



**Monitoring and Research Report on the Gacaca:
Testimonies and evidence in the Gacaca Courts**

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Summary

When Rwanda's national authorities adopted the Gacaca procedure as the means to settle conflicts arising out of the genocide, they decided to combine two principles: "sanction" and "reconciliation", thus combating impunity and fostering the search for the truth, two factors that would promote reconciliation.

In the view of those who were in charge of the Gacaca process, one persistent area of concern was the time it would take to settle the post-genocide conflict. This has led to frequent amendments and instructions during the last two years (2005-2007) intended to reduce the sentences and speed up the trials.

Voluntary and wide scale participation by the population which was to give evidence of what it had done, suffered, seen or heard was a prerequisite if the Gacaca procedure was to achieve its aims of ending impunity, establishing the truth and promoting reconciliation amongst the people of Rwanda.

It is a fact that 14 years after the genocide, the only reliable evidence before the Gacaca Judges or *Inyangamugayo* is the evidence given by victims, defendants charged with genocide or other crimes against humanity charges and the population at large.

Now that this process is nearing its official completion, planned for the first quarter of 2008, we have been looking more closely at the way this evidence, which lies at the heart of Gacaca, has been dealt with. We have listened to what judges, survivors and defendants themselves have had to say, for the way in which the contents of the evidence is treated, its origins and reliability are tested within the Gacaca procedure, make it possible to draw a comparison between this justice and the objectives it pursues.

We also examined how two criteria, to wit the time required to establish the truth and the clear political desire to dispose of the genocide conflict quickly, can be squared without putting at risk the justice that is handed down, the credibility of the process itself or the realisation of the stated objectives, namely the fight against impunity and, above all, national reconciliation.

From our trial observations and interviews with all groups of the population, who are the main actors in this process, it is clear that lack of time and insufficient analysis of the evidence collected, have resulted in the not making sufficient use of the evidence before them.

Today, the main problem is that the population no longer trusts the system and feels insecure when confronted with a justice tool which on occasions fails to establish the facts, punish the guilty and clear the innocent.

Indeed, according to our research witnesses feel they can not speak freely before the Gacaca Courts and their statements often become the subject of various deals and out of court agreements. And yet, these witness statements are the only evidence before the *Inyangamugayo*, who must decide on the guilt or innocence of a person charged with a genocide offence or a crime against humanity. This state of affairs is simply the result of the passing of time which has destroyed most of the exhibits. Today, the various actors in the Gacaca procedure feel that the live evidence does not always reflect the truth; instead it is the outcome of deals between the defendants, or between defendants and survivors or again between defendants, survivors and the *Inyangamugayo*.

It has also become clear that more weight is attached to some live evidence than to other and if it turns out to be perjury, it will go unpunished and will thus protect at least part of the population.

All these facts are translated into a noticeable drop in the population's attendance rates at Gacaca trials. People are disappointed and even lose interest.

A further issue is the independence and the competence of the *Inyangamugayo*. These lay judges have received little training, they are subject to pressure from various quarters, including officials who are in charge of the procedure and this is reflected in the quality and the composure of the justice that is handed down in the Gacaca Courts. These various factors bear on the trial process and render the people, who respect and fear officials, rather vulnerable and powerless.

We have also observed corruption amongst the various actors and although it is difficult to prove, the rumour cannot be dismissed for it had a profound effect on the Gacaca process. There are many reasons for this evil: there is great poverty amongst the population, the accused need to recover their status in the community and avoid the shame of going to prison. The *Inyangamugayo* have not received the kind of training that would enable them to remain independent and resist the huge pressure in respect of time and results to be achieved.

The net result is that there is a risk that the process is perverted and the people no longer believe in it.

It is also worth observing that although there are frequent references to the end of the Gacaca process in political speeches, new charges continue to be brought and part of the population continues to feel vulnerable. Similarly, the number of applications for trial review continues to rise and often lead to yet more changes to the law and this leads persons charged with the same offence(s) being treated differently.

So the Gacaca process has not yet been completed and the coming months provide the opportunity to improve the quality of the justice handed down and to regain a degree of trust amongst the people. It is not yet too late for the authorities responsible for the trial process to take on board the challenge and furnish the *Inyangamugayo* with the means and the opportunity to dispense impartial justice.

Glossary

G

Gacaca: Literally “lawn”: a traditional way of settling conflicts between neighbours. By extension, now the name for the new, popular courts that have been hearing genocide litigation since 2005. They have the power to try defendants charged with Category 2 and 3 offences of genocide and other crimes against humanity. The current reform aims to extend their power so that they can try part of the Category 1 offences.

I

Interahamwe: Literally, “those who work together”, the militia of the National Revolutionary Movement for development (MRND).

Inyangamugayo: Literally, “upright person”; a Gacaca judge.

Ibuka: Literally, “remember”. At present the biggest association of victim-survivors of the Rwandan genocide. Its purpose is to defend the rights and interests of the survivors of the genocide.

Imigudu: Village, agglomeration. Communities that used to live spread out over the hills, living together since 1995.

K

Kinyarwanda: The language spoken in Rwanda. The official language, together with English and French.

N

Nyumbakumi: Term referring both to an administrative unit comprising ten houses and to the person in charge of such a unit.

T

“Tigiste”: A person sentenced to serve a community sentence known as “*TIG*”, an alternative to a custodial sentence.

U

Umuganda: Community duties carried out across the country and organised at Cell level. At present they are carried out every last Saturday of the month.

Umudugudu: The smallest administrative unit which replaces the former *Nyumbakumi* which comprised ten houses. The Umugudugu can comprise more than 10 households.

List of abbreviations

AVEGA	: Association of Widows of the April 1994 Genocide
ASF	: <i>Avocats sans frontières</i> (Advocates without borders)
CNDP	: National Commission for the Rights of the Person
FARG	: <i>Fonds d'Assistance pour les Rescapés du Génocide</i> . An abbreviation for the “National Funds for assisting the most needy victims of the genocide and the massacres that took place in Rwanda between 1 October 1990 and 31 December 1994”.
LDGL	: <i>Ligue pour la Défense des Droits de l'Homme dans les régions des Grands Lacs</i> . The League for the Defence of Human Rights in the Great Lakes Region.
PRI	: Penal Reform International
ROJG	: Gacaca observations reports
SNJG	: <i>Service national des juridictions Gacaca</i> . The National Gacaca Court Service.
TIG	: <i>Travaux d'intérêt général</i> . An alternative punishment to a custodial sentence. Referred to in the English report as “TIG” and those serving a TIG as “TIGistes”

Note to the Reader

The elements presented in this report were collected between August 2007 and January 2008. The report itself was written before the publication of Organic Law Nr. 13/2008 of 19 May 2008 amending and expanding Organic Law Nr 16/2004 of 19 June 2004 establishing the organisation, competence and functioning of Gacaca Courts charged with the prosecution and trying of the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994 as amended and complemented up to this date (Official Journal of 1 June 2008). All references to “the new Organic Bill” or “the future Gacaca Act” therefore should be read as references to Organic Law 13/2008, which at the time of writing this report had not yet been published.

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Methodology

Since 2001, PRI's has been researching how the Gacaca Courts have been dealing with the conflicts arising out of the genocide in order to furnish the national authorities in charge of this process, and in particular the National Gacaca Court Service (the SNJG), with objective information so as to support the SNJG in designing and operating these courts.

The subject of this Report was identified and retained by the whole PRI research team which as from July 2007 focussed its research particularly on the treatment of live evidence and the fact finding process in the Gacaca Courts.

PRI adopted the “research-action” approach, that is to say a form of social research which aims to achieve action by accompanying the process. PRI's research focussed on collecting, analysing and contextualising information on the views and the practices of the actors in the Gacaca process, the actors being the survivors, the witnesses, the accused, the judges and ultimately the population in general.

To do so, we adopted a “qualitative and participatory approach”.¹ We attended and observed trials before the Gacaca Courts both at Cell and Sector levels. A team of 7 local interviewers spoke with members of the population in those locations where they conducted their observations and three basic research assistants in Kigali regularly carry out field work. Each of them was assisted by a research coordinator and two deputy coordinators and described and analysed the information collected. The information was then compiled, compared, cross-referenced and discussed by the whole team so as to enable us to draft our analytical and thematic reports. The team was completed by five translators and three typists who translated and transcribed the cassettes and the reports submitted by our investigators.

The vast majority of the interviews were carried out with individual persons. The questions were formulated as semi-closed questions. But the only way to discover the population's views was to go into a degree of detail which is only possible through open questions on subjects that had been chosen in advance.

However, it should be borne in mind that the excerpts included in this report reflect what people said during our meetings. Such statements do not necessarily reflect the views held generally by the group to which the maker of that statement belongs. So an *Inyangamugayo* or a survivor quoted within the context of this research does not speak on behalf of all or all survivors. But where we quote him or her, it is because his or her statement reflects a strong trend shown elsewhere within the information collected in the field in the course of this research.

In our view, it is equally important to emphasize that even though the law and the instructions for training the actors in the Gacaca process are drafted at national level, the way in which the Gacaca hearings work and the trials held before the *Inyangamugayo* are basically meshed into the local social context and the local genocide events, which were not the same throughout the whole territory.

Once the preliminary results became available, they were reviewed and corrected by the PRI researchers. Interpretation and contents analysis formed the principal basis for their further treatment. The ensuing report was then reviewed by experts or persons whose experience in this

¹ D.J. GREENWOOD and M. Leven, *Introduction to Action Research. Social research for Social Change.*, SAGE Publications, 1998.

field is well-established and who had no connection with the team.

The information used

This Report is based on a series of reports on trial observations in Gacaca Courts as well as interviews carried out with population groups from all the provinces. The interviews, which took place over a period of 7 months (August 2007 - January 2008), focussed in particular on live evidence before the Gacaca Courts and any possible issues arising out of corruption amongst various actors in this procedure.

There were 178 interviews in all and they comprised of:

- 55 *Inyangamugayo*
- 13 discharged defendants
- 12 convicted persons
- 47 members of the population
- 32 survivors
- 5 local officials and Gacaca coordinators
- 10 members of associations
- 4 persons serving a TIG

Moreover, 164 trial observation reports were drafted over the same period and form the raw material of this Report.

Geographical sampling (cf. Table in Annex 3)

The references used

Excerpts from interviews or trial observation reports were taken from the working documents in which the information collected was compiled, either as part of observing a particular situation, or as part of what the interviewee said. So when we use the expression “*according to our observations*”, we are referring to one or several elements which have stood out frequently from the information collected.

The abbreviation “ROJG” refers to Gacaca Trial Observation Reports drafted by our observers. This is followed by the date and the place Province/District/Sector. The Gacaca Courts are identified by the names they used to have prior to the 2005 administrative reforms, as provided by Art. 2 of Organic Law nr. 28/2006 of 27 June 2006² amending and complementing Organic Law Nr. 16/2004³. Our interviewees remain anonymous, apart from a reference to their status, even the place they come from or live in is left out. This is why, on occasions, any reference to the Cell concerned has been omitted as well.

² Organic law Nr. 29/2005 of 31 December 2005 on the organization of the administrative units of the Republic of Rwanda, hereinafter “Organic Law Nr. 29/2005”.

³ Organic Law Nr. 28/2006 of 27 June 2006, published in the Official Journal of 12 July 2006, hereinafter “Organic Law 28/2006”.

The limits to this research

One reservation must be mentioned and that is the potential bias generated by the translation of the documents from Kinyarwanda into French. This risk has been reduced as much as possible by having the original translation from Kinyarwanda into French verified by a second translator who compared the originals and their translations.

As mentioned in our earlier reports, this study in no way claims to be exhaustive, nor does it pretend that any general conclusions can be drawn from its observations or conclusions. The outcome of this research will no doubt meet with criticism – it can be complemented and cross referenced with findings made by other observers. Despite this reservation, the results presented in this report show there are strong and undeniable trends within the various groups of society.

Introduction

Initially it was announced that the Gacaca trials would officially be completed at the end of December 2007⁴, but this has now been revised to a later date, the end of the first quarter of 2008. As of today, it is not certain when the Gacaca trials will come to an end, for it is very probable that a new law will be passed in 2008 extending the scope of the Gacaca Courts' competence in that they will then be able to try some Category 1 cases. That raises the question when the Gacaca Courts will really have finished their work. Whatever the case, if we accept that the Gacaca justice system started nationwide in January 2005, when the 9008 Gacaca Cell Courts began to collect the information that made it possible to bring charges, the entire process will have taken three years.

1. Historical recapitulation

In order to attempt to deal with the enormous backlog in the hearing of cases arising out of the 1994 genocide, Organic Law 40/2000 of 26/01/2001 introduced the Gacaca Courts, which were modelled on the traditional dispute resolution procedure called Gacaca.⁵ In November 2002, 751 Cell Gacaca Courts, across 118 sectors in the country, began their investigations during the "pilot" stage of the process. It was not before January 2005 that the initial information collection stage of the process went nationwide.

The first trials only began on 10 March 2005, when the first prosecution cases were ready to be brought following the outcome of the "pilot" stage. It was not before 15 July 2006 that the trial stage of the Gacaca process could go nationwide. Today, 1545 Sector Gacaca Courts and 1545 Appeal Courts⁶ have been operational and given their judgments under Organic Law 16/2004 on the Gacaca Justice system.⁷

In order to speed up the hearing of conflicts arising from the genocide, the 2004 Gacaca Law was amended in 2007 which, in its Art.1 provides that "A Gacaca Court may have more than one Bench [Translator's note: or "Panel"] where necessary".⁸ So as from that date, the number of Gacaca panels was doubled and 3 348 Sector Gacaca Courts and 1 957 Gacaca Appeal Courts became operational.

At the same time, Category 1 and 2 offences were extensively redefined and these days, Category 2 now also includes, on top of the offenders already stated, well known killers, perpetrators of torture and other degrading acts on dead bodies,⁹ who until then, had to be tried before the

⁴ Source: the SNJG, activities progress meeting pf 2 October 2007; cf. also <http://www/inkiko-Gacaca.gov.rw/PPT/Peunion%2004-10-2007%20final.pps#291,14,Slide14>.

⁵ Official Journal Nr. 6 of 15 March 2001.

⁶ Source: SNJG, Op. cit., cf. also Analytical report Nr. 3, ASF, Oct 2006-April 2007, p. 11.

⁷ Official Journal of the Republic of Rwanda, Special Issue of 19 June 2004.

⁸ Organic Law Nr. 10/2007 of 1 March 2007 modifying and complementing Organic Law Nr. 16/ 2004 of 19/6/2004, previously cited.

⁹ Art. 11 of Organic Law 10/2007 amends Category 2 offences to include (in the official English translation):
"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 characterized him or her in the killings or excessive wickedness with which they were carried out, together with his or her accomplices;

national courts as these offences were Category 1 offences. Having been moved to Category 2, these former Category 1 offences are now triable before the Sector Gacaca Courts whose competence, as a result, was considerably increased. It may be useful to remember that the Organic Law of 30 August 1996 had created 4 “Categories” of offences for the purpose of classifying those who were accused of crimes of genocide or other crimes against humanity, depending on their role in the planning and execution of the 1994 tragedy. Organic Law 16/2004 of 19 June 2004 reclassified the offences and reduced the number of available categories to 3.¹⁰ Currently, only the last two categories of offences can be tried by the Gacaca Courts. The sentence is determined by the Category in which the defendant has been classified.

According to the figures published by the SNJG on 31 May 2007,¹¹ 108 732 people were tried for genocide crimes and crimes against humanity: 100 507 defendants appeared before the Gacaca Courts, i.e. over 92% of the total outstanding national case load. The information provided varies enormously as fresh charges continue to be brought and the SNJG appears to be unable to supply more detailed figures. As per 1 October 2007, 90% of those awaiting trial for Category 2 charges were supposed to have been heard and 10% were supposed to have appealed.¹²

Throughout 2007, the SNJG highlighted the need to complete the process before the end of the year but it did also indicate that unfinished cases could be completed before the end of the first quarter of 2008.¹³

Furthermore, the Organic Law 16/2004¹⁴ establishing the competence of the Gacaca Courts, is likely to be amended once again in the course of 2008. That amendment will aim to extend the competence of the Gacaca Courts¹⁵ to try some Category 1 offenders, in particular rapists, whilst reserving the trial of those who planned the genocide and other highly placed officials to the national courts.¹⁶

2. the person who committed acts of torture against others, even though they did not result into death, together with his or her accomplices;

3. the person who committed dehumanizing acts on a dead body, together with his or her accomplices;

4. the person whose criminal acts or criminal participation place among 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 acts of serious attacks with intention to them, but who did not attain his or her objective, together with his or her accomplices.”

¹⁰ Cf. Art. 2 of Organic Law Nr. 08/96 of 30 August 1996 and Art. 51 of Organic Law Nr. 16/2004.

¹¹ Meeting at the SNJG with the Executive Secretary of the SNJG and the actors in the Gacaca process on 3 July 2007.

¹² Meeting with the Executive Secretary of the SNJG and the actors in the Gacaca process on 4 October 2007.

¹³ *“Above all, let us avoid stress. These were forecasts, if we find (at the end of the year) that we need more time, we will continue”.* Observation made by Mrs. Domitilla MUKANTAGANZWA, the Executive Secretary to the SNJG on 12 December 2007 (Press agency Hirondelle).

¹⁴ This law had already been amended by Organic Law Nr. 10/2007, already cited.

¹⁵ This report and the facts it contains were produced before **Organic Law 13/2008 of 19 May 2008** amending and complementing Organic Law Nr. 16/2004 was published. See our Note to the Reader on page 7.

¹⁶ According to a representative of the SNJG during a meeting organized by the National Commission on the Rights of the Person in Kigali on 18 December 2007. This information has been confirmed by the Executive Secretary of the SNJG at a meeting in her office on 11 March 2008.

There would seem to be a degree of incompatibility between, on the one hand, the date on which the Gacaca process should have been completed in the first quarter of 2008 and on the other, the continuing activity in those same Courts which will now be competent not only to try Category 1 offenders, but also those who have been freshly charged as a result of investigations carried out in 2007 as well as those who appeal from the national trial courts, since those appeals will now also have to be heard the Gacaca Courts.

2. The purpose of this Report

The Gacaca Courts as a means of resolving the conflicts arising from the 1994 genocide were created in response to the fact that the national courts could no longer cope with the enormous backlog in this area. Their creation was launched in the form of a call to all the members of Rwanda's society. Wherever mass killings had taken place, everyone, be they alleged offenders, victims, survivors, witnesses or members of the community, all were called to tell what they did, suffered, saw or heard. In that sense, the duty to give evidence had become a moral duty as expressed in the Preamble to the Organic Law of 26 January 2001 creating the Gacaca Courts:¹⁷ “No one shall have the right to shirk this duty for whatever reason”. Evidence is not only required for finding the truth, it also seems to be the only way to offer the whole population the opportunity to participate in a unique judicial process which is supposed to contribute to “reconciliation and justice in Rwanda, the permanent removal of a culture of impunity (...), the rehabilitation of Rwanda's society which has been devastated up by bad leaders who incited the population to exterminate part of that society”.¹⁸ The central pillar of the Gacaca justice system is the participation by the members of the community who are individually and collectively involved in this process, a process that will stand or fall with that participation.

In this context, there are only two sources of essential evidence concerning the genocide and related criminal liability: the guilty plea and confession by the accused¹⁹ and the population's own evidence. It is on the basis of the evidence before the court that an accused person is either convicted or acquitted. The testimonies and statements given by members of the population are in fact the only forms of evidence available to the *Inyangamugayo* who must rely on it when deciding the guilt or innocence of each accused.

The purpose of this report is to analyse the mechanism for producing, treating and validating witness statements made before the Gacaca Courts and to evaluate their compliance with the relevant legal provisions; it is also to make an inventory of any problems that the *Inyangamugayo* have to deal with when trying to establish what constitutes evidence.²⁰ We believe that such an inventory would be useful at this final stage of a process whose prime purpose was to try those who are charged with genocide crimes and other crimes against humanity committed in 1994 so as to end the culture of impunity, a feature that has dominated Rwanda's society. So it is important to ensure, inasmuch as this is possible, that the historical truth is translated into

¹⁷ Organic Law Nr. 40/2000 of 21 January 2001 creating the Gacaca Courts and the organization of the prosecution of genocide crimes and other crimes against humanity committed between 1 October 1990 and 31 December 1994, hereinafter “Organic law 40/2000”.

¹⁸ Ibid.

¹⁹ “The corner stone of Gacaca Justice”, a Report y PRI, *The guilty plea procedure, cornerstone of the Rwandan justice system*, January 2003.

²⁰ On the issue of witness evidence and admissibility before the Gacaca Courts, see LIPRODHOR, *Evidence in genocide trials: will the creation of Gacaca Courts be the panacea?* June 2000; LIPRODHOR, *The problems arising from information and witness evidence before the Gacaca Courts*, Dec 2006.

judicial truth. Witness statements and evidential consistence are important not just for the parties in a trial, that is to say, the accused and the victims,²¹ the Gacaca hearings are intended to help the entire Rwandan society to come to terms with the genocide trauma. That is why we believe it is essential to analyse the way in which witnesses, who, to quote J. Bentham, are “the eyes and the ears of Justice”,²² give their evidence, how the *Inyangamugayo* accept or reject that evidence when they test the charges that have been brought before them.

For this purpose, throughout its observation work, and in particular during the last six months, PRI carried out systematic research into the way in which live and other evidence is received in the Gacaca Courts. Having analysed interviews and field observations of all of the actors in the Gacaca process, we have been able to flash up the serious problems confronting the *Inyangamugayo* when they have to deal with live and other evidence in the course of the painful 1994 genocide litigation (Part 1). But the ordinary people too are disappointed or frustrated because they feel that the truth will not always out in the Gacaca Courts. They feel particularly strongly about the corruption and the steady misuse of a system that appears to have been diverted from its primary purpose and is now used for settling private disputes (Part 2).

The purpose of this Report is to give an account of our observations, of what we heard and what we analysed and to can give the floor to the “witness-actors” whom we heard in the course of our research as well as to assist the authorities who are in charge of this process to introduce the final adjustments to a process that is drawing to its end.

²¹ For the time being, the Public Prosecutor is not represented before the Gacaca Courts. However, it would appear that this position may change as a result of the bill that is currently being discussed, particularly in rape cases.

²² J. BENTHAM, *Traité des preuves*, I, Nr. 93. (Treatise on Judicial Evidence).

PART 1 – LIVE EVIDENCE IN THE GACACA COURTS

Faced with the huge bulk of litigation arising from the 1990-1994 genocide,²³ the Rwandan government decided in 2001 to invite the people's courts, known as the *Gacaca* Courts to hear these cases. These courts are made up of *Inyangamugayo*, «venerable» or “upright” lay judges who come from the people, have been elected by the people and sit together with a General Assembly of a Cell which is made up from the same people.

For this «judicial» way of resolving the genocide litigation to operate effectively, it needs to be able to rely on voluntary and large-scale participation by the population that is called to give evidence about what it has done, suffered, seen or heard. Fourteen years after the events, a large part of the evidence on which the *Inyangamugayo* must rely for the purposes of the judicial hearing which they chair, consists of the evidence given by the accused persons, the victims and the population in general. It therefore falls upon the *Inyangamugayo* to preside over a trial that ought to enable them to establish each person's individual liability in respect of both the facts and the criminal intent and where an accused admits to his guilt, to evaluate whether the facts to which he confesses do indeed constitute an offence or offences as defined by the law and whether the confession is voluntary and complete.²⁴

The research carried out by PRI focuses on the extreme difficulties with which the *Inyangamugayo* are faced in their judicial work. They have to decide whether the live witness evidence in the Gacaca courts is reliable, sometimes give judgment when no live witnesses have attended, because the latter have either disappeared or refuse to come to court, the plea bargaining and other forms of negotiations pursued by the various actors in the process, the degree of influence exercised by some of the leading personalities when faced with vulnerable parties in the proceedings, these are all elements that take on an enormous importance given the initial purposes which were to have been the search for the truth, the fight against impunity and national reconciliation.

On a different point, those responsible for the Gacaca process have kept the length of this litigation to the forefront of their minds, as more than 10 years have passed since the events took place. Faced with the urgent need to relieve the serious prison overcrowding, the population's weariness, the desire to end this painful, unbearable and costly litigation, the authorities have put the courts under pressure to speed up the hearings and complete them as soon as possible, i.e. at the end of 2007.

« (...) It was the highest authorities who launched this idea that the trial should be completed by the end of 2007. It was an order from above. In particular from the Prime Minister, so it had to be implemented. »²⁵

²³ Unlike the temporary competence granted to the International Criminal Tribunal for Rwanda at Arusha, which dealt with the period from 7 April until 31 December 1994, Rwanda's national courts are competent to deal with a longer period of time covering crimes committed between 1990 and the end of 1994.

²⁴ Art. 64 of Organic Law Nr. 16/2004.

²⁵ Minutes of the meeting: Observation by the Executive Secretary of the SNJG during a meeting on 14 September 2007 with Gacaca judges and Cell and Sector coordinators for the whole of the Gatsibo district.

« The purpose of the meeting between the Inyangamugayo and the local personalities with the Executive Secretary of the SNJG was to see if the Gacaca process could be speeded up and completed before the end of 2007 »²⁶

The requirement to speed up the process would seem to have been retained by the Executive Secretary who did not fail to criticize some sectors, such as the Muganza Sector, where according to current information there are still a great numbers of trials pending. She reminded the authorities of this sector of the need *« to make every effort to improve the speed of the hearings before them »*.²⁷

The issue here is not whether this desire to end this litigation as soon as possible is well-founded or not, but it may be useful to point out that to underline the need for speed at the expense of the principles of an all parties hearing and the presumption of innocence, is not without its dangers in that the people may cease to subscribe to the plan whose primary purpose was to achieve reconciliation in Rwanda.²⁸

It is therefore important that we should examine the way in which witness evidence is collected and tested in the Gacaca Courts (I). We will then analyse a number of factors which prevent these courts from operating impartially and in particular the lack of independence on the part of the *Inyangamugayo* (II) who have to deal with situations that prevent them from fulfilling their judicial functions adequately.

I. LIVE WITNESS EVIDENCE BEFORE THE GACACA COURTS - THE PROCEDURE

Although one should always bear in mind the specific social framework within which the Gacaca Courts were created, it is essential to remember that the Gacaca procedure is a judicial procedure which may impose criminal sanctions for individual criminal liability. Before the Gacaca Courts, individuals charged with genocide crimes or crimes against humanity will admit to their guilt, defend themselves and be liable to punishment for acts they have committed. Here, there are two types of discourse: the accuser's, supported by the victims and the escapees, and the accused's. What the various actors say in respect of a sequence of events will inform the court on the part played by such or such an individual in the commission of the offences with which he or she has been charged.

Fourteen years after the events, the only direct evidence upon which the court can rely in its effort to dispense justice lies in the statements – in the widest sense of the term – made by the people. They form the main bulk or the cornerstone of the Gacaca procedure.²⁹ In practically all cases, only witness evidence and information given by the population can lead to the discovery of criminal acts and the establishment of liability, because so much of the tangible evidence has

²⁶ PRI interview with the President of a Gacaca Court of Appeal, 25 September 2007, nr. 1761.

²⁷ Minutes of the meeting: Observation by the Executive Secretary of the SNJG during a meeting on 2 October 2007 with Gacaca judges and the authorities in the Rusizi district.

²⁸ *“These speedier trials prevent the cross examination of witnesses. There is the proverb that “a rolling stone gathers no moss”, a very wise observation, whoever made it. If you speed up your work, you can't produce a good job”*. PRI interview with a survivor, 8 October 2007, nr. 1783.

²⁹ *Analytical Report nr. 3*, ASF, *The trial stage*, October 2006-April 2007, p. 43.

disappeared with the passing of time. Organic Law 16/2004 sets out the procedure for taking evidence from various actors. It would therefore be useful to look at this text before (A) examining the various types of witnesses who appear before the Gacaca Courts, (B) the manner in which they give their evidence, (C) the problems the courts may experience in taking the witness evidence and in particular the lack of witness statements and (D) the way in which this evidence is dealt with.

A. The provisions of Organic Law 16/2004

Art. 64.6 of Organic Law 16/2004 provides that « *Any person who appears as a witness must take the oath and tell the truth...* ». That means that only persons who appear in court as witnesses may and must take the oath and that their evidence will be considered to be witness evidence, with all that implies from a legal perspective. Anyone appearing as a witness and whose evidence is formalised through the taking of the oath, may therefore, if he or she fails to mention something, or lies, be found guilty of refusing to give evidence or perjury.³⁰ In other words, the provisions confer a genuine status to the person giving the evidence and enable the court to consider the information conveyed in these statements and to decide whether the defendant is guilty or innocent.

Given that the *Inyangamugayo* are fairly untrained, they find it difficult indeed to handle and apply both the concept of a « witness » within the framework of a Gacaca hearing and its consequences. In many courts, people intervene, comment or make allegations that may influence the Panel which may fail to scrutinize, establish personal details or their status in the proceedings.

*« When such outbursts occur spontaneously, the Panel does not differentiate between a statement made under oath and one made spontaneously ».*³¹

As a result of the preponderance of live evidence before the Gacaca Courts and its impact, the Government created a Witness Protection Bureau in 2006. By the end of 2006, this Bureau had recorded 26 complaints. By the end of 2007, this number had grown to more than 1000 complaints and requests for protection.³² This shows not only the Bureau's usefulness, it also reflects the difficulties and the fears experienced by those members of the population who, by speaking out, wish to participate in the establishment of the truth.

It needs to be said that there is no such instrument as a « Witness Protection Act », even though Art. 30 of Law 16/2004 provides that anyone who « *bears or seeks to bear pressure upon any witness or member of the Gacaca Court* » shall be liable to a custodial sentence of no more than one year.

If a law could be passed to protect witnesses, as a Committee of the Rwandan Senate has been calling for, it would be easier for the police and the judicial authorities to protect the safety of witnesses. That would make it easier not only for those who know but dare not speak up, to tell what they know, but also for ensuring that evidence is obtained will comply with the rules.

³⁰ Art. 29 and 32 of Organic Law 16/2004.

³¹ *Half yearly analytical report*, ASF, *The Trial Stage*, March – September 2005, p.16.

³² Statistics on the problems collected by the Witness Protection Commission (General Prosecutor's Office), translated by PRI.

B. Who gives evidence, how and why?

1. The victims who survived

Evidence from witnesses who escaped is fundamental to the establishment of the truth and of the guilt or innocence of those who stand accused. In certain trials and before certain courts victims have been known to intervene actively by charging or discharge those who have been accused.

However, the latest amendment to the Law on Sentences and their Enforcement is perceived by the victims to be let-out option, given the scale and the seriousness of the crimes that were committed. This feeling of resentment has been clearly expressed and the net result is that victims are far less likely to travel to observe and participate in the trials.

« The March 2007 amendment to the Gacaca Law had a very discouraging effect on the victims of the genocide, who fail to see what benefits it brings, and in particular what material benefits. The victims, who join the proceedings alongside the prosecution, complain that the law is in the defendant's favour and that they themselves have been disregarded. Moreover, those who escaped Nyange, now live in Kigali, a long way away from the court. They complain that they have to turn up at trials that are of no relevance to them, since the accused will be acquitted anyway.»³³

« One observes that the witnesses are tired of giving evidence. When you compare participation in the early Gacaca trials and now, and you realize that people are tired of participating in the Gacaca. During informal discussions, without the earshot of the Gacaca, some people tell me that they don't see the point of giving live evidence, because the sentences that are handed down are so much lighter, or the defendants are released after their conviction and that TIG orders are not enforced either. So they get tired of participating in the Gacaca because of the measures introduced at every new amendment of the Gacaca law.»³⁴

The overall impression from all the interviews is that many victims express the feeling of frustration and dissatisfaction when faced with a justice system which in their eyes favours those accused of genocide crimes and crimes against humanity over the victims themselves. So in a very great number of instances, the victims who survived no longer come to court and by their absence from the trial, show their lack of interest and disown a justice system that treats criminals better than the victims.

« This lack of interest is particularly common amongst the survivors who feel they have been removed from Gacaca justice by the new law. »³⁵

« This is the inconceivable forgiveness... But what I can say about that forgiveness is that it has been granted by the State. We the victims do not benefit from it... Just look at this TIG sentence, that is inconceivable.... You see a convicted criminal go home after his conviction whilst awaiting to serve his TIG order instead of directly going to prison so as to face the consequences of his guilt. When he does carry out a TIG order, he completes a day's work, then goes home, chats with his wife and his children and looks

³³ (Unrecorded) PRI interview with a Sector agent, 3 October 2007.

³⁴ PRI interview with a President of a Sector General Assembly, 26 September 2007, nr. 1765.

³⁵ (Unrecorded) PRI interview with a President of a Sector Gacaca Court, 13 October 2007.

after for his cov.... We see this as forgiveness granted by the State and the problem for us is that it doesn't bring us any benefit.»³⁶

But there are other reasons too why witnesses do not come forward to give evidence of what they have seen or heard: survivors who have given evidence³⁷ are afraid of reprisals by the accused or their families, they may be murdered.

« That really puts the witnesses off... They have been bitterly disappointed by the State's failure to send those against whom they have given evidence to prison. People come to tell us that they do not want to have further problems with their neighbours because of having given evidence against them, particularly when they are then not sent to prison.... That is why they don't turn up, when they are called to give evidence for the prosecution. In my view, there are two reasons why people don't turn up. Firstly, the law has been amended and the guilty are no longer sent to prison. Secondly, the inhabitants believe that most of the refugees are dead. »³⁸

« Some survivors refuse to give evidence in court because they are afraid that this will result in a conviction and that the convicted person will then be released. The reason why these survivors act like this is that they don't want any misunderstandings that would lead to conflict with the convicted person after his/ her release. »³⁹

« I have been attending Gacaca trials here at home on a regular basis. At first, we had great expectations of these Gacaca trials, but personally, I have been disappointed. We thought these hearings might lead to reconciliation between ourselves and those who caused our grief, but the latter were freed by the Gacaca Courts. So we are in constant conflict with them. The accused don't tell the truth, on the contrary, they continue to assault us with their lies by treating us as enemies. »⁴⁰

« The reduction in the sentences has led to further trauma for the victims and they no longer have the courage to participate in the Gacaca process. »⁴¹

The disappointment of the survivors is further aggravated by the fact that they feel extremely vulnerable and this often leads them to conclude that their evidence doesn't serve any purpose.

« Here, there are fewer survivors than non-survivors. And those who committed the crimes are also more numerous than us. Inevitably, more weight is attached to witness statements given by the majority, so the survivor who gives evidence of facts that he has directly observed, is disregarded. »⁴²

³⁶ PRI interview with an *Inyangamugayo*, a survivor,, 9 August 2007, nr. 1695.

³⁷ According to the Witness Protection Commission, 25 witnesses have been murdered and there were a further 20 attempted murders, Statistics 2007; cf. also LIPRODHOR, *Issues arising from information given to and statements made to Gacaca Courts*, Dec 2006, p. 60.

³⁸ Group interview with two *Inyangamugayo*, 20 September 2007, nr. 1756.

³⁹ Interview with a survivor, 8 October 2007, nr. 1783.

⁴⁰ Interview with a survivor, 18 October 2007, nr. 1792.

⁴¹ Report of a discussion with at President of a Sector Gacaca Court, Kigali City, 13 October 2007.

⁴² (Unrecorded) PRI interview with a survivor, 18 October 2007.

The victims of the political decisions that shape the Gacaca process, do not understand these decisions which are usually taken without them being involved. That feeling of being left out becomes a sociological barrier to the establishment of the truth and so it is not unusual to hear them refer in various ways to evidence bargaining, whether that is evidence for the prosecution or the defence.⁴³ Similarly, it is possible to bring charges that are very often unsubstantiated because the victims, who were in hiding whilst the offences were being committed, did not witness them with their own eyes, yet they are the only prosecution witness at the hearing. Feeling totally helpless, exposed to reprisals and insufficiently protected by the State, some victims use the only means available to them to defend themselves and that is an attempt to remove certain persons from the hills by bringing unfounded allegations against them.

*« This is yet another obstacle to our activities. When we hear the evidence of some survivors, we realize that that person is telling lies. When that happens, we don't want to insult the victim, because of the suffering s/he has gone through. We pretend we believe him/her, but when we discuss the case amongst ourselves, we discard that evidence. Sometimes, you get to talk with the victim after the hearing and he or she then tells you « we too, we suffered very badly, that is why we need to take revenge ». So I then tell him or her that he or she should not be surprised. In many instances, the victim is not an eye witness ».*⁴⁴

*« It is the victims who push people to give evidence for the prosecution. Not a single charge had been laid against me in this Sector Court. They cobbled a file together at Cell level, but the prosecution had no witnesses. The genocide survivors got hold of the register and asked for my name to be included in some attaque or other... Right now, they prefer those who have pleaded guilty to give evidence in their stead... They don't want to draw attention to themselves. »*⁴⁵

*« A major problem mentioned by members' of the accused's family at the start of a trial... is that as the real offenders have not been found, the dissatisfied survivors try to accuse any of those who are present and who are innocent. »*⁴⁶

This sort of practice goes to show that survivors, many of whom receive no help from the State and live in bitter poverty, are frustrated and unhappy.

*« I am poor and a widow, my husband's entire family has been wiped out. I live alone with my children. Believe me, we heard about this assistance on the radio, but I have never seen any of it, not one single 50 Rwandan Franks coin. The State ought to list those who are in need, the widows and the orphans, and help them, rather than broadcast over the radio that help is available, when that help doesn't reach those who need it. »*⁴⁷

Survivors find it difficult to understand and accept political decisions which in their eyes have little bearing on their every day life, a life in which they come across those who have been convicted of having destroyed their families and with whom they have to live together.

⁴³ Cf. *infra*, p. 50 and seq

⁴⁴ Interview with a President of a Gacaca Court, 17 August 2007, nr. 1761.

⁴⁵ PRI interview with an inhabitant, 8 August 2007, nr. 1693.

⁴⁶ (Unrecorded) interview with a President of a Gacaca Court, 18 October 2007, Kigali City.

⁴⁷ Interview with a woman survivor, 11 September 2007, nr 1738.

From a legal point of view, these feelings of not being understood and being left to their own fate, are translated into a lack of trust in the justice offered by the Gacaca Courts. In some respects, it is the victims' way of rising up against a justice system which, in their eyes, is incapable of punishing the guilty and rehabilitating the victims.

2. The accused or those who have been convicted.

Organic Law 10/2007 amends the penalties for Category 2 offences by reducing them. These amendments affect more than half of those who are brought before the Gacaca Courts. Moreover, the penalties also depend on the date on which the accused has made use of the Art. 14 confession and guilty plea procedure.⁴⁸

Furthermore, Art. 1 of SNJG Instruction 15/2007 of 1 June 2007 on “the implementation of sentences handed down in respect of a person who has made use of the [Art. 14] guilty-plea, confession, repentance procedure and whose statements have been accepted by the Gacaca Court”, provides that such a person “*shall serve his/ her custodial sentence imposed by the Gacaca Court by first serving his/ her TIG, to be followed by time in prison and finally the suspended sentence.*”⁴⁹

At an information meeting bringing together various national and international actors in the Gacaca process, which was held in Kigali on 3 July 2007, the SNJG's Executive Secretary further added that where a person had shown good conduct during his/her TIG, s/he would not have to serve his/her prison sentence, but rather would serve his/her TIG and would remain the subject of a suspended sentence. Even though no legislation to this effect has as yet been published, many survivors believe that therefore people who have been given a TIG order will not go to prison if they have been convicted of a Category 2 offence and their Art. 14 confession and guilty plea has been accepted by the court. In other words, there are now a great number of potential witnesses who can denounce their co-offenders, accomplices or clear those who have been wrongly accused.

In theory, accused persons may not be a witness at their own trial and therefore need not take the oath. Even where they provide useful information during their confession, they can not be obliged to incriminate themselves.⁵⁰ So in that sense, they are not witnesses in the traditional meaning of the word, but their statement and the facts that they report are an integral part of the process and may help to establish the truth.

Accused persons who appear before a Gacaca Court and elect to make an Art 14 confession, must make a contribution to the establishment of the truth, in particular by naming their co-offenders and accomplices.⁵¹ From what we have observed, it would appear that in many cases, defendants are very reluctant to point the finger at their co-offenders, particularly because it is a fact that often they have committed their offences with members of their own family or with close neighbours.⁵² Given the generally fragile state of the economy and therefore the great need

⁴⁸ Art. 14 of Organic Law 10/2007.

⁴⁹ TIG = Travail d'intérêt général, an alternative to a custodial sentence, roughly comparable to a community sentence.

⁵⁰ Art. 14 para. 3 of the International Pact on civil and political rights.

⁵¹ Art. 51, 2° of Organic Law 16/2004.

⁵² For further discussion on this point we refer to the Half yearly analytical report nr. 2, ASF, December 2006, p. 34.

for the population to stick together for survival, denouncing one's neighbours means isolating oneself and depriving oneself of any available help or assistance. This reluctance to denounce co-offenders is further increased by the fear of reprisals that might follow if they were to name a neighbour or a member of their own family, for this would isolate them or exclude them from their society.

« A female presiding judge referred to the fact that the number of confessions is on the increase and expressed her concern about the part-confessions that are being made in her sector. Those defendants who confess restrict themselves to telling their own stories but do not wish to disclose the acts of others. It proves impossible to identify the victim and his/her beneficiaries; i.e. it takes us a great deal of time to collect the information. It is clear that even if a person admits to his/her own acts, s/he will not give his/her co-offenders' names. When they give evidence, they rarely disclose the identities of their co-offenders and accomplices. »⁵³

Gacaca justice was supposed to promote unity and national reconciliation: free speech in particular should have made it possible to confront the accused and his/her victim because rather than just enumerating the facts, the accused accepts that the facts did indeed take place. It is becoming increasingly difficult to believe that this is actually taking place. The two groups, accused and victims, often confront clash and where one or the other is suspected of having told the whole truth, he may well find himself exclude from his own group for having become a « traitor ».

« Someone who is on the side of the defendants and who tries to give evidence honestly will not be regarded with much respect by the others; he will be rejected, sometimes insulted, he will be accused of siding with the victims so as to denounce the others. And it is a fact that the co-offenders will shift to this person all the crimes they committed together, because that person has sided with the victims. What I notice is that those defendants who agree to meet the victims of their crimes in order to ask for their forgiveness, are rejected for they are seen to be enemies.»⁵⁴

If modern Gacaca is based on the model for restorative justice which encourages acknowledgement of responsibility by speaking out and allows the guilty to reintegrate society so that hopefully a new, peaceful coexistence becomes possible, part-confessions, bare faced lies, the fear to tell the truth, wrongful and defamatory denunciations are all factors that may well jeopardize its objectives, and in particular those of establishing the truth about the 1994 genocide, the end of impunity and national reconciliation.

3. The population

It is a main and fundamental requirement for a successful Gacaca justice system that the people participate in its hearings and do so of their own free will. Not only are they supposed to know what happened for having witnessed the events, but they have also been solemnly invited to fully participate in that process.⁵⁵

In the course of the first year of the Gacaca hearings, it was clear that the population was massively present. Most of the trials took place in the presence of more than 300 to 500 people. And although it is important not to confuse « take part » and « attend », for often that attendance

⁵³ Interview with a woman President of a Gacaca Court, 17 August 2007, nr. 1702.

⁵⁴ Interview with a survivor, 18 October 2007, nr. 1761.

⁵⁵ Cf. the Preamble to the 2001 Law creating the Gacaca Courts, cited earlier, footnote 18 and the passage quoted.

was silent and passive, generally speaking it was the whole of the community that would respond to the awareness raising messages broadcast by the authorities who were in charge of the process.⁵⁶

Today, people will still sometimes attend hearings and take part by asking questions and giving evidence on oath before the *Inyangamugayo* about the events and the criminal responsibility of those who are before the court.⁵⁷

But, in the course of 2007 presence and participation have dwindled quite noticeably. There are several explanations for this: first and foremost, people have become weary of the duty to attend hearings, sometimes as often as twice a week, then there is their growing indifference to a justice system that many believe to be corrupt, ridden by deals between accused persons and their victims so as to ensure that certain persons will have to bear all the blame, and, in more general terms, the absence of the truth from statements made before the Gacaca Courts.

« There is an enormous difference between the way in which the population took part in the Gacaca hearings in the early days and now. It is quite noticeable that the local officials, who were supposed to raise the awareness, are no longer doing so to the same degree. We have noticed that only 2 or 3 out of the 11 Imigudu and cells are actively participating in the Gacaca courts.

Another reason is that there are no more meetings to raise the people's awareness of the need to contribute to the Gacaca hearings. Even when there is a meeting, Gacaca justice is no longer included on the agenda. The population's absence from the Gacaca hearings proves to be a real obstacle to many things. The accused try to justify their actions by lying and the prosecution witnesses lie. There is no hearing between the parties and we may take decisions in the absence of all evidence. It needs to be said that the absence of the population devalues the Gacaca justice system and makes it impossible to identify the criminals who need to be punished. »⁵⁸

The following example is just one of many similar cases, in which the population has quite simply given up speaking out because of pressure, intimidation, insults, criminal acts and other reprisals, in particular imprisonment by an administrative body, such as the Sector's Executive Secretary.⁵⁹

« The locals do not ask any questions at the Gacaca hearings here. I'll tell you why these people will no longer give evidence. He who gives evidence is putting himself at risk. The Executive Secretary only accepts prosecution evidence and does not accept any evidence for the defence.

They are all afraid of him. Just imagine, here's someone who has been appointed by the President of the Republic and who has not been elected by anyone. Which local, having heard all that, would still have the courage to ask questions?

And then there was this man who was beaten up. He had given evidence for the defence. He became a victim because he had given evidence on behalf of the defendant. The Executive Secretary told him: « You dog, I don't get it, you had the cheek to give evidence for the defence when you yourself had been discharged ». And yet, he had been an eye witness. « We were there together. He can confirm that himself.

⁵⁶ See the *Analytical Report* nr. 2 (October 2005-September 2006), ASF, p.21.

⁵⁷ For example: ROJG City of Kigali/Nyamirambo/Rugamara, 28 September 2007; ROJG Cyangugu (currently West Province)/Cyangugu City/Jamembe, nr. 0401/07 of 13 September 2007.

⁵⁸ (Unrecorded) interview with a President of a Sector Gacaca Court, 13 October 2007.

⁵⁹ *Observation Report on the preliminary investigations*, 28 August 2007, nr. 0360, West Province.

He had said that he was amongst those who led the attack on the school, he confessed and pleaded guilty, but he said that he did not see the other accused persons. »⁶⁰

Another reason is that the authorities have reduced the number of meetings to raise the population's awareness of the Gacaca hearings and replaced them by meetings aimed to emphasize the need to speed up the process and the duty to complete all hearings by the end of 2007. The increase in the number of Gacaca panels under Art. 1 of Organic Law 10/2007, which provides “a Gacaca Court may have more than one Bench [panel] where necessary” has made it even more difficult to collect witness evidence, because people cannot attend several hearings simultaneously. Even if the panels deal with cases from the same cells,⁶¹ the problem remains that some people, who may have been witnesses to crimes committed in different cells, cannot attend two trials at the same time, and yet their evidence would have been useful in both cases.

To conclude, it is clear from all the interviews with the various actors in the Gacaca process that the population rarely takes an active part for fear of being accused,⁶² of denouncing members of their own family or close friends. In the latter case, they prefer to remain silent, as otherwise members of the accused's family, who are often more numerous than the survivors, will produce evidence for the defence.⁶³ That witness evidence is likely to carry more weight with the judges if it remains untested or is not weighed against other available information and may thus lead to unfair decisions or miscarriages of justice.

C. The lack of witness evidence and the issue of evidence

1. Summoned witnesses: failure to appear and/or refusal to give evidence

The main reason for the lack of live or witness evidence⁶⁴ is the failure of witnesses, who have been summonsed, to appear, their deliberate refusal to give evidence or their fear to give evidence. This is a major obstacle to the court's work and its search for the truth. We observed a trial in the West in which the presiding judge called the victims and the witnesses: none were present, no one appeared and no reason for their absence was given to the court.⁶⁵

« The prosecution witnesses were discouraged by the fact that the accused persons will begin to serve their sentence by doing a TIG. They don't see the point of giving evidence for the prosecution, because they know

⁶⁰ Interview with a local woman resident, 8 August 2007, nr. 1692.

⁶¹ Art. 8 of SNJG Instruction nr. 11/2007 on the creation of jurisdictional committees and their members provides that “case files originating from the same Gacaca jurisdiction shall be transferred to a panel for the convenience of the defendants, the complainants and the witnesses”.

⁶² “There is another problem in Gacaca justice: denouncing those whom you have seen commit these atrocities. The person you have denounced will say “Now I need to find someone to accuse, I'm not going to leave on my own”. So when he then accuses you in turn, because all he says will be taken account of, even if it is all lies because you have accused him”. Interview with a local person, 28 January 2008, nr. 1879.

⁶³ “Members of the families of the accused have set up teams that appear as witnesses for the defence”, interview with a representative of AVEAG, 6 September 2007, nr. 1703.

⁶⁴ On the issue of the absence or insufficiency of witness evidence, see also LIPRODHOR, *Situation relating to the rights of the person in Rwanda*, Report 2003-2004, Dec. 2005.

⁶⁵ ROJG Kibuye Province (currently West Province)/Budaha/Ngobagoba, 12 August 2007.

*that the accused will be freed soon. The fact that we may have summonsed a witness, once, twice, three times and he still fails to turn up, does prevent us from dispensing justice ».*⁶⁶

The interviews conducted by our team clearly show that a great number of trials are held even though the summonsed witnesses have not given evidence or at least have been described in the prosecution file as not having done so. One of the reasons for a witness's failure to appear may be that he or she does not receive the summons on time, or at all.

*« Witnesses do not appear at trial because they receive the summons too late. Kamembe is in town. The people who lived there at the time of the genocide have moved away and settled elsewhere so as to make a living. It takes more than just a few days to forward a witness summons to the person to whom it is addressed. »*⁶⁷

A totally different issue arises out of the workload on the *Inyangamugayo* and its effect on their ability to make a living which they need to do outside their time in Gacaca. So they often do not comply with the procedural time tables for witness summonses or, on occasion, or even do without them altogether. And yet, the Procedural Guidelines for the Gacaca Courts provides clearly that « any person called to appear before the court, whether as an accused, a witness, a victim or in any other capacity, must be informed no later than 7 days before the trial ». ⁶⁸

*« The Gacaca Courts fail to call witnesses on time and do not set aside enough time to hear all the necessary witnesses. Moreover, now that the trials are being speeded up, it is easier for people to conceal the truth ».*⁶⁹

As this survivor says, as trials are being speeded up, the public can no longer take part to the extent it would like to, and as it could do in the early days of the Gacaca hearings. Worse, if no one present at the hearing wishes to give live evidence, the *Inyangamugayo* give judgment without having checked the information that is available from the case file that was put together during the initial investigatory stage of the proceedings. That this should occur at all can be explained by the fact that the authorities are insisting on faster trials as a matter of urgency.

*« It has been decided that the Gacaca hearings should be completed by the end of 2007. The problem is that some courts have decided to exploit this situation and so make mistakes. So sometimes courts give their judgments without having heard all the witnesses. »*⁷⁰

There are other reasons too for the lack of witness evidence which might otherwise be useful to the Gacaca courts: for example, evidence for the defence was not included during the preliminary investigatory stage.⁷¹ So the case files before the courts during trial usually would not necessarily include any names of defence witnesses and that means that either there are no witnesses at all at the trial, or the only witnesses present at the hearing are those who appear on behalf of the prosecution.

⁶⁶ PRI interview with an *Inyangamugayo* , 13 July 2007, nr. 1685.

⁶⁷ Interview with a survivor, 8 October 2007, nr. 1738.

⁶⁸ Point A, 11 of the *Procedural Rules for Trials in the Gacaca Courts*, SNJG, as translated by PRI.

⁶⁹ PRI interview with a survivor, October 2007, nr. 1783.

⁷⁰ PRI interview with a survivor, 28 October 2007, nr. 1804.

⁷¹ PRI Report on « the preliminary investigatory stage after the nationwide roll-out », June 2006, P. 31 and seq.

« There are survivors who refuse to give evidence in court. This happens frequently. They are afraid of blaming the accused who will be released after his/her trial. They refuse because there may be misunderstandings which may then lead to conflicts with the accused persons, once they have been released. »⁷²

This statement illustrates the position many survivors adopt because, as it has been said before in this report, they are disappointed and take the view that the reduction in the sentences as set out in 2007 Law makes it likely that they are going to be in conflict with the accused persons who will now be returning to the hills fairly quickly. For these various reasons, the victims simply refuse to speak out, because it wouldn't serve any purpose.

« The Gacaca courts ignore the survivors. Some of them don't even want to be examined. He who has the courage to speak out becomes an enemy of the population. He won't be able to ask anyone for water, he won't be able to stand for an election, he won't get a job anywhere, he is considered to be evil. »⁷³

« Some witnesses refuse to give evidence for either the prosecution or the defence because in their eyes it is no longer so important since the State has decided to free convicted criminals and sentence them to a TIG. So these witnesses are discouraged »⁷⁴

« Anyone here who would want to tell what really happened, will be threatened, hated and won't be left in peace. These people, who are comfortably off, talk to every one and he who might give evidence won't be left alone... Many atrocities were committed here. No one has dared bring a complaint for fear of becoming a victim. My husband brought this state of affairs to the attention of the authorities. Since then, people have just shut up. People here have decided not to say anything about what happened. »⁷⁵

There is good reason to fear that this kind of attitude will become a real obstacle to the search of the truth, for witness stay away from the hearings or refuse to talk, even though they are the only people to have knowledge of what happened. What is even more worrying is that some offenders do not stand trial or are acquitted because the victims have lost interest: they feel that the politicians' solutions are tantamount a failure to meet out punishment.

2. Increasing the number of panels: a real obstacle to live witness evidence

Whilst Art. 1 of Organic Law 10/2007 provides that “*A Gacaca Court may, where necessary, comprise more than one panel*”, it also provides that the number of judges per panel may be reduced. Under the 2004 Gacaca Law, there were 9 office holders and 5 deputies; under the 2007 Law, these numbers were reduced to 7 and 2 respectively so as to re-allocate the available judges to the newly created panels.

In order to speed up the disposal of the genocide case, some 1 800 Gacaca panels were created at Sector and Appeal level in 2007.

In the course of interviews with PRI observers, many of the witness-survivors let it be known

⁷² PRI interview with a survivor, 8 October 2007, nr. 1783.

⁷³ PRI interview with an *Inyangamugayo*, 31 July 2007, nr. 1685.

⁷⁴ PRI interview with an *Inyangamugayo*, 31 July 2007, nr. 1685.

⁷⁵ PRI interview with a survivor, 29 January 2008, nr. 1879.

that the vast increase of the number of panels had isolated them, for they just cannot attend several locations at the same time and yet their evidence about the events and those who caused them, is indispensable.

“It used to be better. There was only one panel. People found themselves altogether in the same place and proportionally, the number of survivors wasn’t too disappointing. But now, there are several panels, people have to spread themselves over a greater number of hearings and panels, so the number of victims per panel has dropped dramatically and that means that less weight is attached to their evidence.”⁷⁶

Some of the representatives of Ibuka, an association of genocide survivors, also severely criticise this state of affairs. They regret that witnesses can no longer appear at trials as they should, because of the vastly increased number of panels.

“So, for example, in a Sector with no less than 6 courts, survivors and witnesses are unable to attend for all the trials at which they are supposed to give evidence. The net result is that the alleged genocide offenders are acquitted for lack of prosecution witnesses”⁷⁷

The increase in the number of panels has therefore resulted in the escaped victims being even further isolated and depriving them of their right to give evidence. They feel that their word carries less weight than that of the accused and his or her family, which will be present in great numbers, that the political decision to hand down lighter sentences boil down to as many offers of impunity for those who have been found guilty. It is increasingly likely that they will not come forward and give evidence before the Gacaca Courts and express their disappointment with decisions which, in the absence of witness evidence, have little bearing on what really happened.

3. Trials in the absence of evidence: the Inyangamugayo’s reservations

The silent and passive presence of the population, the absence of witnesses from a great number of trials or the witnesses’ fear of giving evidence puts the *Inyangamugayo* in a tricky and uncomfortable position. There is a heavy responsibility for they still must dispense justice. They have expressed their concern about the absence of witnesses from trials and the fact that they must hand down justice without having been able to collect enough evidence to enable them to form a view.

“The population’s failure to participate has caused us a lot of trouble when it comes to obtaining evidence from witnesses, victims or accused persons. This means the Inyangamugayo reach a decision that is unsupported by any evidence!”⁷⁸

“When during any trial there is no mention of witnesses, this is a problem for the Gacaca Courts, for it leads to real difficulties for the Inyangamugayo when they have to take their decision. When this happens, the judges rely on the available information and call upon the Cell judges for an explanation of these cases.”⁷⁹

“(..) He was really disappointed by the total absence of prosecution witnesses in these trials. The reason was that those who used to live here and survived the genocide, have now settled elsewhere, particularly in

⁷⁶ Interview with a survivor, 18 October 2007, nr. 1792.

⁷⁷ Kigali, 5 December 2007. Observations by M. Kayitare, Head of Ibuka’s Legal Services, gathered by the Hironde Press Agency.

⁷⁸ (Unrecorded) PRI interview with a president of a Sector Gacaca Court, 13 October 2007.

⁷⁹ PRI interview with a survivor and an *Inyangamugayo*, 15 October 2007, nr. 1784.

Kigali. So the defence witnesses are in the majority, because they did not move away. This has certainly led to several acquittals for lack of prosecution witnesses.”⁸⁰

It follows from the above that in these conditions there is no all parties hearing. As a result of these problems, the *Inyangamugayo* have expressed their concern about the possible miscarriages of justice that they may cause as a result because they can't cross reference the information and the witness evidence, either because they do not have enough information, or because they are under a duty to come to a decision and are unable to look for further evidence. Added to this, they are afraid to convict persons whose standing or financial power is awesome and fearsome, when they themselves do not have either the means or the protection necessary to ensure their authority and independence.⁸¹

“Some persons are sentenced to 30 years in prison. Others get 15 to 29 years without TIG. We deal with such cases. There aren't many of them, but they do happen.... and the worry continues: these trials have taken place before Inyangamugayo who were elected from within the population. They often come from humble backgrounds, haven't been to school, are poor and work without getting paid. It is quite tricky for an unschooled judge to convict someone who has enjoyed some education and enjoys a relatively high standing in his community, particularly as they are bound to bump into each other as soon as the convicted person has been pardoned, because he is likely to be pardoned. One shouldn't forget that no law will protect the judges after the Gacaca, so there is cause for concern. We are quite worried.”⁸²

“Fear” is a word that is often used by the interviewees. Survivors are afraid of speaking out and becoming the target of violent reprisals which can go as far as murder. Defence witnesses are afraid to speak out because they may be accused of protecting the genocide offenders or they may be accused in turn. The defendants are afraid of putting their own case because they fear being accused of belittling the genocide.

It is important to underline in this tense social climate, the *Inyangamugayo* must have the means and the time to look for and investigate the evidence that enables them to convict or acquit the defendant. There is a direct link between the credibility of the decisions in the Gacaca Courts and whatever trust the population may have in the justice system on the one hand, and their ability to found their decisions on evidence that has been sufficiently tested in open court.

D. Acceptance, testing and validation of witness evidence.

1. Little use is made of the information collected during the preliminary investigatory stage

Collecting evidence during the preliminary investigatory stage was the first major step enabling the Gacaca procedure to start up and this was done when the *Nyumbakum* – or local officials - collected information about the crimes and the offenders. The information was then validated by the Gacaca Courts and the General Assembly⁸³ and formed the basis for the prosecution case. The competent Gacaca Court then reviews that evidence and decides what charges should be laid

⁸⁰ (Unrecorded) PRI interview with a Sector Executive Secretary, 9 November 2007.

⁸¹ See also the *Analytical Report nr. 3*, ASF, op.cit., p. 52.

⁸² PRI interview with a President of a Gacaca Court of Appeal, 9 October 2007, nr. 1785.

⁸³ Cf. PRI Report : Information-Gathering during the National Phase, June 2006.

against the persons brought before it.

During this preliminary investigatory stage, the entire population was encouraged to say what it had seen, done or suffered. So the prosecution cases were based on information collected by the *Nyumbakum*⁸⁴ who had the task of asking the population about the events.

When they are trying a case, the Sector Gacaca Courts base their work on the information from the prosecution files and conduct their hearing by listening to the witnesses who have been summonsed and in particular those who were discovered during the preliminary investigatory stage. Our enquiries have revealed that in reality, little or no use is made of the information collected during the preliminary investigation, a stage in the proceedings comparable to the investigatory stage in criminal proceedings. The only evidence the *Inyangamugayo* tend to consider is the evidence produced by witnesses at trial.

*“In my view, information provided to the Cell Gacaca Courts about, for example, people who were alleged to have been Interahamwe leaders, was ignored. The Inyangamugayo only listen to the defendants.”*⁸⁵

*“The Inyangamugayo attach little importance to information collected before the prosecution laid its charges. The evidence to which most importance is attached is that given by witnesses at trial.”*⁸⁶

*“I am referring to the Chairman of the Gacaca. It is often said that he fails to take account of any information provided by the population during the preliminary investigatory stage, even though he ought to consider it.”*⁸⁷

Furthermore, many people have observed that there are major contradictions between the information collected during the preliminary investigation and any subsequent statements made by the same persons. Many of these contradictions could only be explained by the fact that those who spoke out during the collection stage, didn't think that they would have to repeat those statements before the Sector Courts or the Appeal Courts and that under Art. 29 and 30 of the Organic Law 16/2004, perjury is punishable.⁸⁸ Another explanation for these contradictions may be that the population was under pressure when the information was initially collected, for under Art 29 of that same law, a person refusing to provide information or make a statement could be sent to prison. So, in order to avoid being accused of refusing to participate in the Gacaca process, many people made false statements during the collection stage.⁸⁹

“The situation in respect of statements has now changed. When the trials started, people told the truth, and now they are changing their minds. An accused person may have provided this or that piece of information during the investigatory stage, but now that s/he is before the Sector or Appeal Gacaca Court, s/he changes his/her mind.”

⁸⁴ *Ibid.*, pp. 7 and 8.

⁸⁵ Interview with a survivor, 25 September 2007, nr. 1761.

⁸⁶ Interview with a survivor, 12 September 2007, nr. 1738.

⁸⁷ Interview with a local resident, 31 August 2007, nr. 1721.

⁸⁸ Art 29 (2) provides as follows “Any person who omits or refuses to testify on what he or she has seen or on what he or [she] knows, as well as the one who makes a slanderous denunciation, shall be prosecuted by the Gacaca Court which makes the statement of it. He or she incurs a prison sentence from three (3) months to six (6) months. In case of repeat offence, the defendant may incur a prison sentence from six (6) months to one (1) year”.

⁸⁹ See PRI Report Information-Gathering during the National Phase, June 2006.

Similarly, it frequently happens that in the Cell Gacaca Court the survivor gave information about the crimes committed against him/her and then, once s/he stands trial in the Sector Court, s/he may stick to his story or change it on some points. And then, at the next level, the Appeal Court, s/he will completely exonerate the accused. He may have been a prosecution witness before the Sector Gacaca Court and become a defence witness before the Appeal Court and s/he will claim that it was Satan who pushed him to give evidence against the accused and that s/he is now giving evidence on behalf of the accused so as to contribute to the reconstruction of the country.”⁹⁰

Other people again may protect their interests and change their statements:

*“It is to protect their own interests that some people give evidence that is different from what they said during the preliminary investigatory stage”.*⁹¹

It is regrettable that at the public hearing the *Inyangamugayo* make little or no use of the information obtained during the preliminary stage. This state of affairs is probably due to their lack of training which, together with other problems, such as the workload, the speeding up of the trials, corruption and various other forms of interference, inevitably underlines the irregularities which we observed during the trials.

As the Gacaca process is drawing to a close, it would seem that one of the *Inyangamugayo*'s most serious problems was how to conduct a true all parties hearing which would have enabled them to exercise their own judgment after having tested the information obtained. And during these final moments of the trial stage, one can't but help feeling that a certain *laissez-aller* aggravates the existing problems. The judges have to go fast and no longer test the evidence as they should before they find the accused guilty or innocent.

2. The order in which the witnesses are heard

A full hearing of all the parties before the court means that the prosecution must be able to set out the charges preferred against the defendant and state its case. That implies that the prosecution must be transparent to the extent that it must set out to the defendant all the evidence on which it seeks to rely so as to enable the defence to reply to or rebut the allegations. The same principle applies to the order in which witnesses are heard in court: in the traditional procedure, the witnesses for the prosecution give their evidence before those who appear for the defence. Thus the defendant will know the case against him and be able to defend himself fairly.

Even if it is not possible to ask that the Gacaca Courts grant the defendant the same safeguards for a fair trial as he would receive in the ordinary courts, it would seem essential that the defendant be put in a position that enables him to answer the allegations against him, test the prosecution witnesses and ask for a confrontation with his accusers, if possible.

Various official texts concerning the Gacaca Courts, and in particular the “Rules of Procedure in trials before the Gacaca Courts” which are addressed to the *Inyangamugayo*,⁹² simply provide that where a defendant has not confessed to the crime(s) or where he has pleaded guilty, “the Court's

⁹⁰ PRI interview with an *Inyangamugayo*, 28 August 2007, nr. 1715.

⁹¹ Interview with a survivor, 12 September 2007, nrs. 1738-1739.

⁹² Original text in Kinyarwanda; French translation provided by PRI.

Secretary shall inform the defendant of the charge against him and the category of offences in which he has been placed”. Where the defendant does not challenge “his” category, the presiding judge “shall open the floor to prosecution or defence witnesses”.⁹³

We can’t affirm categorically that the law and the instructions strictly require that the prosecution witnesses must be heard before the defence witnesses, even if the latter have been listed after the prosecution witnesses. But in a genuine all parties hearing, it would be logical that the prosecution put its case before the defence. An accused can not put his case if he doesn’t know what he has been charged with and who has accused him.

Having observed Gacaca trials in various sectors, and in particular in Kigali town, we can’t say that there is a consistent practice when it comes to calling witnesses and any influence this may have on the outcome of a trial. The order would seem to depend on whatever the relevant Gacaca Court has decided in advance in respect of the accused’s guilt or innocence.

The table below sets out the order in which prosecution and defence witnesses were called in 41 trials, which were observed in various sectors between July and December 2007, and the outcome of those trials.⁹⁴

	Trials in which prosecution witnesses gave evidence first	Trials in which defence witnesses gave evidence first	Total
	11	30	41
Convictions	5	20	25
Acquittals	2	7	9
Adjournments	4	3	7

Eleven of the 41 trials observed began with witnesses for the prosecution, 30 with witnesses for the defence. Out of the 11 trials in which prosecution witnesses gave evidence before the defence witnesses, 5 ended in a conviction, 2 in an acquittal and 4 were adjourned.⁹⁵ Out of the 30 trials in which defence witnesses gave evidence first, 20 resulted in a finding of guilt, 7 in an acquittal, 3 were adjourned.

So not only did more trials began with the evidence from defence witnesses (about 73% against 27% in which the prosecution witnesses were heard first), 74% of the trials in which witnesses for the defence were heard first resulted in a finding of guilt and 26% in an acquittal. Whereas 71% of the trials in which prosecution witnesses were heard before the defence witnesses ended with a conviction and 28% with an acquittal.

Of course, it is not possible to draw any firm general conclusion from these figures, for they do not cover all of the sectors, nor do they include trials in which prosecution and defence witnesses were heard in no particular order decided at random because the court had not decided in advance in which order the witnesses were to be heard so that the only way to tell them apart was by analysing the contents of their evidence.⁹⁶ It is therefore not possible to assert that the order in which the witnesses were heard played a part in the outcome of the trial, because some trials which had begun with witnesses for the defence still resulted in acquittals.

⁹³ *Rules of Procedure for hearings conducting in the Gacaca Courts*, point B, 2.2.2.

⁹⁴ See also ROJG Kigali City/Gikondo/Gikondo, 8 Dec 2007; ROJG Kigali City/Gisozi/Gatsata, 1 December 2007.

⁹⁵ For various reasons.

⁹⁶ Although they are supposed to do so.

However, it is essential that the accused be fully aware of the case against him and the evidence the prosecution relies on, so that he can put his case properly. This is one of the fundamental requirements for a fair trial.

3. The tendency to reject witnesses for the defence

There is another important aspect that we would wish to bring to the attention of the authorities in charge of the Gacaca process. It is one that, in our view, is quite damaging to the search for the truth and the principle of a fair trial. A considerable number of persons whom we interviewed mentioned that the courts are inclined to disregard evidence given by witnesses for the defence. This phenomenon had already been observed during the preliminary investigatory stage when *“it was practically impossible for an accused person to produce any evidence in his defence before the Nyambakumi or the Cell or Sector evidence gathering meetings”*.⁹⁷

We also noted during our interviews that statements for the defence are frequently disregarded and that the population disapproves of this. We would like to mention the worrying case of an accused person who was freed at the end of a Gacaca hearing during which witnesses who were survivors had intervened to rebut the charges brought against him. And yet, when he came to collect his administrative documents, he was re-arrested and sentenced to 30 imprisonment by another Gacaca Court.⁹⁸ Upon appeal, his sentenced was reduced to 7 years imprisonment and a TIG. He applied for a review of his case and on 31 January 2008 he was ultimately sentenced to 30 years imprisonment.

PRI observed this particular trial and noticed that the presiding judge played a very active part during the very final hearing, he even forbade some of the witnesses for the defence to give evidence. Some defence witnesses were not heard, whereas the prosecution witnesses were given ample opportunity to give their evidence.⁹⁹ Such practices are of little help when it comes to discovering what really happened and make it impossible to decide whether the defendant is criminally liable. Thus, they may lead to miscarriages of justice in that the defendant was prevented from putting his case in full or altogether.

*“I have noticed that even before the Gacaca Courts, prosecution witnesses are more likely to be encouraged to speak out than defence witnesses. When a defence witness comes forward to give further details about the person who killed the victim, he will be told he may not speak. This is how unjust and final convictions come about. These threats tend to be made when survivors wish to speak out on behalf of the defendants. Only one person was asked questions and that was Rose. She confirmed that she was one of the survivors and that she had never seen Nicolas amongst the attackers. She was immediately criticised and ordered to shut up. Her evidence was not recorded. So three people were asked questions but only the evidence given for the prosecution was recorded. One single defence witness was heard, but by then, it was 6pm. Over twenty people had asked to be heard, they had raised their hands, but all the requests were refused and the hearing was declared closed.”*¹⁰⁰

“We were shocked to find that the secretary recorded only the prosecution evidence and ignored the defence evidence. The judges were told they would have try and remember the defence evidence and this why all those present became suspicious. You see. One other person who was a member of the attaque was allowed

⁹⁷ See also PRI Report Information-Gathering during the National Phase, June 2006.

⁹⁸ ROJG, Cyangugu Province (now West Province)/Cyangugu Town/Kamembe, 13 September 2007, nr. 0401/07.

⁹⁹ ROJG, Kibuye Province (now West Province)/Budaaba/Ngobangoba, 31 January 2008.

¹⁰⁰ Group interview conducted by PRI involving a “wise man” and a “venerable” man, 9 November 2007, nr.1826.

to speak and a girl called Claudine. Both gave evidence for François. What upset us is that instead of their evidence being taken into consideration, the witnesses were threatened. They were brought before the court and accused of having attempted to mislead the court. They were threatened.”¹⁰¹

These serious breaches of the defendant’s right to a fair trial and to put his case, were brought up at a consultation meeting of the Commission nationale de droits de la personne (National Committee for the Rights of People) in Kigali on 18 December 2007. Several speakers highlighted and criticized the fact that potential defence witnesses are quite literally being subjected to intimidation or prevented from giving their evidence at trial in that they are told they may only answer questions by a “yes” or a “no”. It is therefore quite likely that innocent people have received unjust and severe punishment. That likelihood has increased now that under Art. 14 of the 2007 Law, the Sector and Appeal Gacaca Courts have the power to sentence Category 2 defendants to life imprisonment.

Within the context of legal proceedings such as the Gacaca, which relies on people speaking out and the establishment of the truth and which aims to convict the guilty (the fight against impunity) and to clear the innocent (an element of a fair trial), these intimidation practices only serve to increase the feeling that the system is unjust and fails to do what it was meant to be doing. The people, who know that they are vulnerable and live in great insecurity since they know that in current the justice system it will be well nigh impossible to raise any defence, feel that not participating in the Gacaca hearings is their only protection, or at least that it is the only attitude that can be considered as offering any degree of protection.

4. The failure to sanction perjury

Art. 32 of Organic Law 16/2004 sets out the procedure for prosecuting and sentencing any person who commits perjury in the Gacaca Courts in the following terms “*The Seat for the Gacaca Court taking cognisance of offences stated in articles 29 and 30, decides on all matters ceasing and retires to deliberate on whether it is an offence to be prosecuted according to these articles. When the prosecution of the offence is confirmed, the Seat announces the day of the hearing, notifies it to the defendant, and records it in the notebook of activities before resuming the Court’s business*”.

The penalties that are available in respect of any perjury¹⁰² explain the discrepancy that we noticed between the amount of information disclosed during the preliminary investigatory stage and the statements ultimately made at trial. During the preliminary investigatory stage, many people did accuse or seek to discharge other people by referring to facts which they had not personally witnessed and did not appreciate that one day they might be prosecuted for perjury.¹⁰³

Another form of perjury consists of defendants or certain survivors selling their statements for money.

“Perjury is often committed by witnesses and perpetrators of genocide offences who have made use of the Art. 14 confession and guilty plea procedure and who are at least partly driven by the money that they may earn from it. Sometimes, survivors connive with them so as to set up an organisation which will

¹⁰¹ *Ibid.*

¹⁰² Under Art. 29 of Organic Law 16/2004 penalties for perjury range from 3 to 6 months imprisonment. Repeat offences may be punished with imprisonment for 6 to 12 months.

¹⁰³ For further discussion on the effect of the lack of penalties for perjury, see also the *Analytical Report nr. 3*, ASF, supra, p. 53.

*enable them to make money out of terrorising other people.*¹⁰⁴

Several people whom we interviewed have claimed that it is not unusual for perjury to be committed by survivors. But people also report that such perjury is never prosecuted. This state of affairs has been brought to the attention of the authorities because victims appear to be “untouchable” in that each victim is treated as a party to the proceedings, regardless of the type of proceedings. To convict them of perjury would be tantamount to denying them their status as victims and given how little acknowledgment they claim to receive, such treatment would be unacceptable.

*“These days, 80% of the local population lives in fear. If they could, they would all flee. The immunity granted to victims has gone over the top because when a victim lies, s/he will not be prosecuted. That situation benefits some people who create small groups that aim to wrongly accuse other people in order to make money.”*¹⁰⁵

This situation shows firstly that the law is not applied uniformly in that not all categories of witnesses enjoy the same treatment when it comes to implementing Art. 29 and 30 of the 2004 Organic Law. It also encourages the impression that, in reality, if the maker of false statement is also a survivor, he or she will enjoy a sort of immunity of prosecution.

*“It is not right that a survivor who tells lies is not prosecuted. It is not right that a survivor who wrongly accuses another so as to send him to prison for 30 years will not be prosecuted.”*¹⁰⁶

5. The failure to hold all parties hearings

Genocide litigation is a complex matter because of the very circumstances in which the crimes were committed. Many people died or live in exile, many victims who survived, were in hiding or had fled at the time of the events, were not eye witnesses to the crimes. If the truth about the course of events is to be established, it is vital that the evidence put before the *Inyangamugayo* be cross examined by the other side and tested.¹⁰⁷

Over time, the *Inyangamugayo* have received training and built up experience and have tried to incorporate the need to test the allegations made in their courts. There are examples of how they take the time required for an all parties hearing in order to establish individual criminal liability and they have been known to adjourn a hearing in order to carry out further investigations.

“There are examples of people falsely accusing other people. In other cases, we find people who tell the truth. Both the panel and the public have the time to use their insight and uncover the truth. I have observed that when someone has been wrongly accused, the Inyangamugayo will examine this false accusation carefully and when there is reliable witness evidence, they will try and apply Gacaca law. There are witnesses who want to rebuild the country and explain properly what happened. But there is also another type of witness, whom we can not ignore. For example, a person may wish to give evidence out of jealousy. Fortunately, as it all takes place in the presence of eye witnesses, they try to establish the truth so

¹⁰⁴ PRI interviews with a survivor, 12 September 2007, nr. 2738 and 1739.

¹⁰⁵ Group interview conducted by PRI involving a “wise man” and a “venerable” man, cf. supra.

¹⁰⁶ PRI interviews with a survivor, 12 September 2007, nr. 2738 and 1739.

¹⁰⁷ The failure to hold all parties hearings was referred to in an earlier PRI Report entitled *Trials of property offences committed during the genocide and published in July 2007*, pp. 66-71.

*as to be able to acquit the innocent and to convict the guilty.*¹⁰⁸

*“When we noticed that there are a great number of contradictions in the witness evidence, we adjourn the hearing and carry out our own investigation. And we use the result of that investigation in our decision”*¹⁰⁹

Having said that, there are a number of aspects to the Gacaca procedure that constitute obstacles to the principles and the practice of an all parties hearing. These include the population’s fear to speak out, agreements and corruption involving accused persons, victims and the *Inyangamugayo* as well as the insufficient training offered to the latter and the pressure that is brought to bear on them to achieve results.

The Gacaca Courts have all the powers and all the important prerogatives they need: the law has given them the power to hand down life sentences to those who have been found guilty of a Category 2 offence (Art. 14 of Organic Law 10/2007). In some instances, the *Inyangamugayo* have handed down long custodial sentences when, according to our observations, there was no real all parties hearing.

All the findings we made in the course of our observations show to what extent the establishment of the truth can be compromised by omissions and non-observance of the procedural rules. There are a number of factors, such as mistrust, the feeling of never being protected from false accusations that would be difficult to rebut, a feeling of injustice amongst part of the population that is perfectly aware of the different treatments meted out to itself and the surviving victims, the resentment amongst these victims, who believe that ultimately the convicted criminals are better off than themselves, all of these express a sort of general dejection when they are faced with political decisions that in their eyes are contrary to the aims of Gacaca justice.

Furthermore, the *Inyangamugayo*, who are under time pressure, often call on “unavoidable” witnesses, who are often acquitted defendants who have made use of the Art 41 confession and guilty plea procedure, or widows or genocide survivors.¹¹⁰ These people will systematically accuse or give prosecution evidence in a number of trials, for they seem to know all the accused in a given locality.

As time doesn't always allow the *Inyangamugayo* to adjourn a hearing in which there are few or no witnesses, they make do with these “unavoidable witnesses”, whose evidence remains unchallenged.

II. THE *INYANGAMUGAYO*'S INDEPENDENCE AND IMPARTIALITY AT ISSUE

By the *Inyangamugayo*'s independence is meant that they, who make up the Gacaca Courts, should not be subject to any external influence whatsoever, should base their decisions on nothing but the information that they have collected and should reach a verdict of guilty or innocent on no other basis. This also means that they should be able to protect themselves from any pressure from any political or administrative body. The independence and impartiality of the trial courts

¹⁰⁸ PRI interview with a priest, 10 October 2007, nr. 1786.

¹⁰⁹ Interview with an *Inyangamugayo* in a Sector Gacaca Court, 25 September 2007, nr. 1761.

¹¹⁰ Analytical report on the treatment of evidence and witness statements in Gacaca hearings: South Province/Huye/Karama 12-14 December 2007.

are an essential constituent of the fundamental right to a fair trial as guaranteed by Art. 14 (1) of the International Convention on Civil and Political Rights which provides “(...) Everyone is entitled to a fair hearing in open court by a competent, independent and impartial tribunal (...)”. The independence and impartiality of the judiciary are part of the fundamental principles which guarantee the right to a fair trial to every citizen. Independence therefore is closely related to a judge’s environment, his ability to exercise his authority in that environment and the respect for his office and the decisions he takes in that capacity.

The *Inyangamugayo*, are in a special position in that they are lay judges, who are often insufficiently educated (A), socially and economically vulnerable and therefore exposed to all sorts of pressure or influence (B) and these factors may seriously affect the credibility of the task that has been entrusted to them.

A. The level of training of the *Inyangamugayo*: little education and little experience

From all our interviews with *Inyangamugayo* it is clear that they take their duties very seriously, and many of them carry out their task conscientiously and dutifully. However, there is a limit to what they can do and that limit is not determined by their person but by the level of education that they have received and the experience that they have acquired. These may constitute real limitations to the quality of their performance. In 2005, the Coopération Technique Belge (CTB) carried out a survey which shows that 92.7% of the *Inyangamugayo* are farmers and 15.4% are illiterate.¹¹¹ The genocide litigation is extremely difficult and the *Inyangamugayo* carry an enormous responsibility towards society and their power is commensurate, since the Gacaca Courts are competent to sentence a person to imprisonment for life.¹¹²

Not only do a number of *Inyangamugayo* lack the skills that are required to take on such responsibilities, but they also must constantly adapt to new laws and guidelines completing, amending or refining earlier laws and guidelines, which they do not always have the time to master. The normative tools that are available to them are, in the main, Organic Laws nrs. 16/2004 and 10/2007, but in the single year 2007, these were completed by five “Instructions” from the SNJG.¹¹³ Some of these Instructions completely overhaul earlier Instructions.¹¹⁴ At a practical level, these constant changes make it difficult for the *Inyangamugayo* to understand the procedural rules and apply them.

From what we have observed, we can say that a great number of the *Inyangamugayo* show a real lack of what could be called “the spirit of a trial hearing”. As lay judges they find it difficult to apply the principle of an all parties hearing, to chair it and to ensure that it complies with the

¹¹¹ Coopération technique belge, *Report on improving the living conditions for the Inyangamugayo*, November 2005.

¹¹² Even more so with the next Organic Law on the Organisation of the Gacaca Courts (which is currently before parliament) when the Gacaca Courts will have the power to sentence someone to life imprisonment. This information has been confirmed by the Executive Secretary at a meeting at the SNJG on 28 March 2008.

¹¹³ Instructions 11, 12, 13, 14 and 15 all explain, detail and clarify the Organic Laws.

¹¹⁴ Article 5 of Instruction 13/2007, published after Organic Law 10/2007 provides that “where a Gacaca Court hands down a prison sentence that comprises of a custodial sentence, a suspended sentence and a TIG, the convicted person shall first serve the custodial sentence, then the TIG and then the suspended sentence”. Article 1 of Instruction nr. 15, published 70 days after the same Organic law 10/2007, provides that “where a person is guilty of Category 2 genocide crimes or other crimes against humanity and makes use of the Art. 14 confession and guilty plea procedure and whose plea has been accepted by the court, shall serve his custodial sentence by first serving the TIG, then the prison sentence and last the suspended part of the sentence.”

rules and principles of an all parties hearing.¹¹⁵ On top of that, the whole process is being speeded up and this means that *Inyangamugayo* have to spend more than 2 days per week holding hearings. At a practical level, they are unable to manage all of the Gacaca legal paraphernalia and give the cases they are trying the sort of time needed to come to grips with the issues.

*“The fact that the trials are speeded up is very tiring for many judges because they have to try a lot of accused persons. This means that their decisions are hasty and that some laws are disregarded”*¹¹⁶

One major consequence of this situation is that the *Inyangamugayo*, who do not necessarily appreciate the limits of their powers, may be submissive and lack independence.

*“Many of the numerous Inyangamugayo at appeal level proceed by trial and error. They know little about the law. When we talk and ask them questions about this old man, I find that they know very little. Also, they are afraid. They wonder how they could disagree with a decision taken at Sector level. It is almost as if the Appeal Court receives its orders from the Sector Court. Once a Sector Court has taken a decision, an Appeal Court believes it can’t do anything about it. The judges at those two levels fear each other. That has devastating consequences for the proper functioning of the Gacaca justice system in our sector. This old man may well become the victim of that fear and ignorance of the law.”*¹¹⁷

It is important to remember that compliance with the principle of the all parties hearing and the safeguard of judicial is vital to the credibility and the implementation of decisions that a great number of the *Inyangamugayo* take in the name of the whole community.

The independence of the judiciary is an indispensable precondition for its impartiality. It means that whereas on the one hand the judge on the bench enjoys a certain institutional autonomy and will not surrender to various outside pressures or invitations, on the other hand, he knows how to set to one side his own prejudice or beliefs.¹¹⁸ Given that in this society an order from a superior authority is not normally challenged, it is quite possible that the level of general education of many of the *Inyangamugayo* is such that they feel intimidated when dealing with an authority or a person who has enjoyed a better education. The pressure and influence these people can bring to bear is often perceived as difficult to resist.

*“The involvement of some officials during the trials affects the situation or the form of the trial. In some trials, officials indicate what they want and in doing so influence the decisions that are to be taken by the court which will then disregard the law. Courts are afraid of taking decisions that would find no favour with these officials.”*¹¹⁹

B. Indisputable interference in trials by local officials

The involvement of the administrative authorities in the trial process and their growing responsibility for that same process through the introduction of “performance contracts” for the

¹¹⁵ See also LIPRODHOR, *The position of the rights of the person in Rwanda*, Report 2005, P. 87.

¹¹⁶ (Unrecorded) PRI interview with a local resident, 4 October 2007.

¹¹⁷ PRI interview with a local resident, 14 November 2007, nr. 1457.

¹¹⁸ For the independence and impartiality of the judiciary, see in particular J. PRADEL, *Criminal Procedure*, 13th ed., Cujas 2007, nr. 21 and seq.

¹¹⁹ PRI interview with an *Inyangamugayo*, 31 July 2007, nr. 1685.

Gacaca Courts,¹²⁰ have led to local officials making a considerable investment in the process. That can be seen from their close cooperation with a great number of the *Inyangamugayo* as well as from the meetings intended to encourage the population to participate actively in the Gacaca process. Even though the local officials have always been called upon to be involved in Gacaca, today there is a real issue when it comes to defining how far they can go.

Our research and interviews show that in many instances this investment becomes an abuse of their position which may disturb the *Inyangamugayo*, the accused and some survivors.¹²¹ The latter are subject to other pressures that also need to be mentioned.

1. The administrative authorities

Many of those whom we interviewed mentioned the pressures to which they were subjected, particularly from some Executive Secretaries at Sector level, who do not hesitate to imprison people unlawfully, tell the *Inyangamugayo* what to do¹²² and even dictate their judgments to them.

“He interferes with our duties. We said that we fear him when we work. When we discuss matters behind closed doors, he will ask us to adjourn this or that trial and tell us that he doesn’t want us to give our decision in public. That is why sometimes an Inyangamugayo goes home without saying anything, because he is afraid. He terrified us, we are afraid of saying the truth because we are afraid that he might kill us.”¹²³

These instances of misuse of power and interference in the court’s business worry the *Inyangamugayo* for their credibility and authority suffer. Their mission is being compromised by persons whose authority they dare not challenge.

“Today we decided to call the persons who had asked us to adjourn the trial. We believed that these people had good reasons for asking for an adjournment. We have decided to wait rather than challenge the local officials with whom we work together. The Sector Executive Secretary turned up and he informed us that he had received a phone call to say that the person summonsed wasn’t going to be in court and that we would have to list the hearing for another date.”¹²⁴

“Although there was a heated exchange of words between the accused and the victim, the court did not intervene, because as far as the court was concerned this person was at liberty to incriminate herself or her co-defendants. Although the court had no intention to impose any sentence upon this woman and initially responded by saying that she had not committed any criminal offence by saying what she said. But then the court was sort of swayed and all of a sudden an arrest warrant was issued against her at the instigation of the Executive Secretary.”¹²⁵

It is also worth mentioning here again that local officials were extensively involved during the

¹²⁰ Cf. *infra*, p. 56.

¹²¹ We observed a similar degree of interference by administrative officials during the preliminary investigatory stage Cf. the PRI Report on the nationwide collection of evidence, June 2006, p. 17.

¹²² ROJG Cyangugu Province (now the West Province)/ Cyangugu Town/Gihundwe, 21 August 2007.

¹²³ PRI interview with an *Inyangamugayo*, 8 August 2007, nr. 1692.

¹²⁴ PRI interview with an *Inyangamugayo*, 21 August 2007, nr. 1705.

¹²⁵ PRI interview with a president of a Gacaca Appeal Court, 25 July 2007, nr. 1683.

preliminary investigatory stage:

“The local population just listened attentively. The Inyangamugayo did no more than write down the questions and the answers. The people listened carefully and remained silent because they were afraid that they might be called to give evidence, they said that the officials reject what is said.”¹²⁶

Such misuse of power is even more worrying in that it increases people’s loss of interest and silence - they feel unsettled and will not say a word. They are perfectly aware of some officials’ interference in the business of the *Inyangamugayo*.

“(…) That is how he came to ask me why I had asked the question. I asked him what offence I was supposed to have committed just then by asking my (female) neighbour if he had spent the night at her place... He replied “You ought to be locked up. And anyway, I can beat you to death. No one can ask me to justify myself”. So then I, together with another man who had just said that such and such a person had been too afraid to give evidence, we were taken away (to prison). The man who was with me was seriously beaten up when he said that Rose was afraid of something. It was the director of the local catholic school who stepped in and stopped him from going on beating him”.¹²⁷

As a result of this sort of situation, several people refuse to give evidence, because of the pressure they are put under:

“Then there is Jean, who was acquitted yesterday. He had been imprisoned by the Executive Secretary because he had given evidence for the defence. The Executive Secretary had asked for 3 months imprisonment. He unsettles all the panels. He has set himself up as the judge. He intimidates the judiciary. He tells the Inyangamugayo how to question those who appear. If you give evidence, you are in trouble (...) Everyone is afraid of him. Just imagine someone who claims that he has been appointed by the president of the Republic whereas no one has voted for him. Once you have heard that, how would anyone have the courage to ask a question?”¹²⁸

This sort of attitude was also mentioned during the consultation meeting with the CNDP in Kigali on 18 December 2007. Like all the organisations who have been observing the activities of the Gacaca Courts, the CNDP’s¹²⁹ representatives highlighted that this sort of misuse of power and interference by local officials were just some of the problems that hamper the proper running and the success of the Gacaca process.

“There are people who, in order to get other people locked up, approach the Sector’s administrative officials, or police officers or Inyangamugayo. Some people are put under enormous pressure to confess to the crimes with which they stand charged. No attention is paid to the defendant’s version of the story. Neither are there any enquiries to establish whether this person has really committed the offences with which s/he has been charged. The only objective is to stick that person into prison, or to harm him/her physically, because of his or her appearance or because of his/her financial circumstances... The Sector’s Executive Secretary also interferes in various trials... He demands that they confess to the various genocide

¹²⁶ Observation Report on the preliminary investigatory stage in the West Province, 28 August 2007, nr. 0360.

¹²⁷ PRI interview with a local resident, 8 August 2007, nr. 1692.

¹²⁸ *Ibid.*

¹²⁹ CNDP consultation meeting in Kigali on 18 December 2007, regretting the interference by officials and the Gacaca coordinator in the Nyabihu District. This led to a conflict between the Sector Executive Secretary and the Gacaca coordinator.

*offences with which they have been charged and even those they have not yet been charged with.*¹³⁰

These instances of misuse of power must be known to official at higher levels. They put the success of the Gacaca process seriously at risk and undermine any trust the population may have in that process. Apart from the fact that the search for the truth is wholly compromised, there is an enormous risk of miscarriages of justice because there is no guarantee that the *Inyangamugayo* are truly independent from the local officials.

It is clear from our interviews that people are afraid to say what they know because that might be contrary to the interests or the position of such or such an official and that they might in turn be accused of perjury. All this fear explains why evidence can be bought or untruthful, thus betraying the true Gacaca spirit.

2. The representatives of the law

There are instances of police and security officers wrongly interfering in the business of the Gacaca Courts, thus discrediting the *Inyangamugayo*'s work, unrefuted. They often challenge the authority of the *Inyangamugayo* and their decisions. Such practices do little to support the State's claim that Gacaca is an important mechanism for the establishment of the truth and the reconciliation of the Rwandan people.

The example below illustrates how the police had someone imprisoned although that person had been acquitted by the Gacaca Sector Court:

*"The police took him back to prison even though the Sector Court had found him not guilty of the charges. He had been charged with having been the chair of a Sector political party. In putting him in prison, the police showed that they were conniving with the genocide survivors who had been unhappy about this person's acquittal. He was acquitted in 2005 and yet, he is still in prison. The police, together with the survivors, who were dissatisfied with the decision to acquit him, brought a new case against him and took it to the national court. This court refused to hear the case on the grounds that given the nature of the charges, it must be tried in the Sector Gacaca Court. The police who had refused to release him after his acquittal, are still keeping this person in prison and yet no other charges have been brought."*¹³¹

Following what has been described in the Trial Observation Report, it is clear that the *Inyangamugayo* dare not challenge a representative of the executive power:

"Faustin had been released provisionally. He had been ordered to return to answer the charges after he had left prison. So he had to explain himself about the following charges:

- his presence on a road block*
- his membership of an attaque that killed people in a school*
- carrying a fire arm*

Over 15 people gave evidence, some of them were people who had been acquitted, other had been convicted. All said that Faustin's name did not appear in either the preliminary investigatory stage file or in the Cell file. So they said that all the charges against him were false. Those who had been on the road block said they had never seen Faustin there. Those who had confessed that they had been at the school with the attaque confirmed that Faustin never took part in the attaque. And as far as the gun is concerned,

¹³⁰ PRI interview with an accused, 22 August 2007, nr. 1709.

¹³¹ (Unrecorded) interview with a President of a Sector Gacaca Court, 1 August 2007.

everyone said they had never seen him with one. There was no claimant. And there were no prosecution witnesses.

One single man represented the police (...) He as holding a note book, bounded him with questions without asking the court for permission. His questions were odd. He alleged that he had other information about the accused which the court didn't know about. His questions were intimidating. The judges took no action in the light of this behaviour. They didn't ask the police representative to provide them with the information he held.'¹³²

Despite official denials, PRI observers have been informed and able to observe on many occasions that police officers did interfere and that the *Inyangamugayo* lacked both the capacity and the institutional protection needed in their position so as to enable them to resist. People feel helpless when faced with this sort of abuse of power, they put up with it out of great respect and fear. Everyone knows to what extent the Gacaca process has been diverted from its initial purpose. In this respect, we could cite a case which happened in the West Province. The Vice Chairman of the District Consultative Committee was included in the list of persons accused of looting. The Court moved him to a Category 1 offence. The Gacaca coordinator advised the court that it should amend this category as it did not match the charges. The police told him promptly to pack his bags and go home, accusing him of siding with the *Interahamwe*. It was the police commander who gave that order even called the presiding judge and forced him to sentence the accused. The presiding judge told him that he could not sentence Category 1 defendants. So the accused person was then provisionally put into prison.¹³³

As can be seen, the *Inyangamugayo* do not enjoy any real institutional protection which would enable them to ward off any interference by members of the executive and they have no means of affirming their independence which would help them to resist such pressure, which is often accompanied by violence.

3. Survivors' associations: certain members in charge and other influential members

Our interviews with various actors in the process have also highlighted the extent to which some forms of interference go well beyond support or advice to become real pressure in order to influence the outcome of a trial. These forms of pressure are possible because some people draw their authority from being an elected *Inyangamugayo*, having a well known name, belonging to respected associations or enjoying a certain standing in the community.

There is no doubt that associations of genocide survivors, who help the survivors to deal with their memories and provide counselling, play an important part in making the survivors aware of the need to give evidence about what they have seen and suffered and to participate actively in the Gacaca process so as to ensure that the genocide criminals are indeed punished.

There is however a question about how far they can go in their counselling work within the Gacaca. It is a small step from being an attentive observer and counsellor of victims to influencing the *Inyangamugayo* and the line is crossed when certain attitudes are adopted or intimidation is used that goes well beyond mere observation. This is interference which aims to unsettle the *Inyangamugayo*. It has become clear from our interviews that some leaders of survivors' associations enjoy a factual immunity and their authority and their views cannot be challenged.

¹³² ROJG, Kibuye Province (now West Province)/Itabire/Gashari, 21 August 2007.

¹³³ Analytical Report on Police Interference in Gacaca hearings, 10 September 2007.

“We often notice that there are survivors at the Gacaca hearings who are also members of survivors’ organisations. No one can challenge their position, because they enjoy immunity. (...) Their interventions were intended to convince the accused that the best thing to do would be to accept the genocide charges without demurrals. These survivors came from Kigali and one of them was the man in charge of Memory within that association.”¹³⁴

“Right from the outset, we noticed that because members of this association had come from Kigali to attend the hearing, there was tension and fear in the air, because these representatives were working together with a woman representative from another association in the South of the country and they objected to evidence given for the defence. They went for the defence witnesses who were survivors themselves and frightened off all of Christine’s witnesses.”¹³⁵

It has been noted on a number of occasions that there is a lot of pressure on the survivors which, together with their own tendency to accuse “indiscriminately”, can change the course and the outcome of a hearing.

“The lawyer from the SNJG told us that the State would deal firmly with those survivors who mistake themselves for defence witnesses. According to him, that would detract from the seriousness of the genocide and that the survivor ought to trust him because one single survivor who accuses is worth a thousand witnesses for the defence and that those who contradict themselves would be punished severely to serve as a warning.”¹³⁶

4. Pressure and interference from various other persons

PRI observers noted on several occasions that even amongst the *Inyangamugayo*, there are those who, particularly when they are presiding a trial, try and bring their influence to bear upon their fellow judges, they even try to intimidate them and impose their decision which may lack all legal foundation and yet, their authority is never challenged.

“I am referring to the Gacaca president. He often disregards the information that has been provided by the population during the preliminary investigatory stage when he ought to bear it in mind. And then, he is the only one to question the accused, they other members on the panel keep quiet. He sort of intimidates them. That makes it impossible for the defendants to put their case. The factual evidence will have been provided by the population to the Cell. It is used for asking questions. When you have the floor, he will stop you and say that this is not the time to provide information. So, how is one to put one’s case?”¹³⁷

Other persons, those who occupy a strong position in the community, or are well-known, or have lots of money, exercise a real influence on the *Inyangamugayo*. It is particularly people from the Church who will exercise pressure or interfere, or any other persons who enjoy a certain social esteem.

“My accuser believes he will be supported by another member of his family, who happens to be a minister

¹³⁴ ROJG, Butare Province (now South Province)/Kiruhura/Gikirambwa, 17 October 2007.

¹³⁵ *Ibid.*

¹³⁶ (Unrecorded) interview with a survivor after a meeting organised by a SNJG lawyer with survivors from the West, 17 August 2007.

¹³⁷ Interview with a member of an accused’s family, 22 August 2007, nr. 1709.

of the Presbyterian Church in Kigali. He is a survivor. He meddles a lot with the problems people have here because he was born here. His interference has been mentioned several times in relation to trials of people from Rusenge, his Umudugudu, and in relation to the imprisonment of several persons from Kirinda, where he used to be a pastor. He exercises pressure on the panel. I am worried that he will do the same thing at my trial.... The fact is that when he wants to get rid of someone, he uses his position to influence the panel. Most of them are young and frightened, and so the panel doesn't work properly and becomes prejudiced."¹³⁸

There are various ways in which interference by and on certain parties to the Gacaca process can be exercised. Together with corruption, they constitute a major threat to the achievement of the objectives of Gacaca. Such pressure, particularly when exercised on victims, who are often traumatised, defenceless and vulnerable, could only be warded off by the *Inyangamugayo* if they were able to fulfil their duties totally independently and fearlessly, with the skills and the precision required for the proper testing of the evidence brought before them. Only then will they be able to take an impartial decision about an accused's guilt or innocence. Given that this is a society where it is difficult to challenge a person in authority, we believe that it is vital for the authorities in charge to provide all the necessary support and security to the *Inyangamugayo*, so that their status as an independent tribunal are respected.

¹³⁸ PRI interview with an accused, 22 August 2007, nr. 1709.

PART II: CORRUPTION IN THE GACACA COURTS – BETWEEN RUMOUR AND REALITY

During the vast majority of interviews carried out during this research there was mention of corruption, real or alleged, of the various actors in the Gacaca process. The entire population sees corruption as a widespread phenomenon which goes to the root of the Gacaca process, although they realize that it is difficult to prove its existence.¹³⁹

One definition of corruption is the act of bribing someone in order to induce him to fail to fulfil his duty and serve justice. Active corruption consists of offering money or a service to a person who holds a power which he can exchange for a favour to which the other is not entitled. Passive corruption consists of accepting the bribe.¹⁴⁰ By definition, corruption happens in secret and the only persons to know about it are those who are involved in it. It is therefore often very difficult to prove it.

We believe it is important to examine this concern, not only because people are so adamant that it exists, but also because it defeats the primary objectives of the Gacaca process, which are the search for the truth, the fight against impunity and ultimately, the reconciliation of the people of Rwanda.

"I am a judge in a Cell Gacaca Court. On the subject of raising awareness, I would like to say the following. We noticed that the purpose of the Gacaca Courts has been diverted. This is worrying. It has led to new expressions, such as "Kugura umusozo", or "buying an entire bill", which really means that one single criminal accepts to be held liable for all the offences committed on a bill so that he alone is to be punished and all his associates get off. His co-offenders will look after him whilst he is in prison and help out his family."¹⁴¹

"The purpose of the Gacaca Court is to establish the truth so that the crimes that have been committed are made public. Once corruption has moved in, the truth will remain hidden".¹⁴²

This issue needs to be treated with circumspection, for Gacaca is a judicial process and therefore, by its very nature, its outcome may well disappoint one or several parties to the proceedings. In Gacaca trials, just as in any other legal proceedings, it is not unusual for parties to jump to the conclusion, as they often do when the judges' decision is perceived to be "unjust" or "lacking impartiality", that the judges must have been corrupt. Any examination of the issue of corruption of the various parties to the Gacaca process must therefore be carried out cautiously and dispassionately. But the highest political authorities are aware of the problem and claim that they are taking appropriate remedial action. In a recent interview for *Jeune Afrique*, the President of the Republic of Rwanda, Paul Kagame, stated, in reply to a question about corruption and bias in the Gacaca Courts, that he knew of the problem and expressed himself in the following terms: *"There is no such thing as perfect justice anywhere in the world. Bent judges, unfair decisions, miscarriages of justice, they happen in Rwanda just like they happen elsewhere. But these are isolated incidents and we try to remedy them every*

¹³⁹ On corruption, cf. also LIPRODHOR, Report 2006, p. 71.

¹⁴⁰ Cf. entry « corruption » in the Larousse Dictionary.

¹⁴¹ PRI interview with a Cell Court *Inyangamugayo*, 9 November 2007, nr. 1826.

¹⁴² PRI interview with a resident, 14 November 2007, nr. 1457.

*time. The Gacaca Courts have given tens of thousands of decisions that have not caused any problems at all!*¹⁴³

The main reason for the corruption, which according to all accounts, is not restricted to the *Inyangamugayo*, but rather affects all the actors in the Gacaca process, lies in the extreme poverty from which the population suffers and in the defendants' fear of being convicted and losing their position in the community. These socio-economic factors (I) have been aggravated by the attempts to speed up the trial process (II).

I. SOCIO-ECONOMIC FACTORS: THE OBVIOUS LINK BETWEEN CORRUPTION AND POVERTY

There are many reasons why the various actors in the trial process may be corrupted and these are often determined by each participant's social status. And so it is that extremely poor genocide survivors may agree to a "plea bargain" with the perpetrator of a crime (A), or that the accused's desire to regain a social status will make them do anything to avoid a prison sentence (B), or that the economic position of the *Inyangamugayo* makes them vulnerable to offers to negotiate their decisions (C).

A. Extreme poverty amongst the survivors

The extreme poverty amongst the survivors, their isolation, their deep frustration when they are confronted with the lack of compensation can be read and heard in the interviews carried out by the PRI observers. The following statement by a survivor voices the feeling of neglect that survivors may experience when faced with a justice system which, in their eyes, does more to help the defendants in trials for genocide and crimes against humanity than the victims:

*"There is another problem. The defendant who has been discharged will receive visits from his family which will bring him drink and clothes etc. to celebrate his return to freedom. And yet the victim, who sees it all, has neither house nor chairs. His children, her husband, their family have been killed! It's high time the State began to acknowledge their existence! That is what worries us. When the defendant is brought to court, he will be accompanied by his family and therefore he will feel at ease. When the victim comes before the court, he is alone. When the defendant is acquitted, his family will be organising a party. They sing and they dance whereas at that very same moment, the survivor goes straight home, like a thief, and he will stay there, all on his own, because he has been treated like a troublemaker or a madman! We are overcome by hunger, threats and anguish. The Government should ensure there is some assistance available to us. I am poor and I am a widow, my husband's entire family has been exterminated. I am on my own, with my children. Believe you me, we hear on the radio that there is help for us, but I have never seen it, I have not received a single fifty Rwandan francs piece. The State ought to find out how many people are in need, the widows, the orphans, and help them. Instead they just say on the radio that there is help available, but it never reaches those who need it."*¹⁴⁴

The main reason why the survivors accept corruption is their extreme poverty, something they never cease to bring to the public attention. They know it and they admit to it. Some add that it doesn't stop them from giving evidence for the prosecution and to expose the perpetrators' crimes.

¹⁴³ Rwanda: let us end the genocide. An exclusive interview with President Kagame, *Jeune Afrique*, nr. 2466 of 13-19 April 2008, p. 30.

¹⁴⁴ PRI interview with a survivor, 11 September 2007, nr. 1738.

"In my view, the survivors are poor, so they can be bought with money. They then justify their acceptance of the money by saying "if I refuse this money, someone else will accept it". The truth of the matter is that evidence can now be bought or sold. Having accepted the bribe, the survivor appears before the Gacaca court and claims that he made a mistake, that this was not the offender. These things do happen".¹⁴⁵

"I too, if I were to be offered money, I would take it, rather than continue to speak up in the Gacaca Court which doesn't bring in any money. Perhaps this bribe makes it possible to pay the fare to get to the place where the Gacaca trial is held and where evidence needs to be given. We, we pay the fare for travelling to the Gacaca Court to which we have been summonsed. I could accept the bribe offered by a defendant, but that wouldn't stop me from giving evidence against him. No one can fool me with that (corruption)".¹⁴⁶

"When a survivor believes that a defendant will be released anyway, he'll prefer to get money from the defendant because that will be his only compensation".¹⁴⁷

"Even survivors use corruption, by contradicting themselves deliberately in their evidence (the evidence given during the investigatory stage and that given later to the court)".¹⁴⁸

The extreme poverty in which a great number of survivors live encourages the use of bribes. And defendants exploit this situation by "buying" their victims' silence. For their part, the victims express their disappointment and their bewilderment when they are confronted with some of the political decisions in respect of the Gacaca process (such as the introduction of the TIG for Category 2 defendants) and thus use corruption as a sort of compensation or a way of ensuring their own safety.

"There are those who benefit from the survivors' misery. Where a survivor survives by carrying out small daily jobs for the very person who harmed him, he can not afford to become a witness against that person, because that would put his job at risk and then he wouldn't have anything to eat anymore. It is all because of the poverty. If he provides work and you then fail to come to his rescue, he'll let you know you are in trouble. So, you decide to hang on to your job, you suffer in silence, just in order to survive".¹⁴⁹

Corruption, which the survivors admit to using, is one way of responding to the lack of real reparation, for victims cannot look forward to any positive outcome to the process and so they "take what they can get".

The only way to put an end to the disappointment and the practices which, all considered, only serve to perpetuate impunity and thwart the establishment of the truth, would be to acknowledge the victims and introduce a compensation scheme, however modest.

¹⁴⁵ PRI interview with a survivor, 8 October 2007, nr. 1783.

¹⁴⁶ (Unrecorded) PRI interview with a genocide widow, 17 August 2007, not recorded.

¹⁴⁷ (Unrecorded) PRI interview with a Sector Agent, 3 October 2007, not recorded.

¹⁴⁸ PRI interview with a Cell Gacaca *Inyangamugayo*, 9 November 2007, nr. 1826.

¹⁴⁹ PRI interview with a survivor, 6 October 2007, nr. 1781.

B. The defendants' desire to recover their position in the community

The interviews show that sometimes the defendants use bribery because they do not wish to be humiliated by a conviction for a genocide crime or a crime against humanity and to protect their family from any possible revenge. So they try to bribe the *Inyangamugayo* and the victims in order to obtain an acquittal and to be able to live without being branded by a conviction for a genocide crime.

"He who offers a bribe does so to conceal his actions and receive a light sentence or even escape prosecution... In fact, the corrupter wants to keep his honour by not admitting to having killed".¹⁵⁰

"He offered bribes to the judges. He gave them thirty thousand francs, but they didn't divide the sum very well. The one who went to collect the money from the defendant kept five thousand francs for himself before he shared out the rest of the money. These facts were known before the defendant was put in prison. There was disagreement amongst the judges when it came to dividing the money and they ended up quarrelling, because they had received only a small sum. That is how everybody got to know about it. After the judges had deliberated, they closed the hearing and adjourned all the trials that had been listed for that day. They asked the population to go home and remained behind with the defendant, his wife and his son-in-law who had provided the money. They had a meeting behind closed doors, the defendant said that his family had paid thirty thousand francs and that someone had kept the difference for himself. They went to see the Cell Coordinator who in turn called in the police. These people were immediately arrested and put in prison".¹⁵¹

Other defendants claim they are innocent but when they face their victims and the prosecution witnesses in court, they have no defence. They "buy their right" by offering bribes, their only means of obtaining an acquittal.

*"When you ask a defendant why he prefers to resort to bribery when the law has reduced the sentences, he will answer that it helps him to avoid having to answer questions. Some *Inyangamugayo* intimidate the defendants and threaten them with prison, and so even if they have pleaded guilty, defendants prefer to give money. They call it buy your right".¹⁵²*

C. The precarious financial situation of the *Inyangamugayo*: a threat to their integrity

The *Inyangamugayo* are born of the people and elected by them and they are known and acknowledged as persons whose integrity is unquestionable. Moral probity is the first criterion for anyone who wants to be elected as an *Inyangamugayo*, or "upright person".¹⁵³ Art. 14 of the 2004 law provides that "*members of the Gacaca Courts shall be upright Rwandans elected by the General Assemblies of the Cells in which they live*".¹⁵⁴

The commitment of the *Inyangamugayo* is widely acknowledged and their involvement in the

¹⁵⁰ PRI interview with a released prisoner, 5 September 2007, nr. 1726.

¹⁵¹ PRI interview with a convicted person on parole, 5 September 2007, nr. 1782.

¹⁵² PRI interview with an *Inyangamugayo*, 10 September 2007, nr. 1733.

¹⁵³ Art. 10 (a) of Organic Law 40/2000 of 26 January 2001, *Journal Officiel* of 15 March 2001.

¹⁵⁴ Art. 14 of Organic Law 16/2004.

process matches the importance of that process. However, it is clear from the interviews carried out by our observers that they are the subject of rumours that disparage their judicial function and cast doubt on their impartiality. It then becomes tempting to think in terms of corruption when trying to explain why a party should feel unhappy about a decision.

"Often, it is the same people who accuse the Inyangamugayo of corruption as those who bring false charges because of the conflicts amongst themselves. They blame us for everything because they are unhappy with the judgment. So they then suggest that some members of the court are corrupt. They do that in order to slander us, because the person who utters such accusations, does so because he is not happy with the judgment. We may adjourn a hearing twice because of corruption allegations so that we can investigate whether survivors or released persons did indeed use bribes and we punish them if they are guilty. We, the Inyangamugayo, we are not paid for our work. We do this work because we believe in justice for the Rwandans. You have seen for yourself how stressful the work is, because sometimes we spend the whole day giving judgments. We work for reconciliation in Rwanda, and that is enough for us".¹⁵⁵

There are *Inyangamugayo* who acknowledge the extent of the traffic in witness evidence, accusations and silence. According to this *Inyangamugayo*, some of his colleagues don't forget that they must take their decisions when they are sure in their own minds and that conviction must be based on their own examination of the facts. They continue to carry out their duty with dignity and honesty, refuse all attempts at bribing them and refuse to be molested, threatened or accused, never forgetting how difficult their task is, although they cannot prove that these things happen to them.

"(...) I would say that they contradict their own statements for money because, for example, in a murder trial, when the convicted person wishes to appeal, a member of his family may go and see one of the victim's close relatives and propose to pay him something so that on appeal he'll give evidence on behalf of the appellant whereas at trial level (Sector Gacaca Court), he had given evidence on behalf of the prosecution. It also happens that the convicted person himself goes and sees this victim's relative and offers to give him something, sometimes money, so as to get him to change his evidence. When we are faced with such a case, we will investigate and if we find that this person is really guilty, we decide our case on the basis of our findings and will disregard any bribes."¹⁵⁶

Although many *Inyangamugayo* are morally upright, they are not immune to corruption; they are not only contacted by the parties to the proceedings, where what is at stake is important and contradictory, but also by their peers who are seeking to protect their own. As explains this judge:

"It is rumoured that some of the Inyangamugayo are corrupt. But that has yet to be proven. For myself, I came to the conclusion that there is indeed corruption. At the end of a General Assembly, another Inyangamugayo came to see me to discuss a case in which her husband was a defendant. I told her that those who started that trial should also complete it and that it had nothing to do with me. As I had heard that there was a corruption problem, I told her to leave now and come and see me again another time to discuss it together. She asked me if she could come back the next day, which I refused. I give her another appointment. As I suspected, this judge wanted to offer me a bribe. I informed the police and the Gacaca Courts Coordinator. That's how they became interested in the case. They discovered that this "upright" judge sought to corrupt me because I am the presiding judge of this court. The police discovered the answer. She just wanted to tell me about her husband's problem. As her husband was in prison, I advised her to tell her husband to enter a guilty plea if he felt he was guilty. She said that he had been falsely accused. She gave me the names of those who had accused him and these included the president

¹⁵⁵ PRI interview with an *Inyangamugayo*, 25 September 2007, nr. 1761.

¹⁵⁶ *Ibid.*

of the Gacaca Court of the former [...] Cell and who had been involved in the preliminary investigatory stage. According to her, this judge had fabricated the case papers. She asked me to deal with the case and to find a solution. She told me that she would give me a really big reward if I came up with the right answer. I told her that I don't work for rewards. I reminded her of the oath that we had taken, that we would not use our power for our own purposes. I asked her to leave and to wait for the court's decision. She then begged me to deal with the case as a colleague, she promised me a reward, even if I refused it. She added that she had a bottle of beer which she would give me so that I would accept to deal with her problem, after I had drunk the beer".¹⁵⁷

One of the main reasons why some *Inyangamugayo* may be accepting bribes is that they are poor. A survey carried out by the CTB¹⁵⁸ in November 2005 shows that 92.7% of the *Inyangamugayo* are farmers and 81.1% earn less than 5 000 FRW per month.¹⁵⁹ This study was carried out before the March 2007 law increased the number of courts and 50% of *Inyangamugayo* were already spending two days a week sitting in the Gacaca Courts.

"After a while, we noticed that a number of Inyangamugayo were giving in, they want to earn something from their work and they began to accept bribes. There is this expression "amafranga ashakirwa aho ari", which means that you look for money there where you might find it. The Inyangamugayo only try the poor, from whom no money can be made once the trial is over. So some have begun to fabricate files against people who can afford to pay the Inyangamugayo and the victims".¹⁶⁰

"The Inyangamugayo tell the accused that they'll have to pay up if they want their confession and guilty plea to be accepted. So they pay up, even when they have made a full confession. If they refuse to pay up, they are convicted, just to punish them."¹⁶¹

Removing evidence given by an accused person who is in prison against a person who is free, passing their confession statement to prisoners so that information incriminating those who give money can be removed,¹⁶² buying over defendants so that their confession and/or guilty plea is not rejected,¹⁶³ coming to an agreement with a person in authority or a well-known survivor who enjoys immunity so as to get this or that other person convicted,¹⁶⁴ these are some of the ways in which the *Inyangamugayo* are being bribed. Then there are the files that disappear or the charges that were never brought despite the availability of prosecution evidence.

"This Inyangamugayo in the Gacaca Court of Appeal let me know that if I gave him 50 0000 Francs, he would talk to the appellants and get them to abandon the appeal proceedings and then I would have to

¹⁵⁷ PRI interview with an *Inyangamugayo*, President of a Gacaca Sector Court, 24 July 2007, nr. 1672.

¹⁵⁸ Coopération technique belge, *Report on improving the living conditions for the Inyangamugayo*, Nov. 2005.

¹⁵⁹ On the subject of poverty in Rwanda, cf. in particular Frédéric GATERA, *Le phénomène de la pauvreté au Rwanda: définitions, profils et remèdes* (research study), Oct. 2006; UNDP, *Turning Vision 2020 into Reality, National Human Development Reports, Rwanda, 2007*, pp. 92-96.

¹⁶⁰ PRI interview with an *Inyangamugayo* of a Gacaca Cell Court, 9 November 2007, nr. 1826.

¹⁶¹ PRI interview with a survivor, West province, 22 August 2007, nr. 1711.

¹⁶² ROJG, Butare Province (now South Province)/Kiruhura/gikirambwa, 17 August 2007.

¹⁶³ PRI interview with a survivor, *ibid.*

¹⁶⁴ PRI interview with an *Inyangamugayo*, President of a Gacaca Sector Court, 24 July 2007, nr. 1672.

give him another 1 000 000 francs at the outcome of the proceedings."¹⁶⁵
Several allegations of corruption amongst the *Inyangamugayo* are now being investigated by the national courts.¹⁶⁶

*"In this Sector Gacaca Court, the rumours about corruption have been substantiated by hard evidence. One Inyangamugayo received money from an accused person. The police arrested him. This Inyangamugayo had asked the accused for money and the latter give him 130 000 FRW via his son-in-law. When the panel deliberated their decision, this Inyangamugayo passed 1500 FRW on to his two upright colleagues who then reported him because he had given them so little compared to what he himself had received, and that was then reported to the judicial authorities."*¹⁶⁷

*"When the rich are put on trial, they use their money to come to an arrangement with the judges.¹⁶⁸ Almost every rich person who stands trial will be acquitted. In other words, we are not exactly pleased with the way in which Gacaca Courts reach their decisions. One of those decisions in our Sector Court has really caused trouble. Charles's three sons were put on trial together with one other person, who was poor. Because this other person was poor, s/he was given a heavy sentence although they had all been charged with the same offences. Two of Charles's sons were acquitted and the third received a minimum sentence and that has caused unrest in the population. Later, an investigation was carried out and established that bribery had been used. Right now, the three Sector judges are still in prison."*¹⁶⁹

*"The Chief of Police referred to corruption cases and mentioned that these were particularly frequent in Kamembe and Shangi. He further added that all the complaints brought with the police involve the Inyangamugayo in the Gacaca Courts and some of them are now in prison. Survivor-victims may be involved."*¹⁷⁰

The financial position of the *Inyangamugayo*, who have little time left to earn enough to support themselves and their families, is very likely to be the reason why some of them fall for the bribes. The issue of corruption amongst the *Inyangamugayo* was raised during a consultation meeting organised by the CNDP and held with their monitoring partners in the Gacaca Court system. A number of cases were recorded in the Nyabihu, Rubavu and Ngororero districts. Some of those involved have been put into prison in the Cyumba Sector.

PRI observers noted that corruption is not limited to a few isolated cases and that it is widespread amongst the *Inyangamugayo*.¹⁷¹ Their uprightness has been seriously challenged as a result of their precarious financial and social circumstances. The devastating effect of this can be seen and heard: many people say they are afraid, they expect fresh allegations to be brought, allegations that have never been made before, they notice that the rich and the poor are treated

¹⁶⁵ PRI interview with a monk, 10 October 2007, nr. 1786.

¹⁶⁶ Cf. Journal *IMHAYO nshya* nr. 1727 of 17-23 October 2007; Journal *RUGARI*, nr. 21 of 10-24 May 2007.

¹⁶⁷ PRI interview with an *Inyangamugayo* in a Gacaca Sector Court, 19 September 2007, nr. 1751.

¹⁶⁸ "Thus human courts acquit the strong, And doom the weak as therefore wrong", Jean de La Fontaine, *Fables*, Book VII, "The Animals sick with the Plague".

¹⁶⁹ PRI interview with a local resident, 14 November 2007, nr. 1457.

¹⁷⁰ Observation Report on a meeting of the SNJG's Executive Secretary, the local officials and the *Inyangamugayo* in the Rusizi District on 2 October 2007.

¹⁷¹ Cf. an article in the *Umurabyo* newspaper, nr. 12, 12-26 May, on the corruption in the Gacaca Courts: "the Gacaca Courts will be indicative of the ideology that will determine Rwanda's future" (French translation by PRI).

differently. The absence of equal treatment before the law and the many fears that have been voiced can only increase the use of bribes as each person attempt to escape a justice system that disturbs rather than reassures.

II. CORRUPTION AS A RESULT OF THE ACCELERATED TRIAL PROCESS

Almost all the parties in the Gacaca process are poor and this explains to a large extent the corruption that is taking place. It is perhaps worth adding that a year ago, the authorities decided to speed up the trial process by encouraging the local administration to include Gacaca activities in a "performance contract". (A). This result based approach does not necessarily cause the use of bribes, but it does encourage a phenomenon which is already widespread and would appear to be justified by the faster Gacaca trials (B).

A. The inclusion of Gacaca hearings in the "performance contracts"

After the 2006 administrative reforms,¹⁷² the national administration told the provincial administration that it would have to set targets and timetables that would range from 6 months to one year. At the end of that period the provincial administration would have to submit the results to their superiors. Those results were to be included in a document called the "performance contract" which was now formalised across the administrative board, from provincial level all the way down to district, sector, cell and finally to village level. The political decision to speed up and where possible, complete the genocide litigation before the end of 2007 had been clearly announced at the highest national level and so the Gacaca hearings were included in the performance contracts at all administrative levels. Gacaca had become a priority for all political and administrative bodies. So Gacaca hearings were quickly included in the performance contracts.¹⁷³ The *Inyangamugayo* undertook to comply with the timetables that had been set by the administration. A number of observers noted that this policy which focuses on results to be achieved within ever shortening time limits, hampered the proper functioning of the Gacaca Courts.

"We noticed that in some sectors there are several Gacaca hearings per week, because of the need to speed up the process. For example, in Mutete (North Province, formerly Byumba) the General Assembly meets on Mondays and Saturdays. In Kiramuruzi (West Province, formerly Umutara), the AG meets on Tuesdays and Sundays and in Gashari (West Province, formerly Kibuye) it meets on Tuesday and Saturdays. Added to that, there are the weekly hearings at Cell level that deal with property offences. It is not just the Gacaca hearings that are compulsory, so is the Umuganda, the compulsory community duties which in some places must be carried out every week, even though under national rules this only needs to be done once a month, then there are the night watches and various other compulsory meetings".¹⁷⁴

This pressure is not without consequences. It is particularly noticeable in the people who are worn down, despite encouragement and the pressure from the authorities. Moreover, the work of the Gacaca Coordinators has been further complicated by the fact that they simply haven't got the time to check whether all the documents (in particular those concerning remands in custody

¹⁷² Law 06/07 of 16 August 2006.

¹⁷³ A model is included in Annex III. Performance contracts are filled out by each head of a family, who then forwards the form to the head of the village (*umudugudu*). He then in turn forwards a summary of all the forms to the head of the cell. And so on, right up to district level.

¹⁷⁴ Trials of offences against property committed during the genocide : a conflict between the theory of reparation and the social and economic reality in Rwanda

or prison of accused or convicted persons) comply with the law and that increases the risk of unlawful imprisonments.

Finally, returning to the case of the *Inyangamugayo*, as we have been saying all along in this report, they are not always really independent and do not always manage to remain unbiased and the accelerated trials have caused or encouraged them to accept bribes. The same applies to all the other actors in the process. Several observers have also highlighted the fact that the pressure on the *Inyangamugayo* to complete their activities by the end of 2007 has greatly impaired the quality of their decisions. It has also encouraged corruption particularly by influential or rich people who do not hesitate to use bribes to ensure their own acquittal.

B. Circumstances encouraging the corruption of the *Inyangamugayo*

According to various PRI studies corruption is on the increase, particularly since 2007, when the number of panels was increased and the proliferation of legal tools for the *Inyangamugayo*,¹⁷⁵ who must meet targets in terms of results and number of disposals. As the national authorities remind them regularly of the need to speed up the Gacaca process, many of the *Inyangamugayo* have, for the past two years, been hearing cases at least twice a week. They give their time free of charge and often have to try very complicated cases in circumstances that are becoming increasingly difficult. They are caught between the people's weariness and fear, negotiations between defendants and witnesses about pleas and evidence and the political desire to end this whole process as quickly as possible.

"The Inyangamugayo work hard without getting paid, they work two days a week, and then they have to carry out other duties, such as umuganda, cell meetings ... all of which lays them open to corruption".¹⁷⁶

In accepting bribes, the upright judges become living proof of how difficult, nay impossible it is to resist enticement when one dispenses justice to the Rwandan people in their complex society, a society racked with traumatic experiences, fear and suspicion.

"What I wanted to say is this, there are people who are afraid of Gacaca justice. These trials cause fear because those who are in a financially strong position will be accused and brought before the Gacaca Court, even if they have never done anything. All you need to do is just check: those against whom charges were brought after August, were never accused during the preliminary investigatory stage. It is obvious that the very purpose of the Gacaca has been misappropriated. Today, over 80% of the people here are afraid. Anyone who has the means tries to get away..."¹⁷⁷

What this *Inyangamugayo* has to say illustrates how the people mistrust a Gacaca process that is unable to protect the citizen from arbitrary legal proceedings, or to ensure that the fundamental right to a fair trial will be upheld.

The extreme poverty amongst the vast majority of the participants in the Gacaca process, the lack of time and the judiciary's dependence on the executive all explain why inducements are being offered. During a workshop on the fight against corruption and injustice organised by the Office of the Ombudsman in Kigali on 3 July 2007, representatives for the Office stated in public that

¹⁷⁵ Cf. *supra*, footnotes 113 and 114.

¹⁷⁶ (Unrecorded) interview with a sector agent, 3 October 2007.

¹⁷⁷ PRI interview with an *Inyangamugayo*, 9 September 2007, nr. 1826.

corruption amongst the *Inyangamugayo* during Gacaca hearings was a genuine problem to which the Office was extremely alert and that a request for further investigation had been sent to the Minister of Justice.

The establishment of the truth, which is an absolute precondition for the fight against impunity, can no longer be pursued when those who are directly involved in it can trade in their words, their silence and their evidence. The lack of any effective reparation scheme for the victims is another stumbling block to the legal process in its entirety and explains in part why the victims who escaped are now trading in their silence and their safety. The population often questions the credibility of some of the court decisions which appear to reflect neither the judicial nor the historical truth. Ultimately, it is the very attempt at reconciliation within the Rwandan society that is put at risk.

If the Gacaca process is not to wholly abandon its primary purposes of the search for the truth on the 1994 genocide, the end to impunity and the achievement of national reconciliation, it is vital that those who are in charge of the process take the necessary measures to identify the corruption and prosecute its perpetrators systematically. It is not only the hearings and decisions in the courts that should be protected from any attempt at interference with the course of justice, the *Inyangamugayo* too must adopt a sort of moral code that will enable them not to yield to corruption and ensure that the perpetrators of criminal offences are indeed convicted and that the innocent are acquitted and rehabilitated within society.

CONCLUSION: ARE SPEED AND SERENITY IN THE SEARCH FOR THE TRUTH INCOMPATIBLE?

Justice delayed is justice denied - in any judicial system. But it becomes even more poignant when that justice has to hear distressing genocide litigation. In an attempt to deal with the huge challenge posed by the judicial backlog in 1994 genocide matters, a backlog that no established national could have resolved given the scope of the tragedy, Rwanda opted for a "participative" justice system by bringing in the Gacaca Courts, a traditional system for resolving local disputes in public meetings.¹⁷⁸ Those in political power, who sought to use the criminal law as an education tool, decided to seek their inspiration from the traditional Gacaca system and create a judicial system that was to be based on both written and customary law. That is how the "repackaged" Gacaca Courts, which were now to be used as a means of resolving genocide related litigation, came into being.¹⁷⁹

Gacaca justice is a socio-political process, firmly enshrined in a procedure whose legal aspects are essential, and must now venture to resolve an equation whose terms are complicated and sometimes even contradictory. The Rwandan people, who have witnessed offences which constitute genocide offences and crimes against humanity, and who have, at least in part, also participated in the commission of those offences, must now give evidence, confess, and sit in justice over themselves, as a result of a written law. In this difficult social and political context, the duty of the Gacaca Courts and their judges (who are lay judges) is an almost impossible task. They can only meet the stated objectives if they ensure that hearings and debates are calm and composed and everyone is free to speak and if they have the time to verify the information gathered.

It is understandable that fourteen years after the genocide, those who are in charge of the process would like bring to a rapid conclusion litigation which is painful burden for the whole country. That does not resolve the question whether the faster procedures are not counterproductive, in that they defeat the extant expectations, namely the establishment of the truth on the genocide in the spring of 1994. There is a huge gap between the official statement and the reality out in the fields. The genocide litigation will most certainly not have been completed within the next few weeks.¹⁸⁰ For one thing, the number of appeals and case reviews is growing, new charges are being laid, a great deal of the current litigation will probably be transferred to the national courts and a further law will give the Gacaca Courts competence to try rapists. All this contradicts the official statements that the process is about to come to an end.¹⁸¹

1. Speed at the expense of quality and the truth?

We have been able to show to what extent the political insistence on a speedy conclusion to the current litigation has adversely affected the quality of the court decisions, fostered non-

¹⁷⁸ 'The Gacaca Courts', in: *Justice et Gacaca, l'expérience rwandaise et le génocide* (Justice and Gacaca: the Rwandan experience and the genocide), ed. F. Digneffe and J. Feriens, Presses universitaires de Namur, 2000, p. 7.

¹⁷⁹ As introduced by Organic Law 40/2000.

¹⁸⁰ During a meeting on 11 March 2008, despite the imminent introduction of a new Organic Law on the Gacaca Courts, the SNJG's Executive Secretary reiterated the need to complete the Gacaca trials by the end of the first quarter.

¹⁸¹ Further details were recently provided by the SNJG's Executive Secretary at a meeting between the various actors and partners in the Gacaca hearings which took place on 28 March 2008.

compliance with procedural rules and encouraged corruption, and if this goes unchecked, it may well discredit a process which is intended to help Rwandans to achieve reconciliation.

We have also analysed the difficulties facing the when they seek to collect live evidence which they need to test and compare in hearings in which all parties participate so that they can found their decisions correctly.¹⁸²

"There are instances of judges giving their decision before all the witnesses have arrived in court. Another consequence is that the cases are not properly tried. The court gives its decision within the time limits. It gives its decision before the hearing has been closed. For example, when it is alleged that so and so is an accomplice whereas for the sake of closing the trial, the hearing only deals with the main perpetrator so, I can't but think that this case has not been dealt with properly."¹⁸³

Survivors, *Inyangamugayo* and defendants all agree that the accelerated procedure has had a negative impact on the quality of the court decisions. Those decisions may well no longer reflect the guilt or innocence of the defendants or the historical truth and they certainly fail to meet the survivors' expectations. During a consultation meeting organised by the Commission Nationale des Droits de la Personne (CNDP) in Kigali on 18 December 2007, the Commission's representatives, who cover the whole country, underlined the fact that the accelerated trials have caused a degree of slackness amongst the *Inyangamugayo*, who no longer take the time to consider the facts in the case before them before they come to a decision.¹⁸⁴

"The accelerated trials put a great strain on the Inyangamugayo because they have to hear many defendants. So they take hasty decisions and do not always apply the law."¹⁸⁵

So the work grows more and more difficult for the judges. They finish late, have to deal with a great number of cases in a single day and therefore can't always pay proper attention to the details, the inconsistencies or the inaccuracies contained in the statements. Two meetings every week constitutes quite a workload for the population and often the witnesses are not heard for the sake of gaining time.

2. Fresh accusations cause a feeling of insecurity amongst the population

As said earlier in this report, our studies show that the faster trials and the greater number of panels have led to fresh accusations being brought in the Gacaca Courts against people who had not been previously identified during the preliminary investigatory stage or reported before by possible co-perpetrators or accomplices.¹⁸⁶

According to one interviewee:

"There are Inyangamugayo who conspire with genocide survivors: they fabricate charges against a person with whom they have a dispute, even when no charge had ever been brought against that person

¹⁸² Cf. *supra*, pp. 28-40.

¹⁸³ PRI interview with a survivor, 28 October 2007, nrs. 1804-1805.

¹⁸⁴ According to CNDP agents in charge of the North and East Provinces.

¹⁸⁵ (Unrecorded) interview with a local resident, 4 October 2007.

¹⁸⁶ Cf. *supra*, in particular pp. 36 and 38

during the preliminary investigation stage".¹⁸⁷

We will mention two examples of the extent to which Gacaca justice can be distracted from its judicial purpose and become a tool for revenge, for sorting out private disagreements. The first case concerns a person who had never been the subject of any criminal charge during the information collection stage. Someone was unable to accept that another candidate had been appointed to given an important position and used the Gacaca Court to get his own back.

In one of the Western districts, a person who was well known for having carried out important duties at Cell and District levels from 1994 until August 2007, held a position within the District Committee for Community Development. He had competed for this position with the chairman of a District association of survivors. Disappointed and angry, this chairman then told other people that his rival "wasn't going to get away with it". Less than two months after having taken up his new duties, Nicolas was summonsed before the Sector Gacaca Court and received a custodial sentence of 17 years. Upon appeal this was increased to 19 years.¹⁸⁸

Our investigators observed that the chairman in question had also begun to talk Sector survivors into giving evidence against the defendant at his retrial and told them that if they refused, their Health Service cards (issued by the Fonds d'Assistance aux Rescapés du Génocide, the FARG) would be withdrawn. No evidence was ever collected against this person during the preliminary investigation stage and no charges were brought against him at the time.

The second case is a perfect example of how the trial process itself can be perverted. We are not here to throw doubt on a court decision, but this case concerns a person who was convicted at the end of his trial and then sentenced to 19 years imprisonment upon appeal. This case was widely discussed in the newspapers and triggered a great number of articles in the press highlighting how the Gacaca process was being misused to serve private purposes.¹⁸⁹ Everyone knows how the defendant was brought before the Gacaca court after he had accused an *Inyangamugayo*. One of the judges on the panel that tried him was the very judge with whom he was in conflict. The defendant applied for that judge to recuse himself, but his application was rejected.

The Gacaca Appeal Court hearing¹⁹⁰ took place on 4, 11 and 18 August 2007 but although the defence evidence was heard, it was not considered, whereas the only prosecution witness, who had given evidence at a trial in the national court,¹⁹¹ had not even been summonsed earlier to appear before the Gacaca Court.

These two cases are perfect illustrations of the extent to which private disagreements may interfere with the trial process and used as a revenge tool or a means to settle private disputes¹⁹² within a justice system that on occasions gives the population cause for fear and distrust. Quite a few of those who were interviewed said that they feel they can't be sure that they won't be falsely

¹⁸⁷ PRI interview with a local resident, 4 October 2007, nr. 0497.

¹⁸⁸ Interview with an *Inyangamugayo*, 9 September 2007, nr. 1826.

¹⁸⁹ Cf. in particular Amani, August 2007, nr. 88; Umukindo, Kanawa 2007, nr. 34; Umuseso, Kamena 2007, nr. 284

¹⁹⁰ ROJG, Kigali City/Nyarugenge/Biryogo, 4, 11 and 18 August 2007.

¹⁹¹ RP 0060/04/KG/RMP 6519/S12 of 25 November 2005, Kigali Court of First Instance.

¹⁹² Cf. also ROJG, Utumara Province (now East Province)/Rukara/Gahini, 7 June 2007.

accused and summonsed to the Gacaca Court on genocide charges or for crimes against humanity.

"Fresh accusations, which have never been mentioned during the preliminary investigatory stage are often the reason why defendants go on the run. They are advised to fight the accusation, but when they do so, they are sent to prison."¹⁹³

"I mean that there are several people who are afraid of the Gacaca. They are afraid because these days, anyone who has a bit of money may well be accused before the Gacaca Court, even if that person has never done anything wrong. When this sort of accusation is then checked, it turns out that those persons who have been accused since August, had not been accused before during the preliminary investigatory stage. Whatever the case may be, the real purpose of the Gacaca Courts has been usurped."¹⁹⁴

Fresh accusations are also being made during trials, even at appeal level, by prosecution witnesses or victims against people against whom no charges had been brought during the earlier preliminary investigatory stage.

It also needs to be said that these new accusations may be the result of the survivors' unhappiness. On occasions that unhappiness may have been fostered by outsiders, such as the leaders of victims associations or the local police. Fresh accusations may also be brought by witnesses who received information belatedly and who, having heard about an ongoing trial, come to court to bring new accusations. The Service National des Juridictions Gacaca recommends that such accusations be dealt with by the judges who are hearing the case if the charges fall within their competence.¹⁹⁵ The desire to end the Gacaca trials as quickly as possible is the reason why these new accusations are not investigated and tried independently by the Cell Gacaca Courts, unless the accusations have been made at Appeal Courts level. Such a hurried approach, solely based on the need to dispose of cases "quickly", means there is a high risk of miscarriages of justice. The feeling of insecurity this causes amongst the population can be seen in the sharp increase in new accusations which have often more to do with private disagreements and sometimes nothing with any involvement in genocide offences.

The reality is that these days, many people live in the fear of being falsely accused for they will be unable to defend themselves if this happens, because they lack either the money or the time. There is a very real risk that the Gacaca Courts are being used as a tool for other purposes and those who are in charge would do well to heed the many warnings that have been sounded by human rights organisations and the concern expressed by the civic society that the process may be drifting away from its primary purpose.

3. The paradox of the proclaimed end to the Gacaca Court hearings

Art. 20 of the 2007 Organic Law amends Art. 93 of the 2004 Organic Law by widening the scope for applications for retrials by the parties in the proceedings or by any other person where such a retrial is in the interest of justice.¹⁹⁶ This amendment was followed by Instruction Nr. 12/07

¹⁹³ PRI interview with a local resident, 4 October 2007, nr. 0497.

¹⁹⁴ PRI interview with a wise man, 9 November 2007, nr. 1862.

¹⁹⁵ Cf. Question and answer nr.18 in *Les problèmes fréquents qui engagent beaucoup de discussions* (Frequent problems that trigger many debates), SNJG, March 2005, translated into French by PRI.

¹⁹⁶ Art. 20 (3) provides in its official English translation "a judgment was passed in the last resort by a Gacaca Court, and later on there are new evidence proving contrary to what the initial judgment of that Gacaca ground was grounded".

issued by the SNJG on 15 March 2007,¹⁹⁷ probably as a result of the great number of applications for retrials to the SNJG and to the Presidents of Sector General Assemblies.

Although currently there are no hard figures available, there is no doubt that the number of applications for retrials has risen.¹⁹⁸ This increase is mostly the result of the fact that the disclosures in the confessions made by those who have pleaded guilty enable other convicted persons to use these as "new facts" to found their applications for a retrial. The number of applications for a retrial went up further after the publication of Instruction 15/2007 of 1 June 2007.¹⁹⁹ This provides, in substance, that where a person charged with a Category 2 offence is found guilty and his/her confession has been accepted, s/he shall only serve the custodial part of his/her sentence once s/he has served the TIG part of his/her sentence. The TIG part may be up to half the total sentence.²⁰⁰ For many convicted defendants, this means that it is in their interest to re-appear before a Gacaca Court and use the new facts to have their case examined a second time, for this might enable them to avoid serving the custodial part of their sentence.

It is also the case that many defendants were convicted and given custodial sentences under the 2004 law which, at the time, did not provide for any alternative sentence, including the TIG. These convicted persons now seek a review of their sentence under the 2007 Law as this law provides for a reduction, in length of time and type, of the sentences imposed on those Category 2 defendants who were found guilty and whose confession was accepted by the court. This hope that a case might be reviewed or a prison sentence be reduced or modified together with the intensive information campaign explaining the advantages of the Art. 14 guilty plea and confession procedure, led to a predictable and noticeable increase in the number of review applications made to the Sector General Assemblies. The majority of the defendants were arrested in 1997 as they returned from exile. Now that they know that the Gacaca reforms have introduced more lenient sentences, they believe that if they ask for and obtain a re-trial, they may have only a little more time to spend in prison or may even be released immediately, as they will be receiving lighter sentences and will already have spent a long time in prison.

The political decision to bring the Gacaca process to a quick close would therefore seem to contradict the reality of the proceedings that are still going on today. It is true that it would appear that a number of Gacaca Courts have already ceased to function or are about to do so, but the Director of the SNJG stated on national radio on 29 January 2008 that the collection of evidence was to be resumed or even done all over again in those areas where particularly extensive massacres took place, such as stadiums, hospitals, schools and churches. That would mean that new charges may be brought and put before the Gacaca Courts.

This hardly suggests that the Gacaca proceedings are about to end and it must not be forgotten that no time bar applies to the crime of genocide. It would therefore be difficult to stop all litigation arising out of that crime a mere 14 years later, at a time when it is still possible to

¹⁹⁷ "Given the great number of applications for a trial review that fail to give reasons, contrary to the provisions of Art. 93 of Organic Law 16/2004". (English translation by PRI).

¹⁹⁸ The SNJG's Executive Secretary acknowledged this fact and told us that she was not in a position to provide us with figures immediately (Meeting at the SNJG headquarters on 28 March 2008).

¹⁹⁹ Art. 1 of Instruction nr. 15/2007 provides as follows: "*Any person who is guilty of a Category 2 genocide crime or any other crime against humanity and who has used the Art. 14 confession and guilty plea procedure, shall serve his/her custodial sentence, as determined by the Gacaca Court, by first serving his/her TIG, followed by the custodial sentence and last the suspended part of the sentence...*". (English translation by PRI).

²⁰⁰ Cf. Art. 14 of Organic Law 10/2007.

identify and trace any potential living defendant. The SNJG's Executive Secretary is well aware of this and has stated that any further accusations brought after the official end to the Gacaca Courts would be heard by the national courts.²⁰¹ That would seem difficult to square with the intended removal of the backlog in the national courts, the very problem that led to the creation of the Gacaca Courts. Finally, it is worth noting that the Gacaca Bill provides for a general transfer of any action currently before the national courts to the Gacaca Courts, including Category 1 offences (these include rape in particular). In other words, once the Gacaca hearings have been brought to an end, there is going to be an awful lot of ... Gacaca hearings.

²⁰¹ Meeting with the participants at the SNJG on 28 March 2008.

4. Recommendations

- Better protection for witnesses so as to encourage them to give evidence before the Gacaca Courts

The lack of evidence as a result of the various factors examined earlier in this report, such as the witness's failure to appear in court, or their reluctance to give evidence, the vast increase in the number of panels as a result of the 2007 Law, does not make the *Inyangamugayo*'s work any easier. They complain that they are sometimes expected to reach decisions on the basis of evidence that is insufficient to allow them to be sure. But it is essential that those who are in charge of the Gacaca process be able to examine this issue seriously and perhaps introduce a witness protection scheme which would deal with the reprisals and intimidation that often discourage witnesses from contributing to the search for the truth. It is also important to introduce a genuine status for prosecution and defence witnesses,²⁰² particularly when they are genocide survivors not only in order to protect them from the reprisals of which they have been the targets over these past months, but also to enable them to continue to give their evidence before the Gacaca Courts that have to try the perpetrators of the crimes of which they have become the victims. Such a protection would have to last beyond the soon-to-be-ended Gacaca process so that when the convicted persons finally return to the hills (having served their sentences), they do not become a source of worry for those who gave evidence against them, for the survivors and perhaps even for the *Inyangamugayo*, who are just as worried about what will happen post-Gacaca.

- Ensure the independence and impartiality of the Inyangamugayo

The *Inyangamugayo* cannot acquit themselves properly of their task unless they are independent and impartial, two of the corner stones of a fair trial. Being frequently the target of intimidation and abuse of influence, they must not only be able to resist these, but also various attempts at corruption by parties to the proceedings. For it is the case that such parties, whose interests are various and diametrically opposed, will attempt to influence the court by various means and this may, in the long term, divert the Gacaca Courts from their primary duty which is to dispense justice to the genocide victims. There is a very real risk that the Gacaca proceedings may be perverted and used for other private purposes: measures to combat the plea bargains, deals and negotiations between the various actors in the process must be introduced as a matter of urgency. Gacaca justice must not lose sight of its primary objectives, which are the search for the truth, the fight against impunity and national reconciliation.

- Avoid undue haste when settling the genocide litigation

Genocide litigation takes time. The *Inyangamugayo*, who have been entrusted with the unenviable task of trying the perpetrators of the genocide, must have enough time to listen to and test all the evidence, including the live witness evidence, so that a person's guilt or innocence can be decided calmly and in the absence of harassment.

There is no time bar to genocide crimes. The litigation is far from having been completed, despite the official announcement that the Gacaca Courts are to cease their activities very soon. The political decision to accelerate the hearings in an attempt to end them within the next few months has aggravated the number of errors and abnormalities in the *Inyangamugayo*'s management of the genocide litigation: lack of time has led to a tendency to dispense with some

²⁰² The term "witness" should be interpreted widely to mean any person who has, in one way or another, given information or contributed to the establishment of the truth in the Gacaca Courts. It is true that the government set up a Witness Protection Bureau in 2006, but we would suggest that its powers be extended.

witness evidence and full hearings at which all parties are present. It would also appear that it has exacerbated corruption amongst the various actors in the Gacaca procedure. Genocide litigation is unlike any other litigation. The *Inyangamugayo*, who are not professional judges and who must assist in resolving this terrible conflict, need to have sufficient time to collect all the available witness evidence, ensure that all parties are heard at the full hearing, make any further enquiries which might help them in deciding the innocence or guilt of those who stand accused before them.

Even in a conventional justice system, this would inevitably require time, and it is perhaps worth remembering that "if speed is necessary [in court], overhasty decisions are a great evil".²⁰³ Despite a strong desire to uncover the truth as quickly as possible, one must allow for the fact that a proper examination cases, and in particular serious or very complex cases, takes time. (More) time is perhaps the beginning of the answer to the errors and imperfections of the Gacaca process. More time for obtaining and testing evidence, more time for remedying the current deficiencies as identified in this report: the population's reluctance to give evidence, the tendency to ignore defence evidence, corruption amongst the various actors in the Gacaca process. This has become even more important in the light of the growing number of application for case reviews and the fresh accusations that are being brought now, despite the imminent end to the Gacaca process. In that respect, the message from the SNJG's Executive Secretary to the effect that the current Gacaca Bill provides for a transfer of Gacaca proceedings to the national courts²⁰⁴ doesn't entirely accord with earlier declarations that the genocide related backlog in these courts must be cleared. Consequently, if the concerns and the fears amongst the population and recorded in this report are to be addressed, it would be necessary to set up an independent court which would decide on these new accusations and applications for case reviews.

²⁰³ J.PRADEL, *Procédure pénale* (Criminal Procedure), 13th. ed, Cujas 2007, nr. 379.

²⁰⁴ Meeting with the partners at the SNJG on 28 March 2008.

ANNEXES

Map of Umuganda, Gacaca and performance contracts²⁰⁵

WEEKS Months	FIRST WEEK			SECOND WEEK			THIRD WEEK			FOURTH WEEK		
	UMUGANDA		GACACA	UMUGANDA		GACACA	UMUGANDA		GACACA	UMUGANDA		GACACA
	DATE	SIGNATURE	DATE	SIGNATURE	DATE	SIGNATURE	DATE	SIGNATURE	DATE	SIGNATURE	DATE	SIGNATURE
JANUARY												
FEBRUARY												
MARCH												
APRIL												
MAY												
JUNE												
JULY												
AUGUST												
SEPTEMBER												
OCTOBER												
NOVEMBER												
DECEMBER												

²⁰⁵ Free translation from Kinyarwanda made by PRI.

PERFORMANCE CONTRATS

Activities	1-6		7-12	
	Yes	No	Yes	No
Mutual health care funds				
Education funds + FARG Contribution				
Fireplace(Rondereza)				
Toilet				
Compost				
Terraces				
Family planning				
Wearing shoes				
Water rain use				
Anti-erosive trenches				
Literacy				
Small vegetable plots				
Cattle farming in stables				
Civil weddings				

REPUBLIC OF RWANDA

(Seal of the Republic)

District.....
Sector.....
Cell.....
Umudugudu.....
Last and first names.....
.....
ID card number.....

CARTE OF UMUGANDA, GACACA AND PERFORMANCE CONTRATS

2007

Geographical sampling

Description of persons Places or Provinces	Description of persons									TOTAL
	Associations	Authorities	Gacaca Coordinators	Gacaca Judges	Released and acquitted	Accused and Convicted	Population	Survivors	TIGistes	
Butare	0	0	0	6	4	4	6	5	0	25
Byumba	1	0	0	8	0	0	7	1	0	17
Cyangugu	7	0	0	7	1	2	6	7	0	30
Gisenyi	0	0	0	2	1	0	5	3	1	12
Kibuye	0	2	0	19	3	6	12	9	1	52
Umutara	1	2	1	7	3	0	2	4	2	22
Kigali Rural	1	0	0	6	1	0	9	3	0	20
City of Kigali²⁰⁶	1	0	0	6	1	0	9	3	0	20
TOTAL	10	4	1	55	13	12	47	35	4	178

NB: Provinces have been designated by their old names, used prior to the administrative reforms that took place on 31 December 2005.²⁰⁷

- The former province of Byumba is now part of the North Province
- The former provinces of Gisenyi, Cyangugu and Kibuye are now part of the West Province
- The former province of Umutara is now part of the East Province

²⁰⁶ In the absence of an interviewer, the Kigali area is reserved for assistants only.

²⁰⁷ Under the provisions of the Organic law 29/2005 of 31 December 2005 on the re-organisation of Rwanda's administrative units.

Bibliography

1. General Books

- Jeremy BENTHAM, *Traité des Preuves I*.
- Françoise DIGNEFFE and Jacques FIERENS, *Justice et Gacaca, l'expérience rwandaise et le génocide*, Presses Universitaires of Namur, 2001.
- Dominique FRANCHE, *Généalogie du génocide rwandais*, Flibuste, 2004.
- Frédéric GATERA, *Le phénomène de pauvreté au Rwanda : définitions, profils et remèdes ; texte dactylographié*, Oct. 2006.
- Jean PRADEL, *Procédure Pénale*, 13^e éd., Cujas, 2007.

2. Reports

a. *Penal Reform International (PRI)*

- La procédure d'aveu, pierre angulaire de la justice rwandaise, janvier 2003.
- Information-Gathering during the National Phase, June 2006.
- Trials of offences against property committed during the genocide: a conflict between the theory of reparation and the social and economic reality in Rwanda, July 2007.

b. *Other reports*

- Avocats Sans Frontières, *Rapport analytique n° 2, phase de jugement, mars-septembre 2005*.
- Avocats Sans Frontières, *Rapport analytique n° 3, phase de jugement, octobre 2006-avril 2007*.
- Belgian Technical Cooperation, *Report on improving the living conditions for the Inyangamugayo*, November 2005.
- Ligue Rwandaise pour la Promotion et la Défense des Droits de L'Homme (LIPRODHOR), *Problématique de la preuve dans les procès de génocide : l'institution imminente des juridictions Gacaca constituerait-elle une panacée ?* juin 2000.
- LIPRODHOR, *Problématique des informations et témoignages devant les juridictions Gacaca*, décembre 2006.
- LIPRODHOR, *Situation des droits de la personne au Rwanda, rapport 2005, décembre 2006*.
- LIPRODHOR, *Situation des droits de la personnes au Rwanda, rapport 2006, septembre 2007*.
- United Nations Development Program, *Turning vision 2020 in Reality. National development report, Rwanda, 2007*.

3. Law and official texts

a. *Organic Laws*

- Loi Organique n°10/2007 du 1^{er} mars 2007 modifiant et complétant la loi organique n°16/2004 du 19 juin 2004 portant organisation, compétence et fonctionnement des juridictions Gacaca chargées des poursuites et du jugement des infractions constitutives du crime de génocide et d'autres crimes contre l'humanité commis entre le 1^{er} octobre 1990 et le 31 décembre 1994, J.O. n° 5 du 1^{er} mars 2007.
- Loi Organique n° 16/2004 portant organisation, compétence et fonctionnement des juridictions Gacaca chargées des poursuites et du jugement des infractions constitutives du crime de génocide et d'autres crimes contre l'humanité commis entre le 1^{er} octobre 1990 et le 31 décembre 1994, J.O. n° spécial du 19 juin 2004.
- Loi Organique n°33/2001 du 22 juin 2001 modifiant et complétant la loi organique n° 40 portant organisation, compétence et fonctionnement des juridictions Gacaca chargées des poursuites et du jugement des infractions constitutives du crime de génocide et d'autres crimes contre l'humanité commis entre le 1^{er} octobre 1990 et le 31 décembre 1994, J.O. n° 14 du 15 juillet 2001.
- Loi Organique n° 40/2000 du 26 janvier 2001 portant organisation, compétence et fonctionnement des juridictions Gacaca chargées des poursuites et du jugement des infractions constitutives du crime de génocide et d'autres crimes contre l'humanité commis entre le 1^{er} octobre 1990 et le 31 décembre 1994, J.O. n° 6 du 15 mars 2001.

b. *Instructions of the National Service of Gacaca Jurisdictions*

- Instruction n° 15/2007 du 1^{er} juin du Secrétaire exécutif du SNJG relative à l'exécution des peines prononcées contre une personne qui a recouru à la procédure d'aveu, de plaider de culpabilité, de repentir et d'excuse et dont l'aveu est accepté par le juridiction Gacaca.
- Instruction n°14/2007 du 30 mars 2007 du Secrétaire exécutif national des juridictions Gacaca concernant le dédommagement des biens endommagés pendant le génocide et d'autres crimes contre l'humanité commis entre le 1^{er} octobre et le 31 décembre 1994.
- Instruction n° 13/2007 du 2007 du 20 mars 2003 du Secrétaire exécutif du SNJG dont l'objectif est d'aider les juridictions Gacaca à mettre en exécution ce qui est prévu par la loi organique n°10/2007 du 1^{er} mars 2007 modifiant et complétant la loi organique n°16/2004 du 19 juin 2004 portant organisation, compétence et fonctionnement des juridictions Gacaca chargées des poursuites et du jugement des infractions constitutives du crime de génocide et d'autres crimes contre l'humanité commis entre le 1^{er} octobre 1990 et le 31 décembre 1994, J.O. n° 5 du 1^{er} mars 2007.
- Instruction n° 12/2007 du 15 mars 2007 du Secrétaire exécutif du SNJG concernant la révision des jugements rendus par les juridictions Gacaca.
- Instruction n° 11/2007 du 02 mars 2007 du Secrétaire exécutif du SNJG relative à la mise en place des comités des juridictions et leurs collaborateurs.