RECONCILIATION IN TRADITIONAL COURTS:
Making “Never Again” Possible

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In an effort to restore communities lost to genocide more than a decade ago, Rwandans have turned to a traditional approach to the law. This alternative could offer a chance for victims and perpetrators to reintegrate into society and perhaps lay the groundwork for reconciliation between Hutus and Tutsis. The author spent the summer of 2006 working on the International Criminal Tribunal in Rwanda, as the Judge Diane P. Wood Fellow.

Fifty thousand Tutsis were murdered at Murambi in 1994. Twelve years later I visited the technical school with another intern from the International Criminal Tribunal for Rwanda. The Murambi Memorial Centre was closed that cloudy Sunday morning, but a young man with a scarred face walked outside when our taxi pulled into the gravel driveway. Immanuel spoke to us in broken French as he led us around the site.

He said the government had urged Rwandans to flee there, promising safety. Tutsis and moderate Hutus from across the country flocked to the haven for two weeks. One morning civilians armed with machetes and clubs stormed the gate. The refugees, weak from lack of food, could not resist them. Blood still stained the concrete floors. Immanuel opened the door to a room where petrified corpses lay on white sheets. More than a decade later a woman still hugged her children; a man’s arm stuck awkwardly in the air, still pleading for mercy. Immanuel apologized for not having the keys to show us the rest of the bodies kept there, and instead led us to a large room with clothes piled on clotheslines. The killers, he said, stole the desirable clothes from the bodies before going home that day. These were the clothes no one wanted.

I wasn’t brave enough to ask Immanuel how he got the scars on his face or why he cried when he saw the clothes. I never knew what to say when Rwandans brought up the genocide, so I let them ramble or become lost in thought. I heard them refer to the killings in many ways—civil war, the war of ’94, the events of ’94. Only Immanuel called it genocide: “There was a genocide,” he emphasized as we stood in front of the clotheslines. I tried to explain how sorry I was my country had done nothing to stop it, but he didn’t understand. Finally, I touched my heart and reached out to his. He nodded, his eyes lit with comprehension. He escorted us back to our taxi, hugged goodbye, and whispered, “It is okay. You see, we are a peaceful country now.”

I want to believe him. I don’t think I do. A Sudanese official—a Rwandan ex-pat who left in 1957 before what he said "should have been the first genocide”—once explained to me why South Sudan had to split from the North: “We are Christian. They are Muslim. We have nothing in common.” Fifty years of brewing hatred and power struggles between Hutus and Tutsis left that same stance in Rwanda. The hostility exploded in 1994; it will take more than the elimination of identity cards to prevent it from erupting again.

The most promising effort to placate the country may be a unique court system initiated to try the more than 125,000 prisoners suspected of participating in the genocide. Its goal is to reconcile the perpetrators to the victims, and not to punish.

Gacacas (ga-cha-cha) traditionally occurred under the shade of a tree, where the village elders heard both sides of a dispute before deciding on reparations. The accused was given the opportunity to admit guilt; the two sides then shared a gourd of banana beer as a sign of renewed friendship. In the modern gacaca the community elects seven volunteers—with no legal training—to sit in place of the village elders. Crimes that once consisted of encroaching on a field or stealing a goat now consist of killing neighbors and...
erecting roadblocks. Both victims and fellow accused gather on weekends to stand as witnesses before the community and describe their experiences involving the accused during the genocide. The judges handwrite their findings into a type of story, detailing even the clothes the dead were wearing when last seen. If the accused admits to the acts, he is sentenced to community service, often building houses for the widows whose spouses he killed. If he does not accept, he can be sentenced to up to thirty years in prison.

I attended a gacaca in Kigali for a man accused of being the chief of a roadblock, killing one man and aiding in the death of two more. A woman stood and described how she knew only that her husband, Hussein, was taken to a stadium where the Tutsis were divided from the Hutus. The accused called Hussein’s name and ordered him taken away. She turned to the accused, pleading with him: “We want you to tell us what you did to Wwanabweri and Hussein. We are here for reconciliation. Tell us what you did.” The accused refused and was sentenced to thirty years imprisonment. He is currently appealing the sentence. Others in the community, I was told, did apologize for their actions.

The gacacas appear to combine the benefits of tribunals and truth commissions. Like a tribunal, the perpetrators are prosecuted and punished, creating the perception that such behavior will not be accepted or ignored. When courts hand down a light sentence for cooperation, they send the message that the accused can expect to reintegrate into the community. Like a truth commission, the victims gain a sympathetic forum to discuss their experiences, and those experiences form part of the community record of the genocide. As the government has no money for therapy to treat post-traumatic stress disorder, human rights activists worry that survivors cannot heal psychologically because they never speak of their experiences during the genocide. Testifying at the gacacas allows survivors at least one opportunity to voice their memories.

The gacacas have their problems. The courts do not conduct extensive investigations into the truth of accusations. A priest on a bus to Cyangugu stated the gacacas were only as truthful as the politicians in the area. Just weeks before we arrived, he explained, a gacaca convicted a Kigali journalist who had upset politicians with his stories. The politicians turned to gacacas for vengeance, convincing the community to testify against the journalist. The priest noted the extreme reverence uneducated Rwandans have for their leaders, saying it was one cause of the genocide.

The gacacas may never be fair—the measure by which the first lead prosecutor of the International Tribunals said the tribunals would be judged. If Hutus perceive the system as unfair, they may easily perceive the courts as a form of victor’s justice, preventing the very reconciliation the gacacas were intended to achieve.

Despite the risk of initiating this new take on traditional reconciliation, Rwandans are hopeful. As we stood in front of a deep pit at Murambi, Immanuel told how the killers there planned to hide the genocide by throwing the bodies into mass graves. If no one survived to tell the story, he said, no one could prove what had happened. Through gacacas, the survivors defy those killers. The Rwandans face their past as they tell their stories and perhaps make “Never Again” part of their future.