



From The Executive Editor:

Rwanda's Gacaca Courts: An Innovative Experiment in the Post-Genocide Pursuit of Criminal Justice

By Markus Zimmer

In mid-November, I spent two weeks at the Documentation Center for Cambodia in Phnom Penh working on a new genocide memorial institute to honor the memory of the victims of the 1975-1979 Khmer Rouge reign of terror.¹ While there, I was reminded of the significant progress the global community has made in bringing to justice the perpetrators of genocide and mass crimes against humanity in the 20th Century. This global initiative commenced with the special military tribunals convened in Nurnberg, Germany from 1945 to 1949. Those tribunals conducted 13 trials whose defendants included not only leading Nazi Party officials and high-ranking military, Schutzstaffel (SS) and Geheime Staatspolizei (Gestapo) officers but, in addition, an assortment of German industrialists, lawyers, doctors and other civilians charged with aiding and abetting the institutional sponsorship of sustained ethnic cleansing. In the intervening seven decades, the global community, largely under the auspices of the United Nations, has established a variety of international criminal tribunals and hybrid courts to bring to justice senior-level criminal sponsors and conspirators of similar categories of mass violations of human rights that litter contemporary history and continue as I write.

Perhaps the primary moral issue that looms over this enterprise of pursuing justice internationally is the extent to which thousands of lesser petty criminals, those who execute the orders of the senior leaders and engage in the raw violence that terrorizes and victimizes millions of innocent civilians, have managed to evade accountability. With few notable exceptions, governments of the subject countries have not pursued systematic criminal prosecution of these lesser criminals. Indeed, it is not unusual, when searching through directories of key government officials in some of these countries, to discover among the names of incumbents those who functioned as secondary officials, either in the criminal regimes or their mercenary forces, engaged in heinous war crimes and ethnic cleansing. Some states have established the equivalent of truth and reconciliation commissions with mixed success. In several Balkan states, special state-level criminal tribunals were authorized by reluctant governments, with secure facilities and operational resources provided by western nations and/or the UN, to investigate and prosecute select lesser war crimes offenders not pursued by The Hague-based International Criminal Tribunal for the Former Yugoslavia. Those resources included expat judges, prosecutors and investigators to ensure the legitimacy and objectivity of the criminal proceedings.

The magnitude of mass war crimes comprising the Rwandan genocide prompted the United Nations to establish the International Criminal Tribunal for Rwanda in Arusha, Tanzania, to fund it at an exorbitant cost, and to charge it with bringing to justice the senior-level ringleaders and masterminds. No provision is made for prosecuting their underlings.

Notwithstanding Rwanda's status as an impoverished developing country and the destruction of the institutional framework of its government as a byproduct of the genocide's civil war, the new regime committed itself to bring to justice as many of the lower-level criminals as possible, to date the only government motivated to do so entirely on its own. Tens of thousands were apprehended and imprisoned in a severely over-extended network of prisons, overwhelming the justice system's capacity to accommodate and to process them in timely fashion through its existing framework of courts. Desperate for a solution, the government opted for an innovative but legally perilous transitional-justice solution. It resurrected an indigenous form of community-based justice courts without benefit of lawyers in which respected community elders, serving as nine-member panels of lay judges in towns and villages throughout the country, collectively enquired into the circumstances of alleged violations. Known as *gacaca* courts, they typically conducted outdoor proceedings in community settings to which locals were invited. Surviving victims were also in attendance and allowed to contest the confessional testimony offered by the accused. Observing *gacaca* proceedings in person, as I was privileged to do in a village clearing on the outskirts of Monrovia, is an inspiring and memorable experience.

¹ For an overview of the new Cambodian Sleuk Rith Institute for genocide studies and research, go to www.cambodiasri.org and/or <https://www.youtube.com/watch?v=nuJCvdsLoa0>

The pursuit of vengeance in the context of *gacaca* justice was subordinated to the values of reconciliation and healing. Although *gacaca* judges were authorized to impose punishments up to and including life imprisonment, those adjudged guilty as charged by the panels, and by the collective sentiment of those in attendance, were often sentenced to varying terms of community service, the intent of which was to gradually reintegrate them into productive and responsible roles in their home districts.

Gacaca courts were introduced to supplement the overwhelmed capacity of Rwanda's indigenous courts of law, whose legally trained judges would adjudicate the more serious criminal charges, including rape, leaving to *gacaca* justice the resolution of lesser crimes charged.

In a ceremony on 17-18 June 2012, the government of the Republic of Rwanda officially closed the *gacaca* courts, bringing to an end this innovative and controversial ten-year experiment to pursue criminal justice under the most difficult conceivable circumstances and challenges. As myriad critics have opined, both the process and the results were flawed by 21st Century standards of western justice systems. Notwithstanding those flaws and imperfections, however, the Rwandan government deserves the global community's praise and gratitude for having demonstrated the courage, the tenacity, and the imagination that spawned the experiment. In a world in which most governments similarly challenged to bring criminals to justice on a mass scale have simply opted to drop the ball, Rwanda persisted, notwithstanding enormous resource, capacity, and other challenges.

The cover of this issue of the International Journal for Court Administration captures a *gacaca* court in session. We feature it as a contrast to the cover of Vol. Six, No. 1, the new ultra-modern courthouse in Adelaide, Australia, to emphasize that the pursuit of justice occurs in settings that differ dramatically. The photograph for this cover was taken by Elisa Finocchiaro and is reproduced with her permission. For more detailed information on *gacaca* justice, see Phil Clark's *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda – Justice without Lawyers*, Cambridge Studies in Law and Society, Cambridge University Press, 2010.



The advertisement features a tablet displaying the following text:

Register online at The NJC.

Sign up for courses, view your transcripts, apply for scholarships and more through our new, easy-to-use and informative online registration site.

Online Registration

register.judges.org

Below the tablet, the text reads:

(800) 255-8343
judges.org

THE NATIONAL JUDICIAL COLLEGE
Est. 1963
The NJC Experience.

On the left side of the advertisement, a list of court types is provided:

The National Judicial College educates judges and court personnel serving in

- Administrative Law
- Appellate
- General Jurisdiction
- Military
- Special Court
- Tribal