The Rwandan Genocide: Gacaca Tribunals and Due Process of Law

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Abstract

The atrocities that occurred in Rwanda have been the issue of the international community for some time now. Books have been written about the evils of the genocide that occurred there. Scholars have had their share of debates and arguments about the issue. Newspapers, government reports and human right organizations have made it their headlines in different events. But after all that has been unfolded in Rwanda, all that was left was over 100,000 suspects and more than a million dead corpses. The government of Rwanda had to devise a system to deal with all those suspects, thus bringing forward a traditional conflict resolving mechanism called the Gacaca tribunals. These tribunals were established in every community and were mandated to address genocide related issues and deal with the suspects. They were also established on the belief that they would bring about transitional justice and reconciliation within the society. These and other factors aside, the tribunals were often criticized for lacking the proper due process aspects of dealing with suspects. The main focus of the paper is to discuss thoroughly these issues and analyze the tribunals on this basis.

Introduction

The atrocities that occurred in Rwanda have been the issue of the international community for some time now. Books have been written about the evils of the genocide that occurred there. Scholars have had their share of debates and arguments about the issue. Newspapers, government reports and human right organizations have made it their headlines in different events. On April 6, 1994 the airplane carrying the then president of Rwanda was shot down nearing its depart point in Kigali airport. A few hours later, Hutu

extremists started carrying out a well planned out genocide. In not more than a hundred days, more than 500,000 people were brutally murdered in Rwanda. Over 3 million fled away to neighboring countries fearing the worst. Over a period of four years (1990-1994) this number was estimated by the Rwandan government to exceed 1 million.

Many scholars attribute the mass genocide that occurred in Rwanda to the general international community specially Belgium and France. The United Nations in particular had the upper hand in repulsing the outcome of such atrocity but it chose to ignore the issue and consider it as a mere internal disturbance instead of a well planned out genocide. Few months after the genocide the international community sent out its deepest regrets and condolence to fathers whose children were murdered in cold blood, to children whose mothers were raped in front of their eyes and to wives whose husbands were mutilated.

Upon cooperation with the Rwandan administration and other organizations the Gacaca tribunals were established as a means of reconciliation mechanism and due to the lack of prison facility to admit more than 100,000 genocidieries. There are around 12,000 tribunals which serve as a mechanism of speeding up the trials and establishing the truth about the genocide. 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. Truths being a requirement of justice, the Gacaca tribunals lack a great deal of it. In addition many human rights activists and organizations argue that the tribunals lack

the due process rights of the victims, lack of separation of the judges from the prosecutors and the absence of legal counsel to the accused.

The main aim of this paper is to deal with some of the core issues related with the accusation that Gacaca tribunals lack due process rights. Furthermore, the paper also looks at the distinct features that separate the tribunals from the normal court system. It also deals with the issue of reconciliation and cooperation the tribunals brought to the Rwandan society. Lastly the paper seeks to look into some of the achievements the tribunals have in the international arena as well as within the Rwandan population. In addition reports by international organizations like the UN and human rights organizations are also included. A point of remark here is that the paper is not an exhaustive research into the whole affair of the Rwandan genocide but seeks to look into the Gacaca tribunals in connection with due process rights of the victims as well as that of the perpetrators. It does not seek to address the issues that came into being in post-genocide Rwanda.

Overview of the concept

Genocide definition

> ...Genocide does not mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objective of such a plan would be the disintegration of the political and social institutions

> of culture, language, national feelings. Religion and the economic existence of national groups and the destruction of the personal security, liberty, health, dignity and even the lives of the national group as an entity and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group[1].

The term *genocide* became part of the legal terminology only after World War II. It was derived from the Greek word *genos*, which translates to race or tribe, and the Latin *cide*, which translates to killing[2]. The Convention on the Prevention and Punishment of the Crime of Genocide affirms that genocide is a crime under international law and defines it as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.[3]

In addition to this, a report on the Rwandan genocide states that the act of genocide is an act intended to exterminate an entire group of individuals for

[1] Raphael Lemkin, Axis Rule in Occupied Europe (1994), ILSA journal of international and comparative law, vol 7
[2] Arthus Jay Klinghoffer, the international Dimensions of genocide in Rwanda, New York University press, 1998
[3] Convention on the Prevention and Punishment of the Crime of Genocide, entered into force 12 Jan., 1951 article I and II

the sake of being themselves alone. Furthermore, a summary agreement of the United Nations on human rights forbids propaganda advocating either war or hatred based on race, religion, national origin, or language[4]. It declares genocide itself, conspiracy or incitement to commit genocide, attempts to commit or complicity in the commission of genocide all to be illegal. Individuals are to be held responsible for these acts whether they were acting in their official capacities or as private individuals[5].

Furthermore to what has been said above the general assembly in its resolution number 96(I) which it adopted on Dec. 11, 1946 states that:

> **…**Genocide is the denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these groups…
>
> The general assembly therefore affirms that genocide is a crime under international law which the civilized world condemns and for the commission of which principals and accomplices, whether private individuals, public officials or statesmen and whether the crime is committed on religious, racial, political or other grounds are punishable**.**[6]

What we can understand from the above statement of the general assembly is that genocide amounts to a crime heinous enough to be condemned by the

[4] Summary agreement of the United Nations on human rights, http://www.hrweb.org/legal/undocs.html (accessed 10 December, 2010)
[5]Ibid, http://www.answerbag.com/q_view/31747 (accessed 10 December, 2010)
[6] Resolution 96(I) adopted by the general assembly, the crime of genocide, Dec.11, 1946

international community. In addition, it also amounts to a crime punishable under international law and principles.

In addition to what has been said above legal scholars give out an international definition of genocide. They state that genocide does not have to start from killings but the mere planning and incitation of genocide also amounts to genocide. The broader picture here is that the conventions article when seen deeply includes acts like direct killing and actions causing death, inflicting trauma on members of the group through widespread torture, rape, sexual violence, forced or coerced use of drugs, and mutilation, The deliberate deprivation of resources needed for the group's physical survival, such as clean water, food, clothing, shelter or medical services. Deprivation of the means to sustain life can be imposed through confiscation of harvests, blockade of foodstuffs, detention in camps, forcible relocation or expulsion into deserts[7].

The crime of genocide has two basic elements: intent and action. The former shows purpose of the action conducted. Statements or orders can be shown to prove intent. But more precisely, it can be inferred from patterns of coordinated acts. Intent differs from motive in that whatever may be the motive for the crime (land expropriation, national security, territorial integrity, etc.), if the perpetrators commit acts intended to destroy a group, even part of a group, it is genocide[8].

[7] Prevent genocide internationally, legal definition of genocide, http://www.preventgenocide.org/genocide/officialtext-printerfriendly.htm (accessed 10 December, 2010)
[8] Ibid

Therefore what we can conclude from the above definitions is that genocide, as defined by many rules and principles as well as legal experts, is an international crime resulting in atrocious and horrific outcomes.

Genocide, Crimes against humanity, War Crimes and Inhumane Treatment

Genocide has been regarded as an international crime since the Second World War and the Genocide Convention, 1948 was a critical step in that process. After World War II, through the relentless efforts of Ralph Lemkin, the concept of genocide as a separate international crime emerged.[9]

Article 2 of the Convention defines the crime of genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- Killing members of the group;

- Causing serious bodily or mental harm to members of the group;

- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

- Imposing measures intended to prevent births within the group;

- Forcibly transferring children of the group to another group.[10]

[9] Genocide and crimes against humanity, Patricia M. Wald, Judge ICTY, Washington 1999-2001

[10] Convention on the prevention and punishment of the crime of Genocide, 78 U.N.T.S.277, entered into force 12 Jan., 1951, article 2

Article 6(c) of the Nuremberg Charter included ‘crimes against humanity ’within the jurisdiction of the Tribunal and these were defined as ‘murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the law of the country where perpetrated’.[11]

The Rome Statute establishes a non-exhaustive list of acts that can amount to crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

a. Murder;

b. Extermination;

c. Enslavement;

d. Deportation or forcible transfer of population;

e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

f. Torture;

g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

[11] Infra no. 15

h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

i. Enforced disappearance of persons;

j. The crime of apartheid;

k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.[12]

The basic textual difference between crimes against humanity and genocide is that crimes against humanity require that the acts prosecuted be part of a systematic or widespread attack against a civilian population. Genocide requires that the acts (which can only be the specific five listed) be committed against a racial, religious, national or ethnic group and be done with the specific intent of destroying the group in whole or in part ‘‘as such.” [13]

The genocidal acts need not be widespread and directed as a systematic campaign against civilians, though the Rome statute states the reverse in defining elements of crime[14]. On the other hand, crimes against humanity as expressed in a judgment given by the ICTY are crimes of a special nature to

[12] Rome Statute of the International Criminal Court, 17 July 1998, article 7 *see also* Article 5 of the Statute of the ICTY 25 May 1993 and Article 3 of the Statute of the ICTR 8 November 1994

[13] Ibid

[14] Supra No.12, article 6

which a greater degree of moral turpitude attaches than to an ordinary crime. In addition the court wrote that "Because of their heinousness and magnitude they (crimes against humanity) constitute an egregious attack on human dignity, on the very notion of humaneness[15]. Apart from the above said differences, the statute of the international tribunal for the former Yugoslavia under articles 4 and five clearly state the difference between the two crimes[16]. War crimes are essentially serious violations of the rules of customary and treaty law concerning international humanitarian law, otherwise known as the law governing armed conflicts. Essentially, war crimes law applies to individuals and international humanitarian law to states.[17]

The ICC statute lists the conducts constituting war crimes. Among them, those constituting "grave breaches" to the 1949 Geneva Conventions entail the obligation of all States to prosecute them. These acts are:

(i) Willful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Willfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;

[15] ICTY case numbers IT-94-1-A Para. 271 (July 15, 1999) and Case No. IT-96-22-A (Oct. 7, 1997)
[16] Statute of the ICTY, adopted 25 May 1993, art.4 and art.5
[17] International Law, Malcolm Shaw, sixth edition, Cambridge University Press, 2008

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.[18]

Many of the same acts may constitute both war crimes and crimes against humanity, but what is distinctive about the latter is that they do not need to take place during an armed conflict. However, to constitute crimes against humanity the acts in question have to be committed as part of a widespread or systematic activity, and to be committed against any civilian population, thus any reference to nationality is irrelevant.[19]

Historical Background of Rwanda's Genocide

How it all started.

> ……..The second was a woman who had been beaten and sexually mutilated, and who lived in terror because her attackers, who had been and continued to be her neighbors, still passed freely by her home every day. The third was a woman who was imprisoned, lashed to a bed for several months, and gang-raped continuously. Her final words to us were the stuff of

[18] Rome statute of the International Criminal Court 2187 U.N.T.S. 90, entered into force July 1, 2002, article 8
[19] Supra No.17

> nightmares, vivid, awful, and impossible ever to forget. She said, with a chilling matter-of-factness: "For the rest of my life, whether I am eating or sleeping or working, I shall never get the smell of semen out of my nostrils."[20]

The above were words of victims of the unforgettable Rwandan genocide. This was just an example but if research was to be conducted on it, there would be about a couple million testimonies.

Finding out a balancing ground as to how the killings started is a debatable issue among scholars as well as both the ethnic groups that were involved in the killing (Hutus and Tutsis). Both the groups existed for centuries together speaking the same language, sharing the same religious beliefs and intermarrying one another.[21] They had a history of less confrontational hostilities.[22] The Hutus had developed as an agricultural people, while the Tutsi were predominantly cattle herders. Yet the two groups had none of the usual differentiating characteristics that are said to separate ethnic groups. An estimation made by one historian states that out of 25 percent of the Rwandan population has both Hutu and Tutsi great- grand parents. If this was to be further extended the percentage would grow to 50 percent. [23]

But soon enough, the whole tolerance and brotherhood became a wedge between the two. The European colonizers, more specifically Germany and Belgium, played a great role in laying the foundation for the extermination

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[20] International panel of eminent personalities, Rwanda: the preventable genocide, excerpt, page 4
[21] Ibid
[22] Peace pledge Union information, Talking about genocide, http://www.ppu.org.uk/genocide/g_rwanda.html (accessed 10 December, 2010)
[23] Supra 20

and killings of people in no less than 100 days. It was the practice of colonial administrators to select a group to be privileged and educated 'intermediaries' between governors and governed. The Belgians chose the Tutsis: landowners, tall, and to European eyes the more aristocratic in appearance.[24] This brought about a racial theory called "Hamitic hypothesis". It stated that the Tutsi came from some Caucasoid race and had Christian origins.[25] This came to be an instrument powerful enough to create discrimination among Hutus and Tutsis. In addition most of the world population came to acknowledge this painstakingly untrue issue and started considering the Tutsi as more intelligent, more reliable, harder working, and more like whites than the "Bantu" Hutu majority.[26] In addition to this, children from Hutu background do not have enough access to education as that of a fellow Tutsi. Identity cards were issued to people bearing the sign "Hutu" or "Tutsi". This was later on used to distinguish the exterminable and the living. More to add to the fuel, the missionaries that came to Rwanda during that time also twisted the Hutus brains so that they started thinking that they were a cursed soul. Since the Catholic Church was in control of most of the schooling activity, it created a new generation filled with what some scholars today call "ethno genesis". In response to this, the Hutus chose an armed struggle and in 1956 a rebellion broke out. Three years later in 1959, the Hutus seized power and started tormenting the lives of their Tutsi brethren. Some Tutsis retreated to exile to neighboring countries and they formed a patriotic Rwandans front called RPF[27]. After their first delight in gaining power - and, in 1962, independence for Rwanda - a politically inexperienced Hutu

[24] Supra 22
[25] Ibid
[26] Supra No.20
[27] Supra No.20 cum. Supra No.26

government began to face internal conflicts as well. Tensions grew between communities and provincial factions. Tutsi resistance was continually nurtured by repressive measures against them. In 1990 RPF rebels seized the moment and attacked: civil war began. A ceasefire was made in 1993, followed by the intervention of the UN in negotiating a new multi-party constitution. This caused a major problem because Hutu extremists and leaders opposed any Tutsi involvement in the government[28].

With these tensions going on, another major and probably the trigger to the whole genocide occurred on April 6, 1994. A plane carrying Rwanda's president was shot down from a ground to air strike when it was about to reach its destination in Rwanda. Shortly afterwards, Hutus started exterminating Tutsis in the surrounding areas. From that point on, the overwhelming number of Tutsi killed in Rwanda died in large-scale massacres. Thousands sought sanctuary in public sites such as churches, schools, hospitals, or offices. Others were ordered by Hutu administrators to assemble in large public areas. In both cases, this left the Tutsi even more vulnerable to Hutu soldiers and civilian forces, which were ordered to kill en masse. For three weeks in April, the party militias, the Presidential Guards, interahamwe, and FAR soldiers killed many thousands of Tutsi every day[29]**.** A little more than 100 days later at least 800,000 women, children and men lay dead on the grounds of Rwanda. Thousands more were raped, maimed, tortured for life. In addition to this, nearly a million refugees exiled to neighboring countries like Zaire and Uganda.

[28] Supra No.22
[29] Supra 14, chapter 14

Aftermath of the genocide

After the traumatizing genocide occurred in Rwanda, many were left helpless, mostly the ones whose relatives were murdered. Rwanda was left in ruins and awaited mourning. In the words of one NGO observer, "Rwandans have been through a national nightmare that almost defies comprehension. Theirs is a post-genocide society that has also experienced civil war, massive refugee displacement, a ruthless [post-genocide] insurgency...deep physical and psychological scars that are likely to linger for decades... and economic ruin so extensive that it is now one of the two least- developed countries in the world."[30] A new government structure had to be built from the ruins. This task was that of RPF, the new rebel group that took control of the remains of Rwanda, after the genocide. The new government had to build Rwanda and its administration from scratch jumping over hurdles of height. The economic condition was devastating. Children needed to be attended to. The victims of the genocide had to see justice being served. The criminal justice system had to be restructured so that the genocidieries receive their punishment and so that deterrence took place. In addition to this, the outside world had to rest assured that Rwanda was a safe haven for investment and other capacity building process to take place at. But the remains of the genocidieries were lurking in neighboring countries like Zaire and abroad sheltered under French umbrella. In addition, there had to be some sort of ground breaking peace creation mechanism among the Tutsis and the Hutus.

Post-genocide Rwanda was, to put it lightly, a mess. The legal system had undergone a seventy five percent loss of judges, prosecutors, and support staff. An estimated 100,000 Rwandans were jailed, waiting to be tried for

[30]Supra no.17, U.S. Committee for Refugees, "Life After Death,"

crimes during the genocide. Prisons were overcrowded and international human rights organizations were beginning to criticize the new Tutsi-majority government headed by Paul Kagame.[31] This new government wanted maximal accountability for all crimes committed during the genocide. However, practicing maximum accountability with mass amounts of perpetrators directly resulted in prisons packed with more than four times their capacity.[32] The judicial system for dealing with those alleged to have participated in the genocide can be divided into three levels:

1) The International Criminal Tribunal for Rwanda (ICTR) was established by the United Nations Security Council on 8 November 1994, with the first trial starting in January 1997. The Tribunal has a mandate to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda between January and December 1994. The ICTR's mandate has been extended by the Security Council until December 2012.

The Tribunal has issued several landmark judgments, including:

- The conviction of the Prime Minister during the genocide, Jean Kambanda, to life in prison. This trial was the first instance of an accused person acknowledging his guilt for the crime of genocide before an international criminal tribunal. It was also the first time that a head of government was convicted for the crime of genocide.

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[31] Gacaca Trials: Rwanda's Local Justice System, http://www.suite101.com/content/gacaca-trials-rwandas-local-justice-system-a247844 (accessed 25 December 2010)

[32] Ibid

- The judgment of a former Mayor, Jean-Paul Akayesu, was the first in which an international tribunal was called upon to interpret the definition of genocide as defined in the Convention for the Prevention and Punishment of the Crime of Genocide (1948). The Akayesu judgment also held that rape and sexual assault constitute acts of genocide insofar as they were committed with the intent to destroy, in whole or in part, a targeted group. It found that, in the case of Rwanda, sexual assault formed an integral part of the process of destroying the Tutsi ethnic group and that the rape was systematic and had been perpetrated against Tutsi women only, manifesting the specific intent required for those acts to constitute genocide
- The Tribunal's "*Media Case"* in 2003 was the first judgment since the conviction of Julius Streicher at Nuremberg after World War II in which the role of the media was examined in the context of international criminal justice.[33]

2) The National Court System of Rwanda prosecutes those accused of planning the genocide or of committing serious atrocities including rape. By 2000, the national courts were still dealing with more than 120,000 suspects awaiting trial and by mid 2006 the national courts had tried approximately 10,000 genocide suspects.[34] In 2007, the Rwandan government abolished the death penalty, which had last been carried out in 1998 when 22 people convicted of genocide-related crimes were executed. This development

[33] Lessons from Rwanda, The UN and the prevention of genocide, justice and reconciliation process in Rwanda, United Nations

[34] "Transitional Justice and DDR in Post-Genocide Rwanda" by Lars Waldorf, International Center for Transitional
Justice, http:// www.ictj.org/en/research/projects/ddr/country-cases/2382.html (accessed 26 December 2010)

removed a major obstacle to the transfer of genocide cases from the ICTR to the national courts, as the ICTR draws to a close.[35]

3) The Gacaca tribunal system To address the fact that there were thousands of accused still awaiting trial in the national court system and to bring about justice and reconciliation at the grassroots level, the Rwandan government reestablished the traditional community court system called "Gacaca" (pronounced GA-CHA-CHA), which became fully operational in 2005. This somewhat unusual form of justice was based in small, informal, often outdoor trials in which criminals were tried right in the village or region where they committed their crime. Gacaca is a traditional form of dispute resolution in Rwanda. Historically, it was used by village elders to settle property disputes, inheritance issues, and marriage problems. Although it had largely lain dormant over the years leading up to the genocide, it was still familiar as a means of dispute settlement. Therefore the Gacaca system was culturally acceptable to nearly all Rwandans, especially in rural areas.[36]

Therefore, after such a devastating and horrifying ordeal in Rwanda, the government brought the scattered pieces of the country together in ways that are unimaginable to build up a Rwanda full of hopes and aspiration that most African countries wish to have. In addition to this, Rwanda did not stay put, but is still striving to achieve a greater goal with the help of none but its own true resources, its people.

[35] Supra no.30
[36] Supra no.28

Gacaca Tribunals-Overview

> **……**If a crime unknown before, such as genocide, suddenly makes its appearance, justice demands a judgment according to a new and effective law."[37]

Brief History of the Gacaca

In their original incarnation, the *Gacaca* were *fora* for the resolution of minor infractions at the community level, such as the theft of cattle, or domestic disputes between husband and wife. Traditionally, Gacaca courts were run by members of the community known as the *Inyangamugayo* or "persons of exemplary conduct"4 who were renowned for courage, honor, justice and truth. The *Inyangamugayo* were special, and were given this role based on their high moral and ethical standards. In traditional Rwanda, when the dispute has been resolved, this would be concluded by a ritual or ceremony, reflecting the symbolic and practical importance of the process. Gacaca sessions often ended with the parties sharing drinks and a meal as a gesture of reconciliation. Serious offences would result in the offender being ostracized from the community.[38]

Functions, purpose and jurisdiction of the tribunals

After the genocide took place there remained around 100,000 individuals to be tried under different categories of offences under the Rwandan laws. In addition to this, there was also shortage of prison administration facility and even if there was one, it lacked the proper conditions of a prison. Thus this

[37] Hannah Arendt, 1964, AAU library archives

[38] Psychological Aspects of Post-Conflict Reconstruction: Transforming Mindsets: The Case of the *Gacaca* in Rwanda, Dr Tony Karbo and Martha Mutisi, Oct 2, 2004

created a huge problem for the "hopeful and aspiring" new government. Most of the judicial administration staff have been killed during the genocide or have fled to different parts of the world. This also created a problem in the judicial administration system. In addition, the already in place trial administration mechanisms (ICTR and the National Court system) were slow in carrying out their activities, not because of lack of diligence and commitment, but because of the quantity of the to be tried participants of the genocide.

Rwandans began thinking about innovative ways of dealing with this challenge. Out of these discussions grew the idea of transforming a traditional Rwandan community based conflict resolution mechanism called Gacaca into a tool for judging those accused of participation in the genocide and the massacres. This system is labeled the "modernized Gacaca" and constitutes an unprecedented legal–social experiment in its size and scope.[39] While traditional Gacaca dealt primarily with relatively minor misdeeds in the community, it was modified to address the serious nature of the genocide-related cases that have been clogging up the Rwandan prisons and courts.[40] Gacaca is regarded by the Rwandan government as the best option for dealing with the overcrowding of prisons and backlog of cases in the courts with the limited resources available to the country. Further on this would be dealt with in the following topics.

Throughout the country, Gacaca tribunals have been created composed of persons of integrity elected by the inhabitants of cells, sectors, districts and

[39] The Gacaca Tribunals in Rwanda, Peter Uvin, Case study,2005

[40] Center for restorative justice and peace making, *The Gacaca tribunals in post-genocide Rwanda*, Toran Hansen, Nov.27, 2005

provinces. Each prisoner will be brought before the tribunal in the community where he or she is alleged to have committed a crime. The entire community will be present and act as a "general assembly", discussing the alleged act or acts, providing testimony and counter-testimony, argument and counterargument. The community will elect among those present 19 people to constitute the bench. These people must be of high moral standing, non-partisan and not related to those accused. The community thus provides the entire framework for the proceeding; the judge, the jury, and the witnesses. From 9,000 to 12,000 Gacaca courts were established all over Rwanda at this time to address the genocide-related offences that occurred in their various communities.[41]

The genocide-related offences have been organized into 4 categories by the Rwandan government. *Category 1* offences address the crimes of individuals accused of organizing, planning, and instigating the genocide, along with the crime of rape; *category 2* offences address the crimes of individuals accused of attacks resulting in the death of the victim; *category 3* offences address the crimes of individuals accused of assaults not resulting in death; and *category 4* offences address the crimes of individuals accused of property offences. The newly created *Gacaca* courts were authorized to deal with category 2, 3, and 4 offences.[42]

First category crimes are forwarded to the Public Prosecution to be tried in the domestic courts and second category crimes to the Gacaca courts of the sector.[43] The tribunals have jurisdiction over crimes against humanity and

[41] Penal Reform International, 2005, Staff Reporter, 2005
[42] Supra no.35, Amnesty International,2002
[43] Infra No.59

genocide committed in Rwanda between October 1, 1990 and December 31, 1994 or other offenses proscribed by the penal code provided they were committed during the said period and with the 'intention' of committing crimes against humanity and genocide.[44]

Structure of the Gacaca[45]

The Gacaca jurisdictions are organized hierarchically along the administrative structure of the country from the Cell to the Sector levels.[46] Accordingly, some 9,013 Gacaca tribunals are set up at the cell level.[47] The structure in each of the 1,545 Sectors in the country consists of two Gacaca tribunals, one with a first instance jurisdiction and another with appellate jurisdiction.[48]

The tribunals have jurisdiction over crimes against and genocide committed in Rwanda between October 1, 1990 and December 31, 1994 or other offences proscribed by the penal code provided they were committed during the said period and with the 'intention' of committing crimes against humanity and genocide.[49]

The Gacaca Courts comprise 4 levels of jurisdiction i.e. The Cell's Gacaca Courts, The Sector's Gacaca Courts, The Sector's Gacaca Courts for Appeal

[44] Rwanda's experiment in People's Courts (Gacaca) and the Tragedy of Unexamined Humanitarianism: A Normative/Ethical Perspective, Dadimos Haile, Discussion paper, University of Antwerp, Jan.2008, page 19 *see also* Organic Law No 16/2004, article 1

[45] Text in: National Service Of the Gacaca, inkiko-gacaca, Rwanda Development Gateway

[46] Articles 3 and 4 of Organic Law No. 16/2004 of 19 June 2004.

[47] NATIONAL SERVICE OF GACACA Jurisdictions, *Report on data Collection*, available at http://www.inkikogacaca. gov.rw/PDF/ikusanya%20english.pdf (accessed 5 January 2010)

[48] Supra No.43

[49] Ibid, art.1

Each of these jurisdictions has 3 organs:

A) The General Assembly

The general assembly of the Cell's Gacaca jurisdiction comprises all the population of the Cell beyond 18 years of age. The Cell's general assembly will contribute to the reconstruction of the facts by establishing the list of persons:

- Who have been killed in the Cell and the goods damaged;

- Who have participated in the genocide

- Who left the Cell where they lived during the war and settled themselves elsewhere;

- Who have settled themselves in the Cell after the war and give the proof that the suspects or those who are on the list of persons who have participated in the genocide and the massacres are guilty or innocent.

The General Assembly of the Gacaca Jurisdictions of the next higher jurisdiction comprises delegates from the Gacaca Jurisdiction of the next lower jurisdictions. The General Assembly of the Sector's, the District's and the Province's Gacaca jurisdiction comprises at least 50 members according to the law.

B) The Bureau of the Gacaca Jurisdiction

The Bureau of the Gacaca Jurisdiction comprises 19 members elected by the General Assembly.

C) The Co-ordination Committee

The Bureau of each Gacaca Jurisdiction elects among its members 5 persons whose mission is to co-ordinate the Gacaca Court's activities. These persons are: one Chairperson, 2 Deputy-Chairpersons and 2 Secretaries who have sufficient reading and writing skills in Kinyarwanda.[50]

The main functions of the Gacaca tribunals can be seen in three main forms

a) The Gacaca trials serve to promote reconciliation by providing a means for victims to learn the truth about the death of their family members and relatives as well as giving perpetrators the opportunity to confess their crimes, show remorse and ask for forgiveness in front of their community.[51]
b) Speeding up the trial and reducing the number of prisoners.
c) Creation of an environment which is based upon a notion of national feeling and consensus.

Sanctions employed by the tribunals

Basically, the sanctions passed by the Gacaca and the domestic courts dealing with genocide can vary from the death penalty to civil reparation where it concerns property offences, with a number of mitigating and aggravating circumstances. Persons of authority, for instance, are always exposed to the most severe penalty handed out in a given category.[52] On the

[50] Ibid
[51] Supra No.30
[52] Infra No. 51, page 11and 12, *see also* Morrill, Constance F. "Reconciliation and the Gacaca: The Perceptions and Peace- Building Potential of Rwandan Youth Detainees." *The Online Journal of Peace and Conflict Resolution*, Fall 2004

other hand, the accused those who were between 14 and 18 at the time of the genocide will have their sentence mitigated, while children who were under 14 cannot be prosecuted at all.[53] The tribunals can impose up to thirty year prison sentences.[54] Conviction by the tribunals may also entail automatic deprivation of civic rights. I.e. defendants who are found guilty of offences falling under the first category face permanent loss of civil rights. Those in the second category permanently lose their right to vote, to be elected, to testify, to possess and carry arms and to serve in the armed forces.[55] The gravity of the penalty varies depending on the category of the offences and on whether or not the accused has entered a plea agreement or confession.

Advantages and limitations of the tribunals

Faced with an enormous backlog in genocide cases, with over 110.000 accused still in prison four years after the genocide, the Rwandan government started to entertain the idea of involving the wider community in their trial around 1998. As mentioned above, the aim of the Gacaca tribunals is three folds. With approximately 10,000 tribunals, it should be possible to judge all prisoners over a much shorter period of time.[56] Given its decentralized nature, its relatively simple and recognizable procedures and the importance attached to local participation, the Gacaca ought to be much better at involving the entire community, including victims.[57] It is assumed that at Gacaca courts, the survivors, witnesses and presumed perpetrators all

[53] Ibid
[54] Ibid, art.72-81
[55] Ibid art.76
[56] The Gacaca tribunals in Rwanda, Peter Uvin, case study, page 118
[57] Ibid

come together to witness "truth telling" and justice in action.[58] Gacaca rewards those who confess their crimes by halving of prison sentences. As a result, hundreds of thousands of prisoners have confessed to participating in the genocide.[59]

The Gacaca procedure could produce more truth than the formal justice system has so far managed to do. In addition, the confessions procedure and the community service commutation option bring significant reductions in length of prison sentences, even for those found guilty. As a result, many people should be able to finally rejoin their families and get on with life.[60] Through the principle of "truth telling," the defendant and witnesses are required to give a detailed description of the offence, how and where it was carried out, the victims, and if applicable, information about where their dead bodies were left. Perpetrators who give full confessions of their genocide acts normally have their sentences significantly reduced.[61]

The system gives people a chance to talk about genocide, and by so doing offers a visible form of justice in which community members have a voice and opportunity to participate in solving their country's problems. As a grassroots and trauma healing effort, the Gacaca courts are envisaged to help rebuild the communities that have been so decimated by the genocide.[62] Apart from leading to inconceivable human suffering, the genocide also

[58] Supra No.48
[59] Psychological Aspects of Post-Conflict Reconstruction: Transforming Mindsets: The Case of the *Gacaca* in Rwanda, Dr Tony Karbo and Martha Mutisi, UNDP/BCPR, Accra, Ghana, October 2-4, 2008, page 10
[60] Supra No.45
[61] Supra No.48, page 15
[62] Supra No.48, page.11

resulted in a great deal of material loss. Property was looted or destroyed, houses were demolished or stolen and breadwinners murdered. The deep poverty of the majority of the population, and particularly of those already victimized by the genocide, remains one of the major concerns in Rwanda today. Officially, the Gacaca also purport to address the material needs of those victimized, through recording damages and sentencing those responsible for committing offences against property to civil reparation. These measures are supplemented by other initiatives like through the help of local NGO's.[63]

However, the Gacaca system suffers from significant limitations:

• It compromises on principles of justice as defined in internationally-agreed human rights and criminal law.

• It could set in motion social dynamics that are unexpected and possibly violent.[64]

On the first point, there is no separation between prosecutor and judge, no legal counsel, no legally reasoned verdict, great encouragement of self-incrimination, and a potential for major divergences in the punishments awarded. In short, the modernized Gacaca system seems to provide inadequate guarantees for impartiality, defense and equality before the law.[65] On the second point, the potentially positive effects of Gacaca in terms of community participation and victim centeredness could well be undone by local social dynamics. A number of such issues must be mentioned here - (a) interference by power-holders, (b) neglect of the gender dimension, (c)

[63] Rwanda's Gacaca: Objectives, Merits and Their Relation to Supranational Criminal Law, Barbara Oomen, University of Amsterdam, Netherlands

[64] Supra No.45

[65] Ibid

population movements, and (d) the broader political and social dynamics in Rwanda.[66]

One factor that can reduce or destroy the potential of Gacaca to produce a measure of truth, justice and reconciliation is interference by power-holders - whether the power they possess is that of the gun, of money or of the state. Even if most power-holders are successfully excluded from election to the Gacaca benches, they will be present during the sessions as well as the periods in between. For whatever reasons - personal vengeance, political conflict, issues of land and property, family ties or simply ideology - they may seek to influence the proceedings. If they do so, the Gacaca process will not yield justice or truth, and it will not contribute to reconciliation. Indeed, it may even do the opposite, rendering people even more distrustful, bitter and ready to embrace ideologies of hatred and contempt.[67]

In addition to the above, the Gacaca law itself poses certain problems. Some of the Articles of the Gacaca Law are vague while others are confusing, and there does not seem to be a clear-cut procedure for addressing these problems. It is unclear that the law will result in a working system of Gacaca courts on multiple administrative levels. Additionally, the punishment structure specified in the law may also pose problems, especially the stipulations regarding community service. There also does not seem to be a clear mechanism established for monitoring the proceedings of the Gacaca

[66] Ibid
[67] Ibid

court, and there is some question as to how prepared the public is to take part in the adjudication of over 100,000 genocide suspects.[68]

Another problem of the Gacaca stems from the reliance on the community to participate in the *Gacaca* process. The government is placing a great deal of confidence in the public to accomplish a task that itself is incapable of accomplishing. Nothing in the law indicates the procedure if no one within a particular community gives testimony or cooperates with the courts. What happens if all the judges resign? How will judges decide who is telling the "truth" if there are competing versions of particular events for which an equal number of people passionately argue?[69]

There is an important gender issue related with the limitation of the Gacaca: if no special efforts are made, women's participation in the Gacaca process may well be minimal. The election of Gacaca judges in October 2001 was a worrying sign in this regard. Relatively few women were elected, varying from one-third of all judges at cell level to only one-fifth at the provincial level. There is concern that women may also be neglected during discussions about restitution and compensation, contrary to the law.[70] Finally, underlying many of these other problems is the question of money.

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[68] The Gacaca Law of Rwanda: Possibilities and Problems in adjudicating Genocide suspects, Anne M. Pitsch, University of Maryland, College Park, MD 20781, USA, August 2002, page 12

[69] Ibid, page 13

[70] Supra No.45, page 120

	Benefits	Short Comings
Gacaca Tribunals	1. Promotes public participation in justice efforts 2. Enables local determination of justice outcomes 3. Some justice is seen to be done even if all Rwandans do not agree it is sufficient 4. Time efficient- quickens the pace of trials 5. Cost efficient 6. Enables collective ownership of the genocide 7. A Rwandan solution 8. Encourages local discussion and debate of events surrounding the genocide (in both public and private spheres) 9. Some standardization of norms of right and wrong, criminality and punishment within the communities.	1. International fair standards are not adhered to; due process and rights are compromised. 2. Untrained judges. 3. Potential for manipulation by the state and local elites. 4. Questionable evidence (for e.g. eye witness testimonies)

Without adequate funding, the Gacaca courts could fail. Simple things like transportation of prisoners to their trials and designating a building to keep records in are needed. Furthermore, money is needed to monitor the trials and to oversee the community service option that can be given as punishment.[71]

Gacaca Tribunals and Due Process of Law

Several scholars have shied away from using the word court to refer to Gacaca because it lacks many of the due process protections that courts provide, and because traditional Gacaca was solely an arbitration system. However, the Rwandan government refers to "Gacaca Courts,"[72] and the law implementing Gacaca confirms that "Gacaca Courts have competences similar to those of ordinary courts…."[73] Like court systems, Gacacia's organization is hierarchical; it has the power to summon witnesses, issue search warrants, confiscate goods, pronounce prison sentences, and consider appeals.[74]

The Rwandan government labels Gacaca a court, it functions like a court, and most importantly, it possesses the power of a court to imprison

[71] Ibid, page14

[72] National Service of Gacaca Jurisdictions, Context or Historical Background of Gacaca Courts, http://www.inkiko gacaca.gov.rw/En/Generaties.html

[73] Organic Law, No. 16/2004, Establishing the Organization, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed Between October 1, 1990 and December 31, 1994, June 19, 2004, art. 51, *available at* www.inkiko-gacaca.gov.rw/pdf/newlaw1.pdf (accessed 5Jan 2011)

[74] The Adjudication of Genocide: Gacaca and the road to reconciliation in Rwanda, Maya Sosnov, 2008, page 147

individuals.[75] Therefore, if the government wants Gacaca to operate as a court, it should follow the due process requirements of a court, as enumerated in domestic law and the international and regional treaties to which Rwanda subscribes.[76] Much of the criticism directed towards Gacaca, voiced primarily by the international and local human rights groups, centers on the practical limitations to Gacaca. Specifically, these critiques point to the incapacity of the government and the community to safeguard against the consequence of community trials. Their strongest critique arises from the Organic Law's lack of adherence to the principle of international criminal law.[77]

Human rights organizations have warned of the violations of due process, the lack of training for judges, and the inconsistencies expected with judgments after plea bargains. The absence of these safeguards is thought to increase the chance of "vigilante's justice" as the flipside to community empowerment.[78]

[75] Supra No.64, art.39

[76] Supra No.65

[77] Amnesty International "Gacaca Tribunals Must Conform to International Fair Trial Standards.",17 December 2002, http://www.amnestyusa.org/news/2002/rwanda12172002.html, (accessed Jan 2, 2011)

[78] Daly, Erin. "Between Punitive and Reconstructive Justice: The Gacaca Courts in Rwanda." New York University Journal of International Law and Politics, 2002, page.383 *see also* African Studies Quarterly, After Arusha: Gacaca Justice in post genocide Rwanda, Alana Erin Tiemessen, volume 8, issue 1, 2004

The rights of the genocidieries to be tried under a competent, impartial and independent tribunal

It is stated under the Rwandan constitution that the Judiciary is independent and separate from the legislative and executive branches of government. It enjoys financial and administrative autonomy.[79]

In addition to this, The International Covenant on Civil and political Rights (Herein after ICCPR) states that: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."[80]

Furthermore, the African Charter on Human and People's Rights (Herein after ACHPR) also states that every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent

[79] Constitution of the Republic of Rwanda **(**O.G N° SPECIAL OF 4 JUNE 2003, P.119) AND ITS AMENDMENTS OF 2ND DECEMBER 2003 (O.G N° SPECIAL OF 2ND DECEMBER 2003, 2003, P. 11) AND OF 8 DECEMBER 2005, article 140

[80] International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, article 14(1)

national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.[81] In addition the Charter also state that every state party to the charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.[82] Moreover, the United Nations (Herein after UN) Basic Principles on the Independence of the Judiciary states that "persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law."[83]

Findings on the significance of appropriate legal training to the independence and impartiality of judges is highly relevant to the Gacaca tribunals, where those who are empowered to try serious criminal cases are not even required to be literate let alone to have legal training.[84] By contrast the criminal files that are presented to such judges, which, when available, comprise the results of the prosecution's investigations and the charges, are usually prepared by

[81] African [Banjul] Charter on Human and Peoples' Rights
adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986, article 7(1)
[82] Ibid, article 26
[83] Basic Principles On the Independence of the Judiciary, U.N. Doc A/ CONF.121/22/Rev.1 at 59, 1985, article 10
[84] Rwanda's experiment in People's Courts (Gacaca) and the Tragedy of Unexamined Humanitarianism: A Normative/Ethical Perspective, Dadimos Haile, Discussion paper, University of Antwerp, Jan.2008, page. 25

the Prosecution.[85] The judges, whose functions are also 'supervised and coordinated' by an executive organ,[86] do not have the necessary background to challenge or make an independent evaluation of the legal and factual issues formulated by learned civil servants.

Therefore, the issue here is not just that the judges may lack independence because of their membership in, or affiliation, with the executive branch or any direct interference by the latter, rather, the lack of training by itself deprives those judges of the necessary autonomy and makes them totally dependent on the relevant government office.[87]

The Denial of the rights of appeal

The Universal Declaration of Human Rights (Herein after UDHR) states that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.[88] Furthermore, the ICCPR also states that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.[89]

Affirming the above provisions, the ACHPR also states that every individual shall have the right to have his cause heard which includes the right to an appeal to competent national organs against acts of violating his fundamental

[85] Ibid *see also* Arts. 34(3), 46, 47 and 59 thru 61 of GACACA ORGANIC LAW NO. 16/2004.
[86] Ibid, *see also* article 49 and 50
[87] Ibid
[88] Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), article 8
[89] Supra No.77, Article 14(5)

rights as recognized and guaranteed by conventions, laws, regulations and customs in force.[90] The Gacaca law allows an appeal from one Gacaca jurisdiction to another, except for the third category offenders who cannot appeal against their conviction. There is also no appellate review where an interlocutory appeal has been lodged against a lower Gacaca court ruling on the classification of defendants.[91]

The Rights to Counsel

The Rwandan Constitution provides that the "the right to defense" is an absolute right at all levels and in any type of proceedings. Also in line with the above, it is also stipulated that the principle of presumption of innocence applies to any accused unless proven guilty in a fair and public hearing where "all the necessary guarantees for defense have been made available."[92]
Similar to this, it is also stated under the UDHR that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.[93]
In addition to the above the ACHPR also states that every individual shall have the right to have his cause heard which includes the right to defense, including the right to be defended by counsel of his choice.[94]

In a case brought before the African Commission it was held that the fact that the applicants were tried and convicted by a "Traditional Court" did not prevent the commission from upholding the right to counsel. The

[90] Supra No. 78
[91] Supra No. 81, page 27 *see also* Supra No.68, article 92
[92] Supra No.76, article 18 and 19
[93] Supra No.85, article 11(1)
[94] Supra No.78, article 7(1)(c)

Commission found that the fact that the applicants were tried without being assisted by counsel constitutes a violation of article 7(1) (c).[95] What makes the Gacaca tribunals conviction worse than any is that it does not allow any form of legal representation and at any level for the accused, which is clearly a violation of the country's Constitution and its international obligations.[96]

Rights of adequate time to defend oneself

The right to be afforded adequate time and facilities to defend oneself is one of the corollaries of the principle of equality under the law, which requires that both the prosecution and the defense must be given equal opportunity to prepare and present their case.[97] The right "to have adequate time and facilities for the preparation of the defense and to communicate with counsel of his own choosing" is one of the minimum guarantees of fair trial as provided under the ICCPR.[98]

The Gacaca law does not require that defendants be promptly and adequately notified of the charges and evidence against them. The lack of such notification in practice combined with the fact that many of the defendants have been detained for more than 11 years and that they will not be assisted by counsel greatly impairs their ability to prepare for their defense and constitutes a violation of the ICCPR.[99]

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[95] *Amnesty International (on behalf of Orton and Vera Chirwa) v Malawi* 69/2 and 78/92, COMPILATION DES DECISIONS: 158, Para. 10

[96] Supra No.81, page 28

[97] Ibid

[98] Supra No.77, article 14(3)(b)

[99] Supra No. 81

Presumption of Innocence

The UDHR states that everyone charged with a penal offence has the right to be presumed innocent until proved guilty. Furthermore, the ICCPR and the ACHPR also guarantee the right of the accused in criminal proceedings to be presumed innocent. In addition to the above even the Rwandan constitution also recognizes this principle.[100] According to the principle of Presumption of Innocence, two main applications must be fulfilled. These are that of burden and standard of proof and that of official presumption of guilt.[101] The prosecution must prove its case and must generally do so beyond reasonable doubt. Another application of the principle is that everyone charged with criminal offence has the right to be presumed innocent and treated as such by all concerned officials until found guilty. The latter dimension of the principle thus prohibits authorities from engaging in conduct that prejudges the outcome of the trial.[102]

The law governing Gacaca jurisdictions says little about evidence and it is not clear if judges have received guidelines regarding the principles at stake based on the country's Criminal Procedure Code. There are no procedures governing what evidence is admissible or inadmissible, and the examination and cross-examination of witnesses. In any case, the possibility of effective cross-examination of witnesses and proper assessment of evidence is severely undermined because defendants do not have legal representation and the judges' lack professional training.[103]

[100] Supra No.76, article 19, Supra No. 83, article 11(1), Supra No. 76, article 7(1)(b)
[101] Supra No.81
[102] Ibid
[103] Ibid

Similarly, the Gacaca law does not provide that the defendant has the right to be silent and that judges are not permitted to take adverse inference from his conduct during the trial including from his unwillingness to speak.[104] A more complex associated with Presumption of Innocence is that of the official presumption of guilt. Dadimos states that the term genocide, as per the Rwandan context, refers only to the time when the Hutus exterminated the Tutsis. I.e. the period between 1990-1994.[105] This implies that the atrocious killings committed by the RPF during the same period are not considered as genocide but are referred to as "revenge crimes".[106] Accordingly, the Gacaca tribunals do not deal with crimes allegedly committed by individuals associated with the RPF on the basis of a classification that prejudges the crimes allegedly committed by the latter. No doubt that acts of genocide are very reprehensible and must be distinguished from other crimes whenever relevant. However, the distinction is not relevant when it comes to the principle of presumption of innocence.[107] As a summary of what has been said above, the Gacaca law violates international human rights instruments, the African Charter and the country's Constitution as a matter of principle because it puts in place a system that, by its very design, denies individuals accused of serious crimes minimum due process and fair trial guarantees.[108]

Conclusion and Recommendation

Rwanda has been a center of attention after the passing of the genocide. Not only did its society shatter to the ground, but the whole country was

[104] Ibid
[105] Ibid, page 31
[106] Ibid
[107] Ibid
[108] Ibid, page 32

devastated due to the aftermath of the horrific genocide. The seeds sowed by the foreign rulers during the time of the colonization of Rwanda had a great effect in the later years that came by. One clan exterminated another clan in the most atrocious ways the world has ever noticed within a period of 100 days. The international community made no reaction to these mass killings of citizens. All the nations of the world were by standers to the situation. Later on the condolence and the "we regret the situation" messages were sent from all over the world. The Rwandan Patriotic Front, after it came to power was greeted with all sorts of problems. The economy of Rwanda was decreasing in an increasing rate. There was chaos in all the four corners of the country. The justice system and individual rights were being violated. The society was traumatized and needed assurance that the safety and security of the nation would be preserved. Moreover, the society also needed assurance that the genocide of 1994 would not be repeated again.

A major task was awaiting the newly elected government and thus everyone was waiting for this ground breaking reform in vain. Upon coming to power, the primary acts of the government were to make sure that the security and well being of all the citizens was protected. Next it had to install a new form of justice e system since the number of prisoners who were convicted was being more than the capacity the prisons could handle. There were about 120,000 convicted genocidieries and the number of prison cells was around 10,000. So this was a major problem. As a result the government even though had already but into action judicial mechanisms into action, had to find a solution.

The government of Rwanda decided to revive the traditional community-based system of justice called Gacaca which were to serve as both a means of restorative justice mechanisms and a method of reconciling among the victims and the perpetrators. They were to some extent very much helpful in reducing the number of prisoners that were being charged. Furthermore, with regard to the social healing process they were effective. International human rights organizations were very much concerned about these tribunals. The main problems that were raised include the tribunals effectiveness with regard to the due process mechanism and the international fair trial standards employed for such grave matters.

Basically, the tribunals are based on the participation of the community. The society serves as the witness, the judge and the advocate. These, as per the international fair trial rules and as per the principles Rwanda adhered to follow, amounts to violation of the due process rights of its citizens. Furthermore, it does not guarantee that the judicial system installed to address the matter is strong enough. But even though the tribunals are somewhat loose with regard to dealing with fair trial standards and due process of the convicted, they are very much helpful. The tribunals are applied by combining modern day court structures with the traditional methods used by Rwandan people during earlier times. Even though they need some structural changes, the tribunals help in bringing about speedy trials and reduced number of prisoners which are confessed before trial and guilty pleas during trial and for community service in place of jail time for some who will be convicted.

The government is in fear that if strict standards of fair trial were to be applied to the Gacaca, they would be no different than the normal court system. But their main aim is not to be same as the normal court structure but somewhat different and bring about changes both judicially and sociologically. It is also a known fact that during the period of the genocide Rwanda's economy deteriorated extremely. Thus the country has no capital to invest on longer trial proceedings. Therefore, it was found better to install the Gacaca in place. Therefore, the Gacaca are found to have met their goals with regard to the basic objectives they were set out to achieve.

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