Transitional Justice and Gacaca in Post-Genocide Rwanda: theory and practice

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Gacaca is a process of healing all Rwandans and rehabilitating the Rwandan Nation steered by 170,000 judges "Inyangamugayo" who, by the end of this process, will have acquired an unprecedented experience in resolving conflicts. This mass of actors elected by their respective communities on the basis of their integrity will strengthen democratization and good governance.

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by Alice Urusaro Karekezi

The aim of this communication is to present the state of knowledge on Gacaca. 10 years after the consultations held at the Village Urugwiro which are at the origin of the option for Gacaca and 5 years after the launching of the experimental phase. Gacaca has promoted practice and theoretical understanding of the transitional justice.

The option for Gacaca has been criticized with various actors: academicians, historians, jurists, sociologists, international and national associations of human rights, Bar members. For these observers, Gacaca was an inappropriate solution.

The debate concerned three proposals of models: labour division between international and national jurisdictions under the supervision of organizations for the defense of human rights, and truth and amnesty commissions. The fundamental debate behind these propos-
als is how to reconcile reconciliation and justice, retributing justice and restorative justice: a justice which fights impunity and excess of justice which becomes revenge.

At present, Gacaca is more and more accepted in academic debates and political analyses. Many studies have been dedicated to this issue: they have allowed to gain better understanding of the process. But there are still points to be cleared up and enough space was not given to the beneficiaries of Gacaca to voice their views. Besides, Gacaca was not studied in what it is; it was analysed from the pre-established models which separate the objectives of reconciliation and those of justice.

Genocidal violence is what mostly interests international tribunals, truth commissions and individual psychology. Their approach privileges the crimes committed by those who have planned and orchestrated the genocidal acts: it fails to explain the popular violence and the creativity of local communities in the area of reconciliation and restorative justice. Gacaca originality is that it is situated in a local process: law on Gacaca grants judicial powers to local communities. The fundamental question is to know how these powers will be used.

Gacaca promoted research on transitional justice both at the theoretical and practical level which aims at giving contextual and historic responses to the dilemmas caused by political violence. Post-war European experiences privileged international tribunals (Nuremberg and Tokyo). Other forms appeared during the cold war: revolutionary justice in Portugal, amnesty in Spain. In Latin America (Argentina, Chile, El Salvador, Guatemala, and Haiti) under the 3rd wave of democratization, the debate focused on punishment and forgiveness after massive violations of human rights. Eastern Europe carried out some selected lawsuits.

In Rwanda, after the 1994 genocide, the question was to pursue at the same time the ideal of reconciliation and of justice. Law on Gacaca aims at fostering the participation of the citizens in court decisions, reducing prison sentences for those who confess their crimes, encouraging confessions and compensation for the victims, classifying in 4 categories the crimes according to the level of responsibility and substituting community service for detention.

Gains from Gacaca are unindeniable: accessibility of justice, ownership of conflict resolution by local communities, capacities of local leaders, opportunities of dialogue and cooperation. But there are also challenges and uncertainties which press heavily on Gacaca: the question of security of witnesses, social and psychological problems generated by the process, the interference of decision-makers at local and national level. The Gacaca positive impact can be handicapped by these negative dynamics which appear during its implementation process.

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The Process of Unity and Reconciliation in Rwanda, by Fatuma Ndagiza

The objective of the National Unity and Reconciliation Commission (NURC) is to build a

2 Presented by Alex Mugabo, NURC.