



Center for Restorative Justice & Peacemaking

An International Resource Center in Support of Restorative Justice Dialogue, Research and Training

The *Gacaca* Tribunals in Post-Genocide Rwanda

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November 27, 2005

Rwanda is a landlocked country in central Africa between the Congo, Uganda, Tanzania, and Burundi. It is a small country, slightly smaller than the state of Maryland. It has a population of 8,440,820, of whom 85% are from the Hutu ethnic group and 15% are of Tutsi descent. The country has an agrarian economy and is quite lush and green in the wet season (CIA World Factbook, 2005 & Lonely Planet, 2005). “The name Rwanda once evoked images of the amazing mountain gorillas and breathtaking mountain views, until the country was devastated by bloodshed (Lonely Planet, 2005).”

Ethnic tensions between the Hutu majority and the Tutsi minority go back generations. The Belgian colonizers gave military and administrative power to the Tutsis, enraging the Hutu people (CIA World Factbook, 2005, Dallaire, 2005, & Lonely Planet, 2005). In 1959, a mass murder of Hutu leadership was followed by a massacre of as many as 100,000 Tutsis by Hutus (CIA World Factbook, 2005 & Lonely Planet, 2005). The killings continued on both sides, with thousands of Tutsis fleeing to neighboring countries as refugees. The refugees formed their own militia, called the Rwandan Patriotic Front (RPF). The RPF came to fight for the Tutsi people from bases in neighboring countries where refugees were stationed and fought on behalf of the Tutsis in a Rwandan civil war that began in 1990 (CIA World Factbook, 2005 & Dallaire, 2005). This led to a genocide that occurred between April and July of 1994, when approximately 800,000 to 1 million Rwandans were killed and between 1.7 million and 2 million people in Rwanda were displaced due to the violence (Bishop 1999, Rwanda Development Gateway, 2005, Tiemessen, 2004, & Walker, 2004). The genocide occurred after President Habyarimana was assassinated on April 6, in an airplane crash. President Habyarimana had managed to contain ethnic violence in Rwanda over his 18-year Presidency (CIA World Factbook, 2005, Dallaire, 2005, & Lonely Planet, 2005).

The victims of this genocide were primarily from the Tutsi ethnic group but Hutu moderates, who were supporters of the Tutsi people or of equality between the two groups, were also targeted in the violence (Dallaire, 2005 & Tiemessen, 2004). When president Habyarimana’s airplane was shot down, the Hutu militia, the *Interhamwe* was inflamed, blaming the Tutsi people for his assassination. The *Interhamwe* then led a campaign to purge Rwanda of the Tutsi ethnic group and any perceived supporters of the Tutsis (Dallaire, 2005 & US Department of State, 2004).

There were atrocious human rights violations on an unimaginable scale during the genocide, with groups of people being rounded up by the *Interhamwe* and slain, often with machetes. A huge number of women were rape victims and victims of other forms of sexual torture (Dallaire, 2005 & Rwanda Development Gateway 2005). The violence left the country in shambles as a great many public leaders, community officials, and respected business leaders were killed, along with a much of the citizenry in areas all over Rwanda (Dallaire, 2005). There was also a great deal of damage to buildings and infrastructure that took place as a result of the fighting and weapons being discharged (Uvin, 2005). Eventually, the country reached a modicum of stability when the ex-patriot Tutsi militia, the Rwandan Patriotic Front, wrested control of the country from the *Interhamwe* (Dallaire, 2005). Their leader, Paul Kagame, became Rwanda’s president and remains the president of Rwanda to this day (US Department of State, 2004).

As the genocide wound to a close, the leaders of the *Interhamwe*, *Interhamwe* guerillas, and other citizens who were accused of participating in the genocide were captured by the Rwandan Patriotic Front and remaining authorities in Rwanda. These people were then placed in Rwandan prisons. Estimates of the number of captured range from 80,000 to 130,000 people, many of whom were not formally charged. Most of them are still awaiting trial to this day (Amnesty International, 2002, International Alert 2005, Penal Reform International, 2005, Rinaldo, 2004, Tiemessen, 2004, US Department of State, 2004, Uvin, 2005, & Walker, 2004). The prison conditions have been, by-and-large very poor. Overcrowding, poor sanitation and nutrition, and a complete lack of any medical treatment have been the norm (Amnesty International, 2002 & US Department of State 2004). Rwandan President Paul Kagame has stated that his country cannot cope under the strain of conducting trials for all of the people that were captured (Staff Reporter, 2001).

By 2001, only 4,220 prisoners accused with crimes stemming from the genocide had been tried, with the vast majority still not having been formally charged (US Department of State, 2004). Even after the release of the sick, elderly, those with incomplete files, and the very young, it was clear to the Rwandan government and international observers that it would take well over 100 years to try all of those accused of genocide-related crimes in Rwandan courts (International Alert, 2005, Rinaldo, 2004, Rwanda Development Gateway, 2005, & US Department of State, 2004). Exacerbating the problem was the complete decimation of the legal system, which experienced the loss of over 80% of the legal officials in the country and many legal facilities were damaged, as well. (Bishop, 1999 & Tiemessen, 2004). For instance, only 244 of the 750 pre-genocide judges remained in Rwanda after the genocide and there were only 50 lawyers in the country as of 1997 (Tiemessen, 2004).

It became clear that another system needed to augment the work of the courts and ensure that the accused and the victims of the genocide got an opportunity to experience justice. The Rwandan government decided that the best option would be to blend an indigenous conflict resolution process called *gacaca* with the Western legal tradition (Harpster, 2005, International Alert, 2005, Penal Reform International, 2005, Staff Reporter, 2001, & Roth & DesForges 2002). *Gacaca* (pronounced 'ga-CHA-cha') is a type of grass in the Rwandan language of *Kinyarwanda* and it is on this grass where elders, the *Inyangamugayo* or "people of integrity," would lead villagers through a process to resolve village conflicts. The grass therefore lent its name to this dispute resolution process (Penal Reform International, 2005, Rinaldo, 2004, Rwanda Development Gateway, 2005, Staff Reporter, 2005, & Uvin, 2005). While traditional *gacaca* dealt primarily with relatively minor misdeeds in the community, it was modified to address the serious nature of the genocide-related cases that have been clogging up the Rwandan prisons and courts (Tiemessen, 2004 & Roth & DesForges 2002).

Gacaca is regarded by the Rwandan government as the best option for dealing with the overcrowding of prisons and backlog of cases in the courts with the limited resources available to the country (Staff reporter, 2001). In the new version of *gacaca*, a locally trained judge (the president) presides over a community panel or jury of 9 members (Rwanda Development Gateway, 2005) [other sources indicate that there are 19 members (Penal Reform International, 2005 & Uvin, 2005)]. The jury (also called the seat) is the new *Inyangamugayo* in the revised version of *gacaca*. There is also a general assembly of community members who are witnesses to the proceeding and to the crime being tried (Penal Reform International, 2005, Rwanda Development Gateway, 2005, & Uvin, 2005). The community thus provides the entire framework for the proceeding; the judge, the jury, and the witnesses. Former neighbors become witnesses to the atrocities being tried by other community members (International Alert, 2005 & Staff Reporter, 2005)

The jury determines the guilt of the accused by majority decision (Rwanda Development Gateway, 2005). *Gacaca* judges receive a training (of about 6 days) to prepare them for their post. About 90% of Rwandans participated in an election of *gacaca* judges in October 2001 (Uvin, 2005). From 9,000 to 12,000 *gacaca* courts were established all over Rwanda at this time to address the genocide-related offences that occurred in their various communities (Penal Reform International, 2005, Staff Reporter, 2005, & US Department of State, 2004). If *gacaca* judges or jury members were accused of any genocide-related crimes, they were to immediately their post and certain community officials are barred from participating, to reduce the potential for conflicts of interest to arise (Hirondelle News Agency, 2005).

The genocide-related offences have been organized into 4 categories by the Rwandan government. These categories were codified in the Genocide Law of 1996, later to become the Organic Genocide Law, which passed in the Rwandan legislature on June 18, 2002 (Uvin, 2005). *Category 1* offences address the crimes of individuals accused of organizing, planning, and instigating the genocide, along with the crime of rape; *category 2* offences address the crimes of individuals accused of attacks resulting in the death of the victim; *category 3* offences address the crimes of individuals accused of assaults not resulting in death; and *category 4* offences address the crimes of individuals accused of property offences. The newly created *gacaca* courts were authorized to deal with category 2, 3, and 4 offences (Amnesty International, 2002,

Penal Reform International, 2005, & Rwandan Development Gateway, 2005). Category 1 offences were to be dealt with in the Rwandan courts or at the International Criminal Tribunal for Rwanda in Arusha, Tanzania (Penal Reform International, 2005, Staff Reporter, 2005, US Department of State, 2004, & Uvin, 2005).

The *gacaca* courts were organized in a hierarchical structure whereby a lower category crime was to be dealt with at an increasingly local level. Category 1 offences dealt with at the small village level, category 2 in larger villages, and category 3 in regional towns. Any individuals convicted of their crime have the right of appeal to the next highest level of court if they were not pleased with the judgment of the lower court (Uvin 2005).

The *Inyangamugayo's* first task was to investigate background information relating to the crime in the community in which the offence was committed (Bishumba, 2005 & Uvin, 2005). The case is then brought to the *gacaca*, where no lawyers are permitted (Human Rights Watch, 2003 & US Department of State, 2004). In the *gacaca* tribunal, the community provides further evidence in the case (Rwanda Development Gateway, 2005). Interestingly, the accused is offered the opportunity to speak first in the proceeding, where they are given the chance to confess to their role in the crime, reveal the names of others involved in the crime, and ask the community for forgiveness (Rwanda Development Gateway, 2005 & Walker, 2004). Their sentence is reduced for this form of cooperation. If they confess later in the proceedings, their sentence would be reduced but not as much as if they confessed at the beginning of the trial, though they can modify their confession as the proceedings evolve if they remember important information with no penalty to them (Rwanda Development Gateway, 2005, US Department of State, 2004, & Uvin, 2005).

The tribunal can sentence the accused with sentences of up to life in prison. The *gacaca* courts are not authorized to dispense the death penalty. As much as half of the *gacaca* sentence can be served in the form of community service and the convicted individuals get credit for the time that they already served in prison. Victims can also be compensated for material losses, though difficulties remain in determining whether they can be compensated for the loss of a loved one (Human Rights Watch, 2003 & Penal Reform International, 2005).

The emphasis in *gacaca*, unlike the Western court system, is on reconciliation and healing. Reestablishing community relationships and reintegrating offenders into their communities are important goals of the *gacaca* process. The re-weaving of the destroyed fabric of the nation is as much of a consideration in *gacaca* as achieving justice, in the Western sense. *Gacaca* offers a profoundly participatory form of justice that promotes democratic decision-making in the community by involving community members in dispensing justice, thus re-creating their communities. Offenders and victims are brought face-to-face in the presence of the community to share their perspectives with each other on what has occurred (Bishop, 1999, Rwanda Development Gateway, 2005, Staff Reporter, 2001, Tiemessen, 2004, & Uvin, 2005). The Rwandan government has continually asserted that the *gacaca* tribunals uphold the spirit, if not the letter, of the law and do so in a culturally appropriate manner (Staff Reporter, 2001 & Walker, 2004).

The pilot phase of *gacaca* was implemented in June 2002. The majority of Rwandans, approximately three out of four, including the prisoners of genocide-related crimes, have been found to be supportive of the process () with confidence growing as the process proceeds (Bishumba, 2005, Penal Reform International, 2005, & School of Public Health, 2005). The participatory nature of the process has demanded that an extensive education campaign be undertaken in Rwanda; on the radio, on television, in newspapers, in community forums, and through other media, to inform local people on how the process works and the expectations demanded of them in participating (Rwanda Development Gateway, 2005). The campaign has been found to be largely successful in building awareness of the process among Rwandans but much misinformation about the *gacaca* process remains in spite of the educational efforts (School of Public Health, 2005). The education campaign has made particularly strong efforts to engage Rwandan women in the process, who often are principle witnesses to genocide-related atrocities, but who are also particularly vulnerable and marginalized in Rwandan society and could, as a result, be more easily intimidated by authorities or family members of the accused (International Alert, 2005).

A pilot implementation phase began in June 2002, to work the bugs out of the system (Harpster, 2005). The *gacaca* laws were revised in 2004 to respond to criticisms of the process that emerged during the pilot phase. *Gacaca* trials are currently underway, as the complete *gacaca* system was initiated in 2005. The government has estimated that they will be able to try all of the accused within 5 years. The process will prove to be much faster than the traditional Western legal system and will reduce the costs of housing prisoners in Rwandan prisons. It will also streamline through the administrative procedures involved in trying them (International Alert, 2005 & Rwanda Development Gateway, 2005). President Kagame has indicated that the *gacaca* solution has its flaws but is the best option for Rwanda at this time (Staff

Reporter, 2001). The process is thought by some to have the potential to get at the truth better than the traditional court system, drawing upon local knowledge in a culturally appropriate manner. Beyond attaining Western notions of justice, the process may also hold the potential to help Rwandans put the pieces of their shattered society back together.

There have been a great many criticisms of the *gacaca* process. Many human rights organizations have argued that the process does not live up to international standards for a fair trial. The accused has no access to legal council, judges have very little training, and confessions can be said to be coerced (in that the accused are encouraged to confess by offering them incentives to do so). Confessions are to include all of the other participants in the crimes leading to further charges, and possible “witch-hunting.” Certain charges (like rape) have been reclassified and violate the legal principle of retroactivity (where the possible sanctions for the crime are changed after the crime was committed). These are just some of the concerns regarding due process issues or rights for the accused that have emerged since *gacaca* was proposed (Amnesty International 2002, Fierens, 2005, Human Rights Watch, 2003, Roth & DesForges, 2002 & Uvin, 2005). In a climate where human rights standards are frequently not met by the government of Rwanda, the lack of legal protocols in the *gacaca* process can be all the more troubling (Amnesty International 2002 & Human Rights Watch, 2003).

There have also been concerns in Rwanda that disappearances and extrajudicial killings are still occurring potentially intimidating possible witnesses (Amnesty International 2002, Human Rights Watch, 2003, & US Department of State, 2004). Questions as to whether the *gacaca* process can truly encourage open participation in this political climate have been raised. In fact, there are virtually no safeguards to ensure that witnesses are protected from the accused or authorities (Amnesty International 2002, International Alert, 2005 & Rinaldo, 2004). Investigational bias and corruption of the judge or the jury is very possible in Rwanda and, in fact, since the *gacaca* process has begun approximately 15,000 of the 200,000 trained *gacaca* judges have been accused of genocide-related offences themselves and have consequently had to step down from their positions (Fierens, 2005 & Hirondele News Agency, 2005). Participation in *gacaca* has at times been problematic and there have been occasions when the jury or the assembly did not have enough members to reach a quorum and thus could not provide a ruling in a given case (Amnesty International, 2002 & Human Rights Watch, 2003).

Another potential problem with *gacaca* is that the victims are not provided with any formal emotional supports or any real preparation for their meeting with the accused and could, therefore, be re-victimized by their *gacaca* experience. At times, the accused have shown little remorse or have denied their activity in a crime. If little support is given to families who have gone through *gacaca*, it is possible that rather than *gacaca* improving ethnic tensions in a given community, it could actually inflame ethnic rivalries (Bishumba, 2005, Staff Reporter, 2005, & Walker, 2004). This is particularly a concern in Africa, where undo influence by officials and ethnic politics can control discourse in any particular community.

Many concerns have arisen as to whether *gacaca* is, in fact, a version of “victor justice”. The troops of the Rwandan Patriotic Front, the current regime’s military, are not subject to the *gacaca* courts. The original conditions that led to the genocide (power imbalances in the Rwandan government and military) are likewise not addressed through the *gacaca* process. On the other hand, there have been those that have argued that the convicted offenders are being let off easily for their very serious offences. Furthermore, there are concerns at the sentencing disparities that could arise from the localized sentencing system (Human Rights Watch, 2003, Tiemessen, 2004, & Roth & DesForges, 2002).

There are additional worries that there are often not enough witnesses to effectively try accused prisoners. Many of the potential witnesses to the crimes are dead, either having died during the genocide or since. Many of the witnesses in some areas have moved, having been either displaced as a result of the genocide or having moved for other reasons since (Bishop, 1999 & International Alert, 2005). Even among the local population that are willing and able to participate, there is a good deal of misinformation about the process (as stated above), in spite of the countrywide educational campaign. Logistical concerns such as providing local accommodation for prisoners, transporting them, scheduling the entire jury and assembly, and so on, have further hampered efforts to hold *gacaca* tribunals (Amnesty International, 2002).

Perhaps one of the most serious concerns brought forth by the international community is the possibility that the goals of justice are incompatible with the rehabilitation of communities and the reconciliation of community members. In this view of justice certain goals, such as reinforcing Rwandan social norms, deterrence of further ethnic violence in Rwanda, and re-establishing a moral order in a devastated Rwandan society, could be compromised. By emphasizing relationship building and community reintegration in the *gacaca* tribunals, these other goals of justice could well be compromised (Fierens, 2005). A restorative rather than a retributive view of justice would suggest that these goals are not the only important goals to be addressed by justice. In the attempt to attain justice in post-genocide Rwanda, they may be of lesser importance than the goals of community rehabilitation and individual reconciliation.

The goals of Restorative Justice and the goals of the *gacaca* tribunals have much in common (Tiemessen, 2004). In Restorative Justice, rebuilding fractured community relationships is of paramount importance, much like in *gacaca*. As such, involving the community in the process of nurturing justice by holding offenders accountable to the victims of the crimes directly and, subsequently, supporting offenders and victims in re-integrating with their communities become central justice tasks. In *gacaca*, the community must collaborate and is entrusted with the tasks of determining culpability and re-establishing relationships that will allow Rwandans to co-exist peaceably in their communities after the tribunal concludes its work. This addresses the implicit community needs for peace, safety, and community healing in a holistic fashion.

Furthermore, in *gacaca* sanctions are individualized for each participant (Bishop, 1999). *Gacaca* sentences include reparations such as community service in lieu of prison time, which provide alternative to traditional prison sentences. The incentive for the offender to confess in *gacaca* might also be seen as being compatible with the offender taking direct responsibility for their actions, a central tenet of Restorative Justice. Additionally, the culturally appropriate ritual, the storytelling shared by the victim and the offender, and the participatory, inclusive nature of the *gacaca* process are very much in-line with the principles of Restorative Justice.

Unlike many Restorative Justice practices, the *gacaca* process seeks to determine the guilt of the accused. Rather than employing the restorative vision of justice in which relationship violations create obligations to be met, the *gacaca* tribunals seek to establish offender guilt or innocence and legal remedies to address that guilt. As well, the ultimate determination of that guilt is left in the hands of the jury rather than in the hands of the victims, offender, and community themselves, counter to the restorative principle of encouraging maximum inclusion in decision-making.

Another difference between *gacaca* and Restorative Justice as practiced in the Western world is that Western Restorative Justice programs provide a good deal of preparation for the victim and the offender prior to the face-to-face meeting while the *gacaca* process does not. The educational campaign prepares participants for the *gacaca* process, but does not provide them with assistance in processing the emotional weight of meeting the perpetrator or victim of their crime. It seems very likely that cultural differences and a lack of resources account for this difference. Neither does the process assist the participants in their emotional re-adjustment to living in the same community if the prisoner is released back into the community.

In spite of these differences, the *gacaca* process seems to be more like Restorative Justice than unlike it. The process has offered the people of Rwanda hope for a brighter future in a way that their court system has thusfar failed to do. The blending of Restorative Justice principles and practices with the Western legal model has created a uniquely Rwandan application of Restorative Justice. It remains to be seen just how successful the *gacaca* experiment will be in addressing the genocide-related harms that have befallen Rwandan society. Ultimately, Rwandans must address the power imbalances that exist in their society between the Hutu and Tutsi ethnic groups if they wish to avoid having to contend with more ethnic tensions, and potentially another genocide.

In judging the utility of *gacaca*, we must decide if international human rights standards can be fairly applied to post-genocide Rwanda. Is it fair to apply traditional international human rights standards for legal processes where culture has created a unique response to Rwandan devastation, in a country with very limited means? Is there something condescending about applying those standards to Rwanda, when the majority of Rwandans themselves seem to approve of the *gacaca* model? Does this undermine the self-determination and empowerment of Rwandans by challenging an option that addresses a genocide, something that the Western legal model was not designed to address? Perhaps, the Rwandan response would be more fairly compared to Cambodia's response to atrocities committed under Pot Pot's regime or to another African country's response to a civil war. Is it possible to rebuild a devastated nation without some version of "victor justice?"

President Kagame has himself acknowledged the experimental nature of this undertaking. "We shall deal with [problems] and devise solutions as we go along (Staff Reporter, 2001)." If we dismiss *gacaca* as an inadequate legal response to the Rwandan legal/penal crisis, we are not only rejecting the self-determination of the Rwandan people in addressing a problem of incomprehensible magnitude, we are missing our chance to learn from it and perhaps assist the Rwanda people to improve upon *gacaca*. Perhaps, there are some important lessons for other African nations in addressing ethnic tensions in a culturally appropriate manner that could emerge from looking more closely at *gacaca*. In the West, there may be other lessons awaiting Restorative Justice practitioners in considering this unique blend of Restorative Justice with the Western legal model.

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