

## CHAPTER 7 – ALTERNATIVE JUSTICE MECHANISMS

International courts and tribunals are not the only way of dealing with serious human rights abuses during conflicts. Some countries have chosen to deal with the past through truth and reconciliation commissions, which put a premium on discovering what happened rather than punishing perpetrators. In some cases, countries have set up truth and reconciliation commissions in addition to war crimes courts. In other countries, there have been more traditional methods of seeking justice. This chapter explains some of these alternatives.

### Customary Law Courts

In this section, the term “customary law” is used to mean local hearings, investigations or courts run on traditional lines and with different rules from full courts of law.

The most interesting example of how customary law is being used to try human rights violations is to be found in Rwanda. There, in 2005, local village courts known as Gacaca began to meet once a week to discuss who did what during the 1994 genocide.

Thousands of people had been in jail since 1994, waiting for their cases to be heard in the regular courts. But because of a shortage of judges, lawyers and funds, it was estimated that the process could take a hundred years.

It was to tackle this crisis that the Rwandan authorities set up the Gacaca courts. The name Gacaca comes from the traditional Kinyarwanda word for community-based justice and literally means “on the grass”. The hearings are held in the open air. Respected members of the local community are elected to act as judges and given basic training in legal matters. It is the duty of every inhabitant of a village to attend the Gacaca.

The job of these traditional courts is to make decisions about people accused of lesser crimes. Anyone accused of murder or rape will have their case heard in a higher court. But the decision about whether to transfer a case is taken at the Gacaca.

The main criticism of these kinds of courts is that they may not be fair. Critics have suggested that people attending them might be swayed by majority views or cowed into silence; or that they might use the system to settle old grievances. In 2005, groups

of Hutus fled across the border into Burundi, claiming that Gacaca was designed to destroy them.

Gacaca are difficult for a journalist to cover, not only because of the controversy surrounding them, but because the sessions take place in remote villages.

### Truth and Reconciliation Commissions

Truth commissions are not courts. Instead, their primary function is to establish what happened. Often, they have been empowered by their statutes to either offer an amnesty or a pardon to someone who admits to having committed human rights abuses or war crimes. Or they may be able to offer a reduced sentence – akin to plea-bargaining in a regular court, where a prosecutor may ask for a reduced sentence for someone who has agreed to co-operate.

Obviously, this is controversial – not least from the point of view of victims or relatives of victims. Yet sometimes countries that have been through extremely painful periods have decided this is the best way forward in the interests of truth, reconciliation and peace.

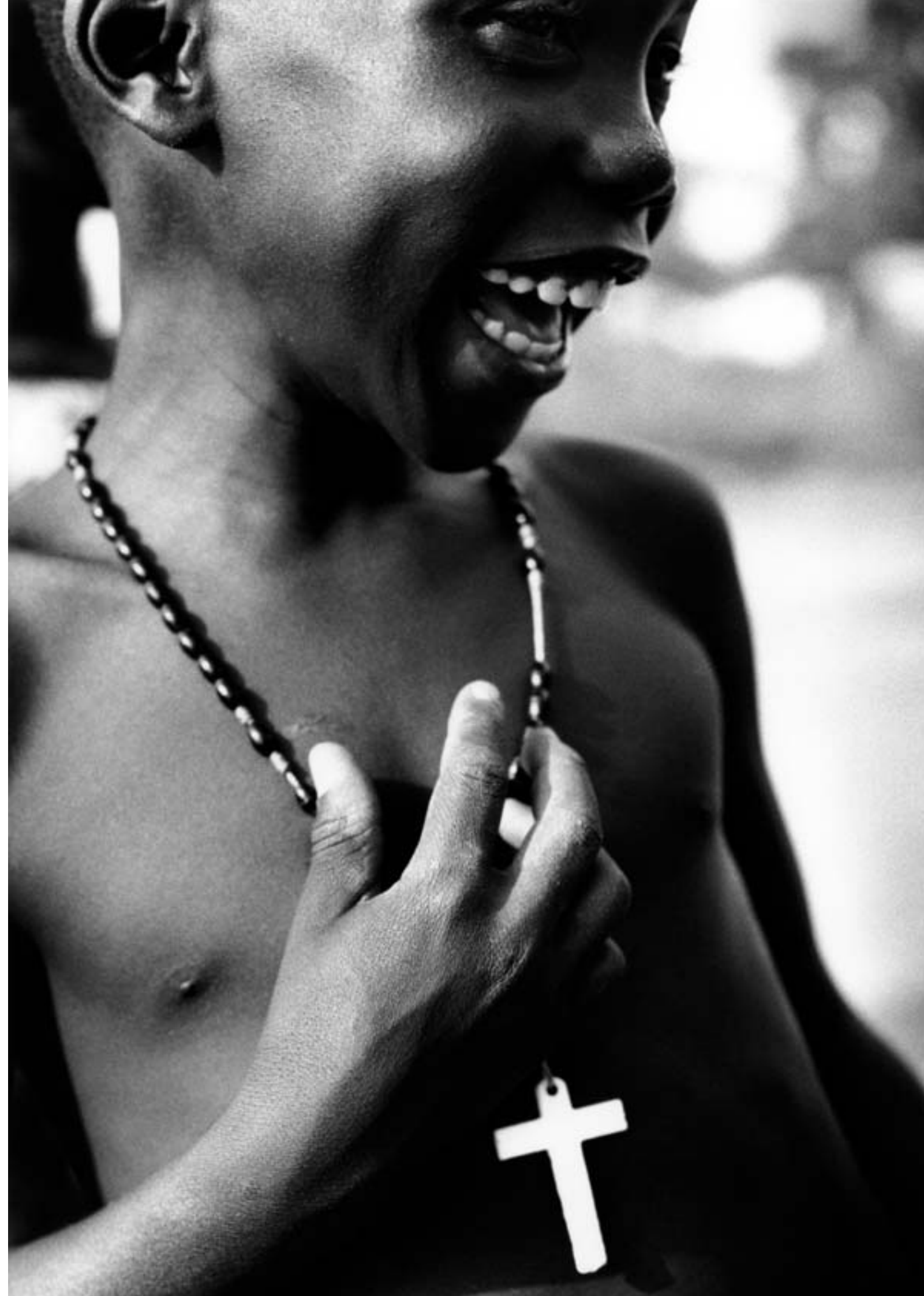
You may have to cover such institutions, in which case you will have to explain to the public why such an approach was chosen, what it is expected to achieve and whether the process is working. What matters above all in these cases is the view of the victims or their relatives. The work of the truth commission is directly concerned with victims and if you do not talk to them, you will miss the whole point of the story.

### South Africa

The best-known of these organisations was in South Africa – the Truth and Reconciliation Commission, known as the TRC. It was set up in 1995, to deal with the effects of apartheid.

The TRC investigated human rights abuses, gave financial support to victims and gave amnesties to people. It was an alternative to criminal prosecutions.

*Children in Northern Uganda are given rosaries by their parents in the hope this will protect them from the Lord's Resistance Army.*  
Credit: Marcus Bleasdale



To get an amnesty, a person had to prove that what they had done was “with a political aim” and to show that they were speaking the whole truth. If their testimony was unconvincing, they were not given amnesty. Out of more than 7,000 who asked for amnesty, only 849 were granted it – which shows how rigorous the process was.

Even so, the issue of amnesties provoked real opposition. But the main bone of contention was the size of reparations to victims. The amounts were thought to be far too small. As a journalist, it’s worth considering what real powers a truth commission has and whether those powers are being used in ways that earn the respect of the wider community.

The South African experience has encouraged other countries to set up commissions, mainly because it set an example for exposing the truth about the past and placing the victims centre stage. That does not mean it achieved all it had

hoped, in terms of “reconciliation”. It is still a subject of considerable controversy in South Africa.

#### Sierra Leone

In Sierra Leone, a Truth and Reconciliation Commission was set up separately from an international criminal tribunal known as the Special Court for Sierra Leone. It was intended to be part of the healing process following the devastating civil war, to create an impartial record of what had happened and try to explain why it had happened.

Operating at the same time as the Special Court, Sierra Leone’s TRC brought into focus the different roles of courts and truth commissions and the potential pitfalls that could occur if they exist side by side. For instance, some people stayed away from Truth Commission meetings because they feared that any information they gave would find its way to the Special Court.

*This is an excerpt from an article by a Rwandan journalist working for the Hironnelle news agency based in Arusha, Tanzania.*

#### Gacaca Soul Tested in Rwandan Village

Mugusa, July 8th, 2005 (FH) – Boniface Seruntaga, 59, would be considered a hero by some Rwandans but most in his village probably see him as a traitor. He is leading a campaign against silence on crimes committed in his neighbourhood during the 1994 genocide.

“People of God, speak out. Tell the truth. You can’t hide for ever,” the diminutive former prisoner calls out to over 100 of his community members seated on patches of shade in a thin forest on the edge of his village. . . . The village is meeting here for this week’s session of Rwanda’s semi-traditional genocide courts known as Gacaca. Elected members of the community preside over the courts and everyone else is encouraged to testify, prosecute, defend or cross-examine the accused...

Rwanda is counting on its people invoking a long-held spirit of honesty by community members standing before their neighbours. This was the backbone of the original traditional Gacaca courts.

“I wonder how everyone can be so quiet,” Silver, a genocide survivor in his late forties says after a fruitless inquiry into the killing of his brother during the genocide. “It is very surprising

and sad that none of you knows anything or saw anything about a murder committed among you....You know what happened,” Silver pleads, as a tear drop rolls down his cheek. Everyone else remains silent.

Suddenly, Seruntaga raises on his feet. “We can’t go on like this,” he shouts. “I hoped the concerned men would stand up and tell us the truth. They are here among us. Silver is right.”

Seruntaga, who has himself confessed to murdering two neighbours during the genocide, calls out the names of people he claims to have seen at Silver’s house the day his brother was killed.

As soon as he completes his list, about a dozen men, visibly angry, stand up and either walk towards the front of the gathering or start denying Seruntaga’s allegations from where they are standing.

“It is not yet time for trials,” the presiding judge reminds the court. “Each one of you will have time to talk about this when the trials begin. We are now only investigating.”

Not all places in Rwanda are like Mugusa. Some communities have seen more guilty pleas and impressive numbers of people coming forward with testimonies. But Mugusa is not an isolated example either. Government, Gacaca officials and observers have acknowledged that the courts are facing severe difficulties getting evidence in some areas. These are the places where the soul of Gacaca is being tested.

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The commission itself has suggested that courts “are limited in their ability to find the broader truth”:

Truth and Reconciliation Commissions represent one of the most viable means of securing a sustainable peace. Such commissions can strengthen the peace through the establishment of an impartial historical record of the conflict and the creation of a public understanding of the past that draws upon broad based participation. . . . It is only when the full truth (or as close to the full truth as possible) is placed squarely before the public that society can examine itself honestly and robustly. It is this cathartic exercise on the part of the nation that permits it to take genuine measures to prevent the repetition of the horrors of the past.

These sentiments apply to tribunals as well as truth and reconciliation commissions, and underscore the importance of the role of a journalist in contributing to the process by reporting reliably and responsibly on war crimes and justice issues.

#### Burundi

A new example for Africa was created in June 2005, when the UN adopted a resolution to create a truth commission and a special court to investigate and prosecute war crimes and human rights violations during Burundi’s civil war. The commission, with three international and two Burundian commissioners, will investigate killings which took place from independence in 1962 until the signing of the Arusha Peace Accord in 2000. Their findings would help the special court to prosecute those responsible for the cycle of massacres of Hutus and Tutsis.

A list of truth commissions is available through the library of the United States Institute of Peace. [www.usip.org/library/truth.html](http://www.usip.org/library/truth.html)

#### Traditional Rituals

There are other ways of dealing with the aftermath of conflict that focus on reconciliation rather than prosecution. One was highlighted in 2005, at a time when the ICC had issued warrants of arrest against several leaders of the Lord’s Resistance Army (LRA), a rebel group operating in northern Uganda. They were accused of crimes against humanity.

Meanwhile, there was a peace process going on in northern Uganda, and local leaders from the Acholi ethnic group told the ICC that some traditional forms of justice could be more successful than the court system. They said that previous members of the LRA had been held accountable this way for what they had done, had made promises about the future and had again become part of the community.

A key factor in this case is that some 20,000 of those who took part in the LRA’s atrocities were children kidnapped from villages and forced to act as porters, sex-workers or soldiers. For some people, punishing them made little sense.

A recent IWPR report from northern Uganda highlighted the different views that local people have about the merits of prosecution versus a truth and reconciliation without penalties.

One woman in a refugee camp said LRA leader Joseph Kony should definitely be brought before the ICC. “Why are they taking so much time to catch Kony?” she asked. “He should be arrested and punished for the suffering he has put us through. He should pay, instead of coming back and getting a big job when our whole lives have been destroyed.”

But a young man in the camp worried that the ICC’s actions could complicate and even endanger the delicate mediation attempts under way. Under the amnesty scheme that is part of the mediation, “at least the rebels allowed some children to come back home”, he said. “Now they are going to run further away, fearing imprisonment, and they will take more of our brothers and sisters.”

#### EXERCISES

In this chapter, we have looked at systems other than courts and tribunals for dealing with past conflicts. Consider the following issues:

- 1) How important is it to have a historical record?
- 2) Is it always essential to punish war criminals?
- 3) What ways might local leaders use to deal with justice issues in your community? Are they enough to cope with people who have committed rape or murder? Would victims or their families accept the perpetrators of such acts back in their midst?