MASS JUSTICE AFTER MASS VIOLENCE

IS AFRICAN ‘TRADITION’ THE SOLUTION?

Gacaca Courts in Postgenocide Rwanda

FAST FACTS

GENOCIDE

- April-July 1994
- Approx. 600,000 Tutsi killed
- High involvement of ‘ordinary’ civilians
- Justice system destroyed
- Policy choice: retributive justice
- 130,000+ in prison (2000)
- Expected time processing with ‘classic’ justice system: 100+ years

GACACA

- Policy choice: modernize ‘traditional’ dispute resolution system ‘gacaca’
- 2005-2012 (most trials in 2007)
- 14,000+ decentralized courts
- Approx. 170,000 ‘lay’ judges
- 1,958,634 ‘cases’ tried
- Majority = cases of pillaging
- Appro. 60% pleading not guilty
- Appro. 10% acquittal rate

‘OLD’ GACACA

- Minor disputes
- Old and wise men
- Restoration of harmony
- Informal mechanism
- Gradually evolved towards semi-administrative body
- Spontaneous resource solicited after the genocide dealing with looting

‘NEW’ GACACA

- Genocide crimes
- Prosecutorial & retributive logic
- Judges: women & young people
- State-driven & largely state-owned
- Cornerstones:
  - Categorization according to crime
  - Decentralization of justice
  - Confession/plea bargaining

FINDINGS

The modern gacaca system is – paradoxically – only very limited ‘tradition’-based.
There is no gradual continuity between the ‘old’ and the ‘new’ gacaca but a difference in kind.
The modern gacaca system managed to speed up the backlog of genocide-related cases.
The modern system was characterized by a systemic tendency to foster guilt
Women have taken up an important role in the functioning of the courts but the procedures remained biased towards cases of rape
Unpopular popular justice but ordinary Rwandans nevertheless preferred the modern gacaca courts over the ordinary courts and the ICTR
The modern gacaca process was a mimicry of the ‘traditional’ dispute resolution system with a reduced potential for conciliation
The modern gacaca was a mimicry of the modern legal system but with reduced guarantees of due process
Establishing the truth is considered as the most positive and the most negative (absence of the truth) outcome of the modern gacaca process
The modern gacaca process replaced one culture of impunity (violence against Tutsi) with another culture of impunity (violence against Hutu)

POLICY IMPLICATIONS

Tradition-based justice and reconciliation mechanism have potential since they emerge from and are situated in the ‘natural’ socio-cultural habitat
However: do not go against the grain, do not change the logic of tradition-based justice and reconciliation mechanisms
Complementary approaches are more important than an overall comprise. Eg: Tribunals for top responsibilities; grassroots mechanisms to restore harmony and reintegrate people in society
Be aware of ingrained ‘legalism’ - create sufficient local knowledge as well as decentralized, socio-cultural insights and expertise

FIELDWORK, METHOD & DATA

34+ months of fieldwork in rural Rwanda between 2004 and 2012
Ethnography & mixed method data collection
Observation & analysis of 1,917 gacaca trials
1,359 interviews with 1,571 Rwandans

More information & publications @ www.bertingelaere.net