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Ukuri, Ubutabera, Ubwiyunge: Truth, Justice, and Reconciliation Through the Gacaca Courts

Kayla Nesbitt

Abstract

This paper addresses the success of the Gacaca Courts in punishing perpetrators that committed crimes of genocide in Rwanda in 1994. Looking at both international and domestic opinions, this essay will discern the benefits and downfalls of the traditional mechanism and its ability to aid Rwanda in its struggle toward peace and reconstruction.

In 1994, after decades of ethnic tension between the Hutu majority and the Tutsi minority, the country of Rwanda was devastated by one of the most horrific and deadly genocides that humanity has witnessed. The social division of the two ethnic groups originated with the invasion of the colonial powers in Rwanda. The violence that surfaced in the early 1990’s pillaged the country, and resulted in a fractured nation characterized by mistrust and hatred.  

Following the atrocities, the formal Rwandan systems of justice, such as the International Criminal Tribunal for Rwanda, the national court systems, as well as the national prisons, have been overwhelmed with an unprecedented influx of citizens who have

been implicated in acts of genocide.\(^2\) The failure of the internationally recognized court systems led the government of Rwanda to reestablish a traditional tribunal system, called the Gacaca courts, to deal with a large portion of the cases, which are categorized according to their level of severity.\(^3\)

The Gacaca courts have experienced both successes and failures, yet they provide a necessary alternative to the national and international court systems. This essay argues that the traditional form of justice found in the Gacaca courts has greatly assisted a divided Rwanda to work towards peaceful reconciliation between the Tutsi and Hutu ethnic groups, largely through a commitment to forgiveness which has been instrumental in healing the fractured community. The courts operate at a local level, and rely on elected community leaders to determine the verdict as well as the punishment of the accused. Elemental to this unique process are the ideals of truth, justice, and reconciliation.\(^4\) Although Rwanda is a “seriously wounded society” and the horrors of the past will never be forgotten, the act of reconciliation between survivors and perpetrators allows for an opportunity to heal and unify the nation.\(^5\)

The violence and desire for vengeance characteristic of the Hutu population throughout the duration of the genocide has its roots in the colonial enterprise. The German colonial powers favoured the Tutsi minority upon invasion, as they deemed this group to be more educated and civilized than the Hutu majority. When the Belgian imperialists supported a Hutu endeavor known as the Social Revolution in 1959, they overthrew the Tutsis who had maintained power following independence, killing approximately twenty-thousand Tutsis and sending an enumerable number into exile.

\(^3\) Ibid., 159-160.
\(^4\) Sarkin, 159.
The Tutsi population that fled sought refuge in neighbouring Uganda, forming a rebel group titled the Rwanda Patriotic Army (RPA). After the Hutu-led government reigned without objection for three decades, the RPA invaded, inciting a battle for control of Rwanda in 1990. After three years of fighting, Rwanda’s Hutu president, Juvenal Habyarimana, signed a peace accord with the Tutsi rebel group. Unfortunately, this peace accord did not hold out, and President Habyarimana was assassinated when his plane was shot down outside of the Kigali airport. The Hutus seized power in 1994 and enacted an “extermination campaign” which targeted the Tutsi minority that had previously subjugated them.

During this crusade of terror, militant and political youth groups, as well as fellow civilians, massacred approximately five hundred thousand Tutsis. Statistics compiled by the United Nations reveal the horrific effect the genocide has had on children in particular. “99.9 percent of Rwandan children witnessed violence during the spring of 1994, [90] percent believed they would die, [87] percent saw dead bodies, 80 percent lost at least one relative, 58 percent saw people being hacked to death…and 31 percent witnessed rapes or other sexual assault.” The desolation resulting from genocide left the country torn apart, with an estimated two hundred thousand Rwandans having committed murder on their fellow countrymen. In the wake of this tragedy, the nation was left to find a solution that would bring peace to the victims, and not only punish, but also reintegrate the accused into society. The initial task of trying the accused was left to the International Criminal Tribunal for Rwanda (ICTR) as well as the Rwandan national courts. These two bodies proved to be inefficient since they could not adequately cope with the massive amount of prisoners to be tried.

These internationally recognized court systems have proved to be insufficient not only at dealing with the percentage of people behind bars – approximately one hundred and twenty thousand – but

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6 Retting, 29.
7 Kinzer, 253.
8 Retting, 34.
9 Sarkin, 159.
they have also failed to alleviate the emotional suffering and trauma of victims.\textsuperscript{10} As President Kagame reveals, “[c]onventional systems have not provided a solution for us. They do not come close to giving us a solution.”\textsuperscript{11} Although many of the problems with these conventional systems lie in the inefficiency of trying every one of the accused, their greatest deficiency is arguably the lack of relief felt by victims following a trial.

The judicial mechanisms in place prior to Gacaca do not address the needs of the victims or provide an opportunity for dialogue between the survivors and the suspects. Rather, “the aim of the trial [was] to attain a guilty verdict, not to assist the victims in their recovery process.”\textsuperscript{12} Although this system of unemotional and discussion-free justice whereby the accused are punished exclusively according to state policy is the norm in the Western world, Rwanda finds itself to be in a very unique circumstance with distinct and separate needs.

As so many people were involved in the genocide, which was contained within a relatively small nation, the victims, as well as those individuals who participated in the violence, must continue to live alongside one another. Stephen Kinzer, author of \textit{A Thousand Hills}, contends, “[a] country torn so violently apart can stabilize only if former enemies reconcile. In Rwanda, this means that people must forgive those who slaughtered their families and even live beside them in newfound brotherhood.”\textsuperscript{13} The traditional tribunal system of the Gacaca courts is sensitive to these specific needs and facilitates discussion within the community by including both the victims and the perpetrators of genocide in the reconciliation process.

The Rwandan government remodeled and transformed the traditional mechanisms of justice to better suit the needs of the nation in the wake of the genocide. “To address the fact that there were thousands of accused still waiting trial in the national court system and to bring about justice and reconciliation at the grassroots level.”

\textsuperscript{10} Ibid., 144.
\textsuperscript{11} Kinzer, 257.
\textsuperscript{12} Sarkin, 148.
\textsuperscript{13} Kinzer, 263.
level, the Rwandan government reestablished the traditional community court system called ‘Gacaca’...which became fully operational in 2005.”[^14] Traditionally, the court system was utilized as a source of “dispute resolution” dedicated to settling issues such as local land claims.[^15] Translated, the term Gacaca roughly means “justice on the grass.”[^16] This meaning makes reference to the nature and setting of the tribunals, whereby “members of the Gacaca sit on the grass while listening to and considering matters before them.”[^17] This instrument of justice, which is deeply entrenched in traditional Rwandan culture, directly involves the community in the deliberation process.[^18] Although the contemporary Gacaca tribunals are conducted in a more formal setting, the success of the trial still relies heavily on community involvement.

As an alternative to the more conventional court structures, local towns elect people from the community as judges for the trials. The defendant’s punishments are largely reliant on the brutality of the crime, the seriousness of which is judged across three tiers. Category one involves those individuals who were the leaders of the genocide as well as those who committed acts of rape and other forms of sexual torture. Category two comprises “notorious killers, people accused of committing torture or ‘dehumanizing’ acts on dead bodies, ordinary killers, and accomplices to the above.”[^19] Lastly, category three judges the least serious offences and involves such offences as property crime.[^20]

Throughout the duration of a trial there are periods dedicated to communication between the victims and the accused, an opportunity for the perpetrator to confess the entirety of their


[^15]: Sarkin, 159.

[^16]: Retting, 30.

[^17]: Sarkin, 159.

[^18]: Ibid., 159.

[^19]: Sarkin, 31-32.

[^20]: Ibid., 32.
actions, as well as - arguably the most important aspect - the expectation that the accused will provide the court with a sincere apology.\(^{21}\) If an accused fully discloses the necessary information, “the crimes committed, the naming of accomplices, and an apology,”\(^ {22}\) they will be shown mercy by the judges in the spirit of reconciliation, their prison sentence will be diminished and they are able to serve half of their remaining sentence through community work. Regardless of the severity of the crime, those who do not show remorse through full disclosure will be punished more severely and likely receive life imprisonment.\(^ {23}\) Political scientist Max Retting alleges that “the aim of these tribunals is at once daunting and inspiring: punish genocidaires, release the innocent, provide reparation, establish truth, promote reconciliation between Hutu and Tutsi, and heal a nation torn apart by genocide and civil war in 1994…[it is] ‘mass justice for mass atrocity’.”\(^ {24}\)

Since the Gacaca courts were implemented into government procedure they have been both commended and condemned by the international community. Internationally recognized bodies such as Amnesty International and Human Rights Watch have opined that the Gacaca courts do not adhere to international law. Amnesty International fears that “the Gacaca jurisdictions would result in excessively light sentences for those who may have committed terrible crimes.”\(^ {25}\) While this is a relevant issue, a large portion of the prisoners have been detained for up to 12 years prior to their trials.\(^ {26}\) The time already served, the conditions in jail due to overcrowding, the strain on the infrastructures in place to handle the population accused of crimes of genocide, and the sincerity of the remorse, are all things to be considered.

The health of the nation rests heavily on these trials. In an unprecedented situation such as this, Rwanda must weigh the pros

\(^{21}\) Kinzer, 257.
\(^{22}\) Retting, 31.
\(^{23}\) Ibid., 31.
\(^{24}\) Retting, 26.
\(^{25}\) Sarkin, 160.
\(^{26}\) Ibid., 144.
and cons of deliberating extremely harsh sentences. Max Retting examines this balance:

Survivors have seen their former tormentors brought to trial, albeit with punishment far less severe than they might like; detainees have had the opportunities to rejoin their communities, even though the possibility of prison sentences looms; and families of prisoners have been able to share the responsibilities of daily life with their released loved ones.  

Non-governmental organizations have also called into question the ability of the locally elected judges to deal with such complex legal issues. “[T]hese judges will have to understand and apply the Genocide Convention, the Geneva Conventions and protocols, crimes against humanity as well as other conventions and principals of international law.” Although the local leaders, who qualify by being 21 years old, Rwandan, and “honorable,” are briefed on protocol and receive some training prior to serving as a judge, the abovementioned question raised by international organizations highlights valid concerns. However, the Gacaca tribunals place an emphasis on the role of the community in determining the guilt of the suspect. It is a “participatory legal mechanism” and its success is achieved by “arriving at the truth through community dialogue.”

Noted political scientist Jeremy Sarkin points out that the defendants are not entitled to defense lawyers and “have no way to collect exculpatory evidence,” which, in the Western world, would compromise the legitimacy of the trial. Max Retting challenges this by stating that “the lack of procedural protections for defendants does not necessarily damn Gacaca; fairness does not demand Western-style procedure.” The Gacaca courts operate under the

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27 Retting, 36.
28 Sarkin, 162.
29 Ibid., 164.
30 Retting, 25.
31 Ibid., 32.
32 Sarkin, 258.
33 Retting, 33.
notion that a defendant confessing their crimes not only “purge[s]…the killer’s tainted soul but [is] also a sign of his willingness to reconcile with the victims.” The concerns raised and disputed amongst the international community are valid. However, various studies have demonstrated that the successes of the Gacaca courts outweigh any failures.

When the trials first commenced in the early part of the twenty-first century, the Belgian government sent Uvin, a development-aid specialist, to investigate the Gacaca tribunal systems and determine if the Belgian government should offer financial support. After witnessing the Gacaca system at work, he determined that “the system profoundly compromised on principals of justice as defined in internationally agreed-upon human rights or criminal law standards but that it deserved support anyways.” He maintained that “some compromise is simply unavoidable” because “criminal law standards were not designed to deal with the challenges faced when massive numbers of people – victims and perpetrators of crime – have to live together again side by side in extremely poor and divided countries.” Uvin concluded his report to the Belgium government by insisting that the Gacaca courts, in actuality, do “respect the spirit of international human rights law” even though their implementation efforts differ significantly from Western notions of justice.

Following the first trial in 2002, the government has created an estimated twelve thousand local tribunals, with a staff comprised entirely of local judges. Within the first four months of Gacaca facilitating the justice process, more than fifty-thousand accused were tried. Out of this staggering number, two-thirds were released based on either insufficient evidence for conviction, or that the sentence they had already served was adequate. To date, the Gacaca courts have administered more justice and “exposed more about how the

34 Sarkin, 261.
35 Kinzer, 258.
36 Ibid., 258.
37 Kinzer, 258.
38 Ibid., 259.
39 Ibid.
genocide was perpetrated...than the ITCR...and the Rwandan courts combined.”

Public opinion reports reveal that the majority – approximately fifty-seven percent – of survivors feel that the Gacaca court system addresses their needs. Eighty-four percent of non-survivors agree that the contemporary court “addresses the problems facing prisoners and their families, including poverty and false accusations.”

Richard Goldstone, the Chief Prosecutor at the ICTR, agrees that the Gacaca courts may not meet the demands of the international community, yet “in the case of Rwanda’s genocide, where there were as many perpetrators as victims, the [G]acaca system has served a useful purpose.” This mentioned ‘purpose’ refers to the desperate need of Rwanda to unify its population under the banner of reconciliation.

The events that transpired in 1994 can never be erased from the collective memories of the Rwandan people. Both ethnicities – Hutu and Tutsi – suffered devastating losses during the genocide and many have never recovered from witnessing or participating in the atrocities. As Jeremy Sarkin comments, “how a society deals with its past has a major determining influence on whether that society will achieve long-term peace and stability.” Some international groups suggest simply ignoring history and granting amnesty to the accused. Conversely, this may lead to a “collective amnesia” which, in turn, will give rise to an “unresolved past” that will “haunt the citizens.”

The Gacaca courts facilitate a dialogue between the accused and the victims which has the potential to bring about reconciliation. This “open and honest dialogue can effect a catharsis,” thus having the ability to heal both survivors and perpetrators. This potential for forgiveness can be seen in the case of Rosaria Bankundiye (victim)

40 Retting, 35.
41 Ibid. 36.
42 The United Nations and The Prevention of Genocide, 2.
43 Sarkin, 143.
44 Ibid, 168.
45 Ibid., 144.
46 Ibid., 147.

and Xavier Nemeye (accused) in the Southern Rwandan village of Mbyo. Xavier was convicted of killing Rosaria’s four children and husband in addition to attacking Rosaria with a machete and leaving her for dead. These two enemies have been aided in reconciling the past atrocities through the Gacaca courts and counseling. In a community meeting with both victims and perpetrators present, Rosaria revealed her unfathomable ability for compassion:

When he killed us, he also destroyed our home and took all our belongings…I lived off help from other people. But thanks to God, we had the blessing to reconcile with those who committed these acts. It is so hard to talk to someone who killed your family. So I thank God that we had the chance to live together and reconcile.”

Mbyo is now one of many communities that has been rebuilt and is home to both Tutsi and Hutu survivors and perpetrators.

The reestablished Gacaca courts have administered justice, revealed truths, as well as aided in the reconciliation process necessary for Rwanda to move forward as a peaceful and united nation. The horrific acts committed in 1994 will live on in the minds of victims and perpetrators alike. However, the hope is that something good can come from the devastation. Although many internationally recognized groups have deemed the Gacaca court as illegitimate and a breach of international law, conventional mechanisms of justice have proved to be inadequate at coping with Rwanda’s unique experience.

The Gacaca courts, while admitting flaw, have served an essential purpose and have encountered considerable success along the way. The UN declared, “The unspeakable crimes of genocide cannot be erased or forgotten. But the Gacaca court system, even with all its imperfections, is helping to re-establish the rule of law.”

The process of healing is long

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47 Kinzer, 265.
and challenging, but with the implementation of the Gacaca tribunals, Rwanda can embark on a path to recovery hopefully resulting in a unified and peaceful nation.

References


