

Is 'tradition' the solution?

Lessons from Rwanda's gacaca courts for justice and reconciliation after mass violence

Over the past years, there has been an increasing attention for the use of tradition-based or home-grown justice and reconciliation mechanisms in the aftermath of violent conflict. The Rwandan gacaca court system is often evoked in this global trend. The gacaca courts operated nationwide between 2005 and 2012. This policy briefing summarizes major findings and policy recommendations based on extensive field research conducted during these years.

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Fast facts

Genocide	Gacaca
<ul style="list-style-type: none"> ☛ April-July 1994 ☛ Approx. 600,000 Tutsi killed ☛ High involvement of 'ordinary' civilians ☛ Justice system destroyed ☛ Policy choice: retributive justice ☛ 130,000+ in prison (2000) ☛ Expected time processing with 'classic' justice system: 100+years ☛ Policy choice: modernize 'traditional' dispute resolution system 'gacaca' 	<ul style="list-style-type: none"> ☛ 2005-2012 (most trials in 2007) ☛ 14,000+ decentralized courts ☛ Approx. 170,000 'lay' judges ☛ 1,958,634 'cases' tried ☛ Majority = cases of pillaging ☛ Approx. 60% pleading not guilty (field observations) ☛ Approx. 10% acquittal rate (field observations)

'Old' Gacaca	'New' Gacaca
<ul style="list-style-type: none"> ☛ Minor disputes ☛ Old and wise men ☛ Restoration of harmony ☛ Informal mechanism ☛ Gradually evolved towards semi-administrative body ☛ Spontaneous resource solicited after the genocide dealing with looting 	<ul style="list-style-type: none"> ☛ Genocide crimes ☛ Prosecutorial & retributive logic ☛ Judges: often women & young people ☛ State-driven & largely state-owned ☛ Cornerstones: <ul style="list-style-type: none"> • Categorization according to crime • Decentralization of justice • Confession/plea bargaining



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Research Findings

- ✓ The modern gacaca system was – paradoxically – only very limited ‘tradition’-based.
- ✓ There was no gradual continuity between the ‘old’ and the ‘new’ gacaca but a difference in kind.
- ✓ The modern gacaca system managed to speed up the backlog of genocide-related cases.
- ✓ Establishing the truth is considered as the most positive and the most negative (absence of the truth) outcome of the modern gacaca process
- ✓ The modern system was characterized by a systemic tendency to foster guilt
- ✓ High levels of trauma, conflict, anxiety & insecurity accompanied the introduction of the modern gacaca system
- ✓ Social cohesion increased with the end (not necessarily because) of gacaca
- ✓ Women have taken up an important role in the functioning of the courts but the procedures remained biased towards cases of rape
- ✓ Unpopular popular justice but ordinary Rwandans nevertheless preferred the modern gacaca courts over the ordinary courts and the ICTR
- ✓ The modern gacaca process was a mimicry of the ‘traditional’ dispute resolution system with a reduced potential for conciliation
- ✓ The modern gacaca was a mimicry of the modern legal system but with reduced guarantees of due process
- ✓ The modern gacaca process replaced one culture of impunity (violence against Tutsi) with another culture of impunity (violence against Hutu)

Policy implications

- ✓ Tradition-based justice and reconciliation mechanism have potential since they emerge from and are situated in the ‘natural’ socio-cultural habitat
- ✓ However: do not go against the grain, do not change the logic of tradition-based justice and reconciliation mechanisms
- ✓ Hybrid systems can also be contradictory due to design and they do not necessarily bring together the ‘best’ of both worlds: limit intrusion, objectives and ambitions.
- ✓ Complementary approaches are more important than an overall comprise. E.g.: tribunals for those with high responsibility for crimes; grassroots mechanisms to restore harmony and reintegrate people in society
- ✓ Be aware of ingrained ‘legalism’ - create sufficient local knowledge as well as decentralized, socio-cultural insights and expertise

A NOTE ON FIELDWORK, METHOD AND DATA

This study is based on over 30 months of fieldwork in rural Rwanda spread over 8 years since 2004. Five principles characterized the research approach: immersion, iteration, multi-sitedness, mixing methods and diachrony. Numerous ethnographic encounters inform the analysis as well as 1,571 recorded interviews with 1,359 (rural) Rwandans and 1,917 recorded observations of gacaca proceedings that dealt with the allegations lodged against 2,573 individuals.

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Research was made possible with the support of VLIR-UOS, the Research Foundation – Flanders (FWO) and the Institute of Development Policy and Management (IOB), University of Antwerp



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