

PRI's Research on *Gacaca*

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Ahmed Othmani, the dynamic founding director of Penal Reform International (PRI) who died in 2004, had a deep personal interest in the Rwanda programme and he passed by Kigali on a regular basis to visit prisons and convince government officials to introduce community service as an alternative penalty for certain crimes. He discussed with me – often at unholy hours late at night or very early in the morning – the difficult situation of overcrowded prisons, the progress of PRI's prison project, and the talks which took place in government circles between May 1998 and March 1999 to establish *Gacaca* courts to deal with the legacy of the genocide. At that time, we also discussed the work of Stevens (1998, 2000) who undertook a very interesting analytical review for PRI of the literature on traditional and informal justice systems in Africa and elsewhere. She had observed that blending traditional justice mechanisms and elements of the modern justice system often failed, in particular if controlled by the state.

Being a social researcher, I suggested that it would be interesting for PRI, after publishing a more theoretical work on this subject, to also conduct a case study of the planned *Gacaca* tribunals. Ahmed was immediately taken by this idea. Together with PRI's staff in Paris we wrote a project proposal to conduct research on *Gacaca* and managed to get the necessary funds. Because our work with the prisons was highly appreciated by the Government, it was not too difficult to get the authorisation to do a study on the *Gacaca*. So PRI became one of the first organizations to monitor the *Gacaca* programme – along with the Rwandan human rights NGO *Liprodhor* and followed later by *Avocats Sans Frontières* (ASF).

PRI hoped to do “action research” which made our project one of the more political and sensitive. The research aimed to improve the working and practices of the *Gacaca* programme and to gather and analyze data about the perceptions, behaviour and experiences of key stakeholders, while taking into account the broader socio-economic and political environment of the *Gacaca* meetings in the hills. Perhaps somewhat naively, we hoped that our analysis of the key issues and proposed solutions -- based on the views, needs and interests of thousands of ordinary Rwandans from all groups -- would have some impact. As a consequence of this action approach, PRI's recommendations (aside from the proposal for the establishment of a neighbourhood Community Service programme) may have had less influence on the *Gacaca* programme than other, more technical oriented projects. But PRI's reports showed, more than many others, the broader context and the views of various groups within the population.

I said we were naive, because when *Gacaca* finally started in 2001, we had already heard enough about the authoritarian nature of the Rwandan regime and its difficult relationship with the International Criminal Tribunal for Rwanda (ICTR) for us to know better. During the period that Carla Del Ponte (1999-2003) was the ICTR's prosecutor, the government of the “Rwandan Patriotic Front” (RPF) - the military victor of the war which ended the genocide - managed to effectively block investigations and prosecutions of war crimes and crimes against humanity committed during 1994 by members of the RPF's military wing, which was part of the Tribunal's mandate along with the prosecution of perpetrators of the genocide. If

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Rwanda was able to do this with an UN-appointed organization based in Tanzania, there was no doubt the *Gacaca* tribunals would be completely under control of the RPF government and there would not be much space for disagreement with members of the RPF government, nor for action-research. Furthermore, it could be expected that the RPF would instrumentalize the *Gacaca* as it has done with the ICTR and that, inside as well as outside Rwanda, *La guerre de la mémoire* "continuera donc, puisque le travail de vérité n'a pas été mené à terme (...)" [The war of memories will go on, because the work of truth-seeking has not been brought to completion] (Guichaoua 2010:583).

No wonder that the relationship between PRI and the Government sometimes had its tensions over our *Gacaca* reports (and it was even worse for the local NGO *Liprodhor*). While the Report doesn't mention these moments, Paul Gready (2009) has discussed some of them. Without the support of the international community – in particular the Dutch, the British, the Swiss, the Belgians and the office of the European Union, who at the time were less lenient toward the Kagame regime than today - PRI's research programme would probably not have survived until the end.

Those tensions created an especially difficult situation at times for members of our research staff, consisting of men and women, Tutsi, Hutu and Twa, survivors and returnees, Christians and Muslims - both in the Kigali office and in the field - because they often suffered directly from the criticism of PRI by certain government people, and because were considered suspect by association. However, this pressure also had a positive side, as the members of the research team became a really motivated and closely-knit group. I therefore thank them all for the work they have done in often quite difficult conditions. I think they did a great job, as shown by the interest in the PRI reports from all over the world.

Evaluating *Gacaca*

It is typical that many reports and articles about *Gacaca* are reluctant to conclude by saying that, for this and that reason, *Gacaca* is a success, a failure or something in between. Rather, what we usually find are phrases such as "the *Gacaca* courts are not a straightforward success" or "the *Gacaca* process has overlooked a number of key principles of justice." This is partly due to the fact that it is still considered too early to comprehensively assess the effects of the *Gacaca*. But it is also because many authors seem to be afraid to present another reality than the one shown by the Rwandan establishment. Bert Ingelaere (2010) wrote:

As Pottier observed (2002:207), "reality is what Rwanda's political leaders, as moral guardians tell the world . . . it is." The Rwandan establishment operating at the center of society is crafting a preferred image of the country. (...)It actively pursues this objective in various ways through the active interference in scientific research projects, through the cultivation of an aesthetics of progress, and through the subtle use of a complex communication code.

By reading PRI's reports and in particular its most recent one² (called here the Report), we can say much more, weigh the pros and cons, and analyze past trends. In my view, those reports show that the *Gacaca* process was a failure if we relate the outcome to its explicit objectives:

² PRI, June 2010 [the Report]

The acceleration of trials, the decrease of the prison population and the reduction of costs: *Gacaca* accelerated trials and reduced the costs (about which little is still known), certainly in comparison with the national court system, not to mention the ICTR. But this Report shows, based on convincing examples, that the speeding up of the process diminished the quality of the justice, endangering the emergence of truth and the delivery of fair justice for all. If we also take into account the prison-like work camps, *Gacaca* didn't bring a solution to overcrowding of these prisons and camps.

Participation in *Gacaca* by the population: The *Gacaca* courts derived their legitimacy from popular participation, but the Report shows that the quality of the participation was insufficient, which reduced the likelihood of establishing the truth about what happened. Following Waldorf (2006), I would say that *Gacaca* is, paradoxically, a form of unpopular participatory justice, with large crowds of uninterested people, often forced to be physically present but psychologically absent or unsupportive of the activities. Those who spoke were predominantly the judges, the survivors and a small group of liberated prisoners.

Establishment of the truth: Innovative truth-seeking mechanisms, such as the confession procedure, were tried out. Although a significant number of detainees made confessions, it is widely believed that these testimonies are only partial, admitting minor crimes, and blaming some people for complicity—mostly those already deceased or 'disappeared' after the genocide—while keeping silent on the involvement of others. The Report states that by moving too quickly, the emergence of the truth was put at risk, but it still maintains that more truth was revealed about the genocide, no matter how partial and distorted this might have been. Others – like Bert Ingelaere (2008) - deny this and I tend to agree with him when he writes that there was “no truth in the *Gacaca* process”. Among other things, the *Gacaca* sessions did not reveal the real truth about the past, the war, and the genocide, which also hampered the healing process.

Eradication of the culture of impunity: The aim of eradicating the culture of impunity was tackled extensively as far as the quest for criminal accountability for genocide crimes against Tutsi was concerned. The *Gacaca* has dealt with over one million cases, but because one person could figure in several cases, the Hutu population of *genocidaires* could be in fact much less.

Because war crimes and other gross human rights violations committed by the RPA/RPF could not be discussed during the *Gacaca* meetings, a majority of the Hutu population sees the *Gacaca* courts as a form of victor's justice through which they are unable to make their own claims.

Justice: The Report highlights the many remaining issues concerning the quality of the justice delivered:

- Most lay judges (the *Inyangamugayo*) didn't have the necessary skills or experience to try so many cases and they often worked under pressure and were unable to examine cases in detail;
- The “dejudicialization” or politicization of information-gathering about what happened during the genocide by entrusting this to local authorities (the *Nyambakumi*) rather than the *Gacaca* judges;
- The political instrumentalization of the lay tribunals by the RPF regime and in particular by the ‘National Service of *Gacaca* Jurisdictions’ (NSGJ) which resulted in processing of more than one million genocide cases (of which over 50% were for property offences);

- The rights of defendants particularly suffered under *Gacaca*; when they appeared at their trials they were often unaware of the evidence against them and had no time to prepare their defence;
- Corruption, manipulation, and other questionable tactics and strategies in the *Gacaca* proceedings were created by survivors' poverty and the lack of an adequate reparation policy; the defendants' desire to regain their place in society; the difficult financial situation of the unpaid lay judges, and the involvement by the State itself.

Reconciliation: The Kagame regime has adopted a discourse of reconciliation and established some institutions such as the government's National Unity and Reconciliation Commission (NURC) and its solidarity camps to facilitate social integration of prisoners.

Reconciliation in Rwanda remains an extremely State-controlled, top-down process.

Consequently, during the *Gacaca* meetings the few Hutu who wanted to discuss killings by the RPA/RPF were often not allowed to speak about their suffering, which hampered social healing and reconciliation.

Most Rwandans don't differentiate between cases and persons (the *genocidaires*) and because the Rwandan government (probably intentionally) never explained this difference, the often quoted number of over one million cases has strengthened even more the idea of collective guilt of the entire Hutu population – something that does not help social healing and reconciliation.

An interesting case mentioned in this Report is that of the “Righteous”, Hutu who chose to protect Tutsi during the genocide period and who could help to counter the tendency to collectivize blame for the genocide to all Hutu.

As Anne Aghion's documentaries about the *Gacaca* process in one community (such as *My Neighbor My Killer* (2009)) show, life on the hills returned to a form of normality out of necessity, but distrust between the different ethnic groups remains always present. This Report also quotes a NURC study which showed that the levels of personal mistrust within Rwandan society are still very high.

Community Service: The Report shows that community service (CS) was introduced as an important alternative punishment, a type of restorative penalty, with the potential for post-genocide reconciliation, and that many who were sentenced to CS saw it –despite the harsh conditions- as a very positive step. According to the Report even some survivors were quite positive, although recently (IRIN, 30/04/10) the chairman of the genocide survivors' organization, Ibuka, complained that this form of punishment was far too little in comparison to the pain they had inflicted (IRIN, 30/04/10).

According to this Report, neighbourhood CS is better suited to the goal of peaceful cohabitation, and ultimately reconciliation, but most authorities (for logistical reasons) chose to group offenders first into work camps, which are often seen as a second prison. Neither model will resolve prison overcrowding, since community service is not the main penalty. By mid-2009 more than 100,000 convicts had gone through the community service programme.

Reparations: According to the Report, reparations are a key element of the reconciliation process, representing a form of ‘symbolic healing’ for losses suffered, as well as social acknowledgement for the suffering of the genocide survivors. Though the development of a

compensation scheme for victims was set aside during *Gacaca*'s pilot phase, it failed to materialize during *Gacaca*'s later stages.

Conclusion

Gacaca was above all a state-controlled retributive justice institution, but at the same time – as Waldorf (2006) so aptly states – it was an outstanding example of the mixing of retributive *and* restorative justice elements with ‘confessions *and* accusations, plea-bargains *and* trials, forgiveness *and* punishment, community service *and* incarceration’.

Based on the field data gathered in this interesting final *Gacaca* Report (which builds on the work of many other reports), I dare to repeat that the *Gacaca* process has been a failure, given: the poor quality of the justice administered; the incomplete and biased establishment of the truth; the forced participation of the population in the process; the lack of an adequate reparation policy for victims; the high number of convicts in prisons and prison-like work camps; the continuing distrust between Hutu and Tutsi; and in particular, the lack of measures to ensure non-repetition.

Of course, Rwanda has had other transitional justice institutions for dealing with impunity for the genocide, such as the national courts and the NURC, which have operated alongside the ICTR. Rwanda also implemented vetting and administrative purges, making it possible to fire government employees, teachers etc. that had been involved in genocide. Rwanda has a very developed memorialisation policy (the annual genocide commemoration, the genocide memorial etc.). However, according to the academics Claudine Vidal and René Lemarchand, it is used by the regime mainly for its own political purposes: the manipulation of the historical record for the sake of an official memory, leading to an overall criminalisation of the Hutu community.

All these transitional justice measures, but especially the political instrumentalization of the *Gacaca* courts by the RPF government, have been used to strengthen control over the Hutu majority. The never openly-stated objective of “*Gacaca* as a tool of suppression” seems, in the short run, to have worked well. However, in the long run it could lead to disaster. By installing victor’s justice, blaming the Hutu population for its role in the genocide, and by continuously manipulating the past, the Government has missed a chance to help current and future generations in Rwanda avoid repeating past injustices. The role of the international community, which is not discussed in this Report, is also to blame, as various authors have shown elsewhere.

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