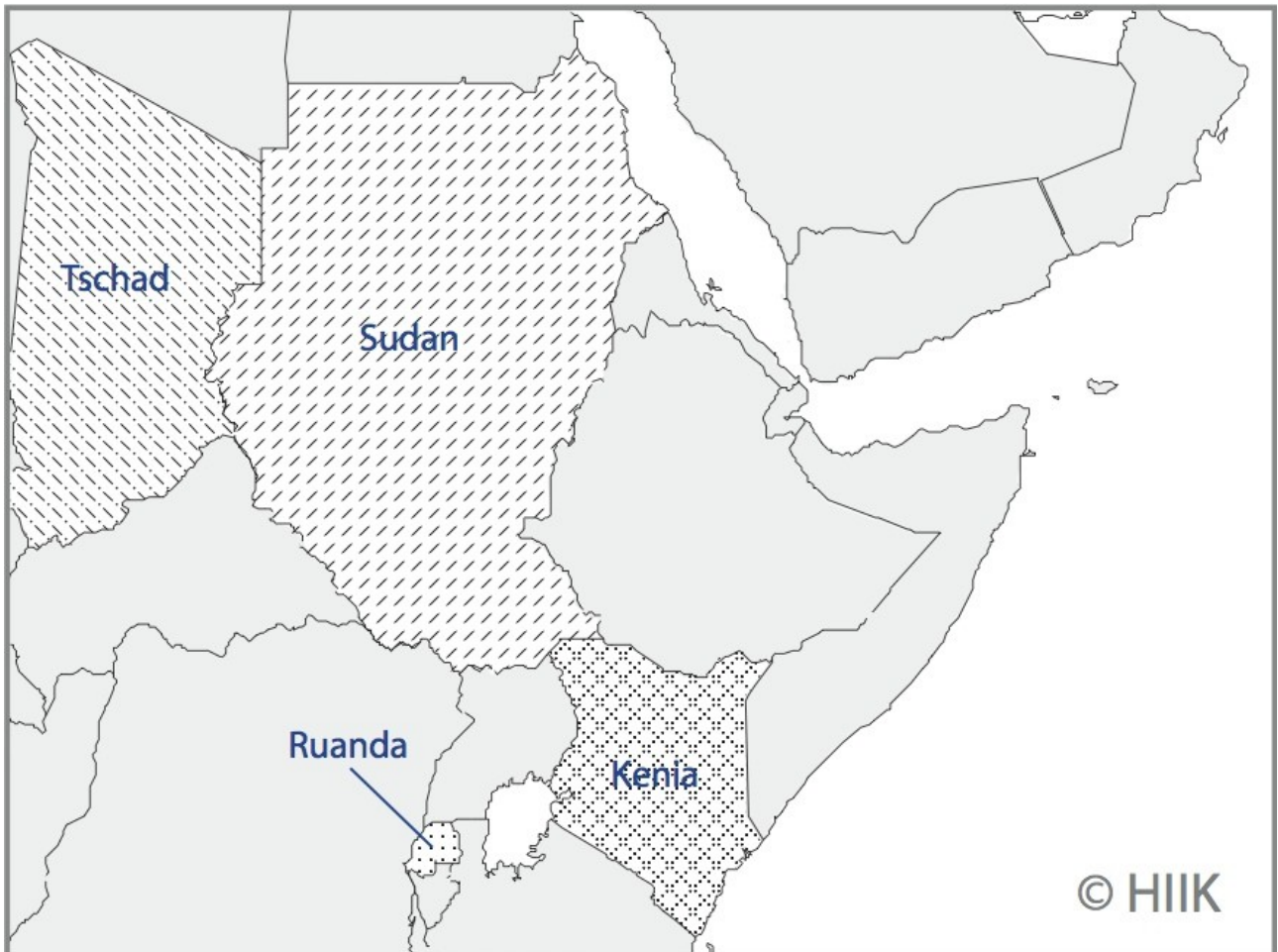


7. The Gacaca Tribunals in Rwanda: Community Justice?

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Legend:

-  5: Krieg
-  4: Ernste Krise
-  3: Krise
-  2: Manifester Konflikt
-  1: Latenter Konflikt

The horror of the 1994 Rwandan genocide cannot be captured by words. Within merely 100 days about 800,000 Tutsi and moderate Hutu were slaughtered by the Hutu army, militias and community members. Today, the legacy of violence remains prevalent and local peaceful coexistence at times precarious. In order to come to terms with the past the government of Rwanda has resorted to traditional conflict resolution mechanisms called Gacaca (“grass” or “lawn”), which have been amended and institutionalised nationally as the official mechanism for rendering justice post-genocide. The presentation during the conference “Civil Society and Civilian Crisis Management” assessed the progress of Gacaca against the government’s objectives. It argued that the new tribunals produce renewed divisions in communities and cause at least as much harm as good.¹

After the genocide the government of Rwanda was confronted with an almost insurmountable challenge. About 120,000 people had been arrested on suspicion of participating in the genocide – 11,000 of whom died within a years due to poor prison conditions – and most of the legal apparatus had been destroyed. Between the commencement of the genocide trials in national courts in 1996 and the launch of Gacaca in 2002, only 7000 accused were tried and it was estimated that it would take up to 100 years to process all others. In order to deal with this dilemma, the government launched a modified version of the local village tribunals Gacaca. For the government, Gacaca pursues the objectives of giving people the means to solve their own problems,

¹ Due to space restrictions, the following arguments can only be sketchy. For detailed discussions see Buckley-Zistel, Susanne: ‘The Truth Heals’? - Gacaca Jurisdiction and the Consolidation of Peace in Rwanda. In: Die Friedens Warte 80, 1-2, pp. 113-129. 2005

speeding up genocide trials, rendering justice, establishing the truth about the genocide and reconciling the people of Rwanda. The rationale of Gacaca is based on the causal logic that truth leads to justice and justice leads to reconciliation. In this sense, their intended function is both punitive and restorative.

At present, about 12,000 Gacaca tribunals convene once a week. They consist of a General Assembly comprised of local people, *Inyangamugayo*, i.e. judges elected from local persons of integrity, as well as the accused who defend themselves. Genocide crimes are divided into three categories:

- (1) planners, active persons in position of authority, well-known killers, rapists and torturers,
- (2) murderers, co-murderers and attackers without the intention to kill, and
- (3) people who offended against property.

Importantly, perpetrators of category 1 charges are not tried in Gacaca, but referred to a higher level court. During the sessions, everybody is free to speak, there is no need for physical evidence but testimonies are sufficient and the sentences can range from community work to life imprisonment.

In order to advance the objectives of Gacaca, the government has introduced the possibility of confessing and plea bargaining for all but category 1 offenders. Each confession has to include all information about the crime, an apology, and the incrimination of one’s accomplices. There is a strong incentive to confess since it reduces the sentences considerably.

Assessment of Gacaca Courts against Objectives

Giving people means to solve their own problems

Communal problem solving requires a high degree of ownership of the process, which is reflected in the extent to which community members participate in the trials. However, nation-wide monitoring of Gacaca has shown that the participation in Gacaca sessions is generally very low and varies according to the different interest groups. As for the accused, even though they confess their crimes and ask for pardon, they often do so in a formal manner without signs of remorse and many seem to expect that their confession will automatically be followed by forgiveness. The General Assembly, on the other hand, does not seem to participate much. Given the demographic constitution of Rwanda, it is comprised mainly of Hutu who, given the close community ties and blood relations, rarely give testimony against the mostly Hutu offenders, unless it is to their defence. As a result, a conspiracy of silence hangs over the Assembly. The survivors, lastly, vehemently charge the accused, in particular since they are highly frustrated about the lack of testimonies from the General Assembly.

The government is aware of these problems and responds with awareness-raising campaigns. Yet since these are often organised from top-down instead of sensitising the audience through discussions, many Rwandans attend meetings out of fear and coercion, rather than choice. This undermines the level of local ownership and thus the potential for Gacaca to be a community mechanism for resolving genocide related problems.

Establishing the truth about the genocide

Even though the confessions were introduced as a way to uncover the truth about the genocide, it now transpires that they are often incomplete or sometimes false. Many accused only confess what is already known and often only implicate accomplices who are either dead or out of the country. Occasionally, an elderly person is paid to confess crimes he or she has not committed so that the real culprits go free. In the General Assembly, many witnesses are cautious of giving testimony since this could mean their exclusion from the community. Individuals have been threatened and some killed so that people are increasingly reluctant to reveal the truth. Moreover, corruption, blackmailing and bribery are not uncommon and social, economic and political power is used to influence potential witnesses. The result, instead of establishing factual truth through Gacaca, is often a combination of lies, power and coercion.

Rendering justice

With truth being a requirement for justice, and as such barely being established in Gacaca, the punitive outcome of Gacaca tribunals can hardly be regarded as just. Moreover, human rights organizations have raised concerns regarding the absence of due process rights, in particular the lack of separation between prosecutors and judges, as well as the absence of legal council and the protection of the accused in case of misrepresented facts. However, Gacaca courts are hybrids between classical Western and traditional Rwandan justice systems and they arguably need to compare less to the standard of Western courtrooms than to local custom.

In addition to these legal concerns, many Hutu feel that Gacaca is a system of 'victor's justice'. In the four years of insurgency war prior to the genocide, as well as during and shortly after the genocide, the troops of the Tutsi army – which now forms the government – allegedly killed 25,000-45,000 Hutu. These killings are not tried in Gacaca and for many people this constitutes a serious injustice, keeping alive ethnic divisions and resentment towards the government.

Speeding up trials and emptying prisons

Even with a limited form of truth established in Gacaca courts, the confession process has led to a number of new accusations. Based on the numbers of newly accused since 2002, the following estimates can be made: the number of category 1 offenders to be dealt with in classical courts will be 50,000, which will continue to overburden the classical justice system. The total number of accused is estimated to be between 500,000-600,000, out of which 400,000 will in be category 2, but so far there are few confessions regarding the 250,000 incidences of sexual violence. These figures suggest that in contrast to the objective of emptying prisons, Gacaca leads to an increase of the number of people accused of genocide crimes.

Contributing to reconciliation

Given the rather slow progress of the Gacaca tribunals, it is still very early days to assess their impact on reconciliation. Nevertheless, based on what has been illustrated so far, some tentative assessments can be made. It was hoped

that Gacaca courts would encourage dialogue and solidarity amongst Rwandans, which does not seem to be the case. Rather, more than a decade after the genocide Gacaca has brought the whole complexity of the legacy of the killings and the circumstance of today's co-existence of victims, perpetrators and their relations to the surface. Even if not outspoken in terms of testimonies, it has brought the genocide back to the communities. Their modus operandi, be it the revelation of truth or the social dynamics that emerge in the process, has brought up disturbing issues without providing a safety net for the communities who then have to live again with mistrust and friction. There is no following up of the consequences of the tribunals. As a result, communities often end up more divided than they were prior to Gacaca. Instead of contributing to reconciliation, in many cases Gacaca courts appear to worsen the already delicate situation.

Despite much initial hope it now transpires that Gacaca tribunals cause at least as many problems than they can potentially solve and the government as well as the international donor community seem increasingly disillusioned. Since halting the process is not possible, to turn at least some of its negative effects around – and to lead to a more positive impact on peaceful coexistence – it is necessary to accompany Gacaca tribunals with trust and confidence building measures and communal mediation. This should however not be on a top-down, national scale but situated in the local communities. A small amount of projects by Rwandans already exist and their expansion should be supported.