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**Rwanda: Seeking Justice After Genocide**

On the morning of April 7, 1994, thousands of Rwandans picked up machetes and “went to work”. What followed was one of the worst and most widespread acts of genocide in modern history, where murder was made routine. Built on historical tensions between the minority Tutsis v. majority Hutus and aggravated by colonial manipulation of those ethnic identities, the civilian Hutu population hunted down the Tutsi population. After 100 days of violence, 800,000 Rwandans had been slaughtered (Class Notes, 3/22). Most disturbingly, the Rwandan genocide was carried out by ordinary people who murdered their Tutsi neighbors, Tutsi relatives and moderate Hutus (Hatzfeld, 50).

In the years following the genocide, more than 120,000 people were detained and accused of bearing criminal responsibility for participation in the killings (Class Notes, 3/22). The almost total destruction of the Rwandan justice system, the enormity of the crime being judged, and the massive participation in it, created giant legal and social challenges. Due in part to the magnitude and severity of the crimes, transitional justice responses to genocide often occur at the local, national and international levels. To deal with the overwhelming number of perpetrators, a judicial response was pursued on three levels: the International Criminal Tribunal for Rwanda (ICTR), the national court system of Rwanda, and the gacaca courts (Gahima, 79).

Through the combination of these three mechanisms, Rwanda was able to convict the masterminds of the genocide, establish their national legal system, and allow justice to be carried out by individual communities. Additionally, where one attempt failed another compensated for those weaknesses. The question that remains is whether one can put an entire society on trial. All of the Rwandan mechanisms of justice were plagued by the sheer enormity of the crimes, the lack of infrastructure, and unresolved ethnic divides that ultimately any product of justice will not amount to the atrocities committed during the genocide itself.

 The International Criminal Tribunal for Rwanda was the international mechanism of justice used by Rwanda in the years following the genocide. The United Nations Security Council established the ICTR in November 1994 (Gahima, 79). The Tribunal had a mandate to prosecute persons bearing great responsibility for genocide and other serious violations of international humanitarian law committed in Rwanda between January and December of 1994 (Power, 485). Only by extending the metaphor of criminal justice beyond borders can human rights become universal; only by punishing perpetrators can a nation emerging from a period of genocide or mass violence hope to reestablish the rule of law and prevent future horrors. In this context, the ICTR fulfilled a need to hold leaders accountable to the wider international community (Gahima, 124).

The ICTR produced tangible, groundbreaking convictions for human rights and international criminal proceedings. In the first judgment by an international court on genocide, a former mayor, Akayesu, was convicted in 1998 of nine counts of genocide and crimes against humanity (Power, 485). The judgment specifically held that rape and sexual assault constituted acts of genocide when they were committed with the intent to destroy, in whole or in part, an entire group. The judges found that, in the case of Rwanda, sexual assault formed an integral part of the process of destroying the Tutsi ethnic group and that the rape was systematic, manifesting the specific intent required for those acts to constitute genocide (Gahima, 123). In addition, the conviction of the prime minister during the genocide to life in prison in 1998 was the first time a head of government was convicted for the crime of genocide. Finally, the ICTR’s Media Case in 2003 examined the role of the media in the context of international criminal justice (Class Notes, 4/5).

 Yet the ICTR has significant flaws that provide a caveat on any genuine contribution towards achieving justice in post-genocide Rwandan. The ICTR’s failings have been well documented and have come under severe criticism. There is the perception that the ICTR is simply institutionalized vengeance where a western form of justice is handed out with little relevance to ordinary Rwandan citizens (Gahima, 113). This disconnect extends beyond mere location, even though a courtroom in Arusha, Tanzania has little significance to those living in Kigali, Rwanda. Locating the ICTR in Tanzania left many in Rwanda feeling detached from the court. Rwandans remain ignorant of the ICTR’s work and many, including some survivors, may not even know it exists (Power, 497). Even when they did hear reports on the ICTR, it concerned the “mismanagement and corruption within the tribunal,” which further undermined its legitimacy on the national level (Gahima, 113)

 Not only do many Rwandans see the results of the ICTR as underwhelming, but also carrying ethnic bias. The Tribunal only tried Hutu perpetrators and did not address crimes against humanity carried out by Tutsis. The Tribunal’s legitimacy was damaged in the eyes of the Rwandan population because it did not prosecute the Rwandan Patriotic Front (RPF) for crimes committed after the genocide. This creates a narrative of “winner’s justice” where violent crimes are not addressed against the winning team (Gahima, 111). In this case, it created an unbalanced narrative of the conflict and speaks volumes about the Hutu dissatisfaction with the ICTR’s work. The justice delivered by the ICTR is marred by the national dissatisfaction with the Tribunal’s exclusion of Tutsi perpetrators.

Any criminal justice system struggles to cope with the fallout of a massive outbreak of violence. In Rwanda’s case, many legal professionals were murdered or fled during the genocide, leaving the system to deal with a professional vacuum. The criminal justice system’s task was staggering. It was estimated that prior to January 2003, around 125,000 Rwandans were incarcerated awaiting trial (Thomson and Nagy, 16). Yet the system pushed ahead, executing, detaining, but also releasing prisoners on a large scale. The Rwandan government wanted to try their own criminals in their own courts following the genocide, which resulted in the growing pains of re-establishing a functioning judicial system (Gahima, 106). Even with the prisons overextended and the lack of initial lack of resources, the Rwandan government pushed to create a lasting and autonomous judicial process. The result of these efforts was the rebuilding of the Rwandan criminal justice system’s infrastructure and creating a national precedent for court proceedings moving forward.

However the development of the Rwandan judicial system was stunted and prolonged by the sheer number of cases and the lack of resources to address those needs. The judicial system was overloaded and subsequently could not deliver the justice it initially promised (Class Notes, 4/5). In addition, like the ICTR, the Rwandan National Courts decided not to try Tutsi perpetrators but instead focused on crimes committed by Hutus. This oversimplified the narrative of Rwandan violence and made Hutu populations feel victimized and persecuted (Thomson and Nagy, 26). Finally, the Rwandan national justice system has failed to instill a sense of culpability amongst prisoners, who simply saw themselves as prisoners of war who ended up on the losing side (Class Notes, 4/5).

To address the fact that there were thousands of accused awaiting trial in the national court system and to bring about justice and reconciliation at the grassroots level, the Rwandan government reinvented a traditional Rwandan community court system called gacaca. The informal courts ran for about 10 years, between 2002 and 2012. The gacaca courts are considered essential because they involved the broader community in finding justice and relieved the regular court system of thousands of cases (Lars Waldorf, 186). In the gacaca system, local communities elected judges and the entire community attended trials of genocide suspects. The courts gave lower sentences if the person was repentant and sought reconciliation. Often, confessing prisoners returned home without penalty or were sentenced to community service (Gahima, 164). The gacaca trials also served to promote reconciliation by providing a means for victims to learn the truth about the death of their family members and relatives, fulfilling some level of individual justice (Lars Waldorf, 188).

Gacaca is unique because it is an attempt to serve justice that addressed acts of genocide committed by a vast majority of the civilian population. As Rwanda’s domestic court system was not established enough to prosecute all accused genocide participants, the gacaca model presented a practical solution to the dilemma of trying hundreds of thousands of people (Lars Waldorf, 187). While imperfect, the gacaca courts provided an avenue for many instances of successful reconciliation and built a foundation for an evolving, post-conflict legal system in Rwanda.

However, systemic flaws and execution issues mar the success of the gacaca process. Gacaca has been criticized for not meeting international fair trial standards, endangering witnesses and not delivering any form of justice. First, gacaca’s entire processes were built on basic violations of the right to a fair trial. These limitations on the accused impacted their ability to defend themselves (Class Notes, 3/29). Additionally, because the judges were comprised of individuals across the country, there were discrepancies in court rulings. Judges were not trained professionals; therefore many possessed flawed decision-making that led to leading to allegations of miscarriages of justice. The gacaca courts were characterized by witnesses who were “forced to tell a specific version of the truth,” that painted a very specific narrative of the genocide (Thomson and Nagy, 26). Often situations that fell outside of that narrative were not accepted, even shut down, preventing people from fulfilling individual acts of justice. There was intimidation of defense witnesses by people in the community, sometimes even the judges themselves (Thomson and Nagy, 17). Finally, the biggest criticism of the gacaca courts was that many people found the sentences unequal to the gravity of the crimes (Class Notes, 4/5).

The genocide left Rwanda’s population traumatized and its infrastructure decimated (Power, 385). Its subsequent mechanisms of justice were attempted solutions to an impossible problem. In the end, the International Criminal Tribunal for Rwanda, the Rwandan national courts system, and the gacaca courts did their best to implement justice at all levels of the conflict with limited resources. Many complain that these avenues of justice have not produced adequate results in the 20 years following the conflict. The ICTR, National Courts, and gacaca courts all addressed different levels of accountability, and subsequently justice, in the wake of the genocide. However, all three struggled to deliver justice due to a lack of resources. Combined with a lingering Rwandan ethnic divide, these processes always left someone feeling that their definition of justice had not been fulfilled. Rwanda could be seen as an example, that “weak states are often incapable of providing any justice” (Thomson and Nagy, 26).

Did any of these attempts at justice reconcile Rwandans, promote democratic governance, or build the country’s legal system and rule of law? The evidence suggests that the model did not work, at least not yet. Present-day Rwanda is not democratic, citizens have few avenues to express dissent or vote in free elections, and the country is governed according by the ruling party, not the rule of law (Class Notes, 3/22). However, it will take longer than 20 years for Rwanda to recover from the repercussions of the 1994 genocide. The genocide’s role in the shaping of a modern Rwandan identity is of monumental significance. The notion of justice in Rwanda contributes to a revised Rwandan identity. Therefore, the effort to find closure through the judicial process is inherently problematic in a nation still defined by dynamic ethnic affiliations, where truth and memory are highly contested. The reality is that genocide is greater than any justice that can be served through a legal system.

Rwanda’s attempts at justice possess positive and negative attributes. Ultimately, even with all their shortcomings, the three mechanisms succeeded in moving the country forward and preventing another outbreak of national violence. Whether they provided justice for the citizens of Rwanda depends on who you ask. They were all attempts to reconcile a country with a horrendous past and, the gacaca courts especially, offered a creative solution to an impossible problem.