

AFRICA WATCH

THE GACACA PROCESS

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Eleven years after the Rwandan genocide in which up to a million Tutsis and moderate Hutus were killed, the Rwandan government has launched a national judicial process aimed at bringing the perpetrators of the genocide to justice. Although trials of genocide suspects have been under way since 1996, according to some estimates it would have taken the Rwandan judicial system up to 150 years to try the over 100,000 people already detained on charges of genocide. Faced with this reality, the Rwandan government created the *gacaca* courts in 2001. They were subsequently introduced in a small number of pilot areas in two phases in 2002, and at national level in early 2005.

One of the key objectives of the *gacaca* courts is to eradicate the 'culture of impunity' in Rwanda. Many Rwandans feel strongly that if the authors of past ethnic massacres in Rwanda had been properly punished, the 1994 genocide would not have taken place. Without proper justice, they say, impunity cannot be eradicated, and reconciliation, which is the second key objective of the process, will remain impossible.

Based on a traditional form of community-level conflict resolution, the *gacaca* courts are essentially grassroots courts presided over by a group of nine judges who are elected by the community. The *gacaca* courts meet once a week, initially to gather, collate and, to some extent, verify information about what happened during the genocide, who was killed, and who

may be accused of having participated in the killings. Once the information gathering period is completed, the courts move to the trial phase during which the accused will have an opportunity to defend themselves, or to plead guilty and confess. The hearings of the *gacaca* courts are public and mandatory, and are intended to promote widespread participation with the aim of getting as much information as possible about what happened during the genocide.

So far, the experience of the pilot phase of the *gacaca* courts indicates that participation is high during the introductory stage of the process, largely as a result of curiosity, and tends to taper off somewhat later on. This has been attributed to a number of things, ranging from fear of reprisals for speaking openly and accusing people, to a significant loss of work time when attending the weekly meetings.

It is too early to evaluate how participation at national level will evolve; however, the introduction of the *gacaca* courts at national level has created an atmosphere of heightened tension around the process. Observers agree that while the *gacaca* process was taking place in only a few areas of the country, it remained a source of curiosity. However, now that it has been introduced on a nationwide level, it has become a reality for all Rwandans – a reality that will force Rwandans to revisit the darkest period of their history each week for as long as the *gacaca* courts function. Revisiting this period of their

history means that Hutus and Tutsis will regularly be reminded of a time that their communities were violently at odds with one another, and when ethnic differences were a matter of life and death. There is growing concern that the regular harkening back to this period during the *gacaca* courts could do more to damage the relationship between these two communities than to heal it. An additional factor which fuels concerns that the *gacaca* process may prove divisive rather than reconciliatory is that the *gacaca* courts will not investigate killings that happened after the genocide and that were frequently perpetrated by the Rwandan Patriotic Front (RPF) against Hutus. Many see this as selective justice and have criticised this omission as being unfair and at odds with a national reconciliation process.

Exacerbating the concern that the *gacaca* courts might be perceived as being one-sided is the fact that the Rwandan political arena remains extremely closed. Opposition parties have been sidelined while almost any criticism of the government is labelled divisionist. This means that the type of debate which a judicial process such as the *gacaca* tribunals would be expected to generate cannot be held openly. This lack of freedom to criticise a process that has massive implications at national level only serves to enforce the impression that the *gacaca*

courts are the government's way of settling past scores, even if this is not really the case.

Misgivings about the *gacaca* courts are not just the domain of the Hutu community, however. Many genocide survivors are also wary of the process, essentially because they perceive the confession procedure as amounting to a *de facto* amnesty for the perpetrators. The confession procedure is a cornerstone of the *gacaca* process: if a person confesses, pleads guilty and asks for forgiveness, his or her prison sentence will be reduced by up to half. This reduction in the prison sentence, coupled with what the survivors say is the accused person's lack of sincerity, has led many survivors to question the credibility of the *gacaca* process.

Most neutral observers agree that there is a very real risk not only that the *gacaca* courts may fail to meet their objective of trying all those involved in the genocide – the latest official figures put this number at 800,000 people, which would take the courts up to 20 years to try – but also that the *gacaca* process may backfire and heighten tensions between the two main ethnic groups in Rwanda. At the same time, there is widespread agreement that the perpetrators of the genocide must be brought to some sort of justice so that the country may move beyond its still very painful and very recent past.