



# Gacaca as seen from the perspective of international human rights

Gunnar M. Ekeløve-Slydal  
Deputy Secretary General



THE NORWEGIAN  
HELSINKI COMMITTEE

# Genocide in Rwanda

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- Took place in the context of a war between the Rwandan government and the Tutsi RPF, attacking Rwanda from Uganda since 1990
  - There was a UN sponsored peace agreement and UN forces on the ground
  - There were plenty of warning signs that massacres and large scale killings of Tutsi would take place
  - 6 April 1994 crash of Presidential plane, triggered the genocide, but it was pre-planned and prepared
    - Official Rwandan commission has concluded that Hutu extremists shot down the plane, but some think otherwise
    - During the next 100 days, government, army, local militia, and ordinary citizens killed an estimated 800 000
    - The RPF won the war and stopped the genocide. UN failed to act
    - RPF committed large scale war crimes, but not genocide



# Dilemmas

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- “Delivering justice for mass atrocities is a daunting challenge, and the scale and complexity of the genocide would have overwhelmed even the best-equipped judicial system” HRW
  - Judges and lawyers killed during the genocide
  - Infrastructure destroyed
  - In 1998, about 130 000 in inhuman prison conditions, waiting for their case to be dealt with
  - Low speed in dealing with cases in the ordinary courts: would take an estimated 200 years to finish the genocide cases



# Possible solutions

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- Amnesties
- Inviting foreign judges, prosecutors etc. to speed up proceedings
- Gacaca: involving ordinary citizens in investigation and trials



# “There should be accountability”

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- Human rights organizations and institutions frequently argue that blanket amnesties should be avoided and there should be put an end to impunity
  - Grave crimes threaten the peace, security and well-being of the world
  - Accountability necessary to prevent future crimes
  - It is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes



# The Gacaca solution

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- *Gacaca* is a pre-colonial conflict resolution institution in Rwanda
  - Respected community elders came together to mediate family and inter-family disputes related to property, inheritance, person injury, and marital relations
- Modern *gacaca*
  - To deal with genocide related crimes (not war crimes committed by RPF)
  - Punitive (resulting in prison sentences or community service), although reconciliation remained an objective
  - Linked to the state apparatus
  - Applied codified law
  - Judges were elected



# An enormous task

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- Since 2005, over 12 000 *gacaca* courts have tried about 1,2 million cases
- Initial designed to hear relatively less serious crimes, but over time also very serious crimes were transferred to *gacaca*
- *gacaca* has still not finished its task, since authorities have concluded that many cases should be reviewed because of possible miscarriage of justice



# UN Human Rights Committee concerns

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- In 2009, the UN Human Rights Committee concluded that the *gacaca* system did not operate in accordance with basic fair trial rules
  - “While acknowledging the serious problems confronting the State party, the Committee notes with concern that the *gacaca* system of justice does not operate in accordance with the basic rules pertaining to the right to a fair trial, particularly with regard to the impartiality of judges and protection of the rights of the accused.”



# The critical points

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- *Gacaca* does not honor fair trial principles, including the right
  - to a lawyer
  - to be presumed innocent
  - to be informed of the charges against oneself
  - to have adequate time to prepare a defense
  - to be present at one's trial and to confront witnesses
  - against self-incrimination
  - not to be tried twice for the same crime
  - to be free from arbitrary arrest and detention
- Lack of legal training of judges
- Reports of corruption
- Lack of respect for the principle of equality of arms, in particular in cases where sentences of up to 30 years' imprisonment may be handed down
- Too speedy trials
- Selective justice



# The response of the Rwandan government

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- The transparency of the gacaca process
- The participation of the entire population would legitimize the process and protect the right of all participants
- The genocide happened during daylight
- The non-professional character of the *gacaca* will maximize the community's sense of ownership



# However...

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- There are well known cases where *gacaca* trials were corrupted and violated Rwandan law
  - The case of Francois-Xavier Byuma, where the judge had been accused by the children rights organization he led of raping a 17 years old girl
  - The story of Theodore Munyangabe: acquitted by ordinary court, convicted by a *gacaca* court



# *Gacaca* a good solution?

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- According to President Paul Kagame, *gacaca* is an “African solution to African problems”.
- It should:
  - Reveal the truth about what happened;
  - Accelerate genocide trials
  - Eradicate the culture of impunity
  - Reconcile Rwandans and reinforce their unity; and
  - Prove that Rwanda has the capacity to resolve its own problems



# The official Rwandan view

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- *Gacaca* is portrayed as a success, although with some problems
  - “Through *Gacaca* we have been able to judge and resolve more than 1 million dossiers, a great achievement that would have been impossible otherwise.”
  - “Under *Gacaca*, people have received prison sentences of between five and ten years, life sentences constitute just five to eight percent of verdicts while between 25 and 30 percent of cases have ended in acquittal. The community work ruling as an alternative to prison has allowed people to live in their homes and carry out their sentences about twice a week, learning to live together and move on.” Tharcisse Karugarama, Minister of Justice



# Rwanda and critical human rights organizations

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- Authorities reacts negatively towards critical reports by human rights organizations
  - The Rwandan government in a statement of 31 May, says “It is a great shame that Human Rights Watch has chosen yet again to chase headlines with its choice of title for today’s report about Gacaca [Justice Compromised: The Legacy of Rwanda’s Community-Based gacaca Courts] rather than reflect the truth.”
  - “Human Rights Watch has chosen to base its verdict of Gacaca by citing a handful of cases which went wrong and then implying that the whole 1.2 million can be assessed in the same light. This is unwarranted and makes a mockery of the efforts of all Rwandans who are working together to promote justice and reconciliation.”  
Tharcisse Karugaramwe, Minister of Justice



# However...

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- The HRW report is rather balanced, stating that the gacaca courts will “leave behind a mixed legacy”
  - It includes explanatory comments by the Rwandan Minister of Justice
  - It includes positive assessments by genocide survivor’s etc.,
- Need for better dialogue!

