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Pietro Sullo

Beyond Genocide: Transitional Justice and *Gacaca* Courts in Rwanda

The Search for Truth, Justice
and Reconciliation



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A mio padre

Foreword

During a few months in the spring of 1994, some 800,000 Rwandan citizens, primarily Tutsis, were killed by Hutu militias and ordinary people. Despite the fact that the UN Special Rapporteur on Summary and Extrajudicial Executions, Bacre N'Diaye, had in 1993 warned the United Nations about the rapidly spreading hatred and violence and the danger of an imminent genocide, the world organization neither prevented nor stopped the genocide. On the contrary, rather than enforcing the mandate and strength of the UN peacekeeping troops stationed at that time in Rwanda, the United Nations decided to withdraw this Assistance Mission (UNAMIR) as soon as the first Belgian peacekeepers had been deliberately killed by radical Hutu militias. The Tutsis were tragically abandoned by the international community, and the genocide was finally stopped with military force by the Rwandan Patriotic Front, led by the current President Paul Kagame and supported by Uganda.

His newly established Government was faced with the enormous task of dealing with the past and healing the wounds by introducing some form of transitional justice and fostering a process of reconciliation between the two groups of people, who had been constructed as two different “ethnic” and social groups by the Belgian colonial administration. It was the new Rwandan Government which requested the UN Security Council in 1994 to establish an International Criminal Tribunal for Rwanda, similar to the one that had in 1993 been set up for the former Yugoslavia. However, the ICTR, which was soon thereafter established in Arusha, could only bring to justice some of the key perpetrators. The infrastructure of the ordinary criminal justice system in Rwanda was broken down, and many judges were killed and the prisons in a most deplorable state. Nevertheless, more than 100,000 suspected *génocidaires* were arrested and kept under inhuman conditions in pre-trial detention. These were the circumstances when the Government decided to entrust a mechanism of traditional African justice, the *gacaca* courts, with the task of providing justice according to local culture and finally achieving reconciliation and peace in the country.

The purpose of the present book by Pietro Sullo is to assess whether the *gacaca* courts have achieved this highly ambitious goal. He describes in detail the mandate and functioning of these community-based courts with lay judges and arrives at the conclusion that the original aims were certainly overambitious. On the other hand, he finds that “the attempt to abide by the principle of duty to prosecute (all) the perpetrators of genocide-related crimes as well as its participatory, community-based approach, made *gacaca* the most courageous effort ever in the search for post-genocide justice” and the “most ambitious prosecution experiment ever”, under the slogan of “mass justice for mass atrocities”. He makes this positive assessment by comparing the achievements in Rwanda with the few Nazi criminals who were prosecuted in post-World War II Europe, the limited results of the current efforts by the Extraordinary Chambers in the Courts of Cambodia and similar situations in Guatemala or Darfur. On the other hand, he also points at the obvious shortcomings and problematic features of the *gacaca* courts, if assessed against the principles of the international rule of law and fair trial. He also strongly criticizes the intrusion of the state, which deprived the people of Rwanda to some extent of their ownership of this important mechanism to redress the painful consequences of the genocide. Overall, Pietro Sullo provides an excellent and balanced analysis of the *gacaca* courts, which should be taken into account by other countries and peoples when faced with a similar challenge.

Vienna, Austria
March 2018

Manfred Nowak

Manfred Nowak is Professor of International Human Rights at Vienna University and Secretary General of the European Inter-University Centre for Human Rights and Democratisation in Venice. He served as UN Special Rapporteur on Torture and currently leads the UN Global Study on Children Deprived of Liberty.

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This book is both the result of my interest for the issues surrounding human rights and genocide, and the happy end of a journey through transitional justice in Rwanda begun several years ago when I started an internship at the ICTR in Arusha under the supervision of Silvana Arbia. In these years, the intricacies connected with Rwandan *gacaca* courts have constantly occupied my mind. Fortunately, I was not alone in my journey and several persons have accompanied me in different capacities, giving me advice and helping me to overcome obstacles and to keep my motivation. It would be impossible to mention all of these fortunate encounters. I am indebted to Prof. Giordina Alessi who invited me to join her chair of legal history at the University Federico II at the beginning of my career and illuminated the years spent in Naples with her knowledge, acumen and irony. I am very thankful to the Scuola Superiore Sant'Anna di Studi Universitari e Perfezionamento in Pisa and in particular to Prof. Andreas de Guttry, which offered me a generous Ph.D. scholarship to spend a considerable amount of time in Rwanda and other post-conflict settings. I also benefitted from a research stay at the International Centre for Transitional Justice in New York under the supervision of Priscilla Hayner in 2007 which has expanded my knowledge in the field of transitional justice. In New York, I also met Valeria Izzi, my dear “grillo parlante”, whose maturity and wisdom remain an example for me. My research work in Rwanda has been facilitated by Avocats Sans Frontières mission to Rwanda, which helped me to orient myself in the complexities of the *gacaca* world. To the Rwandans I have met and interviewed during my research work goes my deepest gratitude. My stays in Kigali were also the occasion to meet Enrico Rampazzo and Elisa Radisone, whom I thank for their friendship.

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Abbreviations

AI	Amnesty International
ASF	Avocats Sans Frontières
AU	African Union
AVEGA	Association des Veuves du Génocide
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
DPKO	Department of Peacekeeping Operations (United Nations)
DRC	Democratic Republic of Congo
ECOWAS	Economic Community of West Africa
FAR	Forces Armées Rwandaises
FARG	Fonds d'Assistance aux Rescapés du Génocide
HRW	Human Rights Watch
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDPs	Internally Displaced Persons
IER	Instance Equité et Réconciliation
IPEP	International Panel of Eminent Personalities
LDGL	Ligue des Droits de la personne dans la région des Grands Lacs
LIPRODHOR	Ligue Rwandaise pour la promotion et la defense des Droits de l'Homme
MRND	Mouvement Républicain National pour la Démocratie et le Développement
NURC	National Unity and Reconciliation Commission
OUA	Organization of African Unity
PRI	Penal Reform International
R2P	Responsibility to Protect
RDR	Rassemblement Républicain pour la Démocratie au Rwanda

RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
RTML	Radio Télévision Libre des Mille Collines
SNJG	Service National des Juridictions <i>Gacaca</i>
SRSR	Special Representative of the Secretary General (United Nations)
TIG	Travaux d'intérêt general
TRC	Truth and Reconciliation Commission
UN	United Nations
UNAMIR	United Nations Mission in Rwanda
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNOMUR	United Nations Observer Missions Uganda–Rwanda
UNSC	United Nations Security Council