

How Rwanda  
**judged**  
its  
**genocide**

Africa Research Institute

**COUNTERPOINTS**



## COUNTERPOINTS

The *Counterpoints* series presents a critical account of defining ideas, in and about Africa. The scope is broad, from international development policy to popular perceptions of the continent.

*Counterpoints* address “Big Picture” questions, without the constraints of prevailing opinion and orthodoxy. The arguments are forward-looking but not speculative, informed by the present yet concerned with the future.

In publishing this series, Africa Research Institute hopes to foster competing ideas, discussion and debate. The views expressed in *Counterpoints* are those of the authors, and not necessarily those of Africa Research Institute.

## ACKNOWLEDGEMENTS

The manuscript was edited by Edward Paice.

Africa Research Institute would like to acknowledge the generous assistance of Richard Smith.

Published by Africa Research Institute

April 2012

ISBN 978-1-906329-18-1



Africa Research Institute

---

---

Since 2001, the *gacaca* community courts have been the centrepiece of Rwanda's justice and reconciliation process. Nearly every adult Rwandan has participated in the trials, but lawyers are banned from any official involvement. Human rights organisations fiercely opposed the use of *gacaca* for trying genocide cases, on the grounds that it fell short of international legal standards of fairness. Much criticism reflects legal rigidity towards the unprecedented challenges confronting post-genocide Rwanda – and a limited understanding of the aims of the community courts. *Gacaca* was inevitably imperfect, but also highly ambitious and innovative. While the full impact of the process will not be apparent for many years, *gacaca* has delivered benefits to Rwandans in the spheres of justice, truth and democratic participation. Other societies confronting the aftermath of mass conflict could learn much from Rwanda's approach to local justice.

---

*By Phil Clark*

In a Rwandan village beside a banana palm-encircled lake, a crowd chatters beneath a blue tarpaulin shielding it from the harsh midday sun. Before the crowd on a long wooden bench sit nine elders, mostly middle-aged men and women, who have been elected by the community for their high moral standing. A young man – the president of the panel – stands to address the gathering. He explains that in their midst is a prisoner, provisionally released from jail a week ago, who has confessed to committing crimes during the 1994 Rwandan genocide which, in a little over three months, claimed the lives of between 500,000 and one million Tutsi and their perceived Hutu and Twa sympathisers. The task of those present, the president continues, is to listen to anyone from the village who saw what the prisoner did, to hear from the families of victims about the pain inflicted by losing loved ones, and for the judges to decide the case of the accused.

A murmur is audible as the prisoner walks to the front and stops between the crowd and the judges. He mumbles, and the president tells him to speak up. With head bowed, the man says that he has come to confess to killing his neighbour's wife in the first week of May 1994. He found the woman hiding in bushes as gangs of killers roamed the paths of the village searching for Tutsi. She was crying, and screamed at him to let her go. He pulled the woman out of the bushes and threw her to the ground. He slashed his machete once across her neck, then again, and left her to die.

The prisoner, still staring at the ground, says that he has come to apologise for what he did. He had many years to think about his actions in jail, and his conscience became so heavy that he confessed his crimes to the authorities. After a pause the president asks the assembly if the testimony is true and complete. For a while there is silence. Then a man at the back stands up. Yes, he says, it is true that this prisoner killed his neighbour's wife – but he has failed to mention that the following day he also killed the woman's son with a machete and threw the body in a pit latrine. A woman rises to her feet and says that she too saw the prisoner kill the boy. The president asks the prisoner to respond to these new accusations.

The man raises his head slightly and replies that it is not true that he killed his neighbour's son. When he received word that the boy was dead he himself was miles away on the road to Kigali, fleeing in shame after murdering his neighbour's wife. Amid the ensuing clamour, distinct voices can be heard. "He's lying – I saw him in the village on the day the boy was killed!" "I saw him too – he spoke to my wife in the courtyard that afternoon!" "And he killed others – more than the woman and the boy!"

The president calls for calm, and for each person who wishes to speak to do so one at a time. People start to cry. The judges scrawl on the notepads in their laps. In one week they will have to decide what crimes the man committed during the genocide and what punishment he should receive. When this case is decided, there will be more – more stories of pain and loss, more claims and counter-claims, more details to verify, more decisions to make.

This hearing took place in 2003, in the Bugesera region of southern Rwanda. It represents a common scene from thousands of Rwandan towns and villages which participated in a highly ambitious, innovative and inevitably imperfect court system known as *gacaca* (pronounced “ga-CHA-cha”). Derived from the Kinyarwanda word meaning “the lawn” or “the grass” – a reference to the conduct of hearings in open spaces in full view of the community – *gacaca* is a traditional method of conflict resolution and reconciliation that was controversially revived, transformed and codified in law to address an extraordinary predicament which threatened to overwhelm the post-genocide Rwandan state.

### **Justice without lawyers**

In 2001, approximately 120,000 genocide suspects were detained in festering jails in Rwanda at a cost of US\$20 million a year. More than 10,000 people had died in detention since 1994. There were few judges and lawyers left in the country. The judicial infrastructure had been decimated. Few countries have had to tackle the aftermath of a conflict in which hundreds of thousands were killed or injured by hundreds of thousands of their fellow citizens with such limited legal and financial resources. As *gacaca* identified new suspects still at large, the number of individuals prosecuted eventually swelled to 400,000.

**“The process was intended to involve the people who experienced the genocide first-hand at every stage”**

Broadly speaking, the dual aims of *gacaca* were to prosecute every individual genocide suspect regardless of seniority or social standing, and to begin the reconstruction and rehabilitation of Rwandan society. The process was intended to involve the people who experienced the genocide first-hand at every stage. The duty of prosecution was conferred on respected individuals elected by the local population.

Professional judges and lawyers were excluded from any official role in the trials. In 2001, more than 250,000 lay judges were elected by their communities in about 11,000 jurisdictions. The majority were Hutu. Their training focused on general legal principles and the specific procedures of *gacaca*. In June 2002, *gacaca* was launched as “justice without lawyers”, partly by necessity and partly due to a widespread fear that lawyers would distort the process by dominating hearings and intimidating participants.

## **Scepticism and innovation**

From the outset, most international observers fiercely opposed the use of *gacaca* for trying genocide crimes. In February 1999, when the Rwandan government was still debating the possibility of adapting *gacaca* to meet its needs, the United Nations Office of the High Commissioner for Human Rights (OHCHR) argued vehemently that community-based courts were ill-equipped to handle complex genocide cases.<sup>1</sup> Amnesty International (AI), Human Rights Watch (HRW) and a host of legal commentators have waged a concerted campaign against *gacaca* on the grounds that it falls short of international standards of due process for the prosecution of serious crimes. In a report published in December 2002, AI stated:

“[T]he legislation establishing the *Gacaca* Jurisdictions fails to guarantee minimum fair trial standards that are guaranteed in international treaties ratified by the Rwandese government . . . [*G*]*acaca* trials need to conform to international standards of fairness so that the government’s efforts to end impunity . . . are effective. If justice is not seen to be done, public confidence in the judiciary will not be restored and the government will have lost an opportunity to show its determination to respect human rights.”<sup>2</sup>

Although some foreign donors contributed towards the cost of the community trials, external opposition remains widespread and strident. In 2009, HRW equated “Rwanda’s highly discredited *gacaca* courts” with the military commissions convened by the US government in Guantanamo Bay. Both were described by HRW as “criminal justice systems . . . in which hearsay is admitted before a jury of non-lawyers”.<sup>3</sup>

These critiques of *gacaca* reflect legal rigidity in the face of unprecedented challenges confronting post-genocide Rwanda – and a limited understanding of the aims of *gacaca*. The perspective stems from a narrow conception of justice based on the experiences of the Nuremberg and Tokyo trials after World War II and subsequent tribunals – including the United Nations International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC). International legal orthodoxy emphasises the use of conventional court hearings – typically located far from the scene of the crime – for small numbers of elite suspects who have the right to defence counsel of their choosing before an impartial judiciary.

“ **Critiques of *gacaca* reflect legal rigidity in the face of unprecedented challenges confronting post-genocide Rwanda** ”

This orthodoxy is found wanting when contending with the aftermath of highly decentralised conflicts like the Rwandan genocide. Orchestration of modern conflicts is often diffuse and requires new thinking about appropriate legal responses. The profound impact on civilian populations also highlights the need to pursue broader social objectives. Truth recovery, psycho-social healing and reconciliation are beyond the remit of more conventional, geographically distant, legal institutions such as war crimes tribunals. A desire to separate and insulate the justice process from the affected population underpins the conventional legal approach to justice, ostensibly in order to maintain judicial neutrality.

Many critics of *gacaca* have failed to recognise that a different notion of justice informs Rwanda’s community courts – one necessitated by the particular nature and intensity of the genocide. A rejection of the Nuremberg model of international legal conventions is implicit in *gacaca*. Justice through *gacaca* reflects the high degree of popular participation in genocide crimes (not just the role of elites), assigns to the population

a central role in prosecuting genocide cases (rather than promoting the participation of professional lawyers), and is sufficiently flexible to pursue locally defined objectives (rather than focusing exclusively on punishing perpetrators). *Gacaca* represents an innovative response to genocide crimes, and a challenge to conventional means of establishing post-atrocity accountability.

### **Judging *gacaca***

Critics who fail to judge *gacaca* by reference to its own methods and objectives also ignore significant benefits that the hearings have delivered. These benefits will have an enduring impact on every level of Rwandan society. *Gacaca* has certainly been far from perfect, and the process should not be romanticised by internal or external observers. Among its main shortcomings have been numerous cases of corruption, bribery of judges and intimidation of witnesses, syndicates of liars who colluded to hide evidence, and retraumatised survivors. However, these negative aspects have not been more widespread than could reasonably be expected of a decade-long process involving as many as one million cases in 11,000 jurisdictions.

There has been a tendency on the part of Amnesty International and Human Rights Watch to identify the worst cases of corrupt or traumatising hearings and suggest that they are representative. Such selectivity may be useful from an advocacy perspective but it is analytically flawed – and undermines legitimate criticism of *gacaca*. While the full impact of *gacaca* will not be apparent for many years, it is possible to identify three main spheres in which the process has delivered benefits to ordinary Rwandans – justice, truth and democratic participation.

#### *Justice*

*Gacaca* has been remarkably successful at fulfilling the Rwandan government's promise to deliver comprehensive prosecutions of *génocidaires* without exacerbating the dire overcrowding of jails that necessitated *gacaca* in the first place. Far from being “mob” or “vigilante” justice, as many legal critics predicted, about a quarter of



*gacaca* cases have resulted in acquittal. Many sentences have been commuted to community service, thereby facilitating the reintegration of detainees into society.

**“ A vast genocide case load  
– as many as one million cases –  
has been handled by *gacaca* in a decade ”**

*Gacaca* has also individualised the guilt of those responsible for the genocide. Greater clarity about who, as individuals, did or did not commit genocide crimes is vital for understanding the causes of the genocide, and for community cohesion in the future. Provincial governors, military officials and peasant farmers have been treated equally and their cases heard without regard to political or socio-economic status – an explicit recognition that Rwandans from all levels of society participated in the genocide.

A vast genocide caseload – as many as one million cases – has been handled by *gacaca* in a decade. In fifteen years the International Criminal Tribunal for Rwanda (ICTR), based in Arusha, has completed 69 trials. *Gacaca* has cost about US\$40 million, the ICTR more than US\$1 billion. The financial and social cost of sustaining a huge number of suspects in jail – with no prospect of trial of any kind – was a crucial consideration in deliberations about the creation of *gacaca*. By clearing the backlog of genocide cases, *gacaca* has released much-needed funds and people for Rwanda’s reconstruction.

### *Truth*

The emphasis on popular participation during *gacaca* hearings was conducive to truth-telling and truth-hearing. *Gacaca* has enabled the recovery of truth in the form of facts about the genocide. It has also allowed individuals to tell and hear narratives that help them deal emotionally and psychologically with the past. The gathering of testimony throughout the country provides a rich and diverse repository of historical material regarding genocide crimes. The recently created *Gacaca*

Documentation Centre in Kigali constitutes one of the largest archives concerning a mass crime anywhere in the world – an invaluable resource for Rwandans and foreigners alike.

Suspects and survivors often affirm that the opportunity to speak openly at *gacaca* about events and emotions concerning the genocide has contributed to their healing. In interviews, many suspects claim a sense of release from feelings of shame and social dislocation through confessing to – and apologising for – their crimes in front of their victims and the wider community. Many survivors say that they overcame feelings of loneliness by publicly describing the personal impact of genocide crimes and receiving communal acknowledgement of their pain.

The openness of the community dialogue at *gacaca* is one of its key features. It differentiates *gacaca* from the conventional forms of justice advocated by human rights organisations, in which judges and lawyers control the discourse and discussions are limited to the legal facts deemed necessary to determine guilt or innocence. *Gacaca* pursues these same legal questions but in a manner – and forum – which enables participants to discuss the individual and collective effects of crimes, and to seek some form of acknowledgement or catharsis.

#### *Democratic participation*

*Gacaca* has opened new spaces for political debate and spawned new forms of democratic participation. In a country where the national political arena remains tightly controlled, this poses a major challenge to a government which did not fully anticipate the ramifications of allowing the population to shape the day-to-day running of *gacaca*. Most debates about democracy in Rwanda focus on the national level – particularly the process of presidential and parliamentary elections, media regulation and reform of state institutions. Developments at the sub-national level may prove to be just as – if not more – important for Rwanda's future political trajectory.

I spent nine years observing *gacaca* hearings and interviewing participants. During that time, I witnessed energetic – and highly unpredictable – forms of popular participation. Many hearings lasted eight or nine hours under the blazing equatorial sun. Communities argued over the details of genocide crimes – who had killed whom, by what means, where bodies were buried, what property had been stolen, and who deserved compensation. Complex, often heated, discussions about the nature of justice were commonplace. To what extent should peasant perpetrators be held accountable when the genocide was initiated by political and military elites? Was the imprisonment of the guilty – as opposed to compensation for victims – the preferred outcome of the process?

“***Gacaca* has opened new spaces for political debate, and spawned new forms of democratic participation**”

Many foreign commentators depict Rwandan society as closed and secretive. *Gacaca* has demonstrated an immense capacity for vigorous political exchange. This was especially visible during the prosecution of local mayors, prefects and other senior government officials after the 2008 reform to the *Gacaca* Law. For many participants, the transfer of certain “Category 1” genocide cases from the national courts to *gacaca* proved politically emboldening. The spectacle of former leaders being held accountable in the courtyards and marketplaces where previously they had exercised power was reflected in highly charged hearings.

In the midst of communal debates at *gacaca*, locally elected judges have gained a new moral and political standing in the community because of their ability to guide difficult discussions. Many claim that community members come to them for advice on daily matters because they have proven adept at mediating disputes and providing wise counsel. *Gacaca* has produced a sizeable cadre of skilled political practitioners with a deep knowledge of the divisions and concerns within their communities.

The impact of *gacaca* on local leadership has been especially important for women, who were often among the most active and voluble participants during genocide hearings. Women were excluded from any official role in the traditional version of *gacaca* which dealt with family disputes and day-to-day infractions. In the modern incarnation of *gacaca* almost 40% of judges were female.

Over time *gacaca* became a forum where communities could discuss sensitive and contentious issues beyond its official mandate to prosecute genocide cases. The discussion of crimes allegedly committed by the Rwandan Patriotic Front (RPF) – the current ruling party in Rwanda – against Hutu was controversially forbidden by the Gacaca Law. But I attended numerous hearings in remote villages where Hutu participants debated at great length the failure to address RPF crimes. Judges tolerated, rather than actively encouraged, these discussions – and did not record any of the testimony in their court notes for fear that the transcripts would attract the attention of the authorities in Kigali.

“ **Once underway, *gacaca* took on a life of its own** ”

Inconvenient truths only emerged towards the end of *gacaca*. Participants needed time to gauge what forms of discourse were safely permissible. Communities on the country’s periphery determined that state surveillance of their hearings was minimal and that open debate of controversial topics was possible.

### **Lofty expectations**

The Rwandan government took an enormous gamble in allowing the same population that had experienced the genocide to guide and shape *gacaca*. It was not a solution favoured by all factions within the RPF leadership and other influential elites. The scale, duration and complexity of *gacaca* militated against the degree of centralised control alleged by some international detractors.

*Gacaca* has been a far from homogeneous process. The mass involvement of the population in the trials is unique. Geographical, historical and other local factors determined the nature and outcome of hearings. Local communities moulded *gacaca* to their own ends – sometimes creating significant problems, and often contrary to the objectives of those who instigated the process. Once underway, *gacaca* took on a life of its own.

*Gacaca*'s capacity for fostering open community debate of contentious issues and new forms of local leadership highlights its democratic potential. The long-term impact in this regard will depend on developments in national politics, and the degree to which Kigali-based elites permit more broad-based political involvement and criticism. Regardless of how national policy evolves, Rwandan leaders will have to contend with the desire for substantial political participation which *gacaca* has aroused among hundreds of thousands of ordinary Rwandans.

A major challenge for *gacaca* has been overly lofty expectations about what it could achieve. Many outsiders have never understood the complexity of the process or its diverse objectives – many of which evolved. International criminal tribunals focus on the punishment of leading malefactors and deterrence. It is doubtful that this objective can ever be achieved by legal mechanisms alone. More importantly, much more than deterrence is necessary to produce lasting peace.

The pursuit of reconciliation was enshrined from the outset in the Gacaca Law. In 2008, in response to extensive discussion in hearings over many years, the law was revised to require suspects to request forgiveness as well as confess and express remorse. Reconciliation and forgiveness are – at best – a distant prospect in most of Rwanda. But these are not one-off acts and *gacaca* constitutes an important starting point. Other societies confronting the aftermath of mass conflict can learn much from the substantial political and social dividends of Rwanda's approach to local justice – as well as its flaws and pitfalls.

## Notes

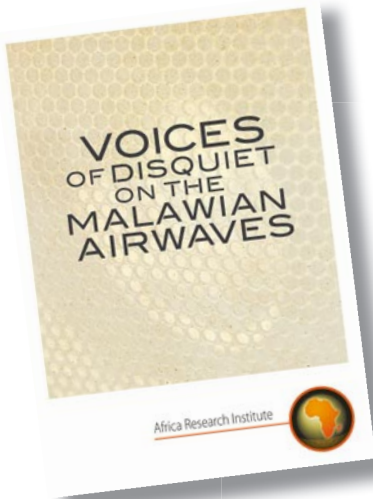
<sup>1</sup> United Nations Office of the High Commissioner for Human Rights, “Report on the Situation of Human Rights in Rwanda”, UN Doc. E/CN.4/1999/33, 8 February 1999, p.12.

<sup>2</sup> Amnesty International, “Rwanda – Gacaca: A Question of Justice”, AI Index AFR 47/007/2002, December 2002, p. 2.

<sup>3</sup> Human Rights Watch, “US: Revival of Guantanamo Military Commissions a Blow to Justice”, New York, 15 May 2009.

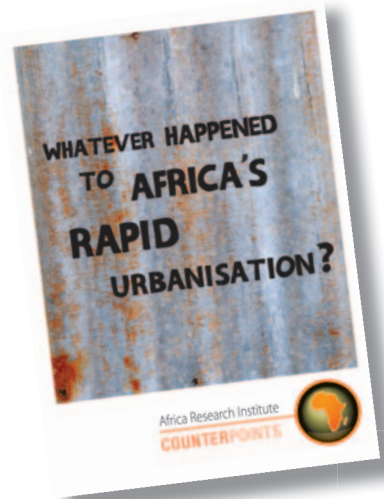
---

Available from our website



**Voices of disquiet on the  
Malawian airwaves**

by Harri Englund  
ISBN 978-1-906329-13-6



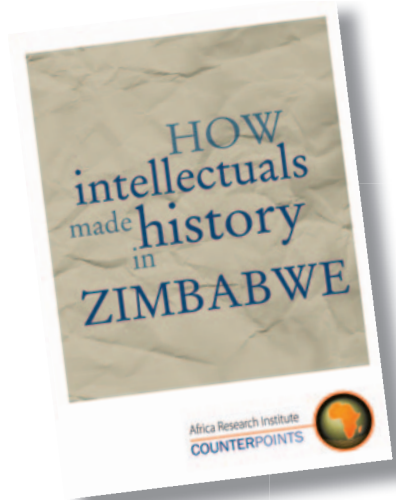
**Whatever happened to Africa's  
rapid urbanisation?**

by Deborah Potts  
ISBN 978-1-906329-17-4



**Why Africa can make it  
big in agriculture**

by Mark Ashurst and Stephen Mbithi  
ISBN 978-1-906329-09-9



**How intellectuals made history  
in Zimbabwe**

by Blessing-Miles Tendi  
ISBN 978-1-906329-11-2

---

[www.africaresearchinstitute.org](http://www.africaresearchinstitute.org)

## **The Author**

Dr. Phil Clark is a lecturer in comparative and international politics at the School of Oriental and African Studies, University of London, and co-founder of Oxford Transitional Justice Research. He is the author of *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (Cambridge University Press, 2010) and *Doing Justice during Conflict: The International Criminal Court in Uganda and the Democratic Republic of Congo* (forthcoming).

## **Africa Research Institute**

Africa Research Institute is a non-partisan think-tank based in London and founded in February 2007. Our mission is to draw attention to ideas which have worked in Africa, and to identify new ideas, where needed.

For free copies of our publications, please contact us on 020 7222 4006 or visit [www.africaresearchinstitute.org](http://www.africaresearchinstitute.org)

Registered charity 1118470

Africa Research Institute  

---

**COUNTERPOINTS**

