Reparation in Rwanda’s gacaca courts

Erkenning binnen de gacaca-rechtspraak in Rwanda

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The Rwandan gacaca courts that dealt with the legacy of the 1994 genocide against Tutsi were inspired by a customary conflict resolution mechanism also known as gacaca – meaning “justice on the grass” – that existed in Rwandan society since pre-colonial times. The grassroots dimension of the modern gacaca lies in the decentralization of the judicial procedure to the lowest levels of society, a popularization or diffusion of the process among lay judges, and the involvement of the general population. Between nationwide introduction in 2005 and official closure of the modern gacaca system in June 2012, over 11 000 courts dealt with 1 958 634 cases of alleged participation in the genocide.

According to government sources and academic analysts, from the moment of its inception, the gacaca process stipulated five goals: establish the truth about what happened; accelerate the legal proceedings for those accused of genocide crimes; eradicate a culture of impunity; reconcile Rwandans and reinforce their unity; and use the capacities of Rwandan society to administer justice based on Rwandan custom. Reparation was not one of these goals. In fact, there has been little attention to reparation for the victims of the Rwandan genocide. The logic of the institutional response has been dominantly retributive and thus focused on (alleged) perpetrators standing trial both at domestic and international level. The former happened mainly through the gacaca courts and the latter through the International Criminal Tribunal for Rwanda (ICTR) and court cases in third countries.

Nevertheless, the modern gacaca system had – by design – a number of characteristics that aimed at facilitating the recognition of and reparation for victims. These characteristics include the confession procedure, which required the perpetrator to ask for pardon, and the gacaca proceedings that dealt with property looted and destroyed during the genocide. A total of 1,320 554 out of 1,958,634 cases (thus 67% of all cases) processed by the gacaca courts dealt with property crimes. It should be noted, however, that these are cases of civil reparation and did not entail the more symbolic dimension often associated with the idea of reparation.

Despite the attention given to the gacaca courts, it remains unclear how acts of apology happened and to what extent they mattered to the victims. In addition, there is little understanding of the operation of trials dealing with looting and the
destruction of property. Did this result in a more restorative type of justice that recognized the dignity of victims or helped to re-establish social relationships?

This article focuses on these two characteristics of the court systems in practice: what was their nature and impact on the lives of genocide survivors? This discussion is based on fieldwork conducted in Rwanda between 2005 and 2012 – when the *gacaca* courts were operational nationwide – when I, together with Rwandan collaborators, observed a total of 1,917 trials dealing with allegations against 2,573 individuals.¹ I first describe the notion of pardon at work in the *gacaca* process, followed by a discussion of civil reparation. A final section concludes.

**PARDON IN THE GACACA PROCEEDINGS**

One key characteristic of the *gacaca* system was the principle of confession. Plea bargaining was instituted to facilitate the collection of evidence. A defendant must “give a detailed description of the confessed offence, how he or she carried it out and where, when he or she committed it, witnesses to the facts, persons victimized and where he or she threw their dead bodies and damage caused, reveal the co-authors, accomplices and any other information useful to the exercise of the public action.”² In addition to revealing factual knowledge, the defendant who confessed was to apologize in public to have his confession accepted and his sentence reduced. According to the *gacaca* law, the defendant should “apologise for the offences that he or she had committed” and these apologies “shall be made publicly to the victims in case they are still alive and to the Rwandan Society”.³

Our own observations reveal that only one in three of the cases the person standing trial actually did ask for pardon. According to the law the victims were not required to grant pardon to the defendants. But through indirect means, such as speeches by dignitaries and local authority figures, it was often suggested that they do so. Very little cases of pardon by victims were observed.

Most of the defendants asking for pardon did so in a formulaic way. Since the law obliged them to ask for pardon they often simply added to their confession, as in a formula, “and I ask for pardon”. A typical example is, by way of illustration, the confession made by Muhire, a resident of a village in south-eastern Rwanda.⁴ As usual, the confession he had initially made in prison and his request for pardon was read aloud during his trial at the start of the hearing:

“In the attack against Mushoza’s, I stole two goats and Muda heranwa (Madonori) took a bicycle and unknown people were killed in the coffee plantation and Sezibera, Muda heranwa (Madonori) and many others were involved in this attack. It was led by Sezibera, we killed two men and Rima and Sezibera clubbed them to death and I apologise to the victims and the State of Rwanda.”

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² Organic Law No.16/2004 of 19/6/2004, art. 54.


⁴ Field observation, south-eastern Rwanda, 10 May 2007. Name of places and individuals are changed to ensure confidentiality.
During his trial there was no further physical or verbal indication of remorse or a request for pardon, nor did the victims announce that they had granted pardon.

During the gacaca proceedings, only very few defendants announced that they would or had visit(ed) the victim(s). For example, during the revision of Jean-Damascene’s trial that had initially taken place in his absence, one of the victims, Patrice, announced: “He asked for a pardon for what he did to me, I don’t feel any grudge against him.” Jean-Damascene had apparently been involved in an attack searching the swamps where Patrice was in hiding. Jean-Damascene managed to locate Patrice’s hiding place. Although not explicitly mentioned during the trial, it was evident to the participants in the hearing that Patrice was supposed to have been killed by Jean-Damascene. But Patrice had a gun, and Jean-Damascene fled before Patrice could use it. Nevertheless, the search party in which Jean-Damascene was involved also found three of Patrice’s children and killed them. During his trial, Jean-Damascene denied the allegation that he was responsible for the killing of these children although he had been part of the attacking group searching the marshes. After Patrice had announced that Jean-Damascene had asked for pardon and that he did not hold any grudge against him, the judges halted the hearing and did not pursue any further information on the involvement of Jean-Damascene in the killings of Patrice’s children. His confession, guilty plea and pardon was accepted by the court and he was sentenced to eight years in prison. He had already been in custody for 10 years and was immediately released.

THE LOGIC OF TRIALS DEALING WITH CIVIL REPARATION

While gacaca trials dealing with crimes against humans were conducted based on the file prepared against a particular defendant, the logic trials dealing with destruction or looting of property was different. These trial proceedings were prepared based on the cases of the victims, not the defendants. And in these cases, the victim was not considered as an individual but as a family, a household. Thus, the lay judges presiding over the court proceedings (the so-called inyangamugayo) would make an inventory of all acts of pillaging and destruction that had targeted a particular household. One representative of the household as well as all the persons accused of the crimes committed against that household would be summoned during the proceedings. We observed a case, for example, in which twenty-two defendants were charged with the destruction and looting of the belongings of the Muberuka household. Twenty of them were found guilty of eating meat from the cow belonging to the Muberuka household and were instructed to pay RWF 5,000 (EUR 6.5) each. Two others were convicted of having stolen six cows and were, therefore, fined with the sum of RWF 600,000 (EUR 782.78) in total. The court also decided that one of the latter two had to reimburse RWF 1,153,500 (EUR 1,504.89) since he was found guilty of having pillaged quantities of beans, nuts, sorghum, maize and manioc.

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(7) Conversion is based on the average exchange rate between 1 July 2006 and 1 January 2012, the operational period of gacaca. 1 Euro = RWF 766.49950
The proceedings dealing with the belongings of the Muberuka household followed the logic of a typical criminal trial. However, two options were possible in cases dealing with looting, theft or destruction of property. One was that the parties in the dispute, victim and offender, could arrive at an amicable settlement with respect to the type and amount of restitution. As the gacaca law makes clear: “if the author of the offence and the victim have agreed on their own or before the public authority witnesses [sic] for an amicable settlement, he or she cannot be prosecuted”.\footnote{Organic Law N°16/2004 of 19/6/2004, art. 51.} In such cases, the judges only supervised and ratified the agreement. The second option was a trial.

I observed continuous efforts by the inyangamugayo to convince the parties involved to reach an amicable settlement in a very high number of proceedings dealing with property crimes. Often a gacaca session dealing with property crimes would start with the judges providing an overview of the cases that needed to be dealt with that day. Subsequently the judges would verify who had already reached an agreement. The judges would ask the disputing parties to reach an agreement with one of the local administrative authorities as a witness. The authorities stipulated the nature of the agreement in a document that all parties involved would then sign, and they would subsequently send the document to the gacaca court as a record of the agreement.\footnote{Field observation, central Rwanda, meeting with authorities, 7 June 2007.} Cases where the parties had taken these steps would not be discussed during the gacaca hearings. The judges would only note the agreement and identify the modalities of restitution the parties had decided on. In the remaining cases – where an amicable settlement had not been reached – the judges would first encourage the people involved to reach a settlement between them. They generally provided this encouragement before the actual trial proceedings but sometimes also during the trial itself.

When there was no mutual understanding between the parties in a dispute, a trial took place that followed the same procedures as trials dealing with crimes against humans. At the end of these proceedings the judges came to a decision on the nature of the restitution. Trial proceedings dealing with property crimes were very common despite the effort of the judges to reach amicable settlements. Multiple defendants stood trial jointly in almost all cases at the cell level. Some of the defendants in a case might already have reached an amicable settlement with the victim(s) while others...
did not. In such a situation, the two options were at work in one and the same case. For example, the court in a village in central Rwanda pronounced a verdict regarding the belongings of the household of Jérémy Habyambere that were pillaged and damaged during the genocide in 1994. Habyambere was deceased and his wife, Mukayuhi, represented the household during the proceedings. In total, seventeen of the defendants were found guilty. Sixteen of the defendants were instructed to pay RWF 70,000 (EUR 91.32) each in order to compensate for pillaged and damaged goods with an estimated value of RWF 1,128,000 (EUR 1471.62). One defendant was only found guilty of having cultivated one of the plots of land belonging to the Habyambere household and was instructed to pay RWF 8,000 (EUR 10.43) as damages. Three defendants were acquitted and five defendants reached an amicable settlement with the victim. The court heard the latter during the case in order to verify that they had reached an agreement, but they were not mentioned when the verdict of the court was pronounced.

As mentioned, the dominant response to the Rwandan genocide was retributive, also at the level of the gacaca courts. Crimes against humans were dealt with in typical prosecutorial way with the (alleged) perpetrator at the center of the proceedings. Was there more room for restoration and recognition of survivors, genuine acts of pardon and reconciliation in the courts that handled cases of theft and destruction of property? Because the logic of these proceedings was different, oscillating between typical trials and mediation, it could have resulted in the experience of a more restorative type of justice-seeking. The act of exchanging goods in the Rwandan socio-cultural universe carries with it a number of connotations, including restoring harmony and the (re-)creation of a social bond. The concept of pardon is not typically implied in these actions but is closely associated with them.

We did observe acts of pardon and reconciliation during proceedings dealing with cases of looting and destruction of property. For example, the son of one of the victims pardoned 24 defendants who were supposed to compensate his family for pillaged and destroyed goods. He announced: “whether you recognize your fault or not, I pardon you anyway.”

In another case, a genocide survivor reduced the amounts of money to be restituted in light of the precarious economic situation of the two men sentenced for
pillaging her belongings. She only did so after the two men had accepted the verdict of the court. A third man, represented by his wife during the trial proceedings, was not granted such a favor because his wife had denied the claims that her husband had been involved in the pillaging. She thus had to reimburse the full amount the judges had decided upon.

In central Rwanda, the mother of an absent defendant was obliged to pay the sum of RWF 200,000 (EUR 260.92) for two cows her son had pillaged. The woman did not contest the punishment and promised to do everything necessary to honor the agreement. In response, the victim reduced the amount to a total of RWF 150,000 (EUR 195.69) as a sign of goodwill. Moreover, he added that this exchange would mean that their families would be connected “with a pact.” The man referred to a so-called “kunywana” or blood pact, which historically would formalize a friendship, as opposed to a client relationship. The exchange of gifts, especially cows, was central to such pacts, and it carried a serious moral commitment; breaking the pact would cause harm. Because the man evoked the significance of a blood pact in the context of the amicable settlement, I considered his words to be an important token of some sort of “symbolic closure” for the people involved.

But acts like those above did not dominate the nature of the proceedings. Over half of the cases dealing with property needed a criminal trial and thus functioned according to a prosecutorial and adversarial logic. Moreover, cases of looting and destruction of property resulted in a significant increase in the number of people found guilty of genocide crimes. To understand this trend, it is important to reiterate that restitution was not individualized: it was a family affair. Thus, if a defendant on trial for property crimes was deceased or abroad, a family member represented him or her. If the absent defendant was convicted, his family had to execute the judgment. This had no statutory basis but was a matter of custom. Especially near the end of the gacaca process, the judges resorted to imposing collective punishments on innocent people. In such a case in the north of Rwanda, the court found 22 people living in the vicinity of a genocide survivor whose house had been pillaged during the genocide collectively guilty of that crime because these “people were unable to identify the person that had pillaged their neighbor.” In sum, they needed to repay the amount of RWF 1,200,000 (EUR 1,565.55). It is questionable whether this measure helped to re-establish the social bonds genocide had broken since it resulted in the collectivization of guilt towards people that were de facto innocent.

(12) Field observation, southeastern Rwanda, 7 June 2007.
(13) Field observation, central Rwanda, 3 August 2007.
(14) Field observation, northern Rwanda, 20 October 2009.
Because the (re-)humanization or (re-)socialization of victims does not occur if an action or interaction is not perceived as a genuine form of recognition – and in fact actions and interactions that are perceived as non-genuine result in the opposite dynamic – the act of pardoning during the *gacaca* proceedings did not often result in any change in the social relationships between victims and perpetrators. Most perpetrators who had confessed, and at times also the victims, mostly gave such pardons in a formulaic, state-sanctioned manner. With respect to actions that facilitate the recognition of victims, the *gacaca* experience demonstrates how a difference can (needs to) be made between confessing that happens in the legal arena and accepting moral responsibility and showing remorse characterizing religious practices when one asks pardon during a rite of confession.

In addition, the *gacaca* proceedings that dealt with property crimes and were organized as mediation – not as a trial – had the most restorative and conciliatory potential. Cases in which both parties attempted to give something appeared to have the most conciliatory potential. In such cases, the perpetrator restituted material objects or money according to his abilities, and the victim reduced the value of the stolen property. It was not the monetary value that mattered in these cases but the restoration of the social relationship through the act of giving. These acts allowed for a new or renewed conviviality, the sharing of drinks, invitations to festivities, and other forms of socializing.

On the other hand, whenever the restitution of property followed a judicial logic – when mediation was not an option it created conflictual situations, an “us vs. them” dynamic. A high number of property cases needed such a trial proceeding. Mediated cases had more conciliatory potential because the nature of the settlement and the process of settling the dispute could tacitly imply an act of pardon. However, most of these mediated cases happened under considerable pressure, and consequently people often perceived them as not being genuine.
REFERENCES


