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978-0-521-19348-1 - The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers

Phil Clark

Excerpt

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INTRODUCTION

INTRODUCING GACACA

In a Rwandan village near the Burundi border, a crowd chatters impatiently beneath a tattered blue tarpaulin shielding them from the midday sun. Before them on a long, wooden bench sit nine elders, mostly middle-aged men and women, led by a young man – the president of the panel – who stands and addresses the gathering. The president explains that in their midst today is a prisoner, released from jail a week ago, who has confessed to committing crimes during the 1994 Rwandan genocide, which in a little over three months claimed the lives of between 500,000 and 1 million Tutsi and their perceived Hutu and Twa sympathisers.¹ The task of this gathering, the president explains, is to listen to anyone from the village who saw what this prisoner did, to hear from the victims' families of their pain after losing loved ones during the genocide, and for the nine judges – who have been elected by the community for their wisdom, love of truth and justice and dedication to the well-being of the village – to decide the case of the accused. The president calls for a minute's silence in memory of those killed during the genocide and then,

¹ There is significant debate over exactly how many Tutsi were killed between April and July 1994. In her comprehensive analysis of the Rwandan genocide, Alison Des Forges estimates that 500,000 Tutsi were murdered (A. Des Forges, *Leave None to Tell the Story: Genocide in Rwanda*, New York: Human Rights Watch, 1999, pp.15–16). Eminent historian Gérard Prunier, however, calculates 'the least bad possible' number of deaths to be 850,000 (G. Prunier, *The Rwanda Crisis: History of a Genocide*, London: Hurst & Co., 1998, p.265). Most writers estimate the number of Tutsi deaths during the genocide to be in the range of 500,000 to 1 million. The exact numbers, however, are not crucial to this book.

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after reading a list of procedures that will guide the running of today's meeting, he motions the prisoner forward to address the assembly.

A murmur goes through the gathering as the prisoner walks to the front, standing between the crowd and the line of judges. He mumbles and the president tells him to speak up. The man, with head bowed, explains that he has come to confess that he killed the wife of his neighbour in the first week of May 1994. He found the woman hiding in bushes as gangs of killers walked the paths of the village searching for Tutsi. When he found her, she was crying, screaming at him to let her go. He pulled her out of the bushes and threw her to the ground, then slashed his machete once across her neck, then again, and left her to die. The prisoner, head still bowed, says that he has come today to apologise for what he did. When he was in jail, he had many years to think about his actions, and his conscience was so heavy that he confessed his crimes to the authorities.

A pause, and then the president asks the assembly if this man's testimony is true and complete. The crowd remains silent. Eventually one man at the back stands and says that, yes, it is true that this prisoner killed the woman. But what he has not told the assembly is that the following day he also killed the woman's son with a machete and threw the body in a pit latrine. Another woman stands and says that she too saw the prisoner kill the boy. The president asks the prisoner to respond to these new accusations. The man raises his head slightly and says that it is not true that he killed his neighbour's son; when he received word that the boy was dead he himself was miles away on the road to Kigali, where he had fled in shame after murdering his neighbour's wife. Voices clamour in the crowd: 'He's lying – I saw him in the village on the day the boy was killed.' 'I saw him too – he spoke to my wife in the courtyard that afternoon.' 'And he killed others – more than the woman and the boy.'

The president asks for calm and for each person in the assembly who wishes to speak to do so one at a time. People start to cry. The judges seated on the bench scrawl in the notepads on their laps. In one week they will have to decide what crimes the man committed during the genocide and what punishment he should receive. When this case is decided, there will be more cases, more stories of pain and loss, more claims and counter-claims, more details to verify, more decisions.

This hearing took place in the Bugesera region of Kigali Ngali province in 2003 and represents a common scene from thousands of towns and villages across Rwanda that since 2002 have been participating

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in a revolutionary court system known as ‘gacaca’.² Derived from the Kinyarwanda word meaning ‘the lawn’ or ‘the grass’³ – in reference to the conducting of hearings in open spaces in full view of the community – gacaca is a traditional Rwandan method of conflict resolution that has been controversially revived and transformed to meet the perceived needs of the post-genocide environment.⁴ Gacaca gives respected individuals elected by the local population the duty of prosecuting cases and excludes professional judges and lawyers from participating in any official capacity. In 2001, more than 250,000 gacaca judges were elected by their communities in 11,000 jurisdictions.⁵ Broadly speaking, the dual aims of gacaca are to prosecute genocide suspects – approximately 120,000 of whom had already been detained in jails around the country when gacaca was inaugurated – and to begin a process of reconstructing the damaged social fabric.⁶

In the face of extreme individual and social devastation, gacaca represents an ambitious attempt to involve the entire population in the processes of justice, reconciliation and post-genocide reconstruction. Among transitional justice institutions around the world, gacaca is unique in its mass involvement of the population that experienced mass conflict first-hand. Today, a huge percentage of Rwandan adults have participated in gacaca in some way, including hundreds of thousands who have been judges or testified during hearings. As Peter Uvin, a Belgian specialist on Rwanda, argues, ‘Politically, [gacaca is] a brilliant piece of work. It offers something to all groups – prisoners, survivors – it offers them all hope, and a reason to participate.’⁷ As we will see later, however, many critics, particularly human-rights observers, argue that gacaca constitutes an illegitimate form of popular justice that will violate individual rights, especially those of genocide suspects.

The purpose of this book is to explore the nature of gacaca as an institution, to identify its objectives and to judge its effectiveness in

² Author’s gacaca observations, Kigali Ngali, Bugesera, 19 May 2003.

³ F. Reyntjens, ‘Le Gacaca ou la Justice du Gazon au Rwanda’, *Politique Africaine*, December 1990, p.32.

⁴ In the remainder of this book, I refer to the historical form of gacaca as ‘traditional gacaca’ and the modern, genocide-focused version (which the government has termed either the Kinyarwanda phrase ‘inkiko gacaca’ or the ‘juridictions gacaca’) as simply ‘gacaca’.

⁵ African Rights, ‘Gacaca Justice: A Shared Responsibility’, Kigali: African Rights, January 2003, p.2.

⁶ *Ibid.*, p.1.

⁷ P. Uvin, quoted in G. Packer, ‘Justice on a Hill: Genocide Trials in Rwanda’, *Dissent*, 49, 2, spring 2002, www.dissentmagazine.org/archives/2002/sp02/packer.shtml.

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responding to the legacies of the genocide. Different sources, whether among the Rwandan government, the population or observers, interpret gacaca and its aims in various ways and inevitably differ in their views of gacaca's efficacy. One main aim of this book is to more clearly analyse what gacaca is designed to achieve than most observers – and many participants in gacaca – have done so far. At the time of writing, gacaca was nearing completion, having tried hundreds of thousands of genocide suspects. This book explores gacaca's objectives, which will then allow us to more carefully analyse its practice and long-term impact.

ANALYSES OF GACACA TO DATE AND OVERLOOKED ISSUES

The literature on gacaca has mushroomed in recent years, especially after gacaca was extended from a pilot phase in select communities to nationwide operation in early 2005. Analyses of gacaca can be divided roughly into three camps, which are discussed in greater detail later in this book: first, the dominant view of gacaca comes from human rights and legal commentators, either observers from international non-governmental organisations (NGOs) such as Human Rights Watch (HRW) and Amnesty International (AI) or non-Rwandan academic observers. These commentators interpret gacaca primarily as a judicial institution that can be analysed through its governing legal documents and are highly critical of the process. They argue that gacaca's primary objective is the punishment of genocide perpetrators, which they generally claim should help deter future criminals.⁸ The second group of commentators, which has emerged more recently, comprises a small number of non-Rwandan academics, including Bert Ingelaere and Lars Waldorf, who have conducted extensive fieldwork into gacaca and criticise various aspects of its practice, particularly what they perceive as the Rwandan state's coercion of popular involvement in gacaca and interference during hearings in order to collectivise the guilt of

⁸ For an example of HRW's analysis of gacaca, see A. Des Forges and K. Roth, 'Justice or Therapy? A Discussion on Helena Cobban's Essay on Crime and Punishment in Rwanda', *Boston Review*, summer 2002, www.bostonreview.net/BR27.3/rothdesForges.html. See also AI, 'Rwanda – Gacaca: A Question of Justice', AI Doc. AFR 47/007/2002, December 2002. For two key examples of the strictly legal interpretation of gacaca by academic authors, see J. Sarkin, 'The Tension between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the Gacaca Courts in Dealing with the Genocide', *Journal of African Law*, 45, 2, 2001, pp.143–72; A. Corey and S. Joireman, 'Retributive Justice: The Gacaca Courts in Rwanda', *African Affairs*, 103, 2004, pp.73–89. I provide a fuller analysis of the range of sources in this first group of observers in Chapters 2 and 10.

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all Hutu.⁹ Finally, a third group of commentators includes several Rwandan and non-Rwandan observers (of whom Alice Karekezi, Simon Gasibirege and Mark Drumbl are among the main proponents) who argue that gacaca aims to punish *génocidaires* but also contributes (to varying degrees) to other post-genocide objectives, particularly reconciliation.¹⁰ These observers highlight, often implicitly, the need to analyse gacaca both as a set of legal statutes and as a socio-legal practice, in which participants' involvement in, and interpretations of, gacaca are important for understanding and critiquing the institution as a whole.

The analysis of gacaca in this book falls in the third category of interpretation, focusing on a wide range of legal and non-legal objectives, while employing the detailed fieldwork and observations of gacaca hearings that are central to the second category. However, this book seeks to overcome deficiencies in all three groups of analysis. While this book concurs with the second and third groups of commentators that the first view misrepresents gacaca by failing to interpret the institution as an evolving socio-legal practice, the second and third perspectives are also largely inadequate for two main reasons. First, they do not directly counter the deficient analysis of gacaca offered by human rights commentators. In particular, the second and third groups of commentators fail to explain why it is necessary to analyse gacaca on the basis of the population's views and participation during hearings. In response to this shortcoming, this book offers for the first time a detailed critique of the dominant discourse on gacaca and more clearly justifies the need to analyse gacaca as a dynamic, lived socio-legal institution. Furthermore, the

⁹ See, for example, B. Ingelaere, 'The Gacaca Courts in Rwanda', in L. Huyse and M. Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, Stockholm: IDEA, 2008, pp.24–59; B. Ingelaere, "'Does the Truth Pass across the Fire without Burning?'" Transitional Justice and its Discontents in Rwanda's Gacaca Courts', Institute of Development Policy and Management Discussion Paper, University of Antwerp, November 2007; L. Waldorf, 'Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice', *Temple Law Review*, 79, spring 2006, pp.1–92.

¹⁰ See, for example, A. Karekezi, 'Juridictions gacaca: lutte contre l'impunité et promotion de la réconciliation nationale', in E. Ntaganda (ed.), *Les Juridictions gacaca et les processus de réconciliation nationale*, Cahiers de Centre de Gestion des Conflits (no. 3), Butare: Université Nationale du Rwanda, May 2001, pp.9–96; S. Gasibirege, 'L'Élection des juges *Inyangamugayo*: rupture ou continuité?' in E. Ntaganda (ed.), *De la paix à la justice: les enjeux de la réconciliation nationale*, Cahiers de Centre de Gestion des Conflits (no. 6), Butare: Université Nationale du Rwanda, November 2002, pp.93–127; M. Drumbl, 'Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda', *New York University Law Review*, 75, November 2000, pp.1221–326. I provide a fuller analysis of the range of sources in this second group of observers in Chapters 5–9.

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book seeks to overcome a perceived weakness in the second category of analysis, namely the authors' tendency to overstate the role of the Rwandan government in controlling gacaca to the detriment of a finer-grained analysis of popular participation in, and shaping of, gacaca. This book therefore focuses strongly on the agency of everyday Rwandans, while also recognising the crucial national socio-political context within which gacaca operates.

Second, most commentators who imply that an appropriate analysis of gacaca requires close empirical consideration of how gacaca functions have not yet observed and analysed gacaca in this way. What unites the first and third camps of observers is a lack of first-hand observations of gacaca hearings, which would enable an examination of the practice – and not only the potential – of gacaca. Because gacaca is a deeply personal and inter-personal experience for those who participate in it, we require a detailed understanding of people's actions and interactions during hearings and their long-term effects.

This book represents one of the first detailed qualitative accounts of how gacaca operates on a day-to-day basis, based on my personal observations of gacaca hearings, focusing on the population's active involvement in the institution and the key external social, cultural, legal and political factors that influence this. Crucially, this book constitutes the first academic analysis of the entirety of the gacaca process, as my desk research commenced in October 2001, several months after the start of pre-gacaca hearings, and my fieldwork spanned the period from January 2003, when the first genocide suspects began returning from prison to their home communities to await gacaca trials, until April 2010, as gacaca was completing its final cases. This book also draws on 459 interviews with all relevant categories of actors in gacaca, from the officials who created the institution in the late 1990s to academic and NGO observers to everyday citizens who today participate in it, thus combining 'high' and 'low' investigations (including multiple interviews with many of the same individuals over more than seven years) to provide a comprehensive popular and political view on the intentions, modalities and outcomes of gacaca.

METHODOLOGICAL ISSUES

While Chapter 3 outlines in greater detail the analytical rationale for interpreting and critiquing gacaca in this book, it is necessary here to outline some key issues concerning the adopted research methodology,

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beginning with my main approaches to fieldwork and ending with a brief consideration of some of the research problems encountered. This book focuses on popular understandings of gacaca, interpreted on the basis of 356 interviews that I conducted during fifteen months of fieldwork between January 2003 and April 2010 with genocide suspects, survivors, gacaca judges and the general population, especially in rural communities, and from first-hand observations of sixty-seven gacaca hearings in eleven communities in five provinces. Many current analyses of gacaca take a detached view, interpreting it solely on the basis of its governing legal statutes. The aim of this book is to view gacaca close-up, to analyse what Rwandans in different regions say about gacaca and crucially how they participate in it and live through it, thus treating gacaca as a kinetic social institution that is shaped heavily by the population's perceptions and actions.

Broadly speaking, my fieldwork comprised two phases, which are reflected in the structure of Chapters 6–10: first, I conducted semi-structured, qualitative interviews with official, popular and observer sources regarding the objectives that they associated with gacaca. These interviews involved open-ended, non-leading questions designed to allow respondents to discuss gacaca in their own terms. On the basis of those interviews, I designed the conceptual framework of gacaca's nine objectives detailed later in this book, within which I undertook the second phase of this research, namely the empirical analysis of gacaca's practical operation in communities across Rwanda. The purpose of this approach was to develop a conceptual framework that derived from the perspectives of the parties who in various ways were intimately connected to gacaca, rather than adopting a free-standing conceptual apparatus that would bear little resemblance to how people personally engaged in gacaca have understood the institution.

My general fieldwork method was first to conduct interviews in 2003 with confessed *génocidaires* in four *ingando* or 'solidarity camps', which constitute civic education centres for various groups in Rwanda, principally provisionally released genocide detainees: in Kinyinya (Kigali Ville province), Gashora (Kigali Ngali), Butare Ville (Butare) and Ruhengeri Ville (Ruhengeri).¹¹ In each camp, I distributed around 200 questionnaires, requesting detainees' personal information, such as name, sex,

¹¹ The Rwandan government and population often use the terms '*ingando*' and 'solidarity camps' interchangeably. Given that the former term has predominated in Rwandan discussions in recent years, I use it throughout the remainder of this book.

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age, birthplace, the category of the genocide crimes to which they had confessed, level of education and religion.¹² These questionnaires gave crucial insights into the background of genocide suspects in each camp and provided a snapshot of the overall population of suspects imprisoned across Rwanda. Detainees either completed the questionnaires themselves or, if they were illiterate, had a friend complete them on their behalf. On the basis of their responses, I selected approximately twenty detainees in each camp from as wide a range of backgrounds as possible to interview individually.

These interviews with genocide suspects, which typically lasted between forty-five minutes and one hour but sometimes up to two hours, covered a broad range of topics, including the respondents' experiences of the genocide, prison and ingando; their interpretations and expectations of gacaca; and their views on the future. I conducted interviews alone if respondents spoke English or French or, if they spoke only Kinyarwanda, I interviewed them through an interpreter who came from the province where the ingando was located. Between 2003 and 2010, I regularly attended gacaca hearings in communities in the same provinces as the initial ingando interviews, to compare the views of participants in gacaca and the nature of their involvement during hearings with the views of suspects. Finally, I interviewed survivors and the general population in communities near these gacaca jurisdictions, to better understand the key local factors influencing gacaca.

The purpose of this empirical approach was to record the broadest possible spectrum of interpretations by interviewing individuals within all social groups who are directly involved in gacaca, particularly suspects, survivors and gacaca judges. It was also important to interview the general population, who in many cases comprised relatives of genocide suspects. I interviewed the population in a wide range of communities across Rwanda, in both urban and rural areas, but particularly in the latter as communities outside of Kigali are often overlooked in post-genocide research. Like my ingando interviews, these semi-structured interviews in the community covered various themes concerning people's personal experiences of the genocide and its aftermath, which provided a clearer sense of their current circumstances, as well as their perceptions of gacaca.

¹² All genocide crimes are divided into three categories, according to their severity. I explain the nature of these categories in greater detail in the 'Mechanics of Gacaca' section in Chapter 2.

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In several communities, I stayed in the homes of local families or in a tent nearby when the relevant landowners consented, to be as close as possible to the people whom I was interviewing. At the beginning of my fieldwork and later, between visits to each ingando and the surrounding communities, I conducted 103 interviews with government officials (including Rwandan President Paul Kagame and various cabinet ministers) and NGO personnel, usually in Kigali. I also made one visit to Butare Central Prison in 2003 to interview suspects, gaining a government permit to the prison by accompanying a World Vision team that conducted a healing and reconciliation workshop with detainees, and later visits to Kigali Central Prison and Rilima Prison. Finally, I travelled twice to Arusha, Tanzania, to observe hearings at the International Criminal Tribunal for Rwanda (ICTR) and to interview tribunal personnel about issues of justice and reconciliation in Rwanda, including their views on gacaca.

A central component of the research contained in this book is a series of longitudinal interviews conducted with confessed *génocidaires* at all stages of their journey towards their appearance at gacaca, alongside interviews with survivors and the general population in the same locations and during the same phases. This process began with suspects in prison and continued through their provisional release into ingando, following their return to the same communities where they confessed to committing crimes during the genocide, and during and after their trials at gacaca. I personally witnessed each wave of the 'gacaca journey', beginning with the provisional release of genocide detainees in January 2003 and culminating in the post-trial period in 2008 and 2009. I discuss ingando and the gacaca journey as a whole in greater detail in Chapter 4. The journey is ongoing as subsequent groups of detainees have been released, in preparation for their appearance at gacaca, including the release of approximately 36,000 detainees – the largest group so far – on 29 July 2005 and additional liberations since then.¹³ My interviews and observations along the gacaca journey give crucial insights into perpetrators' – and the overall population's – changing attitudes over time towards gacaca and key themes such as justice and reconciliation. By interviewing confessed perpetrators at different junctures, I isolated key cultural, social, economic and political factors that influenced their perceptions of gacaca and issues concerning justice and reconciliation generally. It

¹³ IRIN News, 'Rwanda: Release of Thousands of Prisoners Begins', 1 August 2005, www.irinnews.org/report.asp?ReportID=48373&SelectRegion=Great_Lakes&SelectCountry=RWANDA.

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was also possible to build greater trust and understanding with the interviewees and their families over this seven-year period, thus deepening our conversations. This approach fills another major gap in the existing literature on gacaca, namely the need to analyse gacaca in a wider social, cultural and political context and over a significant period.

Given the sensitivity of the fieldwork questions, I tape-recorded only a small number of interviews, usually with government officials, and took detailed notes during the remaining interviews, which I double-checked with my interpreter at the end of each day. Throughout this book, I employ pseudonyms for all genocide suspects, survivors, gacaca judges and members of the general population and provide only broad descriptions of their locations (usually the name of the province and district), for legal and security reasons. I discuss many suspects' and survivors' personal experiences of the genocide and its aftermath and their views on gacaca, which in some instances refer to potentially volatile issues in local communities or to evidence bearing upon gacaca trials. Naming these individuals and their specific locations may jeopardise their own or others' safety and may negatively influence legal cases being heard at gacaca. Regarding my first-hand observations of gacaca hearings, because the government forbids tape-recording, filming or photography at gacaca, my analysis draws on notes taken during hearings, with the aid of the same Kinyarwanda interpreters mentioned above.

I end this section by outlining some of the key methodological quandaries encountered during the fieldwork which impinge on the analysis in this book. Overall, two principal challenges to this fieldwork comprised the need to build trust with interviewees and to navigate the unavoidable biases of respondents. In a post-conflict setting such as Rwanda, many people are understandably sceptical or distrustful of outsiders, especially those who ask difficult questions about traumatic events. Given that this research occurred as gacaca trials were under way, there was great sensitivity to legal matters and reluctance among many interviewees to discuss issues that might impinge on genocide cases. Furthermore, during interviews with government officials, it was necessary to remain cautious about exaggerated, self-aggrandising or misleading claims. In all of these situations, a key principle of my research was triangulation, seeking multiple sources to verify the information gathered. One boon in seeking to overcome issues of distrust and suspicion was the ability to return to Rwanda to speak to the same individuals many times over several years, building rapport with