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Gacaca in the Context of Reconciliation: The Case of Rwanda

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Introduction

This commentary builds on an argument made in the lead article by Van Arsdale et al. in this issue where it is claimed, "in the broadest sense, genocidal activity is about dysfunctional state systems, imbalanced power relationships, and oppressive institutions." In short, the state is seen as playing a key role in the perpetuation of genocide. In seeking to understand the causes of genocide, one should examine the relationship between the state and the society it dominates. Yet this raises the question of what role the state plays in dealing with the aftermath of the genocide. How have states attempted to foster reconciliation in such environments? This commentary attempts to answer that question by looking at the situation in Rwanda, and the attempts the state has made to further the process of reconciliation.

The state is the primary actor in fostering reconciliation in Rwanda. The state, dominated by members of the Rwandan Patriotic Front (RPF), has invented several mechanisms by which to promote reconciliation, such as the *ingando* camps and memorial services on the anniversary of the genocide. The most prominent of these mechanisms are the gacaca courts. The gacaca courts are based on a traditional dispute resolution mechanism that attempts to promote reconciliation through the participation of the victim, the community, and the alleged perpetrator in the court proceedings. Despite the initial high aspirations of what the gacaca courts would accomplish, the evaluation of scholars, human rights workers, and ordinary Rwandans on the effect of gacaca on reconciliation in the country is at best mixed, and, in some cases, primarily negative. This exploratory analysis targets the role of the state in pursuing reconciliation in Rwanda by focusing on the gacaca courts and processes of reconciliation, denial, and victimization. The purpose is not to point out and offer corrections for the difficulties faced by gacaca, but to understand the role of the state in crafting an institutionalized response in the context of the period following genocide.

The Response to Genocide: The Gacaca Courts

The genocide that occurred in Rwanda in 1994 claimed over 800,000 lives. If not for the successful invasion of the country by the Rwandan Patriotic Front in July of 1994, the *genocidaires*, the name used to refer to perpetrators of the genocide, may have succeeded in eliminating all Tutsi living in Rwanda. Between July of 1994 and 1996, the RPF arrested over 100,000 alleged *genocidaires*. The RPF decided to hold every perpetrator individually responsible for his or her actions during the genocide in order to end the culture of impunity and provide justice for the victims (Reyntjens and Vandeginste 2005:102). However, the justice system was decimated by the genocide. The physical infrastructure of the judicial system was nearly destroyed, and almost all of the judges and lawyers still alive after the genocide had fled the country (Des Forges and Longman 2004:58). The government nevertheless pushed ahead with conventional trials for the alleged *genocidaires*. From 1996 to 2002, out of over 100,000 in detention, only 8,597 trials were held. At that pace, the trials of alleged *genocidaires* would last decades. In order to speed up the trials, assemble a historical record of the genocide, and reconcile the Rwandan people, the gacaca courts were established by Organic Law no. 40/2000 in January of 2001 (Fierens 2005:901). Over 11,000 gacaca jurisdictions were created throughout the country for the purposes of trying crimes against humanity and genocide. Implementation was slow: while the pilot phase first began in 751 jurisdictions in 2002, nation-wide implementation was delayed until 2006. As of April 2009, the gacaca courts have completed over 1.1 million cases with 3,000 pending. While originally set to finish by December 2007, the trials are now supposed to be completed in 2009.

The gacaca courts created by the government in 2001 are significantly different than traditional gacaca in four ways. First, traditional gacaca dealt with relatively minor disputes such as brawls or slander, and not genocide and

crimes against humanity. Second, as the goal of traditional gacaca was social harmony, the process of reaching a verdict was flexible and never involved a jail sentence. The judges of the gacaca courts could sentence time in jail, and the goal of social harmony was combined with achieving retribution for the victim. Third, the traditional judges who presided over gacaca, called *Inyangamungayo*, were typically village elders, while the new courts were presided over by persons of integrity who were elected from the community. Finally, the source of legitimacy for traditional gacaca was the voluntary participation of the community. The new gacaca courts, however, are "state-sanctioned criminal tribunals created by statute, whose legitimacy is derived from their status as governmental institutions" (Le Mon 2007:16). While the gacaca courts are participatory in that they rely on the community to act as witnesses for the alleged crimes, nonattendance at the weekly gacaca courts can result in criminal sanctions.

Processes of Reconciliation

Reconciliation is an ambiguous and complex concept (Weinstein and Stover 2004:13). David Crocker posits a scale of different definitions for reconciliation, ranging from "thin" to "thick" definitions (2000:108). The concept of "thin" reconciliation is simple coexistence - reconciliation as the absence of hostilities. The second definition holds reconciliation as the situation in which former adversaries recognize each other as fellow citizens. Former adversaries engage each other in dialogue, speak to their mutual interests, and compromise to reach conclusions that all can abide by. The "thick" notion sees reconciliation as "a shared comprehensive vision, mutual healing and restoration, or mutual forgiveness" (Crocker 2000:108). Further, reconciliation can take place on individual and collective levels (Gloppen 2005:20). Individual reconciliation takes place on an interpersonal level; collective reconciliation occurs between groups at both the regional and national levels.

As there are many definitions for reconciliation, there are several possible ways to achieve it. Siri Gloppen describes how the goals of truth, justice, restitution, and reform, and the

respective strategies employed to obtain them, are used, whether individually or in combination, to achieve a sense of reconciliation (2005:17-50). The strategies can include truth commissions, legal reform, and trials, to name a few. The Rwandan government ultimately combined the goals of truth, justice, and restitution in order to achieve reconciliation; reform, however, is conspicuously absent from the government's goals. The gacaca courts are supposed to establish a historical record of the genocide through eyewitnesses sharing their testimony. The justice that the courts seek to achieve is both retributive, in that victims receive satisfaction through the knowledge that their perpetrators have been punished, and also restorative, by reintegrating offenders into society by performing restitution that benefit the public good.

Initially, the RPF-dominated state was not interested in pursuing reconciliation, for two main reasons (Reyntjens and Vandeginste 2005:102). First, the survivors of the genocide perceived reconciliation as leading to amnesty and used their considerable political influence to lobby against it. When the influence of the survivors waned, one source of hesitancy to pursuing reconciliation was removed. Second, the state viewed reconciliation as leading to power sharing and democratization. By the end of 1998, the threat of a unified Hutu opposition was diminished, so the state began to work toward reconciliation through the creation of the gacaca courts.

Yet the goals of retributive and restorative justice have proven to be difficult to implement coherently. Balint has argued that emphasizing the punishment of members of the community may actually undermine the process of reconciliation:

An approach which locates responsibility purely at the local individual level will freeze identities. In the context of Rwanda, the Hutu will remain killer and the Tutsi victim. In the Rwandan national legal proceedings, there is no process at the official level which might allow for an explanation other than the Hutu perpetration of violence against Tutsi victims. There is no room for an expla-

nation of the political dimension to the genocide or its parameters (Karekezi et al. 2004:75).

In sum, the attempt to overcome divisive ethnic identities has been undermined through the sole identification of Hutus as perpetrators and Tutsis as victims. Paradoxically, by attempting to overcome the legacy of the genocide through legal proceedings, the state is potentially creating the conditions for the occurrence of future violence in the country.

Processes of Denial: Ethnicity and Collective Guilt

The government has attempted to rewrite the ethnicity of Rwandans on two fronts: through the propagation of a Rwandan nationalism (Zorbas 2004:53), and through the imposition of officially sanctioned categories of political and social identification (Hintjens 2008:14). The state has created the categories of survivor, perpetrator, old caseload refugee and new caseload refugee to, in effect, replace the ethnic identities of Hutu, Tutsi, and Twa (Hintjens 2008:14). Outside of the official discourse, discussion of ethnicity has been outlawed, and attempts to foster an independent discussion of ethnicity can result in the charge of "divisionism." Rwandan nationalism is taught to participants of *ingando*, the state-run reeducation camps that many students, former genocidaires, demobilizing rebel soldiers, and others have attended. *Ingando* is another mechanism employed by the government to promote reconciliation, although the camps are criticized as serving to inculcate RPF-sanctioned ideology (Mgbako 2005:201-224).

The substitution of a created national identity and politically correct categories for the Hutu, Tutsi, and Twa identities is untenable. Simply denying the salience of ethnicity and creating a national identity by decree will not wipe away the memories of ethnicity, which the categories of survivor and perpetrator actually reinforce. "Survivor" merely becomes a euphemism for Tutsi and "perpetrator" for Hutu. As Lars Waldorf has argued, "...it would be difficult to talk about the Rwandan genocide without mentioning the targeted Tutsi ethnicity,

but what is problematic is the tendency to conflate all Tutsi with victims and all Hutu with perpetrators" (Waldorf 2009:295). In other words, all Hutu are labeled as collectively guilty for the genocide, victimizing the Hutu who are labeled innocent.

The gacaca courts reinforce the charge of collective guilt through the one-sided prosecution of Hutus. Despite allegations that the RPF, upon fighting its way to the capital, massacred between 25-45,000 Hutus, and that several hundred thousand Hutu refugees staying in the eastern Democratic Republic of Congo were murdered when the RPF forcibly closed the camps, only charges against suspected perpetrators of genocide and crimes against humanity committed against Tutsi are heard at gacaca. The state's denial of the massacres committed by the RPF undermines its credibility to prosecute the perpetrators of the genocide.

Processes of Victimization

Along with achieving justice, gacaca is supposed to allow healing to occur at the group level by the survivor sharing his or her story with the community. In turn, telling the truth of what happened is assumed to have a healing effect on the survivor (Brouneus 2008:57). However, two factors are inhibiting whatever cathartic effect truth telling might have in gacaca: the lack of security for survivors, and the lack of public participation in the proceedings. In the second half of 2006, over forty survivors were killed (Le Mon 2007:17); as of September of 2008, seventeen survivors had been murdered since the year began. Brouneus reports how, after testifying at gacaca, survivors have had windows broken in their homes, rocks thrown at their doors, and even have been attacked with machetes (Brouneus 2008:67-68).

Secondly, the quantity and quality of public participation has declined since gacaca first began. In one of the first empirical evaluations of a gacaca court proceeding, the average rate of attendance of the adult population was between 41 and 74 percent in three jurisdictions (Karekezi et al. 2004:78). More problematic is the lack of quality participation by the community in the proceedings. Survivors have encountered the solidarity shown by the alleged perpetrators and

their families during gacaca (African Rights and REDRESS 2008:51). As one survivor noted,

All crimes committed during the genocide were attributed either to a few well-known prominent killers, with Kajelijeli [the bourgmestre] at the top, or to those who had already died....I noticed a sort of tacit agreement between them to place the blame for all the Tutsis who died either on Kajelijeli on his own, or the militia of Kajelijeli, or on refugees from other prefectures and communes, or on someone from Mukingo who had already died. As a result, you find that there are no perpetrators, co-perpetrators or accomplices on the spot (African Rights and REDRESS 2008:41).

By the lack of security for survivors, and by the lack of meaningful participation in many court proceedings, gacaca has contributed to the continued victimization of the survivors.

Conclusion

This commentary has built off a statement by Van Arsdale et al. that genocide is largely caused by dysfunctional, imbalanced, and oppressive state systems. It has done so by examining how the Rwandan state has attempted to foster reconciliation in the post-genocide period via the gacaca courts. As has been shown, the reconciliation process has been problematic. While the gacaca courts represent a novel response by the state in the aftermath of genocide, the process of reconciliation has been hindered by divergent goals of justice and the state's denial of ethnic identity. The impunity of crimes committed by the RPF has implicitly reinforced the ethnic identities while undermining the credibility of the government to promote reconciliation. Finally, the lack of security of survivors and the participation of the wider community has undermined what healing may have been possible through truth telling, and has resulted in a further victimization of survivors. As the role of the state is of primary importance in the commission of genocide, so should the role of the state be considered in the aftermath of genocide. One only hopes that the

Rwandan state achieves the level of reconciliation necessary to avoid another tragedy in "the land of a thousand hills." ○

Notes

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