

Anita Wheeler
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Professor David Smith

Redefining Justice: Rwanda's development of *Inkiko Gacaca* --
a village-based community justice.

When we think of genocide, the tasks of healing, reconciling, and carrying out justice are seemingly insurmountable. The people of Rwanda have undertaken the gallant task of seeking truth and justice to move forward after one of our most disturbing moments in history -- the Rwandan Genocide. The process of seeking truth and justice is not about reprisal, but healing, educating, and building relationships on the strength of community, collective interest, and peace. The *Gacaca* courts of Rwanda are grassroots, village-based hearings in which the community judges, prosecutes, and defends those accused of a crime. In this essay, I analyze the *Gacaca* system that incorporates retributive, truth, and reconciliatory models of conflict resolution to resolve the backlog of accused perpetrators' cases in the 1994 genocide. I explore the origins, goals, purpose, and relevancy of the *Gacaca* system in meeting the social, political, and economic needs of Rwanda post-genocide.

The 1994 Rwandan Genocide was a culmination of a deep-rooted divide between the Tutsi and Hutu that had been boiling for over eighty years. The root causes of the conflict can be analyzed from numerous angles, however, the impact of the conflict on the lives of both Tutsi and Hutu is undeniably devastating. The cost of human lives during the one hundred days of slaughter is absolutely astonishing at 800,000 deaths (Harrell, 2003, 33). The casualties on both sides between October 1990 and 1994 are estimated at 1.07 million deaths and of that 94% were Tutsi (Harrell, 2003, 33). To understand the devastation the genocide had on the Rwandan population just imagine every person living in Baltimore City dead, in comparison to the

population in Maryland. When analyzing the numbers of all those affected, it is shortsighted to look at those murdered as the only victims. The 120,000 *genocidaires* and accused *genocidaires* that sit and wait in crowded prisons is similarly disturbing (Harrell, 2003, 33). The prison population also represents a large sector of Rwandan society that has been devastated as a result of war.

Addressing the social, psychological, political, and economic impact of the genocide remains a seemingly overwhelming and impossible task for Rwandans. It is hard to calculate the impact of the large numbers of people dead and incarcerated in social terms. The breakdown may be viewed as such -- 800,000 dead and 120,000 imprisoned. The social structure has been radically transformed because elders have been murdered and with that the purveyors of familial knowledge; a generation of orphans have been created with a distorted sense of history and lack of socialization skills; victims and perpetrators live in the same communities under fear of retaliation or a resurgence of violence; and oppressive and supremacist ideology has permeated the minds of both Hutu and Tutsi. These factors form a complex soup of guilt, shame, anger, fear, and grief within families and the community. The collective and individual impact of genocide has taken a psychological toll on all Rwandans. The trauma and stress of the genocide has left a generation of survivors that now has the responsibility to survive and rebuild a shattered society. The process of healing has been taking place for the past ten years and will continue indefinitely. When forming a viable and effective justice system, all of these factors must be taken into account.

The Rwandan economy and political system pre-genocide were precarious and despotic. The genocide threw an already fragile country into a chaotic whirlwind. As a result, the entire political system had to be rebuilt, along with a judicial system that had to be reformed to account

for the high number of prisoners. The Rwandan economy became dependent on the following: foreign aid, returned refugees living abroad, and subsistence farming. In 2001 the economy grew by 6 percent, but the per capita yearly income remained under \$300 (Harrell, 2003, 35). The Rwandan government struggles with improving healthcare, education, employment, and infrastructure -- including providing sanitary water and electricity. Since the budget is very restricted, the development of judicial processes is not much of a priority considering the demand for much needed social services (Harrell, 2003, 35). However, a significant number of skilled workers remain incarcerated in a prison system that drains 15 percent of Rwanda's USD \$200,000,000 yearly budget (Harrell, 2003, v. 54).

The task of rebuilding Rwanda is just as social and psychological as it is economic and political. The need for Rwanda to develop a relevant justice model was evident from the point the current Rwandan leadership took office in 1994. The existing judicial and social system (before 1994) was built on the "culture of impunity" that permeated the corrupt governments during and after colonization. The International Criminal Tribunal of Rwanda (ICTR) has defined impunity as the "failure to punish violations of established norms" (Honeyman et al, 2004, 4). In the essay, "Establishing Collective Norms," researchers argue that the ICTR definition should include that "impunity involves an erosion of standards, so that those who hold social power become less bound by cultural, moral or legal norms that were once nearly universal" (Honeyman et al, 2004, 4). The concept of impunity is particularly important because when developing a model of reconciliatory justice, the concept of justice within the Rwandan community has to be shifted from disregard of established norms to accountability and an overall development of right and wrong behavior.

Another factor that led to the development of an internal organic justice system was the

failure of the ICTR to adequately try accused perpetrators of the genocide. In 1994, the UN Security Council passed Resolution 955 authorizing the formation of the ICTR to contribute to the process of peace and reconciliation, rectify violations, and strengthen the Rwandan judicial system (Uvin, 2003, 1). The effectiveness of the ICTR has been minimal if not counterproductive. Some argue that the prime function of the ICTR is to simply "reaffirm the international community's own morality" (Uvin, 2003, 1). The ICTR with an annual budget of USD \$80,000,000, has indicted only 61 suspects and has sentenced only six (Harrell, 20, 54). The great number of genocide suspects and the high cost of maintaining the prison system led to the need for a participatory justice model that includes all members of the community and builds unity. This need to build unity led the Rwandan government to explore what Uvin calls an "unprecedented legal-social experiment of transforming a traditional community-based conflict resolution mechanism called *Gacaca*, into a tool for judging people accused of participation in the genocide and the massacres" (Uvin, 2003, 4).

In February 2001, the Rwandan government established the formation of the Gacaca Jurisdictions in the Rwandan Organic Law. The term *gacaca* refers to the variety of grasses that cover the Rwanda's rolling hills. Prior to Belgian colonization, village elders known as *inyangamugayos* would sit on *gacaca* to mediate and arbitrate issues with all affected parties present. After mediating the issue and reaching a solution, the wrongdoer would pay reparations and the parties would share a drink (Harrell, 2003, 67). Many people living in rural Rwanda are not familiar with Western-based judicial systems, while others think that foreign structures are impractical and adversarial for victims. As a result, a practical and more familiar system was modified and put in place to build "coexistence and reconciliation" and to meet desirable long-term and short-term goals (Honeyman et al, 2004, 3).

Inkiko-Gacaca was formed with the goal of revealing the truth about what happened during the genocide (Honeyman et al, 2004, 9). Prior to the instatement of *Inkiko-Gacaca* few prisoners were willing to admit to crimes, but afterwards over one-third of the prison population have already prepared confessions for their *Gacaca* trial (Harrell, 2004, 75). The incentive for prisoners confessing is a lighter sentence and/or a faster release. Acknowledging killing, injuring, raping, stealing and inciting others to violence affirms to both the victims and perpetrators that wrongdoing had occurred and that the culture of impunity needs to be addressed. Victims are being given the opportunity to share the suffering and abuse they endured, as well as participate in the outcome of the justice process. The contributions of all parties helps Rwandans move forward in reconciliation. The implementation of a participatory model that includes victims and their relatives, perpetrators and their relatives, bystanders and returned refugees helps the community address these issues collectively and build relationships. Educating Rwanda's young population about the horrors of genocide and socializing them to engage in peace and reconciliation also helps to eradicate the culture of impunity (Harrell, 2003, 85). Other goals of *Gacaca* are to speed up the trials and to readmit the perpetrators into the community to be productive members of society and help build the economy. Finally, Rwanda wants to show the international community that Rwandan society is capable of settling its own problems through a system of justice based on custom (Republic of Rwanda Website, 2004).

The highly structured *Inkiko-Gacaca* system allows the community to serve as defenders, prosecutors, judge, and jury. Reputable members of the community are elected as the *inyangamugayos* (persons of integrity) or judges to facilitate hearings and render just decisions based on the testimony. The *inyangamugayos* set the tone for *Gacaca* trials and build confidence in the community for full participation. Given the sparse resources, *inyangamugayos* are

gradually receiving training on how to conduct hearings, and elections are taking place at every level of the newly formed system. One of the first tasks of the *Inkiko-Gacaca*, led by *inyangamugayos*, is the categorization of accused perpetrators. Category one is comprised of the planners, organizers, instigators, supervisors, and leaders of the genocide. This includes any person at any level of government, political party, army, religious institution who committed acts of sexual torture, or violence (Republic of Rwanda Website, 2004). Approximately 2,133 of these accused *genocidaires* will be tried in conventional courts (Ibid). The sentences for these offenses are the death penalty or a life sentence. Category two includes those whose acts of criminal participation placed them among the perpetrators, conspirators or accomplices of intentional homicide or serious assault that caused death (Ibid). The sentences for category two are 25 years to life imprisonment. Category three perpetrators are those whose criminal acts or whose acts of criminal participation make them guilty of other serious assaults against a person. The sentence for category three crimes is five to seven years imprisonment (Ibid). The final category, four, is for those who committed offenses against property. The sentence for these crimes is court-ordered reparation of damages or another settlement reached with the victim (Honeyman et al, 2004, 14). Please note that, with the exception of category four, most of these offenses are greatly reduced if a confession is given prior to indictment (Ibid).

Currently, there are four levels of organization in the *Inkiko-Gacaca* justice system. The structure is as follows:

Level	Village (8,987 courts)	Sector (1,531 courts)
Court Structure	Inkiko-Gacaca: 19 judges and the general assembly which is the entire adult population of the village	Inkiko-Gacaca: 19 judges and at least 50 general assembly members elected from village level
Functions	Compile lists, categorize the accused and try category IV crimes	Try category III crimes

Level	District (154 Courts)	Province (13 courts)
Court Structure	Inkiko-Gacaca: 19 judges and at least 50 general assembly members elected from sector level	Conventional judicial system
Functions	II Try category II crimes and court of appeal for category III	Try category I crimes and court of appeal for category

Figure 1: Republic of Rwanda Website

At the village level, every person in the community over the age of 18 is expected to participate in the general assembly. The village may have anywhere between 80 to 400 households or 700 to 900 people (Ibid). The main responsibilities of the general assembly at the village level is to compile a list of those who died as a result of the 1994 genocide, those who were raped, and those who committed such crimes. This body also gathers evidence that incriminates or exonerates those who have been accused (Republic of Rwanda Website, 2004). Nationally there are 8,987 village courts that have elected 19 *inyangamugayos* to reside over the hearings of those accused of category four crimes (Honeyman et al, 2004 14). Sector level courts try category three crimes. There are 1,531 sector courts where 19 *inyangamugayos* have been elected for each sector court as well as 50 general assembly members from various villages . The next level of organization is the district jurisdiction where category two crimes are tried along with appeal cases for category three. There are 154 district courts. All of the above mentioned jurisdictions have an *Inkiko-Gacaca* structure, whereas the provincial courts that try category one crimes have a conventional judicial system (Ibid).

To date, some sources indicate that *Gacaca* is still non-operational and undergoing piloting while others say it is functioning. The Rwandan government has faced many challenges with implementation such as lack of materials for training of *inyangamugayos*, lack of education

in the community of the purpose and relevancy of the model, low turnout to general assembly meetings as well as ideological barriers with victims who view the system as too lenient on the accused. The *Gacaca* model has also raised some concern by organizations like Amnesty International for denying prisoners due process and fairness. In their report, "*Gacaca: A question of justice*" Amnesty International accused the Rwandan government of human rights abuses with the inhumane prison conditions as well as conducting impartial trials (Amnesty International, 2002, 44). The tone of similar reports rightfully challenges the Rwandan government to strive for a non-politicized judicial system but in the process underestimates and devalues the will and role of the Rwandan people in developing a system that speaks to the unique needs of their communities. The yardstick that determines acceptable standards of justice for a Western country may be different for a country like Rwanda where the history is more complex and the resources are scarcer. Asking a group of people who have endured genocide to be objective is unrealistic. However standards and procedures need to be in place to ensure that the evidence collected to try a person is thoroughly checked.

Another criticism is that *Gacaca* is one-sided. The South African Truth and Reconciliation Commission encouraged all violators of human rights to apply for amnesty. Thus, apartheid government officials and resistance movements had to come forward and tell the truth. In Rwanda, the only perpetrators on trial tend to be Hutu, while the Tutsi soldiers who liberated Rwanda in July 1994 committed atrocities that tend to be overlooked (Graybill, 2004, 205). However, most scholars researched are sympathetic to the *Gacaca* system and offer healthy criticism rather than outright skepticism. Many acknowledge that considering the circumstances and resources the *Gacaca* system is the best system in place. The hope and faith that peace and reconciliation will prevail saturates the minds of most that have seen and experienced the hell of

genocide. Rwanda's *Gacaca* model serves as a basis for their own type of reconciliatory, transitory, and retributive justice that meets their needs as a society in recovery and growth.

In essence the significance of this model is based on the strength of building relationships between all Rwandans. Supreme Court Justice Karugarama points out that *Inkiko-Gacaca* is an ideal that will one day become a reality (Honeyman et al, 2004, 20). The trials of the accused are almost secondary to the goal of healing and unity. This is a process that must not occur haphazardly or too hurriedly because sensitization of the population in building unity cannot wholly be legally enforced but desired by both Hutu and Tutsi. In discussing the significance of cooperation in this process of building reconciliation, Justice Karugarama states:

You are getting the killer and the survivors in the courts [...] You are making them sit together and you see that in the heat of an argument, someone will be able to say, 'ah he is good, his ideas are good.' If a survivor sees that you are supporting [her/his] idea that we should punish them or [forgive him] I, a relative of a perpetrator see that. This creates a special relationship between us. (Honeyman, et al, 2004, 8)

Karugarama in this statement conveys that people should be given a space where they can talk, listen, argue, and share their experiences. More importantly people often are able to separate the people from the problem and sensibly reach a resolution. In the progression of *Gacaca*, the outcome is not the primary objective but the process and how people engage each other. In his essay "Justice Healing and Reconciliation: How the People's Courts in Rwanda Can Promote Them", Ervin Staub explains the complexities of a new creative process of justice in a society that has experienced genocide (Staub, 2004, 30). He continues by stating, "public discussion and other community processes seem like a better way to encourage active participation than traditional obedience to authority" (Ibid).

In conclusion, the conflicts and violence that permeate the lives of people all over the world regardless of nationality, culture, class, and gender often end in the victims and

perpetrators feeling disconnected and disempowered. It is extremely difficult to put mechanisms in place that redefine traditional Western style forms of justice. Western models often isolate the accused perpetrators from the community that has been adversely affected and fail to address issues of reparations to the victims. I believe that the *Gacaca* system is an ideal that will progressively become a reality. I believe that Rwandans fully understand the effects of escalating violence and the danger of not addressing deep-rooted violence as a community issue that must be resolved collectively. I also believe that building peace is about building relationships and finding common ground/interests to create a mutually beneficial outcomes and processes. This path to reconciliation is an extremely difficult and complex one that takes time, patience and resources. Rwanda is forging a path to grassroots, communal resolution that will serve as a model for future systems on the local level. The most poignant lessoned I have learned from my research is that in the myriad of conflict that compounds our lives we need not look too far for an alternative. Often we need to look back at what methods our elders used to mediate and resolve issues and adapt those processes to our own situations. The *Gacaca* approach logically puts the power of conflict resolution in the hands of those with the most at stake and those most affected. The process of healing takes time and the value of *Gacaca* is being realized through the work of the Rwandan people.

- Amnesty International. (2002). *Rwanda-Gacaca: a question of justice*. London: Amnesty International Secretariat. This text is an analysis of the genocide trials, criminal justice and the administration of community courts in Rwanda.
- Corey, Allison. (2004). "Retributive Justice: The Gacaca Courts in Rwanda." *African Affairs*, 410, 73-90. This article argues that the gacaca process will contribute to the insecurity of all Rwandan citizens in the future because she believes it pursues inequitable justice, accentuates the ethnic divide.
- Graybill, Lyn S. (2004). "Ten Years After, Rwanda tries Reconciliation." *Current History*, 673, 202-205. This article offers a brief critique of the weaknesses in the gacaca model of reconciliatory justice.
- Harrell, Peter E. (2003). *Rwanda's gamble: gacaca and a new model of transitional justice*. New York: Writers Club Press. This book is an introduction to Rwanda's plan to use village based courts to promote restorative justice theories.
- Honeyman, Catherine. (2004). "Establishing Collective Norms: Potentials for Participatory Justice in Rwanda." *Peace and Conflict*, 1, 1-24. This article compiles 8 weeks of research involving interviews with government and nongovernmental organization officials, local judges, and prisoners, and extensive observations of the Inkiko-Gacaca process in several different rural communities.
- Republic of Rwanda. *Genocide & Justice*. Retrieved November 7, 2004, from <http://www.Qov.rw/>. This website offers specific information on the implementation of the Gacaca courts including the categories of offenses for those on trial.
- Sarkin, Jeremy. (2000). "Promoting Justice, Truth and Reconciliation in Transitional Societies: Evaluating Rwanda's Approach In the New Millennium of Using Community Based Gacaca Tribunals to Deal With the Past." *International Law FORUM du Droit International*, 2, 112-122. This article is an examination of the Rwandan justice system pre and post genocide and the steps that the Rwandan Truth and Reconciliation Commission must take to build a viable court system.
- Staub, Ervin. (2004). "Justice, Healing, and Reconciliation: How the People's Courts in Rwanda can Promote Them." *Peace and Conflict*, 1, 25-32. This article discusses the importance of justice and the benefits that result from justice, in a post conflict, especially post genocide, Rwandan society.
- Uvin, Peter. (2003). "Western and Local Approaches to Justice in Rwanda." *Global Governance*, 2, 219-232. This article is a comparison of the roles of the International Criminal Tribunal and grass roots models like Gacaca at empowering Rwandan communities to seek justice.