Sitting on the grass with sages … standing before judges: Gacacas in Rwanda, between instrumentalization and hybridization

Case study

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From upholding social harmony….

The Gacaca – traditional village tribunal in Rwanda – was not always the court we know today, i.e. the jurisdiction competent to judge some of the crimes committed during the 1994 genocide. Indeed, its origins are much older. "Originally, the Gacaca was a popular court. It consisted in village assemblies during which wise men settled differences, sitting on the lawn or grass"[1]. Usually delivered by the elders of the family, this form of popular justice was subjected to no fixed venue or sessions. All social disruptions came under this form of justice, the object of which was almost "exclusively to restore social harmony"[2]. The finality was not to punish the troublemaker but rather to resocialize him. With this in mind, the "elders" or the "sage", called Inyangamugayo, sought to reconcile the parties through their decisions. This, however, did not preclude potentially very severe sanctions, given the socio-cultural context, as for example the perpetrators' exclusion from the family, which is tantamount to civil death – an alternative to physical death. During the colonial period, as in much of Africa, a Western style juridical system was introduced in Rwanda; but the Gacaca remained a customary practice. During that period all the way up to the moment of independence, the Gacaca continued to play an important social mediation role.

… to national reconciliation

1. Pierre Célestin Bakunda, Rwanda, l'enfer des règles implicites [Rwanda, a Hell of Unspoken Rules], Brussels, 24 June 2007, Présentation of the book « Rwanda, l'enfer des règles implicites », L'Harmattan, 2006, Paris.

2. Françoise Digneffe, Jacques Fierens, « Justice et gacaca : l'expérience rwandaise et le génocide » [Justice and Gacaca : the Rwandan Experience post-Genocide], 2003, p. 15.

In the aftermath of the genocide, the Rwandan judicial and prison systems were in no fit state to deal with the crimes that had been committed. As a result, the government undertook a consultation on the ways and means to be adopted in order to judge the genocidal crimes, but also to induce a national reconciliation. Thus, the discussions organised from 1998 to March 1999 at Urugwiro[3], under the patronage of the President of the Rwandan Republic led the government to explore the "Gacaca solution". Its purpose was to enable the implementation of a justice which, being both local and traditional, would be recognised and accepted by the population. This Gacaca solution is the translation of Rwandan desire (supported to some extent by the international community) to practice post-crisis justice differently: pass form an exclusively punitive justice to a reparative justice involving the entire Rwandan society. After numerous consultations with experts and the population, organised and coordinated by the ministry of Justice, the 25 January 2001 organic law created the Gacaca jurisdictions.

Although the post-genocide Gacaca model differs from the original, it keeps, in principle, certain characteristics that incarnate Rwandan tradition and culture. Thus, the reinvented Gacaca courts have maintained a reparative conception of justice involving the offender, the offended, their families, group or community because the damage goes beyond the individual sphere. Indeed, the response that would be given by a classic judicial system (which would be imprisonment) cannot in this situation bring a satisfactory solution. The author Christian Nadeau argues in favour of such a justice capable of meeting the expectations of Rwandans: "According to John Braithwaite, reparative justice is both a response to the harm caused by the offense and a collective investigation into what the offense reveals about the offender but also the community to which they belong[4]." To repeat the words of Kofi Afande, "all things considered, the traditional African concept of sanction enjoys greater popular legitimacy, while the colonial strain raises suspicion.[5]" Therefore, the Gacaca justice, rooted in the reality and tradition of the country, appears for the Rwandan people as the best instrument for reconciliation.

The Gacaca reinvented: a model of hybridization?

The difficulty in creating post-genocide Gacacas lied mainly with the conciliation between Western and African traditional visions of justice. The first, stemming from postcolonial state law and based on written laws, is centered on the individual and on the sentence. The second, incarnated by the collective responsibility focuses on reconciliation, even if traditional African justice also takes into consideration the punitive aspect of justice which is involved in the process of reconciliation. In fact, other then the name, the traditional Gacaca and the reinvented Gacaca do not share much. Indeed, where a more creative response had been expected from the introduction of Gacacas, the sanctions and judgements delivered have not been that different

3. "These meetings brought together the country's highest authorities, political party leaders and a range of Rwandan institutions. These meetings were intended to address Rwanda's thorny problems: unity and reconciliation, democracy, justice, economy, social affairs, security" from the Parliamentary Commission on MDR Problems Report.

4. Christian Nadeau, « Quelle justice après la guerre ? Éléments pour une théorie de la justice transitionnelle », www.laviedesidees.fr, 23 March 2009.

5. Koffi Afande, « La légitimité et l'efficacité des sanctions pénales dans les pays de l'Afrique subsaharienne – un cas de pluralisme juridicosocioculturel », contribution to the « Sanctionner : est-ce bien la peine et dans quelle mesure ? » congress, Université de Lausanne, 29/30 June 2006, RICPT, n° 3, 2007, p. 277-294.

from what classical, Western style justice would have delivered. The prison sentence is warranted by the gravity of the acts perpetrated, but also because community exclusion is not necessarily appropriate either in a case of genocide or in existing African society. Hence the introduction of a traditional mechanism in line with a specific Rwandan custom did not help find a response to the need for post-genocide reconciliation. This is probably due to the fact that this mixing of justice models was expected to yield a hybridization of the values in which each system was founded as well as of their aims (social harmony versus reconciliation). When it reality it gave birth to new regulation system; which does not satisfy the Rwandan population's sense of justice and re-established social peace. It thus appears that the reinvented Gacacas combine the limitations of the two justices instead of hybridizing them. This is to say that the reinvented Gacacas failed in their mission of reconciliation.

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