THE ANATOMY OF MASS ACCOUNTABILITY: CONFRONTING IDEOLOGY AND LEGITIMACY IN RWANDA'S *GACACA* COURTS

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Introduction

Chief Justice of Rwanda Sam Rugege refers to his country's genocide, in which nearly 800 000 ethnic Tutsis were killed from April to July 1994, as a "circumstance that should never have arisen in the modern world".[1] The modern world's failure to intervene militarily during the genocide was coupled with the International Criminal Tribunal for Rwanda's (ICTR) inability to provide efficient and wide-reaching justice in the aftermath of the atrocity. Seven years after the genocide, the slow progression of ICTR prosecutions of the highest-level perpetrators, combined with the limited logistical resources of Rwanda's national courts, led the country to revamp local dispute resolution forums called *gacaca* ('on the grass'). *Gacaca* operated from 2002 to 2012 in thousands of villages across a country in which virtually every member of society was a killer, a criminal, a victim or a witness.

This article presents a brief overview of the genocide and subsequent legal responses. This will be followed by an outline of various criticisms of *gacaca* in terms of its

Above: The slow progression of the International Criminal Tribunal for Rwanda's inability to provide efficient and wide-reaching justice in the aftermath of the genocide, led the country to revamp local dispute resolution forums.

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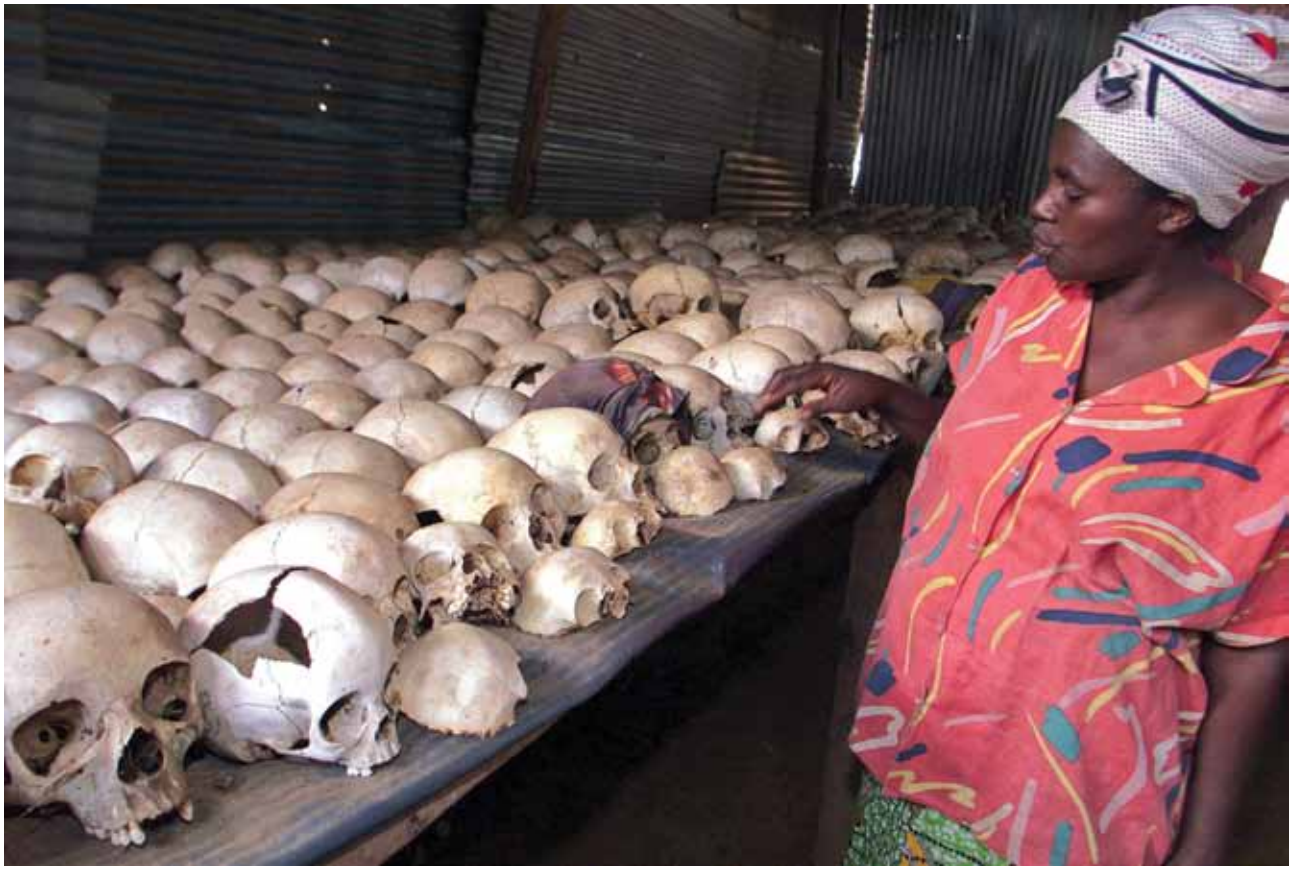
effectiveness and legitimacy as an innovative but untested approach to mass accountability. *Gacaca*'s attempt to instil far-reaching but intimate justice – mirroring the genocide in its staggering scope, meticulous organisation and ambitious execution – will be assessed against post-genocide concerns of reintegration, but also societal needs of reconciliation that predate 1994. Rather than deter specific acts of violence, *gacaca* aimed to eradicate an entire culture of impunity that permitted mass complicity in genocide. Ultimately, this article highlights key areas of debate on *gacaca*'s operational procedures, legitimacy and effectiveness – all of which help to explain early evaluations of *gacaca* as a controversial model of transitional justice. It is then argued that *gacaca*'s long-term legacy needs to be evaluated in light of its attempts not only to meet mass violence with mass accountability, but also to confront historically ingrained violent ideologies throughout the country.

A History of Conflict in Rwanda

The polarisation of Rwanda is rooted not so much in ethnicity as in socio-economic differentiations traced to precolonial times, when the cattle-herding Tutsi minority became the bureaucratic administrators over agriculturalist Hutus in the Kingdom of Rwanda. Nineteenth-century Belgium colonisers exacerbated this hierarchy by issuing identity cards in 1933, politically reinforcing such divisions. With the 1957 Bahutu Manifesto arguing for political dominance by the ethnic majority, violence against Tutsis was sparked and an ideology of genocide was germinated. With independence from Belgium in 1962, Hutus came into power as 300 000 Tutsis fled to Burundi, Uganda and Congo.[2] In 1990, President Juvénal Habyarimana declared a multiparty democracy, opening the floodgates of political and media-driven messages of hate from extremist radio stations and propagandist newspapers to warn against the return of Tutsi exiles. On 1 October 1990, the Tutsi-led Rwandan Patriotic Front/Army (RPF) attacked the Rwandan Armed Forces (FAR), sparking a civil war.

The 1993 Arusha Accords called for a power-sharing government, though few believed Habyarimana's genuine intention of respecting the peace agreement. On 6 April 1994, Habyarimana's plane was gunned down over Kigali, killing Habyarimana and Burundian president Cyprien Ntaryamira. Within hours, Habyarimana's tight-knit circle of



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A Rwandan caretaker examines a display of human skulls, the remains of some of the 5 000 Tutsis massacred in the Ntarama Church compound in April 1994, during Rwanda's genocide (16 June 2002).

Hutu extremists activated the command to exterminate all Tutsi 'cockroaches' and moderate Hutu or Twa sympathisers. Within two weeks, 250 000 were dead by the hands of *Interahamwe* militia and civilians wielding machetes, spiked clubs and automatic rifles.[3] By May 1994, approximately 75% of the Tutsis in Rwanda had been killed.[4] Although genocidal ideology is simple in theory, such an alarming rate of slaughter shows that the execution of genocide demands efficient organisation, methodical implementation and incredible ambition on the part of the orchestrators. With the international community providing little real assistance through the United Nations Assistance Mission for Rwanda (UNAMIR), the RPF alone took Kigali and ended the genocide on 17 July 1994.

International, Domestic and Traditional Responses to Mass Atrocity

Unlike some post-conflict judiciaries that remain fully functional but corrupt after civil war, Rwanda's legal system was devastated by the genocide, leaving only 14 prosecutors in the country.[5] Over 120 000 suspected *genocidaires* were arrested and detained in prisons meant to house 45 000.[6] Soon after taking power in 1994, President Pasteur Bizimungu requested that the United Nations (UN) establish an international ad hoc tribunal for the purpose of holding to account perpetrators of "genocide and other systematic, widespread and flagrant violations of international humanitarian law" committed from January to December 1994.[7] Established with concurrent but primary jurisdiction over Rwandan courts, the ICTR in Arusha found that gaining custody of exiled suspects and gathering evidence in a post-conflict country posed the same challenges to international and domestic courts alike.

Domestically, Rwanda looked for ways to uphold its legal obligations under international treaties, including the 1948 Genocide Convention. The 1996 Organic Law established tiers of crimes, to be tried in Rwanda's national and military courts. Within a few years, national courts had heard only 3% of the genocide backlog (approximately 2 500 cases), while thousands were held without formal charges or trial.[8] This slow materialisation of accountability was exacerbated by Rwanda's use of capital punishment and reports of extrajudicial executions in villages. To manage the enormity of cases and intensifying urgency for justice, methods of accountability would need to address not only individual criminal liability in courtrooms, but also the eradication

GALLO IMAGES/AFP

Genocide suspects confess their role in the 1994 killings to receive reduced sentences at Myove prison in Byumba village, Rwanda (8 February 2005).

of historic ideologies that had created an entire criminal population in the streets.

Rwanda's initial response of retributive justice through international and domestic prosecution of those most responsible for the genocide can be viewed as a decision meant to gain global support for the new RPF government. Alternatively, the decision to utilise retributive justice measures may simply be reflective of developments in the field of transitional justice at the time. For example, the ICTR followed on the heels of the ad hoc International Criminal Tribunal for the former Yugoslavia (ICTY), established in 1993. In the 1980s and 1990s, Latin America experimented with restorative justice mechanisms in confronting human rights violations of prior regimes by means of societal reconciliation and sustained peace. Restorative truth mechanisms typically replace law with ethics and reframe post-conflict reconstruction around questions of victims' right to truth and states' duty to discover truth. Such restorative mechanisms are increasingly thought to be inconsistent with the developing customary law duty to prosecute human rights violations through criminal accountability.

Immediately after Rwanda's genocide, ideas of amnesties and truth commissions were raised, but rejected for fear of leniency that would result in victims' vengeance. *Gacaca* was also considered, but abandoned because of its historically limited usage for common crimes. By 1998, the idea of restructuring *gacaca* again emerged with what would become the *Gacaca* Law, outlining groups of crimes consistent with the 1996 Organic Law:

- Category 1 crimes of genocidal organisation, rape and sexual torture tried in ordinary courts; prison sentence of 25 years to life and possible capital punishment;
- Category 2 crimes of genocide and serious assault causing death tried in districts; prison sentence of seven years to life and loss of civic rights;
- Category 3 crimes of serious assault tried in sectors; prison sentence of one to seven years; and
- Category 4 property crimes tried in cells; penalty of compensation. Cells also investigate crimes and categorise suspects.[9]

An honest and complete confession resulted in reduced prison time or community service. The decision to empower *gacaca* with punitive sanctions rather than amnesties reflected the commitment against impunity, regardless of the tireless task of prosecuting 10% of the population. Punitive sentences were commuted upon confessions – requiring

apology, naming of accomplices and providing details of crimes – all professed before a perpetrator was named as a suspect.

In January 2001, the Transitional National Assembly passed the *Gacaca* Law to promote the "reconstitution of the Rwandese society".[10] October 2001 saw the election of 250 000 *gacaca* judges, ethnically representative and respected members of the community. A pilot phase of *gacaca* was launched in June 2002, and all 11 000 jurisdictions were fully operational by January 2005.

Gacaca under Fire: Criticisms of Effectiveness and Legality

1. Due process

In January 2003, the first wave of accused were released from overflowing jailhouses and returned to their communities to await *gacaca* trials. Nearly 66 000 suspects were provisionally released over the next few years, and housed in solidarity camps.[11] *Gacaca* cells quickly amassed a list implicating 700 000 suspects, leaving *gacaca*'s approach to accountability vulnerable to the same overcrowded justice experienced by the national courts.[12] With a deficiency of resources, the decision to ban lawyers from *gacaca* was an attempt to provide an even playing field for all defendants. As a result, human rights organisations criticised *gacaca* as inconsistent with minimum guarantees for fair trial, including the right to counsel. In addition, a conflict of interest was presented, with *gacaca* judges helping to formulate the accusations of the individuals they would later judge. While perpetrators tried for the gravest crimes in the ICTR enjoyed defence counsel and a presumption of innocence, *gacaca* sentences were rendered by a majority of nine judges.

The *Gacaca* Manual established procedural safeguards, such as the postponement of trial if key witnesses were not available and immediate acquittal if a plea of innocence was not countered by witness testimony or public prosecutor evidence. All *gacaca* courts were subject to judicial review by the *Gacaca* Commission, and local organisations monitored meetings to prevent witness intimidation. Appeals were permitted for all except Category 4 convictions; however, many unenforced judgments involving payment of reparations highlighted the dangers of *gacaca*'s focus on conceptual matters of ideology at the expense of pragmatic aspects of victim livelihood.

2. Coerced traumatisation

The underlying tenet of *gacaca* was the notion of popular ownership over a society's own justice, as promoted by *gacaca* quorums of 100 people. However, *gacaca* is criticised as walking a thin line between facilitated and coerced participation, with witness testimony being made a moral

GALLO IMAGES/AFP

A witness addresses a *gacaca* court in Rukira, Rwanda (3 December 2003).

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Many victims felt *gacaca* lacked guarantees of confidentiality and forced a woman to unearth secrets, such as that related to rape and sexual torture, that could result in her social isolation.

obligation under the 2001 Organic Law: "[N]obody having the right to get out of it for whatever reason."[13] Seeking testimony from people recovering from mass atrocity risks converted the promise of victim participation into a duty to partake in further traumatisation. The question of mandating public suffering is especially pertinent in cases of rape and sexual torture, of which 8 000 such cases were transferred to *gacaca* following a 2008 modification of the law.[14] Many victims felt *gacaca* lacked guarantees of confidentiality and forced a woman to unearth secrets that could trigger her social isolation. Minimal provisions were made to combat these fears, such as allowing a rape victim to submit written testimony and to disqualify judges.

Furthermore, *gacaca*'s effectiveness in promoting genuine reconciliation and forgiveness for acts of genocide was questioned as highly improbable, especially if confessions were motivated by a lesser sentence rather than sincere repentance. Inaccurate or false testimony also caused concern, as time can warp one's memory of events, and because many survived by successfully hiding from rather than witnessing the violence. *Gacaca* jurisdictions with low attendance revealed perceptions of judicial corruption, fear of exposure to Hutu retaliation, or the financial inability to miss a day's work.

3. Collective guilt

Gacaca's delicate balance of restorative measures and criminal punishment also risked the appearance of collective guilt. It is estimated that as many as 210 000 ethnic Hutus participated in the genocide, leaving upwards of five million Hutus having little to no involvement.[15] As every Tutsi was seen as an accomplice of the RPF, every Hutu was assumed to be a *genocidaire*. *Gacaca*'s appearance of mass accusation regrettably emulated the genocide's mass victimisation, underscoring the negative aspects of mirror imaging justice and crime. Furthermore, *Intwali* (Hutus who sheltered and protected Tutsis during the massacre) were concerned with how their past acts of ethnic impartiality might affect their future reconciliation with other Hutus, who regarded *Intwali* as traitors or "troublemakers".[16] Meanwhile, *gacaca* defendants considered themselves merely victims of an unsuccessful defence waged by the Hutu government against the threat of a Tutsi armed rebellion. From different perspectives, every participant in *gacaca* was a victim.

4. Victor's justice

En route to taking Kigali, the RPF was able to capitalise on the world's sympathy and committed its own grave breaches of human rights, which resulted in an estimated 25 000 to 45 000 deaths of Hutu soldiers and civilians.[17] To date, no RPF members have been indicted in *gacaca* courts or the ICTR, while Rwanda's courts have tried a single case against RPF officers for killing Hutu bishops.[18] In 2000, the night before the election of *gacaca* judges, a radio broadcast from newly installed president Paul Kagame announced that RPF crimes would not be dealt with, despite the scope of *gacaca* jurisdiction to allow for such cases. Although most *gacaca* judges were Hutu, the process hinted at victor's justice due to its selective prosecution of Hutus, and the intimidation of victims or judges who showed interest in exploring the possibility of RPF crimes.

Transcending Ideology through Mass Accountability

Departures from minimum standards of due process can certainly frustrate post-conflict democracy building. However, issues of justice and the rule of law rarely remain isolated from political environments, meaning that transitional processes are often subject to a degree of compromise.[19] Rwanda's transitional choices illustrate how the unabridged realisation of justice cannot emerge from the post-conflict rubble without due regard for political and societal fractures, including historical ideologies that, if not addressed, risk the re-emergence of violence. Overall, *gacaca*'s attempt to collectively discover the underpinnings of genocide, at the risk of exposing personal trauma and accepting a degree of distorted information, was calculated against the dangers of permitting collective impunity. Therefore, *gacaca*'s effectiveness should be judged in terms of its success or failure in confronting the widespread culture of genocide *in addition to* its effective or ineffective punishment of individual acts of genocide. In this sense, forgiveness is not the sole factor in alleviating the cycle of revenge. The unifying experience of truth-telling and holding perpetrators to account through an interactive sociolegal process of justice helped to compel cohabitation and non-violent coexistence.

Suspicions of *gacaca* as one-sided justice or as a means for the RPF to disperse vengeance may only cause the gap between political actions and ethnic convictions in Rwanda to become further indistinguishable. What is important to note is that any 'justice divide' along political or ethnic lines is not necessarily a product of *gacaca*, but more likely a symptom of decades-old societal beliefs influenced by precolonial land ownership, political tactics of colonisers and the momentum of Hutu power. At a surface level, *gacaca* trials may not have reflected a nuanced philosophical dissection of sociopolitical tensions. However, to prevent future genocide, Rwanda's 10-year experiment in mass accountability must be evaluated with an appreciation of *gacaca*'s effects on mass

GALLO IMAGES/AFP

Community members from Kigali's Gikondo District One attend a session of the *gacaca* grassroots tribunal (28 March 2004).

understandings of historical divisions that lead to genocidal violence.

In any post-conflict process of transcendence, transitional governments often feed into semi-fabricated narratives to establish regime legitimacy. Although restorative justice is meant to repair rather than conquer, chronicled accounts of tragedy are usually rendered by those in the best position to ask the questions of history. That said, even the RPF's highly centralised government has limited reach to control the 'truth' narrative of 11 000 communities. More likely, *gacaca* utilised participants' intimate accounts of violence from all sides to allow Rwandans to contribute to each other's understandings of the genocide in his or her own experience of the events. Therefore, *gacaca* may come to more accurately be considered 'survivor's justice', by having allowed all Rwandans to identify as collective survivors of a long-standing ideological war.[20]

Conclusion

Gacaca's genocide courts were officially closed on 18 June 2012, having processed upwards of two million cases, with a reported conviction rate of 65%.[21] *Gacaca*'s ambitious endeavour undermined *genocidaire* preconceptions that accountability could never be addressed if everyone was implicated. Although it may seem severe to convict civilians who could only explain their murderous actions in terms of obedience or force of threat by *Interahamwe*, the alternative was to allow impunity to transmit itself from generation to generation. Most criticisms of *gacaca*, although not unfounded, stem from an inability to consider *gacaca* within its multilayered purposes of retributive, restorative and *preventative* justice. Altering collective beliefs embedded in historical, political and social frameworks required a multilayered approach of "confessions *and* accusation, plea-bargains *and* trials, forgiveness *and* punishment".[22]

With an 85% rural population, *gacaca*'s accessibility allowed (or forced) Rwandans to experience the mass retelling of tragic events in an intimate setting. Confessions alongside witness testimonies formed the portrait of a genocidal society – a disturbing image to be entered into the public domain to ensure the impossibility of ever denying or erasing all that had happened. Rather than allowing the genocide to solidify historical disunities, *gacaca* utilised individual grief as a bridge to social commonality and to prioritise peaceful coexistence rather than continued philosophies of hate. Therefore, future assessments of *gacaca* will benefit from the understanding that Rwanda was not only attempting to stop the bleeding caused by the latest surge in violence, but also to innovatively cure the chronic injury of genocidal ideology.

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