Introduction

In July 1994, the victorious Rwandan Patriotic Front (RPF) rebels were confronted with a physical and human landscape in ruins. Three-quarters of the Tutsi population had been killed. Thousands of Hutu who had opposed the genocide were also dead. Decomposing bodies lay on the streets and floated in the waterways. Government buildings had been shelled and ransacked. Long lines of Hutu refugees inched toward the Congo, desperate to get out of the way of the RPF. They expected to be killed. That is what their leaders had been telling them the RPF intended to do since the beginning of the civil war that the RPF had initiated four years earlier. Their leaders had also said that genocide was necessary to thwart the RPF's alleged plan for domination and destruction of the Hutu people. Now that the RPF had won, and ordinary Hutu had been abandoned by their government, there was no telling what was in store.

Hutu who remained in the country were "traumatized" by the violence they had witnessed or perpetrated, "sullen" and "sick with fear" about the possibility of retribution by the Tutsi-led RPF (Prunier 1995: 327). Perpetrators and non-perpetrators alike chose to wait and watch before making any moves. The RPF proceeded to kill remnants of various Hutu militias and targeted civilian elites perceived to be the last remaining bastions of resistance to its will. RPF soldiers conducted sweeping arrests – 1,500 people per week – of those violating curfew to those suspected of having participated in genocide. It also offered immediate rewards for those willing to take on leadership tasks from the ground level up. Across communities, there were Hutu who stepped forward and worked with the civilian and military personnel of the RPF to enforce law and order. Some wanted the first mover advantage of ingratiating themselves with the new rulers. Others had genocide records for which they needed cover. This was their way of demonstrating loyalty and preserving themselves while also exercising power over their communities. Some burnt

papers and destroyed any evidence of involvement in war-time activities, hoping they would be passed over during RPF scrutiny. Some went up to RPF soldiers to denounce others to preemptively distance themselves from any potential accusation of wrongdoing.

At the elite level, the RPF cobbled together a coalition-based transition government that it dominated. It undertook a series of legal and political maneuverings that effectively undercut the prospect of a viable opposition and confirmed observer apprehensions that this was a post-conflict transition into authoritarian rule. Over the years, the RPF also managed to consolidate itself at the ground level. It was able to control the masses, stabilize expectations between the rulers and the ruled, and count on the population for support. A political formation that was an enemy combatant two decades ago and continues to be led by the "minority of the minority ethnic group" (Reyntjens 2011: 30) has survived in power, endorsed as needed by a population that is comprised of 85 percent Hutu[1] who did not think the RPF had the moral authority to rule and held it responsible for mass crimes against Hutu.[2]

Although its tight grip in the early transition years depended on the use of blatant force through killings and arbitrary arrests, the RPF has entrenched itself over the years, becoming thoroughly able to project power at the grassroots without over-reliance on these tools of repression. Hutu prisoners have been released in the thousands. Tens of thousands have received grants of clemency for which they are grateful. Homes in distant rural areas display photos of President Paul Kagame (RPF). Thousands of ordinary Hutu eagerly announce themselves members of the party. Without their willing involvement, the work of local administration would grind to a halt.

What made authoritarian regime consolidation possible? How did ruling elites who had spent three decades in exile and were received with such

[1] Observers of Rwanda typically use the following figures: Hutu = 85%; Tutsi = 14%; Twa = 1% (a group too small to impact political outcomes in the country). The 1991 census (the last ethnic census) put the number of Tutsi at approximately 9% but the actual numbers were likely higher.

[2] The charges include war crimes and crimes against humanity directly perpetrated by RPF/A soldiers (1) during the civil war and in the months following the RPF's capture of power; (2) during the RPF's suppression of the insurgency in the northwest between 1996–1998; (3) during its pursuit of Hutu combatants who were mixed in with unarmed Rwandan Hutu refugees in the forests of the eastern Democratic Republic of Congo (DRC). The accumulated death toll is estimated at nearly a quarter million Hutu until 1998. For sources see Chapter 2, fn. 1–4. Additionally, there were tens of thousands of Hutu civilians (Rwandan and also of other nationalities) who died at the hands of rebel groups operating in the Congo, some of whom the RPF government had sponsored during the Congolese Civil War that ended in 2003. The RPF also stands accused of continuing its support for rebel groups in the violence that has wracked the eastern DRC since.

suspicion and dread manage to sink roots at societal level? The answer, this book suggests, lies in the implicit understandings between rulers and the ruled that were constructed over time: these governed state-society relations and preserved the distribution of power between elites and the masses under conditions of the RPF's unrivaled domination.

These mutual understandings were forged in the crucible of the community-run tribunals for the accountability of genocide crimes. Rwanda's authoritarian turn at the elite level had already been accomplished when the *gacaca*[3] courts began their operations in 2002. It was the largest state-driven project of popular mobilization during the post-genocide transition. These *gacaca* courts had extensive reach: they were set up in every cell and sector (grassroots administrative units) across the country. Through these courts, the state controlled bodies and behaviors (requiring attendance; testimonies; population transfers between communities, labor camps and prisons; apologies from defendants; and pardons from survivors). The demands on the population (asked to submit self-incriminating confessions, denounce their neighbors and ethnic kin, and judge their peers for little to no compensation) paled in comparison to any other commitment to the post-genocide state. By the time these courts wrapped up, they had tried 1 in 3 adult Hutu in the population at the time of genocide in 1994,[4] and had involved practically the entire adult population in various roles (as judges, witnesses, defendants who had confessed, and defendants who insisted they were innocent). Over a period of ten years (2002–2012), the courts directly impacted individual lives on a mass scale, and helped to construct an informal clientelistic bargain as the rulers (unrivaled at the elite level) traded targeted benefits in exchange for varying degrees of submission, active support, and loyalty from the population.

In denouncing others, submitting self-incriminating confessions, and judging their friends and co-ethnics, thousands upon thousands of individual Hutu acted upon and enforced RPF rules, reinforcing the regime with their cooperation in exchange for reduced sentences, security guarantees, the possibility of private gains in the form of personal vengeance or economic windfalls, and opportunities to access public power and social prestige. The RPF unleashed a stream of individualized benefits and sanctions that made "opportunistic investors" of ordinary Hutu who backed RPF rule in their own interests. This kind of support was reliable but not sincere; in fact, these individuals, while

[3] Pronounced *ga-cha-cha*.

[4] The 1991 census recorded 2.5 million adult Hutu (between the ages of 18–54). The figure of 3 million would accommodate population growth between 1991–1994. See Straus (2004), endnotes 1–4.

generally appreciative of the achievements of the RPF on the development front, did not believe that the RPF were legitimate rulers with the requisite clean hands. In the absence of a viable opposition to RPF rule (an alternative "patron" who might cut them a better deal), individuals sensitive to the distribution of power at the elite level acted on their own self-interest. They endorsed the regime by enabling it to pull off this massive self-legitimating project of "national unity" and did so to protect or advance themselves in various ways.

The *gacaca* courts were formally closed in 2012 but this mass socialization into the new rules of political life remained a substantial resource for the regime. The lessons learned were not easily forgotten since the individualized incentives and sanctions unleashed by the *gacaca* process continued to be enforceable. The courts' operations produced a range of additional resources from specific segments of the population – from the beneficiaries of state clemency reluctantly surrendering consent for the ideological premise of "Tutsi rule,"[5] to chipping away by means of mutual denunciation the trust and solidarity that cemented together familial and neighborhood relations among Hutu, to the highly voluntary cooperation of lay judges in bolstering the party at ground level and facilitating everyday governance.

In confessing, denouncing, and judging, ordinary Hutu were indispensable agents in the government's ability to pull off this massive program – on which it had staked its international reputation as the only political actor with moral fiber and a workable vision for national reconstruction. This program became a magnet for international support and shielded the government from donor defection even as human rights organizations became increasingly critical of the government's atrocities in the Congo and its heavy-handed policies at home. The massive numbers of convictions – little less than 1 in 3 adult Hutu at the time of genocide – confirmed the government's insistent claim that there was a substantial threat to national security from within the general Hutu population. It seemed to justify the RPF's repression, perhaps even normalize President Kagame's claim as recently as the 2010 general elections that Rwanda was "not ready for the medicine of democracy" (The Independent 2010).

This book does not seek to make a general argument about authoritarian consolidation as such but it uses the Rwandan case to explore the generic "problem

[5] The term "Tutsi rule" reflects ordinary Hutu respondents' understanding of a regime dominated by elite Tutsi (for more clarification, also see Chapter 1, fn1). In the remainder of the book, the term will generally be used without quotes to convey the naturalness with which it appears in common usage.

of authoritarian control" as rulers strive to balance against the masses (Svolik 2012: 2). It examines individual calculations at the ground level as they unfolded within a set of formal and informal institutional contexts – thereby taking a micro-foundational approach to the question of authoritarian regime consolidation in contrast to much of the existing literature on the sources of durable authoritarian rule that examines elite politics in parties, legislatures, militaries, and ruling coalition pacts (Brownlee 2007; Slater 2010). The book takes a new look at "institutionalized dictatorships" (Gandhi 2008) by examining the informal but self-enforcing quality of the tacit compact between rulers and the ruled under conditions of unrivaled dominance of a hegemonic party.

In focusing on the production of the clientelistic bargain that ensures the political survival of the incumbent, the book seeks to use the Rwandan case to illustrate the phenomenon of "authoritarian clientelism." In other autocratic contexts – such as Mexico under the hegemonic rule of the Partido Revolucionario Institucional (PRI) or Eastern Europe and China under communist rule – scholars have pointed to the centrality of tacit bargains that perpetuated the status quo. The masses traded the vote or agreed to tolerate authoritarian rule in return for targeted economic benefits such as jobs, access to consumer goods, social welfare benefits, and other incentives (Magaloni 2006; Wright 2010; Bunce 1999: 33). However, clientelistic exchanges can be generated around any "scarce valuable resource" (Lyne 2007: 163). In the Rwandan case, the RPF operated a "punishment regime" for genocide crimes that used targeted grants of clemency and opportunities for private gain or public influence to create a "market for political loyalty" (Magaloni 2006: 21). What made these targeted benefits effective as an instrument of control was the credible threat that the allocation of protections and rewards could be monitored and withdrawn to punish noncompliance. For a ruling elite that had spent three decades in exile and lacked social networks at the ground level, the production of loyalty and self-interested support facilitated considerably the task of authoritarian governance. It enhanced the "infrastructural power" of the state in terms of its "capacity … to actually penetrate civil society, and to implement logistically political decisions throughout the realm" while relying less on blunt indiscriminate repression (Mann 1988: 5). It helped advance other important tasks of state consolidation: gaining knowledge of the grassroots population, bargaining with local elites, and devising soft strategies to project power to the hinterlands. Overall, the decade-long operations of the *gacaca* courts enabled the RPF regime's entrenchment and survival.[6]

[6] The idea of regime "consolidation" is associated with the notion of survival, endurance, and persistence. On democratic consolidation, for instance, Przeworski et al. have written, "A democracy becomes 'consolidated' if its … 'hazard rate' declines with its age.… [W]e do not think that 'consolidation' is just a matter of time, of some kind of 'habituation' or mechanical

These arguments set this book apart from the existing literature on the *gacaca* courts on two critical counts. First, it is the only work to examine the nuts and bolts of the *gacaca* courts by focusing on confessions, testimonies, and judges' work. The voluminous literature on the courts is not actually premised on an analysis of the institutional environments, or the individual calculations and behaviors that hold the key to their inner operations – a significant and surprising omission. Second, in linking these participatory behaviors to regime consolidation, the book offers individual calculus and varying degrees of "willing" (self-interested) support as an explanation. It is doubtful if ordinary Rwandans are "free and happy" as President Kagame portrayed them in a public speech that he made in 2010 during the official commemoration of genocide. This book suggests that ordinary Rwandans, particularly the Hutu masses, recognized that as long as they did not challenge the moral and political basis of RPF rule, there was little need to fear for their lives. If they went beyond sullen compliance to actively extend their support, there were even benefits to be derived. These were much better odds than trying to survive in the middle of war or in a refugee camp in the Congo. This ubiquitous human motivator (self-interest), as understood within an evidently constrained environment, remains to be explored in the context of the literature on the *gacaca* courts and authoritarian rule. This is distinct from existing arguments about top-down repression or the everyday strategies of bottom-up resistance – the dominant themes so far in the literature (Waldorf 2010; Thomson 2013).

This book is not about the extent to which the *gacaca* courts adhered to popular understandings of justice, truth, and reconciliation (see Clark 2010a); nor is it a normative assessment of the *gacaca* court processes, even though it closely examines individual-level considerations about moral rights and wrongs. It is an assessment based on a range of original empirical material of the societal drivers of authoritarian survival – triggered as they were in this case by mass accountability processes. While there is a growing literature on international criminal tribunals and reforms in the formal justice sector, this is the rare work that examines at length the micro-dynamics and macro consequences of a local level and ad-hoc mechanism of transitional justice. This book also moves away from the traditional emphasis on explaining the substance and timing of choices during transition to fill an important gap in "the area of evaluating consequences" – the "greatest untapped potential" in transitional justice scholarship (Backer 2009: 51). For those broadly interested in the ordering impact of law on state-society relations and the distribution

institutionalization. … Democracy's ability to survive is a matter of politics and policy, as well as luck" (1996).

of power between ethnic groups, this book will be valuable. It demonstrates that "justice in periods of political change is extraordinary and constructivist" (Teitel 2000: 6) even if it does not necessarily lead to liberalizing change.

THE "MOST AMBITIOUS EXPERIMENT" IN TRANSITIONAL JUSTICE

In ten years, 12,000 local tribunals manned by a quarter million lay judges have tried 1,003,227 individual Hutu in 1,958,634 cases of genocide.[7] Approximately 9 percent of these cases were heard at *gacaca* appeals courts (GOR 2012: Report Presented at the Closing of Gacaca Courts' Activities).[8] These *gacaca* courts were formalized and invested with a range of state-sanctioned powers from authorizing arrests to decisions on verdicts and sentencing. The judges were mostly peasants, elected by their communities and tasked by the state to serve as *inyangamugayo* (individuals of integrity). This was a radical departure from the customary *gacaca* that was used mostly in an informal and ad-hoc manner.[9] In the government's calculation, 1,074,017 individuals had been killed in the genocide, of whom 93.7 percent were Tutsi (cited in PRI 2010: 20). The judges were instructed that their mandate covered the cases of Tutsi who had been killed for "what they were" (genocide) and the cases of Hutu who had died for their opposition to killing Tutsi, that is, for "what they believed" (crimes against humanity) between October 1, 1990 and December 31, 1994 (Trainers Report, ASF 2004b: 10–11).

The courts were described as a "giant gamble" (Uvin 2000: 12), even something of a "fantasy" (Fierens 2005: 19) in terms of its ambitions. It turned the genocide in Rwanda into the "most heavily adjudicated conflict in recent world history" (Longman 2010: 48).

As these courts sprang into action, the number of Hutu accused countrywide shot up from approximately 125,000 in 2001 to 818,564 by the middle of the decade (see Figure I.1). It was, as one observer put it, a "terrible and totally unexpected result" (Schabas 2005: 2). After all, a major rationale for the courts

[7] The phrase "most ambitious experiment" is used by Waldorf 2006: 3.

[8] Some individuals had multiple cases filed against them for crimes that had been committed in different areas or for multiple crimes committed in the same area. It is also possible there is some double counting involved. In any case, this official closure report presents the number of "cases" as double the number of "individuals." Therefore, throughout the book when citing figures from this source, I divide the number of "cases" by half to get the number of "individuals."

[9] Before the genocide, almost half of customary *gacaca* claims pertained to minor injuries that did not include cases of murder. Other cases related to land and succession disputes, repayment of debts, theft, and marital conflicts. The punishments typically involved compensation, not a prison term (Reyntjens 1990).

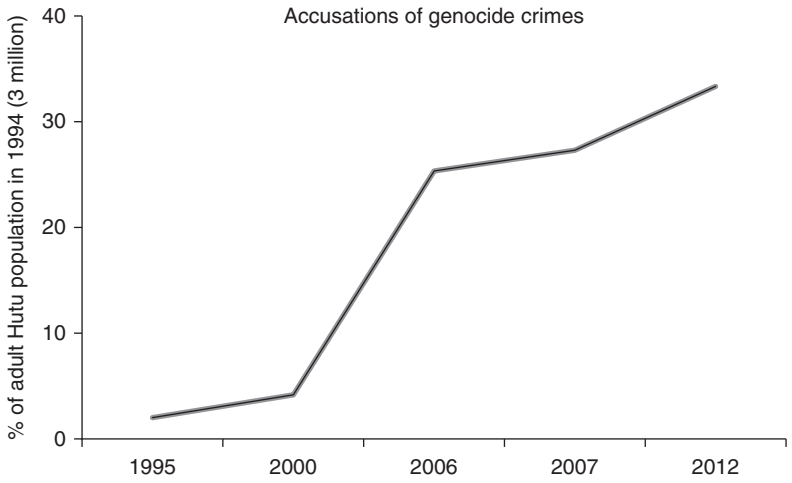

FIGURE 1.1. Escalating accusations.

had been that thousands of local tribunals working simultaneously would expedite the existing caseload, ease the pressure on Rwanda's bursting prisons, and blunt international human rights organizations' criticism of the government's penal policies. After protracted internal debates within top government circles, the *gacaca* tribunals had been advanced as a necessary alternative to Rwanda's ordinary court system, whose human and material infrastructure had been destroyed in the genocide, its fragile capacities overwhelmed by the cases of tens of thousands of Hutu in pre-trial detention.

A truth commission or limited program of trials for top officials would not be sufficient, the RPF had argued, since only mass punishment could deter people from committing such crimes in the future. In their view, ideas approximating a genocidal mindset had been deeply ingrained into the popular psyche over the course of three decades of rule by radical Hutu elites.[10] Officials speculated that the number of actual perpetrators was far in excess of the prison population[11] and even scholarly calculations.[12] The RPF also insisted

[10] A Report on "*Gacaca* Court Achievements" posted on the RPF website noted that ordinary Hutu (with the exception of some courageous individuals) did not think to resist the order to kill because there was a long-standing "culture of impunity" in which Tutsi could be killed without fear of repercussion (2012: section 3.4). The pro-government newspaper *The New Times* published a speech by the President of the Rwandan High Court in which he claimed that the architects of genocide had "made everyone a direct or indirect participant" (quoted in HRW 2008: 70).

[11] In private, some RPF elites estimated the number of perpetrators at 3 million Hutu – the entire adult Hutu population in 1994 (see Gourevitch 1998: 244).

[12] See, for instance, Straus (2004: 94) for an estimate of 210,000 perpetrators – about 8% of the adult Hutu population in 1994.

that the problem of "genocide ideology" was a socially widespread and latent threat.[13] A high ranking official speculated in the media that the political consent of ordinary Hutu was an important factor that had allowed their leaders to undertake the genocide (The New Times 2006b). This premise (a matter of contentious debate[14]) suggested that it was not just the perpetrators, but also the general population as such that needed to be socialized into new values of unity and reconciliation. The government undertook a multi-pronged and far-reaching advocacy campaign to inform the population about the official values underlying the *gacaca* courts. It was suggested that popular participation in the *gacaca* would be the peoples' way of repairing a social fabric they had (actively or through tacit consent) shredded. Perpetrators were expected to confess their crimes, the community was supposed to testify about what they had seen or heard, and judges had to be impartial arbiters of the law. For the first time, "a government entrusted an entire adult population with responsibility for trying genocide" that had been committed in their name (PRI 2010: 13).

Underscoring this high-minded approach, President Kagame observed, "People are not inherently bad.... But they can be made bad. And they can be taught to be good.... I think you can't give up on that – on such a person. They can learn.... And I think some people can even benefit from being forgiven, being given another chance" (quoted in Gourevitch 1998: 224, 313). A senior official was more pointed: the extent to which prisoners embraced and followed through on the government program was "an exam to witness whether they deserve mercy" (The New Times 2007). After ten years of the *gacaca* courts, the RPF government continued to demand "proof" of the commitment to reconciliation, asking the current generation of Hutu youth to demonstrate their distance from genocide by apologizing publicly on behalf of their parents (U.S. Department of State 2014: 37). Once again in Rwanda, one set of human beings wielded extraordinary discretionary power over another – only this time, instead of death, the rulers gave ordinary individuals from the "other" group a chance to resume life contingent on compliance with official directives. The political leverage this gave the new ruling elites over the majority of the population paled in comparison to the immediacy of the horror of genocide and the urgent needs of reconstruction. The political argument for mass justice was lined up compellingly with normative considerations

[13] These are ideas that "later result in genocide itself" (ASF 2004a: lesson 3, p. 1). A series of Parliamentary Commission Reports between 2003 and 2008 denounced the continuing presence of "genocide ideology" in schools, families, churches, and NGOs. Under the 2008 "genocide ideology" law, children as young as twelve years old could be prosecuted (some aspects of this law were amended in 2013).

[14] For more on this point, see Chapters 2 and 3.

("popular participation," "truth telling," "unity and reconciliation") and practical concerns (mostly relating to the cost of running the courts and the speed of the trials). Overall, it was "politically … brilliant" (Uvin, cited in Packer 2002) offering something for every concerned audience.

The Legal Infrastructure: Carrots, Sticks, and Guilty Verdicts

The *gacaca* law built on the existing "confession and guilty plea" law of 1996, which allowed the accused to enter a guilty plea in exchange for a reduced sentence. There were penalties if the confession was rejected. The law also contained sanctions if ordinary Hutu failed to meet their legal "duty to testify."[15] The RPF appealed to the humanity of thousands of ordinary Hutu to serve as judges without compensation. The title *inyangamugayo* "citizens of integrity" was a prized commodity for a population on whom a vast shadow of doubt had been cast for harboring "destructive ideologies." Overall, the RPF wielded a combination of carrots and sticks as it centralized power and vigorously defended its monopoly of the high moral ground. The international community, eager to make amends for failing to stop genocide, was enthusiastic in some quarters about a socially embedded process, or at least willing to suspend skepticism about the growing authoritarianism of the RPF and the shortfalls from fair trial standards in the *gacaca* so that they could support the only actor that had brought an end to the genocide.[16] Besides, the RPF had decisively defeated the organized forces of the Hutu political class and was able to quickly co-opt the disarrayed remnants of the Hutu elite or gag them with laws that punished "divisive" speech, so there was little attempt within Rwanda to limit the RPF's accumulation of power by holding it hostage to its own "skeletons in the closet" (Nalepa 2010).[17]

[15] On the "duty to testify … nobody having the right to get out of it," see preamble to the Organic Law on *gacaca* (GOR 2001c) and article 29 (GOR 2004h).

[16] President Kagame rarely failed to remind the world that it had "stood around with its hands in its pockets" (quoted in Gourevitch 1998: 163). Uvin (2001) has noted that there are few countries where the international community has spent so much money and energy on matters relating to justice as in Rwanda. See also Waldorf (2010: 201) who notes that the international community continued its support for *gacaca* "long after its failings came to light."

[17] In *gacaca* courts across the country, Hutu raised the issue of crimes committed by the RPF – as noted in observation reports filed by human rights organizations (domestic and international) and even government agents of the National Service for *Gacaca* Jurisdictions (SNJG) (PRI 2003: 5; ASF 2005a: 28; GOR 2002-2004 for SNJG reports on the pilot phase; LIPRODHOR 2002: 8). The government made a concerted effort to remove the issue from *gacaca* by advising the population that RPF crimes were tantamount to sporadic revenge killings by renegade soldiers and could be pursued in Rwanda's ordinary courts. In 2004, the *gacaca* law dropped the mention of "war crimes" from the mandate of the *gacaca* courts. In military tribunals, the