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## Cautiously Optimistic: Economic Liberalization and Reconciliation in Rwanda's Coffee Sector

### Keywords

Food and Drug Law, International Trade, Cooperatives, Genocide

**CAUTIOUSLY OPTIMISTIC:  
ECONOMIC LIBERALIZATION AND RECONCILIATION  
IN RWANDA'S COFFEE SECTOR**

KAROL C. BOUDREAU AND PUJA AHLUWALIA \*

I. INTRODUCTION

In some countries, particular industries play especially important roles. In the United States, for example, the automotive industry has provided hundreds of thousands of jobs and helped shape the image of America as the land of the automobile.<sup>1</sup> More recently, the computer industry has helped create a new image of the U.S. as a high-tech, well-connected service economy.<sup>2</sup> These industries have contributed to the development of an “American identity.”

Coffee has played a unique role in Rwanda's development. For decades, coffee has been Rwanda's top export and chief source of foreign exchange.<sup>3</sup> Thousands of Rwandans have been involved in coffee's cultivation and sale. In the twenty-first century, the industry continues to provide a livelihood for some 500,000 Rwandan families,<sup>4</sup> many of whom work in cooperatives and grow coffee on small plots on the country's hillsides.<sup>5</sup>

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1. Kathy El-Messidi, MSN ENCARTA, *Automobile Industry*, <http://encarta.msn.com> (last visited Feb. 28, 2009) (type “automobile industry” into the search bar).

2. Andrew Pollack, *Japanese Portables Threaten American Lead in Computers*, N.Y. TIMES, Nov. 24, 1990, available at <http://query.nytimes.com/gst/fullpage.html?res=9C0CE7DB1530F937A15752C1A966958260&sec=&spon=>.

3. *Coffee: Rwanda*, 43(8) AFRICA RESEARCH BULLETIN: ECONOMIC, FINANCIAL AND TECHNICAL SERIES 17090B (2006); see also Government of Rwanda, *Agricultural Production: Tea and Coffee*, [http://www.minagri.gov.rw/article.php?id\\_article=22](http://www.minagri.gov.rw/article.php?id_article=22) (June 10, 2006).

4. Project Rwanda, *The Coffee Bike*, <http://projectrwanda.org/The-Coffee-Bike.php> (last visited Nov. 13, 2008); Green Living Project, *SPREAD, Rwanda: Coffee Awakens a National Economy*, (Apr. 19, 2008), <http://www.greenlivingproject.com/spread-rwanda-coffee-wakes-up-a-national-economy/>.

5. RESEARCH INTO USE, RWANDA MIL SCOPING VISIT REPORT 9 (2007), available at [http://www.researchintouse.com/downloads/Rwanda\\_-\\_MIL\\_Scoping\\_Study\\_-\\_Apr\\_07.pdf](http://www.researchintouse.com/downloads/Rwanda_-_MIL_Scoping_Study_-_Apr_07.pdf).

Over the past decade, the coffee sector has been transformed from a highly controlled, politicized industry to one that is liberalized and quickly developing a prized niche product: specialty coffee. Rwandans have successfully built a reputation for quality that buyers in the U.S., Europe, and Asia recognize. These changes are translating into increased income and greater economic empowerment for some Rwandan farmers.<sup>6</sup>

In addition to improving incomes, the liberalized coffee sector increases opportunities for commercial cooperation among Hutus and Tutsis. Smallholders are now free to sell their coffee on world markets at prices they negotiate, creating incentives to form cooperatives in order to benefit from economies of scale.<sup>7</sup> Because smallholders retain profits from coffee sales, they also have incentives to work together to improve the quality of their product. And because coffee in Rwanda is grown by smallholders, who make up the vast majority of the population (90%)<sup>8</sup>, liberalized coffee policies have the potential to benefit many Rwandans – Hutus as well as Tutsis.

Rwanda's coffee liberalization, therefore, is likely different from liberalizations that benefit elites (such as Russian privatizations or Kenya land titling reforms).<sup>9</sup> It is, to date, an inclusive reform with positive distributional effects. Because coffee-sector liberalization has raised income, rather than costs, for the rural poor, this liberalization is less likely to promote conflict than liberalizations where costs are spread widely (such as the removal of subsidies) and benefits are narrowly concentrated (such as many privatizations).<sup>10</sup> We note that this is an issue that requires further research.<sup>11</sup>

Journalistic evidence suggests that commercial cooperation exists among Hutu and Tutsi members of coffee cooperatives and that this cooperation may contribute to informal reconciliation.<sup>12</sup> In June 2008, we sponsored and participated in exploratory survey work in Rwanda to investigate this issue. Over ten days, 235 smallholder farmers and employees at coffee washing stations

6. USAID, *FrontLines, Mission of the Month: Rwanda* (Apr. 2006), [http://www.usaid.gov/press/frontlines/fl\\_apr06/dialogue.htm](http://www.usaid.gov/press/frontlines/fl_apr06/dialogue.htm).

7. RUKAZAMBUGA NTIRUSHWA T. DANIEL, *DRAFT REPORT ON AGRICULTURAL INNOVATION AND TECHNOLOGY IN AFRICA: RWANDA EXPERIENCE 14* (2008), available at <http://info.worldbank.org/etools/docs/library/243550/RwandaInnovationStudyreport.pdf>.

8. *Id.* at 6.

9. See E. Sam Overman, *Privatization in China, Mexico, & Russia: A Comparative Study*, 19 (1), *PUB. PRODUCTIVITY & MGMT REV.* 46, 55 (1995) ("Only two groups appear to have the domestic capital that could finance privatization. One group is the established political elite and the party bureaucracy.").

10. Jonathan Morduch et al., *Distributional Consequences of the Russian Price Liberalization*, 42 (3), *ECON. DEV. & CULTURAL CHANGE* 469, 469 (1994).

11. See PAUL COLLIER ET AL., *BREAKING THE CONFLICT TRAP: CIVIL WAR & DEVELOPMENT POLICY 53* (Oxford University Press, 2003) (arguing that "the key root cause of conflict is the failure of economic development. Countries with low, stagnant, and unequally distributed per capita incomes that have remained dependent on primary commodities for their exports face dangerously high risks of prolonged conflict.") Rwanda pre-1994 fits this description and, to a large extent, still does.

12. See *infra* Part VII.

completed surveys regarding their attitudes toward reconciliation, among other issues.<sup>13</sup> Results from these surveys are encouraging, if not dispositive: membership in a coffee cooperative, as well as longer-term association with a coffee washing station, and economic and general life satisfaction are significantly correlated to positive attitudes towards reconciliation.<sup>14</sup> Farmers we surveyed reported an increased willingness to engage in socially inclusive behavior today in comparison to the past. Members of cooperatives were less likely to report high distrust than workers not associated with a cooperative. With respect to material prosperity, farmers are earning more for their coffee beans today than they were in the past and are reporting greater economic satisfaction compared to five years ago.<sup>15</sup>

Changes in levels of economic satisfaction stem in part from income earned through the sale of specialty coffee. Farmers who earn more from the sale of coffee, and who work together with others in cooperatives (or at private washing stations), express an improvement in the way they view others.<sup>16</sup> We caution though, that to the extent that reconciliation is taking place, it is unclear if the reconciliation is short-term and necessitous or longer-term and sustainable. This is another question that requires further research.

We believe the Rwandan experience suggests an interesting question: do government policies that expand commercial interaction among former enemies, and that spread the benefits of trade to many, prompt commercial cooperation and perhaps even reconciliation? This suggestion runs counter to some literature on liberalization and conflict, which suggests that economic liberalization often contributes to conflict.<sup>17</sup>

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13. Interviews were conducted in the local language, Kinyarwanda, at 10 coffee washing stations in the southern part of the country. Interviews were conducted by a team of students from the National University of Rwanda in Butare. Five of the ten survey sites were coffee cooperatives; the remaining five were privately owned coffee washing stations. In the case of interviewees at cooperatives they included both employees and farmers (in some cases a farmer might also be an employee). Similarly, at the privately owned coffee washing stations (i.e., non-cooperatives) interviewees were a mix of employees of the stations and smallholder farmers selling their beans to the station. The methodology and survey procedure is described in Jutta Tobias, *Intergroup Contact Caused by Institutional Change: An Exploration of the Link Between Deregulation and in Rwanda's Coffee Sector and Attitudes Towards Reconciliation* (2008) (unpublished PhD dissertation, Washington State University) (on file with author), 25-31. [hereinafter *Intergroup Contact*]. Surveys on-file with author [hereinafter *Coffee Survey*].

14. See *Coffee Survey*, *supra* note 13.

15. *Id.*

16. *Id.*

17. See, e.g., CHRISTOPHER CRAMER, *VIOLENCE IN DEVELOPING COUNTRIES: WAR, MEMORY, PROGRESS* (Indiana University Press, 2006); ROLAND PARIS, *AT WAR'S END: BUILDING PEACE AFTER CIVIL CONFLICT* 45, 71, 161 (Cambridge University Press, 2004); Andy Storey, *Economics and Ethnic Conflict: Structural Adjustment in Rwanda*, 17 (1) *DEV. POL'Y REV.* 43, 43-44 (1999); David Keen, *Liberalization & Conflict*, 26 *INT'L POL. SCI. REV.* 73 (2005); Han Dorussen, *Heterogeneous Trade Interests & Conflict: What You Trade Matters*, 50 (1) *J. OF CONFLICT RESOL.* 87, 89-92 (2006); Dennis Galvin, *Market Liberalization as a Catalyst for Ethnic Conflict in Senegal & Central Java, Indonesia* 13-18 (paper presented at the 97<sup>th</sup> meeting of the American Political Science Association, 2001).

The Rwandan reforms may be distinctive in that they have the potential to benefit all farmers, Hutus as well as Tutsis. And, as a vast majority of Rwandans are still engaged in agricultural production, this liberalization creates opportunities for a broad swathe of people to increase their income.<sup>18</sup> Such policies provide for commercial cooperation and may create a climate in which informal reconciliation takes place. If so, then in post-conflict environments, similar broad-based liberalization policies may present an important complement to more formal reconciliation efforts such as international tribunals and local court proceedings.<sup>19</sup>

## II. COFFEE AND POWER IN RWANDA

The history of the coffee industry in Rwanda, until recently, is that of unfortunate politicization.<sup>20</sup> Successive governments used control of the coffee trade for their political and financial gain. Through compulsory production, export taxes, and a government-controlled export agency, successive regimes captured the profits of coffee farmers and used these funds to maintain power.<sup>21</sup> So long as international coffee prices remained high, the system was stable; however, once prices dropped in the late 1980s and early 1990s, a key government source of revenue shrank.<sup>22</sup> By the early 1990s, the government lost its ability to pay farmers a subsidized price for coffee, putting at risk its base of rural support.<sup>23</sup>

Missionaries may have first introduced coffee into Rwanda in the early part of the twentieth century, but official government involvement began in the 1930s with the Belgian colonial government's "coffee campaigns."<sup>24</sup> Under these policies, government authorities built nurseries and supplied seeds, but they also required Rwandan farmers to plant coffee trees.<sup>25</sup> The colonial government introduced a mandated minimum price for coffee, created mandatory quality guidelines, and issued special licenses that allowed only some firms to purchase

18. See The World Bank, Rwanda – Country Brief, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/RWANDAEXTN/0,,menuPK:368714~pagePK:141132~piPK:141107~theSitePK:368651,00.html> (last visited Sept. 4, 2008) (noting that “[a]griculture currently accounts for just fewer than 40 percent of GDP and provides jobs to 90 percent of the population. Most Rwandans rely on subsistence agriculture with limited participation in the market economy”); see also AFRICAN DEVELOPMENT BANK, AFRICAN ECONOMIC OUTLOOK 2004/2005 382 (2004).

19. See *infra* Part III.

20. Philip Verwimp, *The Political Economy of Coffee, Dictatorship, & Genocide*, 19(2) EUR. J. POL. ECON. 161, 161 (2003); see generally Lode Berlage et al., *Dictatorship in a Single Export Crop Economy*, (Oct. 2004), available at <http://www.hicn.org/papers/dicta.pdf>. See Learthen Dorsey, *The Rwandan Colonial Economy: 1916-41*, (1983) (unpublished PhD dissertation, Michigan State University) (on file with author).

21. For a discussion of a variety of African experiences with export agencies, see ROBERT H. BATES, *MARKETS & STATES IN TROPICAL AFRICA: THE POLITICAL BASIS OF AGRICULTURAL POLICIES*, 11-29 (University of California Press, 1981); see also TAKAMASA AKIYAMA ET AL., *COMMODITY MARKET REFORMS: LESSONS OF TWO DECADES 84-85* (The World Bank, 2001).

22. Verwimp, *supra* note 20, at 171-75.

23. *Id.* at 175; see also Andy Storey, *Structural Adjustment, State Power & Genocide: The World Bank and Rwanda*, 28 REV. AFR. POL. ECON. 365, 371, 375 (2001) [hereinafter Storey, *Structural Adjustment*].

24. Dorsey, *supra* note 19, at 169.

25. *Id.* at 166-68.

coffee.<sup>26</sup> They imposed export taxes on coffee sales and individual income taxes on the local producers, most of whom were Hutu farmers. Tutsi chiefs collected these taxes, which supported the colonial government and their Tutsi allies.<sup>27</sup>

The post-independence Kayibanda government (1962-1973) maintained a tight grip on the coffee sector.<sup>28</sup> Under this regime, a government agency (OCIR), together with a monopsony export company (Rwandex), purchased and then sold on world markets all coffee grown in Rwanda.<sup>29</sup> The farm gate price paid to coffee farmers was set by the government (by OCIR-Café after it was created in 1978).<sup>30</sup> Middlemen bought beans from farmers and sold them to a monopsony exporter, Rwandex. The markets where smallholders brought their beans for purchase acted as “the economic arm of the Gitarama (i.e. Kayibanda) regime.”<sup>31</sup>

Heavy government involvement in the coffee sector continued under the Habyarimana regime (1973-1994).<sup>32</sup> During the 1970s and 1980s, as world coffee prices increased, coffee exports provided between 60 and 80 percent of Rwanda’s export revenue.<sup>33</sup> Habyarimana ensured control of these important rents by appointing relatives and supporters to positions of authority at the powerful and lucrative state-run coffee agency, OCIR-Café.<sup>34</sup>

26. *Id.* at 181.

27. *Id.* at 55-56.

28. David Norman Smith, *Globalization and Genocide: Inequality and Mass Death in Rwanda*, in *ON THE EDGE OF SCARCITY* 149, 158 (Michael N. Dobkoski et al. eds., 2002).

29. Interview by World Investment News with Mr. Anastase Nzirasano, Director, Office des Cafés du Rwanda, available at <http://www.winne.com/rwanda/to13interview.html> (last visited Sept. 4, 2008) (noting that before 1978 the Offices des Cultures Industrielles du Rwanda (OCIR) was responsible for both the coffee and tea sectors. In 1978, OCIR-Café was created to ‘promote the sector on local and international markets.’ Before the liberalization of the sector in the 1990s, OCIR-Café managed approximately 30 percent of the country’s export volume. The remainder of the exports flowed through RWANDEX, S.A., a company partially government-owned and created in 1964.).

30. Paul DeLucco, *Raising the Bar: Producing Quality Coffee in Rwanda*, in *ADCI/VOCA WORLD REPORT* 13, 14 (Spring 2006), available at [http://www.acdivoca.org/852571DC00681414/Lookup/WRSpring06-Page13-14-RaisingtheBar/\\$file/WRSpring06-Page13-14-RaisingtheBar.pdf](http://www.acdivoca.org/852571DC00681414/Lookup/WRSpring06-Page13-14-RaisingtheBar/$file/WRSpring06-Page13-14-RaisingtheBar.pdf).

31. Verwimp *supra* note 20, at 163 (stating that monopsony export agencies were common in Africa before the 1990s. Typically, they bought low and sold high: purchasing commodities at a mandatory price which was lower than the world market price, but selling at higher, market rates. The agency kept the difference and, in this way, imposed a tax on producers, most of whom were poor.); see also P.T. BAUER, *DISSSENT ON DEVELOPMENT: STUDIES & DEBATES IN DEVELOPMENT ECONOMICS* 387-388 (Harvard University Press, 1972).

32. See Berlage et al., *supra* note 20, at 22 (noting the policy was contained in a 1978 coffee cultivation law that made the neglect of coffee trees “punishable” and that created commune-level coffee monitors who both advised and controlled smallholder farmers. While there was, the authors note, little pressure to enforce these laws in the early 1980s – because coffee prices were high and farmers were content to grow coffee- pressures to enforce would have changed in the mid-1980s as worldwide coffee prices began to tumble.).

33. Berlage et al., *supra* note 20, at 14. See also David Tardiff-Douglin et al., *Find the Balance Between Agricultural & Trade Policy, Rwanda Coffee Policy in Flux* 1 (MSU International Development Working Papers, No. 59, 1996).

34. Berlage et al., *supra* note 20, at 14.

A rise in coffee prices allowed the government to modestly increase the price it paid to farmers, although the government continued to retain much of the difference between the gate price paid to smallholders and the world market price. Verwimp states: "The very high world market coffee prices allowed the [Habyarimana] regime's elite to increase both its personal consumption and its power over the population."<sup>35</sup> The government used its additional revenue to buy loyalty in rural areas (through higher prices paid for coffee and through subsidized agricultural inputs) and to spend more on monitoring the population.<sup>36</sup>

A crisis began when worldwide coffee prices tumbled in the late 1980s and the government rapidly lost revenue.<sup>37</sup> For a few years it attempted to keep payments for coffee stable, but this was an unsustainable policy—especially as, from 1990 onwards, the government needed resources to fight the invading Rwandan Patriotic Front (RPF) forces. By the early 1990s, the government lowered the price it paid to smallholders; price supports to coffee farmers ended in 1992.<sup>38</sup> Storey writes: "[f]or the great mass of ordinary people, the benefits accruing from the fact that they were ruled by Hutu rather than Tutsi were wearing thin, with the result that a rupture between rulers and ruled was deepening."<sup>39</sup>

With their income falling, farmers wanted to shift into production of another cash crop, bananas, but this was forbidden by law (the government may have refused to modify the law because of coffee's role as the major source of export revenue and a lack of readily available, viable substitutes).<sup>40</sup> With an extensive system of local monitors in place, it was difficult for farmers to ignore the law.<sup>41</sup> However, in the face of falling income and hunger, farmers uprooted as many as 300,000 coffee trees<sup>42</sup> and planted food and other more attractive cash crops.<sup>43</sup>

The fall in coffee prices, coupled with growing military expenditures in response to the 1990 RPF invasion, meant that Habyarimana faced a political and

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35. Verwimp, *supra* note 20, at 172.

36. *Id.* at 171-73. Under the Habyarimana regime, the powerful OCIR-Café agency was run by relatives of the dictator's wife, members of the *clan de Madame* also known as the "akazu." *Id.*

37. *Id.* at 173-75. See also Berlage et. al., *supra* note 20, at 22-24.

38. See Storey, *supra* note 17, at 47.

39. Storey, Structural Adjustment, *supra* note 23, at 369.

40. Verwimp, *supra* note 20, at 173-74.

41. *Id.* at 162. Peter Uvin writes of the reach of the post-colonial Rwandan state: "the Rwandese state has been able to expand its presence to the most remote corners of the territory and of social life. Representatives of the state and of the single party were present at even the lowest level of social organization: each "colline" (hill—the basic geographical reference in Rwanda), each extended family was in permanence surrounded by centrally-appointed administrators, teachers, agricultural monitors, internal security agents or police agents, as well as by local party cadres of all kinds." Peter Uvin, *Prejudice, Crisis and Genocide in Rwanda*, 40 (2) AFR. STUD. REV. 91, 97 (1997). In a similar vein, Hintjens writes: "[p]ost-independence Rwanda inherited a legacy of close public scrutiny of all spheres of life, continuing the former colonial and monarchical state's ability to control each individual through a network of controls, extending from the apex of the regime to its base at household level." Helen M. Hintjens, *Explaining the 1994 Genocide in Rwanda*, 37(2) J. MOD. AFR. STUD., 241, at 245 (1999).

42. Storey, Structural Adjustment, *supra* note 23, at 369.

43. Verwimp, *supra* note 20, at 173-74.



fiscal crisis.<sup>44</sup> One option to deal with the fiscal crisis was to find other sources of revenue. To this end, the government confiscated property and raised taxes to supplement the budget and there was some reduction of consumption by elites.<sup>45</sup> At the same time, foreign aid became an increasingly important part of the budget.<sup>46</sup> Prunier argues that in the 1980s, Rwanda's elite relied on three sources of "enrichment:" coffee and tea exports, tin exports for a brief time, and foreign aid.<sup>47</sup> As the commodity revenues shrank, "there was an increase in competition for access to that very specialized resource (foreign aid), which could only be appropriated through direct control of the government at high levels."<sup>48</sup>

However, the reliance upon, and competition for, foreign aid created serious problems within the elite *akazu* group:<sup>49</sup> "the various gentlemen's agreements which had existed between the competing political clans since the end of the Kayibanda regime started to fracture as the resources shrank and internal power struggles intensified."<sup>50</sup> With its growing dependence on foreign aid, and in a bid to remain in power, the government agreed to an International Monetary Fund (IMF) structural adjustment program in 1990 that led to further hardships for farmers.<sup>51</sup>

Verwimp argues that in the early 1990s the regime was no longer able to raise the revenue it needed to buy rural support.<sup>52</sup> Faced with rural discontent, Habyarimana used repression and violence as alternatives to the purchase of rural

44. Patrick Cannon, *Elusive Quest? The Political Economy of Reconciliation in Post Genocide Rwanda*, Address at the Sacramento State Center for African Peace & Conflict Resolution 14<sup>th</sup> Annual Africa/Diaspora Conference (2005), <http://www.csus.edu/org/capcr/documents/archives/2005/ConferenceProceedings/Cannon-1.pdf>.

45. Verwimp, *supra* note 20, at 174-76.

46. Storey, *Structural Adjustment*, *supra* note 23, at 371-72.

47. GÉRARD PRUNIER, *THE RWANDA CRISIS: HISTORY OF A GENOCIDE* 84 (Columbia University Press 1995).

48. *Id.*

49. "Akazu" can be translated as "small house" and in the Habyarimana regime it referred to a group of senior-level military and civilian advisors who were connected to Agathe Habyarimana, the President's wife. See Hintjens, *supra* note 41, at 259.

50. See *id.*; PRUNIER, *supra* note 47.

51. PETER UVIN, *AIDING VIOLENCE: THE DEVELOPMENT ENTERPRISE IN RWANDA* 57-59 (Kumarian Press 1998). Uvin writes that in 1991 Rwanda entered into a \$90 million structural adjustment program with the World Bank. In 1992 and 1993 additional "loans were negotiated but only partially implemented." Key policy goals of the program included improving fiscal and monetary discipline, expanding the private sector and limiting government involvement in this sector, liberalizing trade, increasing export production and allowing for increased internal migration of workers. These loans also required a currency devaluation, which sparked inflation. Uvin notes most of these policy changes were not implemented so aid disbursements for structural readjustment were suspended. *Id.*

52. Verwimp, *supra* note 20, at 177-78.

loyalty.<sup>53</sup> Evidence shows rising numbers of arbitrary arrests, massacres of Tutsis, confiscations of property, and rapes during these years.<sup>54</sup>

To rebuild its popularity, the regime diverted attention from its own economic policies to the Tutsi/RPF threat, using this as an excuse for the increased level of repression within Rwandan society.<sup>55</sup> The government demonized the invaders, argued that allowing Tutsis into the country would mean Hutus would have less of the extremely scarce resource of land,<sup>56</sup> and used the media to foment ethnic hatred.<sup>57</sup> Mostly, the repression was directed at the Tutsi minority, though some spilled over to Hutus.<sup>58</sup> The ultimate results were disastrous. In the three months between April and June of 1994, approximately 800,000 people<sup>59</sup> were murdered and up to 250,000 raped<sup>60</sup> in a country with a population between seven and eight million,<sup>61</sup> roughly the size of Connecticut.<sup>62</sup> Three quarters of Rwanda's Tutsi population<sup>63</sup> and many moderate Hutus and Hutu opponents of the Habyarimana government died.<sup>64</sup> The Rwandan genocide was stopped not by international

53. Verwimp, *supra* note 20, at 175, 177. Storey points out that in 1992 Habyarimana did agree to the creation of a coalition government. With rival Hutus in office, the older guard may have felt their positions in danger, especially as the economic outlook was dire, so Storey argues they used a variety of strategies to stave off the possible loss of power: electoral manipulation, use of propaganda blaming the Tutsi for the economic crisis, violence against opponents, and finally, genocide. Storey, *Structural Adjustment*, *supra* note 23, at 369-70, 375.

54. Berlage et. al., *supra* note 20, at 23.

55. Verwimp, *supra* note 20, at 178.

56. For a discussion of land scarcity in pre-genocide Rwanda see Catherine André & Jean-Philippe Platteau, *Land Relations Under Unbearable Stress: Rwanda Caught in the Malthusian Trap*, 34 J. ECON. BEHAV. & ORG., 1 (1998).

57. Uvin, *supra* note 41, at 100.

58. See Storey, *supra* note 17, at 47.

59. The United Nations reports 800,000 deaths. See, e.g., Letter from Kofi A. Annan, Under-Sec'y-Gen. for Peacekeeping Operations, U.N. Sec. Council, to President of the U.N. Sec. Council (Dec. 15, 1999), <http://daccessdds.un.org/doc/UNDOC/GEN/N99/395/47/IMG/N9939547.pdf?OpenElement>; Alison Des Forges, who triangulates data from three sources, estimates that at least 500,000 were killed. ALISON DES FORGES, LEAVE NONE TO TELL THE STORY: GENOCIDE IN RWANDA 15-16 (Human Rights Watch 1999).

60. HUMAN RIGHTS WATCH, SHATTERED LIVES: SEXUAL VIOLENCE DURING THE RWANDAN GENOCIDE & ITS AFTERMATH (1996), available at [http://www.hrw.org/reports/1996/Rwanda.htm#P324\\_67660](http://www.hrw.org/reports/1996/Rwanda.htm#P324_67660).

61. Mark A. Drumbl, *Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda*, 75 N.Y.U. L. REV. 1221, 1243. For a discussion on regional patterns in violence and how it rapidly spread, see SCOTT STRAUS, THE ORDER OF GENOCIDE: RACE, POWER, AND WAR IN RWANDA 53-64 (Cornell University Press 2006).

62. Drumbl, *supra* note 61, at 1250.

63. Alan J. Kuperman, *Provoking Genocide: A Revised History of the Rwandan Patriotic Front*, 6(1) J. GENOCIDE RES. 61 (Mar. 2004).

64. See PRUNIER, *supra* note 47, at 265; see also Drumbl, *supra* note 61, at 1248 ("Many of the 10,000 to 30,000 Hutu who were massacred during the genocide were killed not because they opposed the genocide per se, but because they were political opponents of the genocidal regime who challenged the grip of that regime on power without necessarily contesting its anti-Tutsi fanaticism."); Mark A. Drumbl, *Rule of Law Amid Lawlessness: Counseling the Accused in Rwanda's Domestic Genocide Trials*, 29 COLUM. HUM. RTS. L. REV. 545, 579 (1998).

action, but by the RPF who killed between 25,000 and 60,000 Hutus during the genocide and in reprisal attacks.<sup>65</sup>

Verwimp sums up the Habyarimana regime's descent into genocide as the result of a failed strategy to maintain political power.<sup>66</sup> The government lost the loyalty of the majority rural population and needed to do something to win back that loyalty or face expulsion (or worse).<sup>67</sup> Rural support was shattered by the government's inability to maintain high coffee prices and by unpopular policies that forced farmers to grow coffee rather than food or other cash crops.<sup>68</sup> In addition, the economic structural adjustment program imposed real hardships on most Rwandans: inflation rose, taxes increased, price controls were removed, fees for health and education were introduced, and price supports for coffee were eliminated.<sup>69</sup> These policy changes imposed substantial costs on Rwandans at a time when the government was forced to defend itself (and hence, expend scarce resources) against the invading RPF.<sup>70</sup> To maintain power, the government tried to legitimize its reign by resorting to ethnic ideology.<sup>71</sup> Frightening farmers with the specter of Tutsi violence was a means to regain rural support.<sup>72</sup>

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65. Ariel Meyerstein, *Between Law & Culture: Rwanda's Gacaca & Postcolonial Legality*, 32 L. & SOC. INQUIRY 467, 472 (2007). RPF soldiers also killed thousands of Hutu civilians after 1994 in wars in the eastern Democratic Republic of Congo, the anti-insurgency campaign in northwest Rwanda in 1997 and 1998 and during the closing of the refugee camps in 1995. Lars Waldorf, *Massjustice for Massatrocities: Rethinking Local Justice as Transitional Justice*, 79 TEMP. L. REV. 1, n. 338 (2006). Compare DES FORGES, *supra* note 59, at 705 (describing widespread and systematic human rights abuses by the RPF before and during the genocide and noting how the RPF massacred groups of unarmed civilians in public meetings after combat was finished, in places where there had been little or no slaughter of Tutsi and where militia did not appear to threaten their advance.), with PHILIP GOUREVITCH, WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA 219 (Farrar, Straus & Giroux 1998) ("What most vividly impressed observers in the waning days of the genocide was the overall restraint of this rebel army, even as its soldiers were finding their ancestral villages, and their own families, annihilated.").

66. Verwimp, *supra* note 20, at 161.

67. *Id.* at 173-74.

68. *Id.*

69. Storey, *supra* note 17, at 47-48.

70. Uvin, *supra* note 41, at 108.

71. Many historians and ethnographers do not consider Hutus and Tutsis to be distinct ethnic groups. GOUREVITCH, *supra* note 65, at 47-48 (1998); UVIN, *supra* note 41, at 92-93. Both groups speak the same language (Kinyarwanda), belong to the same clans (ubwoko), practice the same religions, live side-by-side, intermarry and share art, music, and culture. Drumbi, *supra* note 61, at 1242-44; DES FORGES, *supra* note 59, at 4; PRUNIER, *supra* note 47, at 15. In pre-colonial Rwanda, the terms "Hutu" and "Tutsi" referred to farmers and cattle-herders, respectively. Animal husbandry brought greater status and power, and therefore Tutsis generally enjoyed higher social status and wealth than Hutus. However, the categories were fluid, and a Hutu could become a Tutsi by acquiring more cattle. Colonialism, however, changed the significance of the meaning of "Hutu" and "Tutsi." When Europeans explored Rwanda in the early nineteenth century, they identified Rwandan Tutsis as the superior race, being generally taller, lighter and in control of Rwanda's pre-colonial monarchy (one of the most sophisticated in Eastern Africa at the time). Under Belgian colonialism, identity cards hardened and institutionalized the categories "Hutus" and "Tutsis" and in a system of indirect rule, privileges reinforced Tutsi's political dominance. The terms no longer referred exclusively to status and economic activity, but referred to two "races," one of which enjoyed greater political power. DES

This is certainly *not* to say that government control of the coffee sector was a direct cause of the genocide.<sup>73</sup> It is to say that the politicization of the coffee sector by the Habyarimana regime empowered some elites to use a portion of the coffee revenue to perpetrate violence. The consequences of extensive government involvement in this key sector were not simply economic; they were deeply political and, ultimately, catastrophic for many.<sup>74</sup>

However, other factors—such as prejudice, strong resentment over land shortages, a severe refugee problem, resentment over rising prices that resulted from the IMF-directed economic restructuring, and fear generated by the RPF incursions—also played important roles in sparking the genocide.<sup>75</sup>

### III. REBUILDING RWANDA

The broad participation in Rwanda's genocide has posed significant challenges to meting out justice, restoring peace, and rebuilding Rwanda's economy.<sup>76</sup> Before the genocide, Hutus and Tutsis farmed the same hills, "attended the same schools and churches, worked in the same offices, and drank in the same bars."<sup>77</sup> Some intermarried and by one estimate, one quarter of Rwandans have both Hutu and Tutsi among their eight great-grandparents.<sup>78</sup>

Despite sharing so much, violence among Rwandans was widespread. Killings were public and neighbors often perpetrated the violence with machetes, sticks, and tools.<sup>79</sup> "Perpetrators" numbered in the hundreds of thousands,<sup>80</sup> while

FORGES, *supra* note 58, at 31-38; STRAUS, *supra* note 61, at 18-23 (debunking the "ancient tribal hatred" as an explanation of the genocide); PRUNIER, *supra* note 47, at 5-23 (describing the colonial impact on Rwandese society.).

72. Verwimp, *supra* note 20, at 178.

73. *See id.* at 180 ("It is not the fall of the coffee price that caused the genocide, but the desire of the ruling elite to stay in power at all cost.").

74. *Id.* at 172.

75. Uvin, *supra* note 41, at 96-105. For an analysis of the participation and spread in violence, *see* Straus, *supra* note 61, at 35-40 (analyzing the hypotheses of nationalism, racial ideology, dehumanization, deprivation, group conformity, deviant behavior, material incentives, and the security dilemma hypothesis.).

76. Wole Soyinka, *Hearts of Darkness*, N.Y. TIMES, Oct. 4, 1998, § 7, at 11 (reviewing PHILIP GOUREVITCH, *WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES*), ("To capture the uniqueness of the Rwandan crime, one must imagine that nearly the entirety of the German population participated in the liquidation of the Jews, or that the Russian masses responded to Stalin's war against the kulaks, armed themselves with picks and shovels and massacred the kulaks in village after village, instead of merely watching them being herded off to their eventual extermination.") Under one estimate, "[t]he dead of Rwanda accumulated at nearly three times the rate of the Jewish dead during the Holocaust. It was the most efficient killing since the atomic bombs of Hiroshima and Nagasaki." GOUREVITCH, *supra* note 64, at 4.

77. DES FORGES, *supra* note 59, at 4.

78. ORGANIZATION OF AFRICAN UNITY, *RWANDA: THE PREVENTABLE GENOCIDE* para. 2.4 (2000), available at <http://www.cfr.org/publication/15629/rwanda.html>.

79. *Id.* at para. 16.58.

80. Scott Straus, *How Many Perpetrators Were There in the Rwandan Genocide? An Estimate*, 6 J. GENOCIDE RES. 85, 85-95 (2004). Straus defines "perpetrators" as "any person who participated in an attack against a civilian in order to kill or to inflict a serious injury on that civilian" and estimates

others facilitated killings or looted. As Mark Drumbl noted, “[m]any Rwandans provided lists of Tutsi in their region to their killers. Teachers identified students, physicians identified patients, and pastors identified the faithful.... Many of these individuals stood silent as murder plagued their streets, but then promptly moved into a suddenly vacant home.”<sup>81</sup>

After the genocide, the RPF government began controversial mass arrests and detentions, often relying on accusations by opportunistic neighbors.<sup>82</sup> Many of the detainees had incomplete case files without specified charges or investigations.<sup>83</sup> By October 1994, approximately 58,000 people were detained in a facilities designed for 12,000.<sup>84</sup> Within three years, this number doubled to 125,000.<sup>85</sup> With Rwanda’s judicial infrastructure in ruins, these detentions posed a significant due process challenge.<sup>86</sup> Over 80% of Rwanda’s legal personnel had been killed or fled the country.<sup>87</sup> Many courts had been damaged or looted.<sup>88</sup> Of the personnel that remained, few had formal legal training.<sup>89</sup>

approximately 200,000. A low-end estimate would be tens of thousands perpetrators. BRUCE D. JONES PEACEMAKING IN RWANDA: THE DYNAMICS OF FAILURE 41 (2001). A high-end estimate would be hundreds of thousands. DES FORGES, *supra* note 59, at 2; MAHMOOD MAMDANI, WHEN VICTIMS BECOME KILLERS: COLONIALISM, NATIVISM, AND THE GENOCIDE IN RWANDA 7 (2002); CHRISTIAN P. SCHERRER, GENOCIDE AND CRISIS IN CENTRAL AFRICA: CONFLICT, ROOTS, MASS VIOLENCE, & REGIONAL WAR 126 (2001) (estimating that “every fourth person in Rwanda’s Hutu population including men, women, and children - was probably directly involved in the genocide, and millions rendered themselves indirectly responsible.”).

81. MARK A. DRUMBL, ATROCITY, PUNISHMENT, AND INTERNATIONAL LAW 98 (Cambridge Univ. Press 2007).

82. Waldorf, *supra* note 65, at 41-42. *See also* DES FORGES, *supra* note 59, at 754 (“Because the overburdened judicial system has failed to discover and punish false accusations increasing numbers of people have brought false charges for their own interests. In some cases . . . persons have been obliged to pay others in order to avoid being false accused and imprisoned or they have been asked to provide a substantial sum of money to officials in order to arrange for the release of a family member.”); ORGANIZATION OF AFRICAN UNITY, *supra* note 77, at § 18.39. (“In too many cases, false accusations were made against those whose only ‘crime’ was inhabiting land or property or working in a post that returning Tutsi refugees coveted. In other instances, accusers were known to be seeking retribution for some current or past wrong, real or imagined, but unconnected to the genocide.”).

83. U. S. DEP’T OF STATE, COUNTRY REPORT ON HUMAN RIGHTS PRACTICES: RWANDA 2001 § 1(d) (2002) (reporting that, in 2001, ninety-five percent of approximately 112,000 individuals incarcerated were awaiting trial on genocide-related charges, the majority of whom had incomplete files). Many pre-trial detentions were retroactively legalized. HUMAN RIGHTS WATCH, LAW & REALITY: PROGRESS IN JUDICIAL REFORM IN RWANDA 13 (2008), available at <http://www.hrw.org/reports/2008/rwanda0708/>. HUMAN RIGHTS WATCH, LAW & REALITY, *supra* note 82, at 14.

84. HUMAN RIGHTS WATCH, LAW & REALITY, *supra* note 83, at 14.

85. GOUREVITCH, *supra* note 65, at 242. *See also infra* note 110 for more discussion of prison conditions.

86. Maya Goldstein-Bolocan, *Rwandan Gacaca: An Experiment in Transitional Justice*, 2004 J. DISP. RESOL. 355, 371 (2005).

87. *Id.* at 371-72. Estimates vary as to the number of legal personnel in Rwanda after the Genocide. National Service of Gacaca Jurisdictions, Gacaca Overview, <http://www.inkikogacaca.gov.rw/En/Generaties.htm> (last visited Sept. 9, 2008) (reporting 758 judges and 70 prosecutors before the genocide and 244 judges and 12 prosecutors after); UNITED STATES INSTITUTE FOR PEACE,

The government periodically began granting provisional releases of genocide suspects in 1994—first the elderly, sick, young, those accused without case files, and later those who had served their sentences in pretrial detention or had confessed.<sup>90</sup> By 2006, the number of genocide suspects in pre-trial detention shrank to roughly 66,000.<sup>91</sup> While some releases benefited the wrongly accused, they have predictably also heightened tensions within Rwanda. As Drumbl notes: “in the aftermath of the genocide both victim and aggressors must live unavoidably side-by-side . . . and share common public spaces.”<sup>92</sup>

To heal wounds, the RPF-led government has adopted a variety of strategies. The government has participated in international court proceedings, created and strengthened national and local-level dispute resolution institutions while also pursuing a program of economic liberalization that seems to provide an alternate channel for informal reconciliation.<sup>93</sup> By most accounts, these institutional and policy changes in Rwanda have varying records in terms of promoting reconciliation and providing justice to aggrieved parties and to defendants. We discuss some of these formal efforts below.

#### A. Creating the ICTR

With the reluctant support of Rwanda,<sup>94</sup> the United Nations Security Council established the International Criminal Tribunal for Rwanda (ICTR) to prosecute crimes of genocide and violations of international humanitarian law.<sup>95</sup> Despite its

RWANDA: ACCOUNTABILITY FOR WAR CRIMES & GENOCIDE (Special Report No. 13, 1995), *available at* <http://www.usip.org/pubs/specialreports/early/rwanda1.html> (reporting that 40 out of 800 judges and lawyers were alive and in the country after July 1994).

88. HUMAN RIGHTS WATCH, LAW & REALITY *supra* note 83, at 12. Damage to the ministry building was so severe that the Minister of Justice had to work from his hotel room and file documents in boxes under his bed. *Id.*

89. William A. Schabas, *Genocide Trials & Gacaca Courts*, 3 J. INT'L CRIM. JUST. 879, 883 (2005) (“There were only about 20 lawyers with genuine legal education in the country when I visited Rwanda in November 1994.”).

90. Waldorf, *supra* note 65, at 42-43.

91. U. S. DEP'T OF STATE, COUNTRY REPORT ON HUMAN RIGHTS PRACTICES: RWANDA 2006 § 1(c) (2007).

92. Drumbl, *supra* note 60, at 1238.

93. *See supra* Parts III.A-B, IV.

94. The U.S. government sent Assistant Secretary John Shattuck to solicit the necessary request from Rwanda for the Tribunal. Before Rwanda consented, Paul Kagame—who at the time served as Vice-President and Minister of Defense—expressed concerns that crimes of genocide would not be punished with the death penalty; the international court would be removed from Kigali and therefore justice would not be palpable to Rwandans; and Rwanda would not have jurisdiction over criminals who fled outside Rwanda. David P. Rawson, *Prosecuting Genocide: Founding the International Tribunal for Rwanda*, 33 OHIO N.U.L. REV 641, 648-49 (2007) (citation omitted). Consequently, these reservations hardened into opposition, particularly when it was clear that Tribunal would not sentence genocide leaders to death, and Rwanda ultimately voted against the Resolution establishing the Tribunal. *Id.* at 654-55.

95. *See* Statute of the International Tribunal for Rwanda, S.C. Res. 955, U.N. SCOR, Annex, art. 1-4, 7 U.N. Doc. S/RES/955 (Nov. 8, 1994) [hereinafter ICTR statute] (giving the ICTR substantive jurisdiction over crimes of genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. Temporal jurisdiction was between January 1,

location in Arusha, Tanzania, the ICTR has concurrent jurisdiction with Rwandan national courts, though it theoretically has primacy and can ask national courts to defer to it in any case.<sup>96</sup> The ICTR was modeled after the International Criminal Tribunal for Yugoslavia (ICTY) and—for the sake of economy and consistency in law—it shares institutional links;<sup>97</sup> its rules of evidence and procedure mimic the ICTY's with some modification,<sup>98</sup> and it consists of three trial chambers, a registry, a head prosecutor,<sup>99</sup> and an appeal chamber similar to the ICTY.<sup>100</sup>

There were several motivations behind creating the ICTR. Because the Rwandan court system was in shambles after the genocide,<sup>101</sup> there were concerns that vengeance would compromise fair trials and due process.<sup>102</sup> The ICTR, empanelled with judges selected by the General Assembly,<sup>103</sup> would presumably be in a better position to mete out justice impartially. Some also believed that an international tribunal would expedite extradition and deter genocide in other countries.<sup>104</sup>

As of April 2007, the Tribunal has handed down twenty-seven judgments upon individuals holding leadership positions during the genocide, including the

1994 and 31 December 31, 1994 to allow prosecution of genocide planners.).

96. *See id.* at art. 8; S.C. Res. 977, ¶ 1, U.N. Doc. S/RES/977 (Feb. 22, 1995). For a further discussion of the difficult relationship between the Tribunal and Rwanda, *see* Eric Husketh, *Pole Pole: Hastening Justice at the UNICTR*, 3 Nw. U. J. INT'L HUM. RTS 8, 11, 50-65 (describing how after ICTR's decision to release Barayagwiza—considered one of the top criminals in Rwanda—the Rwandan government suspended cooperation with the Tribunal, preventing the travel of witnesses to Arusha and refusing to issue the Chief Prosecutor a visa to enter the country, although her office and investigating staff were in Kigali.). *See also* INTERNATIONAL CRISIS GROUP, *THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA: TIME FOR PRAGMATISM* (2003), available at <http://www.crisisgroup.org/home/index.cfm?l=1&id=2303> [hereinafter *TIME FOR PRAGMATISM*] (describing how the Rwandan government prevented the travel of witnesses because it objected to the prosecutor's inquiries into war crimes presumed to have been committed by the RPA in 1994).

97. The Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 5 of Security Council Resolution 955*, ¶ 9, delivered to the Security Council, U.N. Doc. S/1995/134 (Feb. 13, 1995).

98. ICTR statute, *supra* note 95, at art. 14.

99. In 2003, the Security Council split the prosecutorial duties for the criminal tribunals for Rwanda and the former Yugoslavia. S.C. Res. 1503, U.N. Doc. S/RES/1503 (Aug. 28, 2003).

100. ICTR statute, *supra* note 95, at arts. 10, 11, 13, 15, 16.

101. *See supra* text accompanying notes 84-87.

102. According to Human Rights Watch, “[m]ore than one hundred persons were condemned to death for genocide [and] [m]any international leaders and organizations opposed the executions, both on general principle and because some of the trials had failed to meet international standards of due process. In several, the accused had no access to counsel and presented no witnesses in their defense. In the case of former prosecutor Silas Munyagishari, political considerations may have influenced the verdict. The executions were carried out in several towns before large and often festive crowds.” HUMAN RIGHTS WATCH, *WORLD REPORT 1999, Rwanda: Human Rights Developments*, available at <http://www.hrw.org/worldreport99/africa/rwanda.html>; *see also* David Wippman, *Atrocities, Deterrence, and the Limits of International Justice*, 23 *FORDHAM INT'L L.J.* 473, 483 (1999) (discussing the possible perception of national trials as illegitimate and “a case of ‘victor’s justice.’”).

103. ICTR statute, *supra* note 95, at art. 12.

104. The Secretary-General, *Letter Dated 1 October 1994 from the Secretary-General Addressed to the President of the Security Council*, ¶ 138, delivered to the Security Council, U.N. Doc. S/1994/1125 (Oct. 4, 1994).

former Prime Minister, six Ministers, one Prefect, and seven Bourgmestres.<sup>105</sup> It has convicted the first head of government for committing genocide and, since the Nuremberg Trials, the first media leaders for inciting genocide.<sup>106</sup> By some accounts, it also advanced the definitions of “ethnicity” and “rape” for the purposes of proving genocide.<sup>107</sup> By the end of 2008, eighty-six accused persons will have been brought before the ICTR.<sup>108</sup>

Scholars have suggested that the Tribunal creates other indirect benefits. It has been argued that internationalizing the justice process has motivated countries to apprehend extremist Hutu leaders, which has thereby thwarted military reorganization of a defunct *Interahamwe* (the Hutu paramilitary force that was responsible for much of the genocide violence) that continued to launch attacks against the RPF until 1999.<sup>109</sup> Some have also suggested that the ICTR has made the Tutsi government more cautious about violent reprisals against Hutus, as the Tutsi government benefits from distinguishing itself morally from the previous leadership and maintaining international legitimacy.<sup>110</sup>

The ICTR's accomplishments, however, have not been without costs or criticism.<sup>111</sup> In its early years, the Tribunal was mired in charges of financial

105. International Criminal Tribunal for Rwanda, *The Tribunal at a Glance*, paras. 1, 8, <http://69.94.11.53/default.htm> (last visited Nov. 9, 2008).

106. *Id.* at paras. 5, 8. See also *Prosecutor v. Nahimana, Barayagwiza, & Ngeze*, Case No. ICTR 99-52-T, Sentence, paras. 1095-1101 (Dec. 3, 2003).

107. International Criminal Tribunal for Rwanda, *Achievements of the Tribunal*, <http://69.94.11.53/default.htm> (last visited Nov. 9, 2008); *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Decision by Appeals Chamber (June 1, 2001) (affirming prior judgment of ICTR Trial Chamber, as well as convicting defendants for complicity in genocide and crimes against humanity); *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, Judgment and Sentence (May 15, 2003) (advancing the definition of “conspiracy”); *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-T (May 16, 2003); see also Payam Akhavan, *Focusing on ICTR Case Law-The Crime of Genocide in the ICTR Jurisprudence*, 34, J. INT'L CRIM. JUST. 989 (2005) (discussing how the Trial Chambers went to great lengths to characterize Tutsis as an 'ethnic' group in order to justify the label of genocide).

108. *ICTR Newsletter* (Int'l Crim. Tribunal for Rwanda), June 2008, at 1, available at <http://69.94.11.53:80/ENGLISH/newsletter/june08/june08.pdf>.

109. Payam Akhavan, *Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?*, 95 AM. J. INT'L L. 7, 23 (2001).

110. *Id.* at 24 (noting also the “occasional punishment of crimes perpetrated by government forces against Hutu civilians”). See also *Rwanda: Human Rights Developments*, *supra* note 102 (“An increasingly active military justice system [has] tried soldiers for indiscipline and common crimes, sentencing several to prison and even to death after conviction for charges such as theft and murder.”). But see Alison Des Forges & Timothy Longman, *Legal Responses to Genocide in Rwanda*, in *MY NEIGHBOR, MY ENEMY: JUSTICE AND COMMUNITY IN THE AFTERMATH OF MASS ATROCITY* 49, 61 (Eric Stover & Harvey M. Weinstein eds., 2004) (noting that “[t]rials of genocide suspects – and a pointed avoidance of substantial legal cases against RPA soldiers – have sought to shape public perception to recognize the moral failings of many Hutu leaders while raising the moral standing of the current national leadership.”). See also *supra* note 65 for more information on RPF war crimes.

111. For a general criticism of international criminal trials see Eric A. Posner, *Political Trials in Domestic and International Law*, 55 DUKE L. J. 75, 147 (2005) (“If only the strongest states have the power to establish international tribunals, determine their memberships, set their agendas, and thus influence the development of international criminal law, predictably the resulting norms of international criminal law will reflect the interests of the strong states, not the weak ones.”).



corruption and mismanagement.<sup>112</sup> For example, some genocide suspects were on the payroll as defense-team investigators.<sup>113</sup> The proceedings continue to be criticized as slow and expensive,<sup>114</sup> and some argue that the ICTR diverts resources away from rebuilding a rule of law in Rwanda.<sup>115</sup> For 2008 and 2009, the ICTR will have a budget of \$247,466,600<sup>116</sup> to complete six trials and commence two.<sup>117</sup> Despite the ICTR's mandate to complete all trials by the end of 2008 and all work by 2010,<sup>118</sup> twenty-nine detainees are currently on trial while seven await trial.<sup>119</sup> Already, the ICTR has applied for a one-year extension.<sup>120</sup>

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112. In 1997 the United Nations Office of Internal Oversight Services reported that in the Tribunal's Registry not a single administrative area functioned effectively ("Finance had no accounting system and could not produce allotment reports, so that neither the Registry nor United Nations Headquarters had budget expenditure information; lines of authority were not clearly defined; internal controls were weak in all sections; personnel in key positions did not have the required qualifications . . ."). The Secretary-General, *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services*, Annex, ¶ 9, delivered to the General Assembly, U.N. Doc. A/51/789 (Feb. 6, 1997). The report also noted that the "Chief of Finance did not have the required degree in administration, finance or accounting nor . . . [the] relevant United Nations experience in those fields." *Id.* at ¶ 20.

113. Victor Peskin, *Rwandan Ghosts*, LEGAL AFFAIRS, Sept./Oct. 2002, available at [http://www.legalaffairs.org/issues/September-October-2002/feature\\_peskin\\_sepoct2002.msp](http://www.legalaffairs.org/issues/September-October-2002/feature_peskin_sepoct2002.msp).

114. See Yacob Haile-Mariam, *The Quest for Justice and Reconciliation: The International Criminal Tribunal for Rwanda and the Ethiopian High Court*, 22 HASTINGS INT'L & COMP. L. REV. 667, 736 (1999) (asserting that the Rwandan courts began prosecuting defendants a year after the ICTR and closed four hundred cases by the middle of July 1998, whereas the ICTR had not completed one trial by the middle of August 1998). *But see* Husketh, *supra* note 96, at 6 (pointing to the increased efficiency of the ICTR as the rate of completion nearly doubled between the first and second mandate and attributing the delays to a lack of technical and translation services, infrastructure, security of lawyers, transportation costs between the two offices, perverse financial incentives for defense lawyers, failure to utilize plea bargaining, and fee-splitting).

115. Jose E. Alvarez, *Crimes of States/Crimes of Hate: Lessons from Rwanda*, 24 YALE J. INT'L L. 365, 466 (1999) ("[E]ach dollar spent by the international community on the ICTR is one less dollar available for assistance to Rwandan courts . . ."). Compare Akhavan, *supra* note 109, at 25-26 (arguing against Alvarez by pointing to violence against judicial personnel, emotionally charged prosecutions and politicization of the Rwandan judiciary), and Des Forges & Longman, *supra* note 110, at 62 ("Given [Rwanda's] politicization of the judiciary, it is not at all clear that investing more in the Rwandan justice system would have promoted the rule of law and encouraged reconciliation in the country.").

116. International Criminal Tribunal for Rwanda, General Information, <http://69.94.11.53/default.htm> (last visited Nov. 9, 2008).

117. According to the most recent completion strategy report, "[f]our cases concerning seven accused are in judgement [sic] drafting phase and two-single accused cases are completed, with the closing arguments yet to be heard. There are six trials involving 19 accused currently ongoing. Two single-accused trials are scheduled to commence shortly. There are four new cases which are to be prepared for trial and four single-accused cases for which request for referral to Rwanda are pending." President of the International Criminal Tribunal for Rwanda, *Report on the Completion Strategy of the International Criminal Tribunal for Rwanda*, ¶ 4, delivered to the Security Council, U.N. Doc. S/2008/322 (May 13, 2008).

118. S.C. Res. 1503, *supra* note 99.

119. International Criminal Tribunal for Rwanda, Detainees-Status on 10 October 2008, <http://69.94.11.53/default.htm> (last visited Nov. 9, 2008).

120. *ICTR Newsletter*, *supra* note 108, at 2.

It is also uncertain how much the ICTR has healed wounds amongst Rwandans. Despite ICTR's outreach program (established in 2000),<sup>121</sup> many Rwandans are unaware of the Tribunal's far-removed work in Tanzania.<sup>122</sup> Of the Rwandans are aware, many are skeptical. High-ranking suspects at the ICTR enjoy better defense lawyers and judges than low-ranking suspects who are tried in Rwanda, often without representation,<sup>123</sup> before judges with minimal experience.<sup>124</sup> They also receive a higher quality of health care than victims and at maximum can be sentenced to life imprisonment (sometimes in a Scandinavian jail).<sup>125</sup> Until recently,<sup>126</sup> lesser offenders in Rwanda could receive death sentences if convicted and otherwise face harsh, over-crowded prison conditions.<sup>127</sup> These differences in treatment between Rwandan courts and the ICTR have led to accusations of class justice,<sup>128</sup> and many Rwandans believe that the ICTR places too much emphasis on responding to the rights of the accused and not enough to victims and survivors,<sup>129</sup> including those who serve as witnesses.<sup>130</sup> Hutus have other reasons to be

121. The Outreach Program primary locale is the Information Centre *Umusanzu mu Bwiyunge* in Kigali. The Centre provides briefings, lectures, workshops and films about the Tribunal's work. The Tribunal also established an internship program in 2000 to allow Rwandan law students to work at the court each year and began translating court documents into Kinyarwanda. International Criminal Tribunal for Rwanda, *supra* note 106. See also Victor Peskin, *Courting Rwanda-The Promises and Pitfalls of the ICTR Outreach Programme*, 34 J. INT'L CRIM. JUST. 950 (describing the Programme as ineffective). According to Alison Des Forges and Timothy Longman, the outreach centre is "[a]ttractive to a tiny part of the urban elite . . . [but] offers little to the majority of Rwandans, who are illiterate and live in rural areas." Des Forges & Longman, *supra* note 110, at 56.

122. A survey conducted in 2002 of 2,091 Rwandans found that 87% either were "not well informed" or "not informed at all" about the Tribunal. Eric Stover & Harvey M. Weinstein, *Conclusion: A Common Objective, A Universe of Alternatives*, in MY NEIGHBOR, MY ENEMY: JUSTICE AND COMMUNITY IN THE AFTERMATH OF MASS ATROCITY 323, 334 (Eric Stover & Harvey Weinstein eds., 2004).

123. See *infra* note 139.

124. Haile-Mariam, *supra* note 114, at 736.

125. See *id.*

126. Organic Law No. 31/2007, July 25, 2007, <http://www.unhcr.org/refworld/type,LEGISLATION,,RWA,46bada1c2,0.html>, art. 4-5; see also U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, *Report on the Situation of Human Rights in Rwanda*, ¶ 136, U.N. Doc. E/CN.4/2000/41 (Feb. 25, 2000) (*prepared* by Michel Moussalli) (finding that of the some 2,406 persons tried by the special genocide courts, 14.4% were sentenced to death, 30.3% to life imprisonment, 34% to jail terms of between 20 years and one year, and 19% acquitted).

127. *Rwanda: Gacaca: A Question of Justice*, AMNESTY INT'L, Dec. 17, 2002, at 8, available at <http://www.amnesty.org/en/library/info/AFR47/007/2002> ("Preventable diseases, malnutrition and the debilitating effects of overcrowding resulted in a reported 11,000 deaths between the end of 1994 and end of 2001."); see also Yassin Yusingwire, *Harsh Prison Conditions Propagating HIV/Aids - Study Reveals*, RWANDA NEWS AGENCY, July, 2 2008, available at [http://www.rnnews.com/index.php?option=com\\_content&task=view&id=39&Itemid=31](http://www.rnnews.com/index.php?option=com_content&task=view&id=39&Itemid=31).

128. Haile-Mariam, *supra* note 114, at 736.

129. Kingsley Chiedu Moghalu, *Image and Reality of War Crimes Justice: External Perceptions of the International Criminal Tribunal for Rwanda*, 26:2 FLETCHER F. WORLD AFF. 21, 29 (2002).

130. Stephen Buckley, *Witnesses of Genocide Targeted; Protection Efforts Fail Rwandans Waiting to Testify in Tribunals*, THE WASH. POST, Jan. 20, 1997, at A24 (reporting that assailants opened fire on a shop owner and eleven others; also reporting assaults on U.N. officials by Hutu former-exiles);

skeptical of the ICTR. For Hutus who did not perpetrate violence, but suffered violations of international humanitarian law in attacks by the RPF, the ICTR's exclusive focus on prosecuting Hutus has left them without a remedy.<sup>131</sup> Zorbas argues that: [i]t is nearly impossible to overstate the bitter disappointment and ill will the ICTR's alleged rampant corruption, bureaucracy, incompetence, and above all its meager results... has generated with the RPF government, the Rwandan people and internationally."<sup>132</sup>

### B. Rebuilding National Courts

Rwanda's courts reopened in 1996 understaffed, with 324 magistrates, 100 deputy prosecutors and 298 judicial police officers.<sup>133</sup> To try genocide crimes,<sup>134</sup> the government established specialized chambers in civil and military courts and carved out four categories of culpability for acts related to the genocide: Category 1 for planners, notorious murderers, and rapists; Category 2 for perpetrators, conspirators, and accomplices of homicide; Category 3 for persons accused of serious but non-lethal assaults; and Category 4 for perpetrators of property offenses.<sup>135</sup> Penalties initially ranged from death and life imprisonment for

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Hirondelle News Agency, *Rwanda and UN Court Vow to End Witness Deadlock*, ARUSHA TIMES, Feb. 5-11, 2005 (reporting the murder of a confessed genocide killer upon return from the ICTR); Husketh, *supra* note 96, at 58 ("In December 1996, a witness was killed with his daughter, brother, nephew and seven others. The witness had asked investigators for protection, but the nearest telephone was more than 20 miles away. The next month, January of 1997, another witness and her entire family of eight were killed after returning from testifying in Arusha.").

131. See *The International Criminal Tribunal for Rwanda: Justice Delayed*, INT'L CRISIS GROUP, June 1, 2001, at iii; see Husketh, *supra* note 96, at 2 (suggesting that the Security Council's decision to not renew Prosecutor Cara del Ponte's mandate was partially motivated by the Rwandan's government animus against her as well as its desire to preempt her continued investigation into war crimes by the RPF/RPA); TIME FOR PRAGMATISM, *supra* note 75 (describing pressure from the Rwandan government to not prosecute members of the Rwandan patriotic army (RPA)). Letter from Sidiki Kaba, President, International Federation of Human Rights & Kenneth Roth, Executive Director, Human Rights Watch to Council Members (June 2, 2006), available at <http://hrw.org/english/docs/2006/06/02/rwanda13504.htm> (urging the Security Council to assure the Prosecutor will be afforded the necessary time to prosecute RPA cases even if those proceedings continue beyond 2008).

132. Eugenia Zorbas, *Reconciliation in Post-Genocide Rwanda*, 1 AFR. J. OF LEGAL STUD. 29, 34 (2004); see also De Forges & Longman, *supra* note 110, at 56-57 (noting that "although the majority of the population is not hostile to the ICTR, people tend to see it as an activity of the international community conducted primarily for its own benefit, with little relevant to the process of reconciliation in Rwanda.").

133. See *Gacaca: A Question of Justice*, *supra* note 127, at 12.

134. Rwanda had no provision for prosecuting and punishing genocide crimes in its domestic penal code, though it had ratified the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions and other conventions of international humanitarian law in 1975. See HUMAN RIGHTS WATCH, *supra* note 83, at 14-16 (discussing and criticizing how Rwanda established the legal basis for prosecution).

135. Organic Law No. 08/96, Aug. 30, 1996, art. 2, <http://www.preventgenocide.org/law/domestic/rwanda.htm> [hereinafter 1996 Genocide Law]; see also Zorbas, *supra* note 130, at 35.

Category 1 offenders to civil damages for Category 4 offenders, though sentences could be reduced through plea-bargaining.<sup>136</sup>

By December 2003, the twelve national specialized courts had tried 9,700 accused.<sup>137</sup> These trials have been criticized for a number of shortcomings, including, but not limited to: a lack of due process,<sup>138</sup> unqualified judges,<sup>139</sup> inadequate defense representation,<sup>140</sup> executive influence,<sup>141</sup> "Tutsification,"<sup>142</sup> impunity for RPF war crimes,<sup>143</sup> and creating a sense of collective guilt against Hutus.<sup>144</sup> To victims, the court proceedings were often inaccessible and provided little reparation.<sup>145</sup> To the accused, Tutsi-dominated juries led some to view

136. 1996 Genocide Law, *supra* note 135, at art. 14-15.

137. Waldorf, *supra* note 65, at 44.

138. See U.S. DEP'T OF STATE, RWANDA: COUNTRY REPORT ON HUMAN RIGHTS PRACTICES 2007 (Mar. 11, 2008), available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100499.htm> (reporting that judiciary is subject to executive influence and does not always ensure due process or expeditious trials).

139. *Gacaca: A Question of Justice*, *supra* note 127, at 12 (observing that "[f]ew of the magistrates were jurists and less than a quarter had adequate legal training").

140. 1996 Genocide Law, *supra* note 135, at art. 36 (stating that the Rwandan government is not obliged to pay for defense counsel); THE DANISH INST. FOR HUMAN RIGHTS, LEGAL AID IN RWANDA: A REPORT ON THE LEGAL ASSISTANCE AVAILABLE IN RWANDA annex at 83 (2004) (estimating that only half of the defendants have benefitted from representation).

141. See HUMAN RIGHTS FIRST, PROSECUTING GENOCIDE IN RWANDA: A HUMAN RIGHTS FIRST REPORT ON THE ICTR AND NATIONAL TRIALS (Jul. 1997), available at <http://www.humanrightsfirst.org/pubs/descriptions/rwanda.htm> (finding that Hutu prosecutors and judges who did not arrest or convict suspects because a lack of evidence were sometimes charged with genocide or corruption); HUMAN RIGHTS WATCH, RWANDA: HUMAN RIGHTS DEVELOPMENTS (1999), available at <http://www.hrw.org/wr2k/Africa-08.htm> (in 1999, the Supreme Court disbanded); HUMAN RIGHTS WATCH, WORLD REPORT 2003: RWANDA: HUMAN RIGHTS DEVELOPMENTS (2003), available at <http://www.hrw.org/wr2k3/africa9.html> (finding that in 2002 six Supreme Court judges were forced to resign after the Prosecutor General threatened to jail them on corruption charges).

142. HUMAN RIGHTS WATCH, *supra* note 102 (concluding that the "judiciary [was] largely in the hands of Tutsi, many of whom were recent returnees."); ORGANIZATION OF AFRICAN UNITY, *supra* note 78, at §18.38 ("as in virtually all other sectors of Rwandan public life, the justice system was dominated by Tutsi").

143. When the ICTR prosecutors attempted to investigate crimes by RPA soldiers, Rwandan officials forced the suspension of the trials by not allowing the witnesses to travel. When other countries, such as France and Spain, have issued arrest warrants for RPA soldiers and officers, Rwanda has broken diplomatic relations and ignored the warrants. HUMAN RIGHTS WATCH, *supra* note 83, at 4 ("only 32 soldiers have been brought to trial for crimes committed against civilians in 1994, with 14 found guilty and punished with light sentences"); Waldorf, *supra* note 65, at n. 338 (citation omitted) (Lieutenant Colonel Fred Ibingira, for example, who commanded the troops that massacred an estimated 2000-4000 Hutu refugees at the Kibeho refugee camp in April 1995 was sentenced to eighteen months in prison for "failing to give assistance to a person in danger."); see also Des Forges & Longman, *supra* note 110, at 61 (noting that the courts have been used extensively to intimidate potential critics and opponents of the regime).

144. Waldorf, *supra* note 65, at 40 ("Early on, the RPF seemed more interested in using the judicial system to impose collective guilt and social control on the Hutu majority than in establishing individualized accountability for the genocide.").

145. Goldstein-Bolocan, *supra* note 86, at n. 375 ("although compensation for victims has been awarded in 50 percent of civil verdicts, in none of these cases were the verdicts awarded against the state or against those found criminally guilty") (citation omitted).

themselves as prisoners of war on the losing side, rather than as defendants in a criminal trial.<sup>146</sup> Given the enormous caseload and the judiciary's limited resources, it would have taken over eighty years to try all of the accused.<sup>147</sup>

The Rwandan government undertook two dramatic initiatives to improve the delivery of justice. First, it sought to reform the judiciary<sup>148</sup> by introducing greater autonomy,<sup>149</sup> raising the educational criteria for judicial posts,<sup>150</sup> and increasing the pace of justice.<sup>151</sup> Second, it launched *gacaca*, a form of popular justice modeled on past customary conflict-resolution practices, to judge most genocide cases.<sup>152</sup> Although *gacaca* and the conventional courts differ in law, procedure, and personnel, the two now constitute a single judicial system.<sup>153</sup>

### C. Institutionalizing *Gacaca*

"*Gacaca*" translates to "lawn" or "small grass," the setting of traditional, informal gatherings where community<sup>154</sup> elders resolved minor conflicts over

146. Drumbl, *supra* note 61, at 1290; Des Forges & Longman, *supra* note 110, at 62-63 ("domestic trials have been politicized and many Rwandans view them as one-sided . . ."); Straus, *supra* note 80, at 151 (finding that many interviewed perpetrators equated killing Tutsis with fighting the enemy and that the most powerful predictor of why one perpetrator committed more violence than the other was whether a respondent described himself as motivated by war-related fear or anger).

147. Schabas *supra* note 89, at 888; ORG. OF AFR. UNITY, *supra* note 78, at § 18.37 (estimating between two to four centuries to try all those in detention).

148. HUMAN RIGHTS WATCH, *supra* note 83, at 23 (stating that a commission consisting of members of the supreme court, prosecutor's office, bar association, ministry of justice, and law faculty drafted 13 laws, which were mostly introduced in 2004 to reform the judiciary).

149. See generally Organic Law No. 07/2004, Jan. 1, 2004, [http://www.amategeko.net/display\\_rubrique.php?ActDo=all&Information\\_ID=2&Parent\\_ID=9&type=public&Langue\\_ID=An&rubID=30692036#30692036](http://www.amategeko.net/display_rubrique.php?ActDo=all&Information_ID=2&Parent_ID=9&type=public&Langue_ID=An&rubID=30692036#30692036), [hereinafter 2004 Organisation of Courts Law] (determining the Organisation, Functioning, & Jurisdiction of Courts). The president of the Supreme Court now has hiring and removal powers with the approval of the Superior Council of the Judiciary, a group consisting of judged elected by peers, the President of the National Commission of Human Rights, two representatives of law faculties, and the ombudsman. *Id.* at art. 6. The office of the public prosecutor was guaranteed financial and administrative autonomy from the Ministry of Justice. Organic Law No. 03/2004, Mar. 20, 2004, art. 2, <http://www.kituoachakatiba.co.ug/prosecutionservice.pdf>. To discourage corruption, judges' salaries increased between two and five-fold. HUMAN RIGHTS WATCH, *supra* note 83, at 26.

150. HUMAN RIGHTS WATCH, *supra* note 83, at 27 (finding that before the reforms, approximately 10% held law degrees and some lower court judges had only finished primary school. In 2004, a law was passed requiring law degrees and six years of experience for High Court judges and eight years for Supreme Court judges).

151. To streamline the judicial system, the government cut the number of courts and judges. See generally 2004 Organisation of Courts Law, *supra* note 149, at title I. Judges are also now required to deliver an official judgment, including reasons for the decision, within 30 days of the closure of trial proceedings. *Id.* at art. 168.

152. Between 2005 and 2008, the conventional courts tried only 222 genocide cases. As of 2008, all remaining cases will be sent to *gacaca* with the exception of national or provincial leaders and those accused sent back to Rwanda from other national or international jurisdictions. HUMAN RIGHTS WATCH, *supra* note 83, at 17.

153. *Id.* at 2.

154. Rwandan communities traditionally were separate homesteads spread out on hillsides rather than villages. HUMAN RIGHTS WATCH, UPROOTING THE RURAL POOR IN RWANDA § III (2001),

property, inheritance, personal injury, and marital relations.<sup>155</sup> Historically, *gacaca*'s goal was to restore tranquility to the community.<sup>156</sup> All community members participated and, apart from women, anyone could voice their opinion.<sup>157</sup> Both parties were expected to accept the sentences imposed, and after the conflict was resolved, to maintain a social relationship.<sup>158</sup> In addition to collectively meting out punishments, communities performed welcoming rites for persons who had completed their punishments to recreate a sense of belonging.<sup>159</sup>

Throughout the colonial period, *gacaca* continued to play a role in resolving local disputes even as parts of the legal system formalized. Colonial courts often accepted *gacaca* judgments, and in some cases, the courts reviewed rather than re-litigated appeals.<sup>160</sup> By the 1980s, local authorities (or sector officials) used *gacaca* as a "semi-official" institution to adjudicate disputes outside state courts.<sup>161</sup> Though *gacaca* ceased in most communities during the genocide, some reorganized it afterwards to arrest genocide suspects and deal with property disputes arising from returnees.<sup>162</sup> In 1998, some detainees, encouraged by prison officials, began their own *gacaca* to hear confessions of inmates.<sup>163</sup>

In 2001, the Rwandan government passed legislation to revive and adapt *gacaca* to try all genocide-related cases, except Category 1 cases which would be heard by national courts.<sup>164</sup> Local communities elected over 250,000 judges<sup>165</sup> and

available at <http://www.hrw.org/reports/2001/rwanda/>. See also Zorbas, *supra* note 132, at 36-7.

155. For more serious crimes such as murder and cattle theft, the king's representatives or chiefs generally had jurisdiction. Waldorf, *supra* note 65, at 48.

156. Christopher J. Le Mon, *Rwanda's Troubled Gacaca Courts*, 14 (2) HUM. RTS. BRIEF 16, 16 (2007).

157. Waldorf, *supra* note 65, at 48.

158. Jessica Raper, *The Gacaca Experiment: Rwanda's Restorative Dispute Resolution Response to the 1994 Genocide*, 5 PEPP. DISP. RESOL. L. J. 1, 30 (2005). In recent times, the losing party had to provide beer to the community as a form of reconciliation. Waldorf, *supra* note 65, at 49.

159. Paul E. Nantulya, *The Gacaca System in Rwanda*, 4 CONFLICT TRENDS, at 53-54 (2001), available at [http://www.accord.org.za/downloads/ct/ct\\_2001\\_4.pdf](http://www.accord.org.za/downloads/ct/ct_2001_4.pdf).

160. *Id.*

161. Waldorf, *supra* note 65, at 49.

162. Jennifer Widner, *Courts & Democracy in Postconflict Transitions: A Social Scientist's Perspective on the African Case*, 95 AM. J. INT'L L. 64, 65-66 (2001) (noting how the voluntary character of resettlement after the genocide—with families and friends banding together to form new villages—meant that members of these new communities trusted each other enough to make election an acceptable means of selecting *gacaca* members, and the number of *gacaca* rapidly increased).

163. PENAL REFORM INTERNATIONAL, *GACACA JURISDICTIONS AND ITS PREPARATIONS* 29 (2002), available at <http://www.penalreform.org/resources/rep-ga1-2002-preparations-en.pdf> (noting that in Kigali Central Prison, the *gacaca* committee heard 1127 confessions from approximately 8000 inmates from late 1998 to late 2001).

164. Organic Law No. 40/2000 of 26/01/2001, art. 2. After the accusation phase ended, approximately 818,000 persons had been accused, 77,000 of which were in category 1. In March 2007, the government redefined the categories to move some accused from category 1 to 2. HUMAN RIGHTS WATCH, *supra* note 83, at 21-22.

165. Judges are not required to have legal qualifications. Rwandans of "integrity" who are at least twenty-one years of age can be elected as *Gacaca* judges so long as they have not participated in the genocide; are free from the spirit of "sectarianism"; have not been sentenced to a penalty of at least six

after an 18-month pilot phase in approximately 10% of the cells in Rwanda,<sup>166</sup> *gacaca* was launched with some modification nationwide in January 2005.<sup>167</sup>

The modernized *gacaca* system departs from traditional *gacaca* in fundamental ways.<sup>168</sup> First, *gacaca* judges are not community elders, but elected, relatively young citizens, including women.<sup>169</sup> Second, *gacaca* courts judge serious crimes, such as homicide, whereas traditional *gacaca* resolved only minor civil disputes.<sup>170</sup> Third, modern *gacaca* is an official state institution that applies codified, rather than “customary” law, with powers to summon persons, issue warrants, conduct searches, confiscate property, and impose sentences up to 30 years in prison.<sup>171</sup> In traditional *gacaca*, family and clan members, rather than individuals, paid assessed judgments, as all members were “parties to the conflict.”<sup>172</sup> Finally, modern *gacaca*’s goals are a mix of retributive and restorative justice,<sup>173</sup> rather than a restoration of communal tranquility.<sup>174</sup>

months of imprisonment; are of high morals and conduct, truthful and honest; and are characterized by a spirit of speech sharing. Jacques Fierens, *Gacaca Courts: Between Fantasy and Reality*, 3 J. INT’L CRIM. JUST. 896, 914 (2005); Organic Law No. 16/2004, June 19, 2004, art. 14 [hereinafter *Gacaca Law*] (establishing the organization, competence and functioning of *gacaca* courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994).

166. 762 *gacaca* courts were established. Meyerstein, *supra* note 65, at 474. In the first nine months of trials, 2000 defendants pled guilty and almost 6000 were convicted. But more than 10,000 fled Rwanda fearing “false accusations and unfair trials.” Le Mon, *supra* note 156, at 17.

167. In June 2004, the government amended the law to combine Categories 2 and 3 into a single category, slightly modified the definitions of crimes, reduced the number of courts and judges, lowered the quorum from fifteen to seven, reduced some penalties to encourage more guilty pleas, capped the maximum sentence to thirty years (instead of life), and provided for mitigating circumstances. Waldorf, *supra* note 65, at 53-54; *Gacaca Law*, *supra* note 165, at arts. 18, 23, 51, 55, 56, 81.

168. Waldorf, *supra* note 65, at 52. For a description of the *Gacaca*’s proceedings and their differences from American trials see Linda E. Carter, *Justice and Reconciliation on Trial: Gacaca Proceedings in Rwanda*, 14 NEW ENG. INT’L & COMP. L. 41, 45-47 (2007).

169. Waldorf, *supra* note 65, at 52 (citing NAT’L SERVICE OF GACACA COURTS, REPORT ON IMPROVING THE LIVING CONDITIONS FOR THE INYANGAMUGAYO 2 (2005)) (finding on the basis of surveys that thirty-four percent of *gacaca* judges are women)). We attended a *gacaca* proceeding in Butare on May 28, 2008. The panel of judges hearing cases that day was composed of two women (one older, one younger) and four men. The lead judge was an older man.

170. Waldorf, *supra* note 65, at 52.

171. Meyerstein, *supra* note 65, at 475-76. The *Gacaca* jurisdictions can impose sentences as severe as thirty years of imprisonment for Category 2 defendants who have killed or attempted to kill their victims and refuse to confess, whereas Category 3 defendants can only be ordered to pay civil compensation for damages to victims’ property. *Gacaca Law*, *supra* note 165, at arts. 73-75.

172. Leah Werchick, *Prospects for Justice in Rwanda’s Citizen Tribunals*, 8 (3) HUM. RTS. BRIEF 15, 17 (2001); Goldstein-Bolocan, *supra* note 86, at 376; Waldorf, *supra* note 65, at 48.

173. Waldorf, *supra* note 65, at 14 (“Under retributive justice, offenders are punished generally with incarceration. Under restorative justice, offenders offer atonement and victims forgive through a process of face-to-face mediation. Apologies, community service, and other forms of restitution replace incarceration.”); see also John Braithwaite, *Restorative Justice: Assessing Optimistic & Pessimistic Accounts*, 25 CRIME & JUST. 1 (1999) (providing a general overview of restorative and retributive justice). For a criticism of how restorative justice can sacrifice due process, reinforce pre-existing power relations, fail to deter, and short-change victims, see Richard Delgado, *Prosecuting Violence: A Colloquy on Race, Community, & Justice*, 52 STAN. L. REV. 751 (2000).

*Gacaca* begins at the cell level<sup>175</sup> where every Rwandan is legally obligated<sup>176</sup> to participate as a member of the general assembly, in a public enterprise of evidence gathering.<sup>177</sup> Initially, Rwandans accused alleged perpetrators in front of the general assembly.<sup>178</sup> But due to lackluster participation, in 2004, the government mandated local administrative officials and *nyumbakumi* (persons in charge of ten households) to gather information from small groups and individuals.<sup>179</sup> The information gathered during this accusation process (which the accused cannot contest<sup>180</sup>), coupled with prisoner confessions and state prosecutor files, constitute the basis for categorization by the court—nine adults of “integrity” elected by the general assembly.<sup>181</sup> The court then tries suspects accused of lower-level crimes and passes the more serious Category 2 offenders up to *secteur* (or “sector”) level tribunals and Category 1 offenders to the Public Prosecution Office.<sup>182</sup>

To encourage confessions, persons who plead guilty to Category 2 or 3 crimes are eligible to serve only half of their sentences, half of which would be in community service.<sup>183</sup> Although the court can reject a confession deemed incomplete or insincere,<sup>184</sup> anecdotal evidence suggests that the benefit of expedited trials, provisional release, and reduced sentences has encouraged false, insincere, and formulaic confessions.<sup>185</sup>

174. The official goals of the *gacaca* are: (1) to reveal the truth about what has happened, (2) to accelerate the genocide trials, (3) to eradicate the culture of impunity, (4) to reconcile the Rwandans and reinforce their unity, and (5) to prove that Rwandan society has the capacity to settle its own problems through a system of justice based on Rwandan custom. National Service of Gacaca Jurisdictions, The Objectives of the Gacaca Courts, <http://www.inkiko-gacaca.gov.rw/En/EnObjectives.htm> (last visited Nov. 10, 2008).

175. *Gacaca* has three courts: a cell *gacaca* court, a sector *gacaca* court, and a sector's *gacaca* court of appeals. *Gacaca Law*, *supra* note 165, at arts. 33-38.

176. Persons who refuse to testify can be prosecuted by *Gacaca* courts and sentenced to up to one year imprisonment. *Id.* at art. 29.

177. *Gacaca* hearings are public, except for rape related proceedings and other exceptional cases in which hearings are conducted in camera. *Id.* at arts. 21, 38.

178. *Id.* at art. 32.

179. Meyerstein, *supra* note 65, at 488.

180. The *nyumbakumi* present the accusations to the assembly to confirm the accuracy of the information recorded, not to test its truth. *Gacaca Law*, *supra* note 165, at arts. 33, 35-37. See HUMAN RIGHTS WATCH, *supra* note 83, at 21 for a discussion of how the *nyumbakumi* had disproportionate power to influence the nature and amount of information that would form the basis of judicial files of accused persons and how the method undermined the intended openness of the process; in some cases, when Category 1 suspects were brought to trial in conventional courts, judges used information gathered in *gacaca* to justify its conviction without independently assessing the information's validity.

181. *Gacaca Law*, *supra* note 165, at arts. 33-34.

182. *Id.* at art. 34.

183. *Id.* at art. 73.

184. Waldorf, *supra* note 65, at 73 (“*Gacaca* courts do not have to accept confessions, even if the prosecutor has certified them as truthful.”).

185. *Id.* at 72-74; see also Madeline H. Morris, *The Trials of Concurrent Jurisdiction: The Case of Rwanda*, 7 DUKE J. COMP. & INT'L L. 349, 361 (1997).



*Gacaca* has been criticized by some and celebrated by others. Some have praised it as an innovation in transitional justice that combines traditional, local institutions with modern judicial practices leading to transformative, democratic effects.<sup>186</sup> Others, however, criticize *gacaca* for failing to meet international human-rights standards with respect to due process,<sup>187</sup> impartial and qualified judges,<sup>188</sup> a right to appeal,<sup>189</sup> a right to defense,<sup>190</sup> and separating prosecutorial and judicial roles.<sup>191</sup> Some also criticize *gacaca* for failing to advance justice or reconciliation, and instead delivering participatory popular punishment and collectivizing guilt against Hutus.<sup>192</sup> Acknowledging its shortcomings, however,

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186. Le Mon, *supra* note 156, at 16. See Rosa E. Brooks, *The New Imperialism: Violence, Norms & the Rule of Law*, 101 MICH. L. REV. 2275, 2336 (2003) (“[G]acaca . . . may hold out Rwanda’s best hope of coming to terms with the genocide in a way that rebuilds confidence in the government and the rule of law.”). See also Erin Daly, *Between Punitive and Reconstructive Justice: The Gacaca Courts in Rwanda*, 34 N.Y.U. J. INT’L L. & POL. 355, 376-77 (discussing how *gacaca* may help to promote democracy and the rule of law and that the sheer number of tribunals should protect the process as a whole from undue influence by the central government). See also Christine M. Venter, *Eliminating Fear Through Recreating Community in Rwanda: The Role of Gacaca Courts*, 13 TEX. WESLEYAN L. REV. 577, 581 (2007) (arguing that if *gacaca* courts were properly funded and organized it could provide a link between the past of the genocide and the participatory democracy Rwanda hopes to be). See Aneta Wierzynska, *Consolidating Democracy Through Transitional Justice: Rwanda’s Gacaca Courts*, 79 N.Y.U.L. REV. 1934, 1958 (2004) (stating that *gacaca* creates “a critical communication bridge between the people and the State that did not exist before.”). But see Waldorf, *supra* note 65, at 77 (noting that these arguments assume incorrectly that the RPF-dominated government is moving toward greater democracy and that *gacaca* is truly participatory).

187. See HUMAN RIGHTS WATCH, *supra* note 83, at 2. See also Daly, *supra* note 186, at 383.

188. See *Gacaca: A Question of Justice*, *supra* note 127 at 38. See also Meyerstein, *supra* note 65, at 479 (discussion of how the training of *gacaca* judges is inadequate).

189. See *Gacaca Law*, *supra* note 165, arts. 89-92. See also Goldstein-Bolocan, *supra* note 86 at 389. But see Daly, *supra* note 186 at 383 (noting that the appellate process may undue some benefits of *gacaca* because they take time, do not strengthen the community and depend on the commitment of the authorities to the rule of law).

190. See *Gacaca Law*, *supra* note 165, at art. 32 (noting *Gacaca* law does not entitle defendants to be represented by a lawyer, but allows the defendant to speak for himself, and for individuals at the hearings to speak for or against the defendant). See also Goldstein-Bolocan, *supra* note 86, at 388-89 (noting defendant’s position may be further compromised because most cases will be judged on the basis of the files prepared and handed over to the *Gacaca* judges by the public prosecutor’s offices, making it difficult for lay judges and defendants to challenge the information). See also HUMAN RIGHTS WATCH, *supra* note 83, at 20-21.

191. See *Gacaca Law*, *supra* note 165, at art. 33 (nothing that individuals responsible for gathering evidence and categorizing cases may also called as witnesses). See also Meyerstein, *supra* note 65, at 488-90 (discussing how local authorities and *nyumbakumi* abused their positions to protect themselves and their families during the information gathering and accusation stage and ultimately played the role of *gacaca* judges, who were relegated to recording and confirming the accuracy of the transcriptions without confirming its validity). See generally HUMAN RIGHTS WATCH, *supra* note 83, at 43-45.

192. *The Gacaca Courts Prepare to Finish Their Mandate*, HIRONDELLE NEWS AGENCY, Apr. 24, 2007, <http://www.hironellenews.com/content/view/402/135/> (reporting as of 2007, 818,564 cases accusing crimes of genocide had been prepared, including 77,269 in the first category of politicians and planners, 432,557 in the 2<sup>nd</sup> category of executors and 308,738 cases of looting. 71,405 cases had been heard, verdicts had been rendered in 64,800 and remain for 6,605. There had been intended acquittals for 15,219 while 7,200 verdicts had been appealed.). See also Waldorf, *supra* note 65, at 80-81 (arguing that *gacaca* will likely criminalize a vast swathe of the Hutus population, given that naming

others conclude that it was the best alternative for delivering justice in post-genocide Rwanda.<sup>193</sup>

Given the range of criticism directed towards *Gacaca*, it is unclear the extent to which it has healed wounds. Rather, the process may have inflamed animosities amongst Hutus and Tutsis. According to Lars Waldorf, "Hutu[s] generally view [gacaca] as a way to release family members wrongly imprisoned, while Tutsi survivors often see it as a disguised amnesty for those who killed their family members."<sup>194</sup> Initially, the majority of Rwandans supported *gacaca*.<sup>195</sup> Yet, despite mandated attendance at *gacaca* court,<sup>196</sup> participation has declined significantly, suggesting a shift in attitudes.<sup>197</sup>

accomplices provides sentence reductions; opportunistic looters are technically *genocidaires*; accomplice liability is broadly defined; accomplices are treated as perpetrators; there is no provision for defenses and justifications, even though there might be colorable claims of duress; and bystanders will be prosecuted for failing to render assistance). See also Daly, *supra* note 186, at 385 (noting that *gacaca* has only a limited ability to promote reconciliation since it rebuilds communities under a cloud of punishment and retribution). See also HUMAN RIGHTS WATCH, *THERE WILL BE NO TRIAL: POLICE KILLINGS OF DETAINEES AND THE IMPOSITION OF COLLECTIVE GUILT 27-30* (2007), available at <http://hrw.org/reports/2007/rwanda0707/> (observing that since the end of 2006, officials have been imposing collective punishments on residents, including fines, obligatory labor, and beatings when survivors suffer property damage.). But see Meyerstein, *supra* note 65, at 491 (arguing that the abuses of power by local officials actually serve to protect the Hutu population and thus work against a collectivized guilt against the Hutu majority).

193. See Meyerstein, *supra* note 65, at 467 (arguing that Amnesty International's legalist approach to the *gacaca* prevents it from appreciating its unique postcolonial hybrid form that is perhaps uniquely capable of responding to the genocide). See also Carter, *supra* note 168, at 49-50 (acknowledging that *gacaca* is an ingenious solution since it spreads out the work among a large number of people with the possibility of justice on a large scale); Widner, *supra* note 162, at 66 (arguing that *gacaca* is integral to reconstructing the rule of law because an ineffective, overused judicial system risks undermining judicial legitimacy and leads people to turn away from law altogether).

194. Waldorf, *supra* note 65, at 74 (citation omitted). See also Goldstein-Bolocan, *supra* note 86, at n.249 (citing Jeremy Sarkin, *The Tension Between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the Gacaca Courts in Dealing with the Genocide*, 45 J. AFR. L. 143, 288-89 (2001), quoting Alison Des Forges who suggests that that "the fairness of the proceedings will vary enormously . . . (and) the result in any one community will be determined by the local balance of power.") (citation omitted in original).

195. TIMOTHY LONGMAN ET AL., *Connecting Justice to Human Experience: Attitudes Toward Accountability and Reconciliation in Rwanda*, in *MY NEIGHBOR, MY ENEMY*, 222 (Eric Stover & Harvey Weinstein, eds., Cambridge University Press, 2004) (stating *gacaca* was the most popular alternative. In 2002, when polled on how much contribution the judicial alternatives would make in advancing reconciliation, 33.8% believed the ICTR would make a significant or very significant contribution, whereas 69.2% thought the genocide trials would, and 84.2% believed that *gacaca* would.). See also PETER UVIN, *THE INTRODUCTION OF MODERNIZED GACACA FOR JUDGING SUSPECTS OF PARTICIPATION IN THE GENOCIDE AND MASSACRES OF 1994 IN RWANDA* 8, available at <http://fletcher.tufts.edu/humansecurity/pdf/Boutmans.pdf> (citing over 70% support for *gacaca*). But see Waldorf, *supra* note 65, at n.366 (suggesting that attitudinal surveys may have measured respondents' ability to parrot widespread government propaganda, rather than actual support for *gacaca*).

196. Waldorf, *supra* note 65, at 66, n.370 & n.378 (noting that in the pilot phase, absenteeism was a problem in eight out of the twelve jurisdictions, partially because of the harsh economic realities. Ninety percent of the Rwandan labor force are subsistence farmers. Many are already required to participate in government sensitization campaigns and community labor typically (*umuganda*) five

Some attribute this decline in support to the public perception that *gacaca* court judges are corrupt. Judges serve without pay and lack legal qualifications,<sup>198</sup> which make them susceptible to corruption. Some defendants have successfully bribed judges,<sup>199</sup> for example, to avoid, for example, a Category 1 classification,<sup>200</sup> and tens of thousands of judges have been accused of participating in the genocide.<sup>201</sup> Judgments also aren't always enforced against indigent *genocidaires*.<sup>202</sup> Without a guarantee of compensation, Tutsi survivors are reluctant to participate as witnesses, particularly when they fear retaliation and violence by their Hutu neighbors<sup>203</sup> and by *genocidaires* who have confessed but have been provisionally released.<sup>204</sup>

Hutus too have little incentive to participate in *gacaca* when they have no opportunity to discuss the suffering inflicted on them by the RPF, or when they fear accusation.<sup>205</sup> False denunciations, though punishable by law, are a simple

times a month.). See also 2004 Gacaca Law, *supra* note 165, at art. 29 (noting that the Rwandan government now mandates participation, penalizes absenteeism with 3 to 6 months in prison and for repeated absentees, 6 months to 1 year). But see Goldstein-Bolocan, *supra* note 86, at 392, for a criticism of the state-mandated use of Gacaca to deal with genocide cases may undermine its original value as an informal, spontaneous dispute resolution mechanism.

197. AVOCATS SAN FRONTIERES, MONITORING OF THE GACACA COURTS JUDGMENT PHASE, ANALYTICAL REP. 10, 25 (Mar.-Sept. 2005) (reporting that "although the local population may have been present in large numbers, they were reluctant to become involved" and hypothesizing the main reasons to be fear of reprisals, refusal to denounce friends and families, and fear of being convicted for false testimony). See also HUMAN RIGHTS WATCH, OVERVIEW OF HUMAN RIGHTS ISSUES IN RWANDA 1 (Jan. 2006), available at <http://hrw.org/wr2k6/pdf/rwanda.pdf> (noting that many Rwandans did not trust gacaca courts and boycotted sessions).

198. See Waldorf, *supra* note 65, at 67.

199. See Le Mon, *supra* note 156, at 17. See generally *Seven Gacaca Judges of a Same Court Arrested*, HIRONDELLE NEWS AGENCY (Dec. 7, 2007), <http://www.hirondellnews.com/content/view/1325/461/>.

200. See Le Mon, *supra* note 156, at 17 (referencing articles that reported bribery of judges).

201. *Id.* at 18 (citing report by Rwandan government office in charge of gacaca courts indicating that authorities suspect 45,396 gacaca court judges of having committed crimes during the genocide). See also Waldorf, *supra* note 65, at 67, n.386 (estimating 1319 judges had been replaced as of January 2004, with 656 having been accused of genocide. In the Murama Sector, the gacaca president stated that the removal of all judges who had pillaged in 1994 would leave gacaca without any judges.) (citations omitted).

202. Waldorf, *supra* note 65, at 57 & n.317 (noting that "in a sample of 192 judgments from 1997 to 1999, civil parties obtained the right to compensation only half the time). Compensation through community service could exacerbate ethnic tensions if seen as a return to the colonial-era forced labor system where Hutu clients worked for Tutsi patrons. *Id.*

203. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2007) (reporting between 11 and 25 genocide witnesses were killed in 2007, while another 22 reportedly committed suicide). See also Le Mon, *supra* note 156, at 17-18, nn.10, 13, & 14 (citing reports of multiple cases of retaliation against witnesses).

204. Arthur Asiimwe, *36,000 Genocide Suspects Freed from Rwandan Jails*, THE INDEPENDENT (London), July 30, 2005 (reporting that a genocide survivor told a journalist, "It will now be useless to attend these gacaca courts. These [released detainees] will stick together and hide the truth."). See Meyerstein, *supra* note 65, at 487-91, for a discussion of how prisoner releases has contributed to the atmosphere of anxiety and distrust.

205. See Le Mon, *supra* note 156, at 18-19. See also Timothy Longman & Theoneste Rutagengwa,

route to get rid of a neighbor whose property one covets or to resolve a property dispute that the *gacaca* courts do not hear.<sup>206</sup> Indeed, when the national phase began, ten thousand Hutus fled to Burundi,<sup>207</sup> causing an international refugee crisis. Many feared they would be accused as perpetrators or bystanders, killed in revenge after being named, or, in the case of provisional releases, be sent back to prison.<sup>208</sup> Some Hutu extremists and families of prisoners propagated rumors that *gacaca* was a harbinger of a counter-genocide, designed to round up Hutus and kill them *en masse*.<sup>209</sup> The tactics adopted at the local level to coerce participation (i.e. fines and public admonishments) have reinforced these fears and help perpetuate a culture of secrecy,<sup>210</sup> where silence is perceived as loyalty to kin and patrons rather than as deception.<sup>211</sup>

The Rwandan government has further frustrated *gacaca's* potential to advance reconciliation by criminalizing certain challenges to *gacaca* courts. At times, the government has accused citizens and international organizations<sup>212</sup> who

*Memory, Identity and Community in Rwanda*, in MY NEIGHBOR, MY ENEMY, 176 (Eric Stover & Harvey Weinstein, eds., Cambridge University Press, 2004) (finding in attitudinal surveys that “[m]any Hutu resent the fact that their experience of suffering is excluded from official discourse.”).

206. Waldorf, *supra* note 65, at 72, n.420 (noting that Gacaca courts do not hear property disputes stemming from the ethnic violence before the genocide, the RPF's displacement of hundreds of thousands of Hutu in northern Rwanda during the civil war of 1990 to 1993, the return of several hundred thousand Tutsi exiles who had fled before 1994, some of their families having left Rwandan in 1959, and the return of about two million Hutu refugees who had fled after the RPF victory in 1994). See also ORG. OF AFR. UNITY, *supra* note 78, at §17.9 (reporting that according to the OAU, the return migration totaled 750,000 just four months after the genocide. “In a literal sense, it was almost an entire new Tutsi population that emerged after the war,” many of whom had no connection to villages or communities in Rwanda.).

207. Meyerstein, *supra* note 65, at 490.

208. U.S. DEP'T OF STATE, COUNTRY REPORTS 2005, HUMAN RIGHTS PRACTICES (Mar. 8, 2006), <http://www.state.gov/g/drl/rls/hrrpt/2005/61587.htm> (reporting that in late April 2005, more than 6500 Hutu fled Rwanda). See also Mary Kimani, *600 Tried, Thousands Flee*, INT'L JUST. TRIB. (May 22, 2005) (quoting one fleeing Hutu, “We fled because of one-sided justice. It is one community judging the other.”).

209. See Waldorf, *supra* note 65, at 67-68.

210. See GOUREVITCH, *supra* note 65, at 22 (“Rwandan culture is a culture of fear . . .”). See also DANIELLE DE LAME, *A HILL AMONG A THOUSAND: TRANSFORMATIONS AND RUPTURES IN RURAL RWANDA* 14-15 (University of Wisconsin Press, 2005) (“Secrets are a preferred tool for forging an identity, both individual and collective . . . Shared secrets develop internal solidarity rooted in trust in each other's ability not to reveal them . . . Secrecy persisted as a cultural habit well beyond pre-colonial and colonial Rwanda, where people, subjected to a climate of constant insecurity, were at the mercy of capricious chiefs whose intrigues affected their lives . . . The habit of secrecy continues in the most ordinary circumstances: one's dwelling place is mentioned evasively, and the rooms of a house are set up so as to conceal the state of one's provisions.”).

211. Waldorf, *supra* note 65, at 70.

212. HUMAN RIGHTS WATCH, *supra* note 83, at 39, n.104 (“Among the international organizations accused of supporting divisionist and genocidal ideas by one or both of the parliamentary commissions were CARE International, Trocaire, Norwegian People's Aid, 11-11-11, Kolping Family, Pax Christi, Voice of America (VOA), British Broadcasting Corporation (BBC) and Human Rights Watch as well as the Catholic Church, the Association of Pentecostal Churches in Rwanda, Jehovah's Witnesses, Seventh Day Adventists, the International United Methodist Church, and the Mennonites.”).

have spoken out against or not participated in *gacaca* as harboring “divisionism”<sup>213</sup> or “genocidal ideology,”<sup>214</sup> which is punishable by a maximum of five years in prison.<sup>215</sup> In one case, a local government official accused citizens of having “genocide and ethnic ideologies” for boycotting a *gacaca*, though the boycott was based on allegations that judges were soliciting bribes.<sup>216</sup>

The Kagame government’s increasingly authoritarian tendencies have not passed unnoticed by international watchdog organizations. Amnesty International reports that Rwandan journalists continue to face violence, intimidation, and harassment.<sup>217</sup> Human Rights Watch has condemned the recent killings of genocide survivors and extrajudicial executions, calling for “prompt, effective, and impartial investigations and prosecutions in all situations, including in the killing of genocide survivors.”<sup>218</sup> Such killings clearly raise tensions between ethnic groups in the country. In the past two years, Human Rights Watch has also denounced illegal detentions, police killings, and the disappearance of prominent business people within the country.<sup>219</sup> In its 2008 Country Report on Human Rights in Rwanda, the U.S. State Department says:

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213. *Id.* at 35. “In 2002 ‘divisionism’ (then called ‘sectarianism’) was made a crime . . .” *Id.* The crime of sectarianism occurs when the author makes use of any speech, written statement or action that causes conflict that causes an uprising that may degenerate into strife among people. *Id.* “When asked to define ‘divisionism,’ not one judge interviewed by Human Rights Watch researchers was able to do so, despite having convicted defendants on divisionism charges.” *Id.* (internal citations omitted).

214. *Id.* (“Under the 2003 law punishing genocide, persons condemned for denying or grossly minimizing genocide, attempting to justify genocide or destroy evidence related to it were liable to a minimum of ten years and a maximum of twenty years in prison.”) (internal citations omitted); *see also* CONST. OF THE REPUBLIC OF RWANDA, pmbl, arts. 9, 13, 33 (June 4, 2003) (stating that that revisionism, negationism, the minimization of genocide and all ethnic, regionalist, and racial propaganda based on an form of division is punishable by law); *see also* Human Rights Watch, *Preparing for Elections: Tightening Control in the Name of Unity*, HUMAN RIGHTS WATCH BACKGROUNDER, May 8, 2003, <http://www.hrw.org/backgrounder/africa/rwanda0503bck.htm> (noting that in 2003, the government accused forty-six MDR politicians and their alleged supporters of divisionist ideology.); *see also* HUMAN RIGHTS WATCH, *supra* note 83, at 40-41 (offering further discussion of problematic prosecutions that have led to marginalization of political opposition, chilled dissent against government policies such as land reform, social isolation of individuals charged and approximately 1,300 prosecutions in 2007-2008 alone).

215. HUMAN RIGHTS WATCH, *supra* note 83, at 38.

216. Le Mon, *supra* note 156, at 19; *Kamembe Residents Boycott Gacaca*, THE NEW TIMES (KIGALI), (Sept. 29, 2006); *see also Genocide Survivor Boycotts Gacaca, Cites Harassment*, THE NEW TIMES (KIGALI), Nov. 16, 2006.

217. *See* AMNESTY INT’L REPORT 2008: STATE OF THE WORLD’S HUMAN RIGHTS, RWANDA (2008), <http://thereport.amnesty.org/eng/regions/africa/rwanda>.

218. Human Rights Watch, *Killings in Eastern Rwanda*, HUMAN RIGHTS WATCH BACKGROUNDER, (JAN. 2007), <http://www.hrw.org/backgrounder/africa/rwanda0107/rwanda0107web.pdf>.

219. HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 2007, RWANDA – EVENTS OF 2006 (2007), <http://www.unhcr.org/refworld/publisher,HRW,,RWA,45aca2a5b,0.html> (“Police and members of Local Defense Forces illegally detained and abused hundreds of persons, many of them street children and members of other vulnerable groups in Kigali, the capital, during the first months of 2006.”).

Significant human rights abuses occurred, although there were important improvements in some areas. Citizens' right to change their government was restricted, and extrajudicial killings by security forces increased. There were reports of torture and abuse of suspects, although significantly fewer than in previous years. Police sometimes imposed collective punishments, including beatings, on residents of communities in which the property of genocide survivors had been damaged or destroyed.... Security forces arbitrarily arrested and detained persons.... There continued to be limits on freedom of speech and association, and restrictions on the press increased.<sup>220</sup>

Filip Reyntjens goes so far as to say that “[t]en years after the 1994 genocide, Rwanda is experiencing not democracy and reconciliation but dictatorship and exclusion.”<sup>221</sup> Reyntjens discusses the conflicts and disagreements that have wracked the RPF over the past decade. These include allegations of abuse of power, human rights violations, discrimination, and intimidation of opponents and critics.<sup>222</sup> He concludes that the RPF is continuing the authoritarian tendencies of the Habyarimana regime and warns that the international community should not be blinded by the competent, technocratic rule of the RPF.<sup>223</sup> Reyntjens sees “ominous” signs that the situation in Rwanda might further deteriorate and that the seeds for “massive new violence in the medium to long run” may already be sown.<sup>224</sup> An echo of this concern is found in the U.S. Millennium Challenge Corporations’ 2007 country scorecard for Rwanda which gives the country low marks in the category of “Ruling Justly.”<sup>225</sup>

Given the scope of the 1994 genocide, and the enormous number of people involved as perpetrators or accomplices, it is unsurprising that both the ICTR and the national legal system have experienced real difficulties in effectively and efficiently prosecuting cases. Empowering local communities to draw on their local knowledge and resolve genocide-related disputes relieves stress on the formal legal system and may speed justice for some. *Gacaca* holds the potential to promote inter-ethnic reconciliation, but it is unclear if the process is living up to this potential.

Strategies for promoting reconciliation do not rely solely on legal process; however, in addition to the courts and *gacaca*, the government has undertaken a variety of other efforts to promote reconciliation. These include creating the

220. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – RWANDA, (March 11, 2008), <http://www.state.gov/g/drl/rls/hrrpt/2007/100499.htm>.

221. Filip Reyntjens, *Rwanda, Ten Years On: From Genocide to Dictatorship*, 103 AFR. AFF. 177, 177 (2004).

222. *Id.* at 180.

223. *Id.* at 209.

224. *Id.* at 209-10.

225. Millennium Challenge Corp., *Rwanda Candidate Country Scorecard FY08*, (2007), <http://www.mcc.gov/documents/score-fy08-rwanda.pdf> (demonstrating that although Rwanda scores well in terms of controlling corruption, it scores poorly in terms of the protection of civil and political rights and in terms of voice and accountability).

National Unity and Reconciliation Commission, which organizes meetings, conferences, and workshops to discuss unity and reconciliation;<sup>226</sup> building genocide memorials and museums;<sup>227</sup> and sponsoring remembrance events, such as the national day of mourning and the annual mourning period in April.<sup>228</sup> In addition to these programs, informal reconciliation in Rwanda may be encouraged by the government's policy of economic liberalization. We discuss the government's effort to liberalize the economy generally and the important coffee sector particularly below.

#### IV. LIBERALIZATION IN RWANDA

Over the past decade, the Rwandan government has liberalized much of the economy, albeit slowly and with some difficulty. There are currently no restrictions on investments in Rwanda,<sup>229</sup> which is also a member of several regional trade groups, including the East African Community.<sup>230</sup> Tariffs have been eliminated on goods entering from COMESA countries but they remain a weighted 9.7% in 2005 for other goods from other nations.<sup>231</sup> The government has privatized a large number (70 of 104) of industries.<sup>232</sup> While Rwanda scores reasonably well on a recent economic freedom index in terms of fiscal, trade, and monetary freedom, it scores poorly in terms of property-rights protection and corruption.<sup>233</sup> Overall, the trend in Rwanda over the past 10 years is towards increased economic freedom and in November 2006, Rwanda was designated as a "Threshold" country by the Millennium Challenge Corporation (MCC) in the U.S., and cited for having "demonstrated an impressive track record on economic reform."<sup>234</sup>

VISION 2020 creates a strategic plan for economic change in Rwanda.<sup>235</sup> This plan "has served as the platform for sector policy-setting in each ministry since late 2003."<sup>236</sup> The goals created by VISION 2020 and Rwanda's Poverty

226. Zorbas, *supra* note 132, at 38. The NURC was created in 1999. It participated in "civic reeducation" aimed at former Interhamwe members or other demobilized soldiers by providing courses. *Id.*

227. *Id.* at 39.

228. *Id.* at 40.

229. THE HERITAGE FOUND., 2008 INDEX OF ECONOMIC FREEDOM, RWANDA (2008), <http://www.heritage.org/Index/country.cfm?id=Rwanda>.

230. John Gahamanyi, *Finanical Institutions: Rwanda Joins EADB Board*, THE NEW TIMES (Kilgali), Nov. 6, 2008, available at <http://newtimes.co.rw/index.php?issue=13706&article=10550>.

231. THE HERITAGE FOUND., *supra* note 229.

232. *Id.*

233. *Id.*

234. Press Release, Millennium Challenge Corp., Millennium Challenge Corporation Board of Directors Announces 2007 Threshold Program Countries Niger; Peru; and Rwanda (Nov. 8, 2006), available at <http://www.mcc.gov/press/releases/2006/release-110806-thresholdcountryselection.php>; see also MILLENNIUM CHALLENGE CORP., *supra* note 225.

235. REPUBLIC OF RWANDA MINISTRY OF FIN. AND ECON. PLANNING, VISION 2020 (July 2000), available at <http://www.moh.gov.rw/docs/VISION2020.doc>.

236. Int'l Fund for Agric. Dev., *Enabling the Rural Poor to Overcome Poverty in Rwanda*, www.IFAD.org, Nov. 2006, [http://www.ifad.org/operations/projects/regions/Pf/factsheets/rwanda\\_e.pdf](http://www.ifad.org/operations/projects/regions/Pf/factsheets/rwanda_e.pdf)

Reduction Strategy Paper (PRSP) include improving the institutional environment to allow for private-sector development and infrastructure improvements; focusing on good governance (including democratization, national reconciliation, political stability, and security); improving productivity (especially of land); improving human capital through investments in health and education, creating a service-based economy with a focus on ICT (information communications and technology);<sup>237</sup> reducing external support; relying more on exports; and promoting regional integration.<sup>238</sup>

Progress towards the VISION 2020 goals has been mixed. As a result of these policy changes, the annual economic growth rate was above 10% between 1994 and 2004; this was the second highest growth rate in Africa during that period.<sup>239</sup> *Per capita* GDP rose at a rate of 5.3% during this same time period and this was the third highest growth rate in Africa.<sup>240</sup> The British overseas development agency, DFID, reports that poverty levels dropped from 70% of the population in 1994 to under 57% in 2006.<sup>241</sup> The government has improved tax collections. The amount collected by the Rwandan Revenue Authority has increased three-fold from the equivalent of 60 million pounds in 1998 to the equivalent of 240 million pounds in 2006.<sup>242</sup> The government has also devoted much time and attention to diversifying the economy. Results have been good enough that in 2006 the British government and the Rwandan government signed a Memorandum of Understanding that commits the bilateral partners to continuing reforms and financial support.<sup>243</sup>

Despite this progress the *per capita* GDP is depressingly low at \$260.<sup>244</sup> Most Rwandans still work in agriculture.<sup>245</sup> The World Bank reports that only 6%

237. Xan Rice, *Poverty-stricken Rwanda puts its faith and future into the wide wired world*, THE GUARDIAN (London), Aug. 1, 2006, at 20, available at <http://www.guardian.co.uk/rwanda/story/0,,1834621,00.html>.

238. RWANDAN AUTHORITIES, AN APPROACH TO THE POVERTY REDUCTION ACTION PLAN FOR RWANDA: THE INTERIM PRSP 12 Int'l Monetary Fund (2000), available at <http://www.imf.org/external/NP/prsp/2000/rwa/01/110100.pdf>.

239. Press Release, Dep't for Int'l Dev., Rwanda's remarkable recovery leads UK to commit funds for next 10 years, (March 1, 2006), available at <http://www.dfid.gov.uk/news/files/pressreleases/rwanda-commitment.asp>.

240. Dep't for Int'l Dev., Organization Record (Jan. 6, 2007), [http://www.afdevinfo.com/htmlreports/org/org\\_35681.html](http://www.afdevinfo.com/htmlreports/org/org_35681.html).

241. Dep't for Int'l Dev., *A Way to Help Governments Reduce Poverty*, WWW.DFID.GOV.UK, Jan. 7, 2008, <http://www.dfid.gov.uk/news/files/prbs-hovs-reduce-poverty-examples.asp#Rwanda>. If these figures are accurate, then such changes go some way towards addressing two prongs of Collier's conflict trap: economic growth and low incomes. COLLIER ET AL., *supra* note 11, at 53. However, past experience may not be replicated in the future. *Id.*

242. Dep't for Int'l Dev., *Good Taxes Reduce Poverty in Rwanda*, WWW.DFID.GOV.UK, Jan. 10, 2008, <http://www.dfid.gov.uk/casestudies/files/africa/rwanda-tax.asp>.

243. Dep't of Int'l Dev., *supra* note 239.

244. U.S. Dep't of State, Background Note: Rwanda, <http://www.state.gov/r/pa/ei/bgn/2861.htm>.

245. *Id.*



of Rwandans have access to clean water and electricity.<sup>246</sup> And, Rwanda scores a low 150 out of 178 in the World Bank's latest (2008) *Doing Business* report.<sup>247</sup>

#### V. MODEST GAINS AND ENCOURAGING SIGNS IN THE COFFEE SECTOR

One area where the government's liberalization policies have created benefits for many poor Rwandans is in the coffee sector. Economic liberalization in this important sector has benefited thousands of Rwanda's smallholders.<sup>248</sup> Reforms have freed farmers from mulching requirements and the legal obligation to grow coffee. Farmers can now interplant coffee with other crops,<sup>249</sup> freely contract with buyers,<sup>250</sup> and join together in cooperatives to take advantage of economies of scale.<sup>251</sup>

Rwandex S.A., the old monopsony purchaser/exporter, was sold to a private owner in 2007.<sup>252</sup> Recent reports suggest the company may face liquidation as a result of excessive debt.<sup>253</sup> If this were to happen, Rwanda would still have four

246. World Bank Group Dev. Outreach, Poverty Alleviation and Economic Growth in Rwanda through S&T, <http://www1.worldbank.org/devoutreach/january07/article.asp?id=397>.

247. *Doing Business 2008: Comparing Regulations in 178 Economies* 6 (World Bank, Working Paper No. 41938, 2008), available at <http://go.worldbank.org/DXNFXDD490>.

248. AKIYAMA ET. AL., *supra* note 21, at 88 (noting that after Uganda liberalized its coffee sector "Rwandan policy makers became keenly aware of the sound performance of Uganda's subsector following liberalization and were eager to apply similar policies.").

249. Scott Loveridge, Edson Mpyisi & Michael T. Weber, *Farm-Level Perspectives in Rwanda's Coffee Supply Chain Coordination Challenge*, 4 Agricultural Policy Synthesis: Rwanda Food Sec. Project/MINAGRI, No. 2E (2002), available at [http://www.aec.msu.edu/agecon/fs2/rwanda/ps\\_2e.pdf](http://www.aec.msu.edu/agecon/fs2/rwanda/ps_2e.pdf).

250. DeLucco, *supra* note 30, at 13.

251. A cooperative is defined as: "a private business organization that is owned and controlled by the people who use its products, supplies or services." Univ. of Cal., Davis Dep't. of Agric. and Res. Econ., Rural Coop. Ctr., What is a Co-op?, <http://www.cooperatives.ucdavis.edu/whatis/index.htm> (last visited Nov. 13, 2008). Agricultural cooperatives form when farmers voluntarily choose to associate in a larger group to pursue some common goal(s) or benefits. These benefits might include access to processing equipment, economies of scale, risk spreading, socializing opportunities, microloans, or improved health or education facilities. Cooperative members may also work at the cooperative as employees. Cooperatives operate under bylaws that specify roles and responsibilities of members, management, and the board of directors. Members elect the cooperative's management and board of directors. In addition, members meet regularly to debate the cooperative's direction. In the field study, when asked what the benefits of being a coffee cooperative member was, roughly 27% responded "earning money and improving living conditions," 20% responded "getting loans," 20% responded "getting inputs" (e.g., fertilizer, pesticide), 15% responded "training and quality improvement" and 15% responded to "join others and socialize." Jutta M. Tobbias, Data Analysis from Field Study [hereinafter Field Study 2008] (unpublished manuscript, on file with author).

252. African Agriculture, Rwanda Coffee Company Privatized, Value-Addition Estimates Expected, <http://africanagriculture.blogspot.com/2007/03/rwanda-coffee-company-privatized-value.html>.

253. Before the sale of the company, the government of Rwanda owned a 51% share in the company. *Id.* On the recent liquidation of Rwandex, see Gertrude Majyambere, *Coffee Sector: Why Rwandex Was Shut Down*, THE NEW TIMES, (Kigali, Rwanda) May 18, 2008, available at <http://www.newtimes.co.rw/index.php?issue=13630&article=647&week=15>.

coffee exporters operating in the country, an increase in competition that may improve marketing efficiency.<sup>254</sup>

Important improvements in this sector have come from bilateral and multilateral development assistance. NGOs have helped farmers establish cooperatives and have trained cooperative members in quality control, processing, and marketing efforts.<sup>255</sup> Removing a coffee bean from its cherry (depulping) is a lengthy process,<sup>256</sup> and the government, donors, NGOs, and the private sector have worked with smallholders to improve the process, in part by helping to build scores of washing stations<sup>257</sup> around the country to improve quality.<sup>258</sup> The result is

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254. AKIYAMA ET. AL, *supra* note 21, at 109 (discussing coffee sector liberalization in India, Uganda, and Togo write: "the disappearance of inefficient marketing parastatals, and increased competition (the result of private traders entering the coffee market) marketing efficiency has improved substantially in Togo and Uganda." Rwanda's liberalized export sector should result in a similar improvement in marketing efficiency).

255. Samuel Goff, Tex. A&M Univ., International Partnerships for the Development of the Specialty Coffee Sector in Rwanda, Address Before the AIAEE 22<sup>nd</sup> Annual Conference (May 16, 2006), in *International Teamwork in Agriculture and Extension Education*, May 2006, at 244, available at <http://www.aiaee.org/2006/Accepted/244.pdf>.

256. The coffee season in Rwanda runs from March through July. As coffee cherries ripen, farmers go to their fields every few days to pick the fruit. The coffee bean is the seed of this fruit. To get the bean, the fruit must be removed by either a dry or wet process. Dry processing is a low-technology approach that uses the sun to dry the fruit which is subsequently milled. In a wet process, used at coffee washing stations in Rwanda, growers bring their cherries to a washing station to be weighed and depulped. The cherries are pre-sorted, by floating them in water to separate the heavier cherries from the lighter ones. The cherries are run through pulping machines that remove much of the fruit from the bean. The fruit from the pulping may be retained to use as fertilizer, but the beans ferment in holding tanks, as fermentation makes it easier to remove the remaining mucilage. After the fermentation process is complete, the beans are washed four to five times. The beans are sorted again and left to float for 24 hours. After this 24-hour period, the beans are laid out on sorting tables, and workers pick out damaged or irregular beans. The beans are dried in the sun until they reach a desired moisture level, which may take between ten days to two weeks depending upon the weather. This "parchment" coffee is then packed in burlap bags and stored for shipment to a miller who will remove the parchment and produce green coffee beans. Beans are typically exported after this and roasted by the importer. For more discussion of this process and supply chain concerns as they relate to coffee production see Raphael Kaplinsky, *Competitions Policy and the Global Coffee and Cocoa Value Chains* 8-9 (paper prepared for United National Conference for Trade and Development 2004), available at [http://www.acp-eu-trade.org/library/files/Kaplinsky-Raphael\\_EN\\_052005\\_IDS\\_Competition-policy-and-the-global-coffee-and-cocoa-value-chains.pdf](http://www.acp-eu-trade.org/library/files/Kaplinsky-Raphael_EN_052005_IDS_Competition-policy-and-the-global-coffee-and-cocoa-value-chains.pdf).

257. Coffee washing stations are generally located in the rural, Rwandan hills where there is little infrastructure. US AID was instrumental in building the first washing station in Rwanda. By 2005, 46 washing stations had been built, 38 with the financial assistance from US AID. By 2007, the number of washing stations in operation more than doubled to 120. SPREAD, a US AID Project currently provides NGO support to 95 washing stations. See *infra* note 259. Still in 2007, less than 10% of all Rwandan coffee was sold fully washed, indicating more growth opportunities. OTF Group, *Coffee Strategy Update, Continuing Achievements Made in the High Quality Arabica Coffee Market*, 2007-10 (on file with author).

258. Peter Hulm, *Rwandan Coffee Goes from Ordinary Coffee to Star(bucks)*, International Trade Forum (Jan. 2007), <http://www.tradeforum.org/news/fullstory.php/aid/1134> (last visited Sept. 5, 2008).

increasing demand for Rwandan fully washed coffee, some of which is considered “specialty coffee.”<sup>259</sup>

One of the major effects of the liberalizing Rwanda’s coffee industry is that smallholders who produce higher valued specialty coffee have higher incomes. The price that cooperatives and private buyers are paying farmers for unwashed coffee cherries has risen from 60 to 80 Rwandan francs in 2004 to 120-150 francs in 2007.<sup>260</sup> Once the cherries are washed they can be sold to buyers for an even higher price. In 2004, the Maraba cooperative sold washed coffee for \$3.26 per kilo; in 2007, the cooperative was able to charge \$4.08 per kilo.<sup>261</sup> In 2007, the COOPAC cooperative was selling its cherries for \$4.00 per kilo,<sup>262</sup> and the Rusenyi cooperative was selling in a range between \$4.40 and \$5.50 per kilo.<sup>263</sup> In a truly remarkable achievement, in September 2007, importers paid as much as \$55.00 per kilo for the best Rwandan coffee.<sup>264</sup> In 2008, the Rwandan government projects that 25% of the beans sold for export will qualify as high-value, defect-free specialty coffee.<sup>265</sup> Cooperatives use the income these sales generate to pay farmers for cherries, to pay salaries for washing-station staff, and they may provide other benefits to members—short-term loans and improvements to local schools would be just two examples.<sup>266</sup>

A 2006 report to US AID details that “[a]pproximately 50,000 households have seen their incomes from coffee production double, and some 2,000 jobs have

259. “Specialty” coffee is defined by the Specialty Coffee Association of America as: “coffee that has no defects and has a distinctive flavor in the cup.” Specialty Coffee Ass’n of America, *Coffee Term Definitions*, <http://www.scaa.org/pdfs/glossary.pdf> (last visited Sept. 4, 2008). Coffee is ranked into five classes. Class 1 is “specialty” coffee and may have between 0 and 5 defects. The next class, “premium grade” has between 6 and 8 defects. Coffeesearch.org, *Coffee Trade: New York Coffee Exchange*, <http://www.coffeesearch.org/market/coffeemarket.htm> (last visited Sept. 4, 2008). Washing coffee may increase the quality of the coffee, which, in turn, might improve the chances of a particular lot of coffee being considered “specialty.” See Loveridge et al *supra* note 249, at 3.

260. Richard Swanson & Tom Bagaza, *Sustaining Partnerships to enhance Rural Enterprises and Agribusiness Development (SPREAD Project), SPREAD-Growers First Coffee Cooperative Assessment & 2008 Cooperative Development Work Plan*, 22-24, (report prepared for the Tex. A&M Univ. Sys. Borlaug Inst. of Int’l Agric. and Growers First, 2008), available at <http://www.spreadproject.org/documents/SPREAD%20Coffee%20Cooperative%20Assessment%20and%20Workplan.pdf>.

261. *Id.* at 22.

262. *Id.* at 24.

263. *Id.* at 23.

264. At the Golden Cup coffee auction and competition in Kigali, in September of 2007, Rwandan coffee was bought by U.S. coffee importers for as much as \$55 per kilo (approximately \$25 per pound), a Rwandan record price comparable to the world’s most expensive coffees. Rwanda Dev. Gateway, *Coffee Sells at Record Prices* (Sept. 10, 2007), [http://www.rwandagateway.org/article.php3?id\\_article=6848](http://www.rwandagateway.org/article.php3?id_article=6848).

265. *Coffee Revenues Double Before Year End*, RWANDA NEWS AGENCY, July 24, 2008, available at <http://allafrica.com/stories/200807240894.html>.

266. See *infra* text accompanying note 393 for further discussion of cooperatives and potential benefits. In Field Study 2008, 83% of respondents who were members of cooperatives believed that they could not have received the economic and social benefits without being a member of the cooperative. Field Study 2008, *supra* note 251, at question 14.

been created at coffee washing stations.”<sup>267</sup> An NGO involved in the US AID project reports: “incomes (in the specialty coffee sector) have doubled or tripled, and business skills, labour conditions and community spirit have been enhanced.”<sup>268</sup> In US AID-supported coffee zones, earnings increased by 50-100% between 2004 and 2007.<sup>269</sup> With more income, farmers can repair their homes, buy clothes and livestock, pay school fees for their children, and get through the long months between harvests more easily than before.<sup>270</sup>

The results from our exploratory field survey<sup>271</sup> conducted in the June 2008 among rural Rwandan coffee farmers confirm that smallholder farmers are benefiting from changes in the coffee sector. Sixty-four percent of those polled said that their workload had been reduced in the past five years or, alternatively, since joining a cooperative.<sup>272</sup> Farmers reported using this extra time to pursue other income generating activities, helping care for family and friends, and to meet socially.<sup>273</sup> When asked to compare the level of happiness with their economic situation now versus in the past (i.e. five years ago, or alternatively before they joined the co-op), only 3% polled said they were very happy before, whereas 40% said they were very happy now.<sup>274</sup> Seventy-two percent reported feeling very confident that there are now good opportunities to make a better life for themselves and their families.<sup>275</sup> While these results are not dispositive, they further corroborate the thesis that farmers are experiencing important economic gains that may, in turn, help promote more positive feelings towards others, a step towards reconciliation.

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267. Chemonics Int'l, *Assessing US AID's Investments in Rwanda's Coffee Sector – Best Practices & Lessons Learned To Consolidate Results & Expand Impact 4* (2006), available at [http://www.minagri.gov.rw/IMG/pdf/USAID\\_Rwanda\\_Coffee\\_Assessment.pdf](http://www.minagri.gov.rw/IMG/pdf/USAID_Rwanda_Coffee_Assessment.pdf).

268. ACDI/VOCA, *Specialty Coffee: Increased Quality & Profits for Smallholders*, available at [http://www.acdivoca.org/852571DC00681414/Lookup/coffeebroweblyout/\\$file/coffeebroweblyout.pdf](http://www.acdivoca.org/852571DC00681414/Lookup/coffeebroweblyout/$file/coffeebroweblyout.pdf) (last visited Sept. 4, 2008).

269. Swanson & Bagaza, *supra* note 260, at 22-24.

270. Interviews with members of the COOPAC cooperative, Gisenyi, Rwanda, ( Mar. 16 2006); Field Study 2008, *supra* note 251, at question 20.

271. The proportion of Hutu to Tutsi ranged from 54% Hutu (to 38% Tutsi) to 83% Hutu (to 13% Tutsi) across the locations. Intergroup Contact, *supra* note 13, at 38. Although the study's sample represents a minority of coffee farmers in Rwanda, i.e. those benefiting from the results of privatization in Rwanda's coffee sector, and the survey design prohibits generalizations beyond the group examined, the observed correlations match current theories of reconciliation and are corroborated by journalistic evidence. Moreover, while correlation is not the same as causation, the absence of a correlation suggests the absence of a causal relationship. Here, there are strong correlations. *Id.*

272. Field Study 2008, *supra* note 251, at question 18. Because not all farmers were members of cooperatives but sold their cherries to private washing stations, we used a 5 year time horizon as a reference point for these participants as opposed to membership in a cooperative. *Id.* Part VII offers a more in-depth discussion of private washing stations.

273. Field Study 2008, *supra* note 251, at question 19.

274. *Id.* at question 21.

275. *Id.* at question 38.

There are a number of reasons to believe these benefits will continue.<sup>276</sup> While growth worldwide in ordinary-grade coffee consumption remains modest, the consumption of high-quality specialty coffee (currently 7% of the coffee volume in the international market) is rising by 20% annually.<sup>277</sup> Even with increased competition and somewhat lower prices, Rwanda's specialty coffees should continue to command a good price.<sup>278</sup> In 2006, coffee exports were expected to grow from 17,000 to 21,000 metric tons—a 23.5% increase—and generate \$46 billion in revenue—which would mark a 21% increase from 2005 figures.<sup>279</sup> Coffee, along with tea, still earns more than 50% of Rwanda's trade revenue,<sup>280</sup> and the amount of fully washed coffee is also rising as the number of washing stations increases.<sup>281</sup>

In an interview in 2006, Rwanda's then-Minister of Agriculture, Anastase Murekezi, said that the specialty coffee industry's most successful story to date (in terms of wealth being created for Rwandans) was with American companies.<sup>282</sup> Importers such as Starbucks and Green Mountain buy Rwandan coffee, bringing much needed income to smallholders,<sup>283</sup> but so too are less well-known but highly discriminating American importers such as Intelligentsia, Thanksgiving, and Counter Culture Coffee.<sup>284</sup>

As noted above, several NGOs have helped Rwandans take advantage of this liberalized environment, providing training and technical assistance and helping farmers develop relationships with foreign buyers. For example, US AID has used part of its relatively small budget in Rwanda to support rural economic growth through three coffee-related projects: the Partnership for Enhancing Agriculture

276. RWANDA NEWS AGENCY, *supra* note 265 (noting that through July, 2008 export revenue for Rwandan coffee was reported to be \$15 million, up from \$6.8 million for the whole of 2007).

277. Specialty Coffee Statistics & Coffee Facts, [http://www.e-importz.com/Support/specialty\\_coffee.htm](http://www.e-importz.com/Support/specialty_coffee.htm) (last visited Sept. 8, 2008).

278. ECONOMIST INTELLIGENCE UNIT, COUNTRY REPORT: RWANDA (2007), (observing that in its 2007 Country Report on Rwanda, the Economist Intelligence Unit notes: "Stagnation in many of the traditional coffee-drinking markets of North America and Western Europe will restrict growth in demand, although demand for high-quality specialty coffees, including Rwanda's finest fully washed Arabica, will remain more buoyant.").

279. Reuters, *Rwanda 2006 Coffee Output Seen at 21,000 T*, FLEXNEWS, Oct. 19, 2006, [http://www.flexnews.com/pages/5321/Africa/Coffee/rwanda\\_2006\\_coffee\\_output\\_seen\\_21000\\_t.html](http://www.flexnews.com/pages/5321/Africa/Coffee/rwanda_2006_coffee_output_seen_21000_t.html).

280. TRADE POLICY REVIEW BODY REPORT, RWANDA-REPORT BY THE GOVERNMENT, WT/TPR/G/129 (Aug. 31, 2004), available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/g129\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g129_e.doc) (noting that "The chief cash crops are tea and coffee, which provide more than half of Rwanda's export revenue.").

281. Swanson & Bagaza, *supra* note 260.

282. Interview with Anastase Murekezi, Minister of Agriculture, Rwanda, in Kigali, Rwanda, (Mar. 14, 2006) (on file with author).

283. See Laura Fraser, *Coffee, and Hope, Grow in Rwanda*, N.Y. TIMES, Aug. 6, 2006, § 3, at 31.

284. Description of Rwandan Intelligentsia Coffee, <http://www.intelligentsiacoffee.com/origin/offerings/02-15-2008>; Description of Thanksgiving Coffee's use of Cooperatives in Rwanda, <http://www.thanksgivingcoffee.com/cooperatives>; description of Counter Culture Coffee's use of Rwandan Coffee, [http://www.counterculturecoffee.com/index.php?option=com\\_content&task=view&id=606&Itemid=49](http://www.counterculturecoffee.com/index.php?option=com_content&task=view&id=606&Itemid=49).

through Linkages (PEARL), the Agricultural Cooperative Development International/Volunteers Overseas Cooperative Assistance (ACDI-VOCA), and the Agribusiness Development Assistance Project in Rwanda (ADAR).<sup>285</sup>

Each group has made important contributions to strengthening the coffee sector. For example, the PEARL project, working closely with the National University of Rwanda in Butare focused on helping farmers form cooperatives to produce high-quality specialty coffee.<sup>286</sup> PEARL team members taught local growers how to improve their quality-control measures, develop effective marketing strategies, and create beneficial relationships with specialty coffee importers.<sup>287</sup> PEARL has helped thirteen cooperatives win government approval, and also assisted coffee washing stations by helping to improve quality-control capabilities, improving market access, and improving management skills.<sup>288</sup> Whether these cooperatives can develop effective management structures remains an open question, one the new SPREAD project (an outgrowth of PEARL) is attempting to address.<sup>289</sup>

Trainers and buyers from Europe, China, and Japan are also routinely visiting the country, bringing expertise that helps improve the local industry, as well as income to farmers. Minister Murekezi said: "You see richness growing and poverty decreasing. You see people happier, more children at school, more homes being improved, more people in savings schemes for health. And people say they want to continue to improve their lives through coffee."<sup>290</sup>

In the 2006 interview, the Minister also noted that in the areas around washing stations, employment and revenues are both rising. Besides increased incomes for farmers, the benefits from specialty coffee extend beyond the cooperative. Goff notes: "[A]s income levels of the cooperative members have increased so has the flow of money in the community.... The positive feelings among community members are a reflection of increased incomes in the area (of the cooperatives)."<sup>291</sup> Coffee production cannot, by itself, solve the many

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285. Chemonics Int'l, *supra* note 267, at 15-16 (noting that budgets for these projects have been relatively small: ACDI-VOCA's budget was approximately \$600,000 from 2001 to 2003; ADAR and PEARL had annual budgets of approximately \$1.5 million. ADAR and PEARL were six-year projects).

286. *Id.* at 16.

287. *Id.* at 32, 33, 39.

288. *See generally* Partnership to Enhance Agriculture in Rwanda through Linkages, <http://www.iaa.msu.edu/pearl/index.htm> (discussing PEARL's functions); *see also* Swanson & Bagaza, *supra* note 260, and Intergroup Contact, *supra* note 13, at 26 (explaining that the PEARL project was succeeded by a new project know as SPREAD (Sustaining Partnership to enhance Rural Enterprise and Agribusiness Development). SPREAD currently assists 15 coffee cooperative and 5 privately owned coffee ventures. SPREADS also assists with technical support and health care services. 95 coffee washing stations, 9 of which are privately owned. 20,000 farmers are associated with the cooperatives that receive assistance from SPREAD, and 5000 farmers sell to private washing stations that have also benefited from SPREAD.).

289. Swanson & Bagaza, *supra* note 260, at 26-36.

290. Murekezi interview, *supra* note 282.

291. Samuel Neal Goff, A Case Study of the Management of Cooperatives in Rwanda, 70 (2006) (unpublished Master's thesis, Texas A&M University) (on file with Texas A&M University Libraries).

problems these farmers face. Indeed, it remains to be seen if the benefits of coffee-sector liberalization will continue to flow to the rural poor. Taken together, concerns over the quality of cooperative management, the government's coffee agency, and a problematic land law<sup>292</sup> may bode ill for farmers.<sup>293</sup> However, if capacity issues can be addressed and harmful government interference avoided, then the positive gains of the past several years might translate into continued economic and social benefits for Rwanda's poor farmers.

## VI. ECONOMIC LIBERALIZATION AND CONFLICT

Economic liberalization entails reforms that "extend the scope of the market, and in particular of international markets."<sup>294</sup> Political liberalization seeks to expand democracy, strengthen and broaden participation in the political arena, increase voice for all members of society.<sup>295</sup> While both sets of reforms may be jointly pursued one often precedes the other (as in South Korea and China).

The goal of economic liberalization is a more open economy. Typical strategies for accomplishing the goal are privatization, deregulation, reductions in tariff and non-tariff barriers to trade, elimination of price controls and subsidies, and the removal of barriers to investment.<sup>296</sup> Structural adjustment programs (SAPs) were one manifestation of economic liberalization and a common feature of IMF lending in the 1980s and 90s.<sup>297</sup> SAPs typically required developing world governments to change their monetary policies to reduce inflation, to reduce tariff rates, to shrink government budgets and to privatize state-owned industries.<sup>298</sup>

292. Organic Law Determining the Use and Management of Land in Rwanda § 20 No. 8/2005 Gazeti ya leta ya Reublika Rwandaise, Sept. 15, 2005.

293. See Goff, *supra* note 291 (discussing management concerns at coffee cooperatives in Rwanda); see Swanson & Bagaza, *supra* note 260, at 9 (discussing current concerns with cooperative management and capacity). For a discussion of the problematic role played by OCIR-Café see Karol Boudreaux, *State Power, Entrepreneurship and Coffee: the Rwandan Experience*, 15 MERCATUS POL'Y SERIES 1, 22-23, (2007). Boudreaux also discusses the troubling 2005 Land Law. *Id.* On the concerns raised by the Land Law see also, Johan Pottier, *Land Reform for Peace? Rwanda's 2005 Land Law in Context*, 6 J. AGRARIAN CHANGE 509 (2005), and Herman Musahara, *Improving Tenure Security for the Rural Poor: Rwanda—Country Case Study* (LEP/FAO Working Paper No.7, 2006), and Int'l Conference on Agrarian Reform and Rural Dev., *A Case Study On the Implications of the Ongoing Land Reform on Sustainable and Rural Development and Poverty Reduction in Rwanda And The Outcome Report of the Thematic Dialogue* (Jan. 20, 2006) [hereinafter Implications Case Study], and Saskia Van Hoyweghen, *The Urgency of Land and Agrarian Reform in Rwanda*, 98 AFR. AFF. 353 (1999).

294. Francesco Giavazzi & Guido Tabellini, *Economic and Political Liberalizations*, 52 J. MONETARY ECON. 1297, 1298 (2005).

295. See, e.g., POLITICAL LIBERALIZATION & DEMOCRATIZATION IN THE ARAB WORLD 3-4 (Rex Brynen et al. eds., 1995).

296. Global Trade Negotiations Home Page, <http://www.cid.harvard.edu/cidtrade/issues/washington.html>.

297. See Paul Collier and Jan Willem Gunning, *The IMF's Role in Structural Adjustment*, 109 The Econ. J. 634, 634 (1999). See also J. Barry Riddell, *Things Fall Apart Again: Structural Adjustment Programmes in Sub-Saharan Africa*, 30 J. MOD. AFR. STUD. 53(1992).

298. Morris Goldstein, *IMF Structural Conditionality: How Much is Too Much?* (Institute of International Economics Working Paper No. 4, 2000).

This conditional lending has been widely criticized for imposing the costs of “austerity” measures on the people least able to bear them: the developing world’s poor.<sup>299</sup>

An extensive literature explores the role that economic and political liberalization play in promoting peaceful relations among nations and in intrastate conflicts.<sup>300</sup> The key insight of this work—which is also known as the “liberal peace thesis”—is that market-oriented democracies rarely go to war against each other.<sup>301</sup> Polacheck and Seigle, for example, write that “countries with the most trade (and the greatest gains from trade) have the most to lose from conflict. *Ceteris paribus*, these countries have lesser amounts of conflict.”<sup>302</sup> They go on to argue that, “nation pairs with more trade exhibit less conflict and democracy-pairs exhibit more trade.”<sup>303</sup> The liberal peace thesis also applies to intrastate conflict, as market democracies experience lower levels of internal conflict, rebellion, assassination, and other disturbances than do authoritarian regimes or closed economies.<sup>304</sup>

Extending this insight, commercial activities within a country, which typically require collaborative efforts to bring goods or services to the market, may also act as a catalyst for generating trust.<sup>305</sup> Such collaboration can contribute to the

299. See generally, Storey, *supra* note 17.

300. Michael Doyle, *Liberalism and World Politics*, 80 AM. POL. SCI. REV. 1151 (1989); Cramer, *supra* note 17, at 202-05; R.J. RUMMEL, UNDERSTANDING CONFLICT AND WAR, VOL. 4: WAR, POWER, PEACE (1979).

301. See generally John R. Oneal and Bruce Russett, *Assessing the Liberal Peace with Alternative Specifications: Trade Still Reduces Conflict*, 36 J. PEACE RES. 423, 433, 439 (1999) (noting that “there is statistically significant evidence for the pacific benefits of economically important trade” as well as joint democracy); see generally Håvard Hegre, *Development and the Liberal Peace: What Does it Take to be a Trading State?* 37 J. PEACE RES. 5, 17 (2000) (concluding that the pacifying effect of trade increases with increased development but that in cases where a trading pair includes one country that is very poor, GDP per capita of less than \$300, increased interdependence may increase the incidence of fatal disputes); see generally Cullen F. Goenner, *Uncertainty of the Liberal Peace*, 41 J. OF PEACE RES. 589, 600 (2004) (discussing the three main theoretical approaches to liberal peace and finding that while trade interdependence is not a strong predictor of military conflict democracy is.); see generally Dale C. Copeland, *Economic Interdependence and War: A Theory of Trade Expectations*, 20 INT’L SECURITY 5 (1996) (arguing that interdependence can foster peace only when states expect that trade will be high into the foreseeable future and that when expectations for future trade are low, the most highly dependent states will be the ones most likely to initiate war for fear of losing economic wealth that supports long-term security).

302. Solomon Polachek & Carlos Seigle, *Trade, Peace and Democracy: An Analysis of Dyadic Dispute* 14 (IZA Discussion Paper No. 2170, 2006).

303. *Id.* at 48.

304. See Mirjam E. Sorli, *The Liberal Peace Argument in the Middle East: Ali in Wonderland or Crude (Oil) Reality?* (Sept. 8, 2001) (unpublished Master’s Thesis, University of Oslo), available at [http://www.prio.no/sptrans/-68957771/file38409\\_canterbury\\_mirjam.pdf](http://www.prio.no/sptrans/-68957771/file38409_canterbury_mirjam.pdf) (analyzing the liberal peace theory on an interstate and an intrastate level. Regarding the liberal peace theory, the author states, “Democracy and economic growth are today seen as the main ingredients in a recipe for a peaceful world.”).

305. See, e.g., T. Saguy & A. Nadler, *Social psychology and the process of trust building: Interviews with Israelis and Palestinians involved in joint projects*, 44 MEGAMOT, 2006, at 354. Our



development of a new, shared identity among members of different groups,<sup>306</sup> thereby reducing prejudice among previously hostile groups.<sup>307</sup>

The idea that a “liberal peace” exists is not new, but renewed interest in the subject over the past twenty years has generated a large body of theoretical and empirical work.<sup>308</sup> In addition, the claim that liberal market democracies are more peaceful than other societies provided support for efforts to export both democracy and free-market economic policies to countries lacking these institutions.<sup>309</sup>

However, the liberal peace thesis has its critics.<sup>310</sup> As Paris notes, it might be the case that existing liberal democracies are peaceful, but the shift from authoritarianism and/or a closed economy to market liberalism can be fraught with conflict.<sup>311</sup> Some liberalization policies, such as those adopted in Rwanda in the early 1990s, impoverish, rather than enrich or empower, the poor.<sup>312</sup> Some privatization efforts benefit political insiders at the expense of the broader

fieldwork supports this hypothesis. When polled on levels of trust towards buyers, 32% of farmers indicated intermediate and high levels of trust previously (i.e. 5 years ago or alternatively before joining the cooperative), whereas 89% indicated intermediate and high levels of trust now. Field Study 2008, *supra* note 251, at question 17.

306. For a discussion of social identity theory *see generally* Matthew J. Hornsey, *Social Identity Theory and Self-categorization Theory: A Historical Review*, 2/1 SOC. AND PERSONALITY PSYCHOL. COMPASS 204, 204-06 (2008), available at <http://dx.doi.org/10.1111/j.1751-9004.2007.00066.x>.

307. Samuel L. Gaertner et al., *How does Cooperation Reduce Intergroup Bias?* 59, No. 4 J. PERSONALITY AND SOC. PSYCHOL., 692 (Oct. 1990) (showing how intergroup cooperation may contribute to the development of a new, shared identity among previously hostile groups); MUZAFER SHERIF, IN COMMON PREDICAMENT: SOCIAL PSYCHOLOGY OF INTERGROUP CONFLICT & COOPERATION (Houghton-Mifflin 1966) (suggesting that when two parties who have experienced conflict over limited resources are faced with a superordinate goal- task or challenge that both groups want to have resolved, and that requires joint effort- hostile behavior subsides); *see also* GORDON ALLPORT, THE NATURE OF PREJUDICE (Oxford, 1954); Thomas F. Pettigrew, *Intergroup Contact: Theory, Research and New Perspectives*, 49 ANN. REV. PSYCHOL. 65, 65-71 (1998) (providing evidence how positive interaction between antagonistic groups can lead to reductions in prejudice and hostility).

308. For a sense of the literature, *see, e.g.*, John R. O’Neal, Frances H. O’Neal, Zeev Maoz & Bruce Russett, *The Liberal Peace: Interdependence, Democracy and International Conflict, 1950-85*, 33 (1) J. PEACE RES. 11, 11 (1996); *see also* John O’Neal & Bruce Russett, *Clear and Clean: The Fixed Effects of the Liberal Peace*, 55 (2) INT’L ORG. 469, 469-71 (2001); *see also* Michael Mosseau, Håvard Hegre & John R. O’Neal, *How the Wealth of Nations Conditions the Liberal Peace*, 9 (2) EUR. J. INT’L REL. 277, 278 (2003).

309. Paris, *supra* note 17, at 44.

310. Katherine Barbieri & Gerald Schneider, Globalization and Peace: Assessing New Directions in the Study of Trade and Conflict, 36 (4) J. OF PEACE RES., 387 (1999); Cullen Goenner, Uncertainty of the Liberal Peace, 41 (5) J. PEACE RES., 589, 589-90 (2004); Erik Gartzke, Quan Li & Charles Boehmer, Investing in the Peace: Economic Interdependence and International Conflict, 55 INT’L ORG., 391 (2001).

311. Paris, *supra* note 17, at 44; CRAMER, *supra* note 17, at 204-205 (arguing that “[t]he liberal free trade vision of capitalism . . . prettifies reality in two main ways. First, it glosses over the reality of how capitalism takes root in a society and how societies have developed into advanced capitalist societies. The beginnings and the effective and progressive development of capitalism are always painful.”).

312. Storey, Structural Adjustment, *supra* note 23, at 375-77.

society.<sup>313</sup> When liberalization policies benefit the few and the favored at the expense of the majority of a citizenry, creating or exacerbating economic cleavages, they may prompt conflict.<sup>314</sup> Therefore, how liberalization policies are crafted may help determine if they are conflict-generating or conflict-reducing.

In Rwanda, liberalization policies in the coffee sector have imposed some costs on farmers (the costs associated with developing and marketing a high-quality product) but, foreign aid projects implemented by NGOs have both off-set these costs and have helped farmers develop valuable market linkages needed to compete globally.<sup>315</sup> These projects have also helped farmers form cooperatives, improve their product, raise capital, identify buyers, and learn how to negotiate contracts.<sup>316</sup> Providing farmers with the skills needed to transition from producing low-quality commercial grade coffee to high-quality specialty coffee has been an important part of transformation in Rwanda's coffee sector.<sup>317</sup> Government policies creating greater scope for local decision making and for entrepreneurship, coupled with support from the development community, have energized this sector. Unlike other liberalizations, the benefits of the coffee-sector liberalization are spread broadly.<sup>318</sup> Any farmer can choose to grow coffee.<sup>319</sup> No one ethnic group seems to be benefiting at the expense of another. To date, the reforms seem to be conflict-reducing rather than conflict-enhancing.<sup>320</sup>

## VII. COOPERATION AND RECONCILIATION

The economic imperatives discussed above mean that for many smallholders there are potential benefits from joining together in cooperatives to produce and process coffee. Most Rwandan coffee farmers are smallholders, and they face serious obstacles identifying possible foreign buyers, marketing their product, and negotiating sales contracts.<sup>321</sup> Sharing costs and spreading risks is a sensible strategy for many of these farmers, so they join together in cooperatives.<sup>322</sup>

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313. KATHERINE VERDERY, *THE VANISHING HECTARE: PROPERTY AND VALUE IN POSTSOCIALIST TRANSYLVANIA* 113-14 (Cornell University, 2003).

314. Cannon, *supra* note 44, at 42.

315. *See supra* Part V.

316. Karol Boudreaux, Comment, *State Power, Entrepreneurship, and Coffee: The Rwandan Experience*, MERCATUS POL'Y SERIES, Policy Comment No. 15, at 5, 8, 17, 27, Oct. 2007.

317. *Id.* at 15.

318. *Id.* at 12, 18.

319. *Id.* at 8.

320. *Id.*

321. *Id.* at 29.

322. *Id.* Discussing work done over the course of a number of years, Fort and Schipiani identify four possible contributions that business can make towards the creation of more peaceful societies. These contributions include: fostering economic development and creating jobs, adopting external evaluation principles, "creating a sense of connectedness among members of an organization" and in mediating power contests. For our purposes, the role that local businesses (cooperatives and/or private washing stations) play in terms of economic development, job creation, and encouraging connectedness among members are of key importance. *See* Timothy L. Fort and Cindy A. Schipani, *An Action Plan for the Role of Businesses in Fostering Peace*, 44 AM. BUS. L.J. 359, 364-67 (2007); *see also*, Thomas W. Dunfee & Timothy L. Fort, *Corporate Hypergoals, Sustainable Peace, & the Adapted Firm*, 36

Compared to individual production, well-run cooperatives can give smallholders a leg up in a competitive marketplace and provide other benefits that are sorely lacking, such as small loans, agricultural inputs, training, and a social forum.<sup>323</sup>

Cooperatives are not new in Rwanda.<sup>324</sup> Uvin writes that hundreds of cooperatives were created in the 1980s and thousands of less formal farmers' organizations were also started during this time.<sup>325</sup> A US AID report says that the Habyarimana government had an "*associez-vous, on vas vous aider*" policy "but without there necessarily being a real reason for associating."<sup>326</sup> Today, the Rwandan government encourages the formation of cooperatives, but is not directly involved in running cooperatives.<sup>327</sup> Farmers who choose not to be members of cooperatives have alternatives of selling their cherries to private buyers or to private coffee washing stations.<sup>328</sup> These "middlemen" will sell the cherries to millers and/or exporters.<sup>329</sup>

Because bringing coffee to the market requires significant coordination amongst workers at cooperatives and private washing stations,<sup>330</sup> both organizations may facilitate cooperation.<sup>331</sup> An International Alert study from

VAND. J. TRANSNAT'L L. 563, 594 (2003).

323. See Swanson & Bagaza, *supra* note 260, at 14 (describing the cooperative management structure and polled benefits).

324. Chemonics Int'l, *supra* note 267, at 8. In a summary report, US AID notes: "[p]rior to the establishment of the COOPACABI coffee cooperative in Bicumbi in 1996, no coffee cooperatives existed in Rwanda. Farmers sold semi-washed coffee directly to RWANDEX agents, at prices pre-determined by the GOR (Government of Rwanda). However, coffee producer associations did exist, but served the limited function of input distribution (and eventual reimbursement) of products supplied by OCIR-Café." USAID, *Assessing USAID'S Investments In Rwanda's Coffee Sector: Best Practices and Lessons Learned to Consolidate Results and Expand Impact*, April 2006, [http://pdf.usaid.gov/pdf\\_docs/PNADG793.pdf](http://pdf.usaid.gov/pdf_docs/PNADG793.pdf).

325. UVIN, *supra* note 50, at 164-65.

326. Translates roughly: "if you join together we will help you." See Interview with Tom Bagaza, Producer Relations Coordinator, SPREAD, Kigali, Rwanda (Feb. 19, 2008) (explaining that before 1994, OCIR-Café encouraged farmers to form associations so that it could deliver agricultural inputs to centralized locations rather than to individual farmers – so coffee associations made the government's job of supporting farmers easier, they did not have a strong business focus.).

327. Chemonics Int'l, *supra* note 323, at 12-13.

328. See, e.g., USAID, *The Ties That Bind: Case Studies in Making Buyer-Supplier Relationships Last*, Research Report, July 2007, [http://pdf.usaid.gov/pdf\\_docs/PNADL009.pdf](http://pdf.usaid.gov/pdf_docs/PNADL009.pdf).

329. *Id.* Interestingly, our field study found that 23% of coffee cooperative members reported selling to their cooperative instead of private washing stations out of loyalty. Field Study 2008, *supra* note 251, at question 17; see also *supra* text accompanying notes 260-61 for a description of the coffee washing process and private washing stations. Of course, cooperatives are also a kind of a "middleman." See *id.*

330. See *infra* text accompanying notes 400-404; see also note 305 for data regarding trust towards buyers.

331. Discussing the role that multinational corporations can play in promoting peace, Fort argues: "[c]onceptually, businesses do possess the capability to reach across borders and to get people who may not otherwise work together to do so, even if the only common goal they have is profitability. Some businesses even intentionally hire employees from otherwise conflicting ethnic or religious groups in order to get them to have the experience of cooperating." Timothy L. Fort, *The Times and Seasons of Corporate Responsibility*, 44 AM. BUS. L.J. 287, 322 (2007).

2006 posits that in a post-conflict environment local business has a role to play by facilitating the rebuilding of damaged societies and by promoting dialogue among former enemies.<sup>332</sup> Local businesses, this report argues, provide a space for people to participate in joint economic activities:

Doing business may be one of the few remaining points of contact between two sides in a conflict—and one of the first to resume in its aftermath. *In many instances, these points of contact are both profitable and inspiring as they demonstrate that peaceful interaction for mutual benefit is possible as well as desirable.*<sup>333</sup>

The exploratory survey mentioned above, coupled with journalistic evidence, suggests that the increased collaboration (and economic rewards) that have resulted from the pursuit of commercial activities in the coffee sectors is encouraging more positive feelings towards others and towards reconciliation.<sup>334</sup>

To provide further detail, the exploratory field survey we sponsored was conducted in the June 2008. Coffee farmers<sup>335</sup> were asked ninety-four questions related to their membership (if appropriate) in a coffee cooperative; the social climate (either in a cooperative or the local community for people selling at private washing stations); the economic benefits of coffee production; and their attitude towards reconciliation with the other ethnic group (as well as demographic questions).

Survey results suggest<sup>336</sup> that membership in a coffee cooperative, being associated with a particular coffee washing station comparatively longer, and economic as well as general life satisfaction are significant correlates of positive attitudes towards reconciliation.<sup>337</sup> In particular, participants with greater

332. International Alert, *Local Business, Local Peace: the Peacebuilding Potential of the Domestic Private Sector – Executive Summary*, available at [http://www.international-alert.org/pdf/LBLP\\_Russian\\_exec\\_sum.pdf](http://www.international-alert.org/pdf/LBLP_Russian_exec_sum.pdf).

333. *Id.*

334. Reconciliation can be defined as a change in identity. Herbert C. Kelman, *Reconciliation as Identity Change: A Social-Psychological Perspective in FROM CONFLICT RESOLUTION TO RECONCILIATION* 111 (Yaakov Bar-Siman-Tov, Ed.) (Oxford University Press 2004). It can also be defined as a change in psychological orientation towards the other, involving mutual acceptance between groups, Ervin Staub, *Reconciliation After Genocide, Mass Killing or Intractable Conflict: Understanding the Roots of Violence, Psychological Recovery and Steps Toward a General Theory*, 27(6) *POL. PSYCHOL.*, 867, 868 (2006). Another definition is a process involving reciprocating empathy and compassion as well as a peaceful expectation of future intergroup relationships Arie Nadler & Ido Liviatan, *Intergroup Reconciliation: Effects of Adversary's Expressions of Empathy, Responsibility, and Recipients' Trust*, 32 (4) *PERSONALITY AND SOC. PSYCHOL. BULL.* 459, 462 (2006).

335. Field Study 2008, *supra* note 251 (discussing the demographic polled).

336. *Id.* Although the study's sample represents a minority of coffee farmers in Rwanda, i.e. those benefiting from the results of privatization in Rwanda's coffee sector, and the survey design prohibits generalizations beyond the group examined, the observed correlations match current theories of reconciliation and are corroborated by journalistic evidence. Moreover, while correlation is not the same as causation, the absence of a correlation suggests the absence of a causal relationship. Here, there are strong correlations. *See, e.g.*, Staub, *supra* note 334, at 874; Kelman, *supra* note 334, at 24.

337. Field Study 2008, *supra* note 251.

economic security reported low distrust towards members of the other ethnic group, and a tendency towards conditional forgiveness.<sup>338</sup> Coffee washing stations that had been in operation for a comparatively longer period of time were also significantly correlated with a reduction in ethnic distance over time.<sup>339</sup> Life satisfaction significantly correlated with economic security variables, and those farmers reporting greater satisfaction with life also expected a more positive, peaceful future in Rwanda.<sup>340</sup> These observations were discernible independent of gender, education, the participants' ethnicity or the ethnic mix at a location.<sup>341</sup>

The survey also revealed a change in attitudes over time. Of the participants that reported disagreements in their community, 75% reported fewer disagreements<sup>342</sup> today than in the past (i.e. since joining the cooperative or, for non-cooperative members, in the past five years).<sup>343</sup> Conversely, 91% of all survey respondents reported that conflicts are better resolved today than in the past.<sup>344</sup> When polled on levels of trust towards buyers, 32% of farmers indicated intermediate and high levels of trust before, whereas 89% indicated intermediate and high levels of trust now.<sup>345</sup> Perhaps the most suggestive data was the increase in farmers willing to engage in socially inclusive behavior today in comparison to the past.<sup>346</sup> Out of the three-quarters of participants who answered questions about their willingness to greet a member of the other ethnic group, work with this person every day, share a beer, or allow their child to marry such a person, the percentage of those who engaged in such social behavior today, compared to the past, had more than doubled across all questions.<sup>347</sup> Moreover, 46% of the respondents who answered these questions reported that they had not carried out any of these social acts in the past.<sup>348</sup> Only 1% reported not doing so today.<sup>349</sup>

Interestingly, the survey data further suggests that membership at cooperatives provides greater economic and social benefits. Members of coffee cooperatives were more likely to have experienced a positive change in economic

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338. *Id.* at questions 55, 60.

339. *Id.* at questions 61-62.

340. *Id.* at questions 55, 60.

341. *Id.* at question 55.

342. At cooperatives, the main disagreement is how money is used. Other disagreements (at both cooperative and private washing stations) include how much farmers are paid for cherries, job opportunities, and how benefits are shared. *Id.* at question 25.

343. *Id.* at question 24.

344. Throughout the survey, the past was framed as since joining the cooperative for cooperative members. For non-cooperative members, the past was defined as five years ago. *Id.* at question 48.

345. For cooperative members, the past was defined as since joining the cooperative. For non-cooperative members, the past was defined as five years ago. *Id.* at question 17.

346. Not all participants answered these questions (approximately 75% did). However, given that the question was framed towards the present and the past, it's unlikely that a participant would feel compelled to answer positive towards one and not the other, and moreover, answer positive to the present but not to the past. Field Study 2008, *supra* note 251.

347. *Id.*

348. *Id.*

349. *Id.* at question 52.

satisfaction, and also rated their life satisfaction today higher than coffee workers not associated with a cooperative. They were also less likely to report high distrust. Members also reported more positive contact affect as well as significantly deeper contact with members of the other ethnic group.<sup>350</sup>

As noted above, this survey was exploratory in nature. These results do not establish a causal link between economic liberalization and informal reconciliation. Rather, they suggest that in these particular settings coffee farmers are experiencing a variety of positive benefits, including lower levels of distrust towards members of the other ethnic group, when economic benefits are experienced. To the extent that broad-based economic liberalization creates opportunities for increased positive collaboration and economic benefits, levels of trust and feelings about reconciliation among former enemies may improve—an important insight for policy making options in post-conflict environments.

This survey work was inspired by a body of journalistic evidence that identifies a link between working in a cooperative and reconciliation. For example, a 2006 article in the *New York Times* tells the story of Gemima Mukashyaka, a member of the Maraba coffee cooperative.<sup>351</sup> Ms. Mukashyaka lost most of her family during the genocide.<sup>352</sup> Her life was spared only because a young Hutu man intervened with the *Interahamwe* militia and bought her.<sup>353</sup> After the killing ended she escaped and, with two surviving sisters, returned to her family farm, only to find it devastated.<sup>354</sup> Laura Fraser writes, “After joining the co-op, Ms. Mukashyaka doubled her coffee earnings in one year. She also grew less isolated and less distrustful of her neighbors, since she had people to talk to at the washing station and in co-op meetings.”<sup>355</sup> Gemma Uwera, another member of the Maraba co-op is quoted as saying:

After the genocide, I feared other people’s reaction when they got to know that my husband is in jail, so it was not easy to join the co-op.... Now I have friends, I meet regularly with widows of genocide, and we plan how we can help each other if someone has a problem.<sup>356</sup>

A *Christian Science Monitor* story discusses Jeannette Nyirabaganwa, who lost her husband, parents, and a child in the genocide.<sup>357</sup> Anastaz Turimubakunzi is, the report says, “a confessed killer who, Jeannette says, helped murder her

350. *Id.* at question 56.

351. Laura Fraser, *Coffee, and Hope, Grow in Rwanda*, N.Y. TIMES, Aug. 6, 2006, available at [http://www.nytimes.com/2006/08/06/business/yourmoney/06coffee.html?\\_r=1&pagewanted=all&oref=slogin#](http://www.nytimes.com/2006/08/06/business/yourmoney/06coffee.html?_r=1&pagewanted=all&oref=slogin#).

352. *Id.*

353. *Id.*

354. *Id.*

355. *Id.*

356. *Id.*; see also *Coffee 'Key to Reconciling Rwandans'*, BRIT. BROAD. CORP., <http://news.bbc.co.uk/2/hi/africa/5299286.stm> (last visited Nov. 10, 2008).

357. Abraham McLaughlin, *Why Jeannette Employs Her Family's Killers*, THE CHRISTIAN SCI. MONITOR, Oct. 24, 2006, available at <http://www.csmonitor.com/2006/1024/p01s03-woaf.html>.

husband.”<sup>358</sup> Today, Jeannette runs a coffee farm and pays Anastaz to work in her fields. Jeannette explains how it is possible for her to work with a man who helped kill her husband: “The only solution was to go together with my countrymen – even the killers. There was no alternative.”<sup>359</sup> So in 1999, a group of neighbors decided to start a coffee cooperative, the Abahuzamugambi Cooperative.<sup>360</sup> Jeannette wanted to participate to increase her income, but that was not her only motive. She is quoted as saying: “I thought that coffee-growing could connect me to other people.”<sup>361</sup> Jeannette goes on to say that because of the cooperative “we’ve been building a relationship that changed our lives. We ended up reconciling in a way we didn’t know.” And this, the story argues: “is a tale of Rwandan-style reconciliation. It may seem almost incomprehensible to outsiders, yet in some cases it works here.”<sup>362</sup> In a different report, Fatuma Ngangiza, head of Rwanda’s National Unity and Reconciliation Commission says of coffee farmers, “[as] they work together, cleaning the coffee, they talk together so they start talking business but later they start talking family affairs. It fosters relationships and reconciliation.”<sup>363</sup>

There is some research that suggests that women have played a particularly important role in reconciliation efforts in Rwanda.<sup>364</sup> After the genocide, women like Gemima and Gemma, one a survivor, the other married to an alleged perpetrator, returned to ruined farms.<sup>365</sup> There were few able-bodied men at the time available to work so the women, on their own, had to manage their farms and feed and care for their children.<sup>366</sup> In a desperate situation it is reasonable to imagine they would recognize the benefits of working together cooperatively in order to rebuild their lives and livelihoods.<sup>367</sup>

358. *Id.*

359. *Id.*; see also Jim Fisher-Thompson, *U.S. Interests in Conflict and Coffee Combine to help Rwanda*, WASH. FILE, May 28, 2006, <http://www.america.gov/st/washfile-english/2006/May/20060528102558nospmohtrhsifj0.6521723.html> (last visited Sept. 5, 2008) (quoting Steven Livingston, who states: “[w]ith the coffee cooperatives and role of Starbucks” (which has purchased Rwandan coffee for its Black Apron product line) “and other coffee companies interested in Rwanda what we see is that if you give people the expectations of hope from economic development’ ethnic tensions are lessened.”).

360. McLaughlin, *supra* note 357.

361. *Id.*

362. *Id.*

363. BRIT. BROAD. CORP., *supra* note 355; see also Land of a Thousand Hills Coffee, [http://www.landof1000hills.com/learn/our\\_story](http://www.landof1000hills.com/learn/our_story) (last visited Nov. 10, 2008).

364. ELIZABETH POWLEY, *STRENGTHENING GOVERNANCE: THE ROLE OF WOMEN IN RWANDA’S TRANSITION* (Sanam Naraghi Anderlini ed., 2003), available at [http://www.huntalternatives.org/download/10\\_strengthening\\_governance\\_the\\_role\\_of\\_women\\_in\\_rwan\\_da\\_s\\_transition.pdf](http://www.huntalternatives.org/download/10_strengthening_governance_the_role_of_women_in_rwan_da_s_transition.pdf).

365. Fraser, *supra* note 351.

366. *Id.*

367. Powley, *supra* note 364, at 16 (citing one interviewee: “[m]ost of the widows have children to take care of. Naturally they find that they can’t cope on their own. Even if she is a [genocide] survivor in the middle of all those people she thinks were against her, she is forced to work with them because she has nobody to turn to . . . Women need more cooperation in the community.”).

Our field study supports the journalistic evidence that women have played an important role in reconciliation and suggests further that women are enjoying greater empowerment in post-conflict Rwanda. Ninety-two percent of those surveyed believed that women contributed significantly to reconciliation,<sup>368</sup> and 79% believed that women definitely play a large role in resolving conflict.<sup>369</sup> When farmers were asked if it is better to have a man in charge, 59% of those surveyed responded definitely not<sup>370</sup> (49% of those surveyed were women<sup>371</sup>). When asked if men make better peace-makers, 53% strongly or moderately disagreed.<sup>372</sup> While this area requires further research, the evidence suggests that opportunities present in the liberalized coffee sector are benefiting women. Women are enjoying greater economic empowerment and a political voice. Eighty-six percent reported that participation of women in decision-making had improved since the joining the cooperative or, alternatively, in the past five years in the community.<sup>373</sup> Seventy-one percent believed that women could participate in decision-making as much as men.<sup>374</sup>

The anecdotal/journalistic and survey evidence presented is not dispositive but rather strongly suggestive of the role that necessity and economic opportunity can play in improving relations among former enemies and also possibly empowering previously disenfranchised groups, like women. However, the Rwandan experience raises a challenging question: does this cooperative behavior represent merely a short-term and necessitous change or is it likely to be something more substantial, a long-term shift in behavior and perspective? In other words, is cooperation in cooperatives prompting informal reconciliation or something else?

The answer is still unclear. However, the Rwandan coffee sector has become a forum for people of all groups to engage in repeat dealings and to work jointly in pursuit of a common goal: making ends meet. Working together to achieve a goal that everyone desires—earning a better living—seems to be helping some farmers overcome animosities. People in Rwanda recognize that commercial activities generally, and the coffee industry specifically, are a potential path to reconciliation. Dr. Timothy Schilling of PEARL has said that:

By bringing villagers together to work toward a common economic goal... co-ops have helped Rwandans with the monumental task of reconciliation, since genocide widows work side by side with women whose husbands are in jail for participating in the killing.... What's reconciliation if it's not people who have conflict getting together and talking?<sup>375</sup>

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368. Field Study 2008, *supra* note 251, at question 58.

369. *Id.* at question 27.

370. *Id.* at question 42.

371. *Id.* at question 87.

372. *Id.* at question 79.

373. *Id.* at question 49.

374. *Id.* at question 41.

375. Fraser, *supra* note 350.



Similarly, Rwandan Minister of Agriculture Murekezi, argued:

Industry has certainly contributed to reconciliation... in every village we've had this very bad experience with genocide. Coffee producers were both victims and killers. Afterwards, the killers were imprisoned. Their wives and their children were at home. Close by were the survivors of the genocide. The victims were living next to the families of those killed. But now we have the experience of people working together. We have seen coffee producers working together.

I believe the secret is increasing income through washing coffee. This is the same concern for all the families. They are working together now through co-ops. The co-ops are friendly associations. These farmers are getting more income now than in the past, and they are happy to get more because they are working together. Now, we can value each family based on [its] real achievements in improving quality and quantity of coffee, not on ethnicity. This is a new value: a focus on work and results.<sup>376</sup>

Minister Murekezi suggested that people now work together precisely because of the market signals associated with specialty coffee production.<sup>377</sup> Specialty coffee fetches higher prices so more farmers would like to produce it.<sup>378</sup> To do this, they often join a cooperative. Once they are members of a cooperative, they have an opportunity to work with other farmers to accomplish a shared goal.<sup>379</sup> The stories above, and our survey results, suggest this joint effort produces positive social benefits as well. If, as seems to be the case, Rwanda's inclusive liberalization catalyzes inter-group cooperation then, importantly, policies that expand economic opportunity for many citizens provide an additional strategy for post-conflict reconciliation.

#### VIII. REASONS FOR CAUTION IN THE COFFEE SECTOR

The specialty coffee industry is doing good things in Rwanda. However, the smallholder farmers and the entrepreneurs who work in this sector face several challenges. These include improving the management of cooperatives to benefit members, limiting the possibility of harmful interference by OCIR-Café, the government-run coffee board, and avoiding dislocations to poor Rwandans, particularly women, that may result from the 2005 Land Law.<sup>380</sup> These issues are discussed below.

##### *A. The Need for Better Cooperative Management*

A serious challenge for smallholders who voluntarily join together into cooperatives is to create a culture of entrepreneurship within the cooperatives so

376. Murekezi interview, *supra* note 282.

377. *Id.*

378. *Id.*

379. *Id.*

380. See generally Swanson & Bagaza, *supra* note 260.

that cooperatives become more “business minded.”<sup>381</sup> A key problem identified by the SPREAD project is the need to attract and retain more professional managers in cooperatives and, at the same time, to reduce the influence of volunteer Boards of Directors (BOD).<sup>382</sup> A recent assessment of a group of Rwandan cooperatives states “[a] professional, entrepreneurial General Manager is the most important individual to a cooperative’s ultimate success.”<sup>383</sup>

However, the report’s authors find that no cooperatives in the group under investigation have such a manager. The reason for this seems to be that the BODs are reluctant to pay high enough salaries to attract a professional manager.<sup>384</sup> Further, the BOD often prefers to have a local person, rather than an “outsider,” fill this role.<sup>385</sup> However, locals are less likely to have the skill set needed to manage the cooperative effectively. Cooperatives are capable of producing very high quality coffee, but they are experiencing real difficulties creating effective management structures.<sup>386</sup>

A related problem is that the BOD often interferes inappropriately in the daily management of the cooperative. The assessment notes that “BOD members, particularly Presidents, do not want to relinquish their authority to a strong General Manager.”<sup>387</sup> While it is essential that the BOD take seriously its fiduciary duties to create general policies and oversee management activities, the assessment recommends that they give managers increased decision-making authority and discretion.<sup>388</sup>

Management of the cooperatives, BOD and professional managers, need to communicate more effectively with members so that members understand the ownership structure of the cooperative as well as the rights members hold.<sup>389</sup> To date, this has not been done effectively. Members report that they are unclear as to who “owns” the cooperative,<sup>390</sup> and some believe cooperative leaders are over compensated for their work.<sup>391</sup> Cooperatives also need to develop and communicate effective business plans and to improve financial record keeping and documentation. When members lack clear information about the financial state of the cooperative, and about likely prices for cherries and benefits to cooperative members, the possibility of corruption and conflict over resources rises. In our field study, 41% of cooperative members had expected benefits they had not

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381. *Id.* at 11.

382. *Id.* at 8.

383. *Id.* at 12.

384. *Id.*

385. *Id.* at 11.

386. *Id.* at 8.

387. *Id.* at 13.

388. *Id.* at 11.

389. *Id.* at 14, 15.

390. *Id.* at 14.

391. 55% moderately or strongly disagreed with the statement that “cooperative leaders get more than they deserve.” Field Study 2008, *supra* note 251, at question 46. 62% moderately or strongly agreed with the statement that “cooperative leaders earn what they deserve.” *Id.* at question 50.

received, and about half moderately and strongly believed that there was anger in the cooperative because benefits were not distributed fairly.<sup>392</sup> These are especially important issues to resolve because cooperatives are facing increasing competition from other coffee entrepreneurs and must find a way to meet this challenge.<sup>393</sup>

Cooperatives have provided a pivotal role for Rwanda's smallholder farmers, allowing them to earn more money from coffee, develop additional skills, and work cooperatively with others in ways that may promote reconciliation. However, cooperatives must now address serious shortcomings in terms of management practices and capabilities if they hope to continue playing this role in the future. There is, however, reason to be optimistic. In our field study, approximately three-quarters of cooperative members indicated that their trust in cooperative leaders had improved since joining, as has the level of participation from ordinary farmers in cooperative decision-making.<sup>394</sup> As cooperatives seem to provide a space for cooperative behavior and even informal reconciliation, further support efforts to help accomplish the goal of creating transparent and accountable management may well be justified.

#### *B. The Role of OCIR-Café*

A different concern is that the government agency OCIR-Café may interfere with positive developments in the industry.<sup>395</sup> Although this agency's role has been modified over time, OCIR-Café continues to create policies and strategies for the coffee sector to implement these policies and strategies, to set up quality norms and classification systems, quality control, and delivery of Origin Certificates.<sup>396</sup> It is also supposed to provide extension services, research, and training to farmers.<sup>397</sup> OCIR-Café continues to supply some subsidized inputs to coffee farmers.

It is, however, the agency's role as the official "brander" of Rwandan coffee that raises most concerns. The agency claims a key role in creating "quality norms and classification systems," including the issuance of Origin Certificates.<sup>398</sup> In an interview in March 2006, the then-Director General of OCIR-Café, Laurien Ngirabanzi, argued that the government should help train producers to meet these quality standards.<sup>399</sup> However, Mr. Ngirabanzi added that if farmers fail to comply, the agency should consider fining them or seizing their crops.<sup>400</sup>

392. Statements such as "we buy fertilizer at the same price as non-coop members," "sometimes we don't get profits," "promised to get bike (or loan) but not yet," "no subsidies, the prices are low," and "inputs are not available for all" were common. Field Study 2008, *supra* note 251, at questions 14, 15, 30.

393. Swanson & Bagaza, *supra* note 260, at 10.

394. Field Study 2008, *supra* note 251, at questions 45, 47.

395. OCIR-Café is a department of Rwandan Ministry of Commerce. See *The Role Of OCIR Coffee In The Coffee Industry*, WORLD INVESTMENT NEWS, available at <http://www.winne.com/rwanda/to13.html/to000.html> (last visited Sept. 8, 2008).

396. *Id.*

397. *Id.*

398. *Id.*

399. Interview with Laurien Ngirabanzi, Director General of OCIR-Café, in Kigali, Rwanda, (Mar.

More recently, coffee dealers have been pressuring the agency to “abolish” the traditional, dry-process production of coffee.<sup>401</sup> Because the country has a limited number of coffee washing stations, the majority of Rwandan coffee is still processed in the traditional way—at home by smallholder farmers.<sup>402</sup> These beans are then sold to local dealers, who in turn, sell to exporters.<sup>403</sup> Because home processing does not ensure high quality, these beans command a lower price on the market than does specialty coffee.<sup>404</sup> While it is clearly a worthwhile goal to raise farmers’ incomes, the agency should, at best, educate farmers about the benefits of washing coffee and avoid coercing farmers by seizing their home-based equipment (as suggested by one coffee processor).<sup>405</sup> For this industry to continue benefiting smallholders, government involvement in the production process should be limited.

In particular, there is little reason why a government agency needs to oversee quality control functions and issue certifications of origin. Rather than entrust a government agency, which is subject to a variety of political pressures, to handle such tasks, private-sector organizations, such as the East African Fine Coffees Association (EAFCA), can serve this role. EAFCA “is an association of coffee producers, processors, marketing people, and organizations in the ten Eastern and Southern African countries of Burundi, Ethiopia, Kenya, Malawi, Rwanda, Tanzania, Uganda, Zambia, Zimbabwe, and the Democratic Republic of Congo as well as others from outside Africa.”<sup>406</sup> Membership thus includes processors, associations, roasters, dealers, retailers, and coffee professionals from all over the world.<sup>407</sup> The association conducts trade missions and creates linkages between producers and buyers.<sup>408</sup> It holds national cupping competitions to help improve quality and sponsors an annual African Taste of Harvest competition in which producers across East Africa compete.<sup>409</sup> Not subject to the kinds of pressures that a public institution faces, EAFCA already serves as a training resource, provides quality control information, and assists with marketing.<sup>410</sup>

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2006) (on file with author).

400. Since March 2006, several different people have filled the role of Director General of OCIR-Café. Interview with Tom Bagaza, Assistant Director, SPREAD, in Kigali, Rwanda, (Feb. 18, 2008) (on file with author).

401. Eugene Kwibuka, *Rwanda: Country Must Enhance Traditional Ways of Milling Coffee Cherries to Improve Quality*, THE NEWS TIMES (Kigali), Aug. 31, 2008, available at <http://allafrica.com/stories/200809010695.html>.

402. *Id.*

403. *Id.*

404. *Id.*

405. *Id.*

406. E. African Fine Coffees Ass’n, *About Eastern African Fine Coffees Association (EAFCA)*, <http://www.eafca.org/about.htm> (last visited Sept. 8, 2008).

407. *Id.*

408. *Id.*

409. E. African Fine Coffees Ass’n, *What is the AToH&A?*, <http://www.eafca.org/atoh.htm> (last visited November 10, 2008).

410. *Id.*

Unquestionably, Rwandan coffee producers and cooperative members have many needs. They must improve a variety of skills; they must continue to improve the quality of their product; and they must get more of their product to market in a cost-effective manner.<sup>411</sup> The question is not whether there are continuing needs within the sector; the question is what is the best way to meet these needs? With growing international acclaim for Rwandan specialty coffee,<sup>412</sup> opportunities arise for producers to partner with importers, to raise capital, and to improve production processes. Creating private-sector partnerships may, in the long-run, be a more effective strategy for ensuring the growth of Rwanda's coffee sector than is one that relies too extensively on a centralized, government-run marketing board.

### C. A Problematic Land Law

As an extremely scarce resource, land is highly contested in Rwanda: “[L]and was a factor behind social tensions before every major open conflict. Even today, more than 80% of all disputes in Rwanda are related to land.”<sup>413</sup> For much of its history, Rwanda's rulers have owned most of the land.<sup>414</sup> With control of land in the hands of government, formal land markets did not develop.<sup>415</sup> Transfers often took place informally, and confusion and insecurity were common.<sup>416</sup> Local officials had great discretion over land allocation and could favor politically powerful individuals over marginalized people who may have held traditional use rights.<sup>417</sup>

In 2003, the Rwandan Parliament approved a Land Reform Decree that provides for individualized rights to property.<sup>418</sup> This policy provided the basis for the 2005 Land Law.<sup>419</sup> The Land Law specifies that people or associations that

411. See Kwibuka, *supra* note 401.

412. This growing acclaim is perhaps best illustrated by the fact that for the first time, in 2008, an African country hosted the Cup of Excellence coffee competition—the country was Rwanda. See Cup of Excellence, 2008 Rwanda Program, <http://cupofexcellence.org/CountryPrograms/Rwanda/2008Program/tabid/418/Default.aspx> (last visited Sept. 8, 2008).

413. Implications Case Study, *supra* note 293; see also Van Hoyweghen, *supra* note 293.

414. See *Rwanda-History*, EAST AFRICA LIVING ENCYCLOPEDIA, African Studies Center at the Univ. of Pa., <http://www.africa.upenn.edu/NEH/rwhistory.htm> (last visited November 11, 2008); see also Tor Sellstrom and Lennart Wolgemuth, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*, STEERING COMMITTEE OF JOINT EVALUATION OF HUMANITARIAN ASSISTANCE TO RWANDA at Ch. 2, March 1996, <http://www.reliefweb.int/library/nordic/book1/pb020.html>.

415. Implications Case Study, *supra* note 293, at 11.

416. *Id.*

417. *Id.* (explaining that sales were restricted according the size of the buyer and seller's total land holdings); see also Musahara, *supra* note 293, at 4.

418. INDEPENDENT REVIEW OF LAND ISSUES, VOL. III, 2006-2007, EASTERN AND SOUTHERN AFRICA 29-30 (Martin Adams and Robin Palmer eds., 2007), available at [http://www.kubatana.net/docs/landr/adams\\_palmer\\_indep\\_review\\_land\\_issues\\_0706.pdf](http://www.kubatana.net/docs/landr/adams_palmer_indep_review_land_issues_0706.pdf).

419. Organic Law No. 08/2005 of 14/07/2005, Determining the Use and Management of Land in Rwanda, July 14, 2005, [http://www.minirena.gov.rw/IMG/pdf/LOI\\_ORGANIQUE\\_FONCIERE.pdf](http://www.minirena.gov.rw/IMG/pdf/LOI_ORGANIQUE_FONCIERE.pdf). As of May, 2008 the Land Law had not yet been fully implemented as orders were still being drafted to facilitate the implementation. Interview with Minister of Natural Resources in Kigali, Rwanda (June 3,

own land via custom, or who have obtained land by previous purchase, or who have previously acquired it from a "competent authority" are "allowed to own it on long term lease."<sup>420</sup> These leases may be sold and transferred. Rural land is being registered locally, and urban, commercial property will be registered in a national cadastre in Kigali.<sup>421</sup> The government maintains a role in the resettling of people and in devising land-use and land-planning policy.<sup>422</sup>

The government hopes the land law will promote the consolidation of land holding.<sup>423</sup> By permitting the sale of leaseholds, small parcels could be sold to commercial farmers who will consolidate the land and create viable agribusinesses. This is both good and potentially bad. Farmers who wish to sell their land may benefit from a more formalized market. However, the law also contains provisions that could force some farmers to give up small parcels of land.<sup>424</sup> As Musahara notes, small, dispersed land holdings serve as a kind of insurance policy for subsistence farmers who would, in bad year, would risk losing all crops if land were consolidated:

[L]and fragmentation in Rwanda serv[es] as a coping mechanism in smallholder agriculture, the typical Rwandan household farms an average of five plots. Some are in the valleys, others are upland and some near the household. In some parts of southern Rwanda, a household may have up to 14 crops growing in different fragments at different seasons.... Recently, Blarel, *et. al.*, noted that the costs of consolidation in Rwanda may not exceed the benefits of using land fragmented over the years in adopting to land scarcity.<sup>425</sup>

A more open, transparent land market is desirable, but the coercive provisions of the law could limit the evolved coping strategies of the poor. Pottier suggests that the law may actually bar people who own less than one hectare from registering their property.<sup>426</sup> The government is supposed to provide compensation for such confiscations, but it has not established clear standards for such payments. Although the government says that it wants to increase tenure security,<sup>427</sup> the new law may increase insecurity for those who are most vulnerable. These prohibitions and potentially vague use requirements place undesirable limits on the market for

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2008); see also Pottier, *supra* note 293, at 510.

420. Organic Law No. 08/2005, *supra* note 419, at art. 5.

421. *Id.* at art. 31.

422. *See id.*

423. *Id.* at art. 20.

424. *Id.*

425. Musahara, *supra* note 293, at 11.

426. Pottier, *supra* note 293, at 521 (interpreting Arts. 62-65); see also Cramer, *supra* note 17, at 208-10 (discussing the English enclosure movement). The Rwandan land law may call the enclosure movement to mind. Compare Pottier, *supra* note 293, and Cramer, *supra* note 17.

427. The government "sees increased security of tenure or rights of address to land, and more effective land management, as important factors for the improvement of the agricultural sector and the economy as a whole, helping to create the resources needed to reduce poverty and to consolidate peace and social cohesion." Pottier, *supra* note 293, at 511.

real property. Further, they might well promote more corruption if individuals wish to consolidate land, or skirt these constraints and demands.

The new law may pose a special problem for women smallholders and their children. Under the 2005 law, people are required to register all parcels of land in the country;<sup>428</sup> however, women will face particular difficulties registering, inheriting and acquiring rights to land. Although the law prohibits discrimination on the basis of sex in relation to the ownership of or possession of rights over land,<sup>429</sup> Musahara argues that the law applies only to legally married women: “those in long-term unmarried relations (who are numerous) are not covered.”<sup>430</sup> Only legally married women and their children are considered joint owners capable of providing consent<sup>431</sup> to the sale of jointly owned property; thus, unmarried women may not be able to stop the sale of land by their partners. There is uncertainty in the law regarding inheritance. For example, it is unclear if women inherit via the inheritance law or via the land law, for example.<sup>432</sup> Also of concern is the fact that custom still bars women from exercising their legal rights under the Land Law.<sup>433</sup> Unless these issues are resolved, the Land Law may create special difficulties for Rwanda’s women, who do most of the agricultural work in the country.<sup>434</sup>

Security and clarity of tenure rights, whether customary or leasehold, are essential both to avoid future conflicts and to encourage increased investment in agriculture. However, the Land Law raises serious concerns, especially for women and for uneducated farmers who might be dispossessed of their land. Surely, these risks are undesirable in a nation with such high levels of poverty and such strong dependence on agriculture as a livelihood.

## IX. CONCLUSION

Despite strong economic growth and clearly beneficial liberalization efforts in the coffee sector, much remains to be done to move Rwanda towards the VISION 2020 goal of becoming a stable, middle-income nation. Most Rwandans remain desperately poor and many will bear the physical and psychological wounds of genocide to their graves.

Yet there is reason for cautious optimism. The recent success of the nation’s specialty coffee industry means that the income of some smallholder farmers is rising, and in turn, they are better able to feed themselves and their family, to send children to school, to buy insurance, to repair or improve homes, and to do other things that improve their standard of living. These benefits can be attributed to the

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428. Organic Law No. 08/2005, *supra* note 419, at art. 30.

429. *Id.* at art. 4.

430. Musahara, *supra* note 293, at 12 (pointing out that “many couples are not legally married because of the expense, and polygamous households are not legally recognized and their offspring are not eligible to receive land as inheritance.”).

431. Organic Law No. 08/2005, *supra* note 419, at art. 36.

432. Musahara, *supra* note 293, at 12.

433. *Id.*

434. *Id.* at 11.

government's liberalization of the coffee sector, which allows smallholders to keep more of the value of the product they grow. By freeing the coffee sector from the heavy-handed involvement of the government, the post-genocide administrations have given all farmers, Hutus and Tutsis, greater freedom to pursue entrepreneurial opportunities.

To deal with the nations' tragic past, the Rwandan government has adopted a multifaceted approach to reconciliation, including participation in the International Criminal Tribunal for Rwanda, creation of the Gacaca Courts, the National Unity and Reconciliation Commission, and a National Human Rights Commission. These efforts will likely bring a sense of justice and healing to citizens. However, these efforts have proved disappointing to many. What is perhaps most intriguing about the rise of the country's specialty coffee sector is the unintended consequence of this particular, broad-based liberalization: commercial activity within the sector seems to be prompting the development of more positive attitudes towards others. People who work together in the sector, at coffee cooperatives particularly, are more willing than they were in the recent past to interact with members of the other ethnic group. Trust levels are rising and people have more positive attitudes towards reconciliation. Though additional research needs to be done in this area, our exploratory survey work, combined with journalistic evidence presented above, suggests that people working together in the specialty coffee sector are finding an alternative path towards reconciliation.

Whether this kind of reconciliation is effective in the medium to long-term remains to be seen; however, the experiences of workers in the coffee sector strongly suggests that in post-conflict environments, governments should follow Rwanda's lead and liberalize trade and promote commercial interaction between former enemies. Such policy changes might just provide a cost-effective complement to more traditional reconciliation efforts and help forge new, shared identities.