

# Chapter 11

## Gacaca Courts in Rwanda: Experience and Perspectives

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### ABSTRACT

*This article deals with the past activities of the gacaca courts in Rwanda. The first section of the article will review the reasons for reactivating the gacaca courts and consider its theoretical suitability as a means of resolving conflicts. The second part offers a survey of the actual implementation and results of the gacaca trials. In the final section, the concrete effects of these results on the inner-Rwandan processes of pacification and reconciliation are assessed.*

### GACACA COURTS IN RWANDA: EXPERIENCE AND PERSPECTIVES

The topic that is the focus of this contribution is controversial. That is by no means surprising, since the occurrences—the genocide in Rwanda—which lead to its emerging as an issue are themselves highly controversial. What is contested is not the genocide itself. That it occurred is recognized by all but a few extremists. The debate centers instead around the question of which side one tends to support in interpreting the genocide and reaching the appropriate conclusions. On the one side, there is the official version of the current Rwandan government. Its representatives can rightly point to the fact that they ended the mass killings in an atmosphere of global indifference towards what was happening and therefore consider

themselves morally justified in deciding alone in what forms and with what content the genocide, its perpetrators, and the memories of the crimes should be dealt with. On the other side, which includes many Rwandans in exile abroad, there are those who charge that the official Rwandan position and its supporters instrumentalize the genocide; they call for a historical narrative that can incorporate the experience of all Rwandans.

For reasons that will be presented below, the author of this text is also skeptical regarding the official Rwandan claim to the exclusive right to decide how to deal with the country's recent past. Despite some positive initiatives, the sum of the various measures and especially the ideology behind them reveal that Rwanda is in the midst of a problematic and potentially dangerous development.

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At this point one might assert—and this is clearly the position taken by official German development aid policy<sup>1</sup>—that it is up to Rwandan policy makers alone to define and implement the path they choose to take to achieve a peaceful future for their country. One must agree with this in so far as, by definition, a government that meets the minimal requirements of a liberal-democratic order must fulfill the task of responsible and engaged efforts to meet the needs of its citizens. But what makes Rwanda, independent of these minimal requirements, a special case, is its history as the site of a crime against humanity that affects the international community as a whole.<sup>2</sup> This is the case despite the fact that the United Nations failed to attempt to prevent or at least curb the genocide, for the dimensions of the crime alone renders it a severe violation of the basic moral values of humankind. As a result, conversely, the manner in which these crimes are dealt with, including the judicial consequences and the means of achieving social peace in the country, are also significant beyond the borders of Rwanda. The international tribunal in Arusha, which prosecutes the planners and organizers of the genocide, was thus established by the United Nations (UN). The UN appointed non-Rwandan judges to try the cases. The reactivation of the traditional Gacaca justice system within Rwanda has been propagated by the Rwandan government itself as a model for resolving conflicts in the region (Ngoga, 2008, pp. 326-327) and indeed Rwanda takes great pains to present itself as a champion of peace and human rights, whose efforts are legitimated by its own experience of violence.<sup>3</sup> In view of these activities that go beyond the domestic sphere, criticism from outside Rwanda thus seems appropriate, especially since it focuses on aspects that are related not only to the modalities of these activities but indeed also to the understanding of Rwandan society in an ongoing process of modernization that underlies them.

Before the critique of Rwandan policy is explicated here, the first section of this text will review the reasons for reactivating the gacaca courts and consider its theoretical suitability as a means of resolving conflicts. The second part offers a survey of the actual implementation and results of the gacaca trials. In the final section, the concrete effects of these results on the inner-Rwandan processes of pacification and reconciliation are assessed. This assessment will examine whether and, if so, how Rwanda's ambivalent development can be considered compatible with the concept of transitional justice and the work of non-governmental organizations (NGOs) in Rwanda who support the concept and its implementation.

## **1. Reactivating the Gacaca Courts**

During the Rwandan genocide, which occurred between April and July 1994, approximately eight hundred thousand people were murdered. The majority of the victims were Tutsi, a minority group within Rwanda's population, or Hutu who either supported the political opposition and were therefore suspected of siding with the Tutsi, had attracted envy and malevolence due to their social position, or had simply refused to participate in killing other Rwandans.<sup>4</sup>

Soon after the genocide ended on 4 July 1994, it was clear to both the international community and to those who had assumed political control in Rwanda that the perpetrators of the crimes committed during the genocide had to be prosecuted. The number of victims was much too high and the dimensions of terror too great to allow for a form of dealing with the crimes outside the realm of criminal justice. In November 1994, the UN Security Council, no doubt spurred by hopes that this step would mean that its failure to prevent or end the genocide might be forgotten more quickly, established the International Criminal Tribunal for

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