Gacaca Beyond Retribution

Accountability, Context, and the Limits of Universal Transitional Justice

Charity Wibabara

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Rwanda's Gacaca courts should not be understood simply as an alternative to conventional criminal justice or assessed solely against transitional justice models developed elsewhere. Writing from my own experience and situated understanding of Rwanda's post-genocide context, I recognise that Gacaca emerged at a time when the country faced a devastated justice system, an overwhelming caseload, and the challenge of rebuilding relationships within communities fractured by mass violence. Its significance lies in its combination of accountability, truth-telling, community participation, and reconciliation. This perspective underscores the importance of understanding transitional justice in relation to local history, institutional capacity, and social realities, while critically examining how locally grounded approaches can uphold justice, individual responsibility, and meaningful reconciliation.

From Judicial Collapse to Gacaca

The 1994 Genocide against the Tutsi profoundly affected Rwanda's justice system. The judiciary had been largely destroyed and could handle only a few thousand cases annually. Numerous lawyers and judges had been killed during the genocide, died in detention or fled the country. According to the *Gacaca Report Summary* published in 2012, by November 1994 Rwanda had only twelve prosecutors and 244 judges, compared with 70 prosecutors and 758 judges before the Genocide against the Tutsi.[1] Thousands of genocide-related cases required investigation and adjudication at a time when Rwanda was simultaneously rebuilding its institutions and confronting the social consequences of mass violence. Conventional criminal justice alone could not realistically process the caseload within a reasonable period.

In response to the scale of this exceptional challenge, Rwanda complemented its formal justice system with Gacaca jurisdictions. The modern Gacaca system drew inspiration from a traditional community-based practice of dispute resolution, but it was adapted and institutionalised to respond to the particular circumstances of post-genocide Rwanda. Its objectives extended beyond punishment to include establishing truth, assigning individual responsibility, involving communities in the justice process and contributing to reconciliation.

Institutionalising a Homegrown Response

Gacaca was neither a simple revival of traditional practice nor an alternative imported from abroad. Although the modern Gacaca courts drew inspiration from Rwanda's traditional community-based system of dispute resolution, they differed significantly in purpose, structure, and procedure. Traditionally, Gacaca brought community members together to resolve local disputes, restore relationships, and promote reconciliation through collective discussion. In contrast, the post-genocide Gacaca courts were established under state legislation to investigate and adjudicate genocide-related crimes, determine individual responsibility, and impose legally prescribed sanctions. While retaining elements of community participation, public hearings, truth-telling, and reconciliation, the modern system operated within a formal legal framework, with defined jurisdiction and procedures.

Organic Law No. 40/2000 of 26 January 2001 created Gacaca courts and organised the prosecution of genocide crimes and other crimes against humanity

[1] National Service of Gacaca Jurisdictions, *Summary of the Report Presented at the Closing of Gacaca Court Activities* (Kigali, 18.06.2012).

committed between 1 October 1990 and 31 December 1994.[2] The framework was subsequently replaced by Organic Law No. 16/2004 of 19 June 2004.[3] Further amendments followed in 2006, 2007 and 2008. These amendments reflected several distinct considerations, including lessons emerging from the implementation of Gacaca, changes in Rwanda's administrative structure, the large volume of cases, and concerns regarding the classification of particularly serious offences. The 2007 amendment, for example, reclassified certain cases, thereby making them eligible for trial by Gacaca while retaining their significance within the broader framework of accountability for genocide-related crimes. This adjustment reflected efforts to manage the substantial caseload while maintaining a differentiated approach to accountability for genocide-related offences.[4]

The subsequent 2008 amendment expanded Gacaca's jurisdiction further, including the transfer of certain genocide-related cases pending before ordinary courts where proceedings had not been definitively concluded. Such transfers were governed by statutory provisions rather than the individual choice of victims or survivors. Although this measure sought to accelerate justice and address the substantial caseload, it raised important questions about survivors' participation, privacy, and access to justice, particularly in cases involving rape and sexual violence.[5]

What Counts as Justice?

Gacaca attracted substantial criticism. Concerns included the limited availability of trained legal professionals, inadequate witness protection, risks of intimidation and questions about whether community-based proceedings could genuinely achieve reconciliation. These concerns remain important in evaluating the system, yet criticism should not obscure the experiences of those who participated in Gacaca.

Empirical research, including interviews examined by Thibodeau, indicates that many participants regarded the process as fair, transparent and effective.[6] Survivors valued the opportunity to participate directly in proceedings and to obtain information concerning relatives who had disappeared during the genocide. The election of *Inyangamugayo* judges from among the affected communities also contributed to the legitimacy among these communities because they could select individuals they considered trustworthy, honest, and morally upright. This local selection process helped foster confidence in the judges and a sense of community ownership of the proceedings, although it did not eliminate concerns about impartiality or social pressure. Perpetrators likewise described truth-telling as an important part of the process. For some, admitting responsibility and confronting the consequences of their actions created opportunities for personal healing and reconciliation. The process could also enable families to learn what had happened to missing relatives.

These experiences point to an important distinction between formal accountability and the broader purposes of transitional justice. A criminal trial may determine guilt and impose punishment, but it does not necessarily reveal the circumstances surrounding a disappearance, restore relationships between neighbours or create opportunities for communities to confront a shared history. Gacaca attempted to perform some of these functions simultaneously.

Beyond the Retributive Model

The Gacaca experience challenges a narrow understanding of justice as punishment. Accountability for genocide crimes was indispensable.[7] At the same time, Rwanda's circumstances demonstrated that punish-

[2] Organic Law No. 40/2000 of 26 January 2001 Governing the Creation of Gacaca Courts and Organising the Prosecution of Genocide Crimes and Other Crimes against Humanity Committed in Rwanda between 1 October 1990 and 31 December 1994.
[3] Organic Law No. 16/2004 of 19 June 2004.
[4] Organic Law No. 10/2007 of 1 March 2007.
[5] Organic Law No. 13/2008 of 19 May 2008; Christopher J. Le Mon, *Rwanda's Troubled Gacaca Courts*, Human Rights Brief, 14 (2007), p. 16-20.
[6] Mary Thibodeau, *Analyzing the Social Impact of Gacaca Courts in the Reconciliation Process in Rwanda*, SIT Digital Collections, Independent Study Project (ISP) Collection, 2020.

ment alone could not address the full consequences of mass violence. This is why Rwanda's post-genocide justice strategy involved multiple mechanisms, including the International Criminal Tribunal for Rwanda, national courts and Gacaca. These mechanisms performed different functions and operated under different institutional constraints. Their coexistence reflected the reality that no single justice institution could address every dimension of the genocide.

The distinction between retributive and restorative justice should therefore not be understood as a strict choice between competing models.[8] Accountability and restoration can operate alongside one another. Criminal responsibility can coexist with truth-telling, community participation, reintegration and reconciliation. This broader understanding is particularly important in post-conflict societies where victims and perpetrators may continue to live in the same communities. Justice must then address not only the individual offender but also the relationships and social structures damaged by violence.

The strongest lesson of Gacaca may therefore be methodological rather than institutional. It demonstrates why transitional justice cannot be assessed independently of the context in which it operates. The African Union Transitional Justice Policy expressly recognises this principle. It provides that transitional justice should be context-specific and should take account of the nature of the conflict, the violations committed, the situation of vulnerable groups, and the legal systems, traditions and institutions of the affected society.[9] The Policy also emphasises national ownership and the importance of using appropriate formal and traditional judicial and non-judicial resources available at national and local levels before relying on external sources and capacities.

Gacaca reflects this approach. Rwanda confronted an exceptional combination of circumstances: a devastated judicial system, an enormous number of genocide-related cases, limited institutional capacity and communities in which survivors and perpetrators often continued to live alongside one another. A justice system designed exclusively around conventional trials could not, by itself, respond adequately to these realities. The significance of Gacaca is therefore not that it provides a universal model that other countries should reproduce. Its significance lies in demonstrating that transitional justice may need to be institutionally and culturally adapted to the society in which it operates.

Reconciliation as Social Repair

The importance of context becomes even clearer when reconciliation is considered. Reconciliation is not synonymous with forgiveness, nor does it simply mean the absence of conflict. It involves a complex combination of acknowledging violations, establishing truth, restoring relationships, promoting healing, enabling accountability and facilitating peaceful coexistence.[10] It also requires the individualisation of responsibility. Collective guilt cannot provide a sustainable foundation for reconciliation because it risks reproducing the very divisions that transitional justice seeks to overcome.

Gacaca contributed to this broader process by creating spaces in which communities could confront the past collectively. Its participatory character enabled survivors to speak, perpetrators to acknowledge responsibility and communities to engage with questions that conventional courtroom proceedings might leave unresolved. This does not mean that Gacaca achieved reconciliation in every community or that its shortcomings should be overlooked. Rather, it demonstrates that reconciliation requires mechanisms capable of engaging with the social consequences of mass violence as well as its criminal dimensions.

[7] Gerhard Werle and Florian Jeßberger, *Principles of International Criminal Law* (Oxford University Press, 4th ed., 2020), p. 233-238.

[8] Paul Christoph Bornkamm, *Rwanda's Gacaca Courts: Between Retribution and Reparation* (Oxford University Press, 2012), p. 119-157.

[9] African Union, *AU Transitional Justice Policy*, 2019, https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf, last accessed 26.10.2026.

[10] Sandra F. Joireman and Allison Corey, *Retributive Justice: The Gacaca Courts in Rwanda*, African Affairs, 103 (2004), p. 87-89; B. Ingelaere, *Do We Understand Life after Genocide? Center and Periphery in the Construction of Knowledge in Post-Genocide Rwanda*, African Studies Review, 53 (2010), DOI: 10.1353/arw.0.0307, p. 49-50.

What Gacaca Leaves Behind

Initially, Gacaca handled most genocide-related cases outside the most serious category, which remained under ordinary court jurisdiction. As outlined above, legislative amendments in 2007 and 2008 expanded Gacaca's jurisdiction, thereby transferring additional cases from ordinary courts to address the overwhelming backlog. Ordinary courts retained jurisdiction over certain high-level suspects and cases assigned to other jurisdictions. This evolving relationship illustrates legal pluralism in practice: a state-regulated, community-based justice system operating alongside formal courts, with jurisdiction shaped by changing legal and practical priorities.

Rwanda responded to institutional collapse and mass criminality by developing a justice mechanism that combined accountability with community participation, truth-telling and reconciliation. In doing so, Gacaca illustrated that transitional justice can be both principled and context-sensitive. Its enduring lesson is not that traditional mechanisms should replace formal justice. Rather, it is that societies emerging from mass violence may require multiple forms of justice capable of addressing different dimensions of harm. Transitional justice must therefore remain attentive to local history, institutional capacity, cultural legitimacy and the participation of affected communities.

This also raises a broader question about how experiences such as Gacaca challenge and reshape prevailing understandings of justice beyond national borders. In this sense, Gacaca can be situated within debates on reflexive globalisation, through which legal concepts and practices are critically reconsidered and reshaped through exchanges between different historical, cultural, and institutional contexts.[11] The Gacaca experience ultimately shifts the question from "Which model of transitional justice is universally correct?" to a more demanding question: "What forms of justice can meaningfully respond to the particular history, needs and capacities of the society seeking to rebuild?"

For Rwanda, the answer involved combining formal criminal accountability with a participatory, community-based mechanism. The experience demonstrates that justice after mass violence is not only about determining guilt and punishment. It is also about rebuilding the relationships that violence destroyed and creating the conditions for a shared future. Gacaca's enduring contribution to transitional justice scholarship therefore lies precisely in its challenge to universalism. It reminds us that justice mechanisms cannot be separated from the societies they seek to transform. Their legitimacy and effectiveness must be assessed not only by the institutions they resemble, but also by the historical realities they confront and the social purposes they are expected to serve.

[11] Philipp Dann and Florian Jeßberger, *Reflexive Globalisation, Law and Placemaking*, Verfassungsblog, 05.02.2026, https://verfassungsblog.de/reflexive-globalisation-law-and-placemaking/, last accessed 26.10.2026, DOI: 10.59704/f8e7edc0c8a2351b.

ABOUT THE AUTHOR

Charity Wibabara

Dr Charity Wibabara was a Senior Fellow (2025/26) at the Centre for Advanced Studies Reflexive Globalisation and the Law (RefLex) at Humboldt-Universität zu Berlin. She is a Principal State Attorney at the Ministry of Justice of Rwanda, where she is Head of the International Justice and Judicial Cooperation Department

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