

# REPUBLIC OF RWANDA



## MINISTRY OF JUSTICE

# RWANDA'S EXPERIENCE WITH TRANSITIONAL JUSTICE: THE CASE OF GACACA COURTS

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# THE CONCEPT OF TRANSITIONAL JUSTICE

- **Transitional justice** refers to the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response.
- It could be also a way for States in which violent conflict occurred or that were under authoritarian rule, to come to terms with the past and build a shared democratic and just future for all.

# RWANDA IN 1994: THE NEED FOR TRANSITIONAL JUSTICE

- ❖ Loss of more than 1,070,000 people (killed, tortured and raped) and properties destroyed;
- ❖ Human bodies and mass graves all around the country;
- ❖ Hundreds of persons into internally Displaced Persons' Camps;
- ❖ New 3,000,000 refugees in neighbor countries;
- ❖ About 2,000,000 former refugees returning home;
- ❖ Threat of former regular army and militias members attacking the country to continue killings;
- ❖ Continuous military training and ammunitions' supply in new refugees camps;
- ❖ No bank, school, Public Administration office, Health Center,...neither Court properly operating;
- ❖ Some Judicial organs' members have participated in the genocide and fled, others have been killed;
- ❖ About 120,000 suspects of genocide in detention facilities awaiting for judgment;
- ❖ Hundreds of other suspects run freely throughout the country;
- ❖ No legal regime for prosecuting and judging suspects of genocide;
- ❖ **Rwanda was a quasi-failed State with a judicial system completely wiped out.**



# GACACA COURTS

- ‘Gacaca’, which translates to justice ‘at the grassroots level’, was a traditional judicial communal mechanism used to settle family and community disputes. Its major objective was to reintegrate those in the wrong back in the community and in this way lead to reconciliation.
- People of integrity, trusted elders and leaders in the village known as *Inyangamugayo* facilitate a discussion that any member of the community can take part in. Once everyone has had their say, the *Inyangamugayo* reach a decision to resolve the problem. If the decision is accepted by all members of the community, the meeting ends usually with sharing a drink as a sign of reconciliation and community continuity.

# GACACA COURTS CON'T

## Creation of *Gacaca* Courts: Rationale and Reasons

- ❖ In the aftermath of the 1994 genocide against the *Tutsi*, the newly established Government struggled to pursue justice.
- ❖ Given the prevailing condition, where hundreds of thousands of Rwandans had been involved in the genocide and that no judicial organs were functioning; Rwanda found itself left with no options but to think of a solution peculiar to the situation at hand.
- ❖ In 2002 Rwanda revived its traditional Gacaca Courts. Five main reasons:
  1. Truth;
  2. Speed
  3. Stand up to the culture of impunity of impunity;
  4. Strengthen Unity and Reconciliation and
  5. Involve every one and test the capacity of the Rwandan society to solve its own problems.

**Note: Classic criminal courts would not have delivered on these objectives.**



# ACTIVITIES OF GACACA COURTS

- ❖ The activities of the Gacaca courts were carried out in **two phases**:
  - Information gathering phase;
  - Trial phase
- ❖ Gacaca courts activities were carried out at **three levels** of jurisdiction:
  - The Gacaca Court of the Cell;
  - The Gacaca Court of the Sector; and
  - The Gacaca Court of Appeal.
- ❖ Nationwide there were **9013** Gacaca Cell courts, **1545** Gacaca Sector courts and **1545** Gacaca courts of appeal.

**Note:** A person had an advantage of having a reduced punishment for full and voluntary disclosure.

# JURISDICTION

- The Gacaca Courts had primary competence of collecting information from Cell level, aided by the people in their respective areas of the jurisdiction. These people could meet in the “General Assembly of the Cell level of Gacaca Court” and put the suspect in the following categories 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>.
- After identifying the suspects placed in the 1<sup>st</sup> category Gacaca courts would refer him/her to ordinary Courts
- To try the suspects in 2<sup>nd</sup> and 3<sup>rd</sup> category, basing on the weight of the crimes a suspect had allegedly committed due to which he/she was placed under category 2 or 3 (Sector level).
- Gacaca Courts also had competence to try persons who committed offences against property (Cell level);
- At the appeal level, Gacaca courts had the competence to try cases at the appellate jurisdiction cases admitted for review based on new evidence.



# GACACA COURTS KEY PILLARS:

## 1. Reconciliation

- In accordance with the Gacaca law, '**Justice and Reconciliation**' was described as the main objective of the whole Gacaca process.
- The main method through which Gacaca courts contributed to national reconciliation was encouraging public participation and truth telling during the process.
- Perpetrators tried under Gacaca were reintegrated into the community. This is unlike the convicts from classic courts and other countries whose sentences were prison terms.
- This process provided community with the space to share and grieve together and in the end enable the reintegration of perpetrators into their society.
- At the end of the day, victims and perpetrators had to live together side by side again, and with punishment alone, this could not be done.

# GACACA COURTS KEY PILLARS CON'T

## **2. Restorative Justice: Community Service as an alternative to imprisonment**

- Gacaca provided a form of restorative justice through community service, truth telling and acknowledgment and this made it possible to begin the reconciliation process.
- Justice, and in this case restorative justice, is a significant component for reconciliation.



# GACACA COURTS KEY PILLARS

## CON'T

### **3. Public participation in the process**

- The high degree of popular participation generated a sense of legitimacy among the population which as result brought conflicting groups back together to move the country forward. Rather than focusing solely on punishment, and using professional lawyers, Gacaca provided the population with a central role in the proceedings and outcomes of the entire process.
- This way, they allowed Rwandans to own the process of justice and work together to find solutions to move forward.

# GACACA COURTS KEY PILLARS CON'T

## 4. Truth

- Truth telling on the other hand provided crucial truth for victims' families to be able to bury their loved ones and achieve closure. Although the victims' families and the survivors need justice done, they would not be able to forgive without truth.



# MAIN ACHIEVEMENTS OF GACACA COURTS (2002-2012)

- In 10 years, Gacaca Courts tried **1,958,634** genocide related cases. This hugely contributed to the eradication of the culture of impunity and dispensation of justice to the victims.
- Among the cases mentioned above **1,320,554** concerned properties destroyed or damaged while **638,080** were cases related to crimes committed against persons.
- The courts were and remained credited with laying the foundation for peace, reconciliation and unity in Rwanda.
- Many Rwandans agree that it has shed light on what happened in their local communities during the 100 days even if not all of the truth was revealed.
- It helped many families find relatives' bodies which they could finally bury with dignity.
- The Gacaca Courts process confirmed the resilience, self-confidence and hope in Rwandans capacity to solve their own problems.

# MAIN ACHIEVEMENTS

- Bringing to justice all Genocide suspects from the instigators to the implementers was the best way to leave a lesson of respecting human rights to all Rwandans of all layers.
- Gacaca trials also served to promote forgiveness and also gave perpetrators the opportunity to confess their crimes, show remorse, ask for and receive forgiveness in front of their community.
- The dedication of all actors particularly *Inyanagamugayo* during the Gacaca Court Process clearly demonstrated the spirit of Patriotism and deep-rooted connection of Rwandans to their Country.



# KEY CHALLENGES

- Killing and intimidation of survivors of genocide, witnesses and *Inyangamugayo*;
- Some *Inyangamugayo* accused of participation in crimes of genocide;
- Refusal to testify;
- Partial confession of crimes

# GACACA'S SPILL OVER EFFECTS TO JUSTICE IN RWANDA

- Gacaca courts served as a community based method of conflict resolution and reconciliation;
- This inspired a series of other **home-grown solutions** aimed at disputes settlement in a peaceful way, including:
  - *Abunzi* Mediation Committees;
  - Neighbors' Councils (*Inteko z'Abaturage*);
  - Mediation councils before resorting to litigation
- A law on criminal procedure code (2019) has introduced plea-bargaining procedure.
- Rwanda is pursuing more out of court's dispute resolutions mechanisms (A comprehensive Alternative Dispute Resolution Policy).



# CRITICISM LEVELLED AGAINST GACACA COURTS

- Lack of legal representation
- Self incrimination
- Corruption / collusion leading to injustice
- Low intellectual capacity of the *Inyangamugayo*
- It was neither inquisitorial nor adversarial

# GACACA COURTS EVALUATION

- The Centre for Conflict Management of the National University of Rwanda (CCM) carried out the research to determine the extent to which the Gacaca Courts attained its five set objectives and came up with the following results:
- Finding out and disclosure of the truth about Genocide: **83.5%.**
- Speeding up of genocide trials: **87%.**
- Putting an end to the culture of impunity: **86.4%.**
- Strengthening unity and reconciliation: **87.3%.**
- Demonstrating the capacity of Rwandans to resolve their own problems: **95%.**

**Note: The total average percentage being 87.84 %.**



# CONCLUSION

- ❖ The Gacaca system was modified to meet international standards to the best of its capacity and was successful in contributing significantly to reconciliation in Rwanda.
- ❖ Gacaca, a ‘traditional’ system, laid the foundation for Peace, Reconciliation and Unity in Rwanda. Its ability to process a huge number of cases, help survivors and perpetrators to live peacefully was a first step in the road to reconciliation.
- ❖ Penalties provided by Gacaca courts are intended to integrate the guilty people into the society and to enable them to collaborate with others in the reconstruction of the country.
- ❖ It may not have been a perfect solution but neither would a perfect solution be found anywhere. It was a solution that worked for Rwanda, this is what mattered. Government chose to account to Rwandans rather than to other actors.



**THANK YOU FOR YOUR KIND  
ATTENTION**