



## **Monitoring and Research Report on the *Gacaca***

### ***Community Service (TIG) Areas of reflection***

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## Summary

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The intent of Penal Reform International's (PRI's) research is to shed light on the social context surrounding the measures taken since the end of the genocide to promote "national reconciliation", primarily the *Gacaca courts* and concurrent measures. The research also aims to define the repercussions that these measures have had on different social groups. The main subject of this report is Community Service (TIG<sup>1</sup>), a sentence issued by the *Gacaca courts* for genocide perpetrators of the Second Category who have confessed, which replaces half of the prison sentence. In the following pages, we emphasize the popular sentiment towards the Community Service, and the consequences it has had -- during the pilot phase -- on Rwandans' everyday life. The two main groups this research focuses on are the survivors, and the former genocide perpetrators and their families, which we will deal with first. Our analysis is guided by the following question: can Community Service support these two groups' peaceful cohabitation and the return of some degree of trust in the hills?

Within this framework, Community Service seems to have significant potential, and its pilot phase has revealed some encouraging aspects. First, the persons sentenced to TIG receive professional training, which on their exit offers them the possibilities of professional reintegration. This programme also helps minimise the social alienation produced by incarceration. The former genocide perpetrators, initially reluctant and even frightened with the very idea of Community Service (which was an unknown penalty in Rwanda) gradually came round to it, and now view it as a very positive step, even an act of "pardon" by the State. Among the survivors, some also consider themselves satisfied as the work provided in the camps can sometimes be of direct benefit to them. This is the case in the Nyanza camp where houses were built for impoverished people, including survivors, or in Rwamagana, where a similar project for widows of the genocide was carried out in collaboration with the Association of Genocide Widows (AVEGA).

That said, Community Service in Rwanda is still very recent, and the choice of the ultimate form it will take will be crucial. The authorities seem to be hesitating between two options. In the two Presidential Orders of December 2001 and March 2005 defining the organisation of TIG, the system favoured was one of a *Neighbourhood Community Service*, carried out by the *tigiste* in close proximity to his own hill – at least in his own District - three days a week. However, facing logistical and organisational difficulties, notably an unequal distribution of *tigistes* among the sectors with very few in some locations, authorities have chosen a different organisation for the pilot phase. In this new form they organise the alternative penalty by grouping them into labour camps, and the legal texts have been modified accordingly. However, "*Neighbourhood TIG*" has not been definitely cast aside; it is to be implemented in the national phase, maybe to be combined with TIG in work camps.

The organisation of TIG in the form of a work-camp *à priori* presents some positive points: it is favoured by the *tigistes* because it allows them to reduce their Community Service sentence in half, as they work six days a week. In addition, *Neighbourhood Community Service* carried out on the hills frightens some survivors who feared for their physical safety, as well as some *tigistes* who dreaded tensions. But the risk is that the work camp might be perceived as a second prison, especially in the case where camps are located far from the *tigistes'* places of origin and their families, leading to fewer *tigistes* receiving permission to leave the camps. Moreover, the work camp is not adapted to

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<sup>1</sup> TIG means "Travail d'Intérêt Général" in French, that is "Community service".

people sentenced to this penalty for many years, nor to weak people, the elderly or the sick, because the work would be harmful.

We are in favour of *Neighbourhood Community Service*, which involves gradual contact between *tigistes* and the community through daily encounters which remain supervised by the authorities. This can somewhat reassure the survivors, who are watching the work carried out by *tigistes* and are able to benefit from it more easily. Moreover, Neighbourhood TIG allows *tigistes* to at least partly fulfil their economic and social duties towards their families. Thus, in terms of the advantages in the areas of reintegration and peaceful cohabitation, we find Neighbourhood Community Service preferable. This is of course on condition that the *tigiste's* assent is sought, to make sure that he or she accepts and even endorses the penalty.

However, many significant problems remain. The current methods of Community Service are unable to resolve the problem of prison overpopulation, as the TIG is not a main penalty. Moreover, even if some efforts have been made by the authorities on this matter, the possibility of increased direct benefit from the results of Community Service is indeed a recurring claim of the survivors, who, in the absence of an effective measure for compensation, live in conditions of extreme poverty. Moreover, not all survivors are proponents of the Community Service, as some regard it as a "pardon" granted by the State. Some former genocide perpetrators also aspire to contribute, through Community Service, to improving the living conditions of survivors. One could also regret that the *tigistes'* approval of the sentence was not a prerequisite for the process; if it were, it would increase their sense of responsibility. Sensitisation efforts on this subject have not always been met with success, and numerous fears are yet to be dispelled. Many survivors of the genocide fear that Community Service is not enough to transform the ex-killers and render them harmless, and some of these ex-killers fear revenge by survivors or by those people whom they have accused.

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# Foreword

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## 1. Why a report on Community Service?

Penal Reform International (PRI) has been campaigning for the promotion of Community Service (TIG) as a viable sanction for petty offences since its establishment in 1989. Its actions in this field began on the African continent in Zimbabwe in 1994. Since then, the Zimbabwean scheme became a model for criminal justice activists in Africa and elsewhere. In 1997, the participants of the first international conference on community service in Africa, organised by PRI and the Committee on Zimbabwean Community Service, drafted the Kadoma Declaration on Community Service Orders in Africa, which was recognised by the Economic and Social Council of the UN. The participants of the conference also outlined a Code of Conduct for national Committees on Community Service, and an Action Plan, both of which were used as a basis for the establishment of community service schemes in many African countries.<sup>2</sup>

Following the work in Zimbabwe, PRI has continued its actions for supporting the implementation of Community Service in Kenya, Malawi, Uganda, Zambia, Burkina-Faso, Congo, the Central African Republic and Mozambique. The mobilisation of the association in favour of Community Service is not, however, limited to the African continent; PRI also supports the installation of this alternative to imprisonment in certain regions of Eastern and Central Europe, in the South Caucasus and Central Asia.

In the framework of conceptualising a new approach to penal justice, PRI has also developed in partnership with the International Centre for Prison Studies<sup>3</sup> (ICPS) *A new agenda for penal reform*, published in 1999. Numerous African activists played a key role in defining the programme. Nine strategies had to be defined in order to implement this new agenda; an emphasis was placed on restorative justice, alternative dispute resolution, informal justice, alternatives to custody, alternative ways of dealing with juveniles, specific strategies for dealing with violent criminals, reducing the prison population, a proper management of prisons, and the role of civil society in penal reform.<sup>4</sup>

It is therefore this penal strategy and a pre-existing support for measures taken to implement Community Service that explains why PRI led a *Gacaca* monitoring programme in Rwanda and was closely affiliated with the conception of Community Service in Rwanda in 2001 and 2002. The organisation had brought in an expert who, in partnership with the Rwandan authorities, had worked on the draft of the first Presidential Order and above all the Strategic Plan.<sup>5</sup>

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<sup>2</sup> For more information on Community Service, see PRI Newsletter n°54, July 2006, p. 5-7, available on the website [www.penalreform.org](http://www.penalreform.org)

<sup>3</sup> [www.kcl.ac.uk/icps](http://www.kcl.ac.uk/icps)

<sup>4</sup> *A new agenda for penal reform*, Penal Reform International, International Center for Prison Studies, from the International Conference on Penal Reform, London, April 13-17, 1999.

<sup>5</sup> Cf. Penal Reform International, *Strategic National Plan for the Implementation of Community Services in Rwanda*, (in French), July 2002. This plan was not followed up for various reasons, particularly because of the increasing number of potential *tigistes* following the *Gacaca* pilot phase results.

With the launching of Community Service at the end of 2005, following the first judgments handed down by the *Gacaca* courts at the sector level, it seemed essential for PRI to integrate this issue in its monitoring activities. Indeed, the research-monitoring which PRI has conducted since 2001 aims to support the Rwandan authorities in the implementation of the *Gacaca* courts. Community Service constitutes the final link to this unique mechanism of transitional justice, since it is the *Gacaca* which pronounces the Community Service sentences. Moreover, this link is essential for this process's stated objective of reconciliation.

We are in complete agreement with the Associate Executive Secretary of the Executive Secretariat of the National Committee of Community Service (SNTIG)<sup>6</sup> when he states that Community Service is "*a new form [of repression and re-socialisation], an attempt, indeed bold, but one which, once well established can bring many benefits to both Rwandan citizens and the country!*"<sup>7</sup> Thus it seemed essential to us, at the outset of Community Service's pilot phase, to make available to its organisers the initial data which we were able to collect among the various social groups concerned as well as our preliminary lines of thought on the issue. Our main purpose is to communicate the impressions, the degree of understanding or the lack thereof, and finally the perceptions emerging from members of the Rwandan population with whom we were able to meet, so that they could be analysed and taken into consideration in some way, to "maximise" the potential of this new mechanism as a tool of reconciliation.

## 2. Community Service

Community Service was introduced as an alternative penalty to imprisonment into the Penal Codes of several Western and Asian countries during the last 30 years, and was adopted very recently by several African countries, including Zimbabwe, Burkina Faso, Mali, Kenya, Uganda, Senegal, Niger, Namibia and Tanzania. In each of these contexts, despite local variances, Community Service fulfils the same goals. In Rwanda, however, Community Service has been introduced under new conditions.

### The concept of Community Service<sup>8</sup>

Community Service is a method of carrying out the prison sentence prescribed by the law, and which the penal jurisdictions can resort to when they deem that a person is guilty of an offence. The offender can make up for his or her wrongdoing by doing unpaid work for the benefit of the community without having to be imprisoned.

The essence of Community Service remains a penalty: "*It is a penalty pronounced by a court, in suppression of a violation to a criminal/penal law*"<sup>9</sup>.

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<sup>6</sup> The full title is "National Committee for Implementing Community Service as an Alternative Penalty to Imprisonment", see Article 10 of the Presidential Order n°10/01 of 7 March 2005 determining the modalities of implementation of Community Service as Alternative Penalty to Imprisonment, *Official Gazette of the Republic of Rwanda*, n°6, 15 March 2005.

<sup>7</sup> PRI Interview with Mr Anastase Nabahire, Associate Executive Secretary of the Executive Secretariat of the National Committee of Community Services, 13 January 13, 2006, n°1146.

<sup>8</sup> For more information on Community Service see Penal Reform International, *Community Service as an alternative to custody*, 2002.

<sup>9</sup> Cf. Jean-Marie Mbarushimana, then Executive Secretary to Community Service, *Community Service in Rwanda*, Kigali, February 2004.

In all countries, other than Rwanda where Community Service exists, it applies only to minor offences where imprisonment is too high a penalty for the crime. For the sentenced individual it consists of carrying out non-paid work for the benefit of the community, for a public administration, civil organisation or association with a social programme or working for the public's interest. The work involved can differ greatly depending on the country and the nature of the offence. It could be working in a hospital, digging wells or building schools. It is, above all, a policy intended to enable offenders to reintegrate better into society, to redeem themselves by carrying out work that is useful to the community and that makes them feel valued, and to avoid the deeply harmful social and economic impacts of prison on the delinquent's family; imprisonment is often also harmful to the prisoner's physical and mental health. In addition, this policy leads to a reduction in the prison population, one which is very costly to the State.

Being reintegrated into society also helps reduce the likelihood of recidivism. This can be caused by the imprisonment of violent offenders, the increased likelihood of developing criminal relationships in prison and the de-socialisation and loss of stabilising elements (work, family, friendships, and schedules) that imprisonment entails.

This also involves developing among delinquents a sense of the responsibility towards society, as stated in the "United Nations Standard Minimum Rules for Non-custodial Measures" (Tokyo Rules).<sup>10</sup>

### **Reasons for the implementation of Community Service in Rwanda**

The implementation of Community Service in Rwanda since 2005 as a response to the legal crisis in the aftermath of the genocide's represents a unique form of this alternative penalty for two particular reasons.

First, unlike the usual conditions of eligibility (non-violent delinquents and minor offences), charged offenders who are called upon to benefit from Community Service in Rwanda are those who have committed, in such extreme violence, the most serious crime possible: the crime of genocide. Indeed, according to the *Gacaca* Organic Law of 2004<sup>11</sup>, Community Service is administered to persons classified in Category 2, which includes the perpetrators,

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<sup>10</sup> See point 1.2. This text drafted in 1990 is available on the website of the United Nations High Commissioner for Human Rights at [www.unhcr.ch/](http://www.unhcr.ch/)

<sup>11</sup> Organic Law N°16/2004 of 19 June 2004 establishing the organisation, competence and functioning of *Gacaca* courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between 1 October 1990 and 31 December 1994, *Official Gazette of the Republic of Rwanda*, Special Edition of 19 June 2004, as modified by the Organic law n°28/2006 of 27 June 2006 effective as of 12 July 2006, and by the Organic Law n°10/2007 of 01 March 2007, effective as of 1 March 2007 by publication in the *Official Gazette of the Republic of Rwanda*, n°5.



joint perpetrators or accomplices to killings or serious attacks which resulted in death<sup>12</sup>, the person who injured or committed other acts of serious aggression with intention to kill even if they did not attain this objective, the person who committed or participated in criminal acts without any intention of killing, and finally, with the modification of the law in March 2007, the "well known murderer", and the person who committed acts of torture or dehumanising acts on a dead body, previously classified into Category 1.

These people are sentenced to Community Service provided that they have confessed, except for those who committed or participated in criminal acts without any intention of killing; they serve half of the sentence in custody and have a sixth of the sentence suspended even if they did not confess. The length of the prison sentence, and therefore of the TIG sentence, depends on the gravity of the crime and the timing of the confession.

These people classified in Category 2 are not sentenced to Community Service alone: according to the law as modified in March 2007, they are absolved from a third or a sixth of their sentence in prison, a third or a sixth of their sentence is suspended, and the remainder, that is a half of the sentence, is completed in the form of Community Service.<sup>13</sup>

But above all, and beyond the more common aim of social rehabilitation of the convict at the individual level, this system is meant to rebuild social bonds at the collective level, and thereby create some national cohesion in a post-genocide context. According to the remarks of the current Associate Executive Secretariat of the National Service on Community Service, the authorities in charge of its implementation have tried, to the greatest extent possible, to adapt Community Service to fit into the framework of a "*national policy*" combining various "*aspects, namely punishment, unity and reconciliation, [ and ] development*".<sup>14</sup>

The Rwandan legal context thus differs so much from the usual framework of Community Service application, that one may ask why Rwanda made the choice of resorting to an alternative

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<sup>12</sup> According to Article 11 of the Organic Law n°10/2007 of 1 March 2007 modifying and complementing the article 51 of the Organic Law n°16/2004 of 19 June 2004, Category 2 includes:

- 1° the well known murderer who distinguished himself or herself in the area where he or she lived or wherever he or she passed, because of the zeal which characterised him or her in the killings or excessive wickedness with which they were carried out, together with his or her accomplices ;
- 2° the person who committed acts of torture against others, even though they did not result in death.
- 3° the person who committed dehumanising acts on the dead body, together with his or her accomplices.
- 4° the person whose criminal acts or criminal participation with the killers or authors of serious attacks against others, causing death, together with his or her accomplices.
- 5° the person who injured or committed other serious attacks, with the intention to kill, but who did not attain his or her objective, together with his or her accomplices.

<sup>13</sup> According to article 14 of the law n°10/2007 modifying article 73 of the law n°16/2004, persons classified in Category 2 can have half of their penalty commuted into community service, a third or a sixth commuted into suspension depending on the moment they confessed, and the remainder (that is a third or a sixth of the sentence) is spent in prison. If the confession was made before the person was included on the list of the accused, a third of the penalty is suspended and one-sixth of it is served in custody. If the confession was made after the person was included on the list, it is the other way round: a sixth of the penalty is suspended, and a third of it is served in custody. For all the persons who confessed, whether they did it before being included on the list or not, half of the penalty is commuted into TIG (provided that the confession was made before the judgment was issued). Persons who refused to confess or whose confession was rejected spend the whole penalty in prison.

<sup>14</sup> PRI Interview with Mr Anastase Nabahire, Associate Executive Secretary of the Executive Secretariat of the National Committee of Community Services (SNTIG), 13 January 2006, n°1146.

penalty of this kind. Four types of responses can be put forward here, in line with those stated by the national authorities<sup>15</sup>.

In Rwanda, resorting to imprisonment for all those convicted during the genocide trials is not a realistic solution: according to the figures provided by the National Service of the *Gacaca* courts, 818 000 people have been accused before *Gacaca* courts during the information-gathering phase. Among them, more than 500 000 (Categories 1 and 2) could be sentenced to imprisonment. The incarceration of hundreds of thousands of condemned people would weigh much too heavily on the State budget and would require an adaptation of penitentiary logistics that would be impossible to carry out in a situation already marked by significant prison overpopulation.

Next, for a country which has led a noticeable fight against poverty and has placed economic development among its major objectives, it would be counteractive to deprive its economy of a significant portion of its active population.

It is also an attempt to contribute to national reconciliation by gradually reintegrating into society those condemned for their participation in the genocide, while also sentencing them to a penalty which can both make sense and can be beneficial to the individuals carrying out Community Service, as well as to the whole of the Rwandan population, including the survivors.

Lastly, the promotion of Community Service has been particularly important as it has provided the main arguments for promoting a policy of sensitising towards the confessions of the genocide perpetrators; this policy is crucial since the confessions are the "cornerstone" of the instruction and judgement in the *Gacaca* process.<sup>16</sup>

### 3. Methodology and research material

PRI adopted a qualitative methodological approach for this research. The presentation of collected data mainly depends on interpretation and analysis of the contents of the observation reports and interviews carried out in the field by PRI investigators. As for the geographical location, conducting interviews close to Community Service camps was favoured, although for the sake of comparison, we also carried out interviews in zones further afield.

This work was carried out using a research-action combination, with the aim of identifying perceptions and behaviours of the various actors involved in the process, in order to create a tool of comprehension of the context in which Community Service is rooted. It also involved detecting potential problems which were limiting the effectiveness of this tool, and identifying potential solutions emerging from the field.

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<sup>15</sup> For the aims pursued by the authorities in charge of the installation of Community Service, see Jean-Marie Mbarushimana, then Executive Secretary of Community Service, *Community Service in Rwanda (Le Travail d'Intérêt Général au Rwanda)*, Kigali, February 2004, pp.3-4:

- To serve as an instrument of reconciliation and national unity.
- To serve as an instrument of reconstruction and rehabilitation of the development infrastructure.
- To serve as an instrument of social rehabilitation for people having confessed to the crime of genocide and who have been accused and convicted.
- To considerably reduce the prison population as well as related budgetary implications.

<sup>16</sup> Cf. PRI Report, *The guilty plea procedure: cornerstone of the Rwandan justice system*, Report IV of PRI research on *Gacaca*, January 2003.

This report is based on the following investigation material:

- Reports of direct observation carried out in January 2006 in the Community Service camps of Nyanza and Ruyumba, and accounts of meetings or seminars related to Community Service.
- Semi-directed interviews (in groups or individually) carried out by PRI among a number of *tigistes* who were present in these camps and different population groups. Among the 132 interviews comprising the body of the work are :
  - 17 interviews among *tigistes* as they carried out their penalty;
  - 18 among families of *tigistes*;
  - 30 among released persons;
  - 13 among survivors;
  - 20 among authorities;
  - 9 among *Gacaca* judges.

It should be noted that our direct observations of the operation of Community Service had to be limited to the two pilot camps of Nyanza and Ruyumba. The Executive Secretariat of the Community Service authorised a visit for observation at the beginning of 2006, but it was not renewed or extended to other camps. It appears useful, however, to share the results of these initial observations because they emphasise a certain number of important elements, particularly from an organisational point of view. There is no doubt that this observation would benefit greatly from being repeated and in greater depth over a longer period of time.

# Introduction

## The Relevance of Some Adjustments

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As an introduction we would like to highlight some points which, upon further reflection and in light of certain difficulties, could call for some further adjustments, whether at the legislative level or at the organisation at the field level. It is thus a question of summarising the suggestions for solutions and recommendations which will be put forward in this report in order to support and encourage a process whose success we consider fundamental for the future of Rwanda and which could prove to be an essential instrument of national reconciliation.

### **Facing the challenge of the potential number of *tigistes***

Both the *Gacaca* courts and the Community Service penalty correspond to choices made by the legislator after realising the impossibility of addressing the crisis in the aftermath of genocide through ordinary legal means alone. In 1998, with approximately 130,000 persons detained and presumed to have taken part in the genocide, the *Gacaca* court system was chosen – since ordinary courts were unable to guarantee the handling of the files of those accused of having taken part in the genocide within a reasonable time frame. As for recourse to the penalty of Community Service, this was in response to the authorities' observation that the system could not rely on just a penalty of imprisonment<sup>17</sup> for the majority of those condemned, when one takes into account the prison overpopulation that it would generate, and of the cost of management and maintenance of these prisoners over several decades.

A few years down the road, a quantitative observation is once again raising new questions about the previous answers. Are the solutions, which were implemented a few years earlier, sufficiently adapted to face the numerical challenge presented by the enormity of the genocide trials?

With the statistics provided by the National Service of the *Gacaca* courts concerning the pilot phase<sup>18</sup>, some estimates can be worked out on the basis of the following figures: 6,267 judgments passed, 695 acquittals given (approximately 11%)<sup>19</sup> and 5,572 persons were sentenced. Among those convicted, 2,039 were sentenced to Community Service. Using these figures which cover a full year of activity in the *Gacaca* courts, it is reasonable to project that the percentage of *tigistes* will represent more than 35 per cent of convicted<sup>20</sup> persons across the categories.

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<sup>17</sup> The death penalty is also foreseen for those persons in Category 1 who refuse to confess, but currently this penalty is not meted out. The last executions were in 1998, and Rwanda began a debate on the abolition of capital punishment.

<sup>18</sup> Using as a reference the figures provided by the National Service of the *Gacaca* courts on the pilot phase sentences handed down during the year 2005. See National Service of the *Gacaca* Courts, "Summary Table of the Judgements", *Semi-annual Reports of the Activities: January - June 2005 and July - December 2005*, Kigali, January 2006, Appendix.

<sup>19</sup> But we have to notice that the national service of the *Gacaca* courts announced during a meeting on the 13<sup>th</sup> of march that more than 20% of accused had been acquitted during the beginning of the judgment phase

<sup>20</sup>  $[\text{No. of persons condemned to Community Service} / \text{Total no. of persons sentenced}] \times 100$ , or  $[2039 / 5572] \times 100 = 36,59$ .

Thus, on the basis of 818 000 cases<sup>21</sup>, and subtracting 11 per cent for the projected acquittals (89, 890 people), the potential number of those sentenced to TIG could reach 255,000<sup>22</sup> persons.

The management of such high numbers of *tigistes* is going to be problematic. The authorities in charge of setting up the Community Service have already come up with an organisational solution - Community Service in the form of camps. This organisation presents practical advantages over what is prescribed by the texts, i.e. a Community Service carried out by the *tigistes* on their hill. During the pilot phase it allowed for the grouping of the *tigistes*, as they were relatively few in some sectors. This organisation also makes it possible to provide training for a large number of *tigistes* who will be able to carry out more substantial tasks.

The system of Neighbourhood Community Service has not been permanently dropped. It is still prescribed by the texts and according to the National Service for Community Service, it remains the preferred system for the national phase. It seems to us fundamental that this system be favoured, that the TIG be carried out, as often as possible, by the convicts close to their own hill, which would enable them to be in contact with their family and, above all, to interact with the survivors. This concept is of value as it could allow a gradual *rapprochement* with the community and perhaps the return of some form of trust. The implementation of Neighbourhood Community Service, which allows for the close supervision and guidance by the authorities as the former genocide perpetrators return to their hills, strikes us as a way to limit conflicts and help quell fears in order to grow accustomed to living together.

In order to preserve the merits of both forms of Community Service, it would be interesting to think of implementing a two-phase scheme which would link in two successive stages, time spent in a camp and time in the neighbourhood. We feel that the camp option should only be imposed for short periods of time. It would, in any case, seem advisable to continue the search for creative solutions and to further reflect on the various ways in which to implement Neighbourhood Community Service so that Community Service can best contribute to the overall aim of reconciliation.

### **Facing the challenge of the number of potential prisoners, still a concern**

In the current state of the Rwandan legislation, Community Service cannot be pronounced as the main penalty. It is only an alternative way to execute the sentence of imprisonment, and only one who has already purged the first half of his or her sentence in detention is entitled to it.

However, the great majority of people sentenced to Community Service during the pilot phase of the judgements in 2005 were those who had been temporarily released in 2003 and 2005, following their confessions. They had already carried out a significant number of years in pre-trial detention and were sent to carry out their Community Service immediately after their judgement was issued. But the great majority of those who will be sentenced to Community Service in the future will not have served a single day of prison, since these will be people who were accused during the information-gathering phase which took place in 2005. Consequently, if the legislation is not modified, those sentenced will not be able to carry out their Community Service straight away as they would first have to carry out one-third or one-sixth of their prison penalty. Thus,

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<sup>21</sup> Figure concerning the number of accused during the information-gathering phase provided by the National Service of the *Gacaca* Courts in March 2006. Those figures remain provisional because new accusations are made during the judgment phase.

<sup>22</sup> [(818 000– 89 980) x 35] / 100 = 254 807.

the problem of absorbing these people into an already overpopulated prison system remains unsolved.

The introduction of TIG to the list of available penalties for genocide in Rwanda, and then the possibility of suspensions following the amendments to the *Gacaca* texts in March 2007 are both positive steps. But neither TIG nor the suspended sentences constitute main penalties; they are only supposed to complement the prison sentence. While the length of the prison sentence is reduced thanks to TIG, the total number of persons sentenced to prison remains the same.

One way to solve the problem of prison overpopulation would be to use TIG as a main penalty in some cases. But the question remains as to which categories of convicts would be concerned, as it obviously cannot apply to all Category 2 offenders. We should also consider how such a measure would be received by the population; an inquiry into the subject would, nonetheless, be interesting and relevant.

### **Measures to be taken to ensure popular support**

As this report will show, based on the interviews carried out in the field, opinions on Community Service differ according to groups: the survivors are rather more divided, often worried. The *tigistes*, after an initial period of doubt, seem to be rather more enthusiastic. Yet fears need to be lifted in both groups and it would be interesting to consider ways to bring about greater support for Community Service among the population.

On the *tigistes'* side, one of the means of achieving this would no doubt entail restoring the legal requirement of obtaining the consent of the person condemned to his or her penalty: this provision was in the Presidential Decree which defined the 2001 Community Service methods, but has disappeared from the 2005 legislation. This measure would certainly not change the facts on the ground as it is highly unlikely that a large number of people prefer prison to Community Service, yet it would give those concerned the impression of being actively engaged in the process, and would thus develop their feeling of responsibility and inclusion.

We also feel that the *tigistes* should be given more guarantees when it comes to the possibility of them being sent back to prison in the event that they did not carry out their Community Service adequately. Indeed, following the Presidential Orders of December 2001 and March of 2005, this decision is left to the District committees and is not supervised by the judiciary authorities. Granted, this has been modified in the revised *Gacaca* law of 2007. In article 17<sup>23</sup> of this document modifying article 80 of the 2004 law, a clause has been added stipulating that if a *tigiste* does not properly carry out his work, it is the *Gacaca* court of the sector where TIG is being carried out that files the forms sending him back to prison, following the TIG Committee's report. However, there is nothing in the law about the judge's ability to assess the suitability of the report that is submitted to him. Furthermore, this article seems to ascribe to the court the role of merely executing the district committee's decision as it states that the judge "*fill in the form to return the defaulting person to prison*". Thus, he is given no room for assessing the report. The addition of this clause leads us to ask yet another question, namely what will happen when the *Gacaca* courts cease to exist, whereas the TIG is meant to last longer than the courts.

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<sup>23</sup> Article 17 of the law n°10/2007 modifying the law n°16/2004<sup>16</sup>/2004 of 19 June 2004 establishing the organisation, competence and functioning of *Gacaca* courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between 1 October 1990 and 31 December 1994, *Official Gazette of the Republic of Rwanda*, Special Edition of June 19, 2004 stipulates « *in that case, the Community Service Committee in the area where the convicted person is carrying out community service shall prepare an ad hoc report and submit it to the Gacaca Court of the Sector where community service is perlogged which will fill in the form to return the defaulting person to prison* ».

If the organisation in the form of labour camps is to continue, it would be worthwhile to insist upon the professional education of the *tigistes*. To educate them and facilitate their return to the hills is an important point for the survivors. It would also be better if the camps were not too far away from the *tigistes'* place of origin, to allow for contact with the outside world. Moreover, the elderly seem unsuited to the kind of work carried out in the labour camps, and women who are sentenced to Community Service -- a small minority -- do not always have adequate infrastructures available to them. It would thus be important to consider a Community Service adapted to their situation, one which could be carried out on their own hill.

That said, the time spent in a TIG camp should not exceed a few months so that it is not perceived as a second prison. In fact, the long TIG sentences that are currently allowed by the law seem excessive: the 2007 amendments to the *Gacaca* law make it possible to sentence someone to up to 15 years of TIG. This strikes us as not only impossible on the logistical and material front, but it also diverges from the initial purpose of TIG -- regardless of how it is ultimately organised -- by making it a heavy psychological and economic burden on the *tigiste* and his family.

On the survivors' side, although efforts have been made to include them in the decision making and implementation of Community Service, it seems relevant to further emphasise this inclusion in order to reassure them and help them understand the goals of Community Service, and to show them that they too can benefit from it. It is indeed very important that the survivors directly benefit from the outcomes of the Community Service, as has been the case in the Nyanza camp, or the Rwamagana camp, where some of the poorer survivors were allotted a house that was built by *tigistes*. It is crucial that the State carefully assess these projects to make sure that they serve a purpose in the larger project of national reconciliation, and that the *tigistes* are not perceived as competitors by other labourers.

The populations' favourable response to associations of freed prisoners and survivors shows us that collaboration in work is in fact possible, and in some cases these associations could serve as inspiration for the implementation of Neighbourhood Community Service .

Increased sensitisation would also be a positive development: it should be organised by the local authorities who are closer to the fears of the population, and whose deeper involvement seems to be necessary, given that until today Community Service activities have been organised in a centralised manner at the national level. This could help the survivors understand that Community Service is not a "grace" granted to the genocide perpetrators.

Finally it seems important that the monitoring work on the status of social relations on the hills -- already initiated by the National Commission on Unity and Reconciliation and some NGOs -- be intensified to try and evaluate the tensions between the groups, and to study the context in which Community Service is established, with the goal of making it an optimal tool for reconciliation.

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In order for Community Service to best fulfil its objective of contributing to national reconciliation, we would recommend certain modifications in its implementation, as well as an added emphasis on the authorities' already existing efforts.

In order to contribute to this line of reflection, PRI proposes in this report to return to its first observations of the actual operation of the Community Service pilot camps, and to present

certain preliminary perceptions already gathered from *tigistes*, survivors, and the rest of the population.

At the time of our investigation there were only two camps, today there are up to seven. Their work mostly involves the construction of houses for poor people, among them survivors. This seems to be a positive point and which is consistent with the recommendations that we made following our investigation on the pilot camps.

Our investigation and the resulting report are not exhaustive: it is a question of bringing forth elements which can contribute to the ongoing reflection on possible adaptations of Community Service. These "areas for further reflection" are in line with continuing research on the implementation methods which will allow Community Service to best fulfil its assigned aim, that of gradually restoring some form of trust between the social groups, and of creating the conditions for peaceful cohabitation between the survivors and those implicated in the genocide, as they are fated to live together. One must also think about ways to make these goals compatible with the organisational requirements, and the imposing figures mentioned earlier, which promise to present a challenge.



# Part One

## Community Service work in the pilot phase, initial observations

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In order to comprehend the circumstances that surround the implementation of Community Service in its pilot phase, we propose first to describe the legal texts and to share our initial observations and conclusions on the operation of the Community Service pilot camps set up in September 2005. Secondly, we will turn to the popular reaction, among the various groups, to the installation of Community Service over the last three years.

### A. Community Service: in the texts and on the ground

In order to clarify matters, it seems helpful to briefly go over the type of organisational structure stipulated in the texts, and then describe in greater detail the reality of Community Service operation in the field.

#### 1. Community Service in the texts

Community Service was first introduced into the Rwandan legislation through the Organic Law n° 40/2000 of 26 January 2001 “*setting up “Gacaca Jurisdictions” and organising prosecutions for offences constituting the crime of genocide or crimes against humanity committed between 1 October 1990 and 31 December,*”<sup>24</sup> which was then modified by the Organic law n°33/2001 of 22 June 2001.<sup>25</sup>

Articles 32<sup>26</sup>, 69, 70 and 75 of the Law of 2001 mention this alternative measure. According to articles 69 and 70, the defendants of Category 2 who confess, and those of Category 3<sup>27</sup> whether they have confessed or not, spend half their penalty in prison and the remaining half is commuted to Community Service work. Article 75 clearly stipulates that a choice be offered to

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<sup>24</sup> Law published in the *Official Gazette of the Republic of Rwanda*, 15 March 2001

<sup>25</sup> Organic Law n° 40/2000 of 26 January 2001 setting up “*Gacaca Jurisdictions*” and organising prosecutions for offences constituting the crime of genocide or crimes against humanity committed between 1 October 1990 and 31 December 1994, *Official Gazette of the Republic of Rwanda*, n°6, 15 March 2001, as modified and supplemented by the Organic Law n° 33/2001 of 22 June 2001 modifying and supplementing the organic law n° 40/2000 of 26 January 2001 setting up “*Gacaca Jurisdictions*” and organising prosecutions for offences constituting the crime of genocide or crimes against humanity committed between 1 October 1990 and 31 December 1994, *Official Gazette of the Republic of Rwanda*, n°14 15 July 2001.

<sup>26</sup> This article stipulates that persons who refuse to testify before *Gacaca* or who give false testimonies are sentenced to one to three years in prison, half of which is carried out in the form of Community Service.

<sup>27</sup> It is worth recalling that according to the Law of 2001, which reiterates the categorisation of 1996, there are four categories: Category 2 is for “*a). The person whose criminal acts or criminal participation place among authors, co-authors or accomplices of deliberate homicides or serious attacks against persons which caused death; b) the person who, with intention of killing, has caused injuries or committed other serious acts of violence, but from which the victims have not died.*” And Category 3 includes “*The person who has committed criminal acts or has become accomplice of serious attacks, without the intention of causing death to victims*” These Categories were fused in 2004, leaving only three Categories. With the modification of the 2004 *Gacaca* law by the law n°10/2007 published on 1 March 2007, well known murderers, people who committed de-humanising acts on dead bodies, and those who committed acts of torture, before classified in Category 1, belong to Category 2.

the condemned person, even when the penalty has already been pronounced, as it specifies in paragraphs 1 and 2 that *"In case of a prison sentence with commutation of half the sentence into community services, the convicted prisoner may choose either to carry out the said community services or to serve the full sentence in prison. The convicted prisoner who chooses to serve the full pronounced sentence in prison shall notify the community services managing board within three months before the date of his release. However, he is free to request later from the same board, to carry out community services for the remaining period."*

One year later, in accordance with article 75<sup>28</sup> and in order to define in the most precise manner possible the methods of implementation of this innovation, the Presidential Order n°26/01 of 10 December 2001<sup>29</sup> which *"sets out general provisions on the organisation of the commutation of prison sentence into community service"*<sup>30</sup> was published on 1 February 2002. This first Order defines Community Service work, describes the administrative structure responsible for its implementation at both the local and national levels, specifies the conditions which must be met by the institutions that hope to receive the *tigistes*, and also the nature of the work which can be regarded as having "public interest". It also clarifies the conditions under which Community Service must be carried out. According to this decree, *"Community Service work shall be carried out at the rate of three days a week"*<sup>31</sup> and the consent of the convict is required for Community Service to be carried out in a district other than his or her district of residence<sup>32</sup>. But the text also specifies that *"at the request of the host institution and with the consent of the convict, the District or Municipality Committee may authorise that the days to be worked within a period not exceeding one year, be consolidated into a shorter period depending on the nature of the work load to be carried out"*.<sup>33</sup> Thus, the path is already paved for a TIG that can be carried out every day of the week.

The reform of the *Gacaca* process in June 2004<sup>34</sup> would have entailed the reform of the Community Service system which had been formulated in 2001 but which was never implemented. Taking into account the development of the *Gacaca* process, there should be a significant increase in the estimated number of those accused, given the projected figures of prisoners likely to be condemned,, the Community Service system appears all the more necessary. The Law of 19 June 2004 is more specific about Community Service: it contains five articles on the subject.<sup>35</sup> According to the Law of 2004 which merges Categories 2 and 3 -- as defined by the Law of 1996 and reiterated in the Law of 2001 -- it is the convicts of Category 2 who confessed, who have the possibility of seeing half of their penalty *"commuted into community services"*.<sup>36</sup> Those

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<sup>28</sup> Which also specifies *"a presidential order fixes modalities for carrying out of community services"*.

<sup>29</sup> Presidential Order n°26/01 of 10 December 2001 on Community Service as an alternative penalty to imprisonment, *Official Gazette of the Republic of Rwanda* n° 3, 1 February 2002.

<sup>30</sup> First Article of the Presidential Order n°26/01 of 10 December 2001.

<sup>31</sup> Article 32 of the Presidential Order n°26/01 of 10 December 2001.

<sup>32</sup> Article 30 of the Presidential Order n°26/01 of 10 December 2001.

<sup>33</sup> Article 32 of the Presidential Order n°26/01 of 10 December 2001.

<sup>34</sup> The Organic Law n°16/2004 of 19 June 2004 establishing the organisation, competence and functioning of the *Gacaca* courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity committed between 1 October 1990 and 31 December 1994, *Official Gazette of the Republic of Rwanda*, Special Edition, 19 June 2004.

<sup>35</sup> Articles 73, 74, 78, 80 and 81 of the Organic Law n°16/2004 of 19 June 2004.

<sup>36</sup> See especially Article 73 of the Organic Law N°16/2004 of 19 June 2004.

condemned in Categories 1 and 3 are not affected by the Community Service. One may note, however, that among criminals classified in Category 2, those convicted of having "*committed or participated in criminal acts against persons, without any intention of killing them, together with his or her accomplices*" carry out half of their penalty in the form of Community Service even if they have not confessed<sup>37</sup>.

Community Service is therefore not a penalty that stands on its own: persons in Category 2 who confessed are condemned to a prison sentence whose length depends on the crime committed and the time of confession, where half of the penalty is carried out in the form of Community Service.

Article 74 of the Law of 2004 also specifies that if a TIG worker is found guilty of another offence, he/she goes back into detention for the remaining half of the prison sentence. Furthermore, if the work is not properly carried out, according to Article 80 he/she goes back to prison to purge "*the remaining prison sentence*"<sup>38</sup>. Those who were minors at the time of the events may also have part of their penalty commuted to Community Service, as is outlined in Article 78.

Pursuant to this law, and after a first Order of the Prime Minister of 15 August 2004 instituting the "*Executive Secretariat of the National Committee Responsible for Implementing Community Service as an Alternative Penalty to Imprisonment*" (SNCS), a new Presidential Order n°10/01 of 7 March 2005 was adopted to govern the new modalities of Community Service. There are few changes from the Order of 2001. Yet it is apparent that the consent of condemned persons to Community Service disappears. We will return to this point later in this paper.

This law was amended in October 2005, in order to adjust the text to the way TIG was being organised on the ground since September 2005, in other words into camp form. Article 32 of the Presidential Order of March 2005 was amended by article 7 of the Presidential Order that came into effect in December 2005. This article 7 specifies that "*Without prejudice to legal working hours the alternative sentence to imprisonment is carried out on a schedule of three days a week. However, when the National Committee judges it necessary, Community Service as an alternative penalty to imprisonment can be carried out by means of work camps. Currently, the days set aside for the alternative penalty to imprisonment are grouped together and carried out consecutively. All the other orders relating to the execution of alternative sentences are under the jurisdiction of the National Committee.*"<sup>39</sup>

The camps are thus written into the law. Furthermore, the text no longer refers to any maximum period during which TIG work days can be carried out consecutively. This is different from the laws of 2001 and 2005 which stipulated that the days could be carried out over shorter periods of time, but for "*a period not exceeding one year*".<sup>40</sup> This development seems to allow for lengthy TIG periods spent in a camp, something that we find unwise.

That said, the Presidential Order of October 2005 slightly changes the composition of the committees while also abrogating article 37 of the Presidential Order of 7 March 2005, which reads: "*Community service to be carried out as an alternative penalty to imprisonment shall be regulated by the*

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<sup>37</sup> See Articles 51 and 73 of the Organic Law N°16/2004 of 19 June 2004.

<sup>38</sup> See Articles 80 of the Organic Law N°16/2004 of 19 June 2004.

<sup>39</sup> Traduction by PRI

<sup>40</sup> Article 32 of the Presidential Order n°26/01 of 10 December 2001 and article 32 of the Presidential Order n°10/01 of 7 March 2005.

*provisions of the laws and regulations governing healthcare, night labour, hygiene, security at work, medical care in institutions as well as labour laws relating to women and minors”.*<sup>41</sup>

This deletion is surprising. The SNTIG has assured us that the Ministry of Health was involved and that the hospitals would be receiving *tigistes* who had fallen ill and that the ministry was inspecting the camps and providing them with nurses. Nevertheless, we find it important that the *tigistes* be informed about their rights in this area, and that these rights be codified in the texts.

Finally, in changing the categorisation, the amendments to the *Gacaca* law that were made in March 2007 end up increasing the maximum length of the TIG sentence, which can now last for more than 14 years.<sup>42</sup>

## 2. The effectiveness of the organisational set-up

Both the Presidential Orders of December 2001<sup>43</sup> and of March and October 2005<sup>44</sup> outline the organisation of those responsible for the implementation of Community Service. This organisation is almost identical in the two texts. It relies on a **"pyramid" of Committees** set up on a national scale and on the scale of Provinces, Districts and Sectors.

The composition of these committees has similarities at the various levels: all the committees include representatives of political and administrative authorities, of the police (or security personnel), of associations defending Human Rights, and of associations defending the victims' interests. The National Service of *Gacaca* court is represented at the national level, as well as at the Province and District levels. Prison authorities are represented at the national and District levels.

At the Province and District Committee levels, an agent is especially assigned to the Community Service<sup>45</sup>. The Order of 2005 also specifies that such an agent could "*where possible*"<sup>46</sup> exist at the Sector level.

The District and Sector committees must meet at least once a month, while the Committee of the Province or Town of Kigali meet at least once per quarter.<sup>47</sup>

The National Committee, which every year defines the national policy regarding Community Service, must meet at least once per quarter, and whenever circumstances require it. It is provided with a permanent Executive Secretariat which implements its decisions and ensures the follow-up

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<sup>41</sup> Article 9 of Presidential Order N°50/01 of 16 October 2005 modifying and complementing the presidential Order N°10/01 of 7 March 2005.

<sup>42</sup> We will further examine this point on p.26.

<sup>43</sup> Presidential Order n°26/01 of December 10. This regulation however has still never been applied: no Community Service has been pronounced by the *Gacaca* courts between 2001 and 2004.

<sup>44</sup> Presidential Order n°10/01 of March 7, 2005 determining the modalities of implementation of Community Service as an alternative penalty to imprisonment, *Official Gazette of the Republic of Rwanda*, n°6, March 15, 2005

<sup>46</sup> See Article 12 of the Presidential Order n°10/01 of March 7, 2005

of the local committees' activities. This secretariat was defined and set up by an Order of the Prime Minister on 15 August 2004.<sup>48</sup>

**In practice, it is the District<sup>49</sup> level that carries out most of the implementation of Community Service,** since it is at this level that the work and the projects that qualify to be carried out as an alternative penalty to imprisonment are identified, and it is here that the necessary approvals are granted to the institutions hosting the *tigistes*. It is also the District Committees who assign the convicts under their jurisdiction who have served half of their sentence in prison to the institutions where they must carry out this alternative penalty to imprisonment. These Committees can also request that any uncooperative *tigistes* be sent back to prison.

**The texts thus prescribed a decentralised structure,** entrusting the Community Service committees and those put in charge of Community Service with its implementation.

However, **the form of organisation which ultimately prevailed in the field during the pilot phase has, on the contrary, depended on a centralisation of activities at the national level of the SNTIG.** Although the different Community Service committees submitted the lists of works to be carried out in their constituencies during 2005, the actual choice of the places of execution and the organisation of the activities during the pilot phase basically remained at the discretion of the Executive Secretariat. For example, the organisation AVEGA, which hoped to obtain the participation of Community Service workers in carrying out a project of house construction for the widows of the genocide, was obliged to make its request to the SNTIG and not -- as envisaged in the Order of 2005 and likewise the Order of 2001 in their Articles 21 -- to the Community Service District committees.<sup>50</sup> The Community Service committees, and in particular the representatives of the survivors within these committees, found themselves confined to a role of delivering explanations for the Community Service's orientations to the population. This is how the person responsible for mediation at the Province level explains it:

*"We invited them to explain to the whole population that Community Service is not a form of forced labour, but a penalty handed out as a punishment for the perpetrators of genocide who have recognised this crime and have asked forgiveness."*<sup>51</sup>

The "pilot" nature of the first stages of Community Service, along with an administrative reform which handicapped the installation of local structures until the first semester of 2006, largely explain the limited involvement of the committees and those in charge of local level Community Service. Thus, this should only be a temporary situation. Nonetheless, this organisational structure remains different from the one outlined by the legislation. Although these changes are the result of organisational adjustments to realities and constraints on the ground, such necessary pragmatism should nevertheless not cause us to ignore the need to involve the local structures in

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<sup>48</sup> Prime Minister's Order n° 20/03 of 15 August 2004 determining the "Structure and Responsibilities of Executive Secretariat of National Committee Responsible for Implementing Community Service as an Alternative Penalty to Imprisonment", *Official Gazette of the Republic of Rwanda*, 16 August 2004.

<sup>49</sup> See article 18 of the Presidential Order n°10/01 of 7 March 2005.

<sup>50</sup> PRI Interview Report with a representative from Avega, 20 April 2006. As for the responsibilities of the Committees, refer also to Articles 14 to 20 of the Presidential Order n°10/2001 of 7 March 2005.

<sup>51</sup> Analysis Report on Community Service in province of Kibuye, 20-22 September 2005. Cf. also PRI's account of a seminar organised by the Executive Secretariat of TIG for the Community Service committees of Sector of the district of Kacyiru, August 17, 2004.

charge of Community Service. This involvement is indeed the best tool to guarantee popular support for this policy. The local authorities -- being closer to the population, its worries and its fears -- are certainly the most effective conduits for reassuring the population and explaining the goals of and the principles behind Community Service; their intervention seems necessary, as is explained by the Associate Executive Secretary of the SNCS: "*The Community Service process remains a measure of penal policy whose success requires the involvement of political authorities at the grassroots level as much as those at the national one*".<sup>52</sup>

As a result, once the methods of execution for the TIG have been chosen, it seems crucial to ensure the subsequent conformity of the texts and the involvement of the authorities in charge of Community Service at the local level in order to guarantee quality and effectiveness in the field. Furthermore, as the number of *tigistes* increases, it will become increasingly difficult for the SNTIG to manage the activities in a centralised way.

### 3. Carrying out Community Service in the labour camps

Article 32 of the Presidential Order n°10/01 of 7 March 2005 envisages that the Community Service penalty be carried out "*at the rate of three days a week*" and "*on request by the host institution and with the consent of the convict, the District or Municipality Committee may authorise that the working days within a period not exceeding one year, be consolidated into a shorter period depending on the nature of the workload to be carried out*". Article 35 states that the placement be made by taking into account "*the places of residence of the convicts and the manner in which the community service to be carried out will facilitate their social reintegration*".

However, another formula was applied to the pilot phase: Community Service was carried out six days a week in the form of camp work, and sometimes very far from the *tigistes*' homes.

The decision to organise Community Service in camp form was made in response to the uneven distribution of the workforce among different districts: The Neighbourhood Community Service option was thus put aside to avoid incurring operational costs disproportionately high relative to the small number of Community Service workers, as well as to avoid spreading the workforce too thin rather than focusing on fewer, large-scale works.<sup>53</sup>

Thus, the legislation has been gradually amended to allow for sending the *tigistes* away and grouping them into camps. In the law of 2001 it was indeed envisaged that Community Service should be carried out by the convicts in their district of origin (though not necessarily their cell or sector), and that all work carried out outside of this district of origin presumes that they consent.<sup>54</sup> However, this requirement of consent was removed from the text of 2005. The option of organising the TIG in camp form was permitted through the Presidential Order that came into effect on its publication on 15 December 2005, in other words after the camps were launched in September 2005.

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<sup>52</sup> Remarks made by Mr. Anasthase Nabahire, Associate Executive Secretary of the SNCS in the period during a seminar organised by the SNCS for Community Service committees at the district-level sector of Kacyiru, 17 August 2004 (PRI report of the event).

<sup>53</sup> See PRI interview with a head of Community Service at the District level, 6 December 2005, n°1109.

<sup>54</sup> Cf. Article 30 of the Presidential Order n°26/01 of 10 December 2001.

With the first stages of the pilot phase, Community Service workers found themselves assigned to one of the camps in the country. This situation differed from the information which they had sometimes received during sensitisation meetings. As a *tigiste* explains:

*"I'll tell you that before, when we were either in the solidarity camp or in the prisons, we heard talk about this concept; nevertheless, but we were never told that this work was to be carried out in Ruyumba, and that it would consist of the stone quarrying and cutting. [...] We were told, however, that the work would be carried out to serve the development of our districts and sectors, and that we would be doing it once returned to our place of residence. For this reason, I would say that the decision to go and carry out this work in Ruyumba surprised us, because it did not match our understanding of Community Service."*<sup>55</sup>

Recourse to the camp form is understandable since it makes Community Service easier to manage. It also offers advantages for the Rwandan population, which we will look at later on. It is relevant, however, to consider whether the initial objectives of building community ties and the reintegration of the convicts are not being compromised by these changes.

### **Organisation and operation of the pilot camps**

At the time of our investigation, the SNTIG had created two pilot camps: one based in Ruyumba, in the Southern province / former Gitarama, and the other in Nyanza, also in the Southern province / former Butare. Following the cancellation of works in the Nyanza camp, the *tigistes* were transferred to Rwamagana in the Eastern province.

At the time of our visit in January 2006, Ruyumba camp had a total of 774 *tigistes*, four of whom were women originating from all of the country's provinces except for Butare. The *tigistes* from Butare province were assigned to Nyanza camp, which at the time had 107 *tigistes*, including only one woman.

The co-ordination of each camp was entrusted to a co-ordinator selected by the SNTIG, generally assisted by a staff member responsible for discipline. For surveillance, 15 *local defence* personnel and four police officers ensured the monitoring of the Ruyumba camp, and two *local defence* personnel were stationed at the Nyanza camp. As for the internal organisation of the camps, it depended on a number of Community Service workers formed into monitoring committees. In the Ruyumba camp, they were divided into nine teams corresponding to the dormitories and 23 work teams of 27 members each. A team of three health agents were in charge of the emergency care of Community Service workers and the transfer of the most seriously ill to the nearest Health Centre.

According to the legal texts, many different types of work can qualify for Community Service, according to the decisions made by the National Committee. However, the Order of 2005, like the earlier one, proposes a list of possible areas of work, but with a few alterations. It stipulates that the work must be related mainly to the protection of the environment (anti-erosion, conservation of rivers and lakes, forest maintenance, etc.) and the construction or maintenance of buildings belonging to institutions of public interest. The activities selected were stone-cutting (quarrying, breaking and cutting) for the Ruyumba camp and the construction of houses for the poor in the Nyanza camp.

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<sup>55</sup> PRI Interview with a Community Service worker, 13 October 2005, n°1150.

The way the camps are organised largely depends on the requirements of the work undertaken there. In the Ruyumba camp, the *tigistes* begin work at 7am and finish at 4:30 pm with a midday break. The best workers' daily average is 90 stones for men and 40 for women; the slower workers' average is 25 for men and 15 for women. Evenings and weekend afternoons are reserved for teaching sessions meant to facilitate the reintegration of the *tigistes* on their hills. As for the Nyanza camp, *tigistes* work from 7:30 am to 2:00 pm on two construction sites building houses for the poor, among them survivors. They are assisted in their task by fifty or so inmates of the Nyanza prison who possess knowledge in masonry. When *tigistes* return to the camp around 3 pm, they have the main meal of the day, a combination of the two meals they are entitled to and which they said they preferred to have at the end of the "single gong"<sup>56</sup> of work. In the morning they are served a broth. Beginning at 4 pm, they attend various seminars held by the authorities or by members of associations.

### **The perception of these labour camps**

From the interviews with *tigistes* in these camps, they appear overall to be glad to be taking part in them. Two key elements seem to explain this:

First, for a number of these Community Service workers, passing through the camps means acquiring skills that can help them find jobs upon their release. In an economic recession, and with difficult access to land, this can be a real asset for the *tigistes* who are for the most part farmers. Thus for three months, the *tigistes* of the Ruyumba camp participated in a training programme on stone-cutting held by an agent of HelpAge.<sup>57</sup> Here they explain the benefits they see in this vocational training:

*"We've gained some knowledge; we didn't used to know how to cut the stones."<sup>58</sup>*

*"We now hope that we'll have the possibility of finding work on construction sites after we've carried out our sentence. There are more than thirty-seven people who went home after they carried out their sentence. We learned that some of them found work on construction sites. The trainers also promised us jobs."<sup>59</sup>*

*Tigistes* in the Nyanza camp are acquiring general masonry skills which can also be useful when searching for employment.

On this point one might add that even some survivors have told us that they approved of the *tigistes* receiving training, because it may possibly allow them to emerge from poverty -- one of the factors which can push a person to criminal behaviour. In the words of one survivor, who is involved in monitoring the social condition of survivors in his sector for the Ibuka Association:

*"We don't want to see these criminals live in poverty. If that's the case, they may have the urge to kill again [...] They killed people and they pillaged their possessions and now*

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<sup>56</sup> i.e. a day without a break.

<sup>57</sup> HelpAge is an international NGO which takes care of the underprivileged elderly.

<sup>58</sup> PRI Interview with 28 Community Service workers from the Ruyumba camp in the presence of the camp's guards, 20 January 2006, n°1157-1158.

<sup>59</sup> PRI Interview with 28 Community Service workers from the Ruyumba camp in the presence of the camp's guards, 20 January 2006, n°1157-1158.



*they live in misery although they ought to compensate for the goods they pillaged. This encourages them to think of killing the victims who demand restitution in order to be sent back to prison. All this is because of poverty. But if they learn how to carry out these kinds of activities, they can easily lift themselves out of poverty and they won't need to have this mindset."*<sup>60</sup>

Secondly, many Community Service workers perceive the Community Service camp as an experience that is much less difficult to endure than prison; this is for several reasons. In the interviews, most of them mentioned the better humanitarian conditions, less constant surveillance, as well as increased contacts with the outside world:

*"There's one more thing: we carry out our sentence without other concerns like hunger, lack of water, disease, etc. Which means that here, we lead a different life from the one in prison."*<sup>61</sup>

*"Our situation is different from that of the people in prison. That's because we are free in our activities. We are not under constant surveillance. The goal is to complete our sentence. And also, we're not supervised when we go off to take a shower as is the case in prison. [...] As for food, we're well fed. We have the same diet as those who live in homes. The State helps us find better food."*<sup>62</sup>

*"I find that this situation is different from when I lived in prison for the following reasons: first, we know what we're trying to do and we're sure that the work which we carry out is for the common good, whereas [in prison] we were stuck behind four walls. Another advantage is that now we're in contact with the outside world, while that wasn't possible when we were still in prison. Furthermore, we work knowing that once we complete our work, we'll go back to our families. And they know it too."*<sup>63</sup>

The fact that in certain cases they can obtain permissions to leave, especially when there is a death or illness in their family, or when their wife is giving birth, is very important to them, as one of them explains:

*"Only a person who has never been to prison can compare life in prison to the situation now. When we were still in prison, we couldn't even ask for the permission to go and bury a member of our family. But now we can have permission not only to go and take part in funerals of family members, but also to look after another urgent matter, while in prison it was impossible."*<sup>64</sup>

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<sup>60</sup> Interview with a survivor, 31 May 2006, n°1266.

<sup>61</sup> PRI Interview with Community Service workers from the Ruyumba camp in the presence of the camp's guards, 20 January 2006, n°1157-1158.

<sup>62</sup> PRI Interview with 28 Community Service workers from the Ruyumba camp in the presence of the camp's guards, 20 January 2006, n°1157-1158.

<sup>63</sup> PRI Interview with forty Community Service workers of the Ruyumba camp, with four women and a majority of elders, 19 January 2006, n°1156-1157. In this excerpt a woman is speaking.

<sup>64</sup> PRI Interview with about forty Community Service workers from the Ruyumba camp, with four women and a majority of old men, 19 January 2006, n°1156-1157. In this excerpt a man is speaking.

In this regard, there is a significant difference between the *tigistes* of the Nyanza camp, who mostly work near their families, and those of the Ruyumba camp who come from all over the country and who have to pay transport costs if they want to return home. A *tigiste* in Nyanza who works only 15 minutes from where his family lives observes that the situation is not the same for everyone:

*"For those who come from afar, this requires they spend exorbitant amounts to pay for the transport tickets."*<sup>65</sup>

If *tigistes* seem satisfied in general with the living conditions in the camp, one issue was still frequently brought up as problematic: the place of women and the "old people" in these camps. In each case they raised different problems.

During a collective interview in Ruyumba, a woman explained to us that *"we live together well with our tigiste brothers"*<sup>66</sup> and another one said that *"there have never been problems in the relationships between men and women"*.<sup>67</sup> However, the rape of a female *tigiste* in the Ruyumba camp by a security guard obviously raises some doubts as to how safe they really are.<sup>68</sup>

In addition, considering the age of some *tigistes* and therefore of their physical weakness, some of them cannot take part in the activities of stone-cutting or house construction. Consequently, they are assigned to other tasks such as meal preparation, maintenance of hygiene, or guarding the camp, as well as caring for the workers who are ill. Among the old people who were interviewed by PRI in the camps, few of them are satisfied with this situation. Since they do not consider themselves to be undertaking an activity of any real public interest, and thus are *"merely consuming the State's financial resources"*<sup>69</sup>, many say they that they are in favour of a Neighbourhood Community Service in their case:

*"What makes me sad is that I'm old, and I don't produce anything for the State. As I'm an invalid, why keep me here, instead of leaving me at home where all I'd do is stay there quietly?"*<sup>70</sup>

*"We would like to refer to the pardon that the President of the Republic granted us during the launching of the official statement which came from the Presidency of the Republic, and ask for those of us who are old that we find work to do near our families."*<sup>71</sup>

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<sup>65</sup> PRI Interview with a Community Service worker from Nyanza, 19 January 2006, n°1154.

<sup>66</sup> PRI Interview with about forty Community Service workers from the Ruyumba camp, with four women and a majority of old men, 19 January 2006, n°1156-1157. In this excerpt it is a woman that is speaking.

<sup>67</sup> PRI Interview with about forty Community Service workers from the Ruyumba camp, with four women and a majority of old men, 19 January 2006, n°1156-1157. In this excerpt it is a woman that is speaking.

<sup>68</sup> This rape case was reported in an article of *Umuseso, A police officer raped a Community Service worker*, 5-12 December 2006, and confirmed by our interviews in the camp.

<sup>69</sup> PRI Interview with about forty Community Service workers from the Ruyumba camp, with four women and a majority of old men, 19 January 2006, n°1156-1157. In this excerpt a man is speaking.

<sup>70</sup> PRI Interview with an old Community Service worker from the Nyanza camp, 18 January 2006, n°1151.

<sup>71</sup> PRI Interview with about forty Community Service workers from the Ruyumba camp, with four women and a majority of old men, 19 January 2006, n°1156-1157. In this excerpt it is an old man that is speaking.

The following reactions were gathered during a collective interview with about forty *tigistes* of the Ruyumba<sup>72</sup> camp, many of whom were elderly:

*"We've all come here to carry out Community Service, but we don't all have the same strength to work. We're not all able to cut the stones. We just consume the State's resources. Our consumption is not equivalent to the activities we do. We have different activities, there are old people who sort beans, others who sweep the courtyard, there's also another group of people who transport the stones to bring them onto the main road. It's really tiring and frustrating, because there are also ill people and old men doing this work. I'd suggest that the authorities in charge look for other activities suitable for these people, like laying out roads, setting-up seedbeds etc. It's true that we're not able to build houses for the survivors, but there are other activities on our level."*

*"I see that our activities aren't benefiting the State. We consume, without giving anything back. The State gives us food; it spends money for the firewood and provides us with water while we are not able to work. It would be better to let us go back to our hill and carry out other work more suitable for us, like reforestation, monitoring seedbeds, and other sorts."*

*"In fact, we cause a lot of trouble. Although we're old, we need to eat. As they told you, we're divided up into different categories; there are some people who prepare food, some who transport the stones after they have been cut... Do you think these activities are of public interest? We consume, we use soap, toilet paper. I think it is useless consumption. What's useful for us is to go back to our hills. That will allow us to stay close to our neighbours and to feel integrated into society. "*

Article 35<sup>73</sup> of the Presidential Order of 2005 stipulates that the type of work to be carried out should take into account the physical abilities of the person sentenced to Community Service, which is obviously more difficult with the organisation of Community Service in camp form. From this perspective, one solution could be resorting to Neighbourhood Community Service for weaker people. This would allow an adjustment of the penalty to the age or type of *tigiste* (such as doing less physically demanding work, such as smaller jobs in deforestation as the old *tigistes* suggested), and would thus restore purpose to these *tigistes*' penalties. On this issue, the SNTIG has informed us that in certain cases, sentences have been suspended for elderly or sick *tigistes*, and they were allowed to go home.

Furthermore, we find that even the TIG in camp form is not appropriate for long community service sentences that last several years. The question was already raised with the old *Gacaca* law

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<sup>72</sup> PRI Interview with about forty Community Service workers from the Ruyumba camp, with four women and a majority of old men, 19 January 2006, n°1156-1157.

<sup>73</sup> Article 35 of presidential order n°10/01 of 7 March 2005, specifies:

*"Allocating convicts to institutions where they are supposed to carry out community service shall be done depending on:*

- 1. requirements for the good functioning of the institution;*
- 2. the nature of the works proposed and their benefit for the general public;*
- 3. the physical and intellectual capacities of the convict;*
- 4. the capacity in those institutions to implement projects for which they seek contribution from Community Service;*
- 5. the fact that activities in those institutions are in line with or complement government policies.*

*Also to be taken into account shall be the places of residence of the convicts and the manner in which the Community Service is to be carried out – this will facilitate their social reintegration."*

of 2004<sup>74</sup>: According to article 73, the *genocidaires* of Category 2 who confessed after their name was already mentioned in the lists of the accused can be sentenced to up to 15 years in prison, half of which would be spent doing Community Service. Thus under this law, one could have to carry out TIG work for up to seven and a half years, or four years of TIG in camp form where the work days are carried out consecutively, thus dividing the total TIG time in half.

With the amendment to the *Gacaca* law in March of 2007<sup>75</sup> and the redefinition of the categories leading to the transfer of some crimes from Category 1 to Category 2, it seems that according to article 11 of March 2007 that defines the new categories and according to article 14 that defines the sentences for the new Category 2 crimes, the length of the TIG sentence can reach up to fourteen and a half years. Indeed, the well known killers and those who committed acts of torture or degrading acts against dead bodies, now under Category 2, will also have the chance to benefit from TIG as a substitute to half of their prison sentence if they confess. The sentences for these same people, if they confess after their names have already been registered on the list of the accused, are of 25 to 29 years.

If Community Service is carried out in camps for such sentences, that would mean more than seven years in a camp. Indeed, someone sentenced to 29 years would have to spend 14 and a half years doing TIG, and this time would be reduced by half if carried out in camp form as it is uninterrupted, rather than only three days a week which is the case of the Neighbourhood TIG.

Furthermore, TIG in camp form is not really realisable for such an extended period of time because it can become abusive. However given the October 2005 amendment, it appears that nothing limits the length of TIG in camp form, since the stipulations of article 32<sup>76</sup> of the Presidential Order of March 2005 that limited the length of a TIG carried out in succession has been deleted.

In either case, Community Service carried out over such extended periods of time is unrealistic as, regardless of its modes of implementation, it would be too heavy a burden on the convicts. A TIG that lasts over fourteen years loses all purpose. Complementary adjustments to such a sentence would be more than necessary.

## **B. Community Service in people's minds**

Having presented the legal framework and the reality of Community Service in the field, it seems important to try to understand the popular responses to the proposal and to the

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<sup>74</sup> Organic Law n°16/2004 19 June 2004 establishing the organisation, competence and functioning of *Gacaca* courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity committed between 1 October 1990 and 31 December 1994, effective as of 19 June 2004 by the publication of the *Official Gazette of the Republic of Rwanda*, Special Edition.

<sup>75</sup> Organic Law n°10/2007 modifying and complementing Organic Law n°16/2004 of 19 June 2004 establishing the organisation, competence, and functioning of *Gacaca* courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between 2 October 1990 and 31 December 1994, effective on 1 March 2007 by the publication of the *Official Gazette of the Republic of Rwanda*, No. 5.

<sup>76</sup> This paragraph in article 32 of the Presidential Order n°10/01 published on 7 March 2005, stipulated: " *However, at the request of the host institution and with the consent of the convict, the District or Municipality Committee may authorise that the days to be worked within a period not exceeding one year be consolidated into a shorter period depending on the nature of the work load to be carried out.*"

implementation of this programme. Our aim is to thereby understand what impact Community Service could have in terms of national reconciliation.

In contrast to the initial reactions and thoughts within the population upon the introduction of the idea of Community Service, its implementation in camp form was ultimately accepted with great ease.

### **1. From "trick" to "forgiveness": a noticeable evolution in the opinions of the former genocide perpetrators**

As was explained to us during an interview with the Associate Executive Secretary of the SNTIG, "*when Community Service was first announced, Rwandans' reactions were mostly rather negative.*"<sup>77</sup> These negative reactions were observed particularly among persons convicted for genocide crimes, some of whom associated Community Service with "forced labour". However, in barely a few years, there has been a shift towards an extremely positive image of the sentence for the former genocide perpetrators; it has now become more widely regarded as the expression of "*forgiveness*" granted by the State. It is possible that it was watching the gradual implementation of Community Service which provided answers to the questions and concerns of the former genocide perpetrators, and led to a more positive opinion.

#### **Initial reactions: Community Service as forced labour, or a "trick" of the State**

Many prisoners or former prisoners initially cultivated a very negative image of Community Service, seeing in it only a new form of forced labour.

Inside the prisons, it seems that some prisoners who were afraid of being accused and finding themselves placed in Category 1, lead propaganda campaigns about confessions and Community Service and used the history of Rwanda to incite the other prisoners not to confess. They presented Community Service as forced labour, a new form of exploitation for the benefit of the survivors.

*"I forgot to tell you. In prison, you find people of different categories. Some were in charge of distorting what had been said about the Gacaca process. They propagated false information however they liked among those who were less informed. They distorted information on the confession and on the guilty plea, and Community Service was not spared.*

*When we talked about Community Service, many of these detractors said that we were going back to a system of monarchy, under the yoke of forced labour and slavery. I didn't know this regime because we hadn't yet been born. They distorted a lot of the information. As for us, we were in charge of contradicting them in meetings we organised. We lead sensitisation efforts [...] The others said that this meant going to work for the survivors of the genocide, and that each of us would be a vassal of a survivor, and that would remain our status for the rest of our lives".*<sup>78</sup>

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<sup>77</sup> PRI Interview with Mr Anastase Nabahire, Associate Executive Secretary of the Executive Secretariat of the National Committee of Community Services (SNTIG), 13 January 2006, n°1146

<sup>78</sup> PRI Interview with a released prisoner sentenced to Community Service, 23 May 2006, n°1251.

With these rumours propagated in prison presenting Community Service as a modern version of exploitation and slavery, some prisoners were initially unreceptive to the sensitisation campaigns promoting confession, seeing Community Service as a mere scheme, a "trick", to incite them to confess. Given the gravity of their crimes, why would the authorities agree to convert half their sentence into Community Service? As one freed prisoner explains, this seemed incredible:

*« Honestly when they started to sensitise us about the process of confession and the guilty plea, we realised it was political propaganda [ "Siyasa" ]<sup>79</sup>. We found it impossible. We didn't understand how one person who killed another could be freed as a result of confessing. »<sup>80</sup>*

Insofar as the crime of genocide constitutes the most serious crime that exists, *ligistes* themselves began to question the Community Service penalty, a sentence which until then did not exist in Rwanda and usually applies to crimes of lesser importance. As the Associate Executive Secretary of the SNTIG explains:

*"On this issue, we can't help but recognise that Community Service is a light sentence in relation to the crime of genocide. [...] Community Service should not be a fitting penalty. But the choice is due to the history of this country, which must pick itself up and its inhabitants must live together again, cohabit, and leave behind a stable country for their descendants."<sup>81</sup>*

The prisoners expected a very heavy sentence:

*"When I was in prison, I didn't really expect to be released. I said to myself that if I'd killed a person, I'd no doubt also be killed. During the Old Regime, if one took part in killings, a brand new hoe was fixed on the wall and a criminal was only released when this hoe was completely corroded. It served as a symbol, showing that the person was sentenced to life imprisonment."<sup>82</sup>*

This disproportional aspect of the sentences, noticed by everyone, has led to many questions, the main one being: why such leniency?

The rumours had been spreading far: the objective in the State's "trick" was to push the perpetrators of the crimes to confess, so they could separate them from the innocent and thereby punish them severely, or even kill them. Several freed prisoners we interviewed shared these concerns with us:

*"When I was in prison with other prisoners, we agreed amongst ourselves to not tell the truth about what happened during the genocide when we were told about this possibility*

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<sup>79</sup> The interviewer uses a kiswahili term coming from arabic, *Siyasa*, which means "political propaganda" but can also be translated as "devious sensitisation".

<sup>80</sup> PRI Interview with a survivor, 1 June 2006, n° 1273-1274.

<sup>81</sup> PRI Interview with Mr Anastase Nabahire, Associate Executive Secretary of the Executive Secretariat of the National Committee of Community Services (SNTIG), 13 January 2006, n°1146

<sup>82</sup> PRI Interview with a survivor, 1 June 2006, n° 1273-1274.

*of benefiting from the release, since we thought that it was a trick of the Inyenzi to kill us."*<sup>83</sup>

*"In fact, many prisoners who hadn't confessed nor pleaded guilty said that the State of the Inkotanyi was very cunning; that it was trying to put together the people who'd confessed and pleaded guilty in order to execute them. After the presidential statement which specified the release of those who had confessed and pleaded guilty these prisoners said that they were just going to go ahead with the plan."*<sup>84</sup>

*"Those who stayed in prison told us that releasing us was a trick; that it was so they could kill us afterwards and that was why they were freeing us in small numbers. [...] It was prisoners who told us that when we'd get outside, they were surely going to kill us. And they were rumours, since in prison there are always some of those. They told us it was a trick of the State so they could kill us once we'd been released, since in prison they couldn't do so because the international organisations knew us."*<sup>85</sup>

This fear, fed by many rumours, was therefore widespread in the prisons, and many prisoners in the beginning did not trust the authorities' information on the confessions and Community Service.

### **Community Service as "forgiveness", or how this measure gained popularity**

Without a doubt, the releases of 2003 marked a turning point. Upon seeing that those who had pleaded guilty were in fact released, and that those who claimed innocence did not benefit from this, those implicated in the genocide started to believe that the State would keep its word and that the confession/Community Service combination presented a real opportunity for the reduction of their sentence. An ex-prisoner who sensitised the others about confessions explains:

*"When we went to sensitise them [prisoners], they took us for madmen and argued [...] that in doing so we wanted to have them killed. At one point, they opted to release those who'd confessed. Once these people were freed following the president's statement, those who hadn't confessed realised that this was in fact not the trick they had thought it would be. And, they too began to confess."*<sup>86</sup>

As one freed man explains it, the prisoners who heard news from those who had been temporarily released by the presidential statement realised that they were living normally:

*"But, now freed, we did our best to communicate [to the prisoners] that we were alive and that our safety was quite assured. Thus, other prisoners were able to start confessing".*<sup>87</sup>

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<sup>83</sup> PRI Interview with a released prisoner, 1 June 2006, n°1273.

<sup>84</sup> PRI Interview with released prisoners sentenced to Community Service, 11 May 2006, n°1227.

<sup>85</sup> PRI Interview with a released prisoner, 30 May 2006, n°1264.

<sup>86</sup> PRI Interview with a released prisoner, 1 June 2006, n° 1273-1274.

<sup>87</sup> PRI Interview with a released prisoner, 30 May 2006, n°1264.

The second element which showed progress towards a more trusting attitude towards Community Service was the passage of those who were released through solidarity camps. These prisoners received training in the camps from those in charge of the implementation, particularly regarding the nature of the camp work, the reasons behind their implementation, and so on. These provided answers to the many questions of those released, thus calming their fears – indeed, they had gambled and opted for the Community Service while not knowing exactly what was going to become of them. The sensitising organised by the Rwandan authorities seems to have had an impact, as the Associate Executive Secretary of SNTIG explains it, demonstrating this evolution:

*"On the other hand, there are some malicious gossipers who compare Community Service to forced labour. When faced with these cases, we provide them with plenty of explanations, based on the principles of the International Conventions relating to labour as well as the labour code. Indeed, these different texts are clear enough about definitions of forced labour, as they are for Community Service. Most of the time, we show people that those who make these claims are doing so either through ignorance, or simply because they are "politicians" eager to obstruct current policy or to lead Rwandans astray once again. [...] As we gradually expose the tigistes to the reasoning behind this work, we can see - through their show of the interest in Community Service, its legitimacy and the good example that many follow in carrying out Community Service – that these ways of seeing and of interpreting are less and less common."*<sup>88</sup>

One could say that the decisive shift came with the beginning of the pilot camps and the first instances of Community Services by some convicts. The Community Service that they had been hearing about for two years was now a reality which they no longer had reason to doubt. Furthermore, testimonies from *tigistes* who returned from the camps and had finished their sentence provided conclusive evidence that the State would respect its commitment to each one of them. A *tigiste* from Ruyumba explains:

*"Another encouraging thing is that the tigistes who had been given a short period of Community Service, have begun to finish their Community Service and return to their families. For us who are still here, we work with determination as we wait to finish our Community Service."*<sup>89</sup>

When the people implicated in the genocide saw in concrete terms the unfolding of Community Service, they quickly understood the benefits of this system, and how the rumours spread in the prisons were unfounded:

*"We thought that they [the tigistes] were forced to go and do it [the TIG]. But as they began to work, we noticed that they worked under the same conditions as other farmers. They also have a programme for eating and washing. From this, we think that the State did well when it decided to set up the Community Service sentence."*<sup>90</sup>

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<sup>88</sup> PRI Interview with Mr Anastase Nabahire, associated Executive Secretary of the Executive Secretariat of the National Committee of Community Services (SNTIG), 13 January 2006, n°1146.

<sup>89</sup> PRI Interview with about forty Community Service workers from the Ruyumba camp, with four women and a majority of old men, 19 January 2006, n°1156-1157. In this excerpt a man is speaking.

<sup>90</sup> PRI Interview with a released prisoner, 11 May 2006, n°1226.



A combination of the process of gradual implementation and the sensitisation campaigns led by Rwandan authorities among potential *tigistes* has ultimately made Community Service a popular measure among the people implicated in the genocide. Evidently, the perception which the prisoners and their families had of Community Service has evolved considerably in three years. It has turned away from this initially negative reaction to Community Service as a "trick of the State" towards one that is closer to what it truly presents to them: a real opportunity to avoid imprisonment and to reduce the length of their sentence.

The mistrust towards Community Service has decreased to the point that today some *tigistes* and freed prisoners do not hesitate to use the term "lift" (free favour) to describe it. Indeed, this disproportionate correlation between the gravity of the crime committed and the penalty of Community Service leads one to perceive it as a favour granted by the State, as an "advantage", as one released prisoner told us.<sup>91</sup>

Moreover, during interviews carried out by PRI with freed prisoners or *tigistes*, the terms used to describe it prove how favourably it is now viewed. Some do not hesitate to speak about "mercy":

*"In my opinion, the work we're doing is a show of mercy at two levels: on one hand the Government has forgiven us through the President of the Republic, but the survivors have also forgiven us because the work which we're trying to carry out can't be compared with the suffering we made them go through".<sup>92</sup>*

Others also talk of a "pardon" granted to them by the State, given the lightness of the sentence compared to the crimes committed:

*"In my opinion it is at the same time a penalty and a pardon. Community Service is not a sentence that corresponds to the violation we committed." <sup>93</sup>*

*"This Community Service is not a penalty, but rather a pardon granted to us because the crimes of genocide which we committed are extremely serious. [...] Whatever the penalty and the difficulty of the work required from a *tigiste*, it is not proportional to the crimes committed. The *tigiste* will always be able to carry it out." <sup>94</sup>*

*"In fact, the presidential statement forgave us, and that is how we came to do Community Service." <sup>95</sup>*

This enthusiasm is very understandable, since once the fears are assuaged (even if, as we will see, some persist in one form or another<sup>96</sup>), Community Service represents a genuine opportunity for these genocide perpetrators who expected to spend the rest of their days in prisons, the hard

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<sup>91</sup> PRI Interview with a released prisoner, 1 May 2006, n°1226.

<sup>92</sup> PRI Interview with about forty Community Service workers from the Ruyumba camp, with four women and a majority of old men, 19 January 2006, n°1156-1157. In this excerpt a man is speaking.

<sup>93</sup> PRI Interview with 28 Community Service workers from the Ruyumba camp accompanied by the camp's guards 20 January 2006, n°1157-1158.

<sup>94</sup> PRI Interview with a released prisoner, 1 June 2006, n°1273-1274.

<sup>95</sup> PRI Interview with a Community Service worker from the Nyanza camp, 19 January 2006, n°1154.

<sup>96</sup> Cf. in this report: *Fears to be taken into account* p. 41.

reality of which they well knew, a good number of them having tested it during several years of pre-trial detention:

*"In fact, people who say Community Service is the work of serfdom are ones who haven't been imprisoned, who don't know how much people suffer in prison and how we regret having committed these offences. The person who left prison aware of the crime he committed, after confessing and asking forgiveness, this person did so because it is to his/her advantage and hopes to carry out this Community Service. [...] The people who consider that as serfdom are the people who've never been imprisoned [...]"<sup>97</sup>*

This popularity even leads some *tigistes* to agree to carry out Community Service a long way from their homes, and declare themselves ready to accept any form of work:

*"I wouldn't have any reasons to complain about Community Service being carried out in faraway places. Indeed, this sentence can't be compared to life in prison!"<sup>98</sup>*

*"We actually did some Community Service far from our homes. Nevertheless, we're ready for anything whenever there's something to do, we're ready to help in any kind of work."<sup>99</sup>*

According to some freed prisoners whom we have interviewed:

*"I'm ready to go anywhere to do Community Service."<sup>100</sup>*

*"Even if they took me to Uganda, I'm willing to go there. As long as I'm free and regarded as any other Rwandan."*

This enthusiasm might explain the unhindered acceptance of Community Service in the form of work camps which the SNTIG proposed in 2005. At the same time, however, the preference for Neighbourhood Community Service registered among the survivors as well as the individuals convicted for genocide appears to result in somewhat of a retreat in enthusiasm.

## **2. Switch towards a preference for Neighbourhood Community Service**

At the beginning of our investigation, (before the implementation of Community Service, and at the end of 2005), both future *tigistes* along with their families as well as the survivors favoured a Neighbourhood Community Service, as stipulated by the texts, consisting of work carried out three days a week within their own community.

There are several reasons that can explain this preference. For the families of the *tigistes*, it was primarily the desire of having a man in the house who could work in the fields and contribute to the children's education, as well as the end of constant trips back and forth for prison visits. For the survivors it was especially the "degrading" aspect of the sentence that was significant, such as

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<sup>97</sup> PRI Interview with a released prisoner sentenced to Community Service, 20 September 2005, n° 974.

<sup>98</sup> PRI Interview with released prisoners, 5 May 2006, n°1210-1211.

<sup>99</sup> Interview with a former Community Service worker, 6 July 2006, n°1322.

<sup>100</sup> PRI Analysis Report on Community Service in Itabire District, Province of Kibuye, 20-22 September 2005.

seeing the former killers breaking stones or cleaning pathways as they crossed paths on a daily basis.

But today, with the start of Community Service and its organisation in camp form, which in other words means that the *tigistes* are sent far away from their communities for the duration of their Community Service sentence, it appears that the preference for a Neighbourhood Community Service marks a certain lessening in people's enthusiasm, even if it still has some supporters.

From the *tigistes'* perspective, this preference for Community Service in camps can be explained by the advantages that this form presents for them. But it is also the fear of living close to the survivors which leads them to support this new alternative. Similarly, from the survivors' side, this fear is quite obvious.

### **The obvious advantage of Community Service in camp form for *tigistes*: a shorter sentence**

Convicts and their families see the length of the sentence of Community Service divided by two when it is carried out in a camp. Working for Community Service every day except Sunday, instead of only three days a week, *tigistes* can accelerate their sentence. For people who have already spent several years in detention, far from their families, one can understand why this is attractive. As the Associated Executive Secretary of SNTIG puts it:

*"Once interned in the Community Service camp, they do not work three days a week. They work six days, which means that the time they put in to carry out Community Service is reduced. The person who was to spend six months there, spends only three."*<sup>101</sup>

This *tigiste* prefers this new organisation:

*"What makes us happy is that we won't stay in the Community Service forever. We'll do it, finish it in one chunk and go home to our families, instead of continuing to do Community Service for a long time. For example, I'd been sentenced to 12 years of prison and I'd just done eight solid years. I'm very happy because I'll do Community Service for two years instead of doing it for four years as it was earlier envisaged."*<sup>102</sup>

*"We appreciated the accelerated form of Community Service, because this lets us to carry out Community Service quickly so we can go and work for our families."*<sup>103</sup>

Another important element to take into account is the fact that those who are currently eligible for this form of Community Service are those who have already spent time in prison. Thus, they tend to compare that experience with their new living conditions, which are much less harsh. This leads us to ask: will *tigistes* continue to reason this way once people who have never known prison are put in the camps? In the current state of the legislation this situation is impossible as all those condemned to Community Service must first serve a prison sentence. However, if

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<sup>101</sup> PRI Interview with Mr Anastase Nabahire, Associate Executive Secretary of the Executive Secretariat of the National Committee of Community Services (SNTIG), 13 January 2006, n°1146

<sup>102</sup> PRI Interview with about forty Community Service workers from the Ruyumba camp, with four women and a majority of old men, 19 January 2006, n°1156-1157. In this excerpt a man is speaking.

<sup>103</sup> PRI Interview with 28 Community Service workers from the Ruyumba camp accompanied by the camp's guards, 20 January 2006, n°1157-1158.

Community Service were to become the primary sentence, then their position would perhaps change.<sup>104</sup> Moreover, if TIG penalties can last up to 15 years as the new law seems to allow - which would mean more than seven years in a labour camp - this preference will probably decrease.

Although a preference for Community Service in camp form seems to be slightly more common, we should nevertheless mention that it is not unanimous among the *tigistes* and the freed prisoners who were interviewed. Some of them, while recognising the advantages of this form, are still attached to Neighbourhood Community Service. Their reasons for this preference are worth listening to, as they often refer to concerns about social and family reintegration. As one *tigiste* puts it:

*"In all truth, after we were told about this change, we had many problems! Indeed, we believed that after carrying out three days of Community Service, we would go back to our respective families and work for their benefit. We were especially worried about our children who study at secondary school or elsewhere. During these three days, we could have gone to look for a job somewhere and earn money to help them. By the same token, the other children could have benefited from these favours. When a child can see his father or when the father can see his son, this largely contributes to the morale and well-being of the group as well as individuals' hopes. That's why after this change, we felt great despair! Nevertheless, after they explained the system to us, especially that we were only going to reduce our sentence by half working on this site, we understood better. However, I'll say again that it would be good to be able to carry out these sentences from our respective homes."*<sup>105</sup>

This question of reintegration remains essential and should be kept in mind. Even if the advantages, in terms of economics and duration (i.e. a shorter sentence), lead to preference for Community Service in camps, interviews reveal that a fear of proximity between the survivors and those implicated in the genocide also plays an important role. Indeed, on both sides the issue of proximity tends to cause concern, which bespeaks an understandable absence of trust between the two groups. This brings us back to the first role assigned to the Neighbourhood Community Service: that of allowing for reconciliation within the community.

### **A shared fear of proximity**

During our interviews some survivors expressed the wish that those sentenced to Community Service work for them on a daily basis. They insisted on the direct economic benefit this would have for them in a situation of financial instability. As an old woman survivor, who has a lot of difficult going about her daily tasks, explains it:

*"In fact, I think if they return [the *tigistes*], we can work together as it was before the genocide, because they have obeyed orders. Usually, I think we'll collaborate and as I'm*

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<sup>104</sup> In the same way, one could wonder how survivors would react if Community Service were to become a main sentence. The survivors, tending to be opposed to the releases (as we witnessed with the reactions of Ibuka, which do not represent the survivors as a whole, in 2003 and 2005), may accept the current organisation of Community Service since most Community Service workers currently serving have already carried out several years of prison time. A transition to Community Service as a main sentence would mean that some convicts would not go through prison. Under these conditions, the survivors' adherence remains.

<sup>105</sup> PRI Interview a Community Service worker, 17 January 2006, n°1150.

*old, maybe they'll help me in my work because I can't do anything and I don't have anyone else who could come and help me.*<sup>106</sup>”

Of course such a solution is hard to accept, because without very strict management that would be difficult to implement and a very precise legal definition of this, the risk of abuse is too high. Such labour in the service of a private individual can lead to practices that qualify as forced labour or as "debt bondage" - one of the forms of slavery prohibited under international law.

According to some survivors, their relationships with the *tigistes* are going well. The organisation in camp form does not mean there are no contacts between the *tigistes* and the people who live in areas surrounding the work camps, including survivors. One of the Nyanza survivors gave us a long explanation about the evolution of her relationship with the *tigistes* who were building houses not very far from her home. At the beginning she was afraid they had bad intentions towards the survivors, and especially that they would build bad houses:

*“Indeed, when these tigistes came to build these houses, we wondered whether they'd changed their minds and would build strong enough houses so they wouldn't collapse on us. (...) When these tigistes started to build these houses, we passed by them but held back from telling them that we were trying to supervise how they were doing this work. We knew some of them, even if they weren't from Nyanza. We greeted them and chatted. We went into these houses. We found them satisfactory. After we'd left and reached a small distance away, we said to each other that these houses were well built and these tigistes had become good, while noting that they'd built these houses like ordinary masons.”*<sup>107</sup>

Having seen that the houses were well built and especially after having been around them daily, she noted that the behaviour of the *tigistes* was not hostile towards her, and contact became more frequent:

*“They've changed a lot. We speak with them without problems; sometimes even those whom we don't know come up to us and begin talking. They ask us if we know them, we answer them no. Then they say that they knew our parents, and introduce themselves to us. In turn, we ask them if they knew them. They answer yes and express much remorse, saying that truly they committed crimes against them without wanting to. Moreover, they feel sorry for us and ask whether we've received houses. We tell them that we've received them and that, God willing, we'll move into them. They show they're satisfied with that, in fact one doesn't notice any bad spirit around them. And from our side, with what they say to us, we feel happy. (...) Last time, they joined us to do the monthly Umuganda.<sup>108</sup> In fact it was thanks to them that we had such a high turnout. We dug anti-erosion ditches. At the end, to show us that they are studying, they sang us songs about unity and reconciliation. We were satisfied with these. We noticed they work like us and that helped us cast out the fear which we felt towards them.”*<sup>109</sup>

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<sup>106</sup> PRI Interview with an elderly female survivor, 29 October 2005, n°1029.

<sup>107</sup> Interview with a female survivor, 7 December 2005, n°1111.

<sup>108</sup> Communal work carried out throughout the country and organised at the level of the cells.

<sup>109</sup> Interview with a female survivor, 7 December 2005, n°1111.

This testimony clearly shows the important role daily encounters can have for reducing fears, provided they are a part of a sentence, and, in this particular case a sentence which benefits the survivors, as some of the houses built by *tigistes* were allotted to them.

However, this feeling is not shared by everyone; for some survivors, the fear of proximity overshadows the economic benefits which they could derive from a Community Service carried out for them, and in direct contact with them. The proximity of the killers is indeed enough to reawaken the traumas of the survivors, plunging them once again into the nightmare of 1994. Moreover the fear should not be underestimated: some survivors fear for their life, are afraid of reprisals because they testified for the prosecution, have the fear that those who have already killed once could do it again and assassinate them. One survivor who is terrified of the Neighbourhood Community Service explains:

*"For example, the one who killed my relatives knows where I live, he doesn't know my house, but if he knows where I live he can come and kill me. He knows that we only live in housing clusters. We don't want the criminals to know where we live."*<sup>110</sup>

Without always going as far as a fear of murder, many of the survivors worry about living nearby and do not wish to be close to the people who brought them harm:

*"What you're saying is true. Even I can't imagine how I can begin to work my land with the person who killed my husband. Reconciliation is also important, but that doesn't necessarily mean that the people who killed and their victims have to live side by side with one another."*<sup>111</sup>

*"Until today we have our concerns about these people who've been released [...]. It's not easy to live together with a person who made you suffer."*<sup>112</sup>

Often the relationship between the survivors and those released is tense when the two cross paths:

*"Given that they haven't dared ask for our forgiveness and that they walk with their heads lowered, we remain worried. Even when we meet each other, we prefer avoiding them or else waiting until others come and accompany us on the path."*<sup>113</sup>

Sometimes some even deride others, as a survivor and member of AVEGA experienced:

*"Otherwise, we don't think it's normal that a person who, for example, killed members of my family should be released from prison and go on to the alternative sentence to imprisonment without even giving me some sort of compensation. The released person*

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<sup>110</sup> Interview with a female survivor, 31 May 2006, n° 1266-1267.

<sup>111</sup> PRI Interview with a female survivor and president of a cell-level *Gacaca* court, 13 October 2005, n°1012.

<sup>112</sup> PRI Interview with a female survivor, 30 May 2006, n°1263.

<sup>113</sup> PRI Interview with a female survivor, 15 June 2006, n°1297.

*walks by me without a problem and sometimes yells out provocations such as: 'you put me in prison and look, here I am, freed'."*<sup>114</sup>

This fear even leads some survivors to propose that *tigistes* carry out their work in a zone far from their dwellings, in order to avoid problems with the *tigistes'* families:

*"It is not logical that a tigiste works for his sector of origin. Because his family is not too happy to see him building the house of a victim when he is the very one who killed the members of the victim's family and ruined his/her life. I'd wish for example that those who come from the Mubanga District carry out Community Service in the Ngororero District and vice versa."*<sup>115</sup>

In the interviews among survivors it becomes apparent that many harbour ambiguous feelings towards released prisoners and *tigistes*, and that the opinions are split. Fear is a common theme in many interviews.

It is also striking to observe that this fear of proximity is not only felt by the survivors, but also by *tigistes* and released prisoners.

During one interview, the president of the judges of one *Gacaca* court confided in us about her belief that *tigistes* should not work directly for the survivors, as the latter could deride and insult *tigistes* while they were at work<sup>116</sup>, thus causing trouble.

Furthermore, the interviews reveal that the survivors' reactions are not the only concern of the released prisoners. The latter also fear the tensions with the families of other released prisoners or of people whom they might have accused during their confessions. With the releases and the conclusion of the year of information gathering, it is inevitable that the accusations resulted in increased tensions on the hills. This tense climate makes them worry about trouble and accusations against them, for example that personal disputes will occur.<sup>117</sup> This would ultimately mean a return to prison for them. These *tigistes'* concerns are indeed founded, as the current legislation stipulates that any infraction committed during this suspension or the unsatisfactory execution of the assigned works can lead to automatic re-incarceration.<sup>118</sup>

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<sup>114</sup> Interview with a female survivor, 4 August 2005, n°890.

<sup>115</sup> Interview with a female survivor, 31 May 2006, n° 1266-1267.

<sup>116</sup> Analysis Report, 12 -14 October 2005, Cyangugu/Town of Cyangugu /Shagasha and Muhali.

<sup>117</sup> On this subject, for a better grasp of how this happens, refer to the developments on the use of *Gacaca* for personal ends observed in certain cases during the information-gathering: Penal Reform International, *Information Gathering during the National Phase*, PRI, London/Kigali, June 2006.

<sup>118</sup> It is also recommended that the measures stipulated in the *Gacaca* law of 2004 and the Presidential Order of 7 March, 2005 be synchronised.. According to Article 74 of the *Gacaca* law, in the event of a new infraction, the convict is re-incarcerated, to spend the "*remaining prison sentence in custody*". According to Article 80 of the same law the defendant goes back "*to serve the remaining prison sentence in custody*" when the work is not suitably carried out. Article 40 of the Presidential Order of 2005, on the other hand, states that "*where the Committee is aware that the convict sentenced to perform alternative penalty to imprisonment is not performing well, that sentence shall be nullified as well as the period of time served, and the concerned person re-arrested and taken back to prison to serve the full sentence rendered by the Gacaca court.*" There is thus a contradiction between Article 80 of the *Gacaca* law and Article 40 of the Presidential Order, which should certainly be addressed.

Moreover, as already mentioned in the introduction, the judiciary control on the decisions to send convicts back to prison is not sufficient.

As one released prisoner explains, some *tigistes* worry that this proximity would result in conflicts, which could have the consequence of re-incarceration:

*"The fact of working next to one's home brings the risk that we'll start arguing again with our neighbours, which could be the basis for the immediate re-incarceration of the *tigiste*. So if the *Gacaca* has decided to send *tigistes* to do their work far from their homes, it's a good decision."*<sup>119</sup>

Thus, we have observed that among each group the prospect of living together again remains marked by fear, whether it is fear of a direct physical threat or simply fear of troubles and tensions – we will elaborate on the fears of revenge in the second section. These observations testify to the current fragility of the social fabric and the pressing need for significant work to be done in this regard to accompany the implementation of Community Service. The Neighbourhood Community Service was in fact meant to address these very issues. If the Community Service remains solely organised in camp form, it would then be advisable to consider measures, which could compensate for the absence of a framework through which the *tigistes* must interact with their community.

One way to go about this could be to organise measures in the Community Service camps similar to those implemented in the solidarity camps, by insisting on the issue of the prisoners' fear of returning. This could be done either through education or dialogue allowing them to express their concerns. There are many released prisoners who have confirmed the importance that the information they were given in these sessions had for them, by allowing them to be more at ease and less aggressive about the prospect of returning:

*"It was especially the teachings that helped us. In these teachings, they talked to us about the genocide. We realised it had been a bad episode. Moreover, they sensitised us to not do it any more."*<sup>120</sup>

*"Before, we didn't know the State's programme, regarding how to live together with the people who were outside, those not imprisoned and to whom we had caused harm. That's why the solidarity camps have reformed us and taught us the State's programme of national union for Rwandans. We left these camps conscious of our acceptance by the Rwandan community as a part of our country. In the solidarity camps we were taught how to collaborate with the Rwandans. In short, when we went back to our families we didn't experience any problems."*<sup>121</sup>

It would be advisable to pay special attention to this issue, given the recent releases in 2007.<sup>122</sup> Indeed, there are two simultaneous phenomena likely to increase tensions: the return of many released prisoners to their hills, and the pronouncements of the judgements in the *Gacaca*. One released prisoner explains:

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<sup>119</sup> PRI Interview with a released prisoner, 11 May 2006, n°1226.

<sup>120</sup> PRI Interview with a former *tigiste*, 6 July 2006, n°1322.

<sup>121</sup> PRI Interview with a released prisoner sentenced to Community Service, 20 September 2005, n°974.

<sup>122</sup> Around 6,700 persons have been released in the month of February 2007, according to the National Service of Prisons.



*"They organised a solidarity camp for us. I participated in a camp, which took place in the Murambi Commune. We spent about four months there and after that we returned to our sectors. We were well received. It goes without saying that we were afraid because we didn't know if our safety was going to be assured. But nobody had problems, be they physical threats or harmful words, until the moment when the judgements as such began. "*<sup>123</sup>

To assess the scope of these tensions on the hills, certain measures can be implemented: On the one hand, more in-depth and updated monitoring (especially during the waves of release) of the current state of social bonds by working with indicators of social cohesion, and on the other hand, a co-ordination of efforts supporting the promotion of social bonds and community rapprochement. These efforts are not limited to the courses organised in the camps by the SNTIG, as they include initiatives supported by the National Commission on Unity and Reconciliation (CNUR), or even those led by some NGOs.<sup>124</sup> Collaboration and the co-ordination of the activities in this area could only benefit the process of justice as a whole.

### **Towards a two-stage Community Service, or a *work camp* combined with proximity through Neighbourhood Community Service?**

The Neighbourhood Community Service seems to be fundamental and a requisite to be maintained for the sake of reconciliation. However, if the exclusive implementation of "Neighbourhood Community Service" presents too many problems, it could be possible to combine camp and proximity. This would help overcome some of the obstacles, while taking into account the fact that each of these two modes of implementing Community Service has its advantages. Given the aforementioned elements, we believe that the organisation of Community Service in camp form, as initiated in the pilot phase, could be a worthwhile form to keep on the condition that it is combined with Neighbourhood Community Service, and that TIG carried out in camp does not exceed several months.

One can therefore conceive of a two-stage Community Service.

The first stage of the Community Service sentence would be carried out by the *tigiste* in a camp, in order to provide him/her with a thorough vocational training, other education or sensitisation, and reassurance for the two groups. This would also make it possible to complete works of at a larger scale for the development of the country, which would indeed be more difficult to achieve if the *tigistes* were dispersed. The costs for the Rwandan State could thus be even further reduced as the overall duration of internment would not be as long as it would be if the Community Service were solely carried out on the hills.

The prisoners could then move on to a second stage of Neighbourhood Community Service, at the cell or sector level (former administrative division) focusing on a more direct benefit to the survivors. *Tigistes* would, of course, be monitored and supervised by the authorities, and would have to report on their work. Attentive listening to the survivors would also be necessary.

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<sup>123</sup> PRI Interview with a released prisoner sentenced to Community Service, 23 May 2006, n°1251.

<sup>124</sup> On this subject, refer to the work being done by the NGO *Réseau des Citoyens Justice et Démocratie*, to provide free spaces for dialogue among the population.

Admittedly, this combination of two forms of Community Service also requires significant resources, but this would have the advantage of not losing sight of the basic relevance of Neighbourhood Community Service: community rapprochement through daily encounters. This "Community Service in two stages" would also allow a more significant involvement of local authorities, and would yield results visible to all, increasing the relevance of the Community Service to the population.

This arrangement would be especially pertinent if Community Service were to become a primary sentence, as it would facilitate the survivors' acceptance of the fact that some of those implicated in the genocide are not even passing through prison.

We should, nevertheless, note that adjustments are necessary in the camp. Let us begin by discussing two such adjustments:

Firstly, it seems important that the activity to be carried out be adapted to the *tigistes'* gender and age, as well as to the duration of their sentence, so that they can see a purpose to their sentence. From this perspective, a reintroduction of Neighbourhood Community Service without passage through the camp could constitute a solution.

Secondly, it seems absolutely necessary that the camps are not too far away from the residences of *tigistes*, allowing them to have contact with the outside world and to avoid feeling that the camp is like another prison.

The challenge is to implement an organisation of Community Service which is manageable for the Rwandan State, without losing the initial purpose of Community Service, namely the gradual rapprochement between the survivors and the people implicated in the genocide, brought to live together. This aspect puts the entire issue of the reintegration of convicted persons and national reconciliation at stake.

## Part Two

# Community Service, an instrument of reconciliation: On what conditions?

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Having described the organisation of Community Service in its pilot phase (end of 2005 and 2006), we propose, in this second part, to examine the conditions under which Community Service could be an effective instrument for reconciliation.

It is within the framework of reconciliation that those who first conceived the *Gacaca* process added Community Service to the number of sentences at the judges' disposal, for the first time in Rwandan penal law. Community Service would obviously have an immediate economic impact through the return to the workforce of an essentially male population. Above all, it would also ensure the reintegration of convicts as they carry out non-paid work for the public interest, and thereby contribute to a community rapprochement by allowing the coexistence of those convicted for genocide with the rest of the population. Community Service was thus to be integrated in the overall process of reconciliation.

As this programme is taking shape, we thought it important to see to what extent Community Service implemented in such a way could be used as a tool for reconciliation. Our first ascertainments, based on our observations in the pilot phase of Community Service and on the perceptions gathered by our investigators among both genocide perpetrators and survivors, lead us to believe that some adjustments would be needed in order for Community Service to best achieve its objective of national reconciliation.

The first ascertainment is legal: in the Order of 2005, the disappearance of the requirement of the convicts' consent poses the question of the role of personal initiative and approval in a process that requires it for its success. Indeed the TIG worker should feel involved and responsible, so that his/her adherence to Community Service implies his adherence to the fundamental objective of this alternative sentence – reconciliation. Despite the practical difficulties, it seems important to avoid completely erasing the role of individual choice for the benefit of a more collective tendency.

The second ascertainment is that a significant portion of the survivors are requesting that they be more closely associated with the implementation of Community Service, whether as participants in some capacity or as beneficiaries. Efforts to this effect have been made in some cases, and it seems that it would be important to boost them.

The third ascertainment is that certain fears persist, both from the genocide perpetrators' perspectives as well as the survivors' perspective. These fears have the potential of altering the social climate and could compromise the effectiveness of Community Service by compromising the gradual return of trust.

Next, we propose to address each of these ascertainments by identifying their dynamics for a better understanding of the social context surrounding the implementation of Community Service. Thus, we will promote its adaptation so that it may best fulfil its objectives of reintegration and reconciliation.

## A. Guaranteeing a genuine individual compliance to the new system of Community Service

Today the genocide's legacy weighs very heavily on the Rwandan State, in financial, logistical and social terms. One can sense a kind of desire to "get it over with", which seems to result in the view that dealing with the issue at the collective level takes priority over individual adherence of the population to the selected policies. What follows is a risk of these policies being perceived by the population as constraining and imposed. Thus, can one today speak of a genuine appropriation by the population of Community Service as a mechanism of community rapprochement?

### 1. Abandoning the requirement of the convict's consent to Community Service in the law

The changes in the legislation between 2001 and 2005 reveal an evident decrease in the importance ascribed to the individual choice of the person sentenced to carry out Community Service. Initially conceived as an optional measure emphasising the convict's compliance to ensure his/her investment, Community Service has been transformed into a sentence whose implementation relies on its obligatory nature.

#### The disappearance of the convict's consent in the Order of 2005

As demonstrated in the preceding chapters, persons eligible for Community Service are very much in favour of this measure, which represents significant benefits for them. It would therefore be difficult to imagine that many would refuse this possibility and prefer to spend their entire sentence in prison; in any event, it is quite unlikely that the number of convicted persons preferring detention to fulfilling a Community Service sentence was significant enough to call the system into question.

One may then ask for what reasons did the need for the consent of those convicted to Community Service disappear from the legal texts between 2001 and 2005?

In the two texts of 2001, the Organic law<sup>125</sup> and the Presidential Order<sup>126</sup>, it is clear that this non-remunerated work could not be imposed on a convict. The Organic law of 2001 on *Gacaca* specifies that "*in the case of a prison sentence with commutation of half the sentence into community services, the convicted prisoner may choose either to carry out the said community services or to serve the full sentence in prison.*"<sup>127</sup> And the Presidential Order defines Community Service as "*the obligation on the individual convicted of genocide and crimes against humanity to perform, as an alternative to imprisonment, and with his or*

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<sup>125</sup> Organic Law n° 40/2000 of 26 January 2001 setting up "Gacaca Jurisdictions" and organising prosecutions for offences constituting the crime of genocide or crimes against humanity committed between 1 October 1990 and 31 December 1994, *Official Gazette of the Republic of Rwanda*, n°6, 15 March 2001, as modified and supplemented by the Organic Law n° 33/2001 of 22 June 2001 modifying and supplementing the organic law n° 40/2000 of 26 January 2001 establishing the organisation, competence and functioning of *Gacaca* courts in charge of prosecuting and trying perpetrators of the crime of genocide and other crimes against humanity, committed between 1 October 1990 31 and December 1994, the *Official Gazette of the Republic of Rwanda*, n°14, July 15, 2001.

<sup>126</sup> Presidential Order n°26/01 of 10 December 2001 relating to the substitution of the penalty of imprisonment for Community Service, *Official Gazette of the Republic of Rwanda*, n° 3, 1 February 2002.

<sup>127</sup> Article 75 of the Organic Law n° 40/2000 of 26 January 2001.

*her consent unpaid work beneficial to society, in a place designated.*"<sup>128</sup> Thus, one of the characteristics of Community Service was that the convicted person could accept or refuse this sentence.

According to the texts of 2001, the person convicted to Community Service is also given information about the way Community Service is organised. He or she must consent to undertake work of public interest in a district other than where he or she resides.<sup>129</sup> Finally, although in theory the sentence cannot be carried out more than three days per week, Article 32 of the Presidential Order specifies that "*the District or Municipality Committee may authorise that the days to be worked within a period not exceeding one year, be consolidated into a shorter period depending on the nature of the work load to be carried out*", but that can only be done "*with the consent of the convict.*"

Beyond the voluntary aspect that guaranteed a minimum involvement of the convict in carrying out his or her sentence and the adherence to the spirit of community rapprochement it implies, the requirement of the convict's consent was also a measure meant to ensure that this sentence of unpaid work would not feel like forced labour, even though, according to international law, it is not considered as such as it is the result of a sentence, is administered by the authorities and is not carried out for the benefit of private individuals.<sup>130</sup> Obviously, the corollary of this obligation to obtain convicts' consent is that in the event of refusal, they would have to carry out the remainder of their sentence in prison.<sup>131</sup> But the choice was left to the convict.

However, with the *Gacaca* law of 2004<sup>132</sup> and the Presidential Order of 2005<sup>133</sup> the requirement of the convict's consent disappears. Indeed, Article 80 of the Law of 19 June 2004 explicitly refers to the Presidential Order, and Article 2 of the Order of 2005 in no way modifies the old definition of Community Service except -- and this is the essential point -- that all reference to "the consent" of the convict disappears.

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<sup>128</sup> Cf. Article 2 of the Presidential Order N°26/01 10 of December 2001.

<sup>129</sup> Cf. Article 30 of the Presidential Order N°26/01 of 10 December 2001.

<sup>130</sup> See the Convention on forced labour, adopted by the general Conference of the International Labour Organization (ILO) in its fourteenth session, 28 June 1930. It came into effect on May 1, 1932. According to this Convention's article 2, forced labour is defined as such: "*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered him/herself voluntarily*". However the Convention specifies that "*Nevertheless, for the purposes of this Convention the term 'forced or compulsory labour' shall not include: (...) (c) Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations.*"

In addition item 3.4 of the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) adopted by the General Assembly resolution 45/110 of 14 December 1990, specifies only that "*Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.*"

<sup>131</sup> Cf. Article 40 of the Presidential Order N°26/01 of 10 December 2001.

<sup>132</sup> The Organic Law n°16/2004 of 19 June 2004 establishing the "organisation, competence and functioning of the *Gacaca* courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity committed between 1 October 1990 and 31 December 1994", *Official Gazette of the Republic of Rwanda*, Special Edition, 19 June, 2004.

<sup>133</sup> Presidential Order n°10/01 of 7 March 2005 determining the modalities of implementation for the organisation and the commutation of prison sentence into community service, *Official Gazette of the Republic of Rwanda*, n°6, 15 March 2005.

Thus, the **Community Service sentence is henceforth automatic** so that neither the convict nor the court has the choice: if the defendant has confessed and his or her confessions are accepted<sup>134</sup>, Community Service is mandatory.

Similarly, in article 30 of the Presidential Order of March 2005, the convict's consent is no longer sought for sending him to serve his TIG sentence in a District other than his District of origin; contrary to what was prescribed by article 30 of the Presidential Order of December 2001. One exception remained: article 32 of the Presidential Order of March 2005 stipulated that the decision to authorise the convict to have his sentence "*consolidated into a shorter period depending on the nature of the workload to be carried out and thus beyond the three days per week*", should be taken "*with the consent of the convict*". This requirement no longer exists following the amendments to the Presidential Order of October 2005. The method of carrying out the sentence is from then on imposed on the *tigiste*.

With a sentence of Community Service assuming an automatic nature, the convict no longer has the choice of accepting or refusing this sentence of labour (and therefore where applicable, preferring to carry out the remainder of the judgment in custody), nor of discussing the methods of execution (working time, localisation of the host institution). Everything is imposed.

No official justification has been given for this substantial alteration to the Community Service system conceived in 2001. Admittedly, the situation is unquestionably difficult and does not favour an individualised management of Community Service, given prison overpopulation and the high number of *tigistes* to manage.<sup>135</sup> However, this alteration could have an effect on the personal relationship of the convict with his or her sentence of Community Service, and furthermore, it does not seem necessary given the enthusiasm of former perpetrators for this sentence.

### **The disappearance of the possibility of a reduction of the sentence**

Similarly, one could consider the disappearance of any reference to the "sentence remission" first envisaged in Article 41 of the Order of 2001 as regrettable. This article stated that Community Service should last until "*the last day of the sentence of imprisonment that was rendered by the court, unless there is a remission of the sentence as provided for by existing laws.*"<sup>136</sup> This provision made it possible to use the procedure of release on parole, which can be granted by the legal authority and exempts people sentenced to prison from serving their full sentence under certain conditions, namely good behaviour during the execution of the sentence. With the Order of 2005, this provision disappeared: probably in an attempt by the legislature to synchronise the text of the Order with that of the *Gacaca* law of 2004, which states in Article 81 that "*the person convicted of the crime of genocide who commenced serving the sentence, cannot be released*<sup>137</sup> *on parole.*"<sup>138</sup>

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<sup>134</sup> Under the conditions envisaged in Article 54 and according to the Law of 19 June 2004.

<sup>136</sup> The release on parole is governed by Articles 134 to 140 of the Penal Code, in its Chapter V. See the Order in Council n°21/77 of 18 August, 1977, instituting the Penal Code, *Official Gazette of the Republic of Rwanda*, 1978, n°13-(a). It should be noted that while a new Code of penal procedure was released in 2004, then was modified in 2006, the new Penal Code was expected in December 2006, but was still not published at the time of writing this report.

<sup>137</sup> It would seem that the French translation of this article contains an error in confusing the term "provisional release", which only concerns the defendants, not the convicts, and that of "release on parole." Moreover, the term used in the English version of Article 81 is that of "parole", ("*The person convicted of the crime of genocide who commenced serving the sentence, cannot be released one parole*") [...]. It therefore seems that in fact parole releases are intended by this article.

<sup>138</sup> Article 81 of the Organic Law n°16/2004 of 19 June 2004.

The release on parole, however, allows us to consider the convicts' level of investment and behaviour, which is crucial when speaking of social reintegration. Indeed, convicts can benefit from a release on parole if they give reasonable evidence of good behaviour, and offer serious pledges of social readjustment.<sup>139</sup> This condition is especially interesting if one looks at the worries of some survivors who, fearing that the perpetrators of genocide have not learned the lessons from their sentence and the sensitisation efforts in the Community Service camps, demand a monitoring system of *tigistes*.<sup>140</sup> The implementation of this "sentence remission" would have made it possible to respond to this fear by showing the survivors that Community Service sentences were being managed in a responsible manner.

Secondly, from an organisational point of view, sentence remission was a perfect legal tool for management of the sentences in this massive crisis. In lawful measures and with guarantees against arbitrariness and discriminatory practices, it could have facilitated the non-extension of the execution of some Community Services for years, and the gradual release of convicts from their penal obligations once they had demonstrated reintegration into their original communities. This measure would no doubt have encouraged *tigistes* to mend their ways and adopt behaviour favourable to genuine reintegration.

In the end, these two modifications made between the first Order of 2001 and that of 2005 reinforce the idea that there has been a change of direction in the national authorities' management of the TIG. Indeed, as they faced the enormity of the organisation and the not easily surmountable practical difficulties they turned towards a more constraining and collective management of Community Service, leaving less place for a case-by-case approach. This direction is particularly distinguishable through the decrease of legal protection that had allowed for a more significant individual involvement of the convicts, and through legalisation of labour camps.

## **2. Towards an increased compliance and involvement of survivors**

In attempting to understand the role Community Service could play within the context of national reconciliation, and exploring how to maximize this role, the place of the survivors in this system is crucial. Thus we must turn to the question of their compliance and involvement with the policy of Community Service.

### **The survivors' adherence to the policy of Community Service**

It is very difficult to establish whether or not there is a genuine adherence among the survivors to the policy of Community Service being implemented in Rwanda. Indeed, the reactions vary considerably among the survivors, and the opinions can be quite different

Some survivors are in favour of Community Service, considering it to be "*a penitence which we praise, just as the tigistes do.*"<sup>141</sup> According to this female survivor, the results of Community Service will benefit the population, and especially her children:

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<sup>139</sup> Article 134 of the Penal Code, Order in Council n°21/77 of 18 August, 1977, instituting the Penal Code, *Official Gazette of the Republic of Rwanda*, 1978, n°13-bis.

<sup>140</sup> Cf. in the current report the point on "*Fears to be taken into account*".

<sup>141</sup> PRI Interview with a female survivor, 6 July 2006, n°1323-1324.

*"We accept this sentence. We have children who need to study and we also need roads. At least our children enjoy this progress."*<sup>142</sup>

As another one said:

*"Given that there are no schools for our surviving children being built in our towns, nor hospitals, nor fountains and that we don't have enough professionals to build this infrastructure... The tigistes, with the knowledge acquired in the Community Service, will build them without our needing to turn to strangers."*<sup>143</sup>

Few survivors complain and make demands, and some prisoners and *tigistes* may interpret the silence of survivors as a move towards reconciliation, even forgiveness<sup>144</sup>, although this is not always the case. Indeed it is advisable to qualify this assertion.

Many survivors admit to a kind of resignation, and this is a feeling, which, in the panel of survivors we interviewed, is shared by many:

*"In fact, we have to conform to the State's constraints; otherwise the person who killed another person should also be condemned to the death sentence. Meanwhile, the State has tried to be generous by granting special pardons; that's where we, as survivors see that this person who killed our families is carrying out work benefiting the country in general, but that the individual survivor does not receive anything from all this."*<sup>145</sup>

*"To be frank, we accepted this sentence because it's what the law requires. Otherwise, we don't think it's normal that a person who killed for example the members of my family is released from prison and goes on to the alternative sentence to imprisonment without my receiving some kind of compensation."*<sup>146</sup>

*"We're not against the government programme. We accept Community Service because we have no choice, only we can't be happy with these works because this sentence is not proportional to the crimes which the tigistes have committed."*<sup>147</sup>

This idea of the sentence not being proportional to the crimes committed is recurrent in the interviews among survivors, as it was in the conversations with the released persons, prisoners or *tigistes*:

*"It's not a sentence that corresponds to the infractions that were committed because one can't condemn a person who has exterminated more than a million Rwandans to this*

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<sup>142</sup> PRI Interview with a female survivor, 31 May 2006, n°1266.

<sup>143</sup> Interview with a female survivor, 6 July 2006, n°1324.

<sup>144</sup> PRI Interview with a released male prisoner, 13 October 2005, n°1012-1013.

<sup>145</sup> PRI Interview with a female survivor, 14 December 2005, n°1125.

<sup>146</sup> Interview with a female representative of AVEGA, 4 August 2005, n°890.

<sup>147</sup> PRI Interview with a male survivor, 11 May 2006, n°1224.



*sentence, so as to release him, while there are survivors that are living on very meagre resources. It is a State programme, but one which brings us no advantage."*<sup>148</sup>

Thus, from hereon it is wise to be cautious on the issue of the survivors' commitment to this new programme, because it is difficult to know whether the survivor who will share a beer with a released prisoner in a cabaret is not doing so only because he fears that his refusal would be interpreted by the authorities as a rejection of the national "policy of reconciliation", or because he thinks this way he will be safer.

### **The survivors' involvement in the implementation of Community Service**

In the name of national reconciliation, Rwandan authorities have made some efforts to associate the survivors with the implementation of Community Service. For example, as we have seen, representatives of associations of the survivors are represented in Community Service committees at all levels, and therefore in theory participate in the decision-making process.

In some cases the survivors are very closely associated with the implementation of Community Service. To give an example, one could cite the project of house construction for the widows of the genocide in Rwamagana, Province of East/former Kibungo; this project was initiated there by AVEGA.<sup>149</sup> The project already existed before the establishment of Community Service, but there were insufficient means to carry it out. Thus, the Association of the Genocide Widows requested that *tigistes* be assigned to this task under the Community Service committee of the Province. The committee directed the request to SNTIG, which gave its agreement in March 2005. To accomplish this project, *tigistes* from Nyanza were transferred to Rwamagana. The monitoring of the activities was entrusted to AVEGA and also to the district of Rwamagana.<sup>150</sup>

However, some survivors confided in us that they felt they had not been sufficiently consulted or associated with the implementation of the Community Service. For example, this woman tells us she has confidence in Community Service because it is a State policy, but she regrets that her opinion was not sought and hence feels less involved:

*"[...] we don't consider them that important [the tigistes] since the government didn't consult us before bringing them to do Community Service. That's why when they send them to us, we trust them, we think they've repented. Still, we don't meet with them in order that they communicate their information to us. In short, we don't really have a relationship with them."*<sup>151</sup>

According to another female survivor:

*"We received the information regarding Community Service through the radio broadcasts which pass on the wavelength of Radio Rwanda. No particular information came to us. Given the small number of tigistes originating from our cell, we were told that all the tigistes*

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<sup>148</sup> PRI Interview with a male representative of Ibuka, 21 September 2005, n°975.

<sup>149</sup> Association of Genocide Widows (AVEGA).

<sup>150</sup> PRI Analysis Report, 13 July - 14 August 2006. See also the Report on the interview with the Representative of AVEGA in the east zone, 20 May 2006.

<sup>151</sup> PRI Interview with a survivor, 6 July 2006, n°1224.

*would be gathered in the same province of Gitarama for Community Service. We'd wish the survivors would be consulted before making a decision about those who have been accused of genocide. If, for example, the Government envisages that the tigtistes carry out Community Service in Gitarama today and tomorrow in Kigali or Kibungo, we're wondering when it is that they will work for us. [...] In fact, we admire the decision [of the State], but we'd like it if before making such a decision, the authorities would ask for the opinions of the survivors."*<sup>152</sup>

Although the situations vary, many survivors do not feel engaged in the implementation process of this new tool of reconciliation, which Community Service ought to be. Some would like to be included in the discussions regarding its implementation, and often Community Service seems to be a policy of the State, for the State.

## **B. Fears to be taken into account**

As is the case for all the stages of the *Gacaca* process, to consider Community Service separately from the social context in which it is inscribed would be an error, since the latter conditions it. However, from our interviews on the hills it appears that the population's fears of Community Service, in all groups, are far from negligible. Thus, it seems necessary to discuss these in this report, since overlooking them, in the context of sensitisation for example, could jeopardise community rapprochement, which is precisely what Community Service is supposed to facilitate.

### **1. From the perspective of the former genocide perpetrators: the basis of their fear of vengeance**

We have already discussed the prisoners' fears in this report. Often illiterate and easy to manipulate, they are often victims of misinformation organised by some genocide perpetrators in the prisons, and made to fear that Community Service might be a "trick" of the State to kill them, or revenge by the State. From PRI's interviews it also becomes clear that many people who had taken part in the genocide as well as their families are afraid of "what comes after" Community Service, because they fear revenge by individuals. We have already briefly discussed this topic when addressing the "fear of proximity" of some released prisoners. It thus seems interesting to go back to the basis of these fears which are fed -- according to interviews we were able to collect -- by the knowledge which the people implicated in the genocide have of a tradition, as much historical as biblical, of revenge.

Our interviews reveal a consciousness among the population whereby, historically, forgiveness for a murder did not exist, that only the King could put an end to vengeance. In pre-colonial Rwanda, when reconciliation between two families seemed impossible following a serious legal dispute such as a murder, revenge was regarded as legitimate, it was even a religious duty to appease the spirit of the assassinated person. One murder therefore brought on another one and cyclic vengeance between families continued. The families could then call upon the King, and request that he put an end to the cycle vengeance. Only he was able to do so.<sup>153</sup> Thus, some

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<sup>152</sup> PRI Interview with two survivors, 29 September 2005, n°991.

<sup>153</sup> For common law in Rwanda, see Ntampaka Charles, *Introduction aux systèmes juridiques africains*, FUNDP, 2005, and also Ntampaka Charles, *Le gacaca rwandais, une justice répressive participative*, Actualité du droit international humanitaire, in *Dossiers de la revue de droit pénal et de criminologie*, pp. 211-225 and F.Digneffe, *Justice et Gacaca. L'expérience rwandaise et le génocide*, PUN, 2003, pages 16 et 18, and "Guerres et Pratiques religieuses", in *Dialogue*, n°225, November-December 2001, p.12

genocide perpetrators refer to history and deduce that one who killed must be killed, all the more if he or she has committed the “crime of all crimes”. As one survivor tells us, only the current policy of the State has made it possible for a great number of acts of revenge to be avoided:

*"In fact, one must conform to the requirements of the State otherwise the person who killed another person should also be condemned to punishment by death."*<sup>154</sup>

Furthermore, this vision is corroborated by the way that many Rwandans read the Scriptures, which they interpret as calling for this same punishment:

*"According to me, that [Community Service] is not a sentence, in comparison to the acts which were done. Rather, it's a small reprimand, such as what one gives to a child when it has made a mistake. I don't know how to qualify [this sentence] since even in the teachings of the church, he who has killed must be also killed."*<sup>155</sup>

*"The fear of being released was also due to the fact that even in the Bible we read: 'He who shall kill by the sword shall also perish by the sword'. From this fact we really thought this government could not have forgiven us for the crimes committed under the influence of the former regime."*<sup>156</sup>

Many former genocide perpetrators thus fear revenge from individuals. One only needs to refer to the attitudes of some released prisoners as they describe prison as a refuge, to understand the fear that some of them harbour with regard to the outside world:

*"From 1995 up until 2000 we were made to feel unsafe, not by the administrative authorities but rather, by the population. When we were then put in prison, we regarded this house of detention as a refuge. Suddenly, when there was some talk of releasing us, we said to ourselves that we were not going to have peace."*<sup>157</sup>

On the basis of these two beliefs, historical and biblical, which seem deeply anchored among the former genocide perpetrators, some fear individual revenge. Furthermore, the fear of collective revenge, of a "trick" as we explained in Part One, fed by rumours, has still not completely disappeared from the hills, among the uneducated prisoners or released prisoners. But it is above all a fear of reprisals from the families of victims, or from denounced accomplices that are mentioned in the interviews. The wife of a *tigiste* who denounced members of his family and has since lived in fear explains:

*"Our husbands are carrying out Community Service at the moment, but we are anxious about their return. As people adopt different behaviours, some among those who were injured by our husbands' actions claim that they will take revenge since our husbands didn't have pity on them during the genocide. The ones they denounced come and make the situation worse. Their families regard us as enemies since my husband denounced them. When my child goes by them, they say*

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<sup>154</sup> PRI Interview with a survivor, 14 December 2005, n°1125.

<sup>155</sup> PRI Interview with a former *tigiste*, 6 July 2006, n°1321-1322.

<sup>156</sup> PRI Interview with a released male prisoner, 20 May 2005, n°1264.

<sup>157</sup> PRI Interview with a released male prisoner, 30 May 2006, n°1264.

*that my husband will end up coming home to get what he deserves. They boast about what they are going to do even in the cabaret. That is what we are anxious about.”*<sup>158</sup>

In the course of the interview, this woman expressed her wish that the State would make some "guards" available when her husband came home, and even explained that some *tigistes* wished that their sentence were longer because they were afraid of the problems awaiting them upon their return, which brings back the idea of "prison as refuge".

Concerning this fear harboured by some former genocide perpetrators and their families, due to specific situations as well as frequent rumours, it seems necessary to take them fully into account, without doing so in an excessive way. Yet it would be wise to remain conscious of these, especially as the social climate is likely to become tense once again if the successive waves of parole releases that have been announced do actually take place. The former genocide perpetrators are, of course, not the only ones to be afraid, and often the fears of the ones tend to reinforce those of the others, such as those of the survivors.

## **2. From the survivors' perspective: is Community Service enough to transform the former killers?**

From the survivors' perspective, this incongruence between the crime committed and the sentence received will generate some significant questions and expectations. From our interviews it appears that a large portion of those interviewed think the purpose of the sentence should be for the perpetrator to learn a lesson. However as Community Service is commonly perceived as disproportional to the crimes committed, it results in the fear that this sentence is not enough to change the attitudes of the genocide perpetrators. Many survivors fear that the former killers will not learn lessons from this sentence and will therefore not have changed when they return to their hill. One could summarise their doubts as the following: is the sentence of Community Service enough to change a genocide perpetrator? Finally, what seems most important to the survivors, even more than the sentence itself, is the passage through the camp and especially the courses, which are held there. It is on these sensitisation sessions that the hopes of many survivors rest, as they could perhaps lead to a change of behaviour. This dimension of personal evolution prevails over the sentence itself:

*“Indeed, during awareness-raising sessions, they told us that Community Service wasn't made up of hard labour as some people think, but that they are minor sentences because they are to be carried out while returning to our homes. Yet I would say they also make it possible to give an education. [...] To make people understand very well that they did commit the crimes.”*<sup>159</sup>

An old woman survivor thus compared Community Service to a "school", both for the practical training received, like cutting the stones or masonry, and for the education that they receive there promoting good social relations:

*“They [the tigistes] are at the same time carrying out a sentence and attending school and I told you the reasons! [...] In any case, I think that Community Service can correct a conscious person, since they are given so many lessons. While carrying out [the sentence], the tigistes do not only work, they also have the opportunity to learn lessons,*

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<sup>158</sup> PRI Interview with the wife of a *tigiste*, 19 April 2006, n°1204.

<sup>159</sup> PRI Interview with a co-ordinator at the cell level, 19 October 2005, n°1027.

*that's why the conscientious workers will complete these works having been changed, levelling terms of their behaviour.”*<sup>160</sup>

Another female survivor used the word "school", and "seminar", and very much insisted on the fact that the former perpetrators of genocide are transformed by Community Service:

*"When they come back from Community Service, the workers are no longer afraid, rather they are filled with love! Those who haven't yet gone into the Community Service camps don't get along well with their wives because their wives accuse them of having concubines, however, you'd say those who went through Community Service have been taught like in a school, like in a seminar. [...] Community Service serves as a school and, as survivors of the genocide, we praise it because the *tigistes*, as soon as they come back have good intentions. Indeed, prison life is different from camp life for the *tigistes*; I'd even compare the first to primary school and the second to secondary school! Community Service for those who were found guilty represents a kind of secondary school, which was created by the government so they could be purified of all their crimes, so that we can accept them and talk with them about the Gacaca courts. In any case, we could not engage them without their going through these obligations.”*<sup>161</sup>

Others even go as far as introducing a quasi-mystical dimension to Community Service, as had been done with the solidarity camps<sup>162</sup>, seeing in them a kind of "purgatory". The woman survivor quoted earlier also explained to us that the *tigistes* who had finished their sentence said to her that they had come out of "purgatory":

*"They came over to my home to tell me that they'd gone through the purgatory, while saying they'd continue to visit me, before affirming that they'd always maintain good relations.”*<sup>163</sup>

This same survivor also compared Community Service to a "traditional purification", and spoke of a drum, that is to say the drum called "Rucabagome", literally the "Drum which exterminates the criminals". This drum traditionally spread the King's message according to which revenge and violence should cease on a hill, and peace should return:

*"[...] one could compare it to the drum which one would beat in public and which announced peace. Indeed, from this moment onwards nobody pursued any more crimes, and people could share again. In short, I would compare Community Service to the traditional purification.”*<sup>164</sup>

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<sup>160</sup> Interview with a female survivor, 6 July 2006, n°1324.

<sup>161</sup> Interview with a female survivor, 6 July 2006, n°1323-1324.

<sup>162</sup> Cf. Penal Reform International, Monitoring and Research Report on the Gacaca VI, *From camp to hill, the reintegration of released prisoners*, May 2004.

<sup>163</sup> Interview with a female survivor, 6 July 2006, n°1323-1324.

<sup>164</sup> Interview with a female survivor, 6 July 2006, n°1323-1324.

And again according to this survivor, during the *Gacaca* courts, the *tigistes* educate the population in favour of Community Service by comparing it with a "sieve":

*"The tigistes even speak up during the Gacaca courts to bring awareness to the participants that someone who did not go through Community Service doesn't know anything. Indeed, they compare this work with the sieve, which allowed them to purify themselves and thus aspire to unity and reconciliation. Also, they warn other defendants who haven't yet confessed, by telling them that if they continued to hide the truth, they will suffer disastrous consequences."*<sup>165</sup>

These remarks can be added to the experience of the PRI investigators during a visit to the Ruyumba camp: upon their arrival, the *tigistes* performed a song entitled "The Sieve". The *tigistes* symbolised the *Gacaca* courts and Community Service with a sieve, wishing that every Rwandan would go before the *Gacaca* to be purified.

With this expectation of Community Service to bring about a change in behaviours, the survivors adhere to a vision of Community Service that is shared by the authorities in charge of its implementation, as they emphasise "*programmes of teaching and of sensitising which invite the tigistes to look into their souls*".<sup>166</sup> Thus, the role attributed to Community Service camps is ultimately quite similar to that of "re-education" in the solidarity camps, and the teachings offered there bear a resemblance:

*"[...] inside the camp [Community Service], we had lessons on history in which they taught us the circumstances of the colonisation by the white people and the different dreadful consequences it had on the relations between the Hutu and the Tutsi. The history lessons were also about how Rwandan people lived together. We were also given courses on civic education explaining the reasons at the root of the genocide, its definition, its dreadful consequences and the ways to avoid it in the future."*<sup>167</sup>

In the long run, an in-depth study about the issue of the place of the former *tigiste* -- and therefore perpetrator of genocide -- in his/her family, the community and especially in relation to the survivors, remains absolutely necessary. It is paramount to know whether the whole population regards him/her as a person worthy of trust, someone one can invite to their home without fear, to whom one can entrust administrative and social responsibilities, and so on. Certainly in theory, the sentence results in the rehabilitation of the convict. And so logically speaking, if the sentence makes social sense<sup>168</sup>, these people should no longer be regarded as perpetrators of genocide, but as "*ordinary citizens, useful for society*" upon completion of their service.

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<sup>165</sup> Interview with a female survivor, 6 July 2006, n°1323-1324.

<sup>166</sup> PRI Interview with Mr Anastase Nabahire, associated Executive Secretary of the Executive Secretariat of the National Committee of Community Services (SNTIG), 13 January 2006, n°1146.

<sup>167</sup> PRI Interview with a *tigiste*, 13 October 2005, n°1150.

<sup>168</sup> For a contribution on this point cf. especially Edem Comlan, *Meaning and social function of the sentence in Rwanda*, 2006.

<sup>169</sup> However, this is a difficult ideal to achieve in many legal systems, and Rwanda, whose population suffered particularly heinous crimes, cannot be exempt from this difficulty.

In spite of this initially positive reaction concerning Community Service's ability to change genocide perpetrators' behaviour, genuine trust is still a long way off; this can only come with time, as these two women explain:

*"How can I trust them when I can't see what's really inside them? Unless they change because that is possible, however, I can't trust them completely. For example, when somebody has been bitten by a snake, when he crosses another one, he runs because he remembers his previous mistakes! That is why we will have a good relationship but will not forget that they committed such crimes. "*

*"I also think that maybe the fear will disappear, however one can't ever trust a hundred per cent in the person who killed a member of your family. What guaranties do you have that the person won't also execute you?"* <sup>170</sup>

On the survivors' side, there is very little trust, which tends to make them fear being in proximity with the genocide perpetrators.<sup>171</sup> Therefore, in the short term it still seems that an adapted sensitisation, which presents reliable information, especially on security issues, would make it possible to minimise the fears and pacify social relationships.

### **3. The need for information/sensitisation**

When interviewing Rwandans on their knowledge of Community Service, we were able to ascertain that the population remains largely under-informed about this process and its reality. Furthermore, in terms of the level of information, a distinction should be made between on the one hand prisoners and the released, and on the other hand the rest of the population, setting aside local authorities and *Gacaca* judges.

Indeed, those who are the most informed about Community Service are the prisoners and those released, insofar as they were given significant information and sensitisation on the subject. The information was transmitted to them at two levels: firstly, in prison, where Community Service and the reduction of the prison sentence made up the major arguments for sensitising the prisoners on confession, and secondly and above all, during the lessons given in the solidarity camps on the theme of *"the policy of Community Service in Rwanda."*<sup>172</sup>

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<sup>169</sup> PRI Interview with Mr Anastase Nabahire, associated Executive Secretary of the Executive Secretariat of the National Committee of Community Services (SNTIG), 13 January 2006, n°1146.

<sup>170</sup> Interview with a female survivor, 14 December 2005, n°1125.

<sup>171</sup> Cf. the point on fear of proximity in Part One of this report, p.27.

<sup>172</sup> Cf. Penal Reform International, Monitoring and Research Report on the *Gacaca* VI, *From camp to hill: the reintegration of released prisoners*, May 2004.

On the other hand, for the rest of the population, we note that for most the information is still too varying and inconsistent, even non-existent in some cases. When they were informed, the interviewees listed knowledge they had acquired from radio broadcasts, mainly from Radio Rwanda. In general their knowledge related to two elements: the organisation of Community Service in camp-form, contrary to what had originally been announced, and that TIG would only apply to those classified in Category 2.

This observation reminds us that to date, Community Service has not really been thoroughly covered in sensitisation sessions with the entire population. When such sessions were held, they were limited to the pilot zones selected to host the Community Service camps. Furthermore, they consisted more of factual information intended to facilitate an understanding of the mechanism of Community Service rather than a more qualitative campaign aimed at reassuring the population by explaining the objectives of this measure. If one defines sensitising as activities aiming at establishing a real communication and an exchange, carried out over a definite period and on a specific theme and aiming at a gradual change in behaviour, then Community Service - related sensitisation is only in its first stage.

Indeed our observations reveal that, although some irregular meetings were held in 2004, it is mostly during the second half of 2005 that Community Service became a more visible theme, especially in September, just before the launching of the pilot phase.<sup>173</sup> Information on this topic was communicated to the released prisoners and to the *Gacaca* judges during the trainings they received.<sup>174</sup> Members of the Community Service committees received this information when attending "training workshops" held for the committees of the sectors and districts where Community Service camps were located, such as those surrounding the town of Nyanza. Generally led by a representative of the SNTIG, the objective of these "training workshops" was above all to relate the history and inception of Community Service, as well as its goals and implementation. It should be noted that these sessions were usually only held once, after which the mission of making the rest of the population understand the usefulness and importance of Community Service was entrusted to those who had been "trained".<sup>175</sup>

Concerning the state of the sensitisation of the population taken as a whole, apart from the beneficiaries or from the people in charge of Community Service, our observations reveal that few meetings were organised with the primary or exclusive aim of a sensitisation to Community Service. That said, the subject is still raised at other meetings held on various topics such as the *Gacaca*, safety, AIDS, insurance companies, and so on. Thus we are seeing only the beginning of an awareness about this issue rather than any genuine sensitisation, as is shown in the following excerpt, from an observation report of a meeting held in Kayove on 5 September 2005:

*"The leader of training and sensitisation in the National committee in charge of Community Service gave a speech and explained to the population the origin of Community Service. He said that Community Service has nothing to do with serfdom or servitude as some ill-intentioned people consider it. He said that the same kinds of punishments occur in other countries, but that they were established in Rwanda because of the genocide. It is therefore a punishment reserved for persons found guilty of crimes of genocide, and at the same time a way of straightening out and integrating those accused.*

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<sup>173</sup> Cf. PRI Reports summing up these meetings, especially in the province of Kibuye, Gisenyi, in the district of Kayove, or also in the district of Ruyumba in the province of Gitarama.

<sup>174</sup> Mission Report, 22-24 November 2005, P.Kigali City/D.Nyamirambo.

<sup>175</sup> Cf. especially on this point PRI Observation Report, 26 January 2006.



*This work, he said, will be devoted to the sustainable development of the country and will be about: the construction of roads, the anti-erosion work, the construction of schools, hospitals, etc."*<sup>176</sup>

However, given persisting fears among some members of the population that we have mentioned earlier, it seems fundamental not to gloss over a genuine, planned sensitisation campaign that would allow for the whole population's thorough understanding of the modalities of implementation and the goals of Community Service. To be truly relevant, this sensitisation should bring answers to the people's questions about both the Community Service and the *Gacaca*, since the queries on these two processes very often seem to bring up the same fears.

Beyond awareness-raising campaigns led by local authorities in charge of Community Service or representatives of SNTIG, the networks of associations could complement or provide an important alternative to these efforts by offering the possibility of a more targeted sensitisation. For example, for the survivors this could consist of organising information meetings and debates through the organisations that are close to them (such as AVEGA, Ibuka, etc.) and therefore more equipped to hear their fears and desires, and to bring specific answers, especially since during interviews it is not uncommon for survivors to complain about only being informed about the changes in the organisation of Community Service after everything had been decided, without being consulted beforehand.<sup>177</sup>

Whatever the subject, particularly in a context of building reconciliation, information is of primary importance because it brings answers to people's questions and makes it possible to quell their fears.<sup>178</sup>

### **C. Listening to survivors**

One possible way of guaranteeing significant approval among the majority of survivors to the Community Service process -- and maybe to see them be involved -- would first be to take their fears and expectations into full account. This is crucial, as their appeasement would have positive repercussions by generating a true feeling of recognition, which is essential for the achievement of a genuine process of reconciliation.

Our interviews reveal that a number of survivors do not see how Community Service in its present embodiment could serve them. Firstly, many of them, as with some genocide perpetrators, see the sentence of Community Service as equivalent to "an official forgiveness." Furthermore, while the law of compensation is still pending, most of the survivors are not the direct beneficiaries of Community Service even though they were the direct victims of the genocide, and they call for a Community Service, which would be more advantageous to them.

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<sup>176</sup> PRI Observation Report, Kayove, 5 September 2005.

<sup>177</sup> Report of a PRI Interview with a female survivor, 21 September 2005.

<sup>178</sup> On the connection between the lack of sensitisation and the increase in fears, cf. Penal Reform International, *Information-gathering in the national phase*, PRI, Kigali/London, June 2006, pp. 49-54.

## 1. Community Service perceived as an expression of forgiveness by the State

For many survivors - and as we saw earlier for many perpetrators of genocide - Community Service is regarded as forgiveness granted by the State to the criminals.

Many at first seem to understand and approve that the State made the choice to deviate from the Law of Retaliation -- a biblical principle dictating that he who has killed must be killed -- in order not to stoop to the level of the genocide perpetrators:

*"On the other hand, if the government had wanted to pronounce a sentence adequate to their crimes, we would be trying to destroy our country, while at the moment they are trying to build it."*<sup>179</sup>

*"The government founded Community Service because it could not perpetuate the rule of evil, otherwise it would have exterminated all the guilty people because they acted in an evil way when exterminating the babies, by killing pregnant women and other women, their parents, their mothers-in-law, and all other unimaginable acts. Due to this, the government of national unity judged it appropriate to sentence them to Community Service, a sentence so minimal, in order to show them that they should not repeat these atrocities which they have perpetrated."*<sup>180</sup>

*"On the other hand, the State cannot do any differently with the criminals. It cannot kill them. If it did so, it would not be any different from those who committed these crimes."*<sup>181</sup>

Moreover, they note and recognise that given the gravity of the crimes committed, it is very difficult to find an appropriate punishment:

*"In no way can one find sentences that correspond to their crimes!"*<sup>182</sup>

*"One cannot find a punishment for them that is proportional to their crimes."*<sup>183</sup>

There are many survivors for whom it is difficult to regard Community Service as a sentence, as one of them explains:

*"And besides it is not a sentence but rather a favour granted to the released prisoners."*<sup>184</sup>

And since Community Service is not seen as a sentence, but is rather qualified as a "favour", the line between favour and forgiveness is slim and sometimes it gets blurred:

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<sup>179</sup> PRI Interview with a female survivor, 6 July 2006, n°1324.

<sup>180</sup> Interview with a female survivor, 6 July 2006, n°1323-1324.

<sup>181</sup> Interview with a representative of AVEGA, 4 August 2005, n°890.

<sup>182</sup> PRI Interview with a female survivor, 6 July 2006, n°1323-1324.

<sup>183</sup> Interview with a representative of Ibuka, 24 May 2006, n°1252-1253.

<sup>184</sup> PRI Interview with a survivor cell coordinator, 14 October 2005, n°1017-1018.

*"Do you believe that we are still in the phase of sentences? We are now in the phase of forgiveness. It is false to regard Community Service as a sentence."*<sup>185</sup>

But as this released prisoner<sup>186</sup> explains, "*Community Service is not a sentence*" but "*a State policy aiming at unity and reconciliation*", not all survivors accept this "favour" and many are far from accepting as theirs this "*forgiveness*" granted by the State. A good number of them tend to regard Community Service as the instrument of reconciliation between the criminal and the State, but not with them. This forgiveness of the State was granted first through the releases and today through Community Service. Thus in an interview with three survivors<sup>187</sup>, two of them tell how, having pronounced the judgement, the panel of judges then asked them to embrace the convicts. They absolutely refused to do this, explaining that it was the State, which had forgiven the criminals, and not them, especially since the convicts had not even approached them. This difference is noted by both sides as some released prisoners, when they come across survivors and in order to intimidate them, remind them that while they went to prison because of them, it is to the State that they owe their release.<sup>188</sup>

From interviews with several survivors, it becomes apparent that the genocide perpetrators' request for forgiveness, in public and at the time of confessions, is not regarded as authentic. Indeed only a voluntary step aiming at approaching the survivor at an individual level would count for them.<sup>189</sup> In an interview with PRI<sup>190</sup>, a survivor emphasised the fact that Community Service could not contribute to the reconciliation of Rwandans insofar as in her opinion not a single released prisoner has dared to approach a survivor to ask for his or her forgiveness.

And indeed, it seems that the number of released prisoners who, unprompted, make the move to go and ask forgiveness remains small, although some cases do exist. The survivors thus have, to a certain extent, the impression that forgiveness was granted by the State, but is not the result of their individual initiative.

## **2. A Community Service from which survivors wish to benefit more**

If one refers to the legislation of Community Service, constant since the first texts in 2001, it is the State and the population in general which are named as the beneficiaries of the work achieved by those sentenced to Community Service in host institutions (communities, public organisations, or associations.)

Indeed, right from Article 2 it states that "*the benefit which the work to be performed in these institutions brings to the general public.*" In the same way, the non-exhaustive but informative list of activities

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<sup>185</sup> PRI Interview with a female survivor, 14 October 2005, n°1018.

<sup>186</sup> PRI Interview with a released prisoner, 31 May 2006, n°1267. Cf. also PRI Interview with the wife of a *tigiste*, 13 October 2005, n°1017.

<sup>187</sup> PRI Interview with a group of three survivors, 15 June 2006, n°1301.

<sup>188</sup> Interview with a female survivor, 4 August 2005, n°890.

<sup>189</sup> Cf. on this point PRI Interview with an Executive Secretary of sector, 21 September 2005, n° 976.

<sup>190</sup> PRI Interview with a female survivor, 14 June 2006, n°1294. Cf. also on this issue PRI Interview with an Executive Secretary of sector, 21 September 2005, n° 976.

that may be carried out on behalf of the alternative penalty to imprisonment as Community Service reflects the collective character of the beneficiaries and the refusal to have this work benefit any particular group, or an individual.. That said, it is true that houses can be built by *tigistes* and be allotted to impoverished individuals, because that is within the framework of the fight against poverty, a national cause.

This position has been confirmed by the Executive Secretary of SNTIG himself: *“Community Service is a sentence [...] which will certainly have this characteristic of public interest. Thus Community Service will never, at least in the measures envisaged, be carried out in the interest of private parties!”* <sup>191</sup>

Thus the survivors benefit from Community Service as members of the Rwandan population, not as a specific group. For instance, in Nyanza houses were given to some impoverished survivors, and in Rwamagana others were built for the widows of the genocide thanks to the initiative of AVEGA.

Some survivors even declare themselves to be satisfied, and think that their interests are being taken into account and that the authorities did not forget them:

*“Community Service has begun in the Ruyumba District, and also in Butare the *tigistes* are building houses for the poorer survivors. This shows that they thought of the survivors when creating the Community Service programme.”* <sup>192</sup>

However, many survivors demand that the benefits of Community Service be primarily reserved for them. This is expressed by the following woman - a survivor - when she explains that the allocation of houses built by the *tigistes* of the Nyanza camp to non-survivors resulted in some tensions:

*“Some people, who are survivors, did not get houses and felt bad seeing those who did, and their situation moves me because they are miserable. They had trouble with the issue of the Twas and other people who were not survivors, also miserable, that did get houses. They feel indignant and are saying that houses have been given to people who are not survivors, namely the Twas, even though they are poor.”*

She thinks the houses ought first to be given to the survivors, then to the others:

*“Us survivors who did get houses, we don't have problems with the fact that houses were given to the non-survivors. Rather, we feel pain for the survivors who didn't get them. That is why we wish the construction of the houses continues so that they also get some. [...] In fact, it would have been better to first give houses to the survivors, and once all of them had them, some could be given to others, poor people, who are not survivors.”* <sup>193</sup>

Some survivors even wish that Community Service could be carried out exclusively for the benefit of the genocide victims, as a female survivor explains:

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<sup>191</sup> PRI Interview with Mr Anastase Nabahire, associated Executive Secretary of the Executive Secretariat of the National Committee of Community Services (SNTIG), 13 January 2006, n°1146.

<sup>192</sup> PRI Interview with a male survivor, May 11, 2006, n°1224

<sup>193</sup> Interview with two female survivors, 7 December 2001, n°1111.

*“I support the idea of Community Service, provided that it is in favour of victims who became disabled, of mothers without children, of widows who are deprived of everything and are not able to work. Many among them have not found housing yet, there are also those who have houses that are demolished and those who cannot work their fields. The fact that some people don't have houses is a burden for the State. Because these people will always bother the authorities to present their grievances. I wish they would first build houses for the victims without shelters, before starting other activities like assistance for the widows and orphans. [...] Poverty exists since the creation of the world. But there is a difference between regular poverty and that, which is due to the genocide. The characteristic of the victims of genocide is that they are traumatised. If their goods had not been pillaged, they would not beg. If their children had not been killed, they could work for themselves! [...] They should stop bemoaning by saying it's the government that caused their misery!”<sup>194</sup>*

Such demands from the survivors are mostly due to the fact that there has been no progress in the matter of their compensation, no notable steps have been taken for several years now, and many survivors complain of this:

*“It is a problem when one releases people in large numbers as they have, without thinking of setting up funds for compensation to the victims of genocide. [...] One should not release the prisoners while the survivors are suffering from multiple consequences of the genocide, such as AIDS, housing problems, etc.”<sup>195</sup>*

In this situation, Community Service can actually be the beginning of an answer to what remains the survivors' major preoccupation: *“the big problem which we face, is acute poverty”*.<sup>196</sup> As one woman said, when specifically addressing participation in the *Gacaca*, *“all the activities can be carried out, once we have eaten”*.<sup>197</sup>

This problem of poverty is such as it leads some survivors not only not to demand a Community Service whose *“first activity [...] be the construction of houses for the survivors”*<sup>198</sup>, but to go as far as wishing that the funds generated by the activities of the *tigistes*, as well as those economised due to their non-imprisonment, be used for the benefit of the survivors. In an interview a female survivor explained to us that she wished that they would release all the genocide perpetrators and that the funds saved by this be used by the State to help the unfortunate survivors:

*“We lost our family members forever. It is impossible to resuscitate them. Those actively responsible for our dead are costing the State a lot, we even wish that they would be released to devote the expenses which the Government spends in feeding the prisoners to the assistance of the survivors who are poor. We have cases of people who live miserably, namely old people and those with AIDS.”<sup>199</sup>*

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<sup>194</sup> Interview with two members of AVEGA, 12 May 2006, n°1231.

<sup>195</sup> PRI Interview with a representative of Ibuka, 21 September 2005, n°975.

<sup>196</sup> Report of a PRI Interview with a male survivor, 22 September 2005.

<sup>197</sup> PRI Interview with a female survivor, 31 May 2006, n°1266.

<sup>198</sup> Interview with a female survivor, 11 May 2006, n°1224.

<sup>199</sup> PRI Interview with a female survivor, 31 May 2006, n°1266.

It is clear that the major preoccupation of the survivors is still compensation, and not just Community Service being carried out for their benefit. One female survivor we interviewed received a house that was built by the *tigistes* of Nyanza, which was of far less value than the one she had lost during the genocide. She wondered whether this fact would work to her disadvantage during the process of restitution of pillaged goods prescribed by the law.<sup>200</sup> She could not be satisfied with the house built by the *tigistes* given the value of her goods pillaged during the genocide.

In addition to this dissatisfaction regarding the absence of a policy on compensation, the survivors view Community Service as an arrangement favourable to the *tigistes* (and therefore to the people implicated in the genocide) and their families, since it allows them to benefit from a number of advantages, especially the considerable reduction in the length of the prison sentence issued by the *Gacaca* when Community Service is carried out in camp form as it is today. This method of carrying out Community Service means a faster return of these convicts to their families, where they can contribute financially to the household and to the education of their children. While, on the other hand, the survivors have lost members of their family forever, and live in misery. In other words, many survivors have the feeling that compared to what the criminals are given, they remain ignored in this process of reconciliation.

It is thus important that the survivors be the direct beneficiaries of Community Service, as was the case in Rwamagana or Nyanza. We do not mean to say the survivors should have priority in the allocation of these houses. Rather, poverty should be the determining criterion, in part to avoid conflicts and also because it seems logical that the neediest are the first served. Basically, it seems sensible to strongly encourage the implementation of Community Service in the form of house construction, so that the maximum number of people -- and therefore survivors -- may benefit from it. It is this aspect of Community Service, which makes concrete improvement of the living conditions of the survivors and the support of reconciliation very feasible. This would especially make sense for the survivors, as they would see the houses destroyed by the genocide perpetrators be rebuilt by them. This became particularly apparent during the interviews carried out among members of associations for released prisoners/survivors. For example, in Cyangu<sup>201</sup>, in certain cells of the Gihundwe sectors, the survivors took the departure of released prisoners for the Gitarama camp quite badly, as they had begun to rebuild their houses in collaboration after receiving metal sheets delivered by the authorities of the district. This was also observed in the sector of Gahini, in the province of Umutara.<sup>202</sup>

Moreover, a good number of *tigistes* are not necessarily opposed to this type of work, quite the contrary. Some *tigistes* of the Ruyumba camp who, as we have seen, work in stone-cutting for the construction of public works, have expressed the wish to carry out an activity which benefits the survivors more directly, and in some cases even to be carried out in direct contact with them:

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<sup>200</sup> PRI Interview with two female survivors, 7 December 2001, n°1111.

<sup>201</sup> PRI Mission Report, 12 –14 October 2005, Cyangu/Town of Cyangu/ Gihundwe and Muhali.

<sup>202</sup> Cf. also on this point the PRI interview with a *tigiste*, 13 October 2005, n°1014.

*“I sympathise with the survivors because we killed their family members and destroyed their homes, yet the work we’re trying to carry out is in the interest of the Government and not the survivors directly. That means they remain in the misery that we caused.”*<sup>203</sup>

*“Me too, I feel the suffering of the survivors because we sent them into mourning, but the work we’re trying to carry out is in the interest of the Government. The problem is that we’re here for nothing. We would have liked to go and work for them but that requires the Government’s consent.”*<sup>204</sup>

*“We’d like to work on behalf of the survivors, it is also their wish. But the State prevents us from doing so. I would like the Government to do something for the survivors.”*<sup>205</sup>

*“In reality, the victims of our deeds are perhaps not glad to see us here. From my side, I’m glad because I want to stay here for a while, and then go home after a few days. The survivor wonders which benefit he will gain from our activities. Which means he’s not happy. It’s true that his home was destroyed by us. Why not stay beside these survivors and build their houses?”*<sup>206</sup>

### **3. The favourable response to the works carried out through the associations of survivors/released prisoners: a model for Community Service?**

In this report we focussed on fears and reservations, as it is necessary to assess their extent and take them into account. Nevertheless, in some cases co-operation between released prisoners and survivors is actually happening, as the associations of released prisoners/survivors attest to, and are an encouraging example. As we said earlier, the survivors welcomed the construction of houses by released prisoners, within a framework of such associations, because they were the beneficiaries.

These associations of released prisoners/survivors are advantageous as they bring answers to the two aforementioned expectations of the survivors, by combining both economic and social aspects (especially in the desire for a request for forgiveness).

These associations were created here and there, often through the impetus of the National Commission on Unity and Reconciliation, following the releases of 2003 and 2005. Their objective is above all to combine the fight against poverty with the re-establishment of social bonds through activities, which elicit interaction between the various groups. Here is one

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<sup>203</sup> PRI Interview with about forty *tigistes* from the Ruyumba camp, with four women and a majority of old men, 19 January 2006, n°1156-1157.

<sup>204</sup> PRI Interview with about forty *tigistes* from the Ruyumba camp, with four women and a majority of old men, 19 January 2006, n°1156-1157.

<sup>205</sup> PRI Interview with 28 *tigistes* of the Ruyumba camp in the presence of the camp’s guards, 20 January 2006, n°1157-1158.

<sup>206</sup> PRI Interview with 28 *tigistes* of the Ruyumba camp in the presence of the camp’s guards, 20 January 2006, n°1157-1158.

Executive Secretary of sector, explaining how an association of this type was created in his sector:

*“The aim of this association is to sensitise people on the Gacaca, on how to proceed with confessions, on pleading guilty, on repenting and apologies so that the survivors can have forgiveness in them. The other aim is for people to feel united and avoid divergences, which might exist between them since they’ll share the same goal. The other advantage of this association is that one can fight against poverty instead of continuing to live in a state of corruption.”*<sup>207</sup>

In our research we followed in greater detail the work of the *Abiyunze*<sup>208</sup> association, located in the Gahini sector of the district of Rukara, in Umutara, but there are other associations of the same type, such as *Ukuri kuganze* based in the district of Kicukiro in downtown Kigali and in Nyamata.<sup>209</sup>

One person sentenced to Community Service, a member of the *Abiyunze* association, describes here to us the way it works:

*“The association is called Abiyunze, literally those who have been reconciled. I am the secretary of this association. The president of this association is a survivor of the genocide; the vice-president is a released prisoner. At the moment he is in Gitarama. I am the secretary. There are twenty-two founding members of this association. We decide on the goal of sensitising people to unity and reconciliation. Beginning with ourselves first, we asked each other for forgiveness. We were forgiven. This act was aired several times on television. The national committee of unity and reconciliation has just visited us twice. During the first visit, this committee gave us six hundred thousand francs. It recently gave us a herd of eleven cows. It also promised to build fifty houses for those in greatest need. Everything is going well in the association although some members are no longer available since they went off to do Community Service. Among these twenty-two members, there are released prisoners, survivors of the genocide and those who have family members in prison. At the moment there are one hundred and fifty members in the association.”*<sup>210</sup>

It is important to note that in these associations, the members work together, the work is a means of drawing together, and the profits reaped from these activities benefit everyone:

*“Our association has many projects. We attend to the bee-keeping, we have carpenters, tailors, there are basket-makers and potters. Among the categories I mentioned I had forgotten to speak of the Twas, at the present time there is no discrimination based on ethnic groups. We invited them since they’ve been discriminated against for a long time. [...]  
In all that we do, our aim is to promote our way of life. We also wanted to have a meeting-place so that we can converse among ourselves and not only be working for lucrative goals. The work will unite us without any discrimination. We will give people*

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<sup>207</sup> PRI Interview with the Executive Secretary of the Rukara sector, 21 September 2005, n°976.

<sup>208</sup> This means “those who have been reconciled” in Kinyarwanda.

<sup>209</sup> Cf. Recording of sensitisation session held by the *Ukuri kuganze* Association, 5 March 2005, in Kagasa/Kicukiro, n°790.

<sup>210</sup> Interview with a prisoner condemned to Community Service, Secretary of *Abiyunze*, 13 October 2006, n°1014.



*the example that reconciliation is possible. We will prove that reconciliation between the Hutu and Tutsi is possible. After we got some money, we opened a bank account in the people's bank. We save money. We also have a dance troupe, after work, we entertain ourselves before going home.”*<sup>211</sup>

These associations present a definite advantage insofar as they work towards a community rapprochement (based on the idea that through daily close contact one ends up getting over certain fears), and they bring a solid response to the economic needs of the survivors, thereby satisfying their desire for acknowledgement.<sup>212</sup> Once this has been re-established, the conditions for a real rapprochement will have been achieved, because the survivors who are beneficiaries no longer feel left out of the process.

In addition, by creating a space for interaction, the associations play a vital role because they help create a space for dialogue that opens the way for individual initiatives on the part of the perpetrators of the genocide to seek forgiveness from the survivors who they made suffer. This would be the beginning of an answer to the problem that this female survivor raises: *“in short, unity and reconciliation are not possible as long as we do not want to approach each other for forgiveness.”*<sup>213</sup>

It is interesting to note on this point that most of the individual initiatives of requesting forgiveness, which we have noted, were taken by released prisoners belonging to these associations.

*“For example, I went into each household, I didn't ask for forgiveness during a meeting. The proof that we have been forgiven, I believe I told you this the last time, is that now we are part of associations bringing together the released prisoners and the survivors of the genocide. We are in an association in charge of sensitising people on unity and reconciliation.”*<sup>214</sup>

*“Yes, they [the released prisoners] do try to approach them because in their confessions, they tell us how they approached the victims to ask for forgiveness right after their release. They specify from which families they asked forgiveness. Sometimes one notices a change in these people who asked for forgiveness. [...] There are people in charge of unity and reconciliation who help these released prisoners to ask for forgiveness. This is because we have created an association of released prisoners and survivors where even other repatriated people join if they want. In this setting many people have committed themselves and have signed up in this association in order to benefit together from the training.”*<sup>215</sup>

These associations also organise awareness-raising sessions on Unity and Reconciliation: for example, sessions held by *Ukuri Kuganzwe* are always attended by a very large audience and in the presence of the authorities (co-ordinators of the cells and sectors).

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<sup>211</sup> Interview with a prisoner condemned to Community Service, Secretary of *Abiyunze*, 13 October 2006, n°1014.

<sup>212</sup> From this point of view, the manner in which the judgments of Category 3 or the out-of-court settlements proceed is also of prime importance.

<sup>213</sup> PRI Interview with a female survivor, 30 May 2006, n°1263.

<sup>214</sup> PRI Interview with a released prisoner, 23 May 2006, n°1251.

<sup>215</sup> PRI Interview with an Executive Secretary at the sector level, 21 September 2005, n°976.

These associations could serve as an inspiration to Community Service, by showing that the survivors and the released prisoners can work together in certain cases and under certain conditions, and that this allows for a genuine rapprochement. These associations seem to encourage a reinstatement of the Neighbourhood Community Service. The authorities in charge of the implementation of Community Service would benefit from consulting them and using their experience in order to develop a framework in which Neighbourhood Community Service could be installed. These associations could even host the *tigistes*, on their own initiative, so that they carry out their sentence within these associations. These are indeed a concrete and encouraging example of collaboration between survivors and the former murderers, and it would be beneficial to learn from them.

## Conclusion

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The observations and interviews we were able to carry out show that Community Service is not a measure that has been rejected, either by the convicts or the survivors. On the contrary, Community Service elicits positive reactions in each group, even if opinions are divided and numerous fears persist, primarily due to the difficulty the survivors and the former genocide perpetrators have in imagining a life together again.

Nevertheless, a certain inadequacy remains between the current scheme of Community Service and the expectations of each of the groups. Many survivors in particular would like to be the exclusive beneficiaries of Community Service or at least its priority, whereas this system is above all designed to serve the community as a whole. On this point we should note that among the convicts we met, many share this same vision. We are therefore witnessing a situation where the desires of the two groups -- with *a priori* antagonistic expectations -- come together. It would certainly be interesting to increase the number of projects from which survivors can benefit, along with other impoverished recipients, such as in Nyanza or Rwamagana. This can be done without modifying the spirit of Community Service.

Whatever the changes made to the implementation methods of Community Service, one cannot deny that this measure also generates new practical difficulties that need to be resolved, in other words, many new challenges are added on to the earlier ones.<sup>216</sup> Indeed, the double question regarding the number of *tigistes* as well as the schedule for carrying out these Community Service works arises, as in the *Gacaca* process. Can Rwanda “absorb” a mass of *tigistes* reaching several tens or even hundreds of thousands of people?

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These questions lead one to wonder about the purpose ascribed to the *Gacaca* process and in particular to the sanctions provided for by the law. Is raising the question of the feasibility of Community Service not then also raising the question of the need for an appreciable reconsideration of the *Gacaca* process, which is today above all a retributive system, i.e. centred on the pronouncement of a sentence? Would it not be more appropriate to give a more significant place to the victim and to make *Gacaca* a “restorative” justice?

The concept of restorative justice states that justice’s first objective is to repair the wrong done. The emphasis is put on the damage caused and the means of repairing it, and then “*the principal function of the social reaction is neither to punish, nor to handle or protect, but rather to create conditions so that reparation and/or a reasonable compensation of the damages can be carried out.*”<sup>217</sup> The needs of the victim are thus at the heart of the legal process.

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<sup>216</sup> For an outline of the current challenges posed by the *Gacaca* process, cf. especially PRI, *Information gathering during the national phase*, London/Kigali, June 2006, and “Summary”.

<sup>217</sup> Lode Walgrave, *Restorative Justice: in search of a theory and a programme*, Criminology, Volume 32, n°1, 1999. (Original text in French, translation by PRI).

In practical terms restoration can take various forms: restitution, compensation, apologies. Many scholars insist on the importance of mediation or a direct face-to-face discussion between the victim and the offender to define the type of reparation for the damage. The “agreements”, which are sometimes reached in the context of settling files of the 3<sup>rd</sup> Category or of infractions against goods, are *a priori* a very interesting example of restorative justice.

The survivors’ main preoccupation is physical and material security. The questions of compensation are among their first claims in the area of genocide justice-rendering because most of them live in poverty and they all agree that there is no sentence that can measure up to the crime of genocide, and nothing will bring their loved ones back. Of course, punishment of the guilty also remains a request from the survivors. For most of them Community Service alone does not fulfil this function of punishment. Yet the imprisonment of all the criminals of Category 2 (as this category is defined today), as envisaged by the law, seems -- given the figures -- impossible to implement without leading to prison overpopulation. This in turn would be a violation of the prisoners’ most basic human rights.

To insist on the restorative aspect of Community Service and the *Gacaca* process in general would thus make it possible to address the major concern of the survivors who do not feel included in the big decisions made about *Gacaca*. This would perhaps help them accept the alleviation of the sentences administered to the genocide perpetrators of the 2<sup>nd</sup> Category, especially if Community Service were to become a main sentence. In this specific context, where national reconciliation should be the objective, and where the management of criminals is extremely problematic due to their number, the punitive aspect of justice and the very heavy sentences cannot be a solution. Indeed, the majority of survivors are aware of this, even if it often proves to be extremely difficult for them to accept.

The question of the sanction for the great majority of convicts belonging to Category 2 will have to be raised again. One of the means of transforming the *Gacaca* would be to set up an effective system of compensation adapted to the resources of the country. This system would give greater priority to the victims without leaving the survivors with the feeling of impunity, thus supporting social cohesion. It is only upon this condition that one can imagine finding the adherence of the survivors to a necessary reform towards a less retributive mechanism.

This gamble must be taken. One could even venture to say that on purely economic grounds, such compensation for the survivors would cost the Rwandan State less than all the penitentiary policies or support for Community Service do. This is, of course, not counting all the advantages, which would follow in terms of reconciliation. We have already witnessed such political choices with the two waves of releases of defendants in 2003 and 2005. In this case the benefits were clear, especially in the area of peaceful coexistence. Why not reinforce the impact of such a measure by transforming today the very nature of the *Gacaca* system and turn it into a restorative mechanism?