Journal of Living Together (2019) Volume 6, Issue 1, pp. 153-161

ISSN 2373-6615 (Print); ISSN 2373-6631 (Online)

Indigenous Dispute Resolution and National Reconciliation: Learning from the Gacaca Courts in Rwanda

Basil Ugorji

Department of Conflict Resolution Studies, Nova Southeastern University, Fort Lauderdale, Florida

Abstract

This essay explores how the Gacaca courts system, a traditional system of dispute resolution, was revitalized after the 1994 genocide against the Tutsi to promote national unity and reconciliation in Rwanda. To realize this goal, the essay examines five major points: the revitalization process of the Gacaca courts in Rwanda; the conflict resolution practice utilized in the Gacaca courts; the practice theory of change underlying this intervention; Lederach's (1997) views on "sustainable reconciliation in divided societies" as applicable to the Gacaca case; and finally the lessons learned from the Gacaca courts system and how the Gacaca courts were used to foster national reconciliation and peace after the genocide.

Keywords: Rwanda, Hutu, Tutsi, Gacaca court, genocide, alternative dispute resolution, traditional conflict resolution, indigenous people, national reconciliation

Introduction

On June 16, 2016, I delivered a lecture at the Department of Conflict Resolution Studies, Nova Southeastern University, Florida, USA on the topic: "Revitalizing Tradition to Promote Reconciliation: The Gacaca Courts in Rwanda" (Malan, 2005, pp. 466-471). The process by which I chose the Gacaca case in Rwanda was both serendipitous and teleological. *Serendipity*, a word used by Horace Walpole in 1754 to mean "discoveries, by accident and sagacity, of things" (Lederach, 2005, p. 114), was re-appropriated by Lederach (2005) to explain "the fascination and frustration of sideways progress that constitutes the human endeavor of building peace in settings of violence, for constructive social change is often what accompanies and surrounds the journey more than what was originally and intentionally pursued and produced" (p. 115). Initially, I was fascinated by and drawn toward the "faith-based organizations: the religious dimension of peacebuilding," especially the case of "the Pastor and the Imam: the Muslim-Christian dialogue forum in Nigeria" (Johnston, 2005, p. 226). However, and as the French expression goes, *par hasard*, meaning 'accidentally or by chance', I had an opportunity and honor of meeting "Imam Muhammad Ashafa and Pastor James Wuye of the Interfaith Mediation Center, Kaduna, northern Nigeria" (ICERM Press Release, 2016) at a conference in Sacramento, California. Having established a relationship with them, and given that I have access to enormous materials about their work and theory of change, I thought of studying and discovering another practice theory of change that is less familiar to me; hence, my second area of interest: "traditional and local conflict resolution" (Malan, 2005, p. 449), specifically "the Gacaca courts in Rwanda" (Malan, 2005, p. 466).

My choice of the Gacaca case was not just to learn about the history of the 1994 genocide against the Tutsi in Rwanda. Prior to this presentation, I had done some studies on the genocide against the Tutsi in Rwanda. From a *teleological* perspective, however, I wanted to explore, discover, learn and understand how to revitalize traditional customs and practices for social change through alternative dispute resolution processes – particularly restorative justice and victim-offender-mediation. Many conflict resolution theorists and practitioners, and even policymakers, do not recognize the importance of traditional customs and practices in creating the conditions for sustainable peace. The presentation reveals that the Gacaca courts played an important role in promoting interethnic understanding, national unity and reconciliation after the 1994 genocide against the Tutsi in Rwanda.

In light of Lederach's (1997) views on "sustainable reconciliation in divided societies," the presentation explores why the Gacaca courts were institutionalized and the processes by which this traditional model of dispute resolution helped in creating sustainable reconciliation and transformation after the genocide. For a detailed understanding of the presentation, this essay covers five important aspects: the revitalization process of the Gacaca courts system in Rwanda; the conflict resolution practice utilized in the Gacaca courts; the practice theory of change underlying this intervention; Lederach's (1997) views on "sustainable reconciliation in divided societies" as applicable to the Gacaca case; and finally, a conclusion that highlights lessons learned from this practice theory of change, including its weaknesses and strengths.

Revitalization Process of the Gacaca Courts System in Rwanda

The 1994 genocide against the Tutsi in Rwanda raises fundamental, political, policy, judicial, socio-ethical, and moral questions, not only in Rwanda, but also around the world. These questions

center on how the Hutus, Tutsis, and Twas could live together in peace and harmony as Rwandans after the massacre of about one million Tutsi ethnic members and their Hutu sympathizers, and with a high level of trauma, pain, anger, hatred, boiling animosity, refugee crisis, and loss or damage of property that the genocide inflicted on the survivors. How could a new national identity be reconstructed in the post-1994 genocide era? And from a judicial perspective, how could the perpetrators of genocide be tried? What kind(s) of punishment should be given to them to appease, soothe, and comfort the victims? Which model of dispute resolution could help in creating the conditions for the emergence of a new narrative, a narrative that is different from the hateful narrative spread through the media, especially by *Radio Télévision Libre des Milles Collines*? Are there ways by which reparations, trauma healing, and possibly, forgiveness and reconciliation could take place? And finally, which method of conflict resolution has the potential for building bridges between the Hutus and the Tutsis for the emergence of a *national unity and national identity card* as an antithesis of the Belgian government's tactic of divide and rule during its conflict inducing colonization practices in Rwanda and its *divisive ethnic identity cards*?

Five years after the 1994 genocide against the Tutsi, the RPF's (Rwandan Patriotic Front) controlled government led by President Paul Kagame initiated a *National Unity and Reconciliation Commission* with the goal of "reconstructing the Rwandan identity, as well as balancing justice, truth, peace and security in the country" (United Nations Department of Public Information, Outreach Programme on the Rwanda Genocide, n.d.). The notion of justice after a genocide implies that the perpetrators should be arrested, tried and sentenced. The problem with the case of Rwanda was the high number of people accused of participating in the genocide at different levels and in various capacities. According to Malan (2005), "with 120,000 people accused of war crimes in prison, experts calculated that it would take 350 years before all defendants would be tried if the official judicial system and procedures would be pursued unaltered" (pp. 466-467). Relying solely on the formal national courts and the international criminal tribunal (which was created specifically for the 1994 genocide against the Tutsi) for justice could make the process unnecessarily long, and as usual, slow. By the nature and operation of the judicial system, the outcomes are designed to satisfy only the abstract legal and retributive principles, deter further occurrence of genocide, and remove the bad guys from the society by giving them a life sentence. In addition, the agents of change within the formal judicial system (i.e., the judges) may not be trusted by the parties; and the cost of the process is usually expensive that with little or no budget after the genocide, Rwanda could not have afforded the cost of holding formal judicial (court) trials for more than 120,000 people initially identified (Malan, 2005).

Confronted with these challenges, the Rwandan government and its post-genocide citizens thought that it was even better to return to their tradition to explore and revitalize the dispute resolution system and process their ancestors used to resolve conflicts in their various villages and communities. This was the beginning of the revitalization process of the Gacaca courts system in Rwanda. As "a traditional Rwandan method of conflict resolution at the village level [used to settle] land-based disputes, property damage, marital issues, and inheritance rights" (Malan, 2005, p. 466), the Gacaca courts system was revitalized in 2001 and its implementation started in 2002 and ended in 2012.

According to Malan (2005), the Gacaca courts system was used to hear three categories of crimes: "crimes against property; serious assaults against the person; and criminal acts that place the perpetrators among the perpetrators and accomplices of international homicide" (p. 467). The judges or jurors who facilitated the process were community members selected from the grassroots levels based

on their proven records of "integrity, conduct, and lack of involvement in the genocide" (Malan, 2005, p. 467). Through a non-adversarial, restorative justice oriented victim-offender-mediation process, about 250,000 elected judge-facilitators held weekly hearings in "more than 12,000 community-based courts [for] more than 1.2 million cases throughout the country" (Malan, 2005, p. 467). Unlike the Western, formal judicial system, the duration of Gacaca court cases were short and the process was fast, thereby helping the Rwandan government to save a lot of money. As Kayigamba (2012) notes:

> Perhaps the achievements of the Gacaca courts should be measured against those of the International Criminal Tribunal for Rwanda (ICTR) based in Arusha, Tanzania. While the Rwandan grassroots courts have tackled as many as two million cases, the ICTR has only managed to complete 69 trials. Gacaca trials have cost $40 million, whereas the ICTR trials have cost a staggering $1 billion. (para. 24)

The short duration and the inexpensive nature of the Gacaca courts system did not jeopardize the process outcome which includes truth finding, confession, remorse, apology, forgiveness, letting go, reparation or restitution, community service, reconciliation, reintegration, healing, closure, and peace.

Conflict Resolution Practice Utilized in the Gacaca Courts

Based on the foregoing characteristic elements of the Gacaca courts system, it could be said that the dispute resolution practice that was utilized in the Gacaca courts falls within the non-adversarial and restorative justice system and processes, especially victim offender mediation. In 2012, I did a study on the "possibility of ethno-religious mediation in Africa" (Ugorji, 2012), and my findings on the restorative justice program as was implemented in South Africa and later in Rwanda reveal that "unlike the retributive justice (or punitive, repressive) which aims to restore order through the imposition of sufferings, sanctions, revenge, and proportionate reprisals; restorative justice (or transformative) is concerned with: a) the restoration or reconstruction of the victims; and b) the reintegration of offenders into the community" (Ugorji, 2012, p. 160). This finding explains how the Gacaca courts were able to facilitate not only a national reconciliation and the healing process of the victims, but also the system provided a space for the perpetrators to be heard by their communities in which they were to be reintegrated after the terms of reparations were met.

From this perspective, the Gacaca courts system focused on the following seven areas among the other things it achieved: damage(s) caused to the victims and the community, reparation, restoration of the broken equilibrium among the parties: society, offenders and victims; reconciliation, relationship, peace in the community; and finally, a focus on the reestablishment of a balance - "a balance between a number of different tensions: between therapeutic and retributive models of justice; between the rights of offenders and the needs of victims; and between the need to rehabilitate offenders and the duty to protect the public" (Liebmann, 2007, p. 33).

The success of restorative justice programs like the Gacaca courts system depends on the types of questions that are asked. As explained by Zehr (2002), restorative justice process like victim-offender-mediation wants to know who was injured, what the needs of the parties are, and who should be held responsible or accountable for the injury. This approach is totally different in retributive justice system.

The formal, West-inspired judicial system focuses on the laws and tries to debate on which of the laws are broken, which of the parties broke these laws, and the penalty or punishment (sentence) that should be given to those who are found guilty (as explained in Ugorji, 2012, pp. 160-162).

The Practice Theory of Change Underlying this Intervention

Leveraging on Shapiro's (2002) "theory of practice and change flowchart," the table below illustrates how change occurs in the Gacaca courts system.

Diagnosis/Problem Framing	Intervention Framing & Goals	Methods	How Change Happens	Intended Effects
The need for the Hutu, Tutsi, and Twa survivors (those who were hunted to be killed during the genocide against the Tutsi) to live together in peace and harmony as Rwandans after the genocide and massacre of about one million Tutsi ethnic members and their Hutu sympathizers. --- High level of trauma, pain, anger, hatred, boiling animosity, refugee crisis, and loss or damage of property in the wake of the genocide. --- Victims need to know the truth about what happened. --- Perpetrators need a safe space to confess. --- Initially, "more than 120,000 people were waiting for trial for bearing criminal responsibility for their participation in the killings." --- Time and cost of holding formal judicial court trials for more than 120,000 people initially identified.	Use non-adversarial and restorative justice system and processes. --- Revitalize and incorporate the traditional customary dispute resolution system and processes. --- Establish community-based courts or Gacaca courts and hold hearings. --- Elect community members from the grassroots levels based on their proven records of "integrity, conduct, and lack of involvement in the genocide" to serve as Judges. --- Hold hearings in all the affected communities.	Engage in victim-offender-mediation. --- Story telling – perpetrators, victims and witnesses (community members) tell their stories about what happened. --- Active and reflective listening. --- Confession. --- Truth finding, acknowledgement and validation. --- Acknowledgement and validation of hurts and damage caused. --- Remorse, apology, forgiveness, letting go, reparation or restitution, and community service. --- Hold hearings every week.	Using the Gacaca courts system will lead to community grieving, healing of traumatic memories, soothing of anger and pain, and reduction of fears and hatred. --- Sharing stories and listening to one another will lead to metacognition, mutual understanding, and rebuilding of relationship. --- Confession, remorse, apology, and commitment to reparation will elicit forgiveness. --- Rehabilitation of offenders will lead to public safety. --- Allowing community members with good reputation to facilitate the mediation process will add confidence to, and legitimize, the process. --- Frequent hearings will bring relief to the affected population and add credibility to the process.	National unity. --- New Rwandan national identity. --- National reconciliation. --- New narrative about what happened. --- Healing. --- Closure. --- Reintegration of offenders into the community. --- Peace. --- Reliable process, inexpensive, and fast.

Lederach's (1997) Views on "Sustainable Reconciliation in Divided Societies" as Applicable to the Gacaca Case

"Building peace: Sustainable reconciliation in divided societies" by Lederach (1997) constitutes an important theoretical framework from which the Gacaca courts system and processes could be

explained. Published three years after the 1994 genocide against the Tutsi and four years before the revitalization process of the Gacaca courts system started, the timing of this book may suggest that the author was asked to lay out a theory of change for the post-1994 genocide national unity and reconciliation programs in Rwanda. On the contrary, the author rarely mentioned Rwanda in the book; rather, and according to him, the framework of "sustainable reconciliation" draws on his "experiences in Nicaragua, Somalia, Colombia, Northern Ireland, the Philippines and the Basque country" (Lederach, 1997, p. xvii). This marks another important serendipitous moment in my reflection on the Gacaca case. With a prophetic vision and serendipitous prowess, Lederach (1997) suggests two interdependent paradigm shifts in the manifestation of conflict, and conflict analysis and resolution. These paradigm shifts shed light on the practice theory of change evident in the Gacaca courts system. The first is that there is a shift from international conflict manifestation to intra-national or intra-state conflicts; and the second is a shift from western oriented "statist diplomacy" or "the negotiation of substantive interests and issues" to "peaceful and constructive transformation of conflict" through "sustainable reconciliation from within [the affected] society" (Lederach, 1997, p. 25).

The first paradigm shift shows that today's conflicts, especially since the end of the cold war, are basically intra-national or interethnic conflicts caused by unhealed, unresolved, and untransformed deep rooted historic animosities and memories of past trauma, pain and hurt, colored by mutual suspicion and hostility, fear, and struggle over power and economic resources.

These factors make such conflicts intractable and protractible. Because of the continuous proximity of the parties, the immediacy of the issues in conflict, and the cultural practices on which the stakeholders' communication styles are based, the second paradigm shift stresses that using the formal western model of conflict resolution, for example, the judicial or retributive system or peripherally "static" and mechanical diplomacy at the top level alone will never touch the heart and sources of the issues, but can only suppress the problem momentarily, thereby creating a condition that will lead to a new cycle of violent escalation. To transform the entire system where the conflict exists, what is needed according to Lederach (1997) is a focus "on the restoration and rebuilding of relationships" (pp. 24-25) from the bottom up through innovative reconciliation programs and activities, and by creating psychological, physical, and social meeting spaces (places) or "points of encounter" where "truth (acknowledgement, transparency, revelation, clarity) and mercy (acceptance, forgiveness, support, compassion, healing) meet; and justice (equality, right relationships, making things right, restitution) and peace (harmony, unity, well-being, security, respect)" (Lederach, 1997, pp. 28-30) are validated and promoted.

Lederach's (1997) theoretical framework and conflict transformation model depict exactly the basic tenets on which the Gacaca courts system are based. The Gacaca Courts system acting as a vehicle for inter-personal, inter-group, and national reconciliation and transformation after the genocide was needed to realize the dreams of the Rwandan people: national unity, new Rwandan national identity, new narrative about what happened, healing, closure, reintegration of offenders into the community, and peace. The processes by which these longings are realized are evident in Lederach's (1997) theory of change: "a focus on relationship will provide new ways to address the impasse on issues; provide a space for grieving the past; permit a reorientation toward the future; and envisioning a common future creates new lenses for dealing with the past" (p. 31). Reconciliation, as the Gacaca Courts system reveals and as the author opines, helps to restore broken relationships between the whole and the parts so that the system will begin to work again harmoniously.

Conclusion

This essay will not be complete without highlighting the lessons learned from the practice theory of change on the one hand, and evaluating the conflict intervention and practice theory of change underlying the Gacaca Courts system on the other hand.

As a conflict resolution practitioner and scholar, I see the Gacaca courts system as a success story from where many lessons emerge. Among the lessons learned, the following two stand out. First, it is important for each country and people to review their traditions and customary practices in order to explore and revitalize conflict resolution practices inherent in and suitable for their cultures. In line with Salem's (2007) "Critique of western conflict resolution from a nonwestern perspective," it is often counterproductive to transport western conflict resolution theories and models to non-western cultures. Second, in each society, there are men and women of peace, or peace agents, or agents of change, what Lederach (1997) calls "peace constituency" (p. 94). Like the ordinary people who served as judges (*Inyangamugayo*) in the Gacaca courts, these peacemakers have "a vision for peace," capacity to build bridges "across the lines of conflict" (Lederach, 1997, p. 94), and the reputation needed to earn public recognition and legitimacy. Local governments, civil society organizations, and donor countries and agencies should identify, partner with, empower these local peacemakers, and help them with resources to do their peacebuilding work. They should desist from providing hundreds of thousands of dollars to the so-called external or foreign conflict resolution experts who, in the process of trying to fix the problem, contribute to its exacerbation.

Although the Gacaca courts system is full of success stories, it has been criticized for some inadequacies. At the early stage of the process, some survivors questioned the gain in participating since their family members who were killed during the genocide will not be brought back to life (Malan, 2005). Others expressed fear of retaliation after testifying in the courts. Other issues associated with the Gacaca courts include lack of compensation for judges; absence of "a right to legal advice or counsel" (Malan, 2005, p. 468); conflicts of interests on the part of the witnesses and elected judges which often manifested in "misuse of the process to give false testimonies against other community members leading to tensions rather than enhancing reconciliation" (Malan, 2005, p. 469); accusation of confession under torture; and women's reluctance to "come forward and speak about sexual violence" (Malan, 2005, p. 470) in public hearings.

Even with all these defects - some of which were later corrected, for instance, women were included in the process, and provisions were made for special/private hearings on cases of sexual abuse/violence-, the Gacaca courts system provides an exceptional, reliable, and inexpensive model for resolving and transforming intractable ethnic conflicts that are deeply rooted in historic animosities. This indigenous dispute resolution, revitalized and implemented after the 1994 genocide against the Tutsi in Rwanda, paved the way for the emergence of national unity, new Rwandan national identity, national reconciliation, new narrative about what happened, healing, closure for the victims, reintegration of offenders into the community, and sustainable peace.

References

ICERM Press Release. (2016). ICERM president and CEO, Basil Ugorji, joined the world to honor the imam and the pastor from the northern nigeria. *International Center for Ethno-Religious Mediation*. Retrieved from https://www.icermediation.org/news-media/press-releases/icerm-president-and-ceo-basil-ugorji-joined-the-world-to-honor-the-imam-and-the-pastor-from-the-northern-nigeria/

Johnston, D. (2005). Faith-based organizations: The religious dimensions of peacebuilding. In P. Tongeren, M. Brenk, M. Hellema, & J. Verhoeven (Eds.), *People building peace II: Successful stories of civil society* (pp. 209-244). Boulder, Colorado: Lynne Rienner Publishers, Inc.

Kayigamba, J. B. (2012, June 15). Rwanda's gacaca courts: A mixed legacy. *New Internationalist*. Retrieved from https://newint.org/features/web-exclusive/2012/06/15/gacaca-courts-legacy

Lederach, J. P. (1997). *Building peace: Sustainable reconciliation in divided societies*. Washington, DC: United States Institute of Peace Press.

Lederach, J. P. (2005). *The moral imagination: The art and soul of building peace*. New York: Oxford University Press.

Liebmann, M. (2007). *Restorative justice: How it works*. Philadelphia, PA: Jessica Kingsley Publishers.

Malan, J. (2005). Traditional and local conflict resolution. In P. Tongeren, M. Brenk, M. Hellema, & J. Verhoeven (Eds.), *People building peace II: Successful stories of civil society* (pp. 449-471). Boulder, Colorado: Lynne Rienner Publishers, Inc.

Moore, C. W. (2014). *The mediation process: Practical strategies for resolving conflicts* (4th ed.). San Francisco: Jossey-Bass.

Salem, P. E. (1993). A critique of western conflict resolution from a non-western perspective. *Negotiation Journal, 9*(4), 361-369. https://doi.org/10.1111/j.1571-9979.1993.tb00724.x

Shapiro, I. (2002). *Training for racial equity and inclusion: A guide to selected programs*. Washington, DC: The Aspen Institute.

Ugorji, B. (2012). *From cultural justice to inter-ethnic mediation: A reflection on the possibility of ethno-religious mediation in Africa*. Colorado: Outskirts Press.

United Nations. (n.d.). Outreach programme on the rwanda genocide and the united nations. Retrieved June 15, 2016 from http://www.un.org/en/preventgenocide/rwanda/

Zehr, H. (2015). The little book of restorative justice (2nd ed.). New York, NY: Good Books.