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The *Gacaca* Tribunals in Rwanda

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Introduction

Between April and July 1994, more than 700,000 Tutsi were killed in the Rwandan genocide. In parallel massacres, tens of thousands Hutu were killed for being too moderate, too sympathetic to Tutsi, too wealthy or too politically inconvenient. After the genocide a new government came to power, dominated by Ugandan-born Tutsi returnees but with the participation of other political parties. It inherited a totally destroyed country, with a traumatized and impoverished population, a collapsed state and a destroyed infrastructure. Eight years later, much of the physical fabric of the state and the economy has been rebuilt - at times better than it was before. However, the giant tear in the fabric of Rwanda's society has not been repaired. Achieving justice and reconciliation remains the great challenge for Rwanda.

From the beginning, the new government argued that unless the "culture of impunity" was once and for all ended in Rwanda the vicious cycle of violence would never end. Although some donors were interested in the South African "truth and reconciliation" model, the government firmly rejected this: only when the guilty had been punished would it be possible for the victims and the innocent to create a joint future together. As a result, the Rwandan Government and the donor community invested heavily in the (re)construction of the justice system. More than 100 justice-related projects have been funded - training lawyers, judges, investigators and policemen; supporting reform of administrative and court procedures; funding the construction of courts, libraries and prisons; paying for vehicles and fuel; supplementing the salaries of judges; and supplying technical assistance to the Ministry of Justice and the Supreme Court.

All this has produced significant results. In 1996, the Rwandan National Assembly adopted a genocide law, creating four categories of crime and associated punishments, ranging from particularly cruel behaviour (category I) to simple property offences (category IV). Trials started by the end of the same year. By mid-2001, approximately 3,500 persons had been judged.

The quality of the trials has improved over the years as verdicts have become more nuanced, but serious problems remain. The quality of the justice delivered is deficient: there are too many instances of investigative bias, corruption of judges, intimidation of witnesses, weak defence counsel or absence of a defence counsel, and political pressure. A second major problem is quantitative: at the current pace, it would take more than a century to finish the trials of the 130,000 persons who are currently imprisoned, often in horrendous conditions. It is widely believed that the justice system simply cannot work much faster than it currently does (it could work faster but not, let us say, 50 times faster, which is what is really needed). More people accused of participation in the genocide die in Rwanda's prisons each year than are judged. This is socially, economically and politically very costly for the Rwandan Government and society.

From mid-1997, senior Rwandans began thinking about innovative ways of dealing with this challenge. Out of these discussions grew the idea of transforming a traditional Rwandan community-based conflict resolution mechanism called *gacaca* into a tool for judging those accused of participation in the genocide and the massacres. This system is labelled the "modernized *gacaca*" and consti-

tutes an unprecedented legal–social experiment in its size and scope. In the summer of 1999, a draft law began to circulate. This was followed by a large number of meetings and discussions involving various segments of government and society, as well as the international donor community. The law underwent various modifications, which resolved some of the criticisms against it but not others, and was finally passed by the National Assembly in October 2000. Elections for approximately 255,000 *gacaca* judges took place in October 2001. Training for the judges followed in April and May 2002, with international support.

The System

Throughout the country *gacaca* tribunals have been created composed of persons of integrity elected by the inhabitants of cells, sectors, districts and provinces. Each prisoner (except those accused of category I crimes) will be brought before the tribunal in the community where he or she is alleged to have committed a crime. The entire community will be present and act as a “general assembly”, discussing the alleged act or acts, providing testimony and counter-testimony, argument and counter-argument. The community will elect among those present 19 people to constitute the bench. These people must be of high moral standing, non-partisan and not related to those accused. In the first phase, at the lowest level (the cell), *gacacas* will categorize all prisoners using the legal

The Structure of the Gacaca Tribunals in Rwanda

Level	Number	Competence	Observations
Province	12	To judge appeals for category II crimes	The competence of <i>gacaca</i> tribunals to judge appeals for category II crimes, which carry a life sentence, has been controversial. Many believe such appeals should be heard before a formal tribunal
District	106	To judge category II crimes To judge appeals for category III crimes	Category II crimes were the major category in the traditional <i>gacaca</i> system, covering 80% of all cases
Sector	1,531	To judge category III crimes To judge appeals for category IV crimes	It is likely that there will be few category III crimes
Cell	9,189	To categorize the accused To list damages To judge category IV crimes	With respect to the categorization of crimes, a major innovation is the classification of rape as a category I crime, and therefore outside the scope of the <i>gacaca</i> tribunals The penalty for category IV crimes is restitution not imprisonment

categories established in the 1996 genocide law. In so doing they can use the case files drawn up against the prisoners insofar as that these dossiers exist. However, they are expected to draw primarily on testimony from the accused and the community assembly. In the second phase, *gacaca* tribunals at different levels will judge the accused, with each level having competence to judge appeals from the level below.

One of the innovative elements of the *gacaca* law is the confession procedure. Prisoners who confess and ask for forgiveness can receive dramatic reductions in penalties. Reductions are greatest for those who confess before the proceedings against them start, either while in prison or at the very beginning of the *gacaca* proceedings, when they are explicitly asked if they want to confess. Reductions are

smaller for those who confess only during the *gacaca* procedure, while penalties are unchanged for those who do not confess at all but are found guilty. Additionally, up to half of the sentence of all convicted can be transmuted into community service (*travaux d'intérêt général*), the modalities of which are yet to be determined by further laws. To benefit from the community service provisions, the accused have to ask for forgiveness publicly.

Finally, the *gacaca* law greatly simplifies the reparation procedure for survivors of genocide. Part of the *gacaca* proceedings consists of a detailed listing of all the damages suffered by each survivor - destruction of property, physical harm or loss of relatives and providers. When the procedure is completed the claimants receive a statement of their losses and can use this to receive reparations from a public fund which will be set up for this purpose.

Merits and Limitations: the Debate

The aim of the *gacaca* system is twofold:

- to speed up the trials and empty the prisons; and
- to involve the community in establishing the truth and, through that, promoting reconciliation.

On paper, the system should be able to achieve these two aims much better than the formal justice system. With approximately 10,000 tribunals, it should be possible to judge all prisoners over a much shorter period of time. Given its decentralized nature, its relatively simple and recognizable procedures and the importance attached to local participation, the *gacaca* ought to be much better at involving the entire community, including victims. As a result it is potentially more victim-centred, and may thus have a more profound impact in terms of reconciliation. Finally, through the process of local discussion and fact-finding, *gacaca* proceedings may well develop a fuller picture of the nature of the violence that occurred and the responsibilities of different people.

The *gacaca* law contains a politically astutely designed set of incentives to encourage popular participation and acceptance. The confessions procedure, with its requirement for complete confession, including the names of all other people involved in the crime, is already setting in motion an avalanche of confessions, including the implication of other people, which is likely to lead to significant debates as people seek to explain themselves, implicate others, contextualize events and so on. Hence the *gacaca* procedure could produce more truth than the formal justice system has so far managed to do. In addition, the confessions procedure and the community service commutation option bring significant reductions in length of prison sentences, even for those found guilty. As a result, many people should be able to finally rejoin their families and get on with life. Finally, the streamlining of the reparation procedure provides a way to buy some (grudging) support from the genocide survivor organizations. However, the *gacaca* system suffers from significant limitations:

- It compromises on principles of justice as defined in internationally-agreed human rights and criminal law.
- It could set in motion social dynamics that are unexpected and possibly violent.

On the first point, there is no separation between prosecutor and judge, no legal counsel, no legally reasoned verdict, great encouragement of self-incrimination, and a potential for major divergences in the punishments awarded. In short, the modernized *gacaca* system seems to provide inadequate guarantees for impartiality, defence and equality before the law. Many foreign legal specialists and human rights observers have consequently been highly sceptical about the *gacaca* proposal. However, the alternatives they propose, such as guaranteeing the right to legal counsel, basically end up rein-

venting the same formal justice system which is clearly not adequate.

At the same time, a number of “real-world” arguments have been proposed which may be sufficient to defend the *gacaca* system even from within a human rights perspective.

The practice of formal justice, which has been maintained for years with massive international assistance, also violates human rights. The basic right to a speedy trial, reasonable detention times and decent conditions of detention is being violated under the current practice, and no one has any credible ideas about how to change this. In addition, approximately 60 per cent of those brought to justice so far have not had legal counsel, and for many who had it this counsel was of low quality - as were the prosecutors, investigators and judges. Hence, when discussing *gacaca*, we are not comparing a “clean” system that respects criminal and human rights law with one that violates it, but rather two practices that are both weak and incomplete. This may well be unavoidable: in the aftermath of mass violence, full, formal justice and complete adherence to human rights standards may be unattainable. For that reason, Ian Martin wrote about “the impossibility of justice” in Rwanda. All this is compounded by conditions of extreme poverty, continued profound social polarization, civil war and the absence of a strong historical tradition of independent justice.

It is possible to argue that the *gacaca* proposal actually respects the spirit of justice, if not the letter of criminal and human rights law. In other words, the practice of *gacaca* may well produce fair trials, but in an original, locally appropriate form. For example, while there is indeed no independent legal counsel, the play of argument and counter-argument and of witness and counter-witness by the community basically amounts to a fair defence, possibly producing better results than the formal justice system has until now been able to achieve. Similarly, if one accepts that people in the community by and large know the truth about who did and did not kill, and how, why, and with what degree of ruthlessness people killed others, *gacaca* is a superior tool to that which the formal justice system has produced.

The categories of persons most affected - the prisoners, the survivors and all Rwandan communities - seem to be largely in favour of the proposed *gacaca* system. Indeed, there is strong evidence that the prisoners themselves overwhelmingly favour *gacaca*. Admittedly, people who have spent many years imprisoned in horrendous conditions are likely to be willing to try anything that gives them a chance to get out of prison, and thus this argument cannot be given any decisive weight. Since the public discussions about the *gacaca* law began, confession rates have skyrocketed, and these confessions have taken the form of mini-*gacacas*. Prisoners thus seem to be giving, by their own behaviour, a certain legitimacy to the idea of *gacaca* and, although their behaviour is certainly heavily constrained, this is of importance. In addition, research results suggest that the great majority of the population, both Hutu and Tutsi, prefer the *gacaca* process to the current system. While they do fear its potential excesses or abuses, they also judge that under current conditions the *gacaca* system is superior to the continuation of the current formal justice practice.

In short, there seem to be a number of real-world reasons that may render the human rights and criminal law violations embedded in the *gacaca* process less devastating than may appear, either because there are few real-world alternatives, or because the process can be argued to constitute a locally appropriate, and popularly legitimate, form of justice, with a higher potential for contributing to reconciliation. This does not mean that the human rights and criminal law violations inherent in the *gacaca* proposal become suddenly irrelevant; it does mean, however, that the *gacaca* proposal should not be dismissed outright as inappropriate or unjust.

On the second point, the potentially positive effects of *gacaca* in terms of community participation and victim-centredness could well be undone by local social dynamics. A number of such issues

must be mentioned here - (a) interference by power-holders, (b) neglect of the gender dimension, (c) population movements, and (d) the broader political and social dynamics in Rwanda.

One factor that can reduce or destroy the potential of *gacaca* to produce a measure of truth, justice and reconciliation is interference by power-holders - whether the power they possess is that of the gun, of money or of the state. Even if most power-holders are successfully excluded from election to the *gacaca* benches, they will be present during the sessions as well as the periods in between. For whatever reasons - personal vengeance, political conflict, issues of land and property, family ties or simply ideology - they may seek to influence the proceedings. If they do so, the *gacaca* process will not yield justice or truth, and it will not contribute to reconciliation. Indeed, it may even do the opposite, rendering people even more distrustful, bitter and ready to embrace ideologies of hatred and contempt. The total absence of witness protection is worrying in this regard. Clearly, then, the capacity of the police to stop attempts at intimidation and manipulation will be a crucial variable.

There is an important gender issue: if no special efforts are made, women's participation in the *gacaca* process may well be minimal. The election of *gacaca* judges in October 2001 was a worrying sign in this regard. Relatively few women were elected, varying from one-third of all judges at cell level to only one-fifth at the provincial level. There is concern that women may also be neglected during discussions about restitution and compensation, contrary to the law. As a consequence of their precarious economic situation, widows are particularly vulnerable to family and social pressure. Given the prevalence of social taboos, the horrific sexual crimes suffered by many of these women are likely to go undiscussed. The absence of trauma counselling; the fact that a fixed representation of women on the *gacaca* benches was not accepted; and the generally weak position of women in Rwandan society are all cause for concern. On the other hand, women's groups, often made up of widows, have sprung up all across the territory, and they may well act as strong new voices.

Underlying a neo-traditional mechanism such as the modernized *gacaca* jurisdictions is a notion of community - the existence of rather close-knit groups of people sharing certain values and expectations (at a minimum the expectation that they will live together for a long time to come). This condition is not always met in present-day Rwanda. In many areas, a significant proportion of the population has arrived since the genocide, and thus the process of witnessing and confrontation may be incomplete. This situation is bound to be worst in urban areas. In general, the degree of distrust that still reigns may well make any notion of community a mirage.

Finally, the way in which the *gacaca* process unfolds will be profoundly affected by broader social and political trends, both nationally and locally. The extent to which people distrust or dislike the government (perhaps because they suffered heavily from the counter-offensives against rebel infiltration, or because they judge the central government to be increasingly unrepresentative and exclusive), the memories they carry about of the behaviour of government soldiers immediately after the genocide, and even general economic trends (e.g., the impact of localized famines) - all these factors are bound to influence people's willingness to engage in the risky process of *gacaca*. While these factors fall outside the design of the law, they may well be the key factors that determine its success or failure.

Concluding Remarks

If successful, the *gacaca* proceedings could produce great benefits. They may solve problems of the current slow judicial practice; they also have the potential to create significant benefits in terms of truth, reconciliation and even empowerment. For these reasons the international community, including many human rights organizations, has decided to cautiously support the process. These potential

benefits follow from the central role played by local communities, as well as from the fact that the system involves many more people, particularly victims, and involves fewer time-consuming rules than the formal justice system. However, for precisely the same reasons, the *gacaca* system is also very vulnerable to unpredictable political, social, psychological and economic dynamics. The results are potentially dangerous.

At the time of writing (summer 2002), the pilot phase has begun, with tribunals taking place in at least one cell of each province. The full-scale phase is expected to start in late 2002. *Gacaca* is a worthy gamble, but a gamble nonetheless. It is simultaneously one of the best and one of the most dangerous opportunities for justice and reconciliation in Rwanda. But in a country like Rwanda there are no easy, cheap or clean solutions.

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