca's performance in trying larger numbers of suspects compared to the national courts and the ICTR.[78] The percentages help us to notice that Gacaca was most successful in dealing with offenders in Category Two, and least successful with Category Three. I propose that the success rates could be attributed to the 'social truth' under the different categories in the sense that it was easier to obtain the truth pertaining to crimes in the most successful category. Both the descriptions of categories and the statistics are used to draw conclusions about the effectiveness of Gacaca in the final chapter of this mini-thesis. With the above history of the Rwanda genocide and Gacaca as an approach to transitional justice, it is important to situate Gacaca in the larger framework of transitional justice which I do in the next section.

[78] The statistics are not designed to add up to 100 per cent because the intention is to show numbers for each category but not combine the categories.

1.4 The Evolution of Transitional Justice

The beginning of transitional justice can be traced to the aftermath of the Second World War with the Nuremberg and Tokyo military tribunals even though the term 'transitional justice' was devised in the early 1990s. The term was devised in the wake of regime changes in Eastern Europe and Latin America. Arthur notes that the term was a signal to greater respect for human rights considering the dilemmas faced by human rights activists working in 'transitional' contexts then.[79] Therefore, whereas the said political regime changes in themselves were not a new occurrence, various players including lawyers, human rights advocates, scholars of politics as well as other people dealing in transitional settings used the term with hope that the transitions would lead to 'democracy' which is an important element of transitional justice.[80] Since its inception, transitional justice is now an institutionalised approach for post-conflict transformation as scholars like Teitel, McEvoy and Miller have observed, and this development explains why and how Gacaca was initiated in post-genocide Rwanda.[81] Hinton remarks that various methods have been developed to realise transitional goals including amnesties, prosecutions, lustrations, truth commissions, memorialization, pardons, reparations, among others.[82]

It is worth noting that beginning from the Nuremburg and Tokyo trials, prosecutions by international institutions (universal jurisdiction) have become a norm in transitional justice where various international courts are formed to prosecute suspects. These international courts, that function by universal jurisdiction powers tend to operate independently or in collaboration with the concerned State. I noted already that the ICTR which was an international court was initially put in place to try genocidaires and was in Arusha Tanzania. Still in relation to the international nature of the ICTR, I noted earlier that it's location in another country where the crimes did not happen, raised practical limitations leading to the establishment of Gacaca.

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[79] Arthur P 'How 'transitions' reshaped human rights: A conceptual history of transitional justice' *Human Rights Quarterly* (2009) 326.
[80] Arthur P (2009) 336.
[81] Teitel R 'Transitional Justice Genealogy' *Harvary Human Rights Journal* (2003a) 89; McEvoy K (2007) 412; Miller Z 'Effects of invisibility: In search of the 'economic' in transitional justice' in *International Journal of Transitional Justice* (2008) 270.
[82] Hinton A (2011) *Transitional justice: Global mechanisms and local realities after genocide and mass violence* (2011) 4.

Due to the growing influence of transitional justice over time, it has also been defined variously by different scholars, Non-Government Organisations (NGOs) and international organisations as I explicate. Mani for instance views it as 'restoring justice within the parameters of peacebuilding.'[83] This means that transitional justice is closely associated with reinstating peace after conflict and proponents of this idea believe that a return to peace is crucial for transitioning communities. Roht-Arriaza on the other hand treats transitional justice like a 'set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, that are aimed at directly confronting and dealing with past violations of human rights and humanitarian law.'[84]

Treating transitional justice as a collection of practices in the context of Rwanda may help us understand why the country used national courts, the ICTR and finally Gacaca. Perhaps the attempt at various methods is a signal to the fact that transitional justice is complex, not straightforward and requires flexibility in approach. Short of this flexibility, post-conflict societies may have to take longer period in the transitional process. The flexibility however, does not imply that every transitioning society should experiment with more than one approach for the sake of it. Instead, it draws attention to the recognition that there is always room to apply a different approach if one does not work, or even to apply multiple approaches at a time depending on the desired outcomes in each transitional justice context.

On the other hand, Teitel believes transitional justice is 'the view of justice associated with periods of political change, as reflected in the phenomenology of primarily legal responses that deal with the wrongdoing of repressive predecessor regimes.'[85] This author raises the idea of using legal responses to facilitate transition. As noted already, legal responses have been found to be problematic in transition process because of their requirement for the legal truth, which is often not possible in some contexts, but also not relevant as was the case for Rwanda. Nevertheless, legal processes do play a recognisable role towards realising transitional justice in their own right and should not be entirely dismissed. In any case international tribunals like the International Criminal Court for the

[83] Mani R (2002)17.
[84] Roht-Arriaza N 'The new landscape in transitional justice' in (eds) Roht-Arriaza N and Mariezcurrena J *Transitional justice in the Twenty-First Century: Beyond truth versus justice* (2006) 2.
[85] Teitel R 'Transitional Justice in a New Era' *Fordham International Law Journal* (2003) 893.

Former Yugoslavia (ICTY), ICTR and now the ICC as a permanent court have played crucial roles in administering justice for the sake of conflict transformation through retribution. What is manifest in the three varying views by Mani, Roht-Arriaza and Teitel so far is that transitional justice approaches are as diverse as the nature of conflicts they intend to address.

In relation to this research, Mani and Roht-Arriaza's views are most relevant as they pertain to transitional justice operating in the realm of peacebuilding; mechanisms aimed at dealing with past violations of human rights and facilitating transition at state and community levels respectively. These are all components Gacaca was concerned with. On the contrary, Teitel's standpoint which pertains to legal responses that deal with the repressive regimes is not applicable as I indicated already that Gacaca employed social laws but not legal laws.

In addition to the above perspectives about transitional justice, the International Center of Transitional Justice (ICTRJ INGO) also offers a definition of transitional justice which Olsen, Payne and Reiter[86] claim that various actors in transitional justice contexts have tended to prefer, and I have also found it suitable in this study. According to ICTRJ, transitional justice is

> 'a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation, and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse'.[87]

In relation to the above, the United Nations (UN), offers an understanding of transitional justice as

> 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof'.[88]

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[86] Olsen TD et al (2010) 10-11.
[87] ICTRJ 'What is Transitional Justice?' http://ictransitional justice.org/sites/default/files/ICTRJ - Global-Transitional-Justice, 2009.
[88] United Nations 'The rule of law and transitional justice in conflict and post-conflict societies' *Report of the Secretary-General* (2004) 4.

The two perspectives by ICTRJ and UN offer broad understandings of transitional justice and equally highlight the inclination for transitional justice to be linked to democratic measures which was the hope of proponents of transitional justice following the regime changes in Eastern Europe and Latin America discussed earlier. Further, the two definitions highlight the nature of transitional justice to include legal and non-legal mechanisms from which a post-conflict community can choose what is more appropriate and in the case of Rwanda, we note that it chose non-judicial mechanisms of Gacaca after the legal approaches were constrained to address the legacies of the genocide.[89] The ICTRJ's guide that transitional justice should not be regarded a special form of justice but rather one that can be adapted for a specific society speaks to the Rwandan context. A notable factor from the UN viewpoint is that transitional justice may involve different levels of international involvement or even none. To this effect, Nagy, and Thoms, Ron and Paris have observed that transitional justice is a largely internationally supported process. Gacaca too attracted a level of international interest as I discuss further shortly below.[90]

The UN's perspective of transitional justice also talks about transitioning communities aiming to achieve reconciliation. As mentioned in the previous section that Gacaca in part aimed 'reconcile and unite the inter-group cleavages within Rwanda,' this transitional justice approach was aimed at bringing people back together. Reconciliation was important in Rwanda just like in many other post-conflict contexts because communities were comprised of both victims and perpetrators who inevitably needed to associate in different aspects of life. Thus, peaceful coexistence, was crucial for social and economic development but also to minimise chances of a reoccurrence of genocide and perhaps any other kind of conflict. For reconciliation to be achieved, Gacaca was appropriate as opposed to formal courts because the former allowed communities to access and debate the truth pertaining to the genocide. In this light, I submit that having accurate records of events is crucial for people to reunite. Formal courts on the other hand, would limit access

[89] Clarke P & Kaufman ZD (2010).
[90] Nagy R (2008) 276; Thoms R, Oskar NT, Ron J, and Paris R 'The Effects Of Transitional Justice Mechanisms: A Summary Of Empirical Research Findings And Implications For Analysts And Practitioners' (2008) 15.

to such truths as sessions tend to be held away from the public, hence, derailing reunion efforts.

Factual records of events are especially important for survivors. We note that survivors were very actively involved in interrogating suspects such that the most compelling truth could be told (discussed in the findings in this thesis). Truth immensely helps the process of reconstruction of the social fabric since it lays bare the harm caused enabling it to be acknowledged officially and publicly. As I discuss in my findings, Gacaca was a great opportunity to not only tell the truth but to debate it, to socially reconstruct and deconstruct it too. Nevertheless, as the findings show, some people took advantage of the non-legal procedures to truth-telling by telling lies due to the fact the Gacaca did not strictly employ rules of procedure and evidence that a formal court would. In the same light, my findings also draw our attention to the limitation caused by the government's requirement for Gacaca to accept one narrative that the Tutsi were entirely victims while the Hutu were villains. This narrative was flawed and threatened the safety and security of people with alternative testimonies or witness accounts, thereby negatively impacting the process of truth-telling and consequently affecting reconciliation and transitional justice efforts in Rwanda.

To conclude this section in view of the viewpoints about transitional justice, I contextualise Gacaca in the larger framework of transitional justice across the world. I conclude that the major point to be noted about transitional justice is that it should be one deemed suitable for a context, whether judicial or non-judicial. Each post-conflict situation has specific circumstances on which a decision for the better approach can be based. The flexibility brings to our attention that whereas a transitional justice may be imperative to change from conflict to peace, a country is bound by both theoretical as well as practical restrictions to achieve their goal. In the case of Rwanda, we noted that the restrictions included limited funds for travel either to national courts or to the ICTR at Arusha in Tanzania. Another issue was the bias of national courts that were established on the legal culture of Belgians who were colonialists of Rwanda. There was also the matter of limited number of prosecutions compared to the alleged suspects as much as the concern that some high-profile suspects would easily evade justice. Hence, Rwanda was justified for conceiving Gacaca instead in view of the practical and theoretical limitations. This would align with their larger vision of having transitional justice that resonates with

communities since the genocide itself was largely a communal crime and this choice resulted in the 'social truth' that this study examines.

1.5 Conceptual / Theoretical Framework

The conceptual framework for the study is 'social truth' which I explained in the overview was derived from Hutchison.[91] I argued that the 'social truth' is that which a community can identify with and is socially constructed by a group of people. Thus, this mini-thesis, through examining secondary data by Breed and Doughty studies how Gacaca provided an environment for defendants, witnesses, and the rest of the community to tell the truth that Rwandans could identify with. The truth-telling, as I explain in the findings, indeed incorporated elements of social (de)construction as seen in responses to some testimonies. The mini-thesis also looks out for circumstances that made it permissible for Gacaca judges to embrace the factor of relying on community to verify the same truth instead of relying on legal procedures. Doughty's submission below further enables an understanding of what I consider the genesis of the 'social truth' in Gacaca when she says:

> 'The law regulating gacaca procedures laid out a general approach to trial sessions, which allowed 'any interested person' to 'testify in favour or against the defendant' based on what 'he or she knows or witnessed', which included both eyewitness and hearsay testimony. The evidence presented in gacaca sessions was what people said aloud, based on memories strengthened or diluted with the passage of time. Cases were thus public debates in which people discussed death in meticulous detail, accused or defended one another, and named names (single quotes in original).'[92]

The quote above reflects Hutchison's view about 'social truth' being socially constructed by a group of people. Doughty brings to our attention that Gacaca was a sort of open contest for truth, and the open platform attracted varying voices competing to prove their knowledge of how the genocide happened. It is of interest to note that Gacaca also allowed testimonies or counter- testimonies based on 'hearsay' which in my view means the standard of truth was greatly embedded in sociological factors but not legal ones.

[91] Hutchison Y (2005) 356.
[92] Doughty K (2015) 425.

Article 69 (1) of the Rome Statute requires a witness to give an undertaking that they will provide the ICC with the truth according to its standard, a standard of evidence beyond reasonable doubt, and the undertaking is given before one testifies. The procedure of making an undertaking was applicable to Gacaca in a different way as Breed notes that at the start of Gacaca session, the Inyangamugayo reminded the gathering that a testifier would raise his or her right hand and say: 'I take God as my witness to tell the truth.'[93] According to Doughty's submission which makes us aware that people could even testify based on hearsay, I point out that truth-telling was certainly flawed which means the oath was not strictly adhered to. It would have been a legal error for one to undertake to provide *unreliable* information based on hearsay at the ICC. The same Article 69(2) provides for evidence to be given in person, orally (vica voce), in a video or audio recording as well as through written documents. In comparison to Gacaca, a witness had only one option of providing an oral testimony.

Similarly, Article 69(3) allows the court to request that any other relevant evidence be submitted if it will help in determining the truth. Gacaca could obtain evidence only to a limited extent as they would only get testimony from those present and who belonged to the particular community. So, for instance it could have missed the opportunity of testimonies from people outside the community. In the same light, Article 69 (4) mandates the ICC to rule on the relevance of any evidence in conducting a fair trial to arrive at a fair judgment. As I shall expound in the findings in this mini-thesis, Gacaca employed a lower standard of evidence threshold compared to the ICC whose evidence threshold is very high. This distinction shows that Gacaca standard of truth was set by sociological factors as opposed to legal standards.

Similarly, Article 14 of the ICTR Statuteon 'Rules of Procedure and Evidence' requires admission of **e**vidence in a similar manner to that of the ICC explained above. Both articles in both Statutes emphasise the need to protect victims and witnesses in all phases of pre-trials, trials and appeals. This protection was not guaranteed by Gacaca and greatly influenced the same 'social truth' too. Considering the distinction in how the *social law* on adducing evidence was applied from a social standpoint contrary to a legal one, I find

[93] Breed A (2014) 93. The oath was prescribed in the *Republic of Rwanda National service of Gacaca Courts* (2005) 4.

it crucial to explore this concept of 'social truth.' The social-legal methodology (explained in chapter three) that I adopt in this study is suitable for the exploration.

1.6 SIGNIFICANCE OF THE STUDY

This study is significant in various ways. First, it offers an awareness of how the 'social truth' was employed, the circumstances that led to it and the conditions that made its implementation possible. This knowledge is needed for both legal and social scholars to understand the interlink between sociological factors that influence legal laws. In the same manner, the knowledge is important for a comprehension of the legal factors that affect social laws. Ultimately a recognition of the inevitable interweave between the law and society permits our appreciation of societal development. In the case of this mini-thesis, development is viewed from the perspective that when the genocide happened, it caused a shift from legal laws to social laws. I suggest the shift can rightly be categorised as a form of societal development from prioritizing legal laws to giving social laws more attention.

Examining the relationship between the communal nature of the Gacaca and the social approach to truth telling it deemed suitable for truth-telling to achieve transitional justice is also necessary. The same connection is relevant when exploring that transitional justice contexts choose certain methods over others and underscores the fact that any transitioning society should deliberately decide an approach or a set of approaches but not make random choices. Even though my findings on this point are particular to Rwanda, they have wider relevance for truth-telling during transitional justice in other conflict and post-conflict contexts because as Schofield notes, 'studies in one situation can be used to speak or to help form a judgement about other situations.'[94] In my case, the findings can for instance speak to Uganda, Syria, Nigeria, Liberia, South Sudan, and Nepal which are all conflict and post-conflict contexts currently. To avoid making a claim for generalising the relevance of the outcomes of my study however, the mini-thesis follows Alasuutari's guidance that the preferred result of qualitative research is to extrapolate and not generalize.[95] Extrapolation is about extending known outcomes

[94] Schofield J 'Increasing the Generalizability of Qualitative Research' *Social Research: Philosophy, Politics and Practice* (1993) 207.
[95] Alasuutari P *Researching Culture: Qualitative Method and Cultural Studies* (1995) 156-157.

beyond a certainly known area while generalising is applying general concepts obtained through inference from specific cases.

Finally, the study contributes towards expanding knowledge about conceptualising the interdisciplinarity of law and sociology. This mini-thesis underlines the fact that the two fields have a bearing on each other. If this is the case, then academic attention needs to be paid to how their co-existence can be continually fostered through research. In arguing for the contributions of my research however, I acknowledge the risks of using secondary data as an ideal viewpoint to understand the 'social truth.' While I appreciate that the two selected texts by Breed and Doughty make it possible for this research to happen, I am cognizant of the fact that their research is not devoid of politics that may have influenced their submissions which I draw on. I keep in mind that even though their research enables an analysis of the concept 'social truth,' the same research can conceal important elements about truth since it was not initially designed for my own perspective. Thus, I do acknowledge that my research has limitations caused by using secondary data and I do not claim that the two texts offer the best possible representations of 'social truth.' Rather, my claims are limited to the possibilities offered in the texts.

1.7 Aim and Objectives

1.7.1 Aim

The main aim of the mini-thesis is to examine how 'social truth' was appreciated in the Rwanda social context. One of the goals of Gacaca Courts was to enable communities to disclose the truth about the genocide events.[96] Thus, disclosing truth was regarded important for transitional justice. For this reason, it is crucial to understand how this goal was achieved by examining how truth was negotiated by the Inyangamugayo and the community.

1.7.2 Objectives

The mini-thesis has three objectives that help to expound and achieve the main aim.

[96] Breed A (2014) 38.

i) To assess the nature of 'social truth' by perpetrators.

ii) To examine the elements of honesty and proof of information by community members to validate or disprove 'the truth' by perpetrators.

iii) To examine the relationship between the communal nature of the Gacaca and the social approach it deemed suitable for truth-telling to achieve transitional justice.

1.8 Research Questions

Based on the research objectives above, the mini-thesis addresses three research questions below.

i) What was the nature of the 'social truth' by perpetrators?

ii) What were the elements of honesty and proof of information by community members to validate or disprove 'the truth' by perpetrators?

iii) What is the relationship between the communal nature of the Gacaca and the social approach it deemed suitable for truth-telling to achieve transitional justice?

1.9 Delimitation / Scope of the Study

Geographically, the scope of the study is Rwanda, although I also draw on examples from other transitional justice contexts especially from Africa such as South Africa where the same concept of 'social truth' was applied during the post-apartheid transitional justice process. In terms of content, the study is delimited to the concept 'social truth' as opposed to the legal truth. The content scope is sufficient for this mini-thesis which is social-legal study. Concerning time scope, when analysing literature specifically on Gacaca, I consider that written in the aftermath of the genocide between 1995 and 2020. This is because it contains narratives written while Gacaca was ongoing, and later after its completion. The latter literature serves the purposes of offering reflections about whether or not the effect of Gacaca was enduring. Otherwise, whenever applicable, I draw on literature outside this timescope as long as it suffices to explicate certain points.

1.11 Chapter Outline

Chapter 1: General introduction to the study

This chapter of the mini-thesis is a general introduction of the study which gives overviews of its various aspects. It discusses the motivation for the study shown through the statement of the problem, gives a background of the Rwanda genocide and Gacaca. It then gives an overview of the evolution of transitional justice, and how Gacaca fits into this framework. It discusses the conceptual framework of the 'social truth,' and introduces the research methodology which is discussed later in chapter three in greater detail. It debates the significance of the study, aims and objectives, research questions, the scope of the research.

Chapter 2: Literature review

This chapter examines literature from both legal studies and social sciences regarding the concept of truth and the 'social truth' in particular. Through the examination, it establishes the relationship between previous research perspectives on Gacaca and my own standpoint about the same. It notes that these relationships resultantly reveal a gap on how the 'social truth' was applied in Gacaca and shows how my mini-thesis fills this gap.

Chapter 3: Research methodology

This chapter presents the reasoning for the choice of a social-legal type of legal research methodology which explores the intersection between sociology and law. It also demonstrates the significance of a qualitative research method drawing on secondary data to analyse the concept 'social truth' in Gacaca. I note that the texts which I draw on were assessed originally for different findings using various methodologies. Thus, I contribute by giving them a different perspective to make them useful in a different way, using the chosen methodology.

Chapter 4: The findings

This chapter discusses the findings from the selected texts regarding how 'social truth' was employed and understood during Gacaca by addressing three research questions: 1)what was the nature of the 'social truth' by the perpetrators?; 2) what were the elements

of honesty and proof of information by community members to validate or disprove 'the truth' by the perpetrators?; and 3) what is the relationship between the communal nature of the Gacaca Courts and the social approach it deemed suitable for truth-telling to achieve transitional justice? The first two questions are addressed concurrently in one section and the third in a separate section.

Chapter 5: Conclusions and Recommendations

This chapter makes conclusions of the findings and recommendations based on the objectives of the study concerning the nature of the 'social truth' by perpetrators, the elements of honesty and proof of information by community members to validate or disprove the truth by perpetrators, and the relationship between the communal nature of the Gacaca and the social approach it deemed suitable for truth-telling to achieve transitional justice.

CHAPTER 2

LITERATURE REVIEW: 'SOCIAL TRUTH' IN GACACA IN VIEW OF EXISTING LITERATURE

This chapter examines literature from both social sciences and legal studies regarding the concept of 'truth' and the 'social truth' in particular. It establishes the relationship between previous research perspectives on Gacaca and presents my own arguments on the subject. It identifies the gap in existing research on how the 'social truth' was applied in Gacaca, and how my mini-thesis in turn fills this gap.

In chapter one of this mini-thesis, I acknowledged that there is enormous academic literature about Gacaca, and this huge literature spans across the period since Gacaca's inception to date. Nevertheless, despite the abundance of literature, only few scholars have paid attention to the aspect of the 'social truth' as I do in this mini-thesis. Considering that it is over twenty years since the 1994 genocide occurred in Rwanda and almost 10 years since the end of Gacaca, this study finds it compelling to pay attention to the question of the nature of the truth employed in Gacaca. The obstacle of not having clarity of this sort of truth may deter us from appreciating the social context of Gacaca from a different perspective to what previous scholars have studied.

My examination of existing literature which I discuss shortly shows that research on how the 'social truth' was employed during Gacaca as a mechanism to achieve transitional justice is hardly available owing to three major reasons. The first reason is that most literature is outright in either showing support to Gacaca as a unique mechanism of transitional justice, or in rebutting it totally because of its approach.[97] The literature that falls in this category cannot serve the purpose of my study because it is extreme in its standpoint. It hinders an awareness of the logical advantages and disadvantages of Gacaca by (re)presenting the approach as either good or bad, successful, or unsuccessful, as the

[97] See for instance Brehm HN & Smith C et al 'Producing Expertise in a Transitional Justice Setting: Judges at Rwanda's Gacaca Courts' (1990); Lahiri K 'Rwanda's 'Gacaca' Courts A Possible model for local Justice in International Crime?' *International Criminal Law Review* (2009); Thomson S & Nagy R 'Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda's Gacaca Courts' *The International Journal of Transitional Justice* (2011).

case may be. Thus, it creates the need for a balanced view of Gacaca which this mini-thesis offers.

The second cause is owing to my observation that several researchers focused on broad and generalised analyses of truth-telling in Gacaca.[98] Generalising and being broad-minded has its benefits which however do not serve the purpose of enabling a detailed understanding of a phenomenon such as 'social truth.' My research compliments this category of scholarship by adding a narrow and specific lens while assessing Gacaca.

Finally, the third reason is owing to the methodology that many previous researchers have employed to analyse Gacaca.[99] I find that a vast majority of previous scholars used anthropological and ethnographic methodologies, particularly, interviews and participant observation of ordinary Rwandans to arrive at their findings.[100] While these methodologies have the merit of obtaining results that embody components in daily life that would otherwise never go unnoticed, they also have the demerit of a possible bias resulting from the researcher's own perception of a people. Interviews for instance can be used by respondents to conceal certain information because there is always a conscious awareness to respond *correctly* to a researcher. Additionally, no matter how one studies a community through participant observation, certain elements of that society remain concealed and incomprehensible by an outsider, which then means they are left out in analysis. Hence, my study offers an alternative methodology of a social-legal approach to understanding communities, and this study approach has been hardly used by previous scholars to scrutinize Gacaca. With the three reasons, I argue that much of the existing literature presents debatable information to credit or discredit Gacaca and its outcomes, and this creates a gap which the mini-thesis fills.

Brehm, Smith and Gertz focus on the expert role of the Inyangamugayo who were instrumental in effecting 'social truth' as seen and understood by the local communities

[98] See for example Brouneus K 'Truth-telling as talking cure? Insecurity and Retraumatization in the Rwandan gacaca courts' *Security Dialogue* (2008); Brouwer A & Ruvebana E (2013).
[99] See for instance Brehm HN & Smith C et al (1990): Brouwer A & Ruvebana E 'The Legacy of the *Gacaca Courts* in Rwanda: Survivors' Views' *International Criminal Law Review* (2013); Clark P 'Bringing the peasants back in, again: state power and local agency in Rwanda's Gacaca Courts' *Journal of Eastern African Studies* (2014); Meyerstein A 'Between Law and Culture: Rwanda's Gacaca and Postcolonial Legality' *Law & Social Inquiry* (2007).
[100] See for instance Brehm HN & Smith C et al (2019) 78; Thomson S and Nagy R (2011) 22; Meyerstein A (2007) 467-508; Brouwer A & Ruvebana E (2013) 940.

in Gacaca.[101] They base their study on forty-six interviews with former Inyangamugayo.[102] They show that it was unprecedented for lay people without legal training to perform the role of judges moreover presiding over overwhelming numbers of cases, trying suspects and pronouncing verdicts that ranged from fines to life imprisonment.[103] They underscore that post-genocide Rwanda was a period where non-professional lawyers were at the forefront of dealing with what would ideally be legal matters. They also address the matter of the Inyangamugayo leveraging their reputations to gain support from communities.[104] These scholars are outright in demonstrating the Inyangamugayo as expert judges but my mini-thesis will prove that the judges exhibited both expertise and incompetence, thereby providing a balanced viewpoint about them.

On the other hand, relying on thirty-seven interviews with local Rwandans and former Inyangamugayo, Thomson and Nagy pay attention to how the relationships among law, power and justice impacted the lives of ordinary Rwandans by requiring them to simply adhere to requirements of Gacaca such as cooperating in truth-telling for the sake of justice and reconciliation.[105] They explore how Gacaca was an opportunity for ordinary Rwandans to interact with the local officials and the State which was unprecedented.[106] They argue that Gacaca mostly rendered average Rwandan citizens powerless, a situation that was caused by the necessity of reconciliation to safeguard future peace and security.[107] They conclude that whereas Gacaca employed a local approach that enabled transitional justice beyond the bounds of legal courts, caution needs to be taken in such approaches to regulate the negative impact of State power on citizens.[108] These authors make an absolute submission that Gacaca rendered ordinary Rwandans powerless.[109] My mini-thesis complements them by demonstrating moments when ordinary Rwandans were rendered both powerless and powerful by Gacaca, hence, demonstrating that Gacaca did not just disempower, but also empowered them in certain aspects.

[101] Brehm et al (2019) 79.
[102] Brehm et al (2019) 79.
[103] Brehm et al (2019) 79, 81, 82-83.
[104] Brehm HN & Smith C et al (2019) 78.
[105] Thomson S & Nagy R (2011) 22.
[106] Thomson S & Nagy R (2011) 13.
[107] Thomson S & Nagy R (2011) 11, 13.
[108] Thomson S & Nagy R (2011) 30.
[109] Thomson S & Nagy R (2011) 11.

Yet, Lahiri assesses the extent to which Gacaca could become a possible model for local justice regarding international crimes.[110] He studies how the courts differed in approach from 'traditional punitive justice' normally applied in the context of international criminal justice systems.[111] His analysis is focused on making a case either in support of, or against Gacaca, which is what he relies on to ask whether it can become a model justice system,[112] and can 'form a legitimate part of the international criminal justice system.'[113] He concludes that the courts, due to their proximity to cultural considerations of victims of genocide had a plausible component of restorative justice and can be used as a model by the international community in dispute resolution regarding international crimes.[114] This author also takes a definite position about Gacaca's credibility, hence, qualifying it as a suitable model for local justice mechanisms. To differ from him, my mini-thesis demonstrates that Gacaca is not entirely suitable to be a model for transition approach. This is because of some glaring flaws such as suppressing the truth by testifiers and witnesses, as well as the incompetence's of the Inyangamugayo.

Meyerstein studies the post-colonial legacy of Gacaca in view of law[115] relying on data and observations by other scholars, as well as 'monitoring of the national Rwandan press and international press coverage of the gacaca and political developments in Rwanda.'[116] The author navigates how Amnesty International, international nongovernmental organizations (INGO), and the government of Rwanda differed in their interpretation of international human rights in the context of a post-conflict society.[117] Meyerstein's study shows that Gacaca relied on communal dispute resolution approaches that were used in precolonial Rwanda thereby underscoring how these approaches differ from modern methods of understanding human rights used by NGOs and Amnesty International.[118] The author presents the argument that Gacaca used a hybrid of precolonial and modern perspectives of addressing human rights abuses.[119] In relation to my study, Meyerstein

[110] Lahiri K (2009) 322, 327-332.
[111] Lahiri K (2009) 322.
[112] Lahiri K (2009) 327-332.
[113] Lahiri K (2009) 322.
[114] Lahiri K (2009) 332.
[115] Meyerstein A (2007) 470, 472, 492.
[116] Meyerstein A (2007) 471.
[117] Meyerstein A (2007) 468.
[118] Meyerstein A (2007) 478.
[119] Meyerstein A (2007) 470, 481.

gives a critical stance of Gacaca and its relevance in the larger context of international human rights and how to address their abuse. My mini-thesis builds on this scholar by providing details of social truth-telling in the context of human rights which he does not pay attention to.

Brouwer and Ruvebana examine the legacy of Gacaca concerning how it enabled an understanding of the role of teachings about forgiveness in enhancing individual and societal reconciliation,[120] using twenty-eight semi-structured interviews with genocide survivors.[121] Their study departs from the principle that, among other objectives, Gacaca was established to foster forgiveness, and so they assess whether this objective was achieved[122] from the viewpoint of survivors.[123] They explore how passage of time could have influenced the people's view of the need for forgiveness.[124] They also address the matter of reparations which they suggest was not yet sufficiently implemented by the closure of Gacaca in 2012.[125] These authors offer a balanced critique of what Gacaca may and may not have achieved but they do not focus of the details of truth-telling as I do.

Considering more than 650 interviews, fieldwork conducted over a period of 10 years, and observation of 105 Gacaca hearings, Clark studies how Gacaca privileged Rwandan peasants by enabling them to take part in building the State through local agencies of the same courts.[126] His contention is that whereas Gacaca gave victims agency, it inadvertently promoted the consolidation and centralisation of State power[127] and I note that his stand is similar to Thomson and Nagy's discussed above. Clark concludes that the relationship between the State and citizens in Rwanda especially in the countryside is complex and needs further exploration to demystify the assumption that they either got a strong voice through Gacaca or that they instead elevated the State, since neither of these perspectives is straightforward.[128] My research speaks to Clark's study through its exploration of how 'social truth' in Gacaca can in some instances be seen as empowering communities, while in other instances it can also be seen as directly empowering the State.

[120] Brouwer A & Ruvebana E (2013) 956.
[121] Brouwer A & Ruvebana E (2013) 943.
[122] Brouwer A & Ruvebana E (2013) 941.
[123] Brouwer A & Ruvebana E (2013) 943.
[124] Brouwer A & Ruvebana E (2013) 938, 940, 943-944.
[125] Brouwer A & Ruvebana E (2013) 969.
[126] Clark P (2014) 194.
[127] Clark P (2014) 193-194, 196-197, 208.
[128] Clark P (2014) 208.

Further, my mini-thesis focuses on details of components and modalities of 'social truth' telling which Clark does not delve into, thereby complementing his research.

This mini-thesis resonates most with Bert Ingelaere's article 'Assembling Styles of Truth in Rwanda's Gacaca Process' where she argues that four respective kinds of truth were applied in Gacaca trials: 'the forensic truth', 'the moral truth', 'the effectual truth' and 'the Truth-with-a-Capital-T'.[129] She explains:

> 'The first is a consequence of the design of the court system, the second is derived from the socio-cultural context, the third is a consequence of the decentralised milieu in which the gacaca courts were inserted, the fourth is the result of the overall political context in which the gacaca activities took place.'[130]

My study finds a connection between Ingelaere's perception of the 'effectual truth' which was a result of localising Gacaca,[131] requiring truth that could be *effective* under the circumstances. I argue Gacaca operated under social circumstances which dictated that the 'social truth' be applied. Ingelaere advances an argument that the 'effectual truth' was accompanied by a 'specific code of conduct' which is 'defined and still defines the nature of social navigation in society,' and that speeches made in Gacaca (confessions and witnesses accounts) corresponded 'to reality in the traditional organisation of Rwandan society.'[132] This way, 'the word was a means to an end, not so much an end in itself.'[133]

In comparison with Ingelaere's research, my mini-thesis puts emphasis on the fact that the truth was socially effective, a focus Ingelaere's research lacks even though she makes a related point in her explanation of the 'moral truth' and the 'effectual truth.' The difference is also seen in her use of a verb 'effectual' to qualify her finding, while I use a noun 'social' to qualify my own finding. Moreover, Ingelaere's view of the 'moral truth' relates to my arguments about the circumstances that led community members to safeguard the social fabric of their communities. In examining the Gacaca judicial processes, I pay attention to how accounts by testifiers and witnesses revealed who, what, when, where, with whom and how the crime of genocide was committed which Ingelaere

[129] Ingelaere B (2020) 32.
[130] Ingelaere B (2020) 23.
[131] Ingelaere B (2020) 25.
[132] Ingelaere B (2020) 25.
[133] Ingelaere B (2020) 25.

calls the 'forensic truth.'[134] Then I proceed to examine the social aspects of testimonies to arrive at the 'social truth' therein. Thus, my research builds on Ingeleare's by not only giving alternative terminology, but also offering a broader perspective of the nature of truth drawing on the communal nature of Gacaca.

Considering the literature, I have reviewed above, I claim that none of the authors has paid specific attention the concept 'social truth.' Whereas the various studies enable an understanding of it in various ways, I suggest there is a need to fill the gap showing exactly how it was arrived at, the negative and positive consequences arising from it. This will differ from existing literature most of which takes one critical stand for or against Gacaca. Even though the existing scholarship is important in its own right, an inquiry into how the truth was constructed to fit the social context is equally vital such that a more detailed and holistic understanding of the complexity of truth-seeking and truth-telling during Gacaca can be arrived at. Therefore, my study builds upon all the studies but especially Ingeleare's to expand her phenomenon 'effectual truth.' Consequently, the mini-thesis plays the significant role of filling this existing gap which will in turn broaden our knowledge of how transitional justice has been implemented in Africa, and particularly in the context of post-genocide Rwanda.

[134] Ingelaere B (2020) 23.

CHAPTER 3

SOCIAL-LEGAL RESEARCH METHODOLOGY

This chapter presents the reasoning behind the choice of a social-legal type of legal research methodology which I have chosen to employ in my study. It also demonstrates the significance of a qualitative research method drawing on secondary data to analyse the concept 'social truth' in Gacaca. I note that Breed and Doughty's texts which I draw on were assessed originally for different findings using various methodologies. I contribute by adapting and giving their texts a different perspective to make them more useful in deepening our understanding of Gacaca from a social-legal lens.

Bryman has advised that it is important for a researcher to select a suitable research method to conduct a successful study.[135] Since I am exploring the relationship of the social-legal conditions that shaped the 'social truth' in Gacaca, it is crucial for me to select an interdisciplinary method that can link the two fields of sociology and law. Upendra Baxi, a renown Indian legal scholar proposes that a lawyer should know ample sociology just like a sociologist should know ample law.[136] My background as a sociologist with ample knowledge of law, makes it possible for me to use this research approach. Khadijah has similarly argued for the necessity of 'combining methods in legal research' which he suggests is important because of the diversity 'of issues' that 'legal education' needs to 'explore.'[137] It should be noted that *social* in social-legal does not simply mean 'sociology' but rather 'an interface with a context within which law exists.'[138] The interface in the case of my mini-thesis is the context of Gacaca which is a combination of social, cultural, legal, political and economic settings in post-genocide Rwanda.

Social-legal research has its methodological and theoretical base in the social sciences as opposed to law.[139] That is, this methodology is principally led by social theories rather than legal doctrines. It aims to understand the law as a social phenomenon and can be

[135] Bryman A 'Mixed methods in Organisational research' in Buchanan DA & Bryman A (eds) *Organizational Research Methods* (2009).
[136] Baxi U *Socio-legal research in India: a programschrift* (1975).
[137] Khadijah M 'Combining methods in legal research' *Social sciences (Faisalābād, Pakistan)* (2016) 519.
[138] Wheeler Sand PA & Thomas PA 'Socio-Legal Studies' in DJ Hayton, (ed) *Law's Future(s)* (2002) 271.
[139] Khadijah M (2016) 5192.

differentiated from other methodologies employed to conduct legal research, like the 'black letter' or 'doctrinal' approach.[140] Moreover, as opposed to legal research which focuses on the analysis of legal rules and considers the law to be a very distinct discipline from other disciplines,[141] social-legal research instead offers the perspective that law is not purely a 'black letter' but is instead a tool of social regulation, which means it needs to be understood from a social perspective too, often relying on empirical data.[142] Hence, my mini-thesis uses the methodology to understand the utility of law in the sociological setting of Gacaca.

I correspondingly employ a qualitative research method drawing on theoretical and empirical secondary data[143] to analyse the concept 'social truth' in Gacaca. Empirical data is important in social-legal research because it helps 'to provide vital insights from an external perspective' into the law's utility in society, a utility that may not be easily noticed by doctrinal research.[144] This justifies why I am relying on two texts that are anthropological[145] and ethnographical[146] in nature such that I draw on the insights they offer to make a persuasive argument about the 'social truth' in Gacaca. The methodology is even more suitable considering that societies continue to be dynamic which calls for interdisciplinary approaches to understanding such transformations.[147]

In this mini-thesis, I rely on 'secondary data sources' which Henn[148] and Schutt[149] have argued that in social sciences, such sources contain information which a researcher did not witness first-hand. The secondary data from Breed and Doughty enables me to make interpretations and conclusions not made by them. Hence, I can generate additional knowledge that complements or deviates from their initial reports. Using secondary data sources is contrary to the use of 'primary data sources' in legal research in which case the

[140] See for instance Dobinson I & Johns F 'Qualitative legal research' in McConville M & Wing WH (eds) *Research Methods for Law* (2007); Peczenik A *On Law and Reason* 2 ed (2008).
[141] Conry EJ and Beck CLD 'Meta-jurisprudence: The epistemology of law' *American Business Law Journal* (1996); Fiona C *Legal Academics: Culture and Identities* (2004); Yaquin A *Legal Research and Writing* (2007).
[142] Chynoweth P 'Legal Scholarship: A discipline in transition' *International Journal of Law* (2009); Mike M and Chui HW *Research Methods for Law* (2007); Yaquin A (2007).
[143] Khadijah M (2016) 5194.
[144] Khadijah M (2016) 5194.
[145] Breed A (2014).
[146] Doughty K (2015).
[147] Khadijah M (2016) 5191.
[148] Henn M *A short introduction to Social Research* (2006).
[149] Schutt RK *Investigating the Social World: The Process and Practice of Research* 5 ed (2006).

researcher makes reference to texts of law that are 'produced by the legal process itself and therefore become the researcheritative statements of law.'[150]

Socio-legal research encompasses key components that I find relevant to my study. The components include making both empirical and theoretical assessments of the nature of law as well as its connection to the State, and a particular society within that State.[151] It also involves investigating political, social, and economic factors in view of both contemporary and historical perspectives.[152] Such investigation helps to learn what influences the development of laws as well as the processes involved in developing the same laws.[153] A third component is a critique of how existing laws operate in formal and informal frameworks.[154] A fourth component is that of examining procedures of decision-making by authorities charged with determining the dispensation of law.[155] Finally, the fifth component relevant to this research is an exploration of the experiences by people implementing the laws in everyday life.

I incorporate all the five components in my social-legal investigation of how Gacaca enabled the 'social truth.' I explore the historical and contemporary political, social, and economic factors that led to the creation of Gacaca. I noted in Chapter one the bias against formal courts established on Belgian principles and the limitations of the ICTR. This background is useful in comprehending what led to the development of the Gacaca law. I also highlighted that Gacaca was employed in precolonial Rwanda as a method for dispute resolution in indigenous communities, which means it was not an entirely new concept in post-genocide Rwanda. Hence, the social-legal methodology enables me to demonstrate that law is socially constructed, in context, and that the construction can be determined by both contemporary and historical factors. The same methodology permits me to demonstrate that whereas law is a tool used to regulate society, in the same way, society can also be used to determine which law is applicable to regulate the same society. The interconnectedness between society and law, then, legitimizes my use of a social-legal lens to assess Gacaca's social-legal order.

[150] Quoted in Khadijah M (2016) 5195 who refers to Elias S *Legal Research: How to Find and Understand the Law* 15 ed 2009; Chatterjee C *Methods of Research in Law* 2 ed (2000).
[151] http://www.griffith.edu.au/criminology-law/socio-legal-research-centre.
[152] Khadijah M (2016) 5192, 5194.
[153] Khadijah M (2016) 5192, 5194.
[154] Khadijah M (2016) 5192, 5196.
[155] Khadijah M (2016) 5191-5192.

The methodology I use here employs a qualitative research method. This method is suitable for my study because as Neuman suggests, it enables a researcher to ask 'why' and 'how' explorative questions to generate process-oriented responses.[156] It entails conducting 'detailed examination of specific cases that arise in the natural flow of social life.' [157] By evoking 'why' and 'how' queries, I show that the two texts by Breed and Doughty permit knowledge about the reasons and means through which Gacaca accepted the 'social truth' but not the legal truth.

Hays & Singh share a viewpoint like that of Neuman in their assertion that the aim of qualitative research is to generate knowledge through description, attention to process, and 'collaboration within a social structure and with its people.'[158] This is why I look for possible indicators in Breed and Doughty's texts in the search of how Gacaca social laws on truth-telling was incorporated into society. Their texts give accounts of their firsthand experiences through observation and interviews in Rwandan communities regarding the incorporation.[159] Since anthropologists and ethnographers conduct research over relatively long periods of time sometimes spanning across years, and using participant observation, their fieldwork is largely focused and concentrated even though it tends to be unstructured.[160] It is an advantage for this study to be relying on previous research which was conducted over a long period of time to understand the Rwandan community and their sociological setting which permitted the 'social truth.'

To conclude this chapter, I submit that by using the social-legal methodology, my mini-thesis proves that the 'the law in context' approach can be used to understand the law. This is contrary to using the 'black-letter law' approach which greatly focuses on the principle of the law being used to understand the law. Since the 'law in context' approach departs form a non-legal bearing to show that another approach such as sociology was preferred in such a situation,[161] my mini-thesis is justified for employing sociological texts to comprehend Gacaca. Using the social-legal methodology equally allows my mini-

[156] Neuman WL *Social Research Methods: Qualitative and Quantitative Approaches* (2011) 165.
[157] Neuman WL (2011) 165.
[158] Hays DG & Singh AA 'Qualitative Inquiry in Clinical and Educational Settings' *British Journal of Educational Technology* (2012) 4.
[159] Breed A. (2014) 10, 21,86, 91-99; Doughty K. (2015) 419, 420-423, 425, 429.
[160] Moore SF 'Law and social change: the semi-autonomous social field as an appropriate subject of study' *Law and Society Review* (1973).
[161] McConville M & Wing WH *Research Methods for Law* (2007) 1.

thesis to create an understanding of the practicality of *social laws* in context. The fundamental social principles and procedures used to obtain truths and evidence in Gacaca ultimately prove that it was practically feasible to employ the 'social truth.'

CHAPTER 4: THE FINDINGS

This chapter discusses my findings from the selected texts; *Performing the Nation: Genocide, Justice and Reconciliation* (2014) by Ananda Breed, and 'Law and the architecture of social repair: Gacaca days in post-genocide Rwanda' (2015) by Kristin Doughty. I examine the two texts simultaneously looking at how they (re)present the application of the 'social truth' during Gacaca trials. I am guided by the three research questions: 1) what was the nature of the 'social truth' by perpetrators?, 2) what were the elements of honesty and proof of information by community members to validate or disprove the truth by perpetrators?, and 3) what is the relationship between the communal nature of the Gacaca and the social approach it deemed suitable for truth-telling to achieve transitional justice? The first two questions are addressed concurrently in one section, and the third is answered separately in the next section.

4.1 What was the nature of the 'social truth' by perpetrators; and what were the elements of proof of information by community members to validate or disprove same?

To answer these two questions, I rely on cases of two perpetrators from the respective texts to arrive at my findings. Depending on Doughty's text, I rely on the case of Claude which was heard in 2008 in Ndora region in Southern Rwanda.[162] Claude was accused of killing three children of a woman named Mukatagazwa who was his neighbour and wife of his godfather.[163] Claude was equally accused of being an accomplice in killing a woman called Mukamurara who was also the godmother to one of his children.[164]

From Breed's text, I rely on the case of Richard Majyambere which was heard in Rugenge, Nyarugenge district in central Kigali in 2005.[165] Majyambere was accused of committing several crimes as a soldier of the Interahamwe and he admitted to committing some while he denied having committed several others.[166] On the day of the hearing of the case this mini-thesis is interested in, Majyambere was brought back to Gacaca and

[162] Doughty K (2015) 419.
[163] Doughty K (2015) 419.
[164] Doughty K (2015) 427.
[165] Breed A (2014) 106.
[166] Breed A (2014) 108.

interrogated about his role in killing various named individuals as well as groups of people.[167] For example, he was interrogated about his role in the massacre at Sainte-Famille Church.[168] He was also required to explain how he had joined the Interahamwe militia group yet he was a member of the Rwanda national army.[169] To start my discussion in response to the two research questions, I begin with the case of Claude.

On the accusation of being an accomplice in killing Mukamurara, Claude denied the allegation and defended himself saying that one day Mukamurara came along with numerous children to seek for protection in his home which he duly accorded them.[170] He instead attributed Mukamurara's death to his father and the Interahamwe arguing that because he lived near his father's house, the next morning when Interahamwe genocidaires came to search his father's house for any Tutsi, his father also 'authorized them to search' his home.[171] This is how the Interahamwe found Mukamurara, took her with them, and supposedly killed her.[172] Prior to taking her however, they beat Claude and his wife, and penalised Claude for shielding Mukamurara by requiring him to pay Rwandan money to the amount of Frw10,000 lest they hand him over to authorities for shielding Tutsi.[173] He however managed to bargain down to Frw3,000, paid the money, and then the Interahamwe left with Mukamurara.[174]

In response to Claude's defence, two women, one of whom was his niece with a baby swaddled on her back opposed his narrative as Doughty writes:

> 'The woman with the baby said that Claude's story was not completely true. She agreed that Mukamurara and the other children had come from the bush to seek refuge at Claude's house but added that he had given them work to do, insisting that they grind sorghum. She suggested this might mean Claude had had bad intentions and maybe he was in league with the killers. Another woman then stood to testify that Claude had left shortly after Mukamurara had arrived, and therefore perhaps he was the one who had called the killers. Claude's niece then testified, agreeing that Claude had asked the refugees to grind sorghum, but also adding that he had been trying to protect so many people hiding at his house at that time.'[175]

[167] Breed A (2014) 109.
[168] Breed A (2014) 109.
[169] Breed A (2014) 109.
[170] Doughty K (2015) 428.
[171] Doughty K (2015) 428.
[172] Doughty K (2015) 428.
[173] Doughty K (2015) 428.
[174] Doughty K (2015) 428.
[175] Doughty K (2015) 428.

Relying on the testimony of Claude and witness accounts by the women, these are my findings about the nature of the 'social truth' as well as the elements of proof of information by the women to validate or disprove his truth.

The mini-thesis makes a finding that Gacaca *relied on oral evidence as 'social truth.'* This, I propose, means the standard of proof of a testimony was based on its oral convictions by societal measures. Evidence in both Claude's testimony and the women's witness accounts did not have to be collected by judicial authorities or even police as would be in a court of law. Only their statements were sufficient, which reinforces my argument that the nature of the Gacaca inevitably predetermined what sort of truth to be accepted, which was the 'social truth.'

On the matter of oral evidence, Doughty writes,

> 'The emphasis on oral evidence, with its inherent malleability, meant that discussions turned into performances wherein people positioned themselves, forming alliances and divisions based on agreeing or disagreeing with one another's versions of the past. There was virtually no other evidence available to support or disprove allegations, so the key form of corroboration was oral testimony […]'.[176]

In this regard, oral testimony was a social aspect of reinforcing a version of the testimony or counter-testimony. Oral expressiveness was given an upper hand in determining how truthful one was, based on what they said. Doughty additionally comments that a person could as well declare their lack of knowledge about a matter or an accusation orally by simply saying, 'I know nothing about what he did during the genocide' or 'There is nothing I can say about that.'[177] Such silence, Doughty believes, was a remarkable way of orally negotiating spoken truth by deciding not to speak.[178] In my view, the requirement to tell the truth orally before the community or even to declare orally that one did not have anything to say about an accusation was a tactical way of concealing truth or evidence. Consequently, this tactic had a negative impact on how much truth one could tell considering that it had to be socially validated before it could be accepted by the Inyangamugayo.

[176] Doughty K (2015) 426.
[177] Doughty K (2015) 425.
[178] Doughty K (2015) 425-426.

Other literature also confirms that indeed oral testimonies comprising of both confessions and accusations were the foundation for the Gacaca system.[179] The requirement of oral testimonies which had to be *agreeable* to the community and did not need proof in Gacaca resonates with Hutchison observation that 'personal narratives' in the South African TRC 'did not require proof, as in a law court'[180], and 'included 'shifting from the personal code of meaning to a shared public "meaning"'[181] as I discussed in the overview of this mini-thesis in chapter one. This means orality was a great component of the 'social truth' in Gacaca.

This mini-thesis recognises the observation by some scholars that remembrance through oral history is largely undependable and should be treated as a social construction.[182] Hutchison particularly points out that that it is imperative to note that 'the time lapse particularly affects both content and how it is 'remembered' interpreted and encoded, or 'forgotten.'[183] This could mean that memories by Claude and the two women were not accurate. The absence of accuracy could also imply that remembering and forgetting come along with (un)conscious retention of moments and overlooking certain experiences. Hence, memory is often a fragment of both time and activity, and I consider these factors in my appreciation of the oral truth which was socially permissible.

In relation to accuracy of testimonies and witness accounts in Gacaca, Doughty reveals that from her informal conversations with Rwandans outside Gacaca, many alleged that the truths revealed during Gacaca hearings were questionable because none of the people she spoke to 'believed that the oral testimony provided was inherently factual.'[184] In fact, she explains that in the trials she attended, people regularly used a term 'arabeshya!' to mean that one was telling a lie or was mistaken.[185] It was their way of accusing someone

[179] Penal Reform International (PRI) (2003); *The Guilty Plea Procedure, Cornerstone of the Rwandan Justice System.* Gacaca Research Report 4 (Paris: Penal Reform International); Waldorf L 'Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice' *Temple Law Review* (2006).
[180] Hutchison Y (2005) 356.
[181] Hutchison Y (2005) 355, double quotes in original.
[182] See for instance: Cole MC *Performing South Africa's Truth commission* (2010); Hodgkin K & Radstone S *Contested Pasts: The Politics of memory* (2003); Hutchison Y *South African Performance and Archives of Memory* (2013).
[183] Hutchison Y (2013) 4.
[184] Doughty K (2015) 426.
[185] Doughty K (2015) 426.

of giving false oral information through feigning forgetting or even being intentionally untruthful.[186]

To supplement Doughty's findings about the term 'arabeshya', and in view of how the time lapse affects memory, a testifier could also use the term in instances when one actually forgot the content and chronology of events during the genocide. Hence, it is important to note that orality in regard to memory as an element of the 'social truth' was not without limitations. As mentioned already in chapter one, Article 69(2) of the Rome Statute of the ICC provides for evidence to be given in person, orally (vica voce), in a video or audio recording as well as through written documents. In comparison however, we see that Gacaca relied only on oral testimony which marks a distinction between it and the ICC.

Relating the applicability of 'arabeshya' in international courts, I note that such a term cannot be invoked and applied in the ICC. Article 70(1)(a) and (b) regarding 'Offences against the administration of justice' was designed to operate under different legal system. A testifier or witness can only give information that is within his personal knowledge and not basing on hearsay. Accordingly, we see that this requirement was not applicable in Gacaca since people had so much room to give information which the community could outrightly tell was untrue. Thus, the impact of allowing the 'social truth' that included un(intentional) lies portray Gacaca as a different kind of jurisdiction in contrast to the ICC for instance.

Claude's niece's witness account is also a point of interest in terms of who could provide testimony in Gacaca. In a formal court, her account could easily raise issues and would have to be handled with caution because of her relationship with the accused. Allowing her to witness implies that Gacaca believed that any member of the community as a social setting could participate in providing the 'social truth.' Thus, Gacaca's disregard for a possible conflict of interest worked in its favour thereby creating room for the 'social truth' to prevail. Ingelaere similarly submits that 'the judges typically asked questions and heard testimony from the defendants, any witnesses, and/or other persons who wished

[186] Doughty K (2015) 426.

to intervene.'[187] Dumas also confirms that during proceedings, insistence on the public dimension of the massacres was common, and this was also a way of encouraging the public to speak up.[188] As such oral evidence was not only prioritized, but it could also be by any person despite their relationship with the accused.

The other finding of my study is that *the truth by witnesses from the community was superior to that of the accused.* In Claude's case, the two women spoke with unquestioned authority about what they knew of the events leading to Mukamurara's death. They alluded to what one would consider private information not privy to third parties. They even made allegations of Claude's intent or conspiracy to kill her, yet this information was not cross examined by the Inyangamugayo as would be the case in a law court. For instance, one wonders how Claude's niece was privy to details such as Claude's insistence that Mukamurara and the children grind sorghum.[189] Similarly, one wonders how the second woman knew that Claude had left his home immediately after Mukamurara and the children's arrival at his home.[190]

Additionally, in the case of the allegation of Claude's intent or conspiracy to kill Mukamurara, there was need to cross-examine the evidence of his niece that by insisting they grind sorghum, it was a sign that Claude could have had bad intentions and was in conspiracy with killers. Similarly, the second woman's belief that by leaving his home immediately could mean that Claude indeed had a plan with the killers needed further examination. Instead, the suspicions of the witnesses were simply believed by the judges and Claude was eventually ruled as a perpetrator of the Rwanda genocide. This means that the 'social truth' by the community was considered superior to the testimony of the accused.

Pertaining to providing evidence in Gacaca, Ingelaere discusses a notion 'ubwenge' which she derives from Alexis Kagame[191] and it means 'cultural wisdom.'[192] This sort of wisdom was applied through linguistic expressiveness by Rwandans in line with the

[187] Ingelaere B (2020) 24.
[188] Dumas H (2020) 135.
[189] Doughty K (2015) 428.
[190] Doughty K (2015) 428.
[191] Kagame A 'La philosophie Bantu-Rwandaise de l'être'. Classe des sciences morales et politiques: Mémoires in 8 (1956) 220.
[192] Ingelaere B (2020) 25-26.

'effectual truth' and it involved using 'caution, cleverness, trickery and prudence'.[193] Here, a person used their wisdom only to mention certain aspects of their experience of the genocide in a strategic manner such that it served the purpose at hand.[194] In relation to my finding, it is possible that the two testifiers, and possibly Claude himself applied 'ubwenge' to satisfy the criteria used by Gacaca to determine the truthfulness of information because they knew well that their truth would have to make sense to the community. The same notion 'ubwenge', I argue was applied in other ways in line with all my findings that I have discussed already and those that are I am yet to explore.

I now pay attention to Richard Majyambere's case when he was interrogated about his role in killing various named individuals as well as groups of people,[195] implicated in the massacre at Sainte-Famille Church[196] and also required to explain how he joined the Interahamwe militia group.[197] Breed notes that there was a series of questions and answers between the president of Gacaca and Majyambere, which the latter agreed to or denied.[198] In all instances of the interrogation, 'the inyangamugayo frequently addressed the audience for verification of his testimony.'[199] This statement, which I explained in the overview of the mini-thesis in chapter one, directly demonstrates that community members who comprised of the Gacaca gathering in that locality were an indispensable component of the proceedings. Audience members were so important that the judges, including the President elevated them to such a high position that their views mattered for court to proceed. This further emphasises my view that the the truth by witnesses from the community was superior to that of the accused.

Breed notes that for instance when Majyambere denied killing someone called Toto, the judge asked the audience to refresh the defendant's memory regarding his knowledge of Toto.[200] Indeed, one community member, witnessed by stating that Toto and Majyambere lived in neighbouring areas which implied the latter knew the former.[201] Majyambere still

[193] Ingelaere B (2020) 26.
[194] Ingelaere B (2020) 26.
[195] Breed A (2014) 109.
[196] Breed A (2014) 109.
[197] Breed A (2014) 109.
[198] Breed A (2014) 109.
[199] Breed A (2014) 109.
[200] Breed A (2014) 109.
[201] Breed A (2014) 110.

denied knowledge of Toto anyway.[202] The Inyangamugayo interrogated Majyambere further about his knowledge about people being burnt or killed in houses he had set on fire, to which he agreed.[203] Majyambere was also asked about whether he was a frontline soldier during the genocide which he denied.[204] Instead he argued that in 1993 when there was information about the looming genocide which was considered a threat to the national army, he only 'practiced' how to conduct the genocide in Kigali Ingali and Ruhengere areas and the practice was arranged by the national army which he served then.[205]

Breed accounts that 'several witnesses, including prisoners were called to testify' against Majyambere and 'many discrepancies emerged in their testimonies.'[206] The discrepancies included a 'report' by the first prisoner who submitted that Majyambere was at one time released from prison yet arrested again for not having a driving license and this contradicted with existing information that whereas Majyambere was actually imprisoned as a genocidaire, he was never released from prison.[207] A second prisoner testified that because people were being killed for giving testimonies in Gacaca, he had instead decided to witness against Majyambere in private to the prison director.[208] Breed indicates that the two prisoners 'were cautious about the information they provided, apparently fearful of Majyambere's revenge.'[209]

Yet, in contrast to the two witnesses, a third prisoner, in response to the second testifier reasoned that even though it was true that witnesses who attempted to tell the truth would be killed, sometimes using poisoned food through relatives, such occurrences had reduced.[210] He stated that he had the 'heart' to be 'truthful' in Gacaca and observed that there were two categories of people; one that wanted to tell the truth and seek forgiveness, and the other that did not.[211] He noted that whereas in the past the category that wanted to be truthful would instead 'hide themselves from others,' now it was the reverse that those who did not want to tell the truth were instead the ones hiding.[212] Breed notes that

[202] Breed A (2014) 110.
[203] Breed A (2014) 110.
[204] Breed A (2014) 110.
[205] Breed A (2014) 110.
[206] Breed A (2014) 110.
[207] Breed A (2014) 110.
[208] Breed A (2014) 110.
[209] Breed A (2014) 110.
[210] Breed A (2014) 110.
[211] Breed A (2014) 110.
[212] Breed A (2014) 110.

this prisoner regularly attended Gacaca sessions and gave testimony accounts basing on what he had witnessed during the genocide.[213]

Breed reason's that in the case of Majyambere just like in other similar cases where the accused was a former member of the Interahamwe or the national army, witness accounts normally contained discrepancies.[214] This shows that even though the Inyangamugayo frequently sought the response of community members, sometimes the responses would be tactfully concealed as in the case of the first two prisoners to avoid persecution by the accused. I reason that such was an instance when 'ubwenge' was applied. To evade persecution, thus, the 'social truth' in Gacaca was affected negatively as important witness information would not come into the public space. Accordingly, because of the discrepancies in testimonies against Majyambere, the judges could not make an effective ruling in line with the 'social truth.' It instead ruled that his role during the genocide as a member of Interahamwe was beyond Gacaca's jurisdiction as it could not try a soldier.[215] His case was referred to the court of the army, he was only charged as a Category One criminal in Gacaca[216] and was required to make compensations[217] to some of his victims whom I discuss later in this section.

From the example of Majyambere's trial, and like Claude's explained already, it can be seen that if the audience agreed with a testifier, he/she would be deemed by the judge to have told the truth. On the contrary, if the audience disagreed, their truth or evidence would supersede that of the testifier. In the case of Majyambere, the discrepancies in the witness account caused conflict in the 'social truth' expected, therefore made it impossible for Gacaca to make a final verdict. Breed makes an analysis that the Inyangamugayo 'deliberately searched for inconsistencies in the guilty plea' of Magyambere.[218] Their search demonstrated 'the tension between the defendant's testimony and the inyangamugayo's judgement of authenticity'[219], hence, the decision to refer Majyambere to the army court. The author's analysis is of interest to this mini-thesis because it underscores the concern that the Inyangamugayo did not cross-examine witness accounts but focused on pressuring defendants to plead guilty. In a formal court,

[213] Breed A (2014) 110.
[214] Breed A (2014) 110.
[215] Breed A (2014) 112.
[216] Breed A (2014) 112.
[217] Breed A (2014) 111.
[218] Breed A (2014) 111.
[219] Breed A (2014) 111.

both the defendant and witness accounts would have been cross examined as I explain further shortly.

In view of Gacaca considering community witness accounts as being superior to testimonies of the accused and using such evidence to reach the final judgment in a case, Article 66(2) of the Rome Statute on 'Presumption of innocence' only gives powers to the Prosecutor to prove that the accused is guilty. Additionally, Article 74 of the Rome Statute on 'Requirements for the decision' is relevant here. Article 74(1) stipulates that all judges of the Trial Chamber, who must be present at each stage of the trial shall make a final decision. This final decision is based on their own assessment of both proceedings and the evidence obtained as required by Article 74(2). Furthermore, the final decision is required to be in writing as shown in Article 74(5) and this writing shall entail a complete account of the findings based on the evidence provided. Accordingly, all these factors were not a matter of interest in Gacaca as explained above.

Evidence by witnesses in both cases of Claude and Majyambere described above draws interest to compare the nature of evidence in Gacaca with that in the ICTR and ICC. In these international tribunals, the prosecutor normally relies on the nature of adversarial evidence to determine how far the case can go, which is contrary to proceedings in Gacaca. Additionally, in the same tribunals, there is consideration of factors such as political interference from countries with interest in the case, as well as a lack of cooperation from the same countries in getting evidence. The evidence admissible is expected to be of a high standard and this means prosecution conducts extensive and in-depth cross examination of witness accounts which are visibly absent in Gacaca. The Inyangamugayo were not seen to be challenging evidence to determine how correct and reliable it was. Hence, the adversarial component of evidence where either the defendant or prosecutor requires the opposing side to adduce pertinent information was not applicable. Thus, these tribunals have very high evidence thresh-holds compared to Gacaca. Having said this, this study is cognizant of the fact that international tribunals too have sometimes failed to obtain satisfactory evidence against accused persons and have been compelled to acquit them thereby attracting international criticism.[220]

[220] See for instance De Vos M C 'Investigating from Afar: The ICC's Evidence Problem' *Leiden Journal of International Law* (2013) 1010 -1011; Labuda P 'The ICC's "evidence problem": The future of international criminal investigations after the Gbagbo acquittal' *Völkerrechtsblog* (2019).

Another finding of this mini-thesis regarding the nature of 'social truth' in Gacaca is that it *contained information about the role of other community members in perpetrating the genocide as a way of proving shared responsibility in committing genocide*. Claude attributed Mukamurara's death to the fact that his father authorised the genocidaires to 'search' his house.[221] I interpret this attribution as meaning that Claude intended to show to the court that it was not just up to him to protect Mukamurara but also up to the rest of the community members like his father. By pointing out the role of another community member, he also intended to bring to the court's attention the need to take into consideration the factor of collective guilt rather than individual guilt shown through the oral testimonies. This draws our attention to the factor that several members of the community had a hand in the genocide,[222] hence, Claude's confession increased the amount of evidence and available information about other people's role in Mukamurara's death. The practice of naming other perpetrators was a requirement by Gacaca law as I explained in chapter one according to the Gacaca Organic Law of 2004 where the accused was expected to name accomplices if any and reveal any other information deemed important in the interest of the court. [223]

Implicating other community members is also seen in the case of Claude on the charge of killing three children of his neighbour Mukatagazwa. Claude endeavoured to highlight the role of other community members to prove his innocence and to underscore the matter of shared responsibility.[224] Mukatagazwa and her children had sought refuge at Claude's home on one night during the genocide, and Claude's two sisters provided evidence implicating him in the crime.[225] Doughty writes that the sisters testified that they had seen Claude killing two of the children with a club and later they had seen him leaving with the third child who disappeared since then meaning Claude had killed the child.[226]

In his defence, Claude argued that while it was true that the children were at his house before their death, he was not the one who killed them.[227] Instead, he said that his sisters were implicating him to exonerate their own sons (his nephews) 'who he knew were the

[221] Doughty K (2015) 428.
[222] Dumas H (2020) 133.
[223] Breed A (2014) 111.
[224] Doughty K (2015) 419.
[225] Doughty K (2015) 419.
[226] Doughty K (2015) 419-420.
[227] Doughty K (2015) 419.

guilty ones' alongside his brother Yohanni.[228] In her own testimony which slightly differed from that of Claude's sisters, Mukatagazwa explained that while at Claude's home, Claude came with a group of killers and killed two of her children and he disappeared with the third one whom she believed was dead and she was yet to locate his remains.[229] She argued that Claude was simply attributing the deaths to Yohanni and his nephews who had since died and could not defend themselves.[230] In this instance, we notice Claude trying to highlight the role of other community members in the genocide.

Still on the same point about implicating other people, Majyambere, in his defence about his role in the Interahamwe argued that before joining the militia group, he fought with a fellow soldier who wanted to rape a Tutsi woman, and his (Majyambere's) leg was shot in the process.[231] He added that his nephew Sylveste and one Interahamwe leader Angelina were the ones who suggested to him to join the Interahamwe, a suggestion he initially refused arguing that he needed to first get permission from the Kigali Army Camp.[232] He narrated further that he eventually joined the Interahamwe although he didn't start genocide work straight away since he was still treating his leg.[233] He ended his testimony saying, 'I was an accomplice, not one of the main leaders.'[234]

For the purpose of emphasising the point about implicating other people as Claude and Majyambere did, I refer to Ingelaere who submits that blaming other people, including the dead, was not only beneficial but also convenient for the testifier.[235] This is an observation she made in one proceeding where the community found it convenient to just blame a dead Interahamwe militia leader.[236] Whereas the said leader was known to have committed heinous crimes during the genocide, he had since died, having been killed by the very local people who were blaming him in that Gacaca.[237] It is compelling therefore, to appreciate that communities used the excuse of blaming other people to demonstrate shared responsibility of the genocide.

[228] Doughty K (2015) 419.
[229] Doughty K (2015) 419-420.
[230] Doughty K (2015) 420.
[231] Breed A (2014) 109.
[232] Breed A (2014) 109.
[233] Breed A (2014) 109.
[234] Breed A (2014) 109.
[235] Ingelaere B (2020) 26.
[236] Ingelaere B (2020) 26.
[237] Ingelaere B (2020) 26.

When I compare this finding with Article 25 (3)(*a*) of the Rome Statute and Article 6 of the ICTR on 'Individual criminal responsibility', I find that Gacaca exercised flexibility in allowing the accused to shift blame to other alleged perpetrators. Both statutes require the accused to take individual responsibility for their own actions in planning, prompting, ordering, committing or for any complementary role in the planning, preparation, or execution of genocide, regardless of whether one committed the crime alone or in collaboration with other people who may have been held criminally accountable or not.

For instance, several accused were found guilty of playing roles like Majyambere's and were eventually convicted by the ICTR. An example, in the case of *Prosecutor* v. *Rutaganda* where the accused was convicted for directing and participating in the Nyanza gravel pit massacre.[238] Another example is *Prosecutor v. Gacumbitsi* in which the accused was convicted for taking part in an attack against Nyarubuye Parish killing several Tutsi refugees.[239] Just like Rutaganda and Gacumbitsi, Majyambere would have been found guilty of participating in the massacre at Sainte-Famille Church.[240] Thus, the possibility of relegating or attempting to relegate responsibility to other people would not have been tolerated. As such, it was only practically logical within the framework of the 'social truth' in Gacaca that an accused person can use other perpetrators, including the dead, to justify their innocence, exonerate themselves from criminal liability or even use the actions of such other people as an excuse for their own crimes.

My other finding is that *it was important to reveal social circumstances that caused genocidal (in)actions and the same circumstances determined what 'social truth' was told in Gacaca.* For instance, on the accusation of having a hand in the death of Mukamurara, Claude defended himself saying that 'he had been too afraid to protest' when one of the Interahamwe leaders interrogated him about hiding rather than killing the Tutsi.'[241] A circumstance in the case of Claude is the fact that his wife had been beaten, and he had to pay fine of Frw3000, which coerced him to let the genocidaires take Mukamurara.[242] A similar argument can be deduced from Majyambere's defence that his nephew Sylveste

[238] *Prosecutor* v. *Rutaganda* (ICTR-96-3) Appeals Judgment, 26 May 2006, para. 591.
[239] *Prosecutor v. Gacumbitsi* (ICTR-2001-64-T), Trial Judgement, 17 June 2004, para 167.
[240] Breed A (2014) 109.
[241] Doughty K (2015) 428.
[242] Doughty K (2015) 428.

and a Interahamwe leader Angelina were the ones who asked him to join the Interahamwe, hence, becoming a perpetrator.[243]

Another finding of my mini thesis is that the 'social truth' in Gacaca involved *a discursive element.* I mentioned in chapter one that during court proceedings, 'the judges asked defendants and witnesses for clarity or to comment on a testimony when it was given.'[244] When both 'parties had the opportunity to speak, the general assembly had their turn and were free to discuss the testimony by refuting, affirming, or questioning evidence.'[245] This sort of interactive discussion was for instance present in Claude's testimony when his two sisters engaged him in a discussion to prove his responsibility for the death of Mukatagazwa's three children.[246]

The opportunity to discuss created by Gacaca brought conflicting views and parties into contact just as was the case with the three prisoners who testified against Majyambere. In international tribunals, a discussion such as what happened in Gacaca ideally takes place between the Prosecutor and the defence lawyer. The accused or a witness can only speak in court if particularly required to do so. Therefore, there would not be such a discursive element between the accused and witnesses. More so, court attendants who are the equivalent of the community in the Gacaca framework cannot submit their views in court. I conclude that the discursive approach in Gacaca created a space of participation to the community thereby enabling the 'social truth.'

Another finding of my study is that the 'social truth' was used to *determine the extent to which one was a perpetrator, and in some instances to exonerate the accused*. Majyambere for instance, classified himself as 'an accomplice' but 'not among the main leaders.'[247] On the other hand, Claude pointed to his inferior role as opposed to that of his father who 'authorized' the searching of his house.[248] Claude additionally demonstrated that his nephew Sylveste and Angelina the Interahamwe leader were the ones responsible

[243] Breed A (2014) 109.
[244] Republic of Rwanda (2008b). Law No. 18/2008 of 23/ 07/2008 Relating to the punishment of the crime of genocide ideology.
[245] Republic of Rwanda (2008b). Law No. 18/2008 of 23/ 07/2008 Relating to the punishment of the crime of genocide ideology.
[246] Doughty K (2015) 419-420.
[247] Breed A (2014) 109.
[248] Doughty K (2015) 428.

for his decision to join the Interahamwe.[249] These defensive statements show that truth-telling was strategic in such a way that a defendant could deliberately mention the social nature of the genocide to situate their 'social truth', and then use the same truth to categorise himself in a less implicating manner relying on the role of other people in the crime attributed to him.

The above finding is like my other observation that the 'social truth' in Gacaca had a component of *acknowledging community and individual efforts to avoid genocide as a means of justifying innocence.* Claude mentioned that he received Mukamurara along with numerous children[250] thereby shielding them from genocidaires. This was reinforced by his narrative in another part of the testimony that he had made great effort in shielding many other people including children who he 'claimed to have hidden for days in a storeroom.'[251] The narrative serves the purpose of demonstrating that Claude had good intentions of defeating the genocide, and so he was not just interested in protecting Mukamurara the god-mother of his child but the larger community.

Moreover, even if his niece testified against him for being an accomplice in killing Mukamurara, the same niece also pointed out that Claude 'had been trying to protect so many people hiding at his house at that time.'[252] In this case, Claude was recognized for his effort at saving some lives, hence, defeating genocide. The same point is noticed in Majyambere's defence that he hesitated to join the Interahamwe even though his nephew Sylveste and Interahamwe leader Angelina insisted that he joins immediately yet he had to first seek permission from the national army before joining.[253] We also learn that he was shot in his leg while he tried to save a Tutsi woman from being raped, and that he waited for it to heal which delayed his start of genocide activities.[254]

In the interest of elucidating the element of acknowledging how accused persons indeed made efforts to avoid genocide, I point out another illustration by Doughty when she notes that during a trial in Ndora, after one defendant confessed to having killed several people, various community members still acknowledged the same defendant with positive comments such as, "He got people from pit latrines and took them to the hospital, he

[249] Breed A (2014) 109.
[250] Doughty K (2015) 428.
[251] Doughty K (2015) 429.
[252] Doughty K (2015) 428.
[253] Breed A (2014) 109.
[254] Breed A (2014) 109.

brought antibiotics to treat injured people," and "He even saved a person from being raped."[255] I construe the acknowledgement of such positive efforts of perpetrators by the community as a way of using the 'social truth' to judge them fairly. Doughty mentions that some witness accounts also demonstrated that an accused person was considered more or less of a criminal based on their action or inaction such as 'refusing refuge to someone, failing successfully to protect someone when the killers came, actively flushing people out of their hiding places or sounding an alarm, and overtly turning people over to the killers.'[256]

Another finding of my study is that the 'social-truth' in Gacaca was influenced by several social factors with an aim of *safeguarding social and moral obligations of the past, present and future*. I reason that community members told their truth keeping in mind the importance of protecting factors that bound them socially. To this end, Breed writes that during various Gacaca proceedings, she witnessed a survivor defend a perpetrator, and a first aid worker walk through a large crowd to console a weeping defendant with a piece of tissue.[257] She likewise encountered theatre artists who argued that their art was meant to promote harmonious living for they believed all Rwandans had suffered owing to the genocide.[258] Concerning the moral obligation manifest in testimonies, Ingelaere has observed that in the Rwandan context 'the moral value of a word depends on its usefulness in a complex socio-political environment.'[259] Thus, testifiers used words to tell a 'social truth' they perceived to play a role in portraying them as being concerned about their moral obligations to safeguard, defend, and maintain the shared fabric of their communities.

Further still, about using the 'social truth' to demonstrate social and moral obligations, Ingelaere reveals that there were persistent blames of witchcraft, threats or suspicions of poisoning, if for instance one failed to invite a neighbour to a social function and this would automatically increase distrust among people.[260] I deduce that it was crucial for one to be calculative in Gacaca such that they avoid words that could easily tear their

[255] Doughty K (2005) 429.
[256] Doughty K (2015) 428.
[257] Breed A (2014) 86.
[258] Breed A (2014) 86.
[259] Ingelaere B (2020) 25.
[260] Ingelaere B (2009) 515.

immediate community apart. The tearing could disrupt the much-needed co-dependence in daily activities while striving to deal with extreme consequences of the genocide such as poverty. In being calculative, I propose one had to bear in mind the requirement of 'social truth' with an aim of being seen to care about reinstating and promoting the human dignity of victims and survivors. In this sense, applying the 'social truth' can be viewed as a test individuals had to pass by demonstrating social and moral duties to their immediate community.

My other finding is that the 'social truth' in Gacaca had a *transactional element*. That is, one told a 'social truth' in such a way that it could fit into the social paradigms and in turn earn him or her a reparation in the form of a compensation, or restitution, or forgiveness, or justice for their dead loved ones. Doughty explains that there were several testimonies and witness accounts predicated on the 'exchange of forgiveness for confessions, and exchange of community service work for prison time, and property case judgments involved the exchange of goods, cash, or work.'[261] For instance, in another charge against Claude, a young woman in her early twenties accused him of 'taking her family's cow and its calf', a claim he denied knowledge of and there were no witnesses to testify against him.[262] Yet, as Doughty explicates,

> 'The judges and assembled crowd none the less devoted nearly an hour to understanding the young woman's social position and circumstances, more than just trying to identify Claude's guilt or innocence. People discussed her mentally ill mother, her parents' divorce, her new stepmother, and how after her father's death in the genocide, the stepmother had left her with nothing. Claude seemed to think this information was irrelevant and that he was not responsible for her well-being, while others seemed to think that given the victim's poor living conditions, it was particularly important that she be reimbursed for her cow.[263]'

In this case Gacaca devoted efforts to the transactional element of 'social truth' such that a survivor could be compensated based on their 'social truth' regardless of whether it implicated the accused or not. It is of interest here to note that Claude was not found guilty of the crime, yet the young woman's testimony was upheld by the court leading to a lengthy discussion about the economic implications of her victimhood.

[261] Doughty K (2015) 430.
[262] Doughty K (2015) 430.
[263] Doughty K (2015) 430.

The transactional element was also present in the case of Majyambere when survivors were requested by the Inyangamugayo to ask for compensation.[264] A widow whose husband was killed by the accused requested 7 million Rwandan francs for each of her five children.[265] She also claimed that since her husband had died at forty years while earning Frw 57,000 monthly salary, she needed to be compensated the same salary for fifteen years plus an extra 5 million per child.[266] In the same case, another old woman whose son was also killed by Majyambere submitted that it was not possible for her to calculate a monetary amount worth of her son, therefore, the court would have to decide.[267] Another witness looking for an opportunity to claim compensation for some of his relatives who died in the Sainte-Famille Church massacre, was told by the Inyangamugayo that compensation could only be asked for those who were hunted and killed as individuals but not those who died as a group in such a massacre.[268]

To further support my finding about the transactional element, I use an example by Nowotny who reports that in an interview they conducted in December 2012, one survivor, Gervais, reflected about the frustration of not getting justice in exchange for his testimony.[269] Gervais stated that his aim of testifying in Gacaca 'against a man that had killed' his family, was to have him imprisoned yet he (the killer) was instead sentenced to '19 or 20 years in prison' since 1994 and was about to be released.[270] Gervais concluded that the perpetrator 'did not face the punishment he deserved.'[271] This survivor's reflection is proof of some people's strategic use of the 'social truth' in Gacaca in exchange for some sort of benefit. Whereas Gervais did not expect monetary or property reparation, we see that he hoped for retributive justice by telling his 'social truth.' From the examples of the young woman who accused Claude, accusers of Majyambere and Gervais' reflection, we can see that people told the truth with an aim of benefitting from the transactional nature of Gacaca.

[264] Breed A (2014) 111.
[265] Breed A (2014) 111.
[266] Breed A (2014) 111.
[267] Breed A (2014) 111.
[268] Breed A (2014) 111.
[269] Nowotny J (2020) 416.
[270] Nowotny J (2020) 416.
[271] Nowotny J (2020) 416.

The transactional nature I have discussed can be equated to what the Rome Statute terms 'Reparations to victims' in Article 75(1). The article specifies that the ICC is mandated to give reparations, restitution, compensation, and rehabilitation, and should determine the extent of the damage, loss, and injury on the victim before deciding the reparation package. The package can be taken from the Trust Fund provided for in Article 79 (2) of the Rome Statute where the ICC can elect money and/or property collected through fines or forfeiture from the accused which for the purpose of reparations. The element of compensation is one similarity I find between Gacaca and the ICC and this means that both courts employ the 'social truth' and legal truth respectively to serve the purpose of recompense.

My other finding is the 'social truth' was employed *in exchange for exemption from liability in the form of compensating victims*. I argue this is like the transactional component I have just discussed above. Doughty notes that when the Rwandan government issued a new provision of determining perpetrators in 2008, community members 'redoubled their efforts to demarcate lines between themselves and guilty parties.'[272] The provision 'intended to resolve property claims in which no one admitted liability.'[273] Doughty expounds that for instance, if no one testified to looting a victim's house, every person who lived in the adjacent area at the time of looting would be required to share in the repayment or compensation of the looted property.[274] This condition in turn compelled more Rwandans to participate in truth-telling to determine perpetrators as a way of avoiding liability.[275]

For the same reason, witnesses were likely to testify even against close people like family members, relatives and neighbours as was the case of Claude and his sisters.[276] This was despite the fact that some people in Gacaca contested the official view that all victims were innocent and deserved repayments from perpetrators as well as support from government programmes.[277] In this case, I submit that one's thoughts or actual knowledge of the genocide did not have to directly correspond with what they said. Rather, what they

[272] Doughty K (2015) 428.
[273] Doughty K (2015) 429.
[274] Doughty K (2015) 429.
[275] Doughty K (2015) 429.
[276] Doughty K (2015) 429.
[277] Doughty K (2015) 429.

said had to relate to the possibility of identifying a possible perpetrator such that they could in turn be exempted from being liable. Again, we see the concepts 'arabeshya' and 'ubwenge' being applied here, in line with the social-legal environment of Gacaca.

My other finding is that truth-telling in Gacaca had an element of *providing one dominant narrative* that resonated with the position of the State that Hutus were all perpetrators while the Tutsi were all victims, yet in fact, some people from either tribe were both victims and perpetrators.[278] This means, the Gacaca framework practically made it intolerable to acknowledge that some Hutu were victims while some Tutsi were perpetrators of the Rwanda genocide too. As such, all oral expressions were expected to be in tandem with the government's view of the genocide ideology and any digressional statements were considered untrue by the Inyangamugayo.[279] In this respect, the victimhood of the Hutu as Thomson has observed was 'rarely discussed among Rwandans in private, let alone in a public space like Gacaca.'[280]

Testifiers who tended to deviate from the State narrative as Doughty mentions that she was told by some people in Ndora community, were threatened, blackmailed, and bribed.[281] This led many people to revise their 'social truths' and evidence such that it could resonate with societal expectations and at the same time protect individuals and communities from persecution.[282] Doughty observes that it was also known to the rest of the community that there was not full transparency during Gacaca hearings but rather strategic performances of victimhood and perpetratorship[283] to be *socially truthful* in line with the recommended government narrative. Ingelaere calls this single narrative the 'The Truth-with-a-Capital-T' and she suggests it led people to practice 'self-censorship' known as 'kwibwiriza' and to conduct 'self-surveillance' on themselves to obey the government's directive.[284] Ingelaere further submits that a 'framework' of fear was extensively proliferated in the countryside throughout Gacaca awareness meetings or campaigns when military commanders and other authorities inculcated a notch of self-

[278] Doughty K (2015) 431-432; Breed A (2014) 119-123.
[279] Breed A (2014) 63.
[280] Thomson S (2011) 384.
[281] Doughty K (2015) 426.
[282] Doughty K (2015) 426.
[283] Breed A (2005) 426.
[284] Ingelaere B (2020) 28.

control among people such that they would be mindful about aligning their truth to the government narrative.[285]

Comparing the requirement of a single narrative employed in Gacaca and the ideal situation in a formal court, Article 20 of the ICTR regarding 'Rights of the Accused' guides that all persons are equal before the court, and an accused is entitled to a fair public hearing and shall be presumed innocent until proven guilty. With Gacaca, we see that Hutu were presumed guilty of genocide while Tutsi were presupposed to be innocent. Presumptions on either group is contrary to rules of procedure in formal courts. This means that Gacaca trials were prejudicial by requiring the State sanctioned narrative only, thus, influencing 'the social truth.'

In regard to the State's requirement for one narrative about the genocide, Grodsky has queried why yesterday's oppressors should 'open a broad public investigation into their own past?' yet they are not open to diverse narratives.[286] Miller has likewise cautioned that indeed while spaces of broad public inquiries [like Gacaca] can create room for silent voices and issues to be heard, they can equally 'silence contentious voices'[287] as was the case with Gacaca. To further elaborate how silencing contentious voices happens during transitional justice interventions, Miller asserts that eventually, transitional justice is 'a definitional project, explaining who has been silenced by delineating who may now speak, describing past violence by deciding what and who will be punished.'[288] I propose that Grodsky and Miller farther our understanding that the 'social truth' in Gacaca was regulated by the State and therefore had limitations on how much information communities could reveal. I reason that Gacaca was a space that enabled dishonest 'social truth.'

Related to the requirement of telling one narrative about the genocide, my final finding is that the extent of 'social truth' in Gacaca was hindered by *the fear of punishment from the accused, government, or community.* I noted earlier a prisoner who declined to

[285] Ingelaere B (2009) 522.
[286] Grodsky B 'Justice Without Transition: Truth Commissions in the Context of Repressive Rule.' *Human Rights Review* (2008) 282.
[287] Miller Z (2008) 267.
[288] Miller Z (2008) 267.

publicly testify against Majyambere for fear of reprisal.[289] My reasoning in this case is that fear shaped the 'social truth' in as far as people could decide to conceal or reveal certain information. People became cautious of giving counter truths if it could lead to their death or that of other members, and so, there was a minimum extent of 'social truth' for the sake of protecting each other. This situation portrays Gacaca as an unsafe space but also one that propagated tactical revelation or concealment, both being negative consequences on truth-telling.

Nowotny mentions that because of the high risk of insecurity arising out of imagined or real threats, some survivors formed 'safe groups' to be assured of company while going to Gacaca assemblies.[290] The same author mentions that while conducting research and in particular when interviewing one Hoziana, the interviewee mentioned that she personally knew two women who were murdered immediately before they could testify.[291] In the same interview which was held in the premises of the district municipal office, 'mid-sentence, Hoziana sprang to her feet and pointed at a slender woman who was coming out of a small shop' and 'whispered' to Nowotny, "that woman was poisoned before she gave testimony at gacaca. The poison did something to her and now she is "mad."'[292] This example reinforces my finding about how fear negatively impacted the 'social truth' in Gacaca.

When I relate this point to legal rules on 'Protection of the victims and witnesses and their participation in the proceedings' prescribed in Article 21 of the ICTR Statute and Article 68 of the Rome Statute respectively, I find that Gacaca did not pay attention to the important aspect of guaranteeing the safety of witnesses and victims. The ICTR even specifies that identities of victims shall be protected which directly contradicts the procedure of Gacaca where victims freely mixed with other community members. Inadvertently, the flexibility of Gacaca in not protecting victims, perpetrators and witnesses instead gave much latitude for people and the State to harm others physically and psychologically.

[289] Breed A (2014) 110.
[290] Nowotny J (2020) 417.
[291] Nowotny J (2020) 417.
[292] Nowotny J (2020) 417 double quotes in original.

Still on the aspect of fear, Nowotny gives another relevant example to illustrate threats on Inyangamugayo causing them to often make judgments amidst fear.[293] Nowotny was told by Adelphine a former judge that Inyangamugayo, especially those who were survivors, were at the most risk compared to community members.[294] Adelphine submitted that she always feared whenever her court convicted a person.[295] She knew an Inyangamugayo who was murdered after the court found 'an important Hutu man guilty of genocide-related crimes.'[296] Adelphine lived in constant fear for her life too and had also been threatened by some men she had ruled guilty who promised to harm her.[297] At the time of conducting the interview in 2014, Nowotny noted that Adelphine still felt the need to safeguard herself even though Gacaca hearings had ended already.[298] Considering the situation of Inyangamugayo living in constant fear, it also implies they did not have a satisfactory level of independence to perform their duties as would be the case in the ICC prescribed in Article 40 of the Rome Statute regarding the 'Independence of the judges.' Hence, the Inyangamugayo's credibility in facilitating the 'social truth' is doubtable.

To conclude this section, I submit that I have discussed nature of the 'social truth' by the perpetrators; as well as the elements of proof of information by community members to validate or disprove 'the truth' by perpetrators. The discussion has shown that 'social truth' was used as a means of transitional justice in post-genocide Rwanda, it was shaped by the social context of Gacaca and had both negative and positive outcomes. In the next section, I address the third research question for this study pertaining to the relationship between the communal nature of the Gacaca and the social approach it deemed suitable for truth-telling to achieve transitional justice.

[293] Nowotny J (2020) 417.
[294] Nowotny J (2020) 417.
[295] Nowotny J (2020) 417.
[296] Nowotny J (2020) 417.
[297] Nowotny J (2020) 417.
[298] Nowotny J (2020) 417.

4.2 What is the relationship between the communal nature of Gacaca Courts and the social approach it deemed suitable for truth-telling to achieve transitional justice?

Having discussed the nature of the 'social truth' by perpetrators and the elements of proof of information by community members to validate or disprove the same, this mini-thesis finds it necessary to explore the connection between the communal nature of Gacaca and the chosen 'social truth.' In this section, I put two variables into perspective. On the one hand is the communal nature of Gacaca, and on the other is the approach of truth-telling that produced the 'social truth' discussed already.

When discussing the evolution of transitional justice in chapter one, I indicated that scholars have recommended that transitional justice can and should be addressed considering the specific needs of a given post-conflict context.[299] Like the scholars discussed already, Olsen et al have observed that different post-conflict contexts choose transitional justice mechanisms according to their specific setting.[300] Such choice is sometimes influenced by the nature of the conflict thereby making transitional justice context-specific.[301] Societies in transition can choose between legal and non-legal approaches or combine both if needs be.[302] I also discussed that the theoretical and practical components of a transitional justice mechanism should be put into plan to enable a society in transition to realise the macro and micro goals of their transitional justice, and that discussion informs my submissions in this section of the mini-thesis.

While reflecting on the impact of transitional justice, scholars have observed that its theories, intended achievements and envisioned beneficiaries are still largely unclear despite the fact that various actors like local, national and international NGOs, international organisations and the UN advocate for it.[303] Other scholars have also noted that there is still a vacuum in the understanding of how transitional justice is particularly

[299] See for instance Teitel R (2003a); McEvoy K (2007); Miller Z (2008).
[300] Olsen et al (2010)16, 24-25.
[301] Olsen et al (2010)16, 24-25.
[302] Olsen et al (2010)16, 24-25.
[303] Ramji-Nogales J 'Designing bespoke transitional justice: A pluralist process approach.' *Michigan Journal of International Law* (2010) 332; Duggan C 'Editorial note.' *The International Journal Of Transitional Justice* (2010); McEvoy K (2007); Clarke P (2009).

experienced at the local level by individuals and communities.[304] In view of these standpoints, it is important to comprehend the theory and intended beneficiaries of Gacaca as a transitional justice approach and how it was experienced by people at local levels. The comprehension will in turn enable an appreciation of the choice of Gacaca in relation to social truth-telling. Departing from this background which presumes that Rwanda chose Gacaca as a suitable approach for the desired 'social truth', I proceed to examine the two variables to establish their relationship in the context of transitional justice for post-genocide Rwanda.

My first finding is Gacaca was organised on the principle of *community participation* which directly relates to the nature of 'social truth' it employed. In this respect, Doughty writes:

> 'Every Tuesday – *gacaca* day – all business, farming, and transport activities halted in Ndora so that people could participate in public trials of suspects of the 1994 genocide before panels of locally elected judges. By mid-morning, people would gather in an outdoor courtyard just down the hard-packed dirt road from the market, a space that other days of the week frequently hosted meetings as part of the government's broader policy of decentralized development. Case sessions began mid-morning, continuing without a break, through the afternoon, often not closing until sunset. *Gacaca* sessions in Ndora, like elsewhere in Rwanda, quickly became a regular part of people's weekly routine and their habitual interactions with neighbours, whether they participated actively, or sought strategies to avoid it, staying out of sight to minimize the risk of sanctions for non-attendance. *Gacaca* sessions unfolded as churning pools of competing recollections and assertions about what occurred in the past'[305].

From the quotation, we learn that by nature, Gacaca was organised in such a way that it was mandatory for community members to be part. Accordingly, the same members would easily be available to listen to other people's testimonies as well as give their own. I propose that Gacaca, hence, gave room for social aspects to interweave: culture and traditions, as opposed to what legal courts tend to do since they focus on national and international spectrums of the law while sidelining the social aspects of life that are embedded in the day-to-day lives of communities.

[304] See Braithwaite J *Restorative justice and responsive regulation* (2002); Elster J (2004); Haskell L (2011); Hayner P (2002).
[305] Doughty K (2015) 42.

Cornwall has noted that participatory approaches in transitional justice are seen as a development strategy which underscores the view point that people are vital to development; and that participation is largely concerned with giving power and voice to the people as well as enabling them to practice their right of freedom of expression.[306] My cognition is that by designing Gacaca as participatory, it enabled ordinary Rwandans to be in charge and become empowered to take actions for social transformation but not just be treated as subjects who were previously marginalised. This line of thought has been referred to as the 'empowerment' argument.[307] In the previous section, I discussed factors such as the oral truth of community members being superior to that of perpetrators, community members participating in discussing activities that facilitated genocide, testifiers revealing information about the role of other community members in the genocide and acknowledging community and individual efforts to avoid genocide as a means of justifying innocence. All these aspects of social truth-telling emphasise the fact that Gacaca permitted community participation.

Besides the empowerment argument is the 'efficiency' viewpoint regarding participation. Scholars have argued that efficiency catalyses the achievement of better project outcomes relating to usefulness, sustainability and regulated spending of money and time on transitional justice processes according to Cleaver,[308] and Gaventa and Cornwall.[309] Here, I talk about Gacaca's efficiency in fostering healing which comprises of reconciliation efforts. Doughty refers to this sort of healing as 'social repair' arguing that Gacaca gave 'reduced sentences as incentives for those accused to confess and encouraged victims to forgive in an effort to restore relationships.'[310] A similar view point in support of social healing is by Taylor who has advanced that public 'truth-telling' is appropriate in most post-conflict contexts and is cathartic and provides healing.[311] In the

[306] Cornwall A 'Whose Voices? Whose Choices? Reflections on Gender and Participatory Development' *World Development (*2003).
[307] Chambers R 'Participatory Rural Appraisal (PRA): Challenges, Potentials and Paradigm' *World Development* (1994); Chambers R 'Participatory mapping and geographic information systems: whose map? who is empowered and who disempowered? Who gains and who loses?' *Electronic Journal on Information Systems in Developing Countries* (2006). Clark P (2014) 203; Rahman MA *People's Self-Development: Perspectives on Participatory Action Research* (1993).
[308] Cleaver F 'Institutions, agency and the limitations of participatory approaches to development' in (eds) Cooke B & Kothari U *Participation: The new tyranny?* (2001).
[309] Gaventa J and Cornwall A 'Challenging the Boundaries of the Possible: Participation, Knowledge and Power' *IDS bulletin* (2006).
[310] Doughty K (2015) 420.
[311] Taylor D (2004).

same light, Breed writes that one play (a theatrical performance) known as Ukiri Kurakiza (*The Liberating Truth*) which was commissioned by the Government to sensitise the population about Gacaca employed a relevant slogan:

> 'Tell what we have seen, admit what has been done, and move forward to healing.'[312]

Hence, this study claims that the nature of the 'social truth' reverberated with the aim of repairing the society to enable forgiveness, healing, and reconciliation[313] which were enabled by the participatory component. On the same issue, Doughty observes that Gacaca was designed as a 'routine part of daily life' of the Rwandans, and created 'spaces in which people like Claude, his family and neighbours could negotiate the micro-politics of reconciliation.[314] It included 'debating definitions of guilt, innocence, and material loyalty.'[315] All these factors serve to elucidate the appropriate relationship between the participatory nature of Gacaca and the 'social truth.'

My other finding is that the *fluidity in the seating arrangement* in Gacaca also symbolised the quest for 'social truth' because there was no physical separation among court attendants. In Majyambere's trial, the setting was 'outdoors, under a tin-roofed open structure with wooden benches,'[316] while for Claude, it was 'a rural hillside in Southern Rwanda with several hundred people who had gathered beneath a jacaranda tree.'[317] Generally, victims were in close proximity with their abusers, witnesses and the entire community, and judges normally sat on benches lined up just in front of the community.[318] Judges seating on benches as opposed to formal courts that typically have sophisticated furniture was also a suitable approach for the 'social-truth.' Proximity allowed various categories to interact directly and openly, hence, a suitable condition for the 'social truth.'

The proximity was so unprecedented that some survivors' associations and various human rights activists condemned the intimate physical relation among the

[312] Breed A (2014) 104.
[313] Doughty K (2015) 420-421.
[314] Doughty K (2015) 420.
[315] Doughty K (2015) 420.
[316] Breed A (2014) 106.
[317] Doughty K (2015) 419.
[318] Doughty K (2015) 419; Breed A (2014) 93, 106.

Inyangamugayo, the accused and witnesses as Dumas recounts.[319] It should be noted that the status of any person among the attendees, including the judges, could change suddenly if they were accused or exonerated through the oral testimonies and witness accounts. This means if a judge was for instance determined to be a perpetrator, he/she could easily be asked to leave the bench and sit with the rest of the community. Thus, the fluidity of Gacaca's physical setting is an important aspect on how it influenced the 'social truth.'

Besides the suitable seating arrangement, was the fact that Gacaca *courts were located in communities.* The choice of location, I submit, was a suitable strategy to make it easy for people to attend but also for them to interact freely since they knew each other. Since testimonies included describing where crimes happened, I reason it was easy for the community to relate with the areas being mentioned since they knew the topography well. This in turn made it easy for them to comprehend the chronology of accounts which was an important aspect leading to the 'social truth,' to share knowledge and awareness of the genocide and to notice when testifiers spoke truth or avoided it.

Locating the court in communities differs from the approach by the ICTR and the ICC. The former in Article 7 concerning 'Territorial and Temporal Jurisdiction' gives the court mandate to operate within the airspace and land surface of Rwanda as well as any country whose citizens in one way or another were involved in committing genocide. This explains why the court was in Arusha, Tanzania. Likewise, Article 3 of the Rome Statute regarding the 'Seat of the Court' Stipulates that it will be at The Hague in the Netherlands which is considered the host-State. The same article of the Rome Statute provides that the ICC, whenever considered desirable, can nevertheless sit anywhere else following the provisions of the Statute. As discussed already, the location of the ICTR made it difficult to achieve transitional justice hence resorting to Gacaca, and it is logical to conclude that its location far away from Rwandans contributed to its failure.

Another finding I make is the *use of local terminology* in the names *Gacaca* and *Inyangamugayo.* I argue the terminology made it easy for communities to associate with proceedings in search of justice while using a language and community values they could identify with. As a result, and as I discussed already, we see that more local terms like

[319] Dumas H (2020) 140.

'arabeshya' which means to tell a lie or to be mistaken, and 'ubwenge' which means local wisdom were applied. Comparatively, the ICTR operated in English and French prescribed in Article 31 of the ICTR Statute as opposed to Gacaca which conducted business in Rwandan language. Making the courts accessible linguistically, therefore, becomes a relationship between the communal approach Gacaca used to achieve transitional justice and the kind of truth-telling it preferred.

Another finding about the relationship between Gacaca and the 'social truth' is the *choice of Inyangamugayo who had to be known community people without professional background related to legal matters like lawyers, police officers and politicians*.[320] I submit that it is more likely than not, that the barred professionals would have incorporated formal legal aspects into Gacaca contrary to the intention of the court. Such aspects would include defining elements of crimes, following legal procedures to obtain verifiable evidence as well as prioritizing an approach of viewing justice from a retributive angle and not a restorative one. Moreover, they would likely have focused on the violation of the law rather than the social harm caused to the society by the genocide.

Likewise, choosing judges who were known to the community was an assurance about the moral authority of officers since they could easily be identified as witnesses or survivors but not perpetrators. This gave the community confidence knowing that they would be adjudicated by people with good social reputation. Using local people who had experienced the war as judges, as opposed to formal courts where judges are normally foreigners to the events at hand, is in my view commendable for it enhanced the 'social truth.'[321] In contrast to legal courts, a presiding judge would possibly be faced with the matter of conflict of interest if they had to decide a case that affects them directly.

The ICTR and ICC do not require court judges to be known by defendants or witnesses. In addition, the judges can hail from any country other than the origin of the accused. Article 12 of the ICTR statute concerning 'Qualification and Election of Judges' does not provide for community members to elect judges. Instead, judges must possess sufficient professional experience in international law and criminal law and should also be

[320] Haskell L (2011).
[321] Haskell L (2011).

knowledgeable in human rights law and international humanitarian law. They should also have qualifications that would enable them to be appointed to the uppermost judicial office in their own country. Similarly, the Rome Statute of the ICC, regarding 'Qualifications, nomination and election of judges' in Article 36 prescribes requirements like those of the ICTR Statute and emphasises in Article 36 (3) (*a*) (*ii*) that a judge should have 'professional legal capacity which is of relevance to the judicial work of the Court.'

Besides professional qualifications, I find it necessary to also compare Gacaca's organisational structure with that of the ICTR and ICC. The nine Inyangamugayo elected a judge among them to be the President of the court and this is similar to the ICTR in Article 13 (1) which permits officers and members of the Chambers to choose a President from amongst them. The Rome Statute differs slightly because it provides for election of the President, and the First and Second Vice-Presidents in Article 38 (1) about 'The Presidency.'

In terms of organisation, Gacaca was comprised of only nice Inyangamugayo who performed all judicial roles.[322] In contrast, the ICTR was comprised of three Trial Chambers, an Appeals Chamber, the Prosecutor and Registry as prescribed by Article 10 on 'Organisation of the International Tribunal for Rwanda.' In the same light, Article 34 of the Rome Statute pertaining to 'Organs of the Court' prescribes the composition of the ICC to include: The Presidency; An Appeals Division, a Trial Division and a Pre-Trial Division; The Office of the Prosecutor; and The Registry. The composition of the ICTR and ICC court judges makes us aware that Gacaca's organisational structure was different in such a way that it enabled the 'social truth.'

It should also be noted that Inyangamugayo were only volunteers who received small stipend not equivalent to the role they played, contrary to the norm in formal courts where judges are paid salaries commensurate to their jobs. For instance, the Rome Statute pertaining to the 'Service of judges' in Article 35 (a) addresses the financial arrangements for judges and prescribes that a judge who from time to time may not be required to serve

[322] Meyerstein A (2007) 475; Thomson S & Nagy R (2011) 17; Lahiri K (2009) 326.

on full-time arrangements should get financial benefits. Article 49 of the same Statute on 'Salaries, allowances and expenses' also specifies that judges among other judicial officers are entitled to 'salaries, allowances and expenses' that are determined by the State parties, and even underscores that such salaries and allowances cannot be stopped while one is still in service.

The lack of salary, I propose was an irregularity that had a negative impact on the Inyangamugayo's commitment to obtaining the 'social truth.' There were allegations that some community members and government officials took advantage of non-payment to bribe the Inyangamugayo thereby influencing their decisions.[323] This is not to suggest that well salaried judges could not have been bribed. Regardless of the irregularity however, the original intention of selecting the judges known by the community must still be appreciated in the context of the 'social truth.' It gave opportunity to ordinary people to oversee a Gacaca process that produced a kind of truth they could identify with.

My other finding is that Gacaca was organised as *a victim-centred approach* to transitional justice. There is need to appreciate how implementers and local actors who are the community, understand transitional justice beyond institutionalising it such that communities can have a real understanding of its intentions and operation styles. There is evidence to show that plays like *The Liberating Truth* and other government programs were designed to sensitize communities on how Gacaca would operate in their interest according to Breed.[324] From this perspective, the Rwandan Government can be commended for creating Gacaca to focus on victims as opposed to formal courts that are perpetrator centred.

By engaging communities at inception level through sensitization about a transitional justice mechanism, I reason that the aim was to let them articulate their desires regarding the transition process as opposed to imposing a pre-determined structure of an institution which is the norm in formal courts. Often, ordinary people have little or no understanding of procedural styles in formal courts which then alienates them from their processes. On

[323] Ingelaere B (2009) 520.
[324] Breed A (2014) 104.

this matter, this thesis draws parallels between Rwanda and Guatemala, another post-conflict society. In the latter, Arriaza and Roht-Arriaza elaborate that a local idea for a social transitional justice approach known as 'houses of memory' was created based on community involvement where testimonies of participants were recorded and used to influence the nature of truth commissions.[325] This example further shows that transitional justice mechanisms that are victim-centred like Gacaca usually comprise of activities that communities can actively participate in. As mentioned already, Gacaca was a participatory space for communities thereby enabling the 'social truth' as part of the larger agenda of transitional justice in post-genocide Rwanda.

To conclude this section, I argue that the communal nature of the Gacaca and the social approach it deemed suitable for truth-telling to achieve transitional justice were logically connected. The connection validates Rwanda's choice of electing a transitional justice mechanism that resonated with the country's transitional needs. This relationship is what made possible the 'social truth' by the perpetrators; as well as the elements of proof of information by community members to validate or disprove truth and evidence I discussed in the previous section.

[325] Arriaza and Roht-Arriaza (2006).

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

This chapter makes conclusions and recommendations about how the 'social truth' was used as an approach to transitional justice in Gacaca in post- genocide Rwanda. The conclusions and recommendations are based on my findings from the three research questions for this study concerning the nature of the 'social truth' by perpetrators, the elements of honesty and proof of information by community members to validate or disprove the truth by perpetrators, and the relationship between the communal nature of the Gacaca and the social approach it deemed suitable for truth-telling to achieve transitional justice. I drew the findings from Doughty and Breed's texts.

I made various but interconnected findings regarding the first two research questions on the nature of the 'social truth' by the perpetrators; and the elements of proof of information by community members to validate or disprove the same. These are: Gacaca's reliance on oral evidence as social truth, the truth by witnesses from the community being superior to that of the accused, and testimonies containing information about the role of other community members in perpetrating genocide as a way of proving shared responsibility in committing the crime. The other findings are, using the 'social truth' to determine categories of victims and perpetrators, telling the 'social truth' to safeguard social and moral obligations of the past, present, and future, and the transactional nature of the 'social truth.' Yet other findings pertain to providing the 'social truth' in exchange for exemption from liability in the form of compensating victims, the need to provide one dominant narrative, fear of punishment from the government as well as reprisal from the rest of the community, and the need to reveal circumstances that motivated genocidal actions or the lack of such actions.

I have shown that the nature and elements of the 'social truth' were also aided by the lingual ability 'ubwenge' which was applied by community members to testify accordingly to achieve the 'social truth' within the set social paradigms of Gacaca. From my discussion of the findings, the 'social truth' was applied depending on what one specifically wanted to achieve with their testimony or witness account. Whereas the 'social truth' was employed with selfish motives in some instances, for example when one accused the dead simply to exonerate themselves, I note that it played a significant role in shaping socially acceptable narratives.

Pertaining to the third question about the relationship between the communal nature of the Gacaca and the social approach it deemed suitable for truth-telling to achieve transitional justice, I made the following findings: Gacaca's organisation that permitted community participation, the physical seating arrangement for hearings, Gacaca courts being located in communities, the use of local terminology which the community could identify with, excluding professionals like lawyers, police officers and politicians from playing the role of Inyangamugayo and finally Gacaca being a victim-centred approach to transitional justice. I expounded that all these factors respectively created a conducive environment for the 'social truth.'

My conclusion is that the findings on all three research questions give a balanced critique of Gacaca showing how its framework shaped the 'social truth.' I note that some elements of the 'social truth' were negative while others were positive, in both cases for the sake of making it possible for Gacaca to be a communal transitional justice approach. Thus, compared to previous scholars whom I discussed in the literature review, my study enables an understanding of the merits and demerits of Gacaca from the perspective of the 'social truth' it permitted. Keeping these pros and cons in mind, I claim that Gacaca was successful in enabling the 'social truth' regardless of the good or bad intentions or outcomes of the 'social truth.'

Considering the statistics shared in the introduction about how many cases were handled by Gacaca overall, that is; 11.8 per cent for category one criminals, 37 per cent for category two and 4.1 per cent for category three, I submit that Gacaca succeeded in holding an unparalleled number of perpetrators accountable through the 'social truth.' Having noted in the introductory chapter that by establishing Gacaca, the Rwandan government aimed to try as many alleged perpetrators as possible, and in view of these statistics, then it is logical to conclude that the courts achieved the aim, enhanced by the 'social truth.' Even though the rules of a fair trial were not strictly adhered to as I explicated in certain cases, this mini-thesis demonstrates that the procedure of obtaining the 'social truth' as per the set standard of Gacaca was adhered to.

Longman has observed that without Gacaca, national courts and the ICTR would have needed 'over 100 years to complete prosecutions.'[326] Yet, formal trials would have been unappealing to the ordinary Rwandans most of whom did not identify with formal legal

[326] Longman T (2010) 48.

procedures.[327] The observation means Gacaca should be acknowledged for being both an empowering and efficient mechanism in speeding up the process of transitional justice in Rwanda using a means Waldorf calls 'mass justice for mass atrocity.'[328] Likewise, Hola & Nyseth Brehm, note that the Rwandan Gacaca 'infrastructure' has so far in world history made a 'unique' achievement of prosecuting such an unprecedented number of perpetrators; and that if retribution had been the sole goal of Gacaca, then it would have been deemed to have achieved a 'resounding success' as some scholars have avowed.[329] Hence, the macro application of Gacaca as a national program across the country and at the same time the micro nature of the courts was significant in helping the nation to engage in the 'social truth' to realise the success it did.

The findings show that the process of achieving transitional justice through Gacaca necessitated the use of 'social truth' as opposed to the legal truth. I observe that conflicts like genocide normally bring about competing demands pertaining to justice. These involve accountability, forgiveness expected to lead to peace, stability, political, economic, and social development. Thus, truth about conflict is usually key in propelling communities forward towards achieving each of those demands separately or collectively. As such, due to the complex nature of Gacaca, the mini-thesis notes that it is equally a complex task to make a very definite stand about the success of this transitional justice intervention using the 'social truth. Thus, I tender that the success of Gacaca which I talk of in the mini-thesis is only to the extent of the efficacy of the 'social truth' it employed.

Regarding the caution on declaring definite success about transitional justice, Cohen and Lipscomb have observed

> 'it is an extremely complex undertaking to evaluate the performance of a sector that proposes to provide so many different kinds of justice (e.g. punishment, reconciliation, truth, history, healing) for a wide variety of people with different sets of expectations (victims, perpetrators, national and international governments).[330]

[327] Longman T (2010) 52.
[328] Waldorf L (2010) 183.
[329] Hola B & Nyseth Brehm H 'Punishing Genocide: A Comparative Empirical Analysis of Sentencing Laws and Practices at the International Criminal Tribunal for Rwanda (ICTR), Rwandan Domestic Courts, and Gacaca Courts' *Genocide Studies and Prevention: An International Journal* (2016).
[330] Cohen D & Lipscomb L 'When More May Be Less: Transitional Justice in East Timor' *Transitional Justice* (2012) 268-269.

Duggan has suggested that it is instead easier to declare such success if we rely on the original intentions of a given transitional justice.[331] In the foregoing explanations in this chapter so far, I have indicated that my measure of the accomplishments of Gacaca are in line with its goal of social truth-telling.

Considering that transitional justice has various aims, some of which include restoring social relations among victims, I also conclude that Gacaca chose an appropriate use of the 'social truth' rather than legal truth to restore society. In this light and as Doughty puts it, 'indeed, the fractious dynamics of gacaca sessions seem to undermine claims that law can provide an architecture of social repair'[332] About the same matter, Breed reveals that Domitilla Mukantaganzwa who was the executive secretary of the National Service of Gacaca Jurisdictions stated that Gacaca was largely meant to enable community members to play the role of 'moral reparation' but not just material reparation.[333] As such, Gacaca was not simply, focused on punishing or judging the offenders, but helping them and the entire community to repair, a goal that was achieved by the 'social truth.'

This mini-thesis has also demonstrated that whereas Gacaca enabled local people to participate actively in truth-telling and truth-seeking, 'social truth' also had some limitations. For example, it led some testifiers into concealing truths or evidence that would have been considered socially untrue. This in turn undermined the efficacy of transitional justice being a process of telling multiple truths. Additionally, telling 'social truth' through an oral mechanism before the community exposed people to blackmail, bribery, food poisoning, death, threats from fellow community members as well as the State.

Regarding the mentioned shortcomings, I adopt Thomson's reflection that transitional justice is never without challenges and limitations. The author raises the observation that transitional justice in Rwanda as seen through Gacaca had a 'darker side,' for it sought 'to impose a specific form of justice and reconciliation on its intended beneficiaries – Rwandans who lived through the violence of the genocide.'[334] The imposition was

[331] Duggan C (2010) 320.
[332] Doughty K (2015) 431.
[333] Breed A (2014) 89.
[334] Thomson S (2011) 373.

through the 'formal structures of power'[335] of the Gacaca that presumed local justice to be better than other forms of justice such as the national courts and the ICTR.

Relatedly, Cohen and Lipscomb have also noted that in post-conflict Timor Leste, the Serious Crimes Unit, which was responsible for investigating and prosecuting the various war crimes was criticized for employing a 'weak, and 'incomplete prosecution' strategy.[336] The strategy represented the conflict in biased ways with a dominant narrative and had a negative impact on whether victims such as those of gender-based violence would receive justice.[337] Here we see that another post-conflict community has also been critiqued for imposing a dominant narrative just as Rwanda did through Gacaca. The point is not to condone the practice of enforcing one narrative entirely but to demonstrate that Rwanda's approach of Gacaca concerning the single narrative had negative outcomes. Scholars and international organisations have argued that a 'holistic' approach to transitional justice is desired,[338] but have also observed that this is only in theory as it can equally yield unsatisfactory outcomes just like a single approach.[339] Therefore, Gacaca should be appreciated as a partial approach to transitional justice despite its challenges.

This mini-thesis has shown that various actors in transitional justice often have their interests which they promote using the language and processes of the transitional justice mechanisms at hand. For instance, I noted that some perpetrators and those testifying against them took advantage of the situation to tell the truth in ways that can either exonerate them, lessen their punishments, and give them easy access to compensation hence, the term 'arabeshya.' The study has also demonstrated that the Rwandan government concealed certain truth by structuring Gacaca in a way that only the 'Truth-with-a-Capital-T' can be visible. With this observation, the study advocates for a keen comprehension of the different interests of actors in transitional justice and how this works either in favour or against the credibility of a chosen transitional justice approach.

Considering the requirement for 'Truth-with-a-Capital-T,' I suggest that the 'social truth' sought in Gacaca did not fully address the causes of the genocide which then becomes a

[335] Thomson S (2011) 373.
[336] Cohen and Lipscomb (2012) 289.
[337] Cohen and Lipscomb (2012) 289.
[338] Olsen et al (2010) 6-7; UN (2004), (2008); ICTRJ (2009).
[339] Olsen et al (2012) 260.

weakness of the approach in fostering transitional justice. Siriam, Martin-Ortega and Herman have noted that transitional justice has overtime simply focused on effects of conflicts while failing to unearth long-term structural injustices that cause the conflicts.[340] In Rwanda, there were deprivations pertaining to ethnic inequality, identity-based exclusion, uneven development, and discrimination in political participation by the Hutu against the Tutsi which sparked off the genocide.[341] Yet, these deprivations were generally not paid attention to in Gacaca except the aspect of distributive justice.

Gacaca through it's 'distributive justice' which was concerned with (re)distributing tangible and intangible resources between the previously deprived and privileged, only addressed the causes of the genocide to a small extent.[342] The justification for paying attention to distributive justice is to prevent the recurrence of conflict by addressing deprivations that incited the conflict thereby building a foundation for sustainable peace during and after transition. Gacaca testimonies and witness accounts did not directly allow for a discussion of the causes of the war and the mini-thesis considers this a weakness. In view of the complexity of transitional justice, the successful use of Gacaca for transitional justice gave Rwanda international recognition and legitimacy.[343] The same scholars have argued that the legitimacy can help countries in transition to adopt similar transitional justice mechanisms. Clark has particularly pointed out that since the invention of Gacaca, Rwanda has become 'a key vehicle for analysing wider political and social dynamics in Rwanda, including policy-making under the Rwandan Patriotic Front.'[344]

Finally, from the social-legal methodological point of view, and having discussed how the respective ethnographic and anthropological research by Doughty and Breed enabled the 'social truth',[345] I make four recommendations. First, is that there is a need to further understand the 'social truth' in Gacaca and its impact on social and legal systems. Secondly, we need to pay attention to the bearing of culture in transitional justice in the face of international crimes like genocide. Thirdly, I recommend the need to appreciate

[340] Sriram LC, Martin-Ortega O & Herman J *War, Conflict and Human Rights: Theory and Practice* (2017).
[341] Breed A (2014) 38-46.
[342] Mani R (2012).
[343] Such as Grodsky (2008) 286; Clark P (2014).
[344] Clark P (2014) 193.
[345] Doughty K (2015); Breed A (2014).

that international criminal law needs to be more cognizant of cultural dimensions that (can) inform them. Lastly, I propose that future transitional justice tribunals should adopt the 'social truth' approach but include fair trial right safeguards. I conclude that if the applicability and effectiveness of the 'social truth' had been the only measure of the success of transitional justice in post-genocide Rwanda, Gacaca was largely a great accomplishment for enabling socially acceptable transitional testimonies and witness accounts.

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