



2

Bonner Studien zum globalen Wandel



Kathrin Kästle

## **African Justice for African Healing**

Justice, Reconciliation  
and Traditional Approaches  
in Rwanda

Tectum

Kathrin Kästle

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This thesis is for Remy who has lost everything, and is still able to smile.

And for my parents who have always supported my dreams.



## **Vorwort des Herausgebers**

Der Konflikt in Ruanda mit dem Genozid des Jahres 1994 und rund 1 Million Toten gilt unter den ethno-politischen Konflikten der 1990er Jahre als trauriger Höhepunkt. In der wissenschaftlichen Auseinandersetzung mit diesem Konflikt bilden sowohl die Abläufe während des Genozids, als auch das eklatante Versagen der internationalen Staatengemeinschaft bei der Verhinderung der Gewaltexzesse sowie des wirksamen Einsatzes von internationalen Truppen den Schwerpunkt. Das sog. Post-Conflict-Peace-Building mit den Aspekten der innergesellschaftlichen und justiziellen Aufarbeitung stellen dagegen noch Randbereich der politikwissenschaftlichen Forschung dar. Dies liegt nicht zuletzt daran, dass Prozesse der Aussöhnung nach derartigen Gräueltaten in jedem Fall höchst unterschiedlich ablaufen.

Kathrin Kästle liefert mit ihrer Studie „African Justice for African Healing – Justice, reconciliation and traditional approaches in Ruanda“ an der Schnittstelle zwischen rechts- und sozialwissenschaftlicher Forschung völlig neue Einblicke in das Spannungsfeld zwischen gerichtlicher Aufarbeitung von Verbrechen nach westlichen Vorstellungen und Ansätzen zur Versöhnung durch traditionelle Instrumente. Hierbei weist sie auch darauf hin, dass es nicht zuletzt von der rechten Balance zwischen Gerechtigkeit und Aussöhnung abhängt, ob ein erneuter Konfliktausbruch vermieden werden kann.

Die vorliegende Untersuchung in der Reihe „Bonner Studien zum globalen Wandel“ liefert somit Hinweise auf die Neuartigkeit der internationalen Herausforderungen, die durch inter-ethnische Spannungen entstehen. Dies betrifft im Falle Ruandas sowohl den Aspekt der rechtzeitigen und ausreichenden Reaktion der internationalen Staatengemeinschaft angesichts einer drohenden Katastrophe als auch die Facette der erforderlichen Konfliktnachsorge als Präventionsinstrument.

Prof. Dr. Wolfram Hilz



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# 1 Introduction

## 1.1 Context

Between 500.000 and one million people lost their lives in Rwanda in 1994 in what has become known as the swiftest genocide in human history. It lasted 100 days and an estimated 5.5 persons were killed every minute, leaving Rwanda with a tenth of its population dead. The victims belonged mainly to the minority Tutsi ethnic group, but moderate Hutu and their families were also killed by militia, army elements and ordinary citizens.<sup>1</sup>

The genocide was the final violent explosion of ethnic tensions that had built up for decades. Rwanda had become a part of the German East Africa colony in 1899. After the First World War, Belgium took over and reigned Rwanda and neighbouring Burundi under a League of Nations (and later United Nations) mandate. The Belgians used the Tutsi aristocracy in Rwanda to govern the territory through indirect rule, transforming the majority Hutu population into second class citizens. On the eve of independence in 1959 the Belgians shifted their allegiance to the Hutu, however, as the Tutsi intellectuals demanded an end to colonization all too self-confidently. With the help of the colonizers the Hutu were able to organize what has become known as the Hutu revolution and gained power. For the first time in Rwanda's history systematic violence between the groups occurred and many Tutsi left the country fleeing the massacres.<sup>2</sup>

In 1962, Rwanda became independent and was governed by the Hutu president Gregoire Kayibanda. Massacres against Tutsi continued to occur and were fuelled by attempts on behalf of the Tutsi exiles to force their way back into the country and take power again. In 1972 the Tutsi minority government and army massacred large parts of the Hutu population in Burundi. These massacres are today regarded as the first genocide in the region. The events in Burundi immediately sparked new violence against the Tutsi in Rwanda and led to a second wave of Rwandan Tutsi refugees to the neighbouring states. In 1973 Major General Juvenal Habyarimana seized power in a bloodless coup

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<sup>1</sup> See Jackson Nyamuya Maogoto: The International Criminal Tribunal for Rwanda. A Distorting Mirror. Casting Doubt on its Actor Oriented Approach in Addressing the Rwandan Genocide, in: *African Journal on Conflict Resolution*, Vol. 3 (2003) 1, in: [http://www.accord.org.za/ajcr/2003-1/accordr\\_v3\\_n1\\_a8.pdf](http://www.accord.org.za/ajcr/2003-1/accordr_v3_n1_a8.pdf) (16.12.2007), pp. 65f.

<sup>2</sup> See Thomas Scheen: *Der Kongo und Ruanda. Konflikte in der Region der Großen Seen*, Bonn 2004 (FES Analyse), in: <http://library.fes.de/pdf-files/id/02121.pdf> (16.12.2007), pp. 4ff.

d'état. His party "Mouvement Revolutionaire Nationale pour le Developpement" (MRND) was instituted as the only party in Rwanda. Despite Habyarimana's autocratic rule and the discrimination against the Tutsi minority the outbursts of violence became less frequent during the so-called second republic which lasted from 1973 until 1994.<sup>3</sup> Rwanda under Habyarimana was the darling of the donor community with low corruption rates and remarkable stability.<sup>4</sup> But rapid population growth and the lack of land led to growing tensions within Rwandan society from 1980 onwards.<sup>5</sup>

At the same time armed guerrilla movements from the diaspora started to attack Rwanda to enforce a return for the Tutsi refugees. These rebel groups were mainly made up of the children of the 1959 refugees that had grown up in refugee camps in Uganda and other neighbouring states. In 1990 the "Rwandan Patriotic Front" (RPF) under Paul Kagame invaded Northern Rwanda from their bases in Uganda. The Rwandan government troops were able to force the intruders back with the help of French troops that jumped to the rescue of their long time ally.<sup>6</sup> A civil war followed from 1990 until 1994 between the RPF and Rwandan government troops. In 1992 both parties started ceasefire negotiations in Arusha, Tanzania, and signed a peace treaty, known as the Arusha records, on the 4<sup>th</sup> of August 1993.<sup>7</sup> The United Nations (UN) sent a peacekeeping force to Rwanda to observe the peace process.<sup>8</sup> On the 6<sup>th</sup> of April 1994 the plane of president Habyarimana was shot down on its arrival at Kigali airport. The assassination of Habyarimana triggered the carefully planned genocide against moderate Hutu politicians and the Tutsi

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<sup>3</sup> See Jon Lunn: *The African Great Lakes Region. An End to Conflict?*, London 2006 (House of Commons Library Research Paper 06/51), in: <http://www.parliament.uk/commons/lib/research/rp2006/rp06-051.pdf> (16.12.2007), p. 37.

<sup>4</sup> See Barbara Oomen: *Donor-Driven Justice and its Discontents. The Case of Rwanda*, in: *Development and Change*, Vol. 36 (2005) 5, p. 894.

<sup>5</sup> See Günther Bächler: *Violence Through Environmental Discrimination*, Dordrecht et al. 1999 (Social Indicators Research Series Volume 2), p. 139.

<sup>6</sup> See Gregory Mthembu-Salter: *Mediation and Genocide in Rwanda and Burundi's Peace Agreement Without Peace*, in: *Track Two*, Vol. 11 (2002) 5/6, in: [http://ccrweb.ccr.uct.ac.za/archive/two/11\\_56/rwanda\\_chapter2.html](http://ccrweb.ccr.uct.ac.za/archive/two/11_56/rwanda_chapter2.html) (29.06.2008), [Paragraph 10].

<sup>7</sup> See Gérard Prunier: *The Rwanda Crisis 1959-1994. History of a Genocide*, London 1995, p. 191. For a detailed analysis of the war, the peace talks and the democratization process see chapters 3-5.

<sup>8</sup> See Roméo Dallaire: *Shake Hands With the Devil. The Failure of Humanity in Rwanda*, London 2004, p. 43. In this personal account of the peacekeeping exercise in Rwanda the Canadian commander of the blue berets gives an excellent insight into the failure of the UN intervention which was unable to stop the genocide.

population. The civil war broke out again.<sup>9</sup> The RPF launched a new offensive and conquered Kigali in July 1994. The extremist Rwandan government and the militias fled to the Kivu province in the east of the Democratic Republic of Congo (DRC), aided by the establishment of a humanitarian protection zone called “Zone Turquoise”<sup>10</sup> by the French. They took at least one million terrified Hutu refugees with them that feared the revenge of the Tutsi RPF.<sup>11</sup> The RPF installed a new government in Kigali in compliance with the Arusha records and started to hunt down the remnants of the old regime in the DRC. In the meantime two million people inhabited the large UN refugee camps in the Kivu region of the DRC. “The Rwandan Patriotic Army” (RPA) – the successor of the RPF army – aimed at forcing these refugees back into Rwanda.<sup>12</sup> After the violent dissolution of the camps by the RPA most of the refugees returned to Rwanda in 1996. The militias and elements of the former Rwandan army fled deeper into the forests of the DRC to continue fighting the new regime in Kigali from beyond the border. More than 200.000 refugees have been “missing” since.<sup>13</sup>

The new government under President Pasteur Bizimungu – a Hutu member of the RPF – started to rebuild the totally destroyed country and bring the perpetrators of the genocide to justice. Rwanda was a country in shambles, with its infrastructure destroyed, its intellectuals killed and diseases like the Human Immunodeficiency Virus (HIV) and cholera ravaging the population.<sup>14</sup> The international community, which had failed to stop the genocide<sup>15</sup>, now erected a tribunal for the prosecution of the masterminds orchestrating

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<sup>9</sup> See Alison Des Forges: *Kein Zeuge darf überleben. Der Genozid in Ruanda*, Hamburg 2002, p. 226.

<sup>10</sup> The French had erected the humanitarian rescue zone as part of their „Operation Turquoise“, approved by the Security Council of the UN. It saved the lives of many Tutsi during the last days of the genocide but also aided the flight of the perpetrators. The assessment of this intervention is highly disputed. See Philippe Guillet/Larry Minear: *Soldiers to the Rescue. Humanitarian Lessons from Rwanda*, Paris 1996.

<sup>11</sup> See Scheen: *Der Kongo und Ruanda*, pp. 8f.

<sup>12</sup> See Peter Molt: Eine gewaltsame “Lösung” der Flüchtlingsfrage, in: *FAZ* (02.11.1996), p. 8.

<sup>13</sup> See Kisangani N. F. Emizet: *The Massacre of Refugees in Congo. A Case of UN Peacekeeping Failure and International Law*, in: *Journal of Modern African Studies*, Vol. 28 (2000) 2, p. 178.

<sup>14</sup> See Oomen: *Donor-Driven Justice*, p. 900.

<sup>15</sup> See Stefan Trines: *Unterlassene Hilfeleistung bei Völkermord? Die UN und der Ruanda-Konflikt*, in: Harding, Leonard (ed.): *Ruanda – der Weg zum Völkermord. Vorgeschichte, Verlauf, Deutung*, Hamburg 1998, p. 165.

the massacres, situated in Arusha, Tanzania.<sup>16</sup> In the years after the RPF victory ended the genocide, remnants of the extremist former regime continued to infiltrate the north and west of Rwanda to destabilize the new RPF-led government, killing genocide survivors and other civilians.<sup>17</sup> The RPF on the other hand launched the first Congo war by invading its neighbour several times to mete out the Hutu extremists once and for all. As this did not prove successful and the insurrections continued, Rwanda and its allies started the second Congo war in 1998 to oust the new president of the Congo, Laurent Kabila. Kabila in turn started to support the Rwandan extremists in their struggle to return to Rwanda by force.<sup>18</sup>

In Rwandan domestic policy the RPF – consisting mainly of Tutsi – as the leading force of the government began to tighten control of the society. Civil and political rights as well as the press were restricted in reaction to the outside threats. The government troops engaged frequently in human rights abuses and opposition politicians started to flee into exile.<sup>19</sup> Paul Kagame, the successful rebel leader of the RPF, became president in 2003.<sup>20</sup>

“Freedom House” ranked Rwanda in 2007 as a “not free” state, with further decline in political liberties since the previous year.<sup>21</sup> The Bertelsmann Transformation Index also acknowledges the ongoing drift towards an authoritarian dictatorship: Rwanda scores only on 103<sup>rd</sup> rank of 125 states on the democracy spectre.<sup>22</sup> The Human Development Index ranks Rwanda as 161<sup>st</sup> of 177

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<sup>16</sup> See UN Security Council: Security Council Resolution 955 8th November 1994, in: <http://daccessdds.un.org/doc/UNDOC/GEN/N95/140/97/PDF/N9514097.pdf?OpenElement> (16.12.2007).

<sup>17</sup> See Andreas Wagner: Mauern des Schweigens brechen. Gegenseitiges Verständnis fördert den ruandischen Versöhnungsprozess, in: DED Brief, Vol. 44 (2007) 4, p. 28.

<sup>18</sup> See International Crisis Group: Rwanda at the End of the Transition. A Necessary Political Liberalisation, Nairobi/Brüssel 2002 (International Crisis Group Africa Report No 53), in: [http://www.crisisgroup.org/library/documents/report\\_archive/A400817\\_13112002.pdf](http://www.crisisgroup.org/library/documents/report_archive/A400817_13112002.pdf) (02.01.2008), p. 2. A good detailed analysis of the complicated regional scenario and the different key players can be found in the already cited text by Thomas Scheen.

<sup>19</sup> See Helmut Strizek: Zur Lage der Menschenrechte in Ruanda. Leben nach dem Völkermord, Aachen 2003, p. 35.

<sup>20</sup> See Rolf Hofmeier: Soziokulturelle Kurzanalyse Ruanda, Hamburg 2005, p. 15.

<sup>21</sup> See Freedom House: Freedom House Index. Rwanda 2007, Washington/New York 2007, in: <http://www.freedomhouse.org/template.cfm?page=22&year=2007&country=7259> (30.06.2008).

<sup>22</sup> See Bertelsmann Stiftung: Bertelsmann Transformation Index 2008. Rwanda Country Report, Gütersloh 2008, in: <http://www.bertelsmann-transformation->

countries. Almost all indicators show Rwanda to be in the last quarter of the statistic. It is assumed to fare even worse than the rest of Sub-Saharan Africa in the future. The Human Poverty Index ranks Rwanda on place 31 and almost half of the population is expected to not survive the age of 40.<sup>23</sup> Under these unpromising political and economic conditions the launch of the traditional Gacaca jurisdictions as a new measure to prosecute the lower-level perpetrators of the genocide by the government occurred in 2004.<sup>24</sup>

The political and historical context as well as the severe poverty influence the situation in Rwanda today profoundly and need to be kept in mind when analyzing the current events. It provides the background for Rwanda's quest for reconciliation and an assessment of the potential to reach this goal. In Rwanda, the largest government driven reconciliation process worldwide is taking place at present.<sup>25</sup> Dealing with the past and the consequences of violent conflict is an exceptionally difficult task in the land of the thousand hills, as never before a conflict claimed more victims in such a short time span, and never before so many ordinary citizens were involved in the killing.<sup>26</sup> Consequently the society is extremely divided and clearly split into opposing groups that are extremely suspicious of each other. The social fabric of Rwanda ceased to exist after the genocide.<sup>27</sup> Nevertheless victims and perpetrators are

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[index.de/fileadmin/pdf/Gutachten\\_BTI\\_2008/ESA/Rwanda.pdf](http://index.de/fileadmin/pdf/Gutachten_BTI_2008/ESA/Rwanda.pdf) (30.06.2008), p. 1.

<sup>23</sup> See UNDP: Human Development Index. Going Beyond Income. Rwanda, New York 2007, in:  
[http://hdrstats.undp.org/countries/country\\_fact\\_sheets/cty\\_fs\\_RWA.html](http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_RWA.html) (30.06.2008).

<sup>24</sup> See Rwanda. Traditional Courts inaugurated, in: IRIN News (24.06.2004), in:  
<http://www.irinnews.org/report.aspx?reportid=50380> (30.06.2008).

The Gacaca jurisdictions will be dealt with in detail in chapter 5 and are therefore only mentioned briefly here, despite their prominent status in the analysis of reconciliation in Rwanda.

<sup>25</sup> Karen Brounéus: Reconciliation. Theory and Practice for Development Cooperation, Stockholm 2003 (SIDA), p. 11.

<sup>26</sup> See Wolfgang Reinhardt: Signs of Hope after the Genocide. Healing and Reconciliation in Rwanda Today, in: Jörg Calliess (ed.): Zehn Jahre danach. Völkermord in Ruanda, Loccum 2005 (Dokumentation, despite their prominent status in the analysis of reconciliation in Rwanda).

<sup>26</sup> Karen Brounéus: Reconciliation. Theory and Practice for Development Cooperation, Stockholm 2003 (SIDA), p. 11.

<sup>26</sup> See Wolfgang Reinhardt: Signs of Hope after the Genocide. Healing and Reconciliation in Rwanda Today, in: Jörg Calliess (ed.): Zehn Jahre danach. Völkermord in Ruanda, Loccum 2005 (Dokumentation einer Tagung der evangelischen Akademie Loccum vom 5. bis 7. März 2004), pp. 187.

<sup>27</sup> See Cyprian F. Fisiy: Of Journeys and Border Crossings. Return of Refugees, Identity, and Reconstruction in Rwanda, in: African Studies Review, Vol. 41 (1998) 1, pp. 23.

forced to coexist in the same state and thus need to find a way to deal with the past.

## 1.2 Aims and objectives

Research about Rwanda tends to concentrate on the genocide, its genesis and the conflict scenario in the great lakes in general while neglecting the post-war period and the quest for reconciliation.<sup>28</sup> This paper aims at filling this gap and examining the reconciliation process in Rwanda. The underlying assumption of the research question is that reconciliation is crucial for future peace and a successful dealing with the past. Personal experiences in Rwanda in 2007 have led to the author's opinion that reconciliation should be the focus of post-war politics in the country, as the failure of the process would have a grave negative effect on the ability to sustain a peaceful society.

Reconciliation is a vague concept and its success is difficult to evaluate.<sup>29</sup> However, a successful judicial process that establishes responsibility for past crimes and brings the offenders to justice is crucial to deal with the past and initiate a complex reconciliation process. This reconciliation process in turn is a safeguard against repeated violence and instability.<sup>30</sup> Therefore judicial approaches to deal with the genocide and their contribution to reconciliation are deemed as an appropriate focus point of this thesis. They are not only an important part of the reconciliation process but also easier to evaluate than other measures aiming at reconciliation.

The main objective is therefore: In what way do different judicial strategies on the international, national and local level – namely the International Criminal Tribunal for Rwanda (ICTR), the national courts and the Gacaca jurisdictions – contribute to reconciliation within Rwanda? Can dealing with the past through courts enhance reconciliation or will it rather achieve the opposite? A special emphasis will be placed on the contribution of the Gacaca jurisdictions to reconciliation in Rwanda. This form of local justice is the newest and seemingly most promising approach to date and will therefore be examined in greater detail than the national and international approaches to validate this assumption. This thesis aims at clarifying the question whether local Gacaca

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<sup>28</sup> See Eugenia Zorbas: Reconciliation in Post-genocide Rwanda, in: *African Journal of Legal Studies*, Vol. 1 (2004) 1, p. 47.

<sup>29</sup> See Donna Pankhurst: Issues of Justice and Reconciliation in Complex Political Emergencies. Conceptualising Reconciliation, Justice and Peace, in: *Third World Quarterly*, Vol. 20 (1999) 1, p. 239.

<sup>30</sup> See Sandrine Schilling: Gegen das Vergessen. Justiz, Wahrheitsfindung und Versöhnung nach dem Genozid in Ruanda durch Mechanismen traditioneller Justiz. *Gacaca Gerichte*, Frankfurt am Main 2005, p. 115.