

The Gacaca Courts in Rwanda: Contradictory Hybridity

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BERT INGELAERE, MAY 4 2014

This article is part of an E-IR series marking the twentieth commemoration of the Rwandan Genocide.

Since their inception, images of and commentaries on the *gacaca* courts dealing with crimes related to the 1994 genocide in Rwanda travelled across the globe. The recent commemoration activities brought new attention to the Rwandan way of dealing with its violent past. The existence of the court system is very well known, but its actual functioning and legacy remain little understood as of 2014.

There seem to be as many representations and assessments of the court system as there are hills in Rwanda: thousands. It is, however, not impossible to bring some clarity in this seeming disorder. One needs to make a distinction between who is looking, how one is looking and, especially, when one was looking.^[i] When doing so, the most important trends regarding the functioning of the courts and social dynamic generated by the *gacaca* process are clear. *Gacaca* had strengths but was overshadowed by weaknesses and leaves, therefore, a complicated legacy with important lessons for Rwanda's future and other post-conflict societies. I highlight some of these trends based on over 35 months of fieldwork in rural Rwanda since 2004, including the observation and analysis of almost 2,000 *gacaca* trials.

Speed and Numbers

The modernized *gacaca* courts were conceived at the end of the 1990s and implemented nationwide between 2005 and 2012. The court system was loosely modelled on an existing customary practice. Box 1 presents an overview of the main characteristics of the old and new *gacaca* as well as the mainly quantified accomplishments.

Box 1. Overview *gacaca* characteristics, objectives and accomplishments ^[ii]

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Genocide	Gacaca
<ul style="list-style-type: none"> ✓ April-July 1994 ✓ +/- 600 000 - 800 000 Tutsi killed ✓ High involvement of 'ordinary' civilians ✓ Justice system destroyed ✓ Policy choice: holding every single participant accountable (no amnesty, truth or reconciliation commission) ✓ 130 000+ prisoners (in the year 2000) ✓ Expected time processing with 'classical' justice: 100+ years ✓ Policy choice: modernize 'traditional' dispute resolution system 'gacaca' 	<ul style="list-style-type: none"> ✓ 2005-2012 (pilot 2002 onwards, most trials in 2007) ✓ 14 000+ decentralized courts ✓ Approx. 170 000 lay judges (initially elected in 2001) ✓ 1,958,634 'cases' tried ✓ 1,003,227 'individuals' tried (exact number is unclear and probably significantly lower) ✓ Majority of cases = looting, destruction of goods ✓ 13 % confessions (cases) (87% thus accused) ✓ 14 % acquittal rate (cases) ✓ Cost: +/- 45 Million USD
'Old' Gacaca	'New' Gacaca
<ul style="list-style-type: none"> ✓ Minor disputes (land conflicts, theft, etc.) ✓ Old and wise men as mediators ✓ Objective: restore harmony and social cohesion ✓ Punishment: mostly symbolic, aimed at re-establishing social relations ✓ Informal mechanism ✓ Gradually evolved towards a semi-administrative body connected to the State ✓ Spontaneous resource solicited after the genocide dealing with looting 	<ul style="list-style-type: none"> ✓ Genocide crimes (including murder and rape) ✓ Lay judges, local community members - often women and youth ✓ Official objectives: (1) establishing truth; (2) speed up backlog genocide cases; (3) eradicate culture of impunity; (4) contribute to unity and reconciliation; (5) demonstrate Rwandan self-reliance ✓ Cornerstones: (1) decentralisation of justice; (2) confession/plea bargaining; (3) categorization according to crime

Gacaca broke all records in terms of speed and quantity. The court system managed to speed-up the backlog of genocide-related cases: 1,958,634 cases of alleged participation in the genocide were processed in a couple of years. It remains unclear, however, how many people were actually tried and convicted. *The National Service of the Gacaca Courts* (SNJG), the overseeing government body, communicated following a closing ceremony in 2012 that 1,003,227 individuals stood trial during the 7 years that *gacaca* was operational. However, a person can be linked to multiple cases (hence the reason why there are more cases than individuals).[iii] And it remains unclear (intentionally or not?) how many were actually convicted and how many are counted multiple times.[iv] In any case, these numbers show that the Rwandan way of doing justice after genocide was extremely efficient in terms of speed and cost. The difference with the International Criminal Tribunal for Rwanda (ICTR), based in Tanzania, is telling in that respect. The ICTR completed 75 cases at a cost over 1.5 billion USD. Rwandan authorities report that the entire *gacaca* operation was priced at about 45 million USD.[v] The modern *gacaca* court system brought, on the cheap and with lightning speed, "mass justice for mass atrocity".[vi]

This is, in essence, the numerical side of the story. Some of these statistics, combined with in-depth qualitative research, highlight a number of indisputable trends.

Proximity, Female Participation and Exhumation

Apart from the element of speed, the modern *gacaca* system had a number of other striking characteristics that can be highlighted as positive dimensions. Ordinary Rwandans preferred the justice of proximity over the ICTR in Arusha, Tanzania, or the classical tribunals operating at provincial levels. Despite its problems, the *gacaca* courts were both physically and psychologically less distant for the average peasant.[vii] Also, the 'old' *gacaca*, like Rwandan society as a whole, was dominated by men. While the genocide was equally mainly a male thing, women came to play an important role in the modern version of *gacaca*, both as witnesses and lay judges. Also, survivors received

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information through *gacaca* with respect to the places where family members and loved ones had been buried during the genocide. The excavation of these bodies was important to reach closure, relieve the sorrows of the heart and bring peace of mind. It also shows that *gacaca* did manage to establish the truth about the past in some way and some cases. However, establishing the truth in *gacaca* was a very complex and frictional process. The truth or its absence are often cited as the most positive and negative experience with *gacaca*.^[viii] This insight will guide us towards an understanding the functioning of *gacaca* and reveals some of the 'darker' sides of the court system.

Accusation and Polarisation

The modern *gacaca* tribunals were an 'invented tradition'.^[ix] Despite the epithets 'traditional', 'tradition-based', 'customary' or 'customary-inspired' justice – evoking the image of people gathering under the oldest tree of the village coming together to talk about their problems and happily living on ever after – the courts were a typical criminal justice system decentralized to the village level. The 'old' *gacaca* was restorative and conciliatory; the 'new' *gacaca* became much more retributive and antagonistic. The operational logic of the 'old' *gacaca* was altered by design *and* in practice. One of the cornerstones of 'new' *gacaca* was the principle of confession and plea bargaining: one could receive a sentence reduction in case one confessed to genocide crimes. This principle was introduced to facilitate the collection of evidence. In practice, two trends emerged. *Gacaca* was characterized by a systemic tendency to foster guilt. A number of operational procedures made it much more difficult to prove innocence over guilt. And once the court system got operational nationwide, the dynamic shifted from confessions to accusations. As can be seen in table 1, most of the defendants standing trial in *gacaca* were accused, denied the charges brought against them, but were nevertheless found guilty.

This prosecutorial approach driven by accusations resulted in a peculiar atmosphere at the local level, far different from the envisioned unity and reconciliation. Many studies have identified negative emotions, attitudes or a rise of conflicts during the period the court system operated in Rwandan society.^[x] An initial dynamic of "us vs. them" along ethnic lines was complemented by an overall polarization of all against all, and especially within the category of Hutu. The situation ameliorated with the passing of time, as well as due to changes in the *gacaca* laws. Social cohesion increased with the end of *gacaca*, not necessarily because of *gacaca*. Evidently, participation in *gacaca* also brought healing, a sense of justice, or facilitated living together again in many cases. The bigger picture, general trend, is more bleak.

Power and Conflicts

Not only the internal logic of *gacaca* but also contextual factors, the socio-political setting both at the national and local level, influenced the experience of doing justice the Rwandan way. The *gacaca* proceedings were not only about justice, but also about power.^[xi]

Some politicians, important members of civil society, or simply ordinary Rwandans with a critical stance towards the reigning Rwandan Patriotic Front (RPF), President Paul Kagame's political party and the rebel movement that defeated the previous regime, were targeted by *gacaca* and silenced. Also, the regime actively managed to exclude crimes committed by the RPF during the civil war or following the genocide.^[xii] Since there are no other mechanisms addressing these crimes, the functioning of *gacaca* introduced a new moral hierarchy in Rwandan society. Impunity for violence against Tutsi has been replaced by an impunity for violence against Hutu. *Gacaca* did not eradicate, but reconfigured, a culture of impunity. Moreover, certain individuals who most probably played an active role during the execution of the genocide were recycled in the new political dispensation and therefore sheltered from prosecution in *gacaca*.^[xiii] It means that *gacaca* also served political goals. The use of the law and judicial mechanisms to serve power entrenched a political culture that predates the genocide and contributed to the violence of the nineties. In doing so, *gacaca* served what was useful in the given circumstances.

Power was at play on the average Rwandan hill as well: the demographic composition of the collective (for example, the numbers of survivors versus released prisoners), authority, economic capacity and the structure of social networks influenced the proceedings. Existing conflicts often informed the proceedings as well. An irritating neighbor, an avaricious parent, a longstanding feud over land, or simply envy: an accusation of participation in the genocide

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could be used to settle a score. The experience of being falsely accused was widespread. Moreover, defendants often confessed to crimes to receive a reduced sentence, but nevertheless managed to conceal other crimes. Also, local circumstances could force survivors into silence and simply non-participation in order to survive physically and socially.

These localized dynamics also explain why there was suddenly and unexpectedly such a high number of cases brought before the *gacaca* courts. As mentioned, although designed to spur confessions, an accusatory logic animated by petty conflicts and other peculiar motives made *gacaca* spiral out of control. At times, the judges were willing and able to deal with these intrigues or to provide security to the witnesses; often, they were not.[xiv] In these cases, the outcome of the procedure was mostly based on the law of the strongest or the smartest. Also at this level did a consequentialist ethics drive an important part of the proceedings. Just or good was that which created the desired outcomes in the given circumstances. And the desired outcome was often finding justice or establishing the truth, but even more getting out of prison, getting even, physical survival, economic gain, etcetera. Hence, the frictional experience with the truth evoked above. The pressure to move fast, high stakes and limited procedural safeguards simply made it impossible to take the latter motives out of the equation.

Conclusion

The changes and modifications (also during the years when *gacaca* was operational nationwide) altered the *gacaca* courts into a hybrid institution with elements of the original informal conflict resolution mechanism, but now fully incorporated into the formal judicial system. This made the court system innovative, with different traditions and objectives possibly reinforcing each other, but it also made it fragile when the heterogeneous sources of inspiration and intended outcomes tended to be irreconcilable and neutralized each other. The new *gacaca* was indeed designed to be a hybrid institution.[xv] Hybridity is fashionable these days but little understood.[xvi] Moreover, both academics and policy makers embracing the concept often seem to work with the tacit assumption that hybridity automatically brings together the best of multiple worlds. In fact, the *gacaca* experience shows that this is not necessarily the case. The modern *gacaca* process was a mimicry of the 'traditional' dispute resolution system with a reduced potential for conciliation, and it was a mimicry of the modern legal system but with a reduced guarantee of due process. It explains why *gacaca* did not easily facilitate reconciliation and why power was at work in the court system, operating from above and below.

Under these circumstances, was *gacaca* instrumental for initiating a just order? This question is important because, when stripping the phenomenon of transitional justice to its basics and non-normative core, one arrives at a 'liminal' period with respect to a society's norms and moral values.[xvii] The functioning of and experience with *gacaca* discussed above shows that longstanding popular practices and *how* power operates in society *do not necessarily* change through a transitional justice process. Quite the contrary: this can be enhanced and consolidated by such a process. Overall, as was previously observed by Jefremovas, "little has changed [regarding the] patterns of power" in Rwandan society.[xviii] It raises some important concerns with respect to *gacaca*'s legacy and Rwanda's future. A nation wounded by a violent past and re-built on the law of the strongest and an ethics of usefulness seems less stable compared to a society anchored in unalienable values and principles, such as inclusion and the rule of law.

References

[i] Bert Ingelaere, "From model to practice. Researching and representing Rwanda's 'modernized' *gacaca* courts," *Critique of Anthropology*, 32: 4 (2012), 388-414. Without taking into account these elements, one analyzes a non-debate. Although presenting some interesting field material and reflections, this is a dominating trend in Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda. Justice without Lawyers* (Cambridge: Cambridge University Press, 2010).

[ii] Information regarding objectives and some of the accomplishments of the modern *gacaca* courts are based on a document distributed by the National Service of the Gacaca Courts in June 2012 entitled: *Summary of the Report Presented at the Closing of the Gacaca Courts Activities* (SNJG). (On file with the author)

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[iii] The Rwandan government has always been confusing in their communication about these numbers, especially whether these are cases or individuals. Officials of the SNJG and members of the Rwandan government and administration generally referred to “individuals” when communicating about these statistics throughout the period that *gacaca* was operational. I asked a number of officials several times whether they communicated about cases or individuals and I never received a clear answer. An understanding of the number of individuals tried, convicted or acquitted is not only important to understand the dynamics of the genocide, but also regarding the collectivization or individualisation of guilt.

[iv] For example, there was a distinction between courts dealing with property crimes and courts dealing with acts of violence against individuals. Also, an individual could be tried in multiple locations if he or she was accused of committing crimes in several locations. It is thus very well possible that accused stood trial multiple times in multiple courts.

[v] Total of funds used since 2001 mentioned by the SNJG report referenced above: 29,665,828,082 Rwandan Francs (RWF).

[vi] Lars Waldorf, “Mass justice for mass atrocity: rethinking local justice as transitional justice,” *Temple law review*, 79 (1) (2006), 1-88.

[vii] The peasantry still makes over 85% of the Rwandan population.

[viii] Bert Ingelaere, “Does the truth pass across the fire without burning?’ Locating the short circuit in Rwanda’s *gacaca* courts,” *Journal of Modern African Studies* 47: 4 (2009), 507-528. Joanna Pozen, et al., “Assessing the Rwandan experiment: Popular Perceptions of *gacaca* in its final phase,” *The International Journal of Transitional Justice*, 2014. Advance Access: doi: 10.1093/ijtj/ijt029.

[ix] Eric Hobsbawm and Terence Ranger, eds., *The invention of tradition*. (Cambridge: Cambridge University Press, 1983).

[x] See for example: Max Rettig, “*Gacaca*: truth, justice and reconciliation in postconflict Rwanda?,” *African Studies Review* 51:3 (2008), 25-50. Karin Brounéus, “The trauma of truth telling: effects of witnessing in the Rwandan *gacaca* courts on psychological health,” *Journal of conflict resolution* 54:3 (2010), 408-437. Bert Ingelaere, “The rise of meta-conflicts during Rwanda’s *gacaca* process.” In: F. Reyntjens, S. Marysse and S. Vandeginste, eds. 2011. *L’Afrique des Grands Lacs, Annuaire 2010-2011* (Paris: L’Harmattan, 2011), 303-318.

[xi] See for example also: Susan Thomson, “The darker side of transitional justice: the power dynamics behind Rwanda’s *gacaca* courts,” *Africa*, 81:3 (2010), 373-390. Jennie Burnet, “The injustice of local justice. Truth, reconciliation and revenge in Rwanda,” *Genocide Studies and Prevention*, 3:2 (2008), 173-193.

[xii] For a recent analysis of the relationship between crimes committed by the RPF and the *gacaca* proceedings, see: Bert Ingelaere, “Hidden death. Rwandan postgenocide *gacaca* justice and its dangerous blind spots”. In: Bert Ingelaere, et al, eds. *Genocide, Risk and Resilience: An Interdisciplinary Approach*, (Basingstoke: Palgrave Macmillan, 2013), 212-230. And an interview with Phil Clark in C. Stefanowicz, “*Gacaca* highlights failure to deal with RPF crimes,” *Think Africa press*, 8 March 2011.

[xiii] Examples can be found in Philip Gourevitch, “The life after: fifteen years after the genocide in Rwanda, the reconciliation defies expectations,” *The New Yorker*, May 4, 2009, 37-49.

[xiv] This is a general trend that does not exclude significant variation in the periphery of society depending on location. See, for example: Bert Ingelaere, « Mille collines, mille *gacacas*. La vie en marge du processus *gacaca*, » In: F. Reyntjens and S. Marysse eds. 2009. *L’Afrique des Grands Lacs, Annuaire 2008-2009*. (Paris: L’Harmattan, 2009), 29-42.

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[xv] See, for example: Phil Clark, "Hybridity, holism, and "traditional" justice: the case of the *gacaca* courts in post-genocide Rwanda." *George Washington international law review*, 39:4 (2007), 765-837.

[xvi] On the complex nature of hybridity, see the discussions on the African Arguments forum: Tom Goodfellow, "Hybrid governance in Africa: examining a development buzzword", African Arguments. Accessed at: <http://africanarguments.org/2013/04/04/%E2%80%98hybrid%E2%80%99-governance-and-africa-examining-a-development-buzzword-%E2%80%93-by-tom-goodfellow/> (30 April 2014). And: K. Meagher, T. De Herdt and K. Titeca, "Hybrid Governance in Africa: Buzzword or Paradigm Shift?". Accessed at: <http://africanarguments.org/2014/04/25/hybrid-governance-in-africa-buzzword-or-paradigm-shift-by-kristof-titeca-kate-meagher-and-tom-de-herdt/> (30 April 2014).

[xvii] Ruti G. Teitel, *Transitional Justice*. (Oxford: Oxford University Press, 2000), 220. Richard A. Wilson, *The politics of truth and reconciliation in South-Africa. Legitimizing the post-apartheid state*. (Cambridge: Cambridge University Press, 2001), 19.

[xviii] Villia Jefremovas, *Brickyards to graveyards. From production to genocide in Rwanda*. (Albany: State University of New York Press, 2002), 126-127.

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