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Civil Society and Policy Making in Rwanda: A Case Study of Land Reform and the Gacaca Courts

DRAFT

Paul Gready

LSE

www.lse.ac.uk/ngpa
tel +44 (0)20 7955 7205
fax +44 (0)20 7955 6039
email ngpa@lse.ac.uk

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Non-Governmental Public Action Programme
c/o The Centre for Civil Society
Department of Social Policy
London School of Economics and Political Science
Houghton Street
London WC2A 2AE

Tel: +44 (0)20 7955 7205/6527 Fax: +44 (0)20 7955 6038 Email: ngpa@lse.ac.uk

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Abstract

This paper focuses on two case studies of civil society engagement with policy making and policy implementation in Rwanda: 1) LANDNET, a network largely comprising international and local NGOs, set up to work on land reform; and 2) Penal Reform International (PRI), a northern based INGO, utilizing a much more ad hoc set of partnerships in its monitoring of the *gacaca* courts. In the sections which follow the paper provides: 1) An introduction to the research and the issues. 2) Background on the relevant organizations and partnerships. 3) A profile of the policy context (regime type, development environment, civil society). 4) Outlines of the policy processes, and the contribution of LANDNET and PRI to these processes. 5) An evaluation of the determinants of civil society effectiveness. Certain lessons emerge.

The interplay between the post-genocide moral legitimacy of the Rwandan government and its material dependency shapes opportunities for and constraints on all policy actors. Local contexts and power dynamics are revealed as crucial to the translation of policy prescriptions into policy realities. An ongoing exchange between policy making and policy implementation, with the latter repeatedly feeding back into the former, troubles any simplistically linear notion of policy processes. Effectiveness for civil society actors is determined by the ability to creatively engage a state that is simultaneously strong and weak, without being co-opted by it. Role combination within agencies (balancing advocacy and partnership), divisions of labour between agencies (sometimes along similar lines), and 'shifting register' (between strategies and/or different interlocutors) are strategies that have had some success. In short, engagement needs to be sustained beyond policy making to policy implementation, and beyond central government to donors and local government and power structures to really have an impact. Finally, effectiveness depends on not allowing the tensions and divisions that characterize the political culture to rebound negatively on internal organizational dynamics or external organizational relationships.

In sum, it is argued that LANDNET has had successes in shaping the land reform policy and law, but has struggled to define its role or strategy in the implementation phase. PRI had less success in shaping policy, but has had more influence during the implementation phase as one agency among many involved in monitoring the *gacaca* process. To date, implementation of land reform has not been monitored by civil society.

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About the author

Paul Gready is a Professor of Applied Human Rights, and Director of the Centre for Applied Human Rights, at the University of York. When conducting research for this paper he was based at the Centre for International Human Rights, Institute of Commonwealth Studies, University of London. He has worked and undertaken consultancies for a number of human rights

organisations, mostly in the UK and South Africa. His academic publications include *Writing as Resistance: Life Stories of Imprisonment, Exile and Homecoming from Apartheid South Africa* (Lexington Books, 2003), the *No-Nonsense Guide to Human Rights* (co-authored with O. Ball: New Internationalist, 2006), and the edited volumes *Political Transition: Politics and Cultures* (Pluto Press, 2003), *Fighting for Human Rights* (Routledge, 2004), and *Reinventing Development? Putting the Rights-based Approach to Development into Practice* (co-edited with J. Ensor: Zed Books, 2005).

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1. Introduction

This paper focuses on two case studies of civil society engagement with policy making and policy implementation in Rwanda: 1) LANDNET, a network set up to work on land reform which attempted to include international and local NGOs as well as government representatives and donors; and 2) Penal Reform International (PRI), a northern based INGO, utilizing a much more ad hoc set of partnerships in its monitoring of the *gacaca* process (*gacaca* is a significantly modified, indigenous conflict resolution mechanism mobilized by the government to help deal with the enormous number of post-1994 genocide suspects).¹ Land reform, and post-genocide justice and reconciliation, are arguably the two most pressing challenges facing contemporary Rwanda, because both ‘crystallize all the social and political problems in Rwandan society’ (INGO, human rights). The paper also examines the strength of civil society in Rwanda more generally, and its relationship with the current government.

Between 7 April and the beginning of July 1994, in a 100 day period, up to 1 million Tutsis and moderate Hutus were killed in Rwanda in the clearest case of genocide since the Holocaust. The international community destroyed its claims to legitimacy as the UN peace-keeping mission, the UN Assistance Mission for Rwanda (UNAMIR), withdrew its troops; it prevaricated about using the term genocide, with its injunction to act, while the Clinton administration in the US preferred the euphemism ‘acts of genocide’; and states such as France were complicit in arming and providing sanctuary to the *genocidaires*. In contrast, the Rwandan Patriotic Front (RPF) established its claims to legitimacy by stopping the genocide and winning the war. The current RPF regime is seen by some as necessarily ‘strong’, the term used by many Rwandan commentators and interviewees for this study who emphasize history and context (the benchmark: the ground zero of genocide), and by others as unnecessarily ‘authoritarian’, the judgment of many international commentators and interviewees (the benchmark: international standards for

democracy and human rights). Despite this 'strength', the government remains dependent on international donors. Policy making in Rwanda negotiates these faultlines.

This study explores civil society's impact on policy making in this context. As such it 1) provides some background to the relevant organizations and partnerships; 2) profiles the policy context (regime type, development environment, civil society); 3) maps the land reform and *gacaca* policy processes, and the contribution of LANDNET and PRI to these processes; and 4) evaluates the determinants of civil society effectiveness. Certain lessons emerge.

The interplay between the moral legitimacy of the Rwandan government and its material dependency is key as it shapes opportunities for and constraints on all policy actors. Local contexts and power dynamics are revealed as crucial to the translation of policy prescriptions into policy realities. An ongoing exchange between policy making and policy implementation, with the latter repeatedly feeding back into the former, troubles any simplistically linear notion of policy processes. Effectiveness for civil society actors is determined by the ability to creatively engage a state that is simultaneously strong and weak, without being co-opted by it. Role combination within agencies (attempting to balance advocacy and partnership), divisions of labour between agencies (sometimes along similar lines), and 'shifting register' (between strategies and/or different interlocutors within the state) are strategies that have had some success. In short, engagement needs to be sustained beyond policy making to policy implementation, and beyond central government to donors and local government and power structures to really have an impact. Finally, effectiveness depends on not allowing the tensions and divisions that characterize the political culture to rebound negatively on internal organizational dynamics or external organizational relationships.

In sum, it is argued that LANDNET has had successes in shaping the land

reform policy and law, but has struggled to define its role or strategy in the implementation phase. PRI had less success in shaping policy, but has had more influence during the implementation phase as one agency among many involved in monitoring the *gacaca* process. To date, implementation of land reform has not been monitored by civil society.

2. LANDNET and Penal Reform International

2.1 LANDNET was originally conceived ‘from above’ in 1999 by its initiator, the UK Department for International Development (DFID), as an Africa-wide network. LANDNET now has a number of regional and country chapters in the continent. Rwanda is part of the East African region, and LANDNET Rwanda was launched in 2000 with the Rwanda Initiative for Sustainable Development (RISD) as its coordinating agency. Its mission is ‘to contribute to equitable and sustainable land reform through inclusive actions and processes’. LANDNET Rwanda is composed of a general assembly (all members of the network), a steering committee (elected by the general assembly to serve as the network’s main organ of management) and a coordination agency (a local organization which oversees day to day affairs ie. RISD). With a membership of around 45, chiefly national *and* international NGOs, the network is less formal than an ‘umbrella’ structure and has a single issue remit that is often not the sole focus of its member organizations.² DFID originally conceived of LANDNET as a fora for all relevant stakeholders. As such, the Rwandan government is a member of the network – members include the Ministry of Lands, Environment, Forestry, Water and Natural Resources [MINITERE], the Parliamentary Land Commission, the Rwandan Commission for Human Rights [CRDH] and the National Unity and Reconciliation Commission [NURC] – but these agencies do not serve on its steering committee.

This organizational structure has certain advantages. Firstly, informal, loose structures, with a somewhat fluid local and international membership, are more difficult for the government to control and undermine. Secondly, in advocacy work containing an element of critique, greater numbers provide some safety and added volume to civil society’s voice. Thirdly, networks can develop the complementary capacities and skills of their members, for example building the advocacy capacity and policy literacy of local NGOs, and present the right ‘face’ to external constituencies. Rwandans dominate LANDNET’s interactions with the government, for example. One challenge is that roles, particularly

those of local and international agencies, can become fixed and clichéd rather than being transformed - INGO members complained at being seen simply as sources of money; local NGOs grumbled that their international counterparts do not want to engage with or lobby the government. Within LANDNET there does appear to be a 'gap in the understanding of different roles' which has not been properly addressed (Local NGO, development). Another challenge is that the structure perhaps best serves the advocacy moment of policy formulation, and is less well suited to implementation. But the greatest challenge by some margin is having the government itself as a network member.

On the one hand this provides at least the promise of a built-in, regular channel of communication with the government. The former Director of Lands, Eugene Rurangwa, attended some early meetings, and a DFID technical adviser working within MINITERE was a regular presence, providing a window on what was happening in the ministry. On the other hand, both sides assumed control of the network. Civil society seized the opportunity to use the network as an 'advocacy machine' to influence government, while from government there was the expectation that LANDNET would 'report to' MINITERE (Local NGO, development). One Rwandan interviewee working for a development INGO described this as 'a game of hide and seek'. In September 2005, MINITERE essentially closed the network down, stating that 'all land related activities for the network should stop until further advised by MINITERE' (minutes, LANDNET Steering Committee meeting, 17 January 2006 - see below for further details on this incident). Rendered explicit in this act was the assumption that LANDNET should not do anything without government approval. Relations have improved slightly, but the government remains an impediment to action. Organisational guidelines for LANDNET's general assembly, steering committee and coordination agency, developed in an often acrimonious attempt to address the roles tensions detailed above, were submitted to the Minister of Land in September 2006 and in July 2007 the network was still waiting for a response.

Members of the network hold different views on this issue. There are those who feel LANDNET would get the disadvantages of governmental animosity anyway but only gets any advantages with the government as a member, and that excluding the government would make the network more vulnerable. Others think its membership violates the independence of LANDNET as a voice for civil society, and have campaigned for the government's exclusion. A third constituency is 'still struggling with' the pros and cons, and the fact that the government is the only member that can close the network in this way. That said, a crossroads appears to have been reached. At a September 2007 meeting of LANDNET East Africa the Rwandan coordinating agency will propose that the networks be 'left to civil society' as the current composition has not worked throughout the region. In essence, scenario where the state and civil society work together in this way 'is not possible' (Local NGO, development).

2.2 Penal Reform International (PRI), a northern-based NGO, is engaged in two very different types of work in Rwanda. On the one hand it works with the Ministry of Internal Security, providing training to prison guards and court clerks based in prison, in addition to supporting the implementation of a software programme to improve prisoner file management. This is familiar, core mandate work. PRI also has a *gacaca* research and monitoring programme, which had been running since 2001. Whilst also conceived as a project that would support the relevant government agency, in this case the National Service of *Gacaca* Jurisdictions (NSGJ), this research essentially amounts to human rights monitoring, albeit framed as 'constructive criticism', and has placed PRI in a much more adversarial position vis-à-vis the government. This is less familiar terrain for PRI. In its *gacaca* work, PRI uses Rwandan field investigators from the areas being researched but its research coordinators have been largely French expatriates (unlike LANDNET, it presents an external, and often French, 'face' in meetings with the government).

PRI initially adopted more ad hoc partnerships with local NGOs and survivor groups in its *gacaca* project, serving at times as an 'intermediary' for local actors seeking funding. Such partnerships are no longer a feature of its work in part due to the priorities of research coordinators, but also because civil society partnerships have become increasingly difficult as local human rights and survivor organizations have been harassed and infiltrated by the government. This raises interesting issues about the different attitude of human rights and development INGOs to partnership. Many human rights INGOs are reticent about partnership *per se*, and in the Rwandan context such organizations - the major players in the justice sector are PRI, *Advocats Sans Frontières*, RCN Justice and Démocratie, and the Danish Human Rights Centre - are now hesitant to enter into partnerships on the grounds that local human rights NGOs lack independence. Human rights INGOs now have their own justice forum and tend to work in partnerships with one another, and are seeking individually and collectively to secure influence through donors. Suggesting a two way process of distancing, one of the local human rights NGOs stated that they had withdrawn from their international counterparts so as to better collaborate with government.

In contrast, development INGOs, particularly those adopting a rights-based approach, continue to forge partnerships with local human rights NGOs to build capacity, including in relation to the *gacaca* process (eg: Trocaire and the League for the Promotion and Defence of Human Rights [LIPRODHOR]). In part this different approach is about a partnership ethos that privileges sustainability, and local people and actors driving and owning their own development. There is a greater emphasis on local context, caution about judging and sentencing partners, and a belief that independence is not simply about confrontation with the state but also requires a relational, cooperative dimension. Yet, as we will see, some of these international agencies which seek to build local capacity, particularly in the field of advocacy, have been targeted, along with their partners, by the government for alleged divisionism and the spreading of genocidal ideology.

The study, therefore, focuses on these two very different civil society actors. LANDNET is a broad, Rwandan-led network, which has attempted to include governmental and non-government members (NGOs, INGOs) and influence government policy. PRI is an expatriate led INGO, which now forms partnerships with other INGOs and seeks influence largely through donors.

3. The Policy Context

The policy context in Rwanda is determined by three factors: political setting, the development environment, and the profile of civil society. Each will be considered in turn. This analysis provides a sense of the policy community in Rwanda: who is included, when and how?

3.1. Political Setting

The Rwandan government works to a 'command and control' ethos (European bilateral donor). Across various sectors, there is agreement on the post-genocide periodization of Rwanda's transition (stage 1: 1994-1999, stage 2: 1999-2003); there is less agreement on what the respective stages mean, or indeed the direction in which the regime is heading. In the political domain, premature, ill-conceived and externally imposed democratization between 1990 and 1994 ultimately saw political parties divide and duplicate ethnic divisions, and was used by threatened extremists as a justification for the genocide. Post 1994, this recent past was used to argue for electoral delays as the RPF successfully pushed back electoral politics to the second stage, arguing that it would be divisive in a still fragile environment. An effective extension in the transition period met with little donor or international resistance (Eltringham 2004, pp. 76-97; Kimonyo et al. 2004, pp. 13-14; Uvin 2001, pp 179-81). But if moral legitimacy was sufficient for stage 1, the RPF regime came under pressure to add the complement of at least some vestige of electoral legitimacy during stage 2.

The chief benchmarks are as follows. Local (cell and sector level) elections were held in March 1999 and district elections in March 2001 (both no-party cum one-party elections, in which there were major concerns about the secrecy of the voting process eg: voting by a queuing system in March 1999). In a final 'transition year', in quick succession, a May 2003 constitutional referendum took place following a constitution-making process (the campaign was exclusively in favour of the text and the approval rating secured a massive

93%); presidential elections were held in August 2003 (in which President Kagame received 95% of the vote); and parliamentary elections followed in September 2003 (where the RPF and a few small opposition parties won about 74% of the vote). Elections have been marred by violence and the lack of genuine political opposition and debate. International electoral assistance was withheld for the constitutional referendum after it was preceded by the banning of the Mouvement Démocratique Républicain (MDR), the main Hutu opposition party, the arrest and 'disappearance' of opponents, and the intimidation of civil society groups such as the LIPRODHOR. But assistance generally resumed for the presidential and parliamentary elections, most likely on the premise of positive results not positive procedures (Kimonyo et al. 2004, pp 15-27 – concluding that electoral assistance has been more effective in improving logistical and technical capacities than in improving political processes [29]; Reyntjens 2004, pp.182-7; Reyntjens and Vandeginste 2005, pp. 103-5). In short, electoral politics has augmented rather than replaced the still primary source of regime legitimacy (an entitlement to govern as the actor which stopped the genocide).

A second political narrative documents the increasing Tutsification of power, which has maintained a steady momentum through the two phases of transition. Several authors document the shift from a power sharing government in the immediate aftermath of the genocide to a regime increasingly dominated not by Tutsis *per se*, but by a small clique of Anglophone, former Tutsi refugees from Uganda. The exclusionary trend is duplicated across politicians, civil servants, judges, the military, intelligence services, academia and more (Reyntjens 2004, pp. 177-182). This represents a disturbing continuity with the past, where politics was characterized less by monolithic ethnic supremacy than by sub-groups oppressing many within their own and other ethnic groupings (the Kayibanda regime of the First Republic, 1962-73, prioritized a Hutu elite from south and central Rwanda; the Habyarimana regime of the Second Republic, 1973-94, elite Hutus from the north-west). A governing elite, defined by a complex overlay of ethnicity,

geographical origins, and class, nevertheless uses broad-brush ethnicity to legitimize itself and delegitimize others.

But the current scenario is more complex than this. On the one hand the government insists that all its citizens are simply 'Rwandan', frowning upon talk of Hutu, Tutsi or Batwa (an indigenous group), and relentlessly pushes a historical narrative that stresses the harmony of Rwanda's pre-colonial past. On the other hand the government has used justice processes - *gacaca*, national prosecutions, and through the government's obstruction, de facto the International Criminal Tribunal for Rwanda [ICTR] - none of which are prosecuting RPF or Rwandan Patriotic Army (RPA) crimes, as a means of stigmatizing collectivities and reinforcing static identities. The notions of Tutsi victim/survivor and Hutu perpetrator are reinforced by the discourse around Hutu 'moderates', a term only used retrospectively, seeming to imply that the only 'moderate' Hutus are dead. Through its implication that Hutu survival depended on participation or complicity in the genocide, this discourse labels those who remain as extremists (Eltringham 2004, pp. 69- 99). This in turn provides forms of leverage for political exclusion.

The above is an example of a third dynamic of political transition, the essentially schizophrenic nature of the current Rwandan government. It has presided over a straightforward case of violent inversion (in which one sub-group rules over others), of the kind so familiar to Rwandan history. Yet it also lays claim to a different vision, and the desire to create Rwanda anew. The latter propensity for visioning is manifested strongly in its unifying historical narrative, development documents (Vision 2020, Rwanda's Poverty Reduction Strategy Paper [PRSP] and its successor, the Economic Development and Poverty Reduction Strategy [EDPRS: 2008-12]), and aspects of its external relations (Rwanda volunteered to have its policies reviewed by NEPAD's African Peer-Review Mechanism). Policies on both land reform and *gacaca* are very strong on vision. While for some commentators the political diagnosis is bleak - 'from genocide to dictatorship' (Reynjens 2004) - in the political domain

the question for this paper is ultimately whether in a policy community in part forged at the intersection of rhetorical democratization, sub-group Tutsification, and inversion versus revision there is space, or space could be claimed, for civil society, and for it to input into policy making.

3.2. Development Environment

With regards to development, the clearest post-genocide periodization differentiates between an emergency phase (stage 1) and a development phase (stage 2). As well as the formulation of high profile development policies (Vision 2020, the PRSP, the EDPRS), an equally important challenge in and beyond stage 2 is to move from policy formulation to policy implementation. Rwanda's basic economic indicators have been strong in the decade since the genocide, and it has some progressive and imaginative development policies. GDP growth, mainly driven by agriculture and construction, has been impressive (between 6 and 9%). Social service delivery and infrastructure rehabilitation while still weak have improved dramatically, if from a very low base. Working within a World Bank and International Monetary Fund (IMF) approved economic programme, for all its pitfalls, has secured debt relief, with Rwanda reaching the Heavily Indebted Poor Countries (HIPC) Completion Point in March 2005. However, almost two thirds of the population still live below the poverty line and the country remains highly dependent on external assistance which funds around 60% of total public expenditure.

As the country's human and physical resources were decimated by the genocide, the new regime's moral legitimacy was accompanied by acute material dependency on the delegitimized international community. As such, INGOs and donors have had to navigate the moral-material mine-field in post-genocide Rwanda, not least the profound influence of a guilt complex, that is both felt by the international community and manipulated by the Rwanda government ('How can you criticize us? Where were you when the genocide took place in 1994?'). One of the dangers felt by donors and INGOs alike is that of 'instrumentalisation', of being 'used' by an astute government ('NGOs

can work here, things cannot be so bad').³ Policy making, in part, emerges from this peculiar meeting of the moral and the material, strength and weakness, and from shifts in the respective power of particular donors (DFID is a more influential donor in Rwanda now than France or Belgium).

Many INGOs stepped back over time from direct provision of emergency relief, to assume a capacity building and technical support role for local civil society actors and government in the development phase. Civil society capacity building and north-south partnerships, and more particularly the nature of capacity building and partnerships – for service delivery or advocacy? whose role is de/politicized in this relationship and how? who pulls the strings? – are a central issue now in civil society dynamics and civil society-government relations. Local NGOs remain profoundly dependent on international assistance. A shift has also taken place in donor spending patterns, from channeling most funding through multilateral institutions and NGOs (Uvin, 2001, p. 181), to a strong trend now towards providing longer term direct budget support and sectoral budget support to the government.⁴ Highlighting such trends is meant to imply that donor approaches are homogenous, they are clearly not (Kimonyo et al. 2004, pp. 101-2; Uvin, 2001), or that there are not 'red lines' (European bilateral donor) that cannot be crossed eg: events leading to the withholding of assistance for the constitutional referendum in 2003. However, it is to argue that there is a dominant donor discourse and approach at work. The above donor representative spoke a language of constructive engagement, of managed risk, of shades of gray rather than black and white. Donors, having been accused of aiding structural violence and genocide in Rwanda in the past (Uvin 1998), are being accused of assisting in creating the preconditions for catastrophe again (Reyntjens 2004; Oomen 2005). Is aid funding a one party state and victors' justice or a strong state with a good development record and agenda, trying to deal with extraordinarily difficult circumstances? Most donors clearly feel this is a government with which they can work. While donor dependency provides considerable potential for policy leverage and influence, civil society increasingly feels that it has to

'buy into' government policies to obtain funding for service delivery, and that beyond the role of subcontractor there is very limited space for any of the other functions of civil society.

3.3. Civil Society Profile

What space is there for civil society to flourish within such a context? Prior to 1994, Rwanda had a dense associational sector, but in a very strong rebuttal of the 'if civil society then democracy' argument, the sector was essentially clientist in nature, worked to an apolitical partnership or service delivery model of development, reproduced ethnic divisions and other exclusions, depended on external drive and funding from the government and the international community, and operated within an authoritarian and hierarchical state. In short, it was part of the problem not part of the solution. A set of human rights organizations emerged in the 1990-94 period, but were also affected by these broader political dynamics. Quantity is no substitute for quality, and civil society needs both to want to promote democracy and to be allowed to do so (Uvin 1998, pp. 163-79; also see Kimonyo et al., 2004, p. 36). Civil society, therefore, had no track record of influencing policy and both sides, civil society and the more democratic state, had to find their way into new roles and unfamiliar relationships in the post-genocide era.

The current regime's preferred *modus operandi* for civil society remains service delivery and gap filling, with advocacy only encouraged on what are seen as less controversial issues (women's empowerment, disability issues). In the human rights and justice sector this means the emphasis is on training, explanation of policy or laws, and to a limited extent monitoring. A 'you're with us or against us' rationale prevails: 'When civil society sees itself as something different to government, as almost opposed, then it is a problem' (Busingye, former Secretary General, Ministry of Justice). Linked to a policy of small government and decentralization, the government uses a discourse of both service delivery, and participation and consultation. Certain trends in the processes of consultation can be identified. Firstly, there are major consultative

moments, such as the *urugwiro* consultations (national level consultations) from May 1998 to March 1999, to guide national policy making. These consultations are credited with informing policy making vis-à-vis the Vision 2020 document, decentralization and controlled democratization, and the establishment of the NURC and *gacaca* (Kimonyo et al. 2004, 7, 14-15; Musahara and Huggins 2005, p. 280). It is noteworthy that these meetings took place at the cusp of the second stage of transition. Even in terms of long term policy processes, as we will see in relation to land reform and *gacaca*, in a quantitative sense there is no shortage of consultation. But a strong government has very a clear sense of its preferred policy vision or direction and so, as a second feature of consultation, it often takes the form of information sharing and instruction, particularly at a more local level. A 'summons and tell' mode of consultation prevails, of the 'this is what we are going to do; any questions?' variety (INGO, human rights). A contrary view is that civil society actors need to organize themselves better to use the opportunities available. One interviewee stated that at present civil society is 'following the train', in the sense that it responds to invitations to events and to discuss policy documents. NGOs and others needed to 'jump on the train, and bring the right luggage' (INGO, development). Thirdly, consultation often declines over time and the policy is periodically internalized by the government, sometimes for long periods. Civil society lacks a clear sense of the internal politics of the RPF or the policy making process – one interviewee referred to 'developmental' and 'ideological' factions within the government, providing one potential vector of internal debate (INGO, development) – and when it loses sight of the bounty understandably fears that the gains of the consultations will be lost.⁵ In essence, the policy community is a big house, but one to which the government holds the keys and attempts to open doors to the input of others on its terms.

Otherwise, the government employs various strategies of management and control in relation to civil society. Legislation enacted in April 2001 gave the government powers to control the management, finances and projects of

national and international NGOs. From the government perspective the legislation represents a requirement 'to be organized, to report' (Sylvie Zainabu, President, CRDH). New legislation is in the pipeline, which similarly seeks greater control over NGO activities. In this context, RPF cadre, or those with close ties to the government, have infiltrated the top jobs in local NGOs, umbrella groups and collectives (see endnote 3). Similarly, CRDH and NURC have been tamed in this way (Kimonyo et al. 2004, p. 51; Reyntjens and Vandeginste 2005, pp. 120-1). One could conclude, with Reyntjens, that "civil society" is controlled by the regime' (Reyntjens 2004, p. 185).

For those NGOs and civil society actors that step out of line, and are thereby categorized by the government as being 'against us', there is a price to pay. On several occasions, the Rwandan government has cracked down on, suspended and expelled NGOs and their staff, notably in 2003 and 2004 (Kimonyo et al. 2004, pp. 46-7, 59; Reyntjens 2004, pp. 184, 197, ft. 74). Local human rights organizations such as LIPRODHOR and CLADHO have been targeted repeatedly. Preceding the 2003 elections, a Parliamentary Commission, set up to investigate the alleged divisionist ideology of the Hutu opposition party, the MDR, accused LIPRODHOR of receiving funds from the international community with a view to supporting a divisionist and ethnic campaign in favour of the MDR. In 2004, a further Parliamentary Commission on Genocide Ideology investigated the assassination of several genocide survivors in Gikongoro province (targeting people willing to testify in the *gacaca* process in this province appeared to be well organized), and the prevalence in Rwanda of a genocide ideology. The Commission report contained a wide-ranging attack on civil society, and recommended the dissolution of five Rwandese NGOs, including LIPRODHOR. Among the concerns raised by these developments, is that use of the label 'divisionist' and accusations of spreading genocidal ideology are being used to curb political opposition and even just dissent. Those INGOs criticized in the second Commission report were mainly development agencies engaged in rights-based work and building the advocacy capacity of local NGOs, in short, other

facets of civil society beyond the service delivery model eg: CARE International, Trocaire, Norwegian People's Aid. Such sniping continues in various guises. Predictably, attacks on civil society have resulted in behaviour modification and self-policing.

Navigating a way through this complex territory is virgin territory for all concerned in Rwanda. Civil society is struggling to create a role beyond service delivery within the policy community. A synthesis of the dark side of Rwanda is very dark indeed, but space created by electoral politics, revision policies, progressive development initiatives, and the dependence of the government on civil society capacity can be exploited by donors and civil society. Attempts to engage with two particular policy areas and communities is the focus of the remainder of the paper.

4. Policy Processes

4.1 The Challenges to be Addressed

Land tenure systems in Rwanda are characterized by legal pluralism, regional differences and, therefore, great complexity. Under tenure systems inherited from the pre-colonial era (Rwanda was a German colony from 1899 and a Belgian protectorate between 1916 and 1961) a significant proportion of the population could access land only by providing labour and other services to the powerful. Two main customary systems speak to this dynamic. In the predominantly Hutu north west and other peripheral areas of Rwanda, much of which remained outside the control of the Tutsi central, royal court and Belgian colonial authorities until the early twentieth century, customary systems of lineage-based ownership and clientship (*ubukonde*) still coexist with the *isambu* system. The latter was imposed elsewhere in the country chiefly by the expansionist Tutsi monarch, King Rwabugiri, in the late nineteenth century. Under *ubukonde* land was owned by the first occupier, and accessed in exchange for goods, whereas under *isambu* land ownership and control shifted from the lineage heads to the political centre, and specifically the King, and access required both goods *and* labour (the *uburetwa* labour requirement). *Ubukonde* promoted the fragmentation of land through successive father-to-son inheritance. A dual legal system developed, in which the state came to own all land (except registered land, mainly belonging to missions and expatriates, which is considered inviolable private property), and grants usufruct rights to the population. The government could take land at will and pay compensation, if at all, only for development on the land rather than for the land itself. Colonialism and the post-colonial era entrenched arrangements in which land ownership and patron-client relationships were used to facilitate the extractive power of the state and the enrichment of a small elite, whilst simultaneously weakening community institutions. Customary *and* modern land tenure systems became means of division and exclusion (Jefremovas 2002, pp. 59-78; Musahara and Huggins 2005, pp. 277-8, 290-6; Pottier 2002, pp. 180, 182-4; van Hoyweghen 1999, pp. 358-9, 368).

The challenges facing the process of land reform are hard to overstate (see Musahara and Huggins 2005; Pottier 2002, pp. 179-201; van Hoyweghen 1999). Among the front runners are 1) population growth and pressure on the land - Rwanda is widely cited as the most densely populated country in Africa with a growth rate of over 3%; in 2001, almost 60% of households owned less than 0.5 hectares of land, down from 2 hectares in 1960; 2) the lack of off-farm employment - agriculture is the occupation of 90% of the population, and it is 'consumption-driven' rather than 'market-oriented' (van Hoyweghen 1999, p. 355); 3) inequitable ownership patterns, tenure insecurity and landlessness - as noted above, land ownership has been linked to ethnic and social differentiation, and to various forms of patron-client relationship; and 4) unsustainable use of land alongside the use of unsustainable land. As the social fabric and customary systems of land ownership and use took strain, these problems were augmented by individualized and commercialized arrangements, largely outside effective legal and policy frameworks. In this context, it is unsurprising that as one of its sub-narratives, genocide was used as a cover to settle land disputes, with big landowners, for example, being one group targeted. Land reform is seen as a central requirement not only for development but also for conflict prevention and reconciliation (Jefremovas 2002, p. 119; Musahara and Huggins 2005, pp. 272-8; van Hoyweghen 1999, p. 357).

Problems were exacerbated by huge population displacement, internally in Rwanda and within the wider region, during and in the aftermath of the war and genocide. As one example, the RPF's 1993 offensive drove 700,000 predominantly Hutu peasants from the north of Rwanda into Kigali and southern areas. The two main refugee flows were 1) after the RPF took power, 800,000 to 1m what are termed 'old caseload' refugees, mainly Tutsi who had spent more than 30 years in exile, returned from neighbouring countries; and 2) 'new caseload', largely Hutu refugees, who had fled the advancing RPF to Zaire, now the Democratic Republic of Congo, in 1994, returned en mass

(1.3m) from December 1996 onwards. Inevitably, as the population reached and then surpassed the pre-genocide figure of 8 m, this led to competing claims over land. The early official response advocated land sharing (without legislative underpinnings or compensation), opened up public lands and introduced a policy of villagization (*imidugudu*).⁶ What this means is that functioning communities, on which both land reform and *gacaca* policies depend, are at very best 'emergent', and it is more realistic to talk of communities struggling to overcome past patterns of violence, exclusion and repeated population displacement.⁷

Moving on, *gacaca* is a form of hybrid justice, the adaptation of a traditional community-based conflict resolution mechanism into a forum for judging the serious crimes associated with genocide; a formalization of the previously informal, and a combination of retributive and restorative justice (through community service provisions, aimed at assisting the reintegration of offenders back into their communities).⁸ It was a response to the failure of more conventional justice methods to deal with the sheer scale of the challenge at hand.⁹ A participatory form of justice was envisaged. All of the protagonists would be brought together - the accused, survivors, witnesses, bystanders - and with broader community involvement, contribute to a public debate chaired by local judges about the truth of particular allegations and cases. The judges were to be people of integrity, elected by the population. Justice by public debate, rather than by due process-driven justice, was defended by government officials on the grounds that the latter cannot be implemented uniformly everywhere, but has been 'domesticated': 'if you have a situation where everyone fulfils all the roles, everyone has the right to accuse or defend, what is the problem? We have retained the principles, while trying to exclude procedures, avoid technicalities. Are you defeating justice by this? No' (Ngoga, Deputy Prosecutor General). In fact, there is great pride that an indigenous response to post-genocide dilemmas has been devised: 'we were our own source of the book and we wrote that book' (Busingye, former Secretary General, Ministry of Justice). That the government sees *gacaca* as 'their

personal story' perhaps explains their determination to see the process through (INGO, human rights).

The scale of this experiment is vast. *Gacaca* courts were initially intended to try lower level crimes associated with the genocide.¹⁰ In October 2001 over 254,000 civil judges were elected. Training on successive waves of legislation has been brief, and significantly augmented by NGO training initiatives. In the region of 11,000 *gacaca* jurisdictions were planned in a hierarchical structure, one in each cell (nearly 9000), sector (around 1500), commune (later district: in the vicinity of 150) and prefecture (later province: 12) in the country. Suspects were to be judged at the level commensurate with their crimes with an appeal possible to the next level. Many aspects of *gacaca*'s structure and modes of working have been modified over time. Among *gacaca*'s key objectives is the pursuit of reconciliation. In 2003, Uvin and Mironko (pp. 219, 229) argued that in contrast to formal legal options *gacaca* held promise for justice, truth, reconciliation and grassroots empowerment, due to its community engagement and more flexible rules, but that this promise carried with it unpredictability and certain risks. The three paramount risks are 1) that RPA/RPF abuses will not be tried under *gacaca*, 2) the absence of any thick sense of community to dispense community justice, and 3) a political context in which dissent is discouraged and serious human rights abuses are ongoing.

4.2 Land and Gacaca: Policy Making Processes

Officially, the policy making process in Rwanda goes something like this: policies and laws are developed by the relevant Ministry; they are then tabled in and approved by Cabinet; thereafter they require the backing of Parliament (both the Chamber of Deputies and Senate for Organic Laws – also at this stage policies can be debated by a Parliamentary Standing Committee) (Butare, Supreme Court; also see Articles 90-96 of the 2003 Constitution). Most consultation takes place at the early stages, when Ministries are developing the initial policy frameworks. In reality, policy making processes are in their infancy and far less linear than this brief sketch suggests, and, more

troublingly for civil society, often unclear (notably due to periods of policy ingestion by the regime, and also procedurally, for example, with regards to 'the role and phasing of review and discussion by cabinet and parliament': Musahara and Huggins 2005, p. 288). It is difficult for civil society to effectively engage if policy making processes 'lack predictability' and transparency (INGOs, human rights), and concerned actors struggle to identify the relevant governmental interlocutor (INGO, development).

Both the land reform and *gacaca* policy processes have been marathons rather than sprints - the former began in 1986 and the latter 1998 - and remain ongoing today. The life histories of the two policies are littered with national conferences, workshops, and grassroots consultations.

Rwanda has never previously had a coherent land policy or law.¹¹ Early on a study on land reform by Barrière (1997) was one landmark, by which point tensions had already emerged between a dominant line – from the United Nations Development Programme (UNDP)/Food and Agriculture Organization (FAO), World Bank and Rwandan government – and claims that there was popular participation. By early 1999 the first draft of a land law was ready, but it was shelved on the grounds that a national land policy should precede the drafting of legislation. Two factors seem to have influenced this decision. 1) A September 1999 workshop on 'Land Use and Villagization in Rwanda', convened by a Rwandan NGO, included this process requirement as one of its recommendations. The workshop is credited with greatly improving relations between the government and civil society: 'From here the Ministry felt safe and opened up' (Local NGO, development). 2) Consultation on the draft law in the region, where the coexistence of land policies and laws were seen to have impacted positively on effectiveness. In short, what was needed was a 'directive line, general principles' on land management (the policy) to explain the detail, or 'instructive application' (the law) (Rurangwa, then Director of Lands, MINITERE).

By 2000, a new ministry designed to coordinate land affairs – MINITERE, established in 1999 - began developing a national land policy and law simultaneously. The Rwanda chapter of LANDNET was established in 2000. The land reform process was energized by a range of other policy developments. New legislation granted women the same inheritance rights as men; the PRSP (2001) pushed for land consolidation, registration to improve tenure security, and community involvement in allocating title; while Vision 2020 spoke of both increasing agricultural incomes and generating more sources of non-agricultural income, through commercialization. After further consultations and reviews on the draft texts, expectations that the policy and law would be finalized in 2002 were quashed when the policy was ingested by the regime: 'key issues were being debated... largely behind closed doors', such as land consolidation and resolution of disputes over land sharing (Musahara and Huggins 2005, p. 288). Final drafts of the policy and law were adopted by the Cabinet in February 2004, and passed to the Parliament and Senate for adoption. From August 2004, they were discussed by a Parliament Standing Committee. During the concluding policy phase of 2004, civil society re-engaged with the policy making process. Musahara and Huggins's (2005: 288-9) conclusion is that despite some effective consultation with civil society organizations and district-level administrators, consultation was lacking with relevant government departments and the rural peasantry ('the real stakeholder is still out of the arena').

The National Land Policy was finally published in February 2005, and the Organic Law No 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, came into force in September of the same year. From November 2005, DFID has funded a team in MINITERE which undertook, through field trials in four districts – essentially a pilot phase – to develop a road map or implementation model for national application. Its three main objectives are to devise the strategic road map, establish relevant institutional and governance structures, and to develop a framework for donor support (DFID and HTPSE February 2006). It was fully anticipated that legal

amendments and secondary legislation would follow: 'Honestly, any laws can't be 100% correct. It is better when you implement, find out what does not work and then amend the law. You produce the law today, tomorrow there will be an amendment' (Rurangwa, then Director of Lands, MINITERE). USAID has been involved in the drafting of land reform policy and legislation. A community led registration exercise is ongoing, using three phases (public information, plot identification/adjudication, final record). In the middle phase local people mark their plots on satellite images, and as with *gacaca* the adjudication is primarily done by the community. A draft strategic road map, based on completion of three out of the four field trials, was presented to a workshop in Kigali in October 2007 for stakeholders' 'validation and information' (MINITERE 2007).

The central concern of land reform is to provide security of tenure (through registration of land and various forms of ownership). Granting value to land is seen as a way of generating investment, transactions and a land market, and tax revenue, which in turn increase land value and public funds. Rights to land come with duties of conservation and effective exploitation. Other objectives include reigning in land fragmentation and promoting plot consolidation, equality and non-discrimination in access to land, and optimizing land management and productivity. Underlying these somewhat neutral sounding phrases is a more radical, and risky, vision of a privatized, market-driven, modernized and mechanized agricultural sector. This fits into a wider development vision that arguably extends from the provision of more off-farm opportunities to pan-regional ambitions.

Shortly after its creation, LANDNET developed an advocacy strategy prioritizing four issues, based on a strategic review, field research, and a series of workshops that reviewed the draft law.¹² The priority issues were: 1) Batwa land concerns, such as allowing potters access to marsh land; 2) land rights of women, orphans and vulnerable groups (the draft law was vague on these issues and a new, also vague, inheritance law, had had little impact on the ground); 3) land registration and consolidation (challenging the initial proposal

that to be registered, land plots had to be of a minimum size [1 ha]); and 4) land administration (addressing issues such as civil society's role within the proposed Land Commissions and their relationship with existing local authorities). Arguably, LANDNET were successful on the latter three, in the sense that they were part of a debate that modified the government position, leading to alterations to the policy and law. Government officials confirmed LANDNET's impact on the registration and consolidation adjustment.

A neat summary of the *gacaca* policy process is provided by Schabas (2005 – also see Reyntjens and Vandeginste 2005. 117-121). The first genocide law – Organic Law No. 08/96 of 30 August 1996 on the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity committed since 1 October 1990 – defined the original four categories of offenders and established the 'Confession and Guilty Plea Procedure', by which in return for a full confession, offenders in categories 2 to 4 could benefit from substantial sentence reductions. Confessions, it was hoped, would also overcome problems encountered in gathering evidence. Thus an initial model was put in place to deal with very large numbers of offenders, and national prosecutions commenced.

But the Rwandan justice system, for understandable and already stated reasons, had difficulties processing both the confessions and the trials. As early as February 1997, then Vice-President Kagame declared that an alternative method of transitional justice ought to be considered, giving some form of community service as an example. A 15-strong Commission, established in 1998 to explore mechanisms for increasing public participation in judicial proceedings, recommended in June 1999 the establishment of *gacaca* courts. The early development of policy papers and draft legislation coincided with a consultative moment, including the *urugwiro* consultations. To smoothly announce the next piece of legislation – Organic Law No. 40/2000 of January 2001, on the Establishment of 'Gacaca Jurisdictions' and the Organization of Prosecutions for Offences Constituting the Crime of Genocide

or Crimes Against Humanity Committed between 1 October 1990 and 31 December 1994 – glosses over what was being attempted here. Such an indigenously-based process, such a scale of judicial activity and experimentation, such an ambitious form of judicial social engineering, has quite simply never been attempted anywhere before. A better entry-point, is perhaps a comment by a government official interviewed for this study that the 2001 law was the 14th version of the draft legislation. The four crime categories were modified and the emphasis maintained on encouraging perpetrators to admit guilt and express remorse (with significant scope for sentence reductions and community service).

After pressure from international scholars, activists, and legal practitioners, the government revised its initial plan and decided to implement *gacaca* gradually (Karekezi et al. 2004, p. 69). Thus, as with land reform, a pilot phase kicked off implementation, lasting from June 2002 until June 2004. Starting with *gacaca* courts in 73 cells, a further 670 were added from November 2002. The next phase, involving the entire country, was postponed pending new legislation. In due course a new law was passed in 2004 – Organic Law No. 16/2004 of 19/6/2004 Establishing the Organisation, 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 – abolishing district and provincial *gacaca* courts (leaving their cell and sector level counterparts to carry the load), reducing the number of operative courts and judges required, and simplifying the categories of crime (categories 2 and 3 were merged). *Gacaca* proceedings are unfolding in three stages: information collection (at cell level, records of people killed, victims and damages, and suspects are compiled); then individual case files are prepared for each suspect, and on this basis suspects are classified by category; and finally, the trial phase completes the process. Information collection, which had been the focus of the pilot phase, was launched nationwide in January 2005, and completed by December that year (PRI 2006). Simultaneously, in March 2005 trials began in the pilot

gacaca courts and trials were launched nationwide, after something of a hiatus, another phase of policy ingestion and more legislative reform, in July 2006. *Gacaca* courts initially prioritized the trials of those who had confessed, and what are now category 2 crimes (those classified between leaders etc. and property crimes). As of July 2007, over 200,000 such trials had been completed, and the process is scheduled to be completed by the end of 2008.

Among the problems accompanying the *gacaca* process have been declining public interest, an absence of high level political and social participation, intimidation and murders of witnesses and genocide survivors, and inadequate and top-down sensitization programmes.¹³ But, the greatest problem is that every attempt to seek a 'way out' (Busingye, then Secretary General, Ministry of Justice), or 'make the problem small' (Ngoga, Deputy Prosecutor General), only seems to increase the size of the mountain to climb. For Schabas the 'terrible and totally unexpected' outcome of the pilot phase was that it 'opened a Pandora's box': facilitating further denunciations (through the confession process), rather than forms of closure and the simple resolution of existing cases (Schabas 2005, pp. 881-2). It seems that a whole range of local disputes, including those over land, are being refracted through the *gacaca* process. After the information phase the NSGJ calculated that there were 818,564 people in the three categories (77,269 category 1; 432,557 category 2; 308,738 category 3).

The continuous drip, drip of legal reforms illustrates the ongoing attempt to manage this huge problem and the way in which policy implementation has fed back into policy making. During the trial phase, in March 2007, a new law redefined category 1 offences, moving some into category 2 (77,269 people was considered too many to process in the conventional justice system); allowed for simultaneous benches to sit in certain circumstances; and for part of a prison sentence to be suspended (in essence, those who have confessed and are found guilty have their sentence divided into a prison term, a suspended sentence and community service). In May 2007, further changes

mean that community service will be served before any prison term. These changes have been brought in to speed up the process and ease one problem (prison overcrowding), but may well create another (in July 2007, it was reported that 30,000 people were already doing community service: *The New Times*, 20 July 2007). Entering 2008, a draft law was under consideration which would bring the majority of remaining category 1 offenders under the jurisdiction of the gacaca courts – notably leaders at the former commune (district) level and at lower administrative levels. The formal court system will handle cases transferred from the ICTR when it winds up its trial activities at the end of 2008. Dominant trends running through these reforms are an attempt to simplify and speed up procedures, a growing reliance on *gacaca* courts to handle serious cases and ease the burden on the formal court system, and recognition that the majority of offenders will serve neither prison terms nor community service, given capacity constraints.¹⁴ In short, *gacaca* has become an intervention in which process (judicial, political, social) matters more than judicial outcomes, and social control is being sought through such processes.

Against this backdrop, many interviewees testified to the interminable nature of the policy making process, as endless modifications are discussed and some instituted in an attempt to get a handle on the problem: ‘every time we think it is at an advanced state we go back to the drawing board’ (Ngoga, Deputy Prosecutor General). There are also clear indications that over time consultation elides into control. Monthly meetings in 2002 and 2003 at the Belgian embassy to discuss legislation and operations on the ground, with NGO, donor and some government participation, were stopped, in part due to government pressure along the lines of ‘we are the ones doing *gacaca*, we are the ones who should be holding meetings’ (International human rights consultant). Meetings are now more infrequent, and of the ‘summons and tell’ variety. There has been no serious debate about the legislative amendment processes from 2004 to the present.

Evaluations of civil society impacts on the *gacaca* process are difficult, given the lack of an equivalent, coordinating network to LANDNET (although fora of monitoring agencies do exist),¹⁵ more disparate agendas and claims, and even worse relations with the relevant organ of government (the National Service of *Gacaca* Jurisdictions [NSGJ]). The treatment of rape is the most widely cited example of influence by all parties, including government officials, as women's and survivor groups amongst others are generally credited with having championed upgrading rape to a Category 1 offence. In 2001, rape joined sexual torture in this category.¹⁶ PRI proposed the incorporation of community service, and later a combination of community service and suspended sentences, into the *gacaca* process. Both proposals were adopted after initial resistance, but the precise impact of PRI's advocacy is impossible to map. Another impact PRI and other monitors claim to have had is the influence their monitoring presence has on the way proceedings are conducted. Examples of advocacy success cited by ASF included lobbying to stop abuses in the detention/arrest process (judges arresting people when collecting information), and that children not be given heavier sentences in *gacaca* trials than those contained in the penal code. Local actors stressed simplifying the administration of the *gacaca* system as an area of influence (reducing the designated number of judges; allowing greater flexibility in the required number of people needed for a court to sit).

From the other side of the fence, the head of NSGJ (Mukantaganzwa Domitilla), preferred to talk of 'common issues of concern' for government and civil society, such as the security of witnesses. She suggested that there was a 'big difference' between local and international NGOs, with the former more aware about the genocide, its consequences, and the challenges of the local context. While INGOs in her view sometimes seemed have motives other than 'helping Rwanda', she also stated that local NGOs were not independent due to their donor dependency. A general NGO contribution was acknowledged, but Domitilla specifically rejected the examples of PRI input cited above: 'I think the reduction in sentences came from Rwandans themselves'. She was

critical of PRI for being 'very negative'.¹⁷ In short, the origin of policy changes and successes are contested, but can be categorized as 'symbolic' (symbolic, for example, because whilst elevating the seriousness attached to rape is important, few cases are likely to be heard in national courts given their public nature, the lack of witness protection, and the stigma attached to rape) and 'decontextualized and technical' modifications (changes in the number of judges and courts; reviews of sentencing provisions). This is not to suggest that these reforms are unimportant, far from it, but what is notably lacking is a further tier of more political amendments (eg: addressing both sides in the conflict, reparations) which will be required for *gacaca* to achieve its stated goals (reconciliation).¹⁸

Measuring advocacy success in policy processes involves a notoriously difficult set of calculations. Civil society will invariably make exaggerated claims, government will invariably make exaggerated denials. Causation is hard to map. Given the long term, attritional nature of these two policy processes, and deteriorating relationships with government at the policy making-policy interpretation threshold, arguably, in these cases, NGOs tend to underestimate rather than overestimate their influence on policy making. LANDNET was particularly creative and successful at this juncture. However, for both land reform and *gacaca*, long, unfinished and open-ended policy making processes have entered, through the gateway of a pilot phases, into the implementation phase. Efforts to keep the channels of consultation and participation open have struggled with the government's ongoing desire for control. But as we shall see the policy making-policy implementation continuum does provide some opportunities for civil society input, especially when this agenda is backed by donors.

5. Determinants of Effectiveness

Civil society effectiveness is determined by three main factors: 1) the strategies employed; 2) an ability to navigate the transition from policy making to policy implementation, in particular the capacity to engage with local politics and power relations at the implementation phase; and 3) internal organizational dynamics and the external relationships forged by civil society agents in a difficult political culture.

5.1 Strategy

Three main strategies have been used by the civil society agents that are the subject of this study to improve their effectiveness: role combination, shifting register and divisions of labour. With regards to role combination, many development INGOs have adopted a rights-based approach, or human rights approach, to development which moves away from more traditional service delivery and related capacity building towards, among other things, a greater stress on advocacy and nurturing capacity for advocacy (CARE, Norwegian People's Aid [NPA], Trocaire). Similarly, human rights agencies are engaged in capacity building work, such as training of *gacaca* judges, as well as more conventional monitoring. As already mentioned, alongside *gacaca* monitoring PRI is working in the prisons, building capacity. Coming from different directions, therefore, diverse actors are trying to find ways of combining a palate of activities. This is in part a strategic choice, as less controversial activities potentially create space for more controversial interventions. NPA, for example, in its justice programme deliberately works with the state *and* civil society, and on issues of varying sensitivity – the hope being that cooperation will create space for contention. In a not dissimilar fashion, the Danish Human Rights Centre has prioritized legal aid as a relatively non-controversial way of tackling fundamental human rights and justice issues.

Such developments are also linked to international trends in INGO operations and development discourse (role combination, rights-based approaches), as

well as to the more general challenges posed for NGOs by transitional contexts (often also involving a shift from an adversarial stance towards an oppressive regime towards forms of role combination).¹⁹ In Rwanda, as is often the case elsewhere, these dynamics play out as an attempt to forge a third way for civil society-state relations, beyond cooption or mutual antagonism. In this context, simple classification of INGOs becomes difficult.

Besides role combination, other areas of interest include the ways in which NGOs shift register between activities and, either implicitly or explicitly, operate to a division of labour whereby agencies achieve a complementary balance of activities collectively. Two examples will suffice. Taking on shifts in register first, NGOs and INGOs in Rwanda have often worked hard to try to build trust and momentum with specific personalities and departments in government. It is clear from interviews with both government officials and civil society representatives that the former resent any sense that different messages or reports are being sent to, say, government ministries and donors, preferring that the government be the first recipient and gatekeeper. Quiet diplomacy or 'offscreen engagement', in contrast to 'policy making as political activism', is the mode of exchange preferred by the government and many, especially Rwandan, civil society actors (Rwandan staff members, INGOs, development). However, it should also be noted that such an approach carries with it the very real danger, and sometimes even intent, of cooption and marginalization. LANDNET's work with the Minister of Land and MINITERE is a good example of careful nurturing. But it also, ultimately, faced difficult choices about whether and when to shift register, from one set of interlocutors to another, from one way of working to another. Such a strategy disrupts the established policy community. It is a risky strategy: Will it produce positive outcomes? Will these outcomes outweigh the negative repercussions of undermining trust and momentum with one's core interlocutor?

LANDNET shifted register on two occasions in 2004. At a point when MINITERE and the Minister of Land wanted the policy making process to be

over and policy implementation to commence, LANDNET disagreed, and as the MINITERE door to influence closed it circumvented its main policy interlocutor and pushed open two other doors. Both of these incidents are part of LANDNET folklore, and were recounted by a number of interviewees. These actions were consistent with a proactive philosophy: that there is space for civil society but you have to demand it, nobody is going to bring it to you (Local NGO, development). Firstly, when the land policy and law were being debated by cabinet, LANDNET wrote a letter to the President, copied to all cabinet members, and secured a meeting with the President's economic adviser. A prime mover in the drafting of the letter talked of the care involved: 'It took hours and hours, days and days, to frame the letter in a conflict sensitive way' (Rwandan staff member, INGO, development). Secondly, in August 2004, LANDNET made use of a USAID parliamentary strengthening programme, which included a desire to increase civil society input into Parliamentary Standing Committee hearings, to do just that when land reform was discussed. LANDNET members believe these interventions led to further modifications of the land policy and law, and represent a landmark example of civil society advocacy in Rwanda (terms such as 'unprecedented' and 'pioneering' were used). A consultant on the USAID programme stated that he had 'never seen such participation from the public'. But these actions also contributed to a deterioration in relations with the MINITERE. One interviewee said that in response to the aforementioned letter the convener of LANDNET was 'chewed out' for 45 minutes by the Minister of Land who saw it as an attempt to 'get one up on her' (INGO, development). As part of the learning process about civil society-state relations for both sides it is perhaps too early to know, on balance, whether these register shifting interventions were effective. Nevertheless, LANDNET can add process impacts to its list of advocacy achievements.

The second example refers to an implicit division of labour between two of the main human rights INGOs monitoring *gacaca* (PRI and ASF).²⁰ Different research methodologies and reporting styles make these organizations

interesting case studies of human rights reporting. PRI set out explicitly to do action research (research with a social change agenda), utilizing sociological and anthropological methodologies. Context and social process were emphasized as *gacaca* is understood by PRI to be totally conditioned by society; the argument is that such reports will be more helpful in identifying the challenges facing *gacaca*. Among the criticisms of PRI reports are that analysis obscures the facts, in what is ultimately research not monitoring. Accompanying charges are that reports lack objectivity and methodological rigor. PRI's preferred reporting process envisaged prior submission to government and donors, with a response invited within three weeks. Responses were to be published alongside PRI's report, as an annex, for a wider audience. With government this happened once only. On this one occasion, the government was apparently angry that the content of the PRI report was not changed following its response. PRI too have shifted register, in their case from a partnership-come-advocacy focus on the government to a similar relationship with donors.

ASF, in contrast, employ more conventional human rights research methodologies and reporting styles to monitor the *gacaca* laws and how they are applied by judges. Monitoring is linked into its ongoing training of *gacaca* judges and, as a result, more explicitly part of a capacity building agenda: 'we try to build a programme of continuing training through reports' (ASF staff member).²¹ Reports cover three key areas – information, problems, and solutions – with the latter two being of greater sensitivity. Quite consciously the facts precede analysis, announcing its origins, as ASF publishes a series of monthly factual reports followed by a more analytical summary every six months. The main critique of this approach is that the *gacaca* process is depoliticized, reduced to a set of technical, legal questions. Is the fact that testimony against alleged offenders is collected but assertions of innocence are not a technical or political issue? To see PRI and ASF methodologies and reporting styles as complementary rather glosses over unresolved questions, important for human rights reporting in general and the monitoring of *gacaca*

specifically, about the relationship between reporting style and effectiveness: Is greater context necessary, and if so what are the implications for effectiveness (Wilson 1997)? Can, and should, effectiveness be measured beyond impacts on governments?

Role combination, register shifts and divisions of labour are all ways of attempting to rework the traditional tension between collaboration/partnership and advocacy/critique in an attempt to develop a multi-faceted civil society. While the challenges should not be underestimated, nor should the creativity being exercised in pursuit of more textured state-civil society relations.

5.2 Local Power and Implementation

The main issue to address here is the importance of local government and local power dynamics in rendering policy prescriptions a reality, especially as policy making folds into policy implementation.²²

Two commentaries set the scene for this discussion. Pottier (2002, p. 179) kicks off his treatment of land reform with the observation that ‘policy *implementation* is more likely than not to be a matter of policy *interpretation*’. Using as case studies the repossession of temporarily vacated land, women’s land rights, and villagization, he demonstrates how implementation, and what policy actually comes to mean in reality, is crucially molded by local power dynamics and moral discourses. What this means in the new Rwanda is that ‘old caseload’, Tutsi returnees seem often to be favoured. In short: ‘legal entitlement is one thing, lived reality another’ (Ibid, p. 190), and problems will not be solved by ‘smooth but simplistic policy narratives’ (Ibid, p. 199). In a second commentary, Musahara and Huggins (2005, pp. 270, 277, 285-6) concur, arguing that implementation and interpretation are political rather than simply technical issues, and that governance structures, crucially local governance structures, will guide these processes.

The impacts of both land reform and *gacaca* are likely to depend on processes

of locally contingent 'embedding' and ongoing political dialogue between communities and political officials at various levels. Policy and legal realities in Rwanda are informed on the one hand by a surprisingly strong state, the strength of which extends to local government. The state's room for interpretation is often extremely wide, as policies and laws are broadly framed and read like acts of faith, vague and idealistic in turn. The leader of the DFID road map team in MINITERE stressed he had a challenge ahead of him to implement the 'loose' land law, and devise the necessary procedures, systems, and regulations to deliver the law (Clive English, DFID road map Team, MINITERE). On the other hand, in the process of implementing policy as a leap of faith, the government is often forced to fall back on civil society and others due to capacity shortcomings and as crises arise. As such, the strengths and weaknesses of the state feed a policy making-policy implementation continuum, in that local application loops back into policy reform and amendments in a relationship that is more akin to an ongoing conversation (top down prescriptions meeting bottom up realities in a process of mutual transformation) than clearly distinguished, successive stages.

Three examples begin to flesh out the space for civil society in the policy making-policy implementation continuum, engaging with political actors at all levels. Does it provide new opportunities, such as space for civil society to advocate for policy formulations that were not possible within the initial policy making phase, or ways for the state to increase control over parts of the policy previously open to contestation? Predictably, focusing below on the *gacaca* process, some initial answers to this question suggest both potential and further pitfalls (INGOs, human rights, including PRI):

- 1) *Legal clarity*: Unevenness in the tightness of legislation mean that some articles, intentionally or unintentionally, allowed for interpretation while others do not, meaning that the only way to secure a different form of implementation is to seek to change the law. In such cases, a 'more advocacy' approach is needed to change the law. A core component of

information-based and advocacy feedback loops is civil society monitoring. Donor funded monitoring of *gacaca* is ongoing, and has influenced policy modifications. On the other hand if *gacaca* is understood as 'state-imposed "informalism" designed to expand the state's reach into local communities' (Waldorf, 2006, p. 9), unevenness in legislation and unintended outcomes will lead to legislative amendments attempting to tighten central control.

- 2) *Perpetual flux*: The discussion so far implies a desire to adhere to the law. What if this is absent? INGOs have highlighted problems associated with information collection, previously undertaken by the *gacaca* courts and general assembly, but which the government wanted to allocate to local authorities. This was contested on the grounds that information collection was supposed to be open and participative, and that the proposed approach blurred administrative, political and judicial functions. Whilst not incorporated into the law, such (illegal) practice has taken place anyway (PRI 2006). The repeated ricocheting between policy application and amendment provides some space for civil society interpretation, but also a cover of perpetual flux for government obfuscation, arbitrary action, and a 'way to mix the cards and not to have transparency'.²³
- 3) *Capacity building*: Both government officials and civil society engage in acts of interpretation. For example, early NGO training of *gacaca* judges sought to influence interpretation and implementation through a strong focus on equality. In such initiatives there has been a shift to a capacity building approach, seeking to improve the implementation of the *gacaca* programme. Particularly during the pilot/early phase of policy processes, civil society may be able to exploit the government uncertainty about how to proceed to implementation, and how to manage risk and demands on limited capacity. A combination of donor and civil society pressure can facilitate such opportunities. Ongoing training of *gacaca* judges is an example of such a capacity building opportunity for civil society.

Negotiating the indivisibility of policy making and policy implementation is a key challenge for civil society seeking to impact on policy processes, and for both civil society and the state as they realign their respective roles. For civil society, it will involve being articulate in the grammar of local contexts and an ability to engage with government at all levels; a facility to combine advocacy/information gathering and capacity building/constructive engagement; a preparedness to engage in a contest over interpretations, counter-interpretations, and the appropriation of ideas; an ability to build alliances, especially with donors; and a realization that flux but also opportunity will continue into the implementation phase.

5.3 Organisational Dynamics and Relationships

Finally, effectiveness depends on keeping a difficult political environment at a distance, and not allowing it to rebound negatively on internal organizational dynamics or external relationships. Both LANDNET and PRI have struggled organisationally with long, attritional policy process. At the policy making-policy implementation cusp, both experienced crises. In the case of LANDNET, following the publication of the land law in September 2005, LANDNET planned a conference to discuss implementation. It was at this point that the government essentially closed LANDNET down using very strong language, such as 'betrayal'. Arguably this deterioration in relations was a continuation from the 'register shifting' episodes of 2004. There are differing explanations for the 2005 relationship breakdown – a personality clash between the Convener of LANDNET and the Minister of Land; an issue of ownership and control relating to the proposed international conference and leadership of the implementation phase; invitation protocol not being followed (the Minister was not written to directly and invited); a concern on the part of government not to reopen the policy debate or prematurely raise expectations among the population about delivery etc.²⁴ This fallout is a further example of the dangers of a policy hiatus, when the regime ingested the policy process raising anxieties about what was happening behind the scenes.

LANDNET's record of advocacy success in the policy making period is under some threat as land reform enters the implementation phase. There are three main concerns.²⁵ 1) It lacks a robust research base, as a piece of research commissioned in 2005 to inform LANDNET's move into implementation produced disappointing results. Interviewees repeatedly spoke about the importance of high quality information for successful advocacy. It was also argued that the focus of this research was misdirected, as it privileged an evaluative standpoint (advocacy), at a point when there was nothing to evaluate, rather than a facilitative one (partnership: what preconditions were necessary, and what institutional frameworks needed, for implementation?). A desk study and workshop produced a report that went some way to remedy this shortcoming (Nsamba-Gayiiya 2006), but grassroots research in Rwanda remains to be done. 2) LANDNET faces considerable internal, structural problems. Charges include a lack of broad based participation and commitment beyond the Steering Committee; insufficient rural, grassroots engagement; over-centralized control; concerns over inadequate organizational structures, internal transparency and democracy; and divisions between INGOs and NGOs. The stalled attempt to develop guidelines for the general assembly, steering committee and coordinating agency might, if reactivated, go some way towards solving some of these problems. But the essential challenge now is whether the network structure that served the advocacy phase relatively well is suited to the implementation phase. 3) The network has yet to recover from the breakdown of its relations with MINITERE. A meeting between the LANDNET Steering Committee and the Minister in January 2006 appeared to slightly eased relations, although the message members of the Committee took away from the meeting varied considerably. One important LANDNET source stated that the government still did not want the network to take actions without seeking the Ministry's approval. The exclusion of the government from the network seems the most likely way of moving the relationship on.

In short, the network lacks a long-term strategic plan and is in danger of being marginalized. Government and DFID sources concurred that to facilitate implementation LANDNET and civil society should assist with tasks such as community mobilization, local consultations, training and information dissemination (for example translating the law into Kinyarwanda or simplifying it for illiterate audiences) - a somewhat modest, service delivery agenda. The DFID road map team, whilst stating that their door is open to civil society, emphasized its fragile capacity, its lack of grassroots connections, and that it has not come forward to suggest what role it could play or areas where it might have comparative advantage with regards to implementation.²⁶ In July 2007, Clive English, the head of the DFID road map team, commented that the input from LANDNET to their work had been 'very disappointing' as they had not come forward with concrete proposals in relation to implementation. IMBARAGA, a rural association, was the only organization to have spent time with his team in the field. A senior figure in LANDNET countered that the road map team had not made it clear how they wanted to involve civil society, and that IMBARAGA was on board because it was weak and could be controlled. And so the tensions within LANDNET and between LANDNET and the government simmer on.

For *gacaca*, the problematic dynamics associated with the transition from policy making to implementation are equally profound and somewhat more advanced. PRI's relationship with the government has essentially broken down. The organization even resorted to asking the government to propose research topics it was interested in, but received no response. This fits into a pattern: 'the government leaves us be, but ignores us, which is a problem for our mandate'. In 2006, PRI underwent a wholesale review of its work in Rwanda, with local staff feeling that they were not a pure research institute and their policy impacts had been very modest. One interviewee went further to say that dialogue between the NSGJ and justice NGOs in general had 'failed, totally stopped'. Government officials disagreed, stating that such a judgment was 'very unfair': 'We might have a difference in what dialogue breaking down

means. You may tell me something and it is not accepted, and you say dialogue has broken down. I do not believe everything civil society says is right. After listening we can say no' (Busingye, then Secretary General, Ministry of Justice). There is a general sense that the space for civil society influence shrunk as *gacaca* entered the implementation phase. Here, as with land reform, the government now wants civil society to move on, and essentially to sensitize (explain *gacaca* and the laws to the population) and also to monitor in the implementation phase. After the review of its work, PRI has stayed on, providing an invaluable resource to donors, researchers, but as with LANDNET, struggling to overcome a profoundly difficult relationship with the government.

6) Conclusion

This paper tells a story about policy processes in Rwanda at a number of different levels. Firstly, a particular narrative is told about Rwanda's political transition (stage 1: 1994-99; stage 2: 1999-2003). This in turn reveals the strands in Rwanda's post-genocide development (towards a form of combined electoral politics and government by entitlement; from emergency to development). In this context, key policy lessons for civil society are: 1) the interplay between the moral legitimacy of the Rwandan government and its material dependency, which shapes opportunities for and constraints on all policy actors; 2) local contexts and power dynamics are revealed as crucial to the translation of policy prescriptions into policy realities; and 3) an ongoing exchange between policy making and policy implementation troubles any simplistically linear notion of policy processes.

Effectiveness for civil society actors is predicated on the ability to continue to engage with a state that is simultaneously strong and weak, without being co-opted by it. Role combination within agencies (attempting to balance advocacy and partnership), divisions of labour between agencies (sometimes along similar lines), and shifting register (between different interlocutors within the government, between government and donors) are strategies that have had some success. Networks would also seem to have potential, but require greater internal transparency than has been achieved by LANDNET. As suggested above, engagement also needs to be sustained beyond policy making to policy implementation, and beyond central government to donors and local government and power structures to really have an impact. Finally, effectiveness depends on not allowing the tensions and culture of a difficult working environment to rebound negatively on internal organizational dynamics or external organizational relationships.

How successful have LANDNET and PRI been? LANDNET, a largely urban-based advocacy network, had significant successes in shaping the land reform

policy and law, but has struggled to define its role or strategy in the implementation phase. PRI had less success in shaping policy, but has had more influence during the implementation phase as one agency among many involved in monitoring the *gacaca* process. To date, implementation of land reform has not been monitored by civil society.²⁷ Sophistication in NGO strategies is both evident and ongoing success, even survival, will require further creativity. But there are some obvious roads that have not been traveled. Why has LANDNET let debilitating differences between the network and the government, and between INGOs and local NGOs within the network, continue for so long? Might PRI have been more successful if it had tried to contribute more actively to solutions as well as pointing out problems in relation to *gacaca*? Donors have a vital role and responsibility in determining how this story will end. As a laboratory for many of the latest trends in development discourse (direct budget support, rights-based approaches to development), and in the aftermath of the cataclysm of both genocide and the international community's response to it, the stakes are high. Donors have on occasion created space for civil society to input into policy making and grow beyond a set of service delivery functions (USAID's parliamentary strengthening programme; the potential offered by the DFID road map team in MINITERE). The NGO community is almost unanimous that they have not done enough. Both policy areas (land reform and *gacaca*) and the civil society actors (LANDNET and PRI) are at a crossroads. This paper recounts a story without a definitive ending at all levels, but the warnings are clear, and failure will have profound implications not just for Rwanda but also for the international community, donors and INGOs.

¹ Analysis draws on fieldwork undertaken in Rwanda in March 2006 and July 2007. NGO interviewees are referenced by organisation type (International NGO [INGO] or local NGO; development or human rights). A similar format is used for donors. This is to protect their anonymity. Government officials are referenced by name.

² A range of different structural or organizational arrangements exist within Rwandan civil society. Perhaps foremost amongst these are 'umbrella' structures of local NGOs, usually thematically organized eg: PROFEMME for women's groups, CLADHO for

human rights organizations, IBUKA for survivor groups. These structures have a history going back to the pre-1994 era, and provide an unfortunate thread of continuity between past and present. Structures, often established to protect members against repression, are widely seen now to have been infiltrated and coopted by the government, in the current era from the late 1990s onwards. Hierarchical in organizational culture, many are led by people who act as mouthpieces of the government. As such, they become 'monitoring and control devices', used to 'prevent an independent civil society from emerging' (INGO development, international human rights consultant). Generally, structures tend to include local or international NGOs, not both. There is another network that effectively combines local *and* international NGOs, as well as government, donors and academics in Rwanda: the Peaceful Coexistence Network. It provides a space for those working in the fields of peace and reconciliation to exchange experiences and ideas. This network has periodically discussed *gacaca*.

³ One of the points repeatedly raised by interviewees and in the literature is that the Rwandan government has been skillful at playing the game of international development. Oomen talks of 'the government's amazing agility at appeasing the international community, adapting its vocabulary of "gender", "good governance" and "popular participation" and playing on its (undoubtedly) guilty conscience, while simultaneously pursuing its own political agenda' and of an Africa-wide trend 'in which nations engage in a kind of shadow book-keeping: they comply with donor exigencies in terms of decentralization, democratization, constitution-writing, while the real politics take place elsewhere and along wholly different lines' (Oomen 2005, pp. 901, 907).

⁴ Direct budget support is not, of course, a donor strategy unique to Rwanda, but what is often described as a 'new modality' for aid. It does, however, play out in a unique way within Rwanda, which has been a pilot for budget support harmonization formalized through a Memorandum of Understanding between the donors and their key partners.

⁵ A good example of consultative dynamics in Rwanda is provided by the constitution drafting process and referendum in 2003: consultation occurred, but was criticized as 'orchestrated' and reduced over time; it did not extend to either a genuine debate or adequate civic education during the referendum campaign, both of which the government opposed; and the referendum took place in the context of a crackdown on political opposition and civil society. In short, consultation was viewed as a technical rather than a political or transformative process (Kimonyo et al. 2004, pp. 15-16, 20, 22-3, 29; Reyntjens 2004, pp. 185-6).

⁶ This paper will not discuss villagization in detail as the policy, although obviously linked to land reform, was embarked upon in December 1996 and the commencement of its implementation precedes land reform. In brief, villagization, which in one form or another has a considerably history in Rwanda, is seen as a means to secure land tenure, increase plot consolidation and effective service delivery, free up productive land, thereby increasing productivity. Critics point out that the policy has failed elsewhere in Africa, and bemoan the lack of consultation and voluntary participation in Rwanda, but as an emergency response to the 'new caseload' returns the policy received considerable donor and INGO support (Jefremovas 2002 p. 125; Pottier 2002, pp. 181-2, 185, 193-6; van Hoyweghen 1999, pp. 363-5).

⁷ In an interesting commentary on normative ambiguity, Rose, whilst arguing for clearer and fairer formal legal provisions regarding women's access to land, states that in post-genocide Rwanda women became 'creative interpreters of law' rather than necessarily victims: 'By virtue of necessity, they become complex problem-solvers in

that they must deal with their land access problems according to the contextual constraints and opportunities presented by a hugely transitional customary legal system on the one hand, and a disrupted, minimally functioning formal legal system on the other hand'. Caught within an insecure land tenure system women sought, on a case-by-case basis, to 'bridge the gap' between land tenure systems where they were non-comprehensive, unclear, inconsistent, or contradictory (Rose 2004, pp. 202, 219-20, 242). Such creativity provides an indication of the many ways in which space for policy interpretation is opened up and exploited in the context of transition.

⁸ It is interesting to note how scholars writing about land reform discuss *gacaca*. Here, with relevance to the past and present, we come across references to *gacaca* as a source of social capital and counter-balance to the power of the state, and as a possible means of controlling local discourse on public morality and exclusion (Pottier 2002, p. 231 ft. 19; van Hoyweghen 1999, p. 359). Of course, both arguments may contain elements of truth. Several authors argue that a more modest past and present role for *gacaca* was and should remain the resolution of property and land disputes (Rose 2004; Waldorf 2006). See Waldorf for a timely warning against romanticizing local justice as transitional justice, based on the case of *gacaca*.

⁹ Redress for the genocide commenced in a judicial wasteland. Both the human and physical infrastructure of the Rwandan judiciary were decimated by the genocide. Further, huge numbers of people were imprisoned – around 120,000 – frequently illegally and invariably in appalling conditions. In this context, Rwanda undertook to prosecute all those responsible for the genocide. The numbers of victims and perpetrators were so large that Martin writes: 'The scale of the crimes simultaneously indicates the overwhelming need for justice and the impossibility of justice' (Martin 1998, p. 159). The record of the ICTR and national trials have been documented elsewhere: Moghalu 2005; Reyntjens and Vandeginste 2005; Schabas 2005; Uvin and Mironko 2003. Suffice to say here that the ICTR, designed to prosecute the architects of the genocide, while symbolically important as a belated sign of international concern and jurisprudentially significant for its case law on genocide and rape, has completed a small number of trials, remains largely unknown in Rwanda, and manifestly has not acted as a deterrent if one looks at subsequent events in the Great Lakes region. The domestic trials have more national significance. Commencing in December 1996, up to 10,000 people were tried in specialized courts by the end of 2004, although judicial reforms, reduced donor funding and the commencement of the *gacaca* process appear to have coincided with a decline in the number of trials, and long periods of complete inactivity. The fairness of these trials, whilst by no means perfect, improved over time.

¹⁰ Originally category 2, 3 and 4 crimes. Category 1 crimes were at this time assigned to the formal judicial system. The original (1996) classification of crimes is as follows: category 1 (leaders, planners, those who committed 'odious and systematic' murder), category 2 (others who committed murder), category 3 (other serious crimes against the person), category 4 (crimes against property). In 2001, rape was added to category 1. In 2004, category 1 crimes were slightly expanded, and categories 2 and 3 were merged. Further modifications of these categories have occurred over time.

¹¹ On the land reform process, see Musahara and Huggins 2005, pp. 286-9; Pottier 2002, pp. 179-201; and van Hoyweghen 1999. I am grateful to the then Director of Lands at the MINITERE, Eugene Rurangwa, and two staff members of an international development agency for talking me through, and providing their reflections on, large sections of this process.

¹² This discussion draws on a number of interviews with local and international NGOs.

¹³ On the challenges facing *gacaca*, see Waldorf 2006, pp. 55-85.

¹⁴ Other means of reducing the judicial burden have also been attempted, such as provisional prisoner releases. See PRI 2005, pp. 28-38.

¹⁵ One forum includes local and international NGOs and is coordinated by the Rwandan Commission for Human Rights (CRDH). It meets every three months to share findings and discuss ways to divide the work and avoid duplication (Niwe-Rukundo, Director, Unit of Planning and Research, CRDH). This forum is not regarded as independent by most INGOs. Another, PAPG, is an umbrella of five local civil society collectives. Having any kind of impact is also made more difficult by a range of government restrictions that have impeded effective monitoring (Waldorf 2006, pp. 78).

¹⁶ While sexual violence can only now be tried in the national courts, in pilot phase pre-trial proceedings in cell level *gacaca* courts rape victims rarely came forward. 2004 legal amendments ensured greater privacy and dignity for victims, banning public accusations and confessions of sexual violence. Victims must now make accusations in private to a *gacaca* judge or a prosecutor. Charges will be investigated by prosecutors before the file is transferred to national courts for trial (Waldorf 2006, pp. 62-3).

¹⁷ Where both Domitilla and donors acknowledged that PRI has had an impact on some donor attitudes to, and spending on, *gacaca*.

¹⁸ Reparations remain an unresolved issue in Rwanda. Survivors have not been able to access reparations either through the courts (as *genocidaire* are invariably unable to pay damages, and the government has legislated immunity for itself from civil liability) or, very effectively, through the FARG (Fonds d'Assistance aux Rescapes du Genocide), an assistance rather than compensation fund for the most needy established in 1998, that mostly pays education and health costs. An endless series of draft laws for a compensation fund have yet to produce concrete results. A staff member of the CRDH told me in July 2007 that he did not think there would ever be compensation (also see Waldorf 2006, pp. 56-9). In contrast to survivors, ex-soldiers and -combatants on all sides are given financial assistance on completion of the *ingando* (solidarity camp) process (Mgbako 2005).

¹⁹ On rights and development see Gready and Ensor (2005); and Uvin (2004); on NGOs in the context of transition see Bell and Keenan (2004) and International Council on Human Rights Policy (2003).

²⁰ This section draws on interviews with PRI and ASF staff in Rwanda. Their reports can be found at <http://www.penalreform.org/> and <http://www.asf.be/>.

²¹ PRI specifically state: 'PRI has chosen not to participate in the implementation of [its recommended] solutions in any way' (PRI 2006, p. II).

²² I have written elsewhere (Gready 2004, pp. 7-12) of the way in which civil society organisations often mobilise towards norm creation, the enactment of legislation and policy making, as an end in itself. Again, in the examples examined in this paper, we see the importance of mobilisation towards this point *and* beyond it to secure effective implementation. This is easier said than done as the 'partial success' of new laws and policies can 'dissipate focus, bring to the fore disagreements about priorities and strategy, and unravel coalitions' (11). But otherwise, even progressive laws and policy can be rendered ineffective, and even unjust, as they are refracted through the power dynamics of implementation.

²³ In a similar vein, an INGO (development) interviewee involved in the land reform process described the non-linear nature ('back and forth') of the policy process as a means through which the government is 'trying to regain control of the content'.

²⁴ A number of interviews have been drawn on to compose this section.

²⁵ As above.

²⁶ Discussions were held with three members of the DFID road map team within MINITERE. The government source is Rurangwa, then Director of Lands, MINITERE.

²⁷ One of the resolutions emerging from the October 2007 workshop on the draft strategic road map was for the inclusion of stakeholders from the private sector and civil society in monitoring and evaluating the implementation of national land tenure reform (MINITERE 2007, p. 19).

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