"Lessons from Rwanda's National and International Transitional Justice: The Case to Improve Regional and International Perspectives of Justice"

A Paper Presented by Herbert Rubasha and Isaac Bizumuremyi-Advocates Kigali Bar Association at the Regional Forum on International and Transitional Justice organized by Avocats Sans Frontières-Uganda Mission and the Uganda Coalition of the International Criminal Court on 30th July, 2012 at Imperial Botanical Beach Hotel, Entebbe

Introduction

This paper is presented on the assumption that the reader is conversant with the background to the Rwandan conflict which culminated into internationally recognized crime against humanity – Genocide and as such, we shall not touch on the history which pre-dates the conflict but rather the Rwandan response to the conflict, its national impact, and lessons that may be borrowed by regional and international stakeholders to improve the cause of Justice.

In post-conflict countries, Transitional Justice has gained an international popularity due to its judicial and non-judicial mechanisms practically believed to be convenient and fitting to redress the legacies of massive human rights abuses during the conflict. The terms *Transitional Justice* has been defined by the International centre for Transitional Justice (ICTJ) as a *response to systematic or widespread violations of human rights which seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy*[1]. It is a system of Justice which is adapted to peculiar societies who have a desire to transform themselves after a period of pervasive human rights abuse as was the case of Rwanda after the Genocide against the Tutsi which climaxed in April 1994 but which systematically is dated several years ago.

These measures/mechanisms include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms.[2] The post genocide against the Tutsi situation of 1994 in Rwanda represented such scenario that saw the adoption of the above measures in an attempt to achieve accountability and redressing victims, by providing recognition of the rights of victims, promoting civic

[1] *The International Center for Transitional Justice is USA based international non-profit organization specializing in the field of transitional justice. Accessible at: http://ictj.org/about/transitional-justice*
2 ibid

trust and strengthening the democratic rule of law. This paper briefly explores transitional justice mechanisms that were employed by Rwanda in the post genocide era and lessons amenable to the region and the international community at large.

Rwanda's Comprehensive Transitional Justice Policy

It is important to earmark that the post genocide government was quick to note that a prompt response to problems of Rwanda was within the means and reach of Rwandans. That homegrown/traditional rather than classic judicial solution to the justice demands was eminent to redress the over one million innocent lives of Rwandans. The different elements of a transitional justice policy pursued by Rwanda were not thus a mere random list, but rather, related to one another practically and conceptually. The following sections present such core elements that were adopted by the Transitional Broad Based Government which succeeded the social and economic consequences of the rouge regime which had orchestrated genocide against the Tutsi in 1994.

a) "GACACA" CRIMINAL PROSECUTIONS

What are the Gacaca courts?

The term "*Gacaca*" originates from Rwanda's national language, (*Kinyarwanda)*, which if translated into English it could roughly mean short, clean cut grass or "*umucaca*". There were informal means of solving disputes around issues like theft, marital issues, land rights, and property damage which were constituted as village assemblies, presided over by the senior citizens, where each member of the community could request to speak. The trials were meant to promote reconciliation and justice of the perpetrator in front of family and neighbors. Well-respected elders, known as *Inyangamugayo*, were elected based on their honesty by the people of the community. It is symbolic for a gathering place for elders to sit on and judge the trial. The *inyangamugayo* would assemble all parties to a crime and mediate a resolution involving reparations or some act of contrition.

The *Gacaca* justice system was formally instituted by the post-genocide government guided by the spirit of embracing a restorative justice rather than retributive justice as one of the government strategies to restore the Rwandan social fabric which had been severely destroyed by the Genocide against Tutsi. The traditional system was thus in a way modernized to ensure effective delivery of Justice and the ownership of the system by the victims. Modernization included

formal legal framework of prosecution of genocide suspects and redressing victims by way of civil reparations. The sought for Gacaca justice system was also propelled by the then a limited number justice qualified personnel (*some of them were just killed and others had fled the country*) a situation which put the country into a big challenge of administering justice at the time it was badly needed by a mass of victims. While the conventional Justice system of ordinary courts tried a bit to handle some trials but realistically it was not feasible to deliver Justice to the survivors of Genocide. The estimated minimum period required to complete the known numbers of suspects was estimated at 100 years. This period was believed to be repugnant to principle of justice-reasonable delay (*Justice delayed is Justice denied*.

Combined with conventional courts, the inspired by tradition Gacaca Courts were established in 2001 to address these challenges[3]. The establishment of Gacaca courts manifested the Government tireless efforts to develop a just means and approach that would try more than 100,000 people accused of genocide, war crimes, and related crimes against humanity which were in recorded at the time. Recently, Gacaca has officially closed its activities, leaving behind a legacy of remarkable successes that saw around 2 million trials in a period of 7 years. This was far beyond expectations of everyone in Rwanda and all regional and international stakeholders of Justice in Rwanda. More importantly though, is that Gacaca helped Rwandans to rediscover their ability to find solutions to seemingly intractable questions and achieve restoration of unity, trust and reconciliation among themselves and to forge a way forward to economic reconstruction of their nation.

On the international level, an ad hoc tribunal – the International Criminal Tribunal for Rwanda (ICTR) was established by the United Nations Security Council to prosecute individuals responsible for genocide, crimes against humanity and serious violations of international humanitarian law committed in Rwanda during 1994. To date, around 37 trials have been held by the Arusha based Court. As opposed to a restorative Gacaca justice courts, the ICTR comparatively sounds to be a retributive Justice whose slow pace trials and failures to apprehend several *masterminders* of genocide is said by many if not by all victims to be a failure given the resources allocated to it. It is estimated that at least 3.4 million of people were directly involved in the perpetration of Genocide but only 1.9 million were brought to trial. The other 1.5 million (approx) fled the country after the fall of the rouge regime.

[3] *The law on Gacaca provided for "four categories" of suspects. The first category included people that conceived, planned and executed genocide were tried by the conventional courts while the second, third and fourth categories were tried by Gacaca courts.*

Recent figures presented indicate that at the time of formal closure of Gacaca trials, at least **1,951,388** genocide cases had been tried and completed as of 31st January 2012 segregated below by the following categories:

TOTAL NUMBER OF CASES: 1,951,388

CATEGORY	**NO. OF CASES**	**GUILTY**	**NOT GUILTY**
FIRST	**31,453**	**24,730** (79%)	**6,723** (21%)
SECOND	**649,599**	**433,471** (67%)	**216,128** (33%)
THIRD	**1, 270,336**	**1, 270,336** (96%)	**49,865** (4%)

To Rwandans, this was a success story regardless of the perception held by legal practitioners and scholars that the traditional system trials fell below international minimum standards of criminal trail including the fundamental right to defense. Rwandans believed that Gacaca courts are home grown and they fit into the underlying stated objective of accountability with overtones referring to reconciliation, as we have argued above. Specifically during the International IDEA research, Rwandans expressed their positive views on Gacaca as follows:

1) *Ordinary Rwandans prefer the Gacaca courts over the national courts and the ICTR* for dealing with the genocide crimes. For the ordinary peasant the classical tribunals are both physically and psychologically remote institutions.
2) *Women have taken up an important role in the Gacaca proceedings*.
3) *The Gacaca proceedings are speeding up the backlog of genocide-related cases.*

Several critics have argued that the violence experienced during the genocide and massacres was of such gravity that it simply cannot and should not be handled in the Gacaca and that Gacaca could function as a sort of truth commission with two aims. On the other hand, collecting facts about the atrocities experienced in local communities and then the collected information would be forwarded to the classical tribunals[4]. In addition, Gacaca were criticized on the following arguments[5]:

4 Quote from International Institute for Democracy and Electoral Assistance (IDEA) citing United Nations High Commissioner for Human Rights (UNHCHR), Gacaca: Le Droit Coutumier au Rwanda (Kigali, 1996), passim

- *That trying crimes of genocide and massacres in Gacaca would minimize the seriousness of these crimes.*
- *That ordinary people who are not educated and acquainted with judicial procedures were doubtable to take care of these serious offences themselves*
- *That family relations and friendships would render the trials partial*
- *That testimonial evidence would be very difficult to obtain because it would be very hard make people tell the truth and that in some parts of the country there would be nobody left to testify.*
- *That it would be better if the Gacaca were used as an investigative mechanism, providing the classical courts with information.*
- *That the trials by the Gacaca would create new conflicts and tensions in the local population.*
- *That Gacaca is not in accordance with international laws*

b) CIVIL REPARATIONS

While the drive for the establishment of Gacaca Courts was among others, its restorative nature which is naturally inherent in the system and of course for the purposes of empowering the citizens to participate in rendering justice and hence ownership, the government indeed recognized the need to repair in some way the physical damage suffered by the victims. As such, the law instituting Gacaca Courts took into considerations this need of civil reparation. Civil reparations included among others construction of destroyed residential homes, restitution of other property rooted and financial compensation for moral damages. In criminal matters, the state is a secondary victim of crimes and one of the measures sought by the government to be redressed was institution of works for public interests executed by the genocide convicts. By this way, the convicts, constructed and repaired public roads, public buildings, institutions and other public amenities. In this way, the government believed that the public works would benefit Rwandans in general including the victims who enjoyed those public works constructed by the convicts.

However, commentators and other pressure rights groups do believe that it is overtly notable that the issue of civil reparations to the victims of genocide remains a serious challenge in Rwanda. The history and issues that were associated to compensation of the Jews to date proves to us such a dilemma. Particularly in Rwanda, black and white truth reveals that most of the perpetrators of genocide and other crimes against humanity - dispose no or inadequate means to meet damages awarded by courts to victims. This has only meant that the government through a holistic approach has resorted to taking sole initiatives that offer basic support to victims of genocide.

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[5] *International IDEA (op cite)*

c) UNITY AND RECONCILIATION AND INSTITUTIONAL REFORMS

There is no doubt that the 1994 genocide against the Tutsi was in many ways manifest of abusive state institutions such as armed forces, police and courts to mention among others which by and large called for introduction by appropriate means and establishment of novel structural machinery capable of preventing recurrence of serious human rights abuses and impunity. The overriding political challenge of the post genocide government was to reconcile Rwandans who had been divided for ages without negating the desire to render justice to the victims which was badly needed for the government to maintain its legitimacy. The trials for the genocide suspects was publicized to be one geared towards achieving or promoting Unity and Reconciliation rather retributive justice. This was enhanced by reforming state institutions directly delivering or contributing towards unity of Rwandans. This culminated into Constitutional amendment to establish a national fund for the support of genocide survivors[6].

The institutional reform was not limited to unifying the genocide suspect and their victims but a complete institutional overhaul touching on gender, children and other special groups, institutions to combat corruption and injustice and those ensuring the state support of the genocide survivors. This overhauling of structural institutions was enhanced by establishment of relevant organs/institutions with specialised mandate of protection and promotion of human rights for better dispensation of justice. These institutions include, The national fund for the support of Genocide survivors (GARG), National Unity and Reconciliation Commission (NURC), National Commission for Human Rights (NCHR)[7], the Office of the Ombudsman, the National Commission to fight against Genocide (CNRG) Gender Observatory Monitoring Office (GOM) , National Council for Women (NCW), Itorero[8], Ingando solidarity camps which has transformed itself into *Intore z'igihugu* (civic

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[6] *Article 14 of the 2003 Rwandan constitution as amended to date provides that: "the state shall within the limits of its capacity, take special measures for the welfare of the survivors who were rendered destitute by genocide against the Tutsi committed in Rwanda from October 1st, 1990 to December 31st 1994……"*

7 The NCHR was also established with a two-fold mission i.e., investigating and follow-up on human rights violations and educating the population on their rights. For further information, see the Law N°04/99 of 12/03/1999 establishing the National Commission of human rights, O.G. n° 6 of 15/03/1999.

[8] *Traditional Rwandan schools), where self reliance, nationalism and moral values of integrity and taboos are taught*

education program). All these institutions which are largely decentralised to the lowest administrative unit of the country have a legal duty to promote unity and reconciliation of Rwandans and to protect citizens from acts of human rights abuses.[9]

Such initiatives often with material elements (such as cash payments or health services) as well as symbolic aspects (such as public apologies or day of remembrance) have been provided to survivors via a fund set up under an Act of 22 January 1998 as amended to date, which was designed to help the neediest survivors in key areas such as education, health care and housing among others. Finally, the Government has made every effort to protect survivors and ensure that the perpetrators of genocide do not repeat their heinous crime, by resisting separatist ideas and combating those who continue to hold and disseminate such views.

d) TRUTH TELLING AND EVIDENCE GATHERING

The prosecution of genocide suspects was faced by lack of evidence due to the fact that in some areas, no one was left to tell what happened and only those present were either relatives of the perpetrators or those who did not want to create poor relations with the relatives of the suspect by testifying to Gacaca trials about "who, when, how it happened. It was thus an imperative challenge to the State to deliver justice and at the same time endeavor to reconcile and unify Rwandans. For purposes of establishing the truth and encouraging the public to play their role in justice process, a National Unity and Reconciliation Commission (NURC)[10] mentioned above was established. Primarily, the NURC was mandated with preparation and coordination of all country's programmes on promotion of national unity and reconciliation, investigate and report on systematic patterns of abuse, recommend changes and help understand the underlying causes of serious human rights violations that occurred. It encouraged the public to tell the truth known to them about how genocide was perpetrated. To this end, great achievements have been attained by this commission in promoting tolerance among all members of the populations. Through the commission, Rwandans have come to understand and appreciate the value of coexisting and living in harmony with each others as they strive to build a peaceful nation that they will leave to their children. Indeed, very

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9 See the 9th, and 10th periodic report of the Republic of Rwanda under the African Charter on Human and Peoples' rights (Paras 15, 16 and 17, p 7 - 8.) and le 8ème rapport périodique du Rwanda à la Commission Africaine des droits de l'homme et des peuples (pages 9-11 ; 17-24)

[10]. See also the Law n° 03/99 of 12/03/1999 establishing the National Unity and Reconciliation Commission, *O.G.* n° 6 of 15/03/1999.

strong and useful social values and components are communicated through the Commission to all walks of Rwandans.[11]

e) DISARMAMENT, DEMOBILIZATION AND REINTEGRATION (DDR)

The post genocide government undertook disarmament, demobilization and reintegration (DDR) programs of the former government soldiers (EX-FAR). Generally, the programs involved the reassurance of former combatants that they will be reintegrated, not punished. By and large, this program provides a remarkable counterexample, where DDR was largely regarded a success. [12] Most of the combatants who fought on the side of the genocidal forces have been demobilized and reintegrated over the last eighteen years.

f) WHAT LESSONS CAN BE BORROWED FROM RWANDAN TRANSTIONAL JUSTICE EXPERIENCE TO IMPROVE REGIONAL AND INTERNATIONAL JUSTICE?

a) Is there a one-size fit all Transitional Justice system? **NO**
b) Can any successful system of transitional Justice in one country fit in any post-conflict situation as is to? **NO.**
c) Can it be borrowed by other situations for the purposes of contextualizing to local situation? **YES**
d) What do you do then with successful Transitional Justice System to your situation? **Study your situation and try to fit in only those elements that can fit into.**
e) So what relationships do Transitional Justice systems in post conflict situations have? **Validate the statement below:**

> *"Transitional justice and human development are about building societies which can be at peace, just, and inclusive. The challenge we share is ensuring that transitional justice and development practice do contribute to transformations which bring sustained and meaningful improvement to people's lives.* **Helen Clark, UNDP Administrator (Rwanda)**

Here is what the UNDP Rwanda office stated on Rwandan Gacaca Courts during their formal closure one month ago (18th June 2012) and what lessons do we learn from the statement about the legacy left behind by Rwandan Gacaca Courts?

[11] Annual Activity Report of NURC of 2010/2011.
[12] Lars Waldorlf, Transtional Justice and DDR: The case of Rwanda.

1) The United Nations has identified five core components of transitional justice, namely, prosecution initiatives, truth and reconciliation processes, reparations, institutional reform, and national consultations. Each of these components should be seen as complementary to one another.

2) After a decade, it is fair to say that the Gacaca justice system delivered its intended objectives and provided a solution for the complex nature of the cases related to the 1994 genocide.

3) During these 10 years, Gacaca jurisdictions have tried more than 1.9 million suspects.

4) Far from being “mob” or “vigilante” justice, as many legal critics predicted, about 25% of Gacaca cases have resulted in acquittal.

5) Many prison sentences have been converted into community service, thereby facilitating the reintegration of detainees into society.

6) The Gacaca experience serves as a lesson for us all.

7) The UN also recognized that national or “homegrown” initiatives should be supported, as they have a more direct and sustainable impact on affected populations.

8) These initiatives, often referred to as Transitional Justice, are more cost effective and can more effectively contribute to unity, reconciliation, peace building as well as have a positive effect on broader justice reforms.

9) Transitional justice involves “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation”.

10) The Gacaca process in Rwanda played a key role in advancing peace, stability and reconciliation.

11) It is important to record and disseminate the lessons learned from this unique process globally. Even more importantly, it will also be a reminder to future generations to never let it happen again.

g) CONCLUSION

As mentioned above in (g) then transitional justice in Rwandan experience has a record of enormous success if viewed from its angle of ultimate goals: a) ***to restore the lost Rwandan element of humanity***, ***peace, co-existence, unity and reconciliation of Rwandans***. The success can only be noted if we try to avoid are not delinked during evaluation of the Rwandan transitional Justice from the underlying cause of the Rwandan conflict, the conflict itself and its devastating impact on the society and economy and then the national desire for a transformed Rwandan society. The entire world watched genocide happens in Rwanda and so the entire world wondered how such grave and heinous human rights abuses were to be addressed. The speed at which new institutions were established and former ones strengthened to hold the country together was amazing. The establishment of Gacaca Courts that tried nearly two million suspects within ten years was not only impeccable but also a strong signal to Rwandans that solutions to their problems are within their means. It is important to recall what we stated above that by this conclusion, the authors are by no means contend that Rwanda's transitional justice was safe from challenges as noted above neither is a one-size- fit all system for the regional and international justice but rather the authors reckon that the its best practices can be borrowed and tailored to each peculiar situation. What is undisputable in this conclusion is that in post conflict situations, it is not a flat principle that classic solutions will often redress the situation. Dialogue and continuous consultations with all stakeholders in the situation is necessary and important element one cannot afford to leave it out.