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RESEARCH NOTE

Justice for a Genocide?

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In Rwanda today it is considered poor manners to cry at funerals. Public grieving for the death of a single person is thought to minimize the grief people felt after the genocide when many people lost entire families. That genocide was eight years ago and to date little has been done to bring the perpetrators to justice. The newly established gacaca courts are meant to rectify this situation and assess the guilt or innocence of some of the tens of thousands of people now held in Rwandan jails.

Gacaca, appropriately means grass, as the courts are held outside on the grass under shelters that in the past would have been constructed from banana leaves to shade people from the sun, but are now made out of UNHCR tarps. The logistics of bringing people to trial in this context are complex. First, it is necessary to compile a list of all the people present in an area before the genocide, then a list of all those who were killed, and finally a list of the accused. Draft lists are read out to groups of at least 100 people who correct them according to their memories. Trials of the accused begin in March of 2003.

As a method of getting a backlog of cases to trial, the gacaca courts are Rwanda's best option to date. Partially because of the genocide, which left Rwanda with a total of judges and lawyers that could be counted on one hand, the Rwandan national courts have been extremely slow in processing the accused. More reprehensibly, the International Criminal Tribunal in Arusha, established to try the organizers of the genocide, has brought less than ten accused to trial. In the meantime, many of those who organized the genocide still go free in the countries surrounding Rwanda, particularly in the Democratic Republic of Congo.

The gacaca courts were designed to be more efficient by enlisting the support and participation of local communities. It is thought that this will not only bring justice but will also aid the communities in working through the trauma and the grief that resulted from the genocide. Indeed, at the beginning of each gacaca session the community is reminded by the presiding official of the benefits of the courts for both the victimized families and for the perpetrators of the violence. Participants in the genocide are urged to come forward and confess their crimes before 15 March 2003 so that their sentences can be reduced.

It remains to be seen whether all of these benefits will be realized. Many fear that the gacaca will only serve to open old wounds and retraumatize those who have already suffered terribly. For example, one Tutsi young woman has been heavily pressured by her community to bring an accusation against a Hutu man. This young woman witnessed the man murdering her mother and grandmother with a machete. Yet, she was unwilling to raise an accusation against him because he was being beaten by others in order make him kill. While she watched, he hacked her mother and grandmother to death sobbing 'I am killing you, I am killing you' all the while. The young woman does not want to see this man convicted, yet the pressure she is under from her community is intense. For her and for others, the gacaca process brings back terrible memories. This case illustrates the problems of adjudicating disputes from the genocide.

There are many levels of guilt: from those who stole things from people who had been killed to those who orchestrated the violence. The gacaca courts are designed to deal only with what are called 'active' and 'passive' participants, in other words people who

killed and people who allowed others to kill or perhaps gave them the information they needed to find Tutsis. The courts will likely be successful in moving people out of prison, as is their goal. But it is too much to expect from a judicial process that the gacaca courts will heal communities torn apart by the genocide.

The gacaca courts will bring the accused to trial in an unusual setting and there are few protections for the accused. Rules for the submission of evidence and legal processes designed to protect the innocent will not be present. Instead, testimony alone will determine the guilt or innocence of those on trial. Though this is not unusual in court settings in sub-Saharan Africa, in this case it could create problems far into the future. If there is any question of unfair procedure in the gacaca courts there is a potential that the courts will be perceived as a tool of revenge against the Hutu by the Tutsi-dominated government.

The gacaca are unlikely to bring any sort of resolution or reconciliation to ethnic conflict. The courts may bring some semblance of justice to a country that has seen little, but it is equally probable that they will exacerbate the underlying tensions that exist. Rwanda needs unifying measures at the moment, not institutional processes that emphasize ethnic divisions. Yet, it also needs justice. This presents a dilemma. The gacaca process illustrates only too well the thin line that exists between justice and revenge.

The courts are explicitly designed to try perpetrators of the genocide alone and not try war crimes associated with the RPF invasion and takeover. By all accounts, the RPF soldiers perpetrated relatively few violations of human rights -at least as African armed insurgency movements go. However, the explicit restriction of the gacaca courts means that the defendants will be almost entirely Hutu. Perhaps the government ought to reconsider this policy and allow all crimes committed during those long and terrible months of 1994 to be tried. If they do so, the gacaca will look far less ethnically biased and only a few RPF soldiers will be tried. If they continue to hold to the restriction then the courts appear to be merely a tool of revenge for the Tutsi against the Hutu. Certainly some sort of trial and punishment of genocide perpetrators is in order, but the government would loose little and gain much by allowing all the crimes perpetrated in 1994 whether related to the war or the genocide to be included. This would be a small, but important step down the road to ethnic reconciliation.

Right now in Rwanda, reconciliation does not seem to be a part of the national agenda. The government has not only started this new and potentially divisive court system, but also promulgated a new flag and a new national anthem for the country to eliminate what were seen previously as symbols of Hutu domination. But will these new symbols be seen as something other than Tutsi domination?

Little seems to have happened since the genocide to bring about an end to the underlying ethnic tensions in Rwanda. If this remains the case then the gacaca may be viewed as just another wave of the cycle of ethnic violence that has been going on in Rwanda for decades – this time institutionalized. Right now the predominantly Tutsi government has the upper hand, but the Tutsi are a minority and they will not always be in this position of power. Long –term stability and peace in Rwanda depends on the ability of all the courts to provide justice in a country where there are only two kinds of people: killers and judges.