

# **Mistrusting as a Mode of Engagement in Mediation**

Insights from Socio-Legal Practice in Rwanda

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The institution of mediators (*abunzi*) existed long before colonisation. When something happened, there was the family elder (*umukuru w'umuryango*), who had the responsibility to solve disputes between family members. He would call upon all family members to share into solving the problem. When someone was found guilty, there were no governmental or judicial entities as in our days, the family elder only charged the responsible with a fine of providing beer that was then prepared for everyone to share. The case ended in that way by reconciliation. In order for people to continue to live in harmony today, the government decided to bring back our culture of solving problems by the people themselves in their communities, because you may find people fighting for a chicken and their case can reach the Supreme Court. The government decided to decentralize justice and provided for it in the Constitution of the Republic of Rwanda, it was in 2003 in its Article 159, which talks about mediation committees (*komite z'abunzi*). There are other laws relating to *abunzi* which means that it is an institutionalized organ, so they tried to bring back that traditional culture in order to prevent people to spend their time in courts just to preside over small cases.

(Interview with Dominique Nkurikiyinka, Mediator, Southern Rwanda, November 2012)

## **INTRODUCTION**

In this chapter, I outline some of the lived consequences of a society that was reformed after acts of mass violence and genocide. I intend to examine modes of pacifying relationships between actors in mediation of disputes by shedding light on the persistence of mistrust, which can be seen in the practices actors

use to navigate and anticipate their futures.<sup>1</sup> The analysis is confined to the mandatory socio-legal practice of mediation or *kunga abantu*<sup>2</sup> guided by those who 'bring people together' *abunzi* (mediators)<sup>3</sup>. Mediation is situated on the threshold of the legal system of the post-genocide Rwandan state and is firmly under control of local administrative structures. Rwanda has witnessed a shift in procedural responsibilities from a conventional judicial system to one that formally incorporates *abunzi* on its threshold. Mediation is re-introduced as an institutionalized and regulated space of dispute settlement governed by law. However, what is intriguing about this promise of mediation is how it is becoming a space for participatory engagement between citizens and disputing partners who, in terms of strategies and practices, are by no means equal partners in mediation. Very similar to what Lipsky has termed street-level bureaucrats (Lipsky 1980), street-smart or savvy actors in dispute employ wide-ranging, creative and flexible registers when pursuing their claims and articulating their accusations. The unintended aspects of engaging citizens in mediation forums are indicative of life worlds in the aftermath of mass atrocities and genocide. In this vein, mistrust has become a forceful strategy in the everyday life of citizens. Their everyday pursuit to secure modes of existence and forms of subsistence translates into social forms of engagement in mediation. Mistrust, silences, passivity and subversive actions are meaningful strategies. Resistance, doubt and critique are ways of making views public and distinguish the individual who employs these critical creative capacities.

The practice of bringing people together in mediation (*kunga abantu*) is embedded in an outgrowth of the Rwandan legal system. It is an organizational extension (Rottenburg 2009: 105, 140) that, since 2004, has been on the threshold of the legal system, bringing people together in mediation forums and introduces their disputes<sup>4</sup> to a public space (Organic Law N° 17/2004 of

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**1** | My use of the term mistrust draws on the Kinyarwanda verb *gukenga* which means to mistrust, the respective noun *amakenga* (suspicion) as well as *urwikekwe* meaning to have suspicion from the verb *kwikeka* which is to suspect something.

**2** | The verb *kunga* finds equivalence in (1) medicine where it denotes rejoining of a broken bone. It is employed when describing the (2) handiwork of tying two cords into one long cord. In relation to people (*abantu*) it is now used to denote (3) mediation covering the re-establishment of relationships between people and reconciling them (Organic Law N° 17/2004; N° 31/2006; N° 02/2010; Ministry of Justice 2010: 4).

**3** | In the course of the text I make use of the terms mediators *abunzi* and mediation *kunga abantu* interchangeably.

**4** | As acceleration of an unanswered claim or an unresolved disagreement between people, a dispute is addressed to some kind of public forum possibly staffed with a third party: 'The duration of disputes depends on the intensity of such bonds that unite victims with those against whom they clamour for justice' (Gulliver 1969/1997: 14).

20/06/2004). This space holds various modes of practices and forms of articulation for actors in dispute. They bring critique to light, employ strategies of mistrust and consciously distance themselves or resist figurations of authority. However, mediation is not an alternative to negotiation of disputes in courts. It rather precedes courts and gives access to disputes easily entering into the judicial system at its lowest level. Thus, mediation is a significant institutional arrangement for coming to terms with disputes considering the number of cases introduced to *abunzi* who set the itinerary for mediation. Mediation aims towards dispute settlement supported by active involvement of *abunzi* as a third party. I thus situate mediation, as organizational extension, within vigorous and fast-paced conditions of citizen surveillance brought about by post-genocide legislative reform in a context of 'autocratic' modes of state-administration and governance as well as their gradual consolidation (see Ingelaere 2009, 2014; Reytjens 1990, 2010; Schabas & Imbleau 1997; Waldorf 2006).

Mistrust is not only an analytical moment in lack of trust. I would agree that 'distrust ought not to be understood as derivate from an original state of trust' (Pedersen and Meinert 2015: 103). Neither do I expect to find logical consequentialisms in the presence and absence of trust as against mistrust. Mistrusting is a strategy, the cautious practice of actors who find themselves in relationships with others, 'mistrust (...) enables people to engage in strategic action and tactical manoeuvring' (de Certeau 1984: 50-52, 59-60; cited in MacLean 2013: 5). In this contribution, I follow an understanding of mistrusting which is to doubt, critique, provoke or steer questions and point to inequalities and injustices. Mistrust is to maintain a critical and self-determined distance to everyday events, institutions and its actors. Here mistrusting is a mode of engagement that can evaluate and calculate situations to create and maintain a vantage point from which actors can strategize about their practices. In my analysis, I focus on creative action and practices that can be achieved in situations of mistrusting, but that can also go wrong. 'Mistrust (...) creates opportunities for people to pursue their own interests, especially where others try to limit their ability to defend and/or advance them' (MacLean 2013: 5, emphasis retained).

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Studying dispute management and resolution mechanisms include a perspective on cases or litigations enacted in a socio-legal sphere under consideration of respective assemblages, rules, institutions and stabilizing objects (Boltanksi and Thévenot 1999: 360).

## WHEN MISTRUST SURFACES

Mistrust is not a set of actions or a range of practices including speech acts that offers itself directly for ethnographic inquiry. Mistrust marks a range of practices asking the participating, observing analyst to come forth attempting to percolate its opaqueness. I did not consider mistrust as a strategic practice of actors when I conceptualized the ethnography. This only surfaced much later in forms of organizing and institutionalizing access to the legal system and justice for 'ordinary Rwandans.'

What if we question the silences that we mistake for quiet endorsement? Speaking with street-savvy Rwandans at the margins of the state in their own language (Kinyarwanda) allowed me to inhabit a fugitive identity that made the familiar unknown and vice versa. I remained at a distance to take people out of their everyday and allow them to see their situation otherwise, while I created proximity to be entrusted with secret stories, insights and concerns. Given that we shared a common language, I could continuously deconstruct the unknown and make it familiar to me. It seems to me that this was the foundation for earning trust and being granted access to restricted realms that many researchers working in post-genocide Rwanda have called a 'withdrawn society' (see Fujii 2009, Thomson 2013).

Starting after the 1994 genocide and lasting until today, villages and communities on Rwanda's hills continue to be remade. Exiled refugees have returned, former FDLR (Democratic Forces for the Liberation of Rwanda) members are reintegrated, prisoners are being sent home after serving their sentences, inhabitants from scattered settlements without access to public services and infrastructures have had to relocate to live in newly built villages. Whenever Rwandans interact with public institutions they are asked to identify not only who they are, but also where they come from. In this way, they strictly follow the rules of the administrative units into which the whole country has been reorganized. The loose translation of village that I employ here, is far from an organically grown community, but more of a collection of homes closely built together, usually within reach of a road or path and implemented as the smallest administrative unit, commonly referred to as *umudugudu* (pl. *imidugudu*).

Against this background of inhabitation, the formation of villages framed configurations of peasants, who are expected to acquiesce when they interact with authorities and public institutions. The reconfiguration of rural dwellings and the comprehensive relocation of the local population certainly resonates in disagreements and disputes. 'Distance from their fields also contributed to uncertainty and concern among rural dwellers about losing their rights to land or their harvests' (Newbury 2011: 225). Given the remaking of post-genocide politics and governance, rural Rwandans not only find themselves living in

communities of strangers, but they are no longer in close proximity to where they cultivate crops and till their land to secure subsistence livelihoods. Farmed fields no longer border plots of land, which belonged to organically grown communities of trust who rely on mutual practices of reliance and exchange. In the longue durée historical approach to social organization, genealogies and political economy, among many other aspects of the ‘interlacustrine’ region, Chrétien evokes a certain dynamic in responsibilities and dependencies between people. ‘Indeed, influence resided in *trust* born out of personal relationships, in oaths, and in resource availability, which allowed one to forge relations that went far beyond the hill or banana garden where one lived’ (Chrétien 2003: 349). Moments of identification strictly pursuing reconfigured spaces rather speak of significant reorganization and reform of governance of Rwandans, than the forging of identities in terms of origin and place of residence. James Scott has scrutinized high modernist social engineering projects that subject organically grown and culturally embedded patterns of human organization to villagization enforced on ordinary inhabitants. The ‘administrative ordering of nature and society’ (Scott 1998: 4) stands out as an attempt to create order where, in the eyes of the state, otherwise restless populations roam. In its attempt to make the ‘social landscape legible, a bureaucratic state concerns itself with the administrative ordering of state and society’ (Newbury 2011: 225). In the state’s effort towards efficiency and good governance, citizens become subjects again. This legibility of the social descends into ordinary life worlds and concerns real people inhabiting these worlds. This short introduction to observations on current forms of living in Rwanda after the 1994 genocide demonstrates how detachment and isolation from mutual practices are conscious actions. They persist in spaces of making community or forums within which mediation is underway (see Doughty 2016). It is in these spaces of the everyday life world that I intend to access, to pursue, observe and, thus, analyse the surfacing of mistrust.

## THEORIES OF TRUST

In the preface to his book on trust, Niklas Luhmann (1967: v) expressed doubt over whether sociology should utilize words of ‘everyday language use’ that originate in a ‘world of imagination’ (*Vorstellungswelt*). His doubt was probably confirmed by the insight that trust had not been systematically conceptualized in sociological analysis and his work should remain the only systematic approach to a sociology of trust for some time to come (Hartmann 2001: 7, Luhmann 2000: 1). Luhmann situates trust in a moral world. Thus, trust runs the risk of being misused as concept for the analysis of the social world. None-

theless, he sets out to introduce trust to the endeavour of building a theory in correspondence to the everyday of the social world (Luhmann 2000: v).

His overall approach to trust makes it a necessity of the everyday to reduce social complexity as a precondition to act. Everyday life, practices and decisions become possible because of trust and trusting, when individuals are in situations and take on certain risks. Following this understanding, individuals who refuse to trust, cannot establish trustworthy relations with others so that mistrusting produces perhaps even too many possibilities for action. This implies that because of mistrusting, the level of complexity of situations encountered by individuals accelerates, so that courses of actions are manifold and actors are overwhelmed by the sheer possibilities in any given situation (Luhmann 2000: 93). Strategies of mistrust accelerate complexity, since more information is required to stabilize one's actions. People tend to scrutinize information to weigh its validity and worth when proceeding with equivalent actions. Given the dynamics of trust and mistrust brought about by thresholds that make actors weigh their risks, Luhmann concludes that 'a social system that requires or cannot avoid attitudes of mistrust (for certain functions) of its members, at the same time requires mechanisms that reduce the possibility of mistrust, out-balances other possibilities or worse runs the risks to reproduce modes of mistrust that slowly result in destruction (of the social system)' (*ibid.* 100). In this regard institutional arrangements hold actions based on mistrust accountable. In other words, mistrust in each other could provoke actions that are based on faith in institutions, not least so as to mitigate the risks and uncertainties of actors invested in mistrusting practices. Lack of trust would be a result of diverse institutions and unstandardized measures (Porter 1995: 46). Porter further asserts, 'trust can never be separated from hierarchies and institutions' (*ibid.*: 214). Following along these lines, trust in new institutions will decrease, if experience of personal encounters and engagements with such institutions vary and lead to contradicting results.

Tilly broadly defines trust 'as an attitude or a relationship that comes along with a set of practices' (2005: 12). He excludes the 'sorts of attitudes that might motivate, complement or result in relationships of trust' (2004: 4). It seems to me that the practice approach may circumvent the 'elusive notion of trust' (Gambetta 1988: ix). Tilly rather foregrounds the fabrics of relationships between people that emerge with their practices. 'Trust networks, then, consist of ramified interpersonal connections, consisting mainly of strong ties, within which people set valued, consequential, long-term resources and enterprises at risk to the malfeasance, mistakes, or failures of others' (Tilly 2005: 12). Trust relationships cannot sustain themselves without the premise of people taking risks and investing in unpredictable outcomes (Tilly 2004: 4).

Trust is confidence in the reliability of a person or system (Giddens 1990), it is indispensable for a stable and collectively shared life. In a similar movement,

Broch-Due and Ystanes (2016) expose trust to ethnographic inquiry. These authors acknowledge the elusiveness of trust, in a similar way to Gambetta (1988). According to Broch-Due and Ystanes (2016: 1), trusting is 'a disposition, a powerful affect, a stance towards the world expressed in a confident reaching out to others'. Indeed, this presupposes trust almost as a confidence in and of the experienced world, as a consequence of modernity (Giddens 1990). These authors also emphasize the future-orientation in a trusting disposition accumulated through collections of positive experiences as actors get along with one another (ibid.). When 'trust weaves together intersubjective worlds' (Broch-Due and Ystanes 2016: 1), it is also in danger of being undermined by mistrust, a corrupting force with the power to encroach social worlds and their associated actors.

According to Hardin, we have entered an age of distrust, as we interact more with unrelated people we cannot trust, rather than with those in whom we trust due to memory of previous encounters (Hardin 2006: 13). 'Distrust is sometimes not merely a rational assessment but it is also benign, in that it protects against harms rather than causing them' (Hardin 2006: 89). Showing how distrust can fulfil the incentive of keeping oneself from risks and harmful actions of others, this approach foregrounds questions of how distrust plays out and which motivations it fulfils, rather than falling into the trap of pathologizing communities of mistrust and generalizing what seems impossible to corroborate empirically. The impossibility of reading trust as opposed to and different from mistrust also brings to the fore the question of how trust relates to trustworthiness.

Hardin opens an alternative trajectory when he sets out from trust and rather considers its attached merits when he turns to trustworthiness. 'Your trustworthiness is your commitment to fulfil another's trust in you' (Hardin 2002: 28). In the following pages on the worthiness of *abunzi*, going along with Hardin, I discuss how 'trustworthiness is a motivation or a set of motivations for acting' in the socio-legal world (ibid. 31). But I believe some critical distance to Hardin's assessment of trust needs to be kept when he reasons that 'the meaningful result of trust, when it is justified, is to enable cooperation; the result of distrust is to block even the attempt at cooperation' (ibid. 96). Moreover, he seems short sighted in painting the two worlds of trust and distrust as distinct and taken for granted opposites: 'Trust is functional in a world in which trust pays off; distrust is functional in a world in which trust does not pay off' (ibid. 96). What is more, in practices and situations there is a leverage for actors to engage their competences ranging from mistrusting, testing commitment to being trustworthy as well as establishing trusting relationships; all of whose thresholds can be overcome effortlessly.

## CUSTODIANS OF TRUSTWORTHINESS

‘You never know the name of the one who will make the spade that will avenge you.’

*AGACUMU KAZAGUHORERA NTUMENYA UWAGACUZE.*

RWANDAN PROVERB

The *abunzi* mediators I worked and conversed with, would refer to having been elected by residents of their village or cell as their representatives in mediation committees as evidence of their public commitment and merit. Referring back to the much formalized procedures of nationwide *abunzi* elections as underlying reason for them becoming *abunzi* was often regarded as ample explanation. But it is worthwhile looking into how people would go about choosing their representatives as everyone could be in need of *abunzi* one day and rely on their good conduct to reconcile with or resolve a disagreement with a party in dispute. Accepting one’s own potential need of *abunzi* sometime in the future is an inducement for actors to accept *abunzi* as an institution of worth and significance. Seen from a perspective of the making of institutions as linked to actors’ practices and human actions<sup>5</sup>, there is a need to rely on *abunzi* and trust their worthiness on behalf of people entering mediation. The trustworthiness of mediators and trust in mediation could therefore be read as a defining moment delineating the practice of mediation *kunga abantu* from mediation in becoming an institution (*komité y’abunzi*).

I base the term trustworthiness on concepts in *Kinyarwanda* that are among the everyday register of street-savvy and ordinary people. *Kwizera* (verb) and *ikizera* (noun) in a general sense means to hope, believe or have faith in. *Icyizere* (noun; plural *iby-*) implies hope, trust, and confidence and is derived from *kwizera*. *Kwiringira* (verb) and *icyiringiro* (noun; plural *iby-*) denotes to trust, rely on, hope, expect. All the connotations that are related to trust inherit the value of a future-oriented perspective.

So why would an ordinary, street-savvy person be elected to become *umwunzi*? Emmanuel, vice-president of a Mediation Committee at the appeal level of the administrative unit of the sector elected for a five-year mandate, explains how he was trusted by people to represent them. A person can only reach trustworthiness – *ubunyangamugayo* (literally the strength to publicly stand against disgrace and shame) – and be a trusted person – *inyangamugayo* (literally someone who refuses blame and is therefore a reliable person) – when his actions and behaviour, especially in his family, are seen as exemplary, good and for that matter trustworthy. Emmanuel captures the formula for qualifying as *inyangamugayo* in the following terms:

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5 | Hans Joas calls this aspect of institution-making a creative process (Joas 1989).

You cannot go to help people in certain matters whereas you have not even understood yourself or know what you are going to help them with. So what does it mean to be trustworthy? It is to see, that the person who will represent you, has the value of *ubunyanga-mugayo*. It is a quality of knowing what is good and what is bad. It is in his behaviours. I give you an example, if in my house I always fight with my children and my wife, do you think that I can be *inyangamugayo*? Can I bring together a husband and a wife in a mediation, while they know that even in my own home there is no peace. First, they have to see my behaviours before they trust me. To stand before them and represent them in mediation, if I do not have *ubunyanga-mugayo* there is no need to trust me for solving their problems because even in my home I need to earn trust first.

(Interview with Emmanuel Désiré Uwimana, Mediation Committee's vice-president, Southern Rwanda, October 2012)

Knowing about a perceptive person's trustworthiness seems to play out in the everyday and in situations of people going about their daily lives with all its flaws. During an unpremeditated conversation between mediators situated at the level of appeal in Gishamvu Sector, a mediator shared the roles he plays in the vicinity of his hill.

I forgot to tell you that all young men who want to date a woman, come to consult me and ask me what to do. So I teach them loving words to say, good songs to sing or poems to recite and even about a certain flower to give to women. Sometimes I accompany men to meetings with their beloved. It has happened that the women fall in love with me instead, but I am a good person I cannot do this kind of things

(Interview with Pascal, Mediator, Southern Rwanda, February 2013).

His account of everyday practices of earning one's trustworthiness through being good with others goes along with an understanding, that surfaces in mediators' narratives of their motivation. Being less concerned with oneself and one's own issues, or in other words selflessness, is a vital ethical responsibility for savvy community members to fulfil. The value *agaciro* of selflessness, compassion and being kind with others resonates with fellow mediators present in the above conversation, who recall memories of cordiality. 'People trust me and they know that there is no one to help them except the one they can trust. We accept to serve our country in this voluntarism [of mediation committees] because we have to help people, our neighbours and to serve the country we belong to.' This interconnects with the voluntariness of a trustworthy person to take the responsibility of being a mediator *umwunzi* and representing, as Emmanuel as called it above, parties in mediation who invest their trust in the responsible *inyangamugayo*.

In this regard mediators are vanguards of a new spirit of trustworthiness and truthfulness in Rwanda that goes along with building new communities after genocide. This is accompanied by socio-political agendas that can be read

as manuals for a new, united and homogenous Rwanda, such as the *Ndi Umunyarwanda* (lit. 'I am Rwandan') programme. Even though it addresses every ordinary Rwandan, it also sets the stage for *abunzi* to act as moral signposts and mobilize Rwandans to set out and search for values that are hoped to bring reconciliation among a population divided by genocide and its lasting ideology. The programme instructs:

To be a person of integrity is characterized by saying the truth, being humble, listening attentively to others, being in harmony, assist others. All this leads to trust between people. To develop a culture of having conversations and to give strong incentives to resolve problems. *Ndi Umunyarwanda* prompts us to always seek the truth, live in harmony without any kind of violation, to accept when we fail and to ask pardon to go forward Decisions on the Programme of *Ndi Umunyarwanda* (lit. 'I am Rwandan').

In her observation, Dasgupta finds that trust is earned and established through practices and their everyday repetitions. '[T]rust is based on reputation and that reputation is ultimately to be required through behaviour over time in well-understood circumstances' (Dasgupta 1988: 53). Again, trusting relationships are located, embedded and rely on contexts delineated by actors embroiled in relationships and collaborations.

## KEEPERS OF TRUTHFULNESS

'Abunzi bring people together in truth'.

Description of a good mediation often eluded to by mediators.

INTERVIEW WITH SILAS NDAKIZI, MEDIATOR, SOUTHERN RWANDA,  
JANUARY 2013.

The quest to bring trust to light and establish trusting relationships as foundational principle in mediation is closely linked to trustworthiness that qualifies a person *inyangamugayo* to be elected as mediator *umwunzi*. It seems worthwhile to look closer into how relations evoking trust and truth play out in the everyday. A mediator shares the circumstances surrounding his selection to become *umwunzi* based on his conduct as *inyangamugayo*.

To elect *inyangamugayo*, people only select those who were not involved in genocide. Those who do not steal, not even touch the cash crops of others. Those who do not have quarrels or cause disturbances in the community where they live. That is how people came to conclude that I am *inyangamugayo*. They hope that you can do good things for others, because *inyangamugayo* is someone who cannot discriminate people based

on ethnicity, but will base his decisions on what the law says. That is inyangamugayo, someone who is impartial in all decisions made.

(Interview with Silas Ndakizi, Mediator, Southern Rwanda, November 2012)

I consider this wording of how trustworthiness relates to truthfulness as a profound insight into how cooperation between people can be maintained based on how actions are valued, measured and put in the context of what everyone's expectations of people live up to. It is ordinary but savvy people seeing, estimating and calculating the actions of others. Value is ascribed to good actions and behaviours that become visible in everyday situations and ordinary encounters. Investing one's trust in a person and seeing truthfulness in the doings of *abunzi* is open for everyone to share into – even strangers, as I described above for me approaching interlocutors in their language and gradually earning my trust. The ways of finding out about trust and truth goes along with Hardin's candid street-level epistemology that 'knowledge of another's trustworthiness can come from many sources other than thick relationships' (Hardin 1992: 157-58). Again, it is a practice-level approach that opens the perspective and possibilities of trusting and trustworthiness. In the remainder of this chapter, I shall turn to the socio-legal practice of mediation with the help of an ethnographic situation and will elaborate on how mistrust surfaces as mode of engagement.

## 'WE ARE GOING TO MEDIATE YOU'

'A distant brother is less valuable than a neighbour'.

*Umuvandimwe wa kure arutwa n'umuturanyi.*

RWANDAN PROVERB

Entering into a mediation calls upon the disputing parties into being-with-others. This and the coming together, being in and making of community – even if this coming together is called upon by authority and a dispute settlement institution that summons reluctant and unwilling actors, sets the pace for parties undergoing mediation and remediating their positionalities (Doughty 2015).

What follows is an ethnographic insight into the introduction of a mediation, usually opened by the lead mediator, held in the Sector of Gasaka in the Southern province of Rwanda, one of the major research sites of my fieldwork conducted for 15 months between 2011 and 2014.

*Emmanuel: Nyirimbaraga Gregoire, we are going to mediate you and your mother, Mukarubuga Beatrice today and I want everyone who is here to help us in this. Do you want to enter this mediation?*

*Gregoire: Yes, I want it.*

After Gregoire gave his consent, the mediation opened with the creation of a 'summarizing protocol', a written device or practice of documentation of the main strategies in actors' argumentation during the mediation. In many instances, I observed how mediators resort to their written documentation to abstract, simplify and 'boil down' initial claims and accusations, and, thus, sort through the various lines of argumentation. Reading the summarizing protocol to the actors in dispute and others present helps to bring about closure and at the same time reduces the heat of the moment, when actors bring forth their experiences of injustice, unsatisfied demands and claims that have added up over several years of unresolved antagonistic relationships. At the end of mediation, stability is brought back into the relationships between actors, which is sustained by a written device that also functions as a structuring device; mediation may either result in mutual agreement *-kumvikanisha* (literally, crafting a mutual understanding) – or a decision taken by the mediators – *umwanzuro*.

At the beginning of mediation, Gregoire's affirmative statement to seize the possibilities of dispute resolution, despite the filial relationship, reveals that family relationships of proximity have been altered en route to mediation. When the lead mediator proceeds to ask 'who is the plaintiff?' and 'so Mukarubuga Beatrice is the defendant against whom Gregoire lodged a claim?', the actors in dispute are being positioned. That implies several things, such as being differentiated along the lines of who lodged a claim to the mediation committee – the plaintiff, on the one hand, and the defendant, who will take the position of the party that is blamed or accused of wrongdoing, on the other. The initial distribution of who claims what from whom is always undertaken. My understanding of the two opposing positions leads to the assumption that actors are not equal parties in mediation, because of the way they are positioned as claimant and defendant. Thus, the initial positioning of actors in dispute has implications on their truthfulness during mediation. For mediators to find out about the truth of 'how things really are', they need to establish that actors can be trusted. A plaintiff who claims 'too much' or whose claim dates back to a 'long time ago', usually before the 1994 genocide, cannot be considered a 'serious person' in mediation.

This goes along with a broader cultural-political discourse in the country about the 'seriousness of Rwandans'. It is specifically linked to a disorderly state of the nation in the years leading to genocide in 1994, shattered social fabrics and disquieting acts of genocide committed by people living together in close proximity and familiarity. The attempt to reconcile, rebuild and develop a nation insinuates 'bad history', as Rwandans refer to it. Thus, a forward-looking course of achievements and improvement comes into play, 'when you are not serious' and striving to achieve what is good, 'you cannot be correct' (Tito Ruraremara, Ombudsperson, quoted in Kinzer 2008: 233). The seriousness of a person has been and is in the becoming of a value in Rwandan society.

The above mentioned seriousness has also come to be integrated as a premise in the socio-political programme *Ndi Umuyarwanda* – ‘I am Rwandan’, which seeks to mobilize citizens to achieve a common goal, foster the self-consciousness of Rwandans and value peoples’ worth (*indangagaciro z’ubunyarwanda* – literally, ‘to give value to Rwandaness’).<sup>6</sup> Certainly, there is a significant motive of discipline in this seriousness, something that is always emphasized by authorities, leaders and members of the ruling party Rwanda Patriotic Front, as for instance the Ombudsperson quoted above. It is a considerable transgression to tell people that they are not serious or not correct (see also Kinzer 2008: 233). The *Ndi Umuyarwanda* programme also resonates in the conversation with *umwunzi* Silas on how to invest in trustworthiness and truthfulness. He emphasizes that a truthful *inyangamugayo* cannot see ethnicity as a point of reference for discrimination. The programme mentioned here, reinforces citizens’ identification as Rwandans instead of resigning to ethnic categories that led to the nation’s descent into genocide. This, I think, is a moment in the everyday practices and roles of savvy citizens like *abunzi*, who inherit their identities from their worth of *inyangamugayo*. Good values and personal integrity that go along with this worth are identified by Rwandans to be rooted in the intricate relationship between having a common culture and shared history, on the one hand, and experiencing the post-genocide predicament, on the other. In this regard, *abunzi* have a significant role to play and are entrusted with ethical leadership on the level of their communities. Not only do they mediate between parties in dispute but, more significantly perhaps, they mediate practices, values and registers of worth between ordinary citizens in local forums on the threshold of the legal system.

Returning to the opening sequences of mediation at Gasaka Sector in February 2013. The lead mediator turns to Gregoire with a provocative assertion:

*Emmanuel*: You should be ashamed to be in dispute with your mother!

The mediator risks to bring forth probably hasty and premature charges of wrong-doing against one of the parties in dispute. But this is intentional; the mediator wishes to stir a sense of participation among others attending the public mediation forum. Thus, the audience is called upon to get involved, share ideas of justice or relate to the dispute submitted to mediation with their witness accounts or evidentiary practices. The mediator makes a deliberate at-

<sup>6</sup> | ‘*Ndi Umuyarwanda* is a program that aims towards the instruction of Rwandans to feel that they are Rwandans first of all things, to live without distrust – *kubana nta rwikekwe* and to put the common good for the country first, all arising matters concerning society should undergo open discussion and be agreed upon through conversation’ (Government of Rwanda 2013: 3, author’s emphasis).

tempt to reduce the weight of the disputed entity at risk of being lost for either side and calls upon the relationship of the involved actors. Gregoire, the son, is in dispute with his mother Beatrice. The son takes on the identity of plaintiff against his mother. This, according to the mediators, cannot be accepted without the disputants' family relationship being submitted to the mediators' scrutiny. Their estimation draws on the proximity and trust between a son and his mother. Let us consider how the lead mediator proceeds:

*Emmanuel:* You know that my name is Uwimana Emmanuel Désiré, I am umwunzi and vice-president of this committee of mediators at Gasaka Sector. I am still waiting for other abunzi to come. But it is good for you, Gregoire and Beatrice, because you have both come here today and we can talk before all others arrive in order to find a solution to your problem.

Gregoire admits that he of course was not in favour of getting involved in disputes in general and that even he cannot recall where this dispute comes from. The lead mediator continues to address Beatrice:

*Emmanuel:* We want to mediate you and your son and the other people present here today will help in order for your family to leave this dispute behind and return to your previous state of relationship.

Beatrice, however, remains little convinced about the possibility of mediation. Her relationship with her son has long been weakened by interests of individual family members calling for property relationships that trespass family values and emphasize personal gains. She therefore reinstates her critical distance to the course of action laid out by *abunzi*.

*Beatrice:* How can you mediate us?

The lead mediator explains the form the mediation could take for the disputing parties as he judges their bonds:

*Emmanuel:* We will show you that your (family) relation is stronger than the dispute (single incidence) you have.<sup>7</sup>

He insists on the significance of relatedness and shared values as one family and therefore sets the conditions for the mediation 'without going into too much

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**7** | Here the lead mediator relies on the proverb '*Icyo mupfana kiruta icyo mupfa*' which translates into 'our relationship (brotherhood) is more important than our differences (disputes, wealth)'.

detail of the case.' The lead mediator sets the tone for the parties in dispute and already lays out directives on what should be remembered and attained in the process of mediation. The relation between mother and son should outweigh the dispute between plaintiff and defendant. This is also why the mediators depart from the assumption that it will be an easy dispute to resolve.

*Emmanuel:* All of you who are here today participating, you know that this dispute is easy and it will not be difficult to mediate both, mother and son, am I lying?

Beatrice confirms that the mediator is of course not lying, but she upholds her critical distance and remains distrustful to the impending mediation based on shared family relations. Even though she states that she is fine with acknowledging her son in dispute, she recalls how Gregoire already 'refused to be mediated' before *abunzi* at the level of the cell. In response to her sensible mistrust in the promise of mediation, *abunzi* continue to invest their confidence by reinstating that they 'will see whether Gregoire again refuses mediation.' The mediators seize a certain capacity of enunciation. Actors in dispute may discard rules and forget about procedures initially laid out. This underscores the sense of a moral community in which all actors in mediation participate (Gulliver 1977: 29). However, this initial or pre-mediation encounter between mediators and parties in disputes already suggests that trust is a fragile commodity, requiring especially delicate handling when interconnectedness between people and institutions is a prerequisite for fulfilling an agreement (Dasgupta 1988: 50), such as mother and son agreeing to be mediated by *abunzi* on the premises of recognizing their mutual bond.

## 'A SMALL LAND AND A FOREST'

After the conditions for the unfolding mediation have been laid out between all involved parties, a process of negotiation over the actual substance of the dispute unfolds. However, as becomes clear in the following, this process will not result in a clear outline of what the parties are disputing over, since neither of them accepts the mediators' proposition of disputing over 'a small land and a forest'. It will moreover reveal the underlying dynamics of adversary relations between parties in dispute. Thus, the process of negotiating the litigation pushes mediation and its mediators to the limits of their capacity in providing resolutions such as the mutual acknowledgement of kinship or family relations. In other words, what becomes evident is how mediation fails and therefore requires alternative itineraries for parties in dispute to get along with each other, even if they do not 'get over it' and completely repair the relationship. In the specific case laid out here, mediators will rely on external stabilizing

objects which come in the form of written evidence, such as a land title issued by the land titling commission, external to the mediation committee. Due to the inability or unwillingness of the parties to reconcile in a common resolution of their dispute, this evidence will support the final decision rendered by the mediators. They set out to leave the material side of the dispute behind, which they refer to as 'the thing you are quarrelling over', and instead focus on social bonds and the imminent filial relationship. Yet, their anticipated path is interrupted by Gregoire who requests the presence of his brother as he is a third actor involved in the dispute. *Abunzi* admit their surprise as they did not issue any 'summons' to a third party.

*Emmanuel:* Why didn't you tell us to summon him?

*Gregoire:* I thought that my mother would tell him and he would come because the case involves many people. He was summoned to come to the mediation in the cell, but he was not there.

*Emmanuel:* Why didn't he come? Is he above the law?

This is a noteworthy turn, since it depicts what mediators will rely on when faced with an overwhelming complexity of 'facts' and 'actors' in a case. Whereas Gregoire persists in mobilizing others to achieve support, he trusts in the relationships between his mother and brother to inform each other and fairness for his claim, *abunzi* strictly rely on written forms of evidence and facts of a case. *Abunzi* act according to their situated knowledge in the heat of the on-going mediation and rely on written transcripts of the documented history of the case, such as the case registration book shared between local authority and *abunzi* and what has been described above as the 'summarizing protocol'. Using these written devices in the mediation, *abunzi* rule that the dispute will be confined to two parties only. This goes along with their positioning of Beatrice and Gregoire, to show that their relationship is stronger than their dispute. The lead mediator turns to another woman in the audience who turns out to be Gregoire's sister who is brought in to share her perspective on a case entangled in filial relationships.

*Emmanuel:* What do you want to tell us?

*Gregoire's sister:* I want to tell you that Gregoire is lying. My brother is not here today because he is not involved in the case, he only used to accompany my mother to the authorities.

Gregoire's attempt to be trusted in his account of the case by mobilising others is countered by the sister's witness statement, judged as truthful by *abunzi*. Gregoire, however, is fiercely rejected by them when being corrected.

*Emmanuel:* The mistake that you made is that you didn't tell us about a second defendant. We gave you a summon for one defendant only.

Since there is no written evidence, *abunzi* cannot invest their trust in Gregoire even on the procedural aspect of the sheer number of involved actors in dispute. Gregoire steers mistrust of *abunzi* by 'adding up' to the dispute, whereas *abunzi* try to foster their trust in him through simplification of the matter at hand. Still, Gregoire remains at a distance and is reluctant to submit to mediation without the mediators giving in to his demand of involving other family members. He expects a logical sequence of hearing his arguments about how the 'small land and the forest' were given to him by his father. He wants to be heard about how he is fighting violence and 'terrorism' in his family whose members have betrayed him. He wants to see acknowledgement for the forms of evidence, arguments, witnesses and truth claims he attempts to mobilize. Gregoire relies on stabilizing objects for overcoming mistrust and crafting relationships of trust. *Abunzi*, however, rely on a strategy, probably less or not at all anticipated by actors in dispute, to move beyond law. They push for a mutual resolution where they would like to see the authority of actors in dispute taking centre stage – a mutual recognition of the filial relationship and amicable relations in more general terms. But the disputants only see semi-standardized practices in what *abunzi* have put forth. Their less standardized approach reduces actors' trust in mediation.

The mediators ultimately define the dispute as violation of property rights. Gregoire occupied a forest and cut down its trees, wrongly believing that he owned the land when, in fact, he did not inherit the concerned piece of property from his father. However, Gregoire maintains that he can mobilize witnesses who can testify that his father handed him down the disputed piece of forest during his lifetime, the common practice of 'ascending partition'. That is why, according to him and against the opinion of the mediators, the case is easy but also hard. With these distancing statements, Gregoire is careful to avoid submitting to the arguments and measures of proof common in mediation. His comments are rather situated on a meta-level of critiquing and maintaining a mistrusting ambivalence towards any committing positions as anticipated by the mediators. What is more to Gregoire mistrusting the ongoing mediation process is the opaqueness of opponents, he alleges, to consist of more than one party. Beatrice, he believes, makes common cause with the authorities due to certain promises, 'my mother is supported and pushed to engage in disputes by the authorities'. Gregoire's mistrust evokes something going on behind the scenes, something obscure unfolding silently in the background, whereas the mediators intend to increase the pace of the mediation going on in the foreground.

Mediators and disputing party reside in different regimes of action and practices of truthfulness. To establish some clarity, the mediators start moving towards forms of evidence in support of one or the other party. They ask both parties for their land titles. Gregoire believes his land title in the hands of his brother's wife, who immediately protests: 'he is lying; we don't have his land title.' The mediators turn to Beatrice who acknowledges that she is in possession of the required title. Gregoire shouts out that the title is forged; 'all Rwandans who are here, you have to listen to me, they have a lot of documents evidencing that it is their own land, but these are forged.' Since he claims that all documents brought forth as evidence by his 'mother's side' are forged, he is required to produce his land title as proof of him being the rightful owner of the small land and the forest. The mediators bluntly abject any further inquiry: 'Gregoire, go back and prepare your case. You confuse a lot of things and we waste precious time. We only want the land title and the paper of inheritance. I think you can go so that we can mediate other people.'

## **CONCLUSION – BETWEEN TRUST IN LAW AND MISTRUST IN MEDIATION**

'Tomorrow's things are brought by those who will come tomorrow'.

Iby 'ejo bibara ab'ej'o.

RWANDAN PROVERB

This chapter followed practices of mistrust as strategies in mediation. The ethnographic situation reveals how disputes are perpetuated and can have long-lasting impacts on relationships between actors in dispute when mistrust prevails. I consciously did not consider all aspects of the litigation in question for the dispute laid out here. Alluding to some of the fragments of mediation allows, as I believe, for more space in the analysis of practices and strategies in mediation.

The fragments of an attempt towards bringing people together in mediation that I laid out here, show how strategies to navigate between trust in law and mistrust in mediation are intertwined. 'Suspicion (like doubt) occupies the space between the law and its application' (Asad 2004: 285). In this chapter, I went along with mediators working towards putting suspicions to rest. In doing so, parties and mediators draw, though in different modes, on practices of evidence and written forms to establish how things really are. However, relationships of mistrust among actors prevailed throughout and beyond mediation. 'Suspicion opposes and undermines trust' (ibid. 285). Mistrust is a strategy in mediation on the threshold of the legal system.

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