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Judging Genocide in Rwanda: Lay Judges and Mass Prosecutions in Local Courts

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ABSTRACT

The motivations, attitudes and behaviors of the quarter million lay judges who ran the mass prosecutions for genocide is a curiously under-studied topic in the growing literature on the local *gacaca* courts in Rwanda. The state would have failed to prosecute thousands of citizens without the cooperation of these judges. Yet this post-genocide Tutsi-dominated authoritarian state allowed these courts to run more or less independently and left this all-important task in the hands of lay judges. The judges too volunteered to work without compensation. Who were the judges? Why did they agree to take on the social and economic risks of allocating punishment to their peers? How did the formal independence of the courts square with the authoritarian state? This paper ventures to answer these questions and using a combination of survey data and deep ethnographic work presents a re-thinking of the conventional answers to questions of state control and popular participation in post-genocide Rwanda.

Introduction

In ten years (2002-2012), the *gacaca* tribunals[1] manned by lay judges tried more than 1 million cases of genocide. The post-genocide state dominated by the Tutsi-led RPF (Rwanda Patriotic Front) established almost 12,000 local courts in which individuals elected by their communities applied state law to try their peers—mostly ordinary Hutu who had been mobilized by their extremist co-ethnics to participate in the killings in which almost 800,000 Tutsi civilians and moderate Hutu opposed to the genocide had perished. There has been much discussion about the chilling effect of the courts' overreach— the mass arrests from

[1] Based on a customary model in which community members known for their moral virtue were asked by disputing parties to decide petty thefts or damage to property. It was an ad-hoc and informal process that never traditionally applied state law, nor was traditionally involved in more serious cases such as homicide. These formalized courts tried genocide crimes, applied state law and involved substantial punishment, but continued with the customary practice of community-based discussion and the non-involvement of the professional legal class. Despite many cases of false accusations etc., defendants did not enjoy the protections they would have been entitled to in ordinary courts.

within the Hutu majority (85% of the population), the trial of 1 in 4 adult Hutu at the time of genocide, and the shortfall from international fair trial standards in these *gacaca* courts, but there exists no empirical analysis of judges' work for the most part, and no explanation as to why 250,000 individuals stepped up for election and were willing to serve as judges without remuneration[2].

There were substantial costs and risks associated with the job. In the pre-trial phase, the judges were working as many as 2-3 full days per week, compiling lists of people killed and property destroyed, and putting together the dossiers of those accused. This represented a loss of income as they were unable to tend to their fields, or go out looking for other work. During the trial phase, the hearing itself represented an entire day's work. Judges toiled from about 9 am until dusk fell and it became impossible to see in the dark[3], working without a designated break for food or drink. Another two days were spent studying the dossiers for upcoming cases, writing up summons to witnesses, preparing reports on cases just completed, formalizing the agenda for trial, and studying the manuals to resolve issues *in camera* for the hearing itself. "This work will kill us", grumbled the judges. Others despaired, "I return empty handed at the end of the day. Who will provide food for my children?"[4]

Yet they persevered under difficult conditions. They lacked offices, gathering from cell level (lowest administrative unit) at the sector government office (6-9 cells comprised a sector) if there was space available, or outside under the brutal sun, adjourning hastily if there was rain.[5] "I am nearly losing my eyesight," an older judge complained. It was not unusual to have to scrounge for tables and chairs to sit on.[6] Another source of discomfort was the social risk they undertook as they determined guilt and allocated punishment and prison terms to community members. Many judges could not shake the jittery feeling if hostile glances were directed at them or there were other perceived slights. There was some anxiety at their social isolation. "I cannot share a drink with my friend because he is involved in a case," or "If we cannot earn an income, who will look after our families except our community?" were common refrains.

In general, scholarly explanations of popular participation in a centralized authoritarian context have emphasized coercion or habitual obedience to orders from above. Despite the post-genocide regime transition to RPF rule, the continuity of authoritarian state structures and government operations in the

[2] The only compensation they received from the state was health insurance for themselves and their families, and a token amount plus a soda for each day they spent in training. The number of days the judges were formally trained ranged from 7-14 days. There were ad-hoc problem solving and advisement sessions with government agents over the years.

[3] Most rural homes and work sites did not have an electric connection.

[4] An additional day of the week was spent for *umuganda* (obligatory community work). They were not entitled to absences for *umuganda*, or other civic duties, such as attending cell/sector meetings, etc.

[5] In official reports, rain is cited as one of the major reasons for postponement of a *gacaca* session.

[6] In one of the "pilot" areas that commanded much spotlight, the individual responsible for commandeering chairs and benches from the local bars threatened to quit since he had not been paid even a token amount in remuneration.

pre-and post-genocide Rwandan context has been documented.[7] Scott Straus discussed the reach of hierarchical, well connected state structures from top down to the community level, the impact of human geography (that enabled neighborly surveillance and the identification of non-compliers) and a long standing culture of popular mobilization for developmental or security purposes (eg. obligatory labor service during u*muganda*, and civilian patrols).[8] Peter Uvin noted that state elites have historically preferred to extract compliance using threats of punishment than by extending positive inducements and incentives.[9] Longtime observers of Rwanda described the *gacaca* courts specifically as a "state directed system that is presently not an open forum"[10]. Coercive measures such as the imposition of fines (for failure to attend) and short prison terms (for failure to testify) have also been noted in places.[11] In contrast, the RPF-led government has emphasized the role of popular enthusiasm and local legitimacy of the once-customary (now statized) *gacaca* model.

But neither coercion, nor popular enthusiasm, appear to apply in the case of the judges in charge of running the *gacaca* courts. The lack of knowledge about judges' motivations stems from the fact that the otherwise vast literature on the *gacaca* courts is absent a systematic study of judges' social and political profiles, their behaviors inside and outside the courtroom, and attitudes toward their work. This paper fills this gap. It draws on a social-structural logic of the state's operation and proposes an interest-based explanation for judges' behaviors.

The argument is that judges were micro-level social elites with access to formal and informal positions of power and influence. Since elites at the center have historically struggled to project power into the grassroots (and continue to do so), they have needed local elites who are allies rather than rivals.[12] Judges were the centre's local allies within this scheme of things, co-opted into the ruling party and local administration. It is no overstatement to suggest that without the judges, the *gacaca* prosecutions would have come to a grinding halt. They also served as the regime's informal spokesmen and agents at the local level using their non-governmental sources of influence in the Church or in various cooperatives and associations. My data indicate that most judges were Hutu. This allowed the center, dominated by elites from the Tutsi ethnic minority, to project power at the grass roots comprised of the ethnic majority. Where the judges were concerned, this represented a unique opportunity to advance themselves at the local level. They now had the power to imprison or free their friends, family or rivals, engage in local power struggles, to move up the party hierarchy, or be rewarded ultimately with a salaried government position. As the data in this paper indicate, small deviations by the judges were "tolerated" as long as

[7] Thomson and Desrosiers (2011)

[8] Straus (2006), paper 8

[9] Uvin (1998), paper 6

[10] See Great Lakes Policy Forum (2003)

[11] Lars Waldorf (2006); Jennie Burnet (2008)

[12] The weakness of African states in projecting power from the center to the hinterlands has been much studied. See for instance, Jeffrey Herbst (2000). For an excellent study of decentralization premised in a bargain between local and national elites, see Catherine Boone (2003).

judges processed the cases speedily, produced a majority of guilty verdicts without causing significant disruptions at the local level, and routinely complied with directives from above.

The paper proceeds as follows: A brief historical overview of center-local relations shows that local elites were "allowed" autonomy in return for implementing the center's agenda in local governance and professing loyalty to the center. An examination of the state's development and administrative logics is also evidence of the argument that local autonomy is routinely ceded for the larger political convenience of elites at the center. This local autonomy is limited, and subject to various forms of oversight by the center that wants to maintain power even as it relaxes some controls at the local level. In fact, the structural logic is so effective that it is pervasive. The organization of the *National Service of Gacaca Jurisdictions* (SNJG) maps neatly onto the institutional logic of center-local relations, allowing judges to enjoy spaces of autonomy within the larger structure of supervision and control. The paper moves onto a discussion of the social and political profiles of judges in 4 regions of the country, and culminates in an examination of the interests, strategies and manipulations by judges who do their best to serve as impartial arbiters unless they have personal stakes in certain cases.

A note on data and their interpretation

In pursuit of a broad cross-regional coverage, I chose to work in four provinces— in the north, west, south and center and spent at least one month in each region. The site in the center was semi-urban and technically located in the capital Kigali. The other sites were in rural areas, without electricity or running water. At each site, my interpreter and I lived with the local population, renting rooms in their homes, temporarily empty coffee sheds, or at the local Parish. When we arrived in each area, the first rite of passage was to stop by the district office to formally introduce ourselves to the Mayor, police chief and SNJG district coordinator (3-4 sectors comprised a district), and present our permits from the various Ministries. With these formalities completed, an hour's walk or so along dirt tracks would take us to the specific administrative sector in which the tribunals were functioning at cell level.

Within each sector, 5 cells were selected randomly and from within each cell level *gacaca* court, the judges with the 5 most important positions on the tribunal (the "coordinating committee"[13]— henceforth "CC") were interviewed. Thus, a hundred judges were interviewed from four regions. If there happened to be no survivors on this "CC", I interviewed survivors amongst the remaining judges or sought to interview survivors in the general population. This was done in order to cross check some of the information generated in the interviews (eg. occurrence of acts of intimidation, or relationships among

[13] This included the President, 2 Vice Presidents and 2 Secretaries. There were originally 19 judges for each court but the *gacaca* law of 2004 reduced the total number of permanent judges to 9. There were also 5 non-permanent judges who had been elected and filled in for a permanent judge who was not available on a given day. The *gacaca* law of 2007 further reduced the number of permanent judges per tribunal to 7 but the composition of the CC remained unchanged.

judges) and for some diversity in the views solicited. In addition to the interviews with the judges, three other types of data were collected: weekly and monthly reports (2002-2004) from the SNJG district office; interview data with officials at the district- the SNJG coordinator, Mayor and police chief; and participant observation data from the trial hearings and judges' re-election activities.

Although judges were eager to present an optimistic picture in the first round of fieldwork and survey, there were some tantalizing references to local conspiracies and coalitions pitted against one another. A survivor who was a non-permanent judge claimed she was too afraid to speak her mind. She even claimed that she had been elected against her will in order to have a token presence on the bench. Another survivor with a non-permanent position alleged that she had been properly elected but later removed when some people falsely denounced her of complicity in the genocide.[14] In places where members of the bench on the "CC" were all Hutu, they hinted at mutual misgivings and sought to tarnish each others' reputations. In a rare instance, a (Hutu) SNJG district coordinator appeared to be involved in nightly clandestine meetings intended to discourage people from testifying. Although the entry against his name in the police register was already a few months old, he was still carrying on with his job. Clearly, there was need for more in-depth exploration of these local struggles.

I returned to the site in the southern region for in-depth ethnographic work, and spent several months in the area. The trial phase had begun, which was useful as I was able to monitor the hearings at this crucial stage. Data were also collected by way of informal discussions with judges—mostly over drinks after the weekly sessions were completed. We were also trusted enough to be present in their private meetings.[15] The extended stay this time around enabled me to identify local relationships at work, and experience how the routines and crises of *gacaca* courts intertwined with everyday life on the hills. In particular, it helped me discover how ordinary people related to and responded to government. Like many others who walked an hour to get to the district office to submit reports, to petition and complain, I too walked to secure permission to continue with my research at various intervals. I observed how the district SNJG coordinator operated, how often district elites summoned local leaders, what kinds of incidents occasioned a visit from the district authorities, the strategies through which the district projected power into the grassroots, and the various ways in which spaces of autonomy operated at the local level. I also relied on secondary sources, such as NGO reports, and judges' training and operations manuals produced by the SNJG in collaboration with international NGOs.

A delicate issue was identifying people by their ethnicity. Ethnic identity was linked to the specific type of persecution different groups had experienced during the civil war that had begun in 1991 (when the RPF rebels attacked Rwanda) and had culminated in genocide in 1994. Indeed, the particularly thorny matter of the atrocities perpetrated by the Tutsi-dominated RPF against Hutu civilians had been removed from *gacaca* court jurisdiction by the RPF government. Any public talk of the persecution of Hutu could land individuals in trouble. There were substantial prison terms for those accused of making ethnically based political claims or indulging in oral acts potentially construed as "divisive" or as

[14] She was accused of handing over her children willingly to the death squad that had arrived at her door.
[15] Elsewhere I have described a dynamic of "partial trust" in which we were given access to private meetings conducted in the back rooms of local bars, but these limited openings invariably shut down when particularly sensitive issues came up in the course of conversation. A warning glance or a discreet nudge were sometimes enough to shut down an unfolding conversation. See Chakravarty 2012

"minimizing the genocide". Under the RPF's formally non-ethnic national unity platform, ordinary Rwandans censored their speech, particularly when it came to talking about ethnicity.

Respondents wanted the opportunity to "test" and observe the researcher over an extended period of time, and calculate that they were safe in talking about identity issues. They would often volunteer the information in the course of conversations, by way of explaining how they had lived through genocide, the losses they had experienced at that time and the uncertainties of the transition to RPF rule. Thus, a reasonably reliable method was to chat about life experiences. However, some respondents could be ambiguous, or emphasize aspects of their past that did not allow accurate inferences. For instance, if a male judge spoke about how his house was destroyed, he could be Hutu with a Tutsi wife, or Hutu who had been suspected of hiding Tutsi in his house, but it was also possible he could be a Tutsi survivor.

I followed up a general discussion of life experiences with the following set of questions that would elicit a clear "yes" or "no" answer. (1) *Were you targeted during genocide?* (2) *Were you targeted because you were Tutsi?* The benefit of wording the questions in this way was that it built on the logic of the *gacaca* trials that were an accountability mechanism for the genocide of Tutsi. It was permissible and safe to answer these questions, even if they were pointed and had no room for ambiguity. It was also a way to separate Hutu who were persecuted (for a range of reasons) from those who were targeted only because they were Tutsi. I pilot tested these questions during the early interviews as a test of the comfort level of respondents as they confronted the questions. That they answered easily, without hesitation, indicated I enjoyed a good measure of trust, and the questions flowed logically from the discussion of life experiences.

In deciding what was permissible, how much to probe, and what to make of the data gathered, utmost attention had to be paid to the local research context that was very much part of the larger political environment. Interviews and ethnographic work yielded a patchwork of "partial truths". By the logical reconstruction of narratives, cross checking vital links, and strategically using a combination of direct and open-ended probes, one could put together an analysis in reasonably accurate fashion.

Political logics of center-local relations

In Tutsi-dominated pre-colonial times, the King transplanted his own men to govern peripheral regions, or governed through local intermediaries. In either case, he allowed them degrees of latitude in local governance. For instance, Rwabugiri, who annexed vast areas to the north, west, south and east in the late nineteenth century, dispatched tax collectors who profited from taxation as much as the King did.[16] Areas that Rwabugiri was unable to annex were left under the control of local dominant lineages just as long as they paid regular tribute to the center and recognized the suzerainty of the center.

Under colonial rule as well, local control was exercised by intermediaries who did the center's bidding in return for sufficient leeway to profit from that position as well. This was on account of the tendency of local populations to aggressively defend their autonomy. Not only were there heterogeneous social and political arrangements across regions that resisted transplantation by the center, there was also

[16] De Lame (2005); Jan Vansina (2004); Des Forges (2011)

a lack of legitimacy perceived by locally dominant farming (Hutu) lineages to control from the (Tutsi-dominated) center. Thus, Rwabugiri's appointees from the centre to the outposts remained poorly integrated in those areas, and returned to the center after his death. His successor, Musinga, who ruled under German tutelage, faced rebellions in the north, northwest and northeast. To consolidate control in these peripheral areas, the Belgians increased the authority of chiefs posted in those areas in order to facilitate the extraction of tribute to the colonial administration. Naturally, the chiefs used this latitude to also extract tribute for themselves. For effective extraction and control, the center needed allies at the local level (either appointed from the center or locally based) and provided an incentive structure within which they could work with their allies in mutual interest.

The district: the center's intermediary for the grassroots

The dilemmas of central control over local affairs persisted after Independence in 1962. The Tutsi monarchy was abolished and thousands of Tutsi fled persecution and went into exile—but a long standing tradition of local autonomy continued to stand in the way of the needs of a centralizing one-party state that now promoted the interests of Hutu elites. Elites of the Hutu Republics (1962-1973; 1973-1991) sought to resolve the problem by appointing hand-selected individuals as Mayors (*burgomasters*) of districts. President Habyarimana's MRND regime would appoint even sector and cell leaders. The district has historically represented the center's arm in local governance. The center's orders are transmitted through district officials to sector and cell officials, who represent the grassroots population. When elections were first introduced at the local level (in the late 80s), it was used by the local population to "reduce the district to impotence."[17] People elected the most ineffective candidate as the cell's representative to the district; the most vigorous, energetic and sympathetic people were elected time and again for cell committee positions.

An administrative re-organization after the post-genocide transition reduced the number of districts from 160 to 30, increasing the area under the control of each Mayor. Under the RPF's national fiscal decentralization policy, there has been a move to make districts financially independent of transfers from the center, increasing the discretionary powers of the Mayor.[18] This enhanced the powers of the Mayor and the district continued to act a reliable intermediary with the grassroots. Its role as the implementer of policies decided at the center was preserved in new national decentralization policies.[19] After indirect elections for the position of Mayor were introduced by the RPF-led government, most Mayors turned out to be Tutsi returnees (former exiles who returned to Rwanda after the RPF seizure of power in 1994) and members of the RPF.[20] The introduction of performance contracts (*imihigo*) and

[17] De Lame (2005), pp. 262-264

[18] This policy has been gradually implemented since 2002. USAID/Rwanda (2004)

[19] As per the vision of decentralized development- see draft presentation by the World Bank (2005, September 21).

[20] This was true as of field research in 2004-5. In general, upper echelons of the state (including the district) are dominated by Tutsi who are also members of the RPF. In contrast, the grassroots leaders at sector and cell level are predominantly Hutu. See also Filip Reyntjens 2004

occasional visits by province or national elites[21] to the district were other methods of holding Mayors accountable despite their enhanced authority.

As the arm of the center closest to the people, the district needs to project power into the grassroots but this is possible only with the cooperation of sector and cell leaders. While cell leaders such as the *responsable* and those officials in charge of various portfolios such as cell development, security and youth are directly elected by the population, the *Konseye* (*conseiller*), who is the leader of the sector, is elected by the *responsables* and officials with important portfolios from each of the cells within that sector. The *Konseye* and the *responsables* are the most immediate loci of government in the everyday lives of people, separated from the district by miles of meandering dirt tracks.[22] The sector and cell leadership is closely nested within grassroots power structures (local elites belonged to extended families with social sources of power in terms of land and livestock ownership and connections to political and church authorities[23]). Without their assistance, district leaders would find it impossible to mobilize large numbers of people for meetings, for work on developmental projects, or information gathering.

The need for allies at the grassroots

Since the RPF evolved into a political party from its roots as a rebel group whose leadership and following had spent almost three decades in exile, the party did not enjoy extensive networks with the majority Hutu population at the grassroots.[24] The RPF needed to co-opt local leadership into governing structures if it was to control the hinterland. Yet physical and ethnic factors created a psychological distance between the district and the grassroots (sector and cells). The state's apparatus of power ("Tutsi rule") was directly visible and experienced in the most immediate ways at the district headquarters. The police post, district courts, and even the district bureau of the SNJG were located here, usually in close proximity to the Mayor's Office. The army area command may also be located not far from here. In contrast, there was no police outpost at the sector. There may not even be a building that served as a sector office. Those occupying positions at the district headquarters were drawn from the various sectors that comprised the district, and the ordinary citizen may not be familiar with any of these officials. This resulted in a relatively diminished sense of familiarity with the district authorities, and a heightened sense of awareness that the district represented a source of power that was not embedded in immediate social networks. Ordinary citizens walked miles over meandering dirt tracks to register their complaints at the

[21] The visit from top to lower levels was a device used for a long time—from King's ambulatory court in pre-colonial and colonial times to President Habyarimana's visits and the registration of complaints to him against local authorities. Top RPF elites continued to visit local areas—also hearing complaints against local leaders who were disciplined. This became a way that otherwise indispensable intermediaries could be disciplined.

[22] The tarmac road from the capital Kigali usually ends at the district.

[23] De Lame (2005), p. 261

[24] See Ansoms 2009

district offices, particularly if they encountered impediments at the sector or cell levels. It is the cell and the sector that are sites of primary identification for rural Rwandans.[25]

The need for allies, not rivals, in the grassroots leadership was demonstrated in the first round of local elections organized in the post-genocide period when the RPF attempted to identify local Hutu leaders whose loyalty could be counted upon by co-opting them into the party.[26] As the ethnographic analysis later in this paper will show, grassroots officials such as the *Konseye* or *responsables* are aware of, if not actual participants in, local manipulations (in this case, around the *gacaca* tribunals) which are "tolerated" by the district that refrains from constant intervention in local affairs. It is only in the most serious cases of potential local disruption in the *gacaca* courts that the larger structure of control from the top reasserted itself in the form of intervention from the Mayor at the district.

Thus, power did not simply flow downwards from the center to the grassroots through intervening structures. The district's cooperation with the center was incentivized through larger grants of decentralized autonomy (without jeopardizing overall control), while the district itself "tolerated" or turned a blind eye to local manipulations in order to incentivize local powerbrokers for their loyalty and cooperation. As this paper will show, local elites (in this case the judges) were able to leverage this to their advantage.

The SNJG district coordinator: squaring local autonomy with control

The SNJG structure also replicated this logic of top down control with limited but not inconsiderable forms of local autonomy, in terms of its relationship with the judges at the grassroots.

The SNJG was created as the 6th chamber of the Supreme Court with a central office in Kigali, the capital. Its mandate was to set up the *gacaca* courts-related infrastructure (including organizing the election and training of judges)[27], to coordinate the transmission of documents between *gacaca* courts at cell and sector level, and to network these courts with the local offices of SNJG based at district as well as province level. There was no SNJG structure below the district level—the district, province and national

[25] Straus (2006), paper 8

[26] ICG (2001)

[27] This also includes the provision of law books, *gacaca* manuals, notepads and pens, stamps and inkpads, legal forms to authorize imprisonment or release etc.

offices of the SNJG were linked with the Prosecutor's Office (*Parquet*), Prison authorities, and various relevant Ministries.[28]

Importantly, the SNJG is vested with the authority to "monitor" and "advise" (but not "instruct") the *gacaca* courts.[29] The district office of the SNJG became inevitably the primary site for monitoring, record-keeping and troubleshooting the *gacaca* processes at sector and cell levels. The district coordinator was the most direct link between the sector and cell level courts on the one hand, and the SNJG authorities at province and national levels on the other. His office was located in most instances within or adjacent to the compound of the district headquarters and police post. This coordinator prepared weekly and monthly reports for all the *gacaca* courts (cell and sector level) in the district under his purview. Since the district office lacked computers, handwritten copies of these reports were transmitted to the province level SNJG office where they were typed up and archived. The district coordinator was also supposed to keep abreast of *gacaca*-related conflicts, and resolve them if he could by explaining the law, or enlisting the intervention of local authorities. In particularly difficult instances, he could request the intervention of the Mayor, or organize a meeting for the conflicting parties attended by SNJG representatives from the province or the center. These SNJG officials in turn consulted the Prosecution, the Director of Prisons, or sought guidance as needed from the central office in Kigali. From time to time, SNJG officials from the province or center, and officials from the Ministry of Justice traveled to rural areas, holding public meetings to provide security assurances and encouraging people to participate.

Since the *gacaca* courts were independent under the law, there was no formal mechanism for oversight to be conducted by sector or cell level government officials. The judges were answerable most directly to the person of the SNJG district coordinator. Yet the extent of supervision was wholly inadequate, and did not approximate an all-encompassing control. The SNJG district coordinator was short of manpower and resources that would enable effective monitoring and control. For instance, the district in southern Rwanda in which I was based for the ethnographic part of the fieldwork, comprised 6 sectors with about 9 cells each. In a given week, therefore, a single SNJG official based at the district had to monitor approximately 54 cell level courts[30] and at least 6 sector courts[31]. These cells were far flung and often held sessions on the same day of the week. This meant that the SNJG coordinator could not be physically present in all of these places; and although proceedings at any given site could take the entire day, he spent very little time at the places that he was ultimately able to visit. For the sessions he could not attend, the SNJG coordinator met with the judges on another day of the week. The latter would summarize the court session, discuss the problems they faced and provide the figures (on number of witnesses, the verdict and sentences, dossiers filled etc.—these were indicators by which progress was measured by the SNJG) hand written on a sheet of paper. But often there were gaps in his reports when

[28] The Ministry of Justice was involved in sensitization campaigns in prisons and among the population; The Ministry of Health dealt with cases of trauma resulting from *gacaca* proceedings and the Ministry of Internal Security was responsible for security arrangements when *gacaca* courts were convened.

[29] Judges training manual (2004): paper 3

[30] At cell level, the *gacaca* courts were charged with processing the pre-trial paperwork, and trying the accused in cases of property theft, arson etc.

[31] At sector level were separate trial and appeals *gacaca* courts --for murder or physical injury cases

he was unable to review the sessions in this manner. His only piece of equipment was a motorcycle, but he often ran out of money to purchase fuel, which meant then that he was without a means of transport. Even though infrastructural resources were scarce at sector level, appointing sector-level representatives who would work out of the district office of the SNJG would have eased the impossible duty of monitoring the work of more than 50 courts at the same time. If tighter supervision was a priority, this could have been done at a low additional cost.[32]

Judges enjoyed considerable latitude in the pre-trial phase when they undertook a long drawn out seven-stage pre-trial information gathering process. This process culminated in the compilation of dossiers on each individual who was accused. It was at this crucial last stage that the sessions were held *in camera*, and as interview and ethnographic data indicate, produced much of the distortion in the dossiers that became the basis for the prosecutions. In the early stages of this pre-trial process, micro-local authorities (such as sector and cell officials as well as the leaders of every ten households within the cells) had been advised to step in and assist the judges in gathering and compiling information. Falling rates of popular attendance made it difficult to collect the information that the judges needed.[33] The rationale was that these unsalaried micro-level officials would conduct their own investigations to aid the judges but this introduced various discrepancies in the information that was gathered and compiled into the dossiers. Judges could authorize pre-trial detention, certify individuals as innocent and request their release, imprison others on grounds of false testimony or the refusal to testify, or even authorize preventive detention if they made the case that the accused was likely to attempt to flee. They could order the seizure of property in certain cases. As this paper will show, judges who represented a section of these local elites (as well as those local authorities who were not judges) were not immune from the temptation to collude and use these powers to strike at rivals and enemies, to protect their family members and friends, or advance themselves in various ways.

Their collusion created serious problems that were not always identified by the SNJG or state authorities at higher levels. One opportunity to correct these problems was when the dossiers were transmitted to the Prosecutor's Office from the cell level *gacaca* tribunal. The Prosecutor's Office was entrusted with the obligation to scrutinize the files and verify information on the accused from multiple sources (confession in prison, witness testimonies etc.). It was possible that inconsistencies originating at the cell level tribunal would be identified and the dossier corrected before being transmitted to the appropriate court for trial depending on how it was categorized.[34] Ethnographic observations suggest

[32] This would have involved basically the cost of a motorcycle, fuel, notebooks, pencils and the coordinator's salary.

[33] The tedious pace at which the hearings unfolded likely tested the patience of the population, no doubt eager to return to their fields or look for other work during the day. Fear was another factor. As judges solicited testimonies from the population, people cowered at the back, or left soon after they arrived. Rumors also circulated that underground groups with names like "ceceka" (remain silent) and "ntubavemo" (don't betray them) were discouraging people from volunteering any information in *gacaca* courts. In some places, people were fined to enforce attendance. See Hirondelle (February 23, 2006) "Tough going for *gacaca* ahead"

[34] Dossiers prepared by cell gacaca courts were peremptorily vetted by the Parquet, then transferred to sector *gacaca* courts for trial (if the case involved murder or personal injury), to an ordinary court (if the case involved a sexual crime, or a top level perpetrator—but these cases were transferred to sector *gacaca* courts after 2007), or retained at the cell *gacaca* court (if the case involved arson, property damage etc).

however that the more likely corrective was when witnesses or survivors complained to local authorities, or bypassed local authorities (if they were complicit or indifferent) to complain to the Mayor, district police, or SNJG district coordinator. It might be months however before any corrective action was taken as higher authorities vacillated hoping the matter would resolve itself or weighed the pros and cons of intervention from the top .

There were indeed a range of institutional checks and balances in place. The training manuals outlined the procedures that were to be followed— from protocols for conducting the hearing to guidelines in deciding on sentencing. The manuals advised the judges on a "legal temperament", to follow the letter of the law, and to recognize their own subjective biases. [35] There was also an appeals process and an appeals court at sector level.[36] Ethnographic evidence suggests that unless their own interests were at stake, the judges did their best to be impartial arbiters. However despite their best efforts, these mostly peasant judges experienced a good deal of uncertainty about the exact procedures to be followed (some of the cases could be quite complex) and discovered early on that there was scope for manipulation and local maneuverings that did not always elicit a response from the SNJG.

As long as the cases were processed rapidly and there were no major disruptions of order within communities, the loyal work of these judges was rewarded by allowing them to meet some of their personal ends. Not only were spaces of autonomy deliberately "allowed" by way of incentivizing these unpaid and overworked judges, these spaces were also to some degree inevitable given the logistical challenge of supervising simultaneously functioning and far flung processes. Ultimately a larger structure of control was maintained by co-opting judges into party and governing structures—the main vehicle for personal and professional advancement in an authoritarian system in which the RPF had emerged as the unrivaled political and economic patron.

The Judges' profiles: A broad cross-regional overview

The average age of the judges on the "CC" across all four regions was 38 years. If one included all the judges on the CC and non-CC permanent positions, the average age of the oldest members was 62 years and the youngest members were around 25 years of age. As such, the judges in the most powerful positions appeared to be mature adults hitting their prime years. They had families to support, ambitions for advancement and the absence of a genocide record put them in a favorable position to secure their interests under RPF rule.[37] These individuals were not "elders" with a reputation for probity and impartial judgment. The two most important criteria for being eligible for judgeship were their record of non-participation in genocide, and their possession of a primary education. Among the judges on the CC,

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[35] See Judges training manual (2004)

[36] Of 7412 verdicts handed down by the trial courts in the pilot phase, 1354 were appealed by the defendants and 323 by the plaintiffs. SNJG (2007)

[37] In their late 20s during the genocide, they were young adults who probably experienced most severely the suffocating structural violence and the lack of opportunities for advancement in the decaying developmental state in the years leading up to the genocide.

those in the urban areas of the capital were better educated than their counterparts in the rural north, west and southern regions. In the capital, 40% of judges had completed 9-10 years of formal schooling and another 30% had reached or completed the 12th grade in comparison to the overwhelming majority of judges elsewhere who had between 5-8 years of school education.[38]

An indicator used in the Rwandan census (to gauge the extent of material security) is the type of material used to roof houses. 98% of the judges (N=100) across the country had either iron sheets or tiles demonstrating that they did not represent the most impoverished sections of the population.[39] The urban bias in terms of their level of education is also reflected in the range of occupations and assets owned by judges on the CC. In the capital, only 1 judge out of 25 was a full time peasant and 85% of them did not own any land. Two were students and unemployed, while all of the others were working professionals. There were doctors, accountants, teachers, small business owners, building contractors and mechanics among them. Everyone owned a radio, 30% owned at least a television set or telephone, while 20% owned bicycles.[40] The overwhelming majority of judges in the rural areas (north, west and southern region) were peasants. Their work on the farm represented their only source of income. A few judges combined farming with other kinds of income generating activities on the side. These additional activities ranged from masonry and tile making, to working as barber, plying passengers on boats or motorbikes, engaging in hunting or fishing.[41] Of the combined 75 judges across these regions, there was no one who was without land, with the exception of 2 individuals in the west.[42] No one owned a telephone, and only 16% of the 75 judges owned bicycles. 60% owned a radio.[43]

The co-optation of local elites

Researchers who spend time close to the ground may pick up on dark whisperings about the gendered persecution of Hutu under the RPF regime. According to this logic, all Hutu males are targeted for arrest,

[38] There were very few judges with little to no formal education. In the capital, there was 1 judge who had completed only 2 years of primary school. In the south, 3 judges had not completed lower primary school, while in the north there were 2 judges with no formal schooling other than one year-long series of literacy lessons as part of a government outreach program.

[39] 1 individual in the north had a roof of banana fibers; while 1 individual in the south had a roof of plastic sheets.

[40] They suggested that the abundance of transportation options in the capital did not necessitate ownership of a vehicle. 2 judges owned cars.

[41] In the north, 3 judges described themselves as owning small business (eg. bars or general stores); in the south, 2 were school teachers; and in the west, 3 were school teachers, 1 was a nurse, and another was a carpenter.

[42] In the north, 45% of judges stated they owned less than ½ hectare of land, 25% owned between ½-1 hectare, and 30% owned more than 1 hectare (N=25).In the south, 28% owned less than ½ hectare, 44% of judges owned between ½-1 hectare, and 28% owned more than 1 hectare of land (N=25). In the west, 30% owned less than ½ hectare, 40% owned between ½-1 hectare, and 34% owned more than 1 hectare of land (N= 23).

[43] Talk of a car or television set brought chuckles and humorous smiles.

and if they don't die in prison, they emerge scarred, their spirits broken; they struggle to find employment and to fend for themselves and their families. There are however other gendered dimensions of political life in post-genocide Rwanda. Perhaps one of the most significant has been the co-optation of a quarter million judges into the RPF party apparatus and RPF-dominated government structures, most of them Hutu males.

Of the 75 judges in the north, west and southern regions, only 4 judges are Tutsi and genocide survivors. The rest are Hutu and predominantly male. Only a quarter of these judges are women. In the capital, 17 of 25 judges were Tutsi (15 were returnees who repatriated to Rwanda after the genocide, and 2 were genocide survivors). Kigali is known for its concentration of Tutsi, particularly returnees with RPF connections, advanced diplomas, technical skills, business capital they accumulated while in exile. In this light, their preponderance among the judges in the capital is not surprising. Even here, only 6 out of 25 judges are women.

Despite gender reforms and a global image of women's leadership roles, Rwanda remains a patriarchal society in which men constitute the bulk of local leadership. For a party formed in exile such as the RPF, its lack of local roots meant it had to woo sections of the local elite. Where the majority of the population is Hutu at the grassroots, this would mean the need to woo Hutu males in particular. Indeed, Hutu men have responded, primarily to advance their own interests, and to get a legitimating foothold on the inside. 90% of the Hutu judges in the rural areas claimed they were members of the RPF.[44] Of these RPF members, 15% held important positions within the party apparatus at the local level.[45]

What is surprising is the marked absence of RPF affiliation among judges in the capital. Only 7 of 25 judges claimed they were party members, [46] of whom only 1 was a Hutu male judge. The rest were Tutsi, including both genocide survivors and returnees. Only 1 individual (Tutsi male returnee) held a position of importance within the party at local level. Perhaps the integration into the RPF machinery was mostly adopted by Hutu judges in the rural areas on account of their urgent need to secure themselves materially and advance their careers as prospects for the peasant remained bleak despite post-genocide Rwanda's economic recovery story.[47] Despite the overall tendency toward refraining from explicit party connections, judges on the CC have sought to advance themselves by also securing local level positions in government. The most common positions were those of *nyumbakumi* (unsalaried leaders of 10 households at cell level representing the deepest reach of the state in the community), or cell-level committees. A similar dynamic of securing local level government positions is present in rural areas in the north, west and southern regions. While it is a matter of power and prestige to get a seat on the local committees, the most high profile positions were the treasurer, development, security, or information portfolios. There were also many judges who held "currently" or in the "recent past" various other portfolios, such as youth

[44] This includes 67 of 75 judges - The rest included no responses for 5 judges and missing data for 3 judges

[45] This includes 10 of 67 judges who asserted RPF membership. The party positions ranged from election campaign coordinator or councilor at cell level to cell level delegate at sector and district caucuses of the party.

[46] 18 of 25 preferred not to respond to the question.

[47] See Ansoms 2013

and social affairs, or gender. Thus, they served as state officials in a dual capacity- as *gacaca* judge and as micro-local administrator.

Their influence seemed to be entrenched beyond just their official positions. All of the benches (with the exception of 3)[48], had at least 1 judge on the CC who was a prominent member of some Church organization at local level. These positions ranged from choir leader and president of the church in the cell, to secretary at sector level, and local representative of CARITAS.[49] An overwhelming majority of the judges (both rural and urban areas) also represented the leadership of various local credit and cooperative associations for farming, credit and savings, beekeeping, animal husbandry etc. There were presidents, vice-presidents, secretaries and treasurers among them belonging to a wide array of associations at cell, sector and in a few cases, even at district level.

Judges, then, represented a group of social powerbrokers at local level, who enjoyed an informal sphere of influence, and whose authority (at least in part) was anchored in sources other than their privileged state positions. It is unclear as to whether judges leveraged their state positions to maneuver into powerful positions in the social sphere or whether members of the local social elite put themselves forward as candidates for judgeship and managed to get themselves elected by drawing on their local sources of support. There is likely a kernel of truth to both possibilities. On the one hand, it may be that local government officials and the local social elite managed to get themselves elected onto the most powerful positions on the benches. Once on the bench, there were now new opportunities for judges to expand their spheres of influence beyond their original constituencies. Thus, a *nyumbakumi* (leader of ten households) who became a judge may position himself to lead a credit association in his cell or sector. A choir leader who became a judge may now position himself to campaign for office at sector level, or apply for a position in the district office.

Once individuals were elected to the CC on the bench, they represented a stable leadership with limited turnover. The founding election for the judges was organized in June 2002. There were several rounds of re-election organized in different areas at different times—in September 2002, then in March, June, September and December of 2003, and again in January, February and March of 2004. These local processes culminated in the nationally organized re-election of judges in June 2004. The majority of judges held on to their positions through these electoral cycles, or shuffled between positions on the CC itself. A few were replaced[50], and a handful of individuals were reassigned to non-CC positions on the bench while non-CC judges got themselves elected onto the CC. Judges then represented a clearly identifiable elite that was predominantly Hutu, that was co-opted into the RPF machinery of governance at the grassroots. They penetrated formal state positions of power and extended into informal social positions of authority and influence. Membership in the RPF represented an added means of climbing the ladder of power and influence.

[48] 1 in the south; and 2 in Kigali

[49] Leadership positions in CARITAS help these individuals to dispense patronage by distributing food and other church-based aid.

[50] The most common cause was a genocide accusation; or blatant incompetence or abuse of authority.

Ultimately, without these individuals, it would be virtually impossible to project power from the top into the grassroots, either in everyday governance matters or to run the trials. This is particularly true for a party elite that was formed in exile, lacked local networks early on, and has come to be associated with "Tutsi rule".

Many judges also worked as consultants and informal advocates for the *gacaca* courts. They advised individuals who solicited their views. Of the hundred judges, 15% said they were consulted "very often", 47% said they were consulted "sometimes", and 37% said that this never happened. They also used opportunities outside of *gacaca* meetings to sensitize people about the benefits of participating in the system. 28% reported it happened "very often", 40% reported it happened "sometimes" and 31% said it happened rarely or never. Clearly all judges were not equally active in going beyond their formal routines of judgeship to advise and exhort the population, but the majority of judges were activists, exercising their formal and informal influence to direct the population. The government relied on local opinion leaders to advocate on their behalf the usefulness of *gacaca*, to mobilize and to continually sensitize the local population.[51]

During field research, I encountered some judges who reported that their services had been utilized during the Presidential and Parliamentary elections. They had been ordered by district officials to mobilize people and ensure that the local population voted for the RPF candidate.[52]

Elites at the center cannot afford to alienate them and incentivize their continued cooperation by allowing them spaces of relative autonomy. They have the option of exercising power at the local level or moving up the party or administrative hierarchy in personal advancement. The President of the sector trial court in the southern site, for instance, moved into a salaried position at the district office after 3 years as *gacaca* judge.

The Judges in a delicate balancing game

Judges could not challenge the scope or substance of the law or propose new interpretations of legal provisions. It was not the intention of the government to create authoritative counterpoints to their power. They needed judges who would follow the procedural rules, process the cases speedily without backlash from the population, and in the event of confusion acquiesce to the advice of the SNJG.

Nonetheless, judgeship conferred power and prestige upon members of the bench. They could use this to protect some, and condemn others. This was not lost on ordinary citizens who treated them with deference inside and outside the courtroom. To them, the judges represented a repertory of knowledge not only about the provisions and procedures of the law but also about how politics worked in general. Judges were seen in meetings with district authorities and important people visited from the capital to

[51] National Unity and Reconciliation Commission (n. d) "Nationwide grassroots consultations report: Unity and Reconciliation Initiatives in Rwanda" Kigali

[52] They were threatened that they would be responsible if a certain number of votes were not delivered for the RPF from their community.

confer with them. They were people with more control over events than the ordinary person and could potentially guide them through the complications of the long and uncertain judicial process. They understood that judges were working on behalf of the state, but enjoyed enough power to make a difference in individual cases. People (including the accused and their family members who were at the mercy of the system) rarely perceived them as collaborators of an oppressive regime-- perhaps because many judges were also local social elites who enjoyed informal (non-governmental) sources of authority. Judges also enjoyed a certain cache with ordinary Hutu--perhaps because they represented local leadership close to the people and distinct from the district or national elites. The general impression was one of some confidence in the judges as their "own" people who would not allow unabashed injustice to happen.

At the same time, there was an awareness that judges had to operate within the confines of the law, were answerable to the authorities, and would be unable to do much beyond a certain point. At best, they hoped for reliable guidance in navigating the system, for mitigating circumstances to be taken into account, and to be treated with consideration in court. For most people, it was a truly troubling prospect to face a tribunal of judges not known to them. In ordinary courts, the accused have confidence in the certainty of formal rules and protections. In a *gacaca* court, however, the accused hoped for the certainty of having familiar faces in the audience and on the bench. [53] One could not hope for more unless one had the resources to command preferential treatment, or enjoyed personal relationships with the judges.[54]

Ordinary Hutu understood they were going up against the authoritarian state led by Tutsi elites who wanted to spread widely the net for prosecutions for genocide. In this menacing atmosphere, judges were their hope. They were state agents, but in some ways, perceived *as if* their sympathies were with the people. They did not have the characteristics attributed to them of agents of "Tutsi rule". Judges, in turn, positioned themselves at the center of a difficult triangular dynamic between the government, Hutu defendants and Tutsi accusers. Judges felt burdened by the pressure of mediating between survivors who relentlessly demanded accountability for genocide crimes and ordinary Hutu chafing under the burden of arrests and punishment. One judge noted somewhat philosophically that there were limits to even the truth.

[53] A sense of distance was inevitable because people often attended *gacaca* courts in places far from their cells. For instance, someone could be accused of crimes in a neighboring sector, in which case, the defendant and his family may not know the judges at all. In another instance, category 2 crimes were tried at sector courts where the judges might be drawn from cells other than the defendant's own area of residence. People said quite frequently that if they were pulled up in front of a *gacaca* court (if only to testify), only God had the ability to preserve them. People dreaded being called to testify by *gacaca* courts in general but they panicked when summoned by a *gacaca* court other than their own. The general feeling was that they could at least hope to be treated fairly by those who know them but there were no such guarantees outside their own community.

[54] When family members were accused, influential relatives stepped in to block testimony using threats of counter-accusations and inducements such as bribes. If a relative happens to be a judge on the CC of that cell, he could influence other judges to omit the concerned person's name from the list of the accused, thereby ensuring there would be no dossier in his name. If this individual was in prison and had not confessed, judges needed only to sign a release order for him to be declared innocent and released. Alternatively, the bench could agree to suppress the most damaging parts of the information generated on the accused person, building a case for the lightest possible punishment if proven guilty during the trials.

Judges observed that their counterparts in ordinary courts were not only paid handsome salaries but also had the luxury of handing out sentences in civil and criminal cases that were not as heavy as the ones provided in the *gacaca* law. They noted ironically that they were supposed to create justice and security for the Rwandan people when they were themselves suffering from injustice and insecurity. They despaired when the state did not do enough to guarantee security during the trials. In general, there were no police and no public officials present except the executive secretary of the sector. One day the defendant escaped after being sentenced. Judges rued the waste of their hard work. Since that incident, there were two members of the local defense force on guard during the trials, armed with big sticks. On the days that prisoners were presented to the court, there would be a policeman with a gun.

In private, some judges began to question the rationale for *gacaca*. The following is a conversation that took place in a bar one evening among some judges and a local leader at the end of a particularly difficult trial. One judge remarked that the work of *gacaca* was like "carrying the cross of Jesus on one's shoulder". The leader said, "We must bear the burden to atone for the terrible crimes committed by us". "We" and "us" ostensibly referred to those who are Hutu. All the judges present in the bar at that moment were Hutu. In response, another judge asked if Tutsi were not guilty also of committing serious crimes against Hutu. He mentioned the whippings and unpaid hard labor imposed on Hutu in the pre-independence years and everybody nodded in agreement. When the leader only nodded sympathetically, they appealed to him that the work was too difficult for them and asked him for advice on how they should proceed. The leader's somewhat inscrutable reply was that the work was difficult and they would make both friends and enemies but they would have to persevere. He then went on to quote from a Rwandan proverb. Perhaps the conversation had gone too far already in my presence and the issue of why RPF war crimes committed between 1990-94 were not being judged in the same way was too taboo to raise.

The conversation went on to an incident that had happened during the trial earlier in the day. One survivor had leveled an accusation against the defendant that had not come up in the pre-trial hearings or the previous stages of the trial sessions. It took everyone by surprise and irritated the judges who had been preparing to retire for deliberations on sentencing. To admit the new accusation would be to further delay the trial by a couple of weeks but the judges decided to summon the relevant witnesses and continue cross-examination the following week. In the bar that evening, some of them grumbled about survivors who never seemed to run out of accusations, who wanted to delay the trials and prolong peoples' suffering. At this point, one of the judges reminded the others that although they were under intense pressure sandwiched between Hutu perpetrators, genocide survivors and the scrutiny of the state, their only commitment in principle should be towards the law. Everyone slowly nodded in agreement. Showing the strong cognitive and emotional association of individual Hutu with the group identity, someone added that "we have to show the world that we (the judges who had Hutu) are capable of good even though we (Hutu who perpetrated genocide crimes or Hutu burdened by a sense of collective guilt) have done wrong things."

The judges underwent a conscious struggle to meet the demands of impartiality. This was evident in conversations with them and through observation of their practices inside the courtroom. In the first appeals court hearing, the president voluntarily stepped down from the bench because he was the defendant's father in law. Three other judges also stepped aside as they were related to the defendant in different ways. They were replaced by the deputy judges. The trial court had announced its verdict several

weeks earlier. The defendant's confession had been found to be incomplete and had been rejected. The punishment for rejected testimony for a defendant accused of category 2 crimes ranged between 25 and 30 years. The trial court had handed him a sentence of 26 years, half of which he had to serve in prison[55] and the rest of it could be commuted to public service. The defendant had appealed but after a new set of hearings, the appeals court upheld the verdict. At the end of the proceedings, the president stood up from his seat in the audience and asked the interim president for permission to speak. He spoke to the people assembled there to accept the verdict, to stand by the law and understand that unity and reconciliation were necessary. Then the interim president, who was a genocide survivor, stood up and spoke to the defendant and the plaintiff. He asked the plaintiff to spend part of the money she would receive from the defendant as compensation for damaged property, to buy a pitcher of local beer and to share the drink with him. This is the traditional Rwandan method of reconciling after settling a dispute and the audience responded enthusiastically with applause.

At the same time, it was almost invariably the case that judges selected from the lower end of the range prescribed in the law.[56] Since the range that was applicable depended on the prior act of categorization of the crimes (in which judges enjoyed considerable leeway), there were some opportunities for maneuvering in defense of friends and relatives, or against enemies.

How these struggles to remain impartial played out depended on the defendant in question. If he was a close friend, relative or erstwhile rival of a powerful judge, or linked to a powerful member of the local elite, one could expect that there would be maneuvering behind the scenes.[57] Of course, these manipulations were constrained to the extent that there was supervision from the SNJG, the Parquet or the population. As far as the SNJG and the Parquet were concerned, close everyday monitoring of judges' work was rare. The manipulation possible at cell level *gacaca* was constrained to an extent at the trial and appeals courts located at sector level. The bench for each court was elected from the population of the various cells in that sector and most judges at the trial and appeals court had no direct link with the accused. It was here that judges discovered discrepancies in dossiers that had been prepared in the cell and often summoned the president of the relevant cell tribunal for an explanation. Also, the trial and appeals process at sector level was subject to magnified scrutiny for two main reasons. First, these courts held sessions at the government office in that sector. This was more accessible than *gacaca* sessions held in far-flung cells, and relatively easier to monitor because the trial was a single session on a given day at one location instead of the simultaneous sessions going on in the cells. Second, the audience at these courts resided in cells different from that inhabited by the accused. They had little to fear from influential movers and shakers in the cell from which the accused originated. They also had little stake in the outcome of that case. The reaction of the audience was a useful barometer to gauge public opinion at the trials. They murmured disapprovingly when testimony was riddled with holes and did not ring true; they spoke with the permission of the judges and put questions to the plaintiff and the defendant; they nodded their approval at certain decisions of the judges and gossiped about the proceedings. They might know if

[55] The defendant had already served 8 out of the 13 years that comprised his prison term in pre-trial detention.

[56] The pre-determined range of punishment reduced to some extent the judges' role to that of clerks. In *gacaca*, the law certainly limited judges' freedom in sentencing but there was still some amount of leeway in selecting from within the pre-determined range.

[57] If a judge was linked to a defendant, he was supposed to recuse himself from that case.

some judges were related to the defendant and ensured that they withdrew from the trial at hand. Public opinion was an important mechanism in keeping the proceedings as transparent as possible.

Yet the most common corrective to attempted maneuvering was intervention from the district. This occurred when survivors banded together and took their grievances to the district headquarters and the SNJG office. As we will see below, unless the situation threatened to spill over and create a general furor in the community, authorities at the top were reluctant to take instant action. They were inclined to instruct the complainants to monitor the situation, deliver regular updates, and take safety precautions.

Local manipulation and its limits

Judges used their powers to acquit and authorize releases from prison. Given the sensitivity of genocide survivors to prisoner releases, this was an issue that tested the boundaries of judges' independence from the state. Preliminary data on *gacaca* verdicts indicates that out of 4162 cases dispensed between March and October 2005, there were 496 acquittals.[58] Of those sentenced, approximately 25% appealed the verdict. These were not low figures, and suggested that judges managed for the most part to exercise the powers they had been given in the law. As long as the majority of defendants were found guilty, and the judges processed the cases speedily and managed to avoid a local outcry over their work, judges were "allowed" their spaces of autonomy.

The limits of this space were sometimes implicitly understood, and at other times, it was discovered in the course of difficult confrontations between judges and state officials.

In one such case, the erstwhile Mayor became involved in *gacaca* proceedings. He was a genocide survivor and wanted to pursue the cases of his friends who had been killed. The former president of a cell court (who had now improved his local stature by getting elected to the position of the President of the sector level appeals court) had secured the release of a prisoner accused of killing a friend of the Mayor. The bench at cell level had determined that the accusations against the prisoner were not credible because they believed that the accuser's account was implausible. They dismissed the idea that the accuser (a single survivor) could have spotted the alleged perpetrator from his hiding place up in the ceiling. They reasoned that any perpetrator who had been searching the house for Tutsi who were hidden must have searched the space above the ceiling as well. If the defendant had not discovered the survivor, it was because he had not been searching the house. Besides, how could it be that the survivor spotted the alleged perpetrator from the cracks in the ceiling but the latter had not spotted the hiding individual? The judges concluded that the survivor must not have been present at that time and that his testimony could not be an eye witness account. They signed the papers authorizing the accused person's release. This did not create a furor until the prisoner returned to the community some months later. The ex-Mayor was a powerful man and although he did not live in that sector any longer (he too had moved up the hierarchy—to a position in the province level administration), it was perhaps at his request that district officials got involved.

[58] Fondation Hirondelle. January 10, 2006.
http://www.alertnet.org/thenews/fromthefield/218498/113697946948.htm

The judges of the sector trial court privately attempted to mobilize some resistance by pulling up from existing election records how many popular votes the now-President of the Appeals court had received. Ultimately, an open challenge to district authorities never occurred. The Mayor summoned this President to the district office and pressured him to resign from his position. People huddled in bars that evening discussing what had transpired at the district office. Apparently, the president had written that he was resigning because he was felt threatened (the subtext was he felt threatened by district authorities) and could not be sure he was safe. The local interpretation of this was that the president had taken a great risk but had heroically made known his resistance to an unpopular government's interference in local affairs. In this case, district elites became involved because they were interested in a particular outcome, and judges assessed it was too risky to oppose the state openly.

The subterranean nature of maneuvers around *gacaca* and the considerable attempt to keep up appearances made it problematic to tap into and collect data on local power struggles. However, these dynamics often became very complicated and drew in multiple actors making it difficult to contain this contentious activity. Disputes that broke through the surface provided 'windows of opportunity' allowing a glimpse beyond the carefully arranged façade. The data presented here draw on informal conversations and formal interviews with all the relevant actors as well as careful observation of the processes that unfolded over several months. One or more active incidents were reported in seven out of nine cells in this southern sector during my stay there. Maneuvers and local upheavals around *gacaca* were also reported in each of the three other sector-based research sites around the country. Judges were involved in a majority of the cases reported.

To illustrate the point, I will describe the events around the election of judges in this southern sector after the new version of the *gacaca* law was introduced in 2004. The pre-trial information gathering phase was in its final stages at the time of this election, which was held in the compound of a primary school under the supervision of a representative from the national electoral commission. The SNJG's province and district level coordinators were noticeably absent. Judges were to be elected to the bench of the cell tribunals within that sector as well as for the sector level trial and appeals courts. The *Konseye* and the elected representatives of each cell were present. A large crowd had gathered in the school compound. As the name of each cell was called out, the residents from that cell pushed their candidates forward. Several people submitted their own names for candidature. They stood in a line and announced their names. Some individuals made a short speech announcing their intention to serve as a judge and explaining why they should be elected. A blackboard was placed in the center of the compound and the names of the candidates for each cell were written. Some people took notes—including the incumbent judges standing for re-election, the cell and sector leaders, and the local representative of the genocide survivors' umbrella organization IBUKA.[59] Ballot papers were handed out to the residents of each cell. They were expected to write the name of their preferred candidates or to take the help of someone who could write. These papers were folded and handed in, then piled separately on a table. The person with the maximum number of votes became President of the *gacaca* tribunal; the next person with more votes than any other candidate became vice-president and so on. The position of president, the two

[59] IBUKA, in Kinyarwanda, means "to remember". In this sector, the local representative was a survivor who contested elections for the bench of the trial court. She was elected as a non-permanent judge, to stand in for one of the permanent judges when the latter could not serve at a trial.

vice-presidents and two secretaries were the ones most vied for as these five judges composed the central committee of the bench.

In the case of one cell, a scuffle broke out when some individuals stepped forward as candidates. Three women were shouting and a group of men were shoving at them and shouting back. The three women were genocide survivors (two of them non-permanent judges on the tribunal) and they were accusing the incumbent president of having participated in the genocide and of having used his position as president to suppress the information that survivors had provided against himself and members of his family. They leveled the same accusations against two other incumbent judges, both of whom were related to the president. As per the law, these accusations should have disqualified these three men from contesting the elections. The incumbent president of the tribunal was carrying his copy of the *gacaca* law, from which he cited a provision that judges could not be replaced by any means other than a vote by the general assembly of the concerned cell. The three women argued back that they had raised these issues several times in the cell meetings of the court but their concerns had not been addressed. The crowd grew agitated and divided. There were shouts and excited discussions everywhere with an overwhelming majority condemning the accusations of the survivors. Others remained silent and watchful. A common refrain that was heard was that survivors refused to live amicably with the rest of the population and were determined to send innocent people to prison. A newly re-elected judge from another cell flung his notebook on the table and exclaimed loudly "*C'est terrible!*"

A representative from a local NGO had come to monitor the elections. He tried to discuss the problem with the supervisor of the elections, who eventually decided to allow the elections to proceed without disqualifying the three accused judges. The vote count began on the blackboard and the incumbent president took an early lead. As the counting progressed, the NGO representative contacted the local police on his phone. Within minutes, a police van arrived and parked on the fringes of the compound. Two plain clothes army officers stood at a discreet distance from the proceedings with their walkie-talkies. The restive crowd became subdued. An official from the district arrived and spoke to the election supervisor. They debated for a while over which provision of the *gacaca* law should prevail in that situation. Ultimately, it was decided that the law's intention was clear: under no circumstance was an accused individual to be allowed to serve as a judge. The vote count was aborted, the three judges were removed from candidature and a new round of elections was held for the bench of the cell *gacaca* court. The district official remained there until the elections were completed and spoke to the residents of the cell at length about integrity and fairness at the heart of *gacaca*. Most judges sat there stiff and poker faced. The three ousted individuals sat through the proceedings without further protest.

As judges, the women had information on the suppression of testimony and their colleagues' manipulations in the preparation of dossiers, but were blocked by the powerful permanent members on the bench, particularly on the CC. It turned out that the women had walked to the Mayor's office at the district on numerous occasions; they had also complained to the SNJG district coordinator but to no avail. There was little to stop the incumbents from getting re-elected. It took the open outbreak of tension, shouting and shoving to produce decisive action on the part of the district authorities. Unfortunately, this kind of blunt intervention produced considerable resentment in its wake.

Local struggles for power and influence could also unravel this kind of nexus between powerful members on the CC. In this case, intra-Hutu rivalry upset the delicate balance of power in the *gacaca*

court of a cell that was mono-ethnic in composition.[60] The president of the cell tribunal was elderly and the head of an extended family locally dominant over many years. His name had come up in the case of the death of a child who had originated from another cell but had been killed in this area. There was no dossier made about the case and there was little headway on this issue at the pre-trial hearings. However, the case represented an opportunity for anyone who wanted to unseat the incumbent president. One of the vice-presidents of this cell court began his own investigations. He visited survivors from other cells who were related to the victim and made notes. He forced the issue out in the open at the *gacaca* session and the president of the *gacaca* court, now formally accused, was replaced by this man who had been next in line to assume his seat.

It was to be a matter of few weeks before elections could be organized in the cell to confirm or reject the new *gacaca* president. During this time, this man conducted *gacaca* affairs in a way that earned him several enemies. He summoned cell leaders and reprimanded them for various infractions. He heaped abuse on the general population and threatened to unearth the truth on peoples' actions during genocide. He publicly chided his colleagues on the bench. His actions, in effect, triggered what appears to be a local conspiracy to replace him. This man kept some *gacaca* papers at his home instead of in a locked box at the sector office as was the general practice. Among these papers was the information he had collected on the deposed president. One afternoon he returned from his field to find a hole in the wall and the documents missing. He raised a hue and cry and neighbors gathered around. The matter was promptly taken to the *Konseye*, the leader of the sector. He was accused of hiding *gacaca*-related papers, a crime punishable by a prison term. Unable to produce the documents, the old man attempted suicide by drinking some pesticide. He was found in a serious condition and taken to hospital where he survived. He had already been replaced as president by then.

The leader of the sector, the *Konseye*, did not willingly disturb the social mechanisms at play in the *gacaca* process even though he was likely aware of the many distortions and the deals struck in many of the cases.[61] I approached him from time to time for background information on particular cases (that was later triangulated against other sources), and he rarely claimed not to know. In this sector, the *Konseye* was Hutu and demonstrated little apparent interest in *gacaca*. Once the trials had begun, he did not attend a single session. Instead, it was the government appointed executive secretary of the sector that was present at most trials, frequently walking out of the room to attend to some business in his office. He sat wherever space permitted and the judges rarely referred to him during the proceedings. In four months of trials, the president asked him for his opinion only once.[62]

[60] The following account is based on what appeared to me as the most plausible reconstruction of the incident drawing on multiple narratives about events that occurred in this cell in June 2005.

[61] If the *Konseye* happened to be a genocide survivor, he might be shut out of certain channels of communication. For instance, conversations in bars could take a different turn if he was around. Alternatively, he could pretend to turn a blind eye, or could actively interfere in cases. In the last situation, it was likely there would be high levels of general discontent and polarization between survivors and the rest of the community.

[62] This was in the case of an individual who had confessed and had been sentenced several weeks earlier. As compensation for the property he had stolen from his victims, he had pledged to sell a field that actually belonged to his brother. It was the brother who raised the issue before the judges, asking them to review their decision on

At the sector, as in the cells, the elected leader was aided by a team of officials (all locally elected) in charge of security, information, development, gender and health. The *Konseye* spent most mornings in the sector office preparing reports and listening to peoples' problems. On the day of "umuganda" (community work) he walked from cell to cell overseeing the work. If there were issues he needed to report to the district and he could not borrow a bicycle, he walked all the way to the district office for a meeting with the Mayor or other district officials. As time wore on in the months I lived there, the *Konseye* appeared to become increasingly detached from his work. The executive secretary lived in the town close to the district office, and cycled to the sector each day. When a robbery took place one night, he assembled almost twenty people in the sector office and took their testimonies. The *Konseye* was markedly absent. It is often argued that Rwandans are excessively obedient to authority[63] but at sector level at least, the *Konseye* was not spared ridicule in private conversations and in the local rumor mill. People declared him incompetent for failing to resolve certain disputes; a local official close to him hinted privately at corruption. There was gossip that the genocide-related accusations against him that had surfaced in the adjacent sector were true, and that compared to others who had confessed to similar crimes, the *Konseye* was cowardly not to come forward and admit his guilt. People began to anticipate his arrest on any day.

Conclusion

The debate on the popular participatory nature of the tribunals has been silent on the role of the judges who are the main drivers of the process at ground level. It has also polarized between those who assert that the process was almost entirely state engineered, and those who posit that that it is mostly driven from below. In this view, the state has not done enough to direct the process.[64]

The argument of this paper is that the truth lies positioned between these two perspectives. The state directed the process in a broad, overall fashion while leaving spaces of relative autonomy as a necessary incentive to judges who took on significant personal costs and risks while serving in this capacity. That these are bounded spaces is mutually understood. The exact boundaries were discovered in the course of clashes between the judges and top level state officials that arose as the ground level processes unfolded. Various kinds of indirect and direct intervention from the top signaled to judges the limits of their agency and independence. This paper utilized rich ethnographic evidence to probe the possibilities and limits of judges' autonomous action.

This paper also demonstrates why this kind of an implicit contract was necessary. Using survey data on judges' profiles, the argument is made that large numbers of judges were members of the local

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the sale of the land. The judges were of the opinion that this constituted a property dispute between the two brothers and should be dealt with by the ordinary courts. The executive secretary agreed with this view.

[63] It is argued that one of the reasons people participated in thousands during the genocide is that they were obeying the orders of their leaders. While this is largely true, it also needs mention that though open defiance of orders is rare, cynicism, hidden resistance and evasion were commonly adopted strategies during genocide. They are also used in *gacaca*. See Thomson 2010 for explicit attention to these behaviors in post-genocide Rwanda.

[64] See Clark 2010 for a mostly benign view of the process—and Thomson 2010 for an opposite assessment.

social elite, as well as members of the RPF party apparatus at the local level. The political-administrative co-optation of a stable section of the grassroots elite is analyzed and placed in historical perspective. Rwanda's historically centralized state has always been unable to project power into the grassroots without allies at the local level. This problem for RPF agents at the center was magnified because the ruling party is dominated by elites from the ethnic minority group, who spent several decades in exile and did not have the support of grassroots networks to start with. Since most judges were Hutu males, the problem of governing the majority ethnic group at the grassroots was addressed and the *gacaca* courts in particular ran their complete course over a decade's operations. The co-optation of judges was an important means of consolidating the RPF regime at ground level.

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