Monitoring and Research Report on the *Gacaca*

The settlement of property offence cases committed during the genocide:

Update on the execution of agreements and restoration condemnations

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All the information contained in this document
is the result of groundwork carried out by the PRI team in Rwanda,
to whom we wish to extend our heartfelt thanks for their hard work.

Summary

This report is a follow-up to the one published in July 2007 on property offence cases committed during the genocide.[1] In that report, we noted the marked discrepancy between the theory of reparation and current socio-economic conditions in Rwanda.

It seemed reasonable to carry out a follow-up assessment two years later on the effectiveness of the execution process of judgments handed down and of agreements concluded as part of this process. This choice of theme is justified by the theory that the optimal resolution of property offence cases is a benchmark of the success of the reconciliation process.

We should also remind the reader at this point that in resolving property cases the Rwandan authorities elected two main courses of action. The first and main course of action is the central place given to "agreements". These are amicable arrangements drawn up between the victims and perpetrators of looting and destruction of property carried out during the genocide. A 1996 organic law on the settlement of cases arising from the genocide prescribed this form of resolution by requesting the "assistance of citizens" in identifying those responsible for looting and theft of property. Only where this approach fails were criminal and civil laws to be brought into action.

In the aftermath of the genocide, various agreements were drawn up, some endorsed by administrative authorities, some not. Whilst this solution contributed in the early days to calming down the property offence litigation, executing them proved to be more problematic, frequently giving rise to disputes about the conditions or even the wording of these agreements and causing tension that adversely affect the reconciliation process.

The second course of action is litigation. A 2004 organic law on the *Gacaca* Courts sets out the terms of the reparation procedure. It consists in damages and interest, or restitution where possible or its equivalent. It is up to the judge to choose the most appropriate sentence, after consulting the accused person. The legislative has property offences out of the criminal law arena in this way by channelling them through the civil law.

The enforcement of reparation orders is a basic part of people's right to justice in the widest sense of the term; this extends to the effective execution of decisions handed down by the *Gacaca* Courts.

Several factors identified in this report have however proved to be an obstacle to the smooth execution of both agreements and reparation orders. Because of these obstacles, the right to reparation becomes purely hypothetical in many cases.

These factors are linked to the context of these cases. We should at this point remind the reader that during the genocide, a kind of parallel economy arose based on systematic organised looting. For this reason, resolving property offence cases is crucial due to the involvement of a large part of the population.

Imposing monetary reparation is often unrealistic due to the socio-economic conditions of

[1] *Gacaca* Research Report No 10 : "Judgements on property offence cases", 2007; ***Le jugement des infractions contre les biens commises pendant le génocide : le contraste entre la théorie de la réparation et la réalité socio-économique du Rwanda, Penal Reform International***, July 2007.

households, particularly that of widows or the wives of imprisoned men, who are unable to contribute to the family budget. Furthermore, in the cases of deliberate non-compliance, enforced execution is often carried out on a capital of very low value mostly composed of land. This leads to a significant reduction in household income, and the inability to generate sufficient money, since land most often is the only source of income for households. For this reason, executing judgments and agreements in a fragile economic context may considerably adversely affect relationships between survivors and perpetrators.

Furthermore, lack of compliance by some perpetrators, the conditions in which third category trials are conducted, the lack of training of the administrators, or executive secretaries charged with the execution of sentences, and the confusion that sometimes subsists around the legal framework that surrounds the enforcement of judgements and agreements are all factors that can adversely affect the optimal settlement of these cases.

These various obstacles, especially the extreme poverty of a great number of the perpetrators, invariably lead to the debate of whether a mutualised reparation scheme might not be a better system. The effectiveness of reparation orders for the victims may depend on the existence of such a scheme. The idea of setting up a compensation fund was mooted as early as 1998, but was abandoned after a number of draft laws failed to materialise, and replaced with a support and assistance fund for survivors. This scheme has proved inadequate at effectively resolving the issue of compensation due to the financial insolvency of perpetrators.

Glossary

A

Abakiga: People from the north of the country, favoured by the Second Republic regime at the end of the genocide.

Abapagasi: People carrying out piecework, especially in agriculture.

C

Ceceka: Literally, "Keep quiet"; this expression was applied to people aiming to conceal information from the *Gacaca* process.

Cell: administrative level above the Village.

F

FARG**: F**onds d'**A**ssistance pour les **R**escapés du **G**énocide. The more correct name is "National fund for assistance to the most needy victims of the genocide and massacres carried out in Rwanda between October 1st 1990 and December 1st 1994".

G

Gacaca: Literally, "grass"; the *Gacaca* is a traditional conflict resolution system for neighbourhood disputes. By extension, it is the name given to new peoples' courts charged since 2005 with ruling on cases arising from the genocide. Their competence extends to passing judgement on the perpetrators of genocide crimes and other crimes against humanity in categories 2 and 3. Reforms currently underway are investigating extending their remit to some perpetrators of category 1 crimes.

I

Interahamwe: Literally, "those who work together"; the paramilitary organisation of the National Revolutionary Movement for Development (MRND) political party.

Inyangamugayo: Literally, "honest person"; name used to describe *Gacaca* judges.

Ibuka: Literally, "Remember"; this is the largest victim organisation for Rwandan genocide survivors; its mission is to fight for genocide survivors' rights and interests.

K

Kinyarwanda: Rwandan language, one of the three official languages, along with English and French.

Kugura umusozi: Literally, "buy the hill"; some people, due to their facility with debating or their social skills, manage to speak for everyone else, and remain uncontested king of their hill. In the usual Kinyarwanda meaning, it means that the person has taken possession of the entire hill and that no-one may contest their ideas. In the context of the genocide, this word has taken on the opposite meaning, and is used about someone who, as a criminal, and knowing that he has nothing to lose, requests that his fellow perpetrators load him with their offences, in exchange for

their protection for him and his family. Sometimes, after agreeing with others, he will willingly confess to all the crimes carried out on that particular "hill".

N

NSGJ: National Service of *Gacaca* Jurisdiction

S

Sector: Third level administrative area, above the Village (*umudugudu*) and the Cell.

Table des matières

Methodology

The research programme carried out by PRI since 2001 on the progress of genocide cases being tried by the *Gacaca* Courts has aimed to supply the competent state authorities, and in particular the National Service of *Gacaca* Jurisdictions, with objective data used to support the establishment and implementation of these courts.

The issues developed in this report were chosen and decided on by the whole PRI research team; since August 2008 the team has focussed its research more closely on the implementation of agreements and reparation orders.

PRI has elected an "action research"[2] approach; this may best be defined as social research deliberately geared towards action; the action in question is a monitoring process. The research carried out by PRI is aimed at collecting, analysing and putting into perspective all the data collected on the perceptions and practises of the various actors in the process- survivors, witnesses, accused people, judges and the population as a whole.

We used a qualitative and participatory approach to draw up this report, using a series of interviews, mostly semi-directed and one-to-one. Exploring people's perceptions requires a depth that can only be obtained through open questioning around pre-set themes.

The fieldwork was carried out by a team of six local researchers living in the areas where they carry out their observations, and supported by two research assistants based in Kigali who make frequent trips to the areas where the work is carried out. They each write up and analyse the collected data, with the support of a research director and two assistant directors; this data is then compiled, compared, cross-referenced and debated by the whole team in order to draw up our analytical and themed reports. The team also includes five translators and three typists, whose job is to transcribe and translate the tapes and reports submitted by the researchers.

We should at this stage point out that the interview extracts used in this report reflect the opinions held by the people interviewed, and should not in any way be taken as representing the opinion of the group to which the interviewees belong. For example, an honest judge (*Inyangamugayo)* or a survivor quoted in the study does not speak for *all* honest judges or *all* survivors. Their words are quoted because they are illustrative of a strong trend within the data collected in the field during this research.

As soon as the preliminary results are available, they are reviewed and edited by the PRI researchers. The editing process mainly involves interpreting and analysing what is said. This report is based on this data, which is then proofread by experts or people with recognised experience in this field, but who are not part of the team.

Data used

This report is based on interviews carried out throughout the country's provinces within the various population groups. These interviews specifically focused on the issue of the implementation of agreements and reparation orders handed down as sentences as part of the *Gacaca* process, were conducted between August 2008 and May 2009. The report also refers to earlier interviews on the same theme, as well as to studies carried out by other organisations and other researchers.

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2 GREENWOOD D.J. and LEVEN M., *Introduction to Action Research. Social research for social change*, SAGE Publications, 1998.

In all, three hundred and seventy-two interviews were carried out, including:

- 78 with honest judges
- 13 with acquitted former prisoners
- 69 with convicted people or their successors (representatives)
- 125 with the general population
- 40 with survivors
- 16 with local authorities and *Gacaca* coordinators
- 22 with *Gacaca* executive secretaries
- 7 with members of survivors' organisations
- 2 with the professional bailiffs association

References

Interview extracts quoted in this report are referenced to the documents in which the information was collected, either as an observation of a situation, or spoken as part of an interview. The expression "*from our observations*" refers to one or more elements that figured most frequently in much of the information collected.

Inasmuch as our interviewees' anonymity is guaranteed, only the person's role is cited in our interviews, and not their location. For this reason the particular Cell may sometimes not be mentioned.

Limitations of this research

We must express one major reservation, which is the possibility of bias being introduced through the translation process from Kinyarwanda into French. We take the utmost care to minimise the chances of this happening: a first translation is carried out from Kinyarwanda into French, and the French version is then checked by another translator who compares the two versions.

As we mentioned in earlier reports, this study does not pretend to be in any way exhaustive or representative in its observations or main conclusions. The results of this research will certainly attract criticism; it can of course be completed or cross-referenced with reports from other observers. Despite this reservation, the results presented in it are still significant and represent strong trends observed within the various social groups.

Introduction

Reparation seems to be a crucial factor in post conflict[3] resolution, gradually taking its place as part of a transitional justice system[4]. This transitional system is supported by principles of restorative[5] justice, whose main aim is to redress the wrong committed. The focus is on the damage caused and the ways to put it right, which entails that the "main focus of society's response is not punishment, nor to treat or protect, but to create the conditions in which reparation and/or a reasonable level of compensation may be implemented"[6]. Taking the victim[7] into account is central to conflict resolution, in that their right to reparation is thus

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3 See "International Protection of Victims", *Nouvelles Études Pénales* (M. Cherif BASSIOUNI, 1998); also, "Reparation Efforts in International Perspective; What Compensation Contributes to the Achievement of Imperfect Justice", in *To Repair the Irreparable: Reparation and Reconstruction in South Africa*, Erik Doctored and Charles Villa-Vicencio, eds. (Claremont, South Africa David Philip, 2004), and in "Redressing the Past: Reparations for Gross Human Rights Abuses", in *Rule of Law and Conflict Management: Towards Security, Development and Human Rights?* Agnes Hurwitz, ed. New York: International Peace Academy.

4 The issue of transitional justice appeared in the aftermath of the Second World War, and is a growth area in the vast arena of conflict resolution and large-scale Human Rights violations. It represents a cultural and political shift theme that is currently underway at the United Nations and in legal circles. It is an issue which is still under review both in its principles and in its relevance, resulting in a lack of universally accepted definition..

For Mark FREEMAN, "transitional justice is essentially a feature of how societies transitioning from war to peace, or from an authoritarian to a democratic regime (...) have handled the legacy of large-scale (exactions)", FREEMAN M., *Qu'est-ce que la justice transitionnelle* ?, Bruxelles, CIJT, 2003, p.1. Alex Boraine's definition enables us to better identify the challenges of the transitional justice system; he states that "the transitional justice system is not a contradiction within the criminal justice system, but instead represents a richer, more in-depth and wider understanding of justice, that seeks to make criminals accountable, to respond to victims' needs, and beginning a reconciliation and transformation process that leads to a fairer and more humane society.", BORAINE A., "La justice transitionnelle", in *Les Ressources de la transition*, Le Cap, Institut pour la Justice et la Réconciliation, 2005, p. 19.

For more information on this topic, see HOURQUEBIE F., "La notion de justice transitionnelle a-t-elle un sens?" Available online at www.droitconstitutionnel.org/congreparis, LEFRANC S., "La justice transitionnelle n'est pas un concept", *Revue Mouvements*, n° 53, 2008/1, p. 61.

5 Restorative justice seems to be a concept with several meanings. Tony F Marshall's definition appears to have unanimous support. For Marshall, restorative justice is a process in which the parties involved in an offence decide together on the best course of reaction to its consequences and any future repercussions. MARSHALL T. F.; *Restorative justice. An overview*, Home Office Pub., *Research Development and Statistics Directorate,* multigraph, 1999, 36 p. Three main reasons contribute to the development of this form of justice. The first, the penal or criminal reason (?) draws on the lessons of the crisis in modern penal law. The second places the acknowledgment of victims at the heart of conflict resolution. The third reason is anthropological, emerging from the rediscovery of traditional ways of managing criminal disputes. See CARIO (R.), *Justice restaurative. Principes et promesses, L'Harmattan*, 2005. For more information on the topic, refer to BRAITHWAITE J., *Principles of Restorative justice, In, A. Von HIRCH, J.V. ROBERTS, A. BOTTOMS, K. ROACH, M. SCIFF (eds.), Restorative justice and criminal justice. Competing or reconcilable paradigm? Hart publishing,* 2003, pp. 1-20; FATTAH E.A., *Restorative and retributive models. A comparison, In H.H. Kühne (Ed.), Festschrift für Koichi Miyazawa*, Ed. Nomos, 1995, pp. 305-315 ; GAUDREAULT A., Les limites de la justice restaurative, In Les cahiers de la Justice, Revue d'études de l'ENM, 2005-1 ; JACCOUD M., Justice réparatrice et violence, In P. DUMOUCHEL (Dir.), Comprendre pour agir: Violences, victimes et vengeances, P.U. Laval, L'Harmattan, 2000, pp. 183-206; JOHNSTONE G., *Restorative justice: ideas, values, debates, Willan* pub., 2002, 190 ; WALGRAVE L., La justice restaurative: à la recherche d'une théorie et d'un programme, In Criminologie, 1999-1, pp. 7-29.

6 WALGRAVE L., "La justice restaurative: à la recherche d'une théorie et d'un programme", Criminologie, Volume 32, n° 1, 1999.

7 Taking the victim into account is not a new concept. Mooted at the Nuremberg trials, the dilemma was resolved by giving victims a voice as witnesses; a position arguably still not adequate but nonetheless useful in establishing the facts constituting a violation of international law. Victims were able to take a larger place in the Eichmann trial, which were partly designed around their witness statements, a fact denounced by Hannah Arendt. She claimed that in Jerusalem, the "trials were held not to fulfil the demands of justice but the desire and maybe right

acknowledged as a course of action.
The establishment of the *Gacaca* Courts is influenced in some respects by the restorative approach. As Alana Tiemessen pointed out:

> *The Gacaca represents a model of restorative justice because it focuses on the healing of victims and perpetrators, confessions, plea-bargains, and reintegration. It is these characteristics that render it a radically different approach from the retributive and punitive nature of justice at the ICTR and national courts*[8].

However, the monitoring and research carried out since the start of the process[9], along with the studies carried out by various other researchers and organisations, give rather mixed reports of the restorative abilities of the institution. In reality, the desired cathartic effect[10] has not really materialised; the execution process of reparation orders and agreements strikingly illustrates this, as shall be seen in this report.

On the international level, the right to reparation, recognised in international and regional human rights[11] instruments, "must as far as possible wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed".[12] In other words, the reparation must be adequate and appropriate, which means that it must enable the victim to regain a kind of *status quo ante*. The Human Rights Committee[13] for this reason established that whilst "compensation" is different from one country to another, adequate reparation expressly excludes any damages

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of victims for revenge.", ARENDT H., *Eichmann à Jérusalem. Rapport sur la banalité du mal*, Paris, Gallimard-Folio, 1966, republished 1991, p. 421.

The recognition in a statute from the International criminal court (see article 75 (I) of the Statute of Rome), on the right of victims to take part in procedures in their position as interested parties rather than merely witnesses, and to request reparation was doubtlessly a turning point in the recognition of victims.

On the various aspects of this recognition, see CARIO R., « La reconnaissance de la victime: instrumentalisation ou restauration ? », available at http://www.jac.cerdac.uha.fr ; GARAPON A., "*Des crimes qu'on ne peut ni punir ni pardonner. Pour une justice internationale*", Paris, Odile Jacob 2002; In the case of Rwanda, see particularly, RAMBOUTS H., "*Victim organisations and the politics of reparation: a case study on Rwanda"*, Antwerpen, UA, 2004; COMLAN K. E., "La prise en compte de la victime: la leçon du Rwanda", in *La victime. I. Définitions et statuts*, *textes réunis par Jacqueline HOAREAU-DODINAU, Guillaume METAIRIE, Pascal TEXIER*, Presses Universitaires de Limoges 2008, p. 373-399.

[8] TIEMESSEN, A.E., "After Arusha: *Gacaca* Justice in Post-Genocide Rwanda", African Studies Quarterly, Volume 8, Issue 1 Fall 2004, p. 58.

[9] All the reports published to date are available online at www.penalreform.org

[10] This expression borrowed from Aristotle's poetry has a classical meaning of "purging passions" or emotional purification by means of shows or tragic stories that are considering character building. Freud uses the concept in psychoanalysis to designate the recall of a repressed memory.

[11] See article 8 of the Universal Declaration of Human Rights, articles 23 (a), 9 (5) and 14 (6) of the International Convention on Civil and Political Rights, article 21 of the African Charter of Human Rights, article 5 of the ECHR, article 14 (1) of the Convention on torture and other forms of inhuman, cruel and degrading treatment, to name a few. They are also cited in a report by Joinet, "Question de l'impunité des auteurs des violations des Droits de l'Homme", Rapport final JOINET, E/CN.4/Sub2/1997/20 of 26th June 1997, see particularly Principle 39.

[12] Permanent Court of International Justice, Chorzow Factory (Indemnity) (Pologne vs. France), series A, n° 17.

[13] Organisation charged with controlling the implementation of the International Convention on civil and political rights).

of a purely symbolic nature[14] paid.

The expression seems to have taken on a wider meaning[15], as it is adopted into the holistic approach to the aftermath of a conflict. The forms it adopts are varied and will be presented in the next few paragraphs.

The first form, restitution, is understood to mean re-establishing the *status quo ante*, ie a return to the situation that existed before the event that gave rise to the damages. Whilst it is difficult and sometimes impossible to return to the former situation, restitution may take many forms, including a return to freedom, return of a person's human rights, the right to their own identity, right to family life and citizenship rights, a return to their original place of residence, and of course the return of any goods looted or confiscated[16]. This last point is the one that has been used in trials of property offences committed during the 1994 Rwandan genocide.

The second form, compensation, aims on the other hand to ensure complete reparation for the damage suffered, inasmuch as that damage may be assigned a financial value[17]. The Inter-American Commission on Human Rights ruled in the case of *Velasquez Rodriguez*, stated that "under such circumstances, it is appropriate to fix the payment of 'fair compensation' in sufficiently broad terms (...)"[18]. For this reason the amounts paid in compensation should cover not only the material damage but also the emotional[19] damage.

We should mention at this point that only material damage is covered by compensation in property offence cases. This is regrettable as it excludes "the cost of pain" or the emotional damage suffered by survivors, including loss of relatives, the fact of having witnessed relatives being killed, etc... from the cost of full reparation.

The third form, rehabilitation, is a specific right entrenched in international human rights instruments[20]. The UN declaration of basic principles of justice on the victims of crime and

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14 *Albert Wilson vs. Philippines*, communication n° 868/1999, Doc. NU CCPR/C/79/D/668/1999, 2003. The Human Rights Commission has mentioned in several rulings the duty to grant "adequate" compensation; see in particular, *Bozize vs. Central African Republic,* n°449/1990, Doc. NU CCPR/C/50/D/428/1990; *Mojica vs. Dominican Republic*, n° 449/1991, UN Doc. CCPR/C/51/D/449/1991.

15 See in particular the fundamental principles and directives on the right to appeal and reparation for victims of gross violations of international Human Rights and gross violations of UN international humanitarian law. See also resolution 60/147 passed by the UN GA on 16th December 2005; see also the 1993 Van Boven Report that inspired the text of that resolution, but also South African Truth and Reconciliation Committee recommendations.

16 See Principles and directives, UN GA Res. 60/147, 16th December 2005, ibid; see also Principles 8 to 10 of the Declaration of fundamental justice/ legal principles on the victims of crime and abuses of power, passed by UN GA Res. 40/34 of 29th November 1985.

17 Notes to draft article on States' responsibilities for illegal acts, report of the International Law Commission, 53rd session, GA, supplement n°10 (A/56/10), chapter IV.E.

18 *Velasquez Rodriguez* case, Interpretation of the Compensatory Damages Judgment, *17 August 1990*, 1990 Inter-Am Ct. H. R., (Ser. C), n° 9, 1990, para. 27.

19 It should however be noted that only material damage is taken into account in *Gacaca* jurisdiction cases. Documents on the *Inyangamugayo* process make no mention of emotional damage.

20 See for example the United Nations Convention on the Rights of the Child, UN Doc. A/44/49, 1989, entered into force 2nd September 1990, and its optional protocol UN Doc. A/54/49, Vol. III, 2000, entered into force on 12th February 2002; the Declaration on the Protection of All Persons from Enforced Disappearance, GA

the abuse of power states that: "victims should receive the necessary material, medical, psychological and social assistance.(...)"[21] It is clear that confusion can arise between reparation measures in the strictest sense of the word and measures that flow from a compensation scheme. It is crucial to distinguish between the damages paid by way of compensation for any material or emotional damage caused and the sums paid as rehabilitation money, that are in fact compensation."[22]

In Rwanda, this type of reparation is administered through State services, via the genocide survivors' assistance and support fund.[23]

Finally, obtaining resolution and ensuring that the events do not reoccur require much wider and longer-acting measures, including public acknowledgement of the violation, the right to truth and justice for the victims[24], public apologies, remembrance ceremonies, institutional reform- these are all compensatory measures.

These types of reparation can also be found echoed in the settlement of cases arising from the genocide.

Despite the legal framework outlined above, the practices of even the international tribunals is in stark contrast, and at times non-existent.[25]

Res. 47/133 of 18th December 1992, the United Nations Convention on Torture and its optional protocol, Doc. UN A/39/51, 1984, entered into force on 26th June 1987.

21 See also Principle 24 in the final report from Special reporter Mr. Cherif Bassiouni on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, presented in application of Commission resolution 1999/33, on human rights E/CN.4/2000/62, on 18th January 2000.

22 For more on the difference between reparation and compensation, see COMLAN K. E., "L'adéquation au contexte des modes de réparation en période post conflictuelle", Communication aux XXVIIè Journées d'Histoire du droit, organisées par la Faculté de Droit et des Sciences économiques de Limoges, 1st to 3rd October 2008, in *La victime. II. La réparation du dommage,* to be published by Presses Universitaires de Limoges, 2009.

23 See Law 69/2008 of 30th December 2008, that established and set up the organisation, sphere of competence and operation of the assistance and support fund for the survivors of the genocide against the Tutsis and other crimes against humanity committed between 1sr October 1990 and 31st December 1994.

24 Issue of impunity for perpetrators of human rights crimes, E/CN.4/Sub.2/1997/20/Re.I, 2nd October 1997, para. 17.

25 There is a striking dichotomy both in the ICTR statutes and in their implementation, between the punishment of criminals and their timely reparation which are handled by national courts. For example, the TPIR statutes (see article 23.3) updating those of the ICTY (article 24.3) states simply that: "along with imprisonment of the accused the first instance court may order that all illicitly obtained goods be restored to their rightful owners, including by force." Similarly, article 105, on proof and procedural rules makes provision for first instance courts to be able after a guilty verdict and on request of the procurator or *proprio motu*, to consider the possibility of restoring the property or goods. Furthermore article 106 of the same legislation refers to the issue of compensation for victims; this is to be administered exclusively by internal jurisdictions before which victims are summoned to appear. This referral mechanism is likely to make the right to compensation a purely theoretical principle.

The CPI legislation constitutes progress however, by acknowledging the right of victims to take part in proceedings as interested parties rather than mere witnesses, and request reparation from the Court. Article 75 of the Statute of Rome stipulates that the court may grant reparation such as restoration, compensation and rehabilitation, either on request of the victims, or of their own accord in exceptional conditions. (Article 75 (I) of the Statute of Rome).

According to the extent of the damage, loss or prejudice, the Court may grant individual or joint reparation, or both, (Rule 97(1) of the CPI procedural and proof rules, UN Doc PCNICC/2000/I/Add. I, 2000).

The RPP also stipulates that where it is not possible to assign an amount to each individual victim, or

At the national level, the issue of reparation is also in stark contrast, with a great deal of variability from one place to another.

In Rwanda, agreements are the solution of choice in property offence cases. These are amicable agreements concluded between the victims and the perpetrators of looting and destruction of property during the genocide. An organic law drawn up in 1996 in response to the cases arising from the genocide prescribed this form of resolution by calling on the assistance of citizens, who were requested to help in identifying looters and stolen goods. Only where these measures failed was use to be made of the "rules pertaining to criminal proceedings and civil actions."[26]

Because of this approach, many agreements were concluded in the aftermath of the genocide; many were voluntary, but some were administered and enforced by the authorities. The very wording and conditions of these agreements are now in dispute. The amicable settlement of property offence cases, originally considered a peaceful solution, is now proving to be a source of difficulties and tension that are detrimental to the whole reconciliation process.

The country's socio-economic conditions adversely affect the reparation process to the point that the fear of having to sell one's possessions in order to compensate victims leads some perpetrators to admit to more readily to second category crimes[27] than to third category ones- ie property offences that do not have a set reparation solution. What a paradox that people should prefer detention or community service to a monetary sentence! The reason is that land belongs to the entire family and is often the only source of income. Accused persons often prefer to "sacrifice" themselves than to prejudice their family. This means that the situation of victims is still a cause for concern, and their right to reparation becomes purely hypothetical.

As far as the legal process is concerned, a 2004 law on the *Gacaca* Courts sets out the terms under which reparation is carried out; this consists in damages and interest, or in restitution where possible, or its equivalent if not possible[28]. The choice is at the judge's discretion, after questioning the accused person[29].

The legislative has in this way decriminalised property offences by throwing them back into the civil law arena.

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where the number of victims or the extent, format, or terms of the reparation, a joint reparation is more appropriate, and the court may order that the reparation money be paid via the intermediary into the Fund for the benefit of victims (see Rule 98(2) and (3) of the proof procedures regulations).

26 Organic law of 30th August 1996 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since 1st October 1990, article 14, (d).

27 Crimes for which there is legal provision for half the sentence to be commuted to community service.

28 See article 95 of Organic Law N°16/2004 Of 19/6/2004 Establishing The Organisation, Competence And Functioning Of Gacaca Courts Charged With Prosecuting And Trying The Perpetrators Of The Crime Of Genocide And Other Crimes Against Humanity, Committed Between October 1, 1990 And December 31, 1994.

29 Following on from article 68 of the Organic Law of 19th June 2004, the court explains to the accused the means of reparation that exist under the Organic Law to put right the damage caused, asks the parties for their preferred means of reparation and explains the deadlines that will apply when he or she is found guilty.

The local Cell *Gacaca* courts are deemed competent to rule on all third category offences- looting, destruction and damage to property[30]. Sector courts are deemed competent to rule on second category offences but may, in the event that an accused person has also committed property offences, take charge of the case and hand out a reparation sentence. Although various reparation options are provided for, reparation in money seems to be given preference both by the parties and by the *Gacaca* courts.

Whilst it is accepted that the execution of reparation orders "should be considered an integral part of the right to access to justice, understood in its broadest sense, as also encompassing full compliance with the respective decision"[31], this right tends in Rwanda to be purely hypothetical in most cases.

The very extent of the looting and destruction[32] makes the task especially challenging. In order to fully understand the situation we must remind the reader that during the genocide, a parallel economy appeared that was based on systematic organised looting[33]: "Every day was like Christmas", testified one looter[34].

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30 The SNJG report of 2008 counted 9081 courts at Cell level.

31 Case of *Baena Ricardo vs. Panama,* ruling of 28th November 2003. Inter-Am. Ct. H.R., Ser. C, n° 104, 2003, para. 82.

32 Many people took advantage of massacres to appropriate goods for immediate consumption, such as alcohol or abandoned crops; also took furniture, livestock, and more importantly, land, a major commodity in the most densely populated African country: "All day, you could see people carrying huge bundles of looted goods. Streams of men, women and young people all walking the same route." See witness statements in PRI report ibid, p. 23.

33 See *Le jugement des infractions contre les biens commises pendant le génocide : le contraste entre la théorie de la réparation et la réalité socio-économique*, *Penal Reform International*, July 2007, p. 19 and following.

As explained by the national commission for unity and reconciliation, since 1959, the fear of lacking arable land has fuelled an ethnic hostility that reached its height during the 1994 genocide. See National Commission for Unity and Reconciliation (NCUR), *Propriété de la terre et Réconciliation* July 2006, p. 7. See also on this topic, Antoine MUGESERA, « Vers la fin de l'insécurité foncière, source de tous les conflits », *in L'enjeu foncier au Rwanda*, *Revue Dialogues*, July-December 2004: "The genocide was fuelled to a certain extent by the chance of gain of land. The farmers who committed genocide wanted to exterminate their Tutsi neighbours so that they could take their land. And that was what happened: as soon as the Tutsis had been murdered, the murderers grabbed their land. It was a kind of '*kubohoza'*. This term, much bandied about during the genocide, has several different meanings. Its main meaning is "liberation", but in different contexts it can have an ironic sense, meaning "squatting", "taking by force what does not belong to you" or even looting or raping (of a man or woman). It was often used during the genocide to designate lootings. The history of the term dates to the emergence of multiple parties between 1990 and 1994. During this period, Rwandan peasants rose up against the fact that land was often granted to people in authority and supporters of the regime of former president Juvénal Habyarimana, and that these plots were often uncultivated and left fallow. Some advocated the redistribution of this land to farmers, hence the term *kubohoza* which meant both "grabbing" and "freeing oneself". The term was then used when peasants caught up in the genocide took their victims' land, and after the genocide took the plots of those who'd fled. Plots belonging to victims were therefore redistributed to new owners, creating a heavy caseload for tribunals. On the issue of land, see RCN Justice et Démocratie, "*Le problème foncier dans les juridictions rwandaises*", 2006. To this should be added the issues of conflicts created by the repatriation process of 1959 and the early 60s, and in which land was occupied by new owners. The Arusha peace accord stipulates that those were entitled to have their property restored on their return, excluding those who had been gone from the country for more than ten years, to whom it was advised not to request return of plots occupied by others and that for whom compensation in land would be made available by the government. This was the cause of new tensions despite the efforts deployed by governments in granting new plots to repatriated people.

34 Written witness statement from a prisoner released in 2004. See *Le jugement des infractions contre les biens commises pendant le génocide: le contraste entre la théorie de la réparation et la réalité socio-économique*, *Penal Reform International*, July 2007, ibid.

It must therefore be clear that property offence cases are pivotal due to the very extensive involvement of a vast proportion of the population[35]. For this reason judgments can have a considerable effect on relationships between survivors and the rest of the population. The tensions caused by the enforcement of these judgments bear witness to this, and can mostly be attributed to the socio-economic conditions of both victims and perpetrators.

The stress surrounding the execution of reparation orders and the risk of adversely affecting the reconciliation process highlight the need to distinguish between the two main goals of a judgment. These have been well described by Paul Ricoeur: one is a short-term goal, in which the act of judging means to decide, to put an end to uncertainty, and the other is a longer-term, less obvious goal, which is the contribution that the ruling makes to furthering public peace.[36]

It is wise to value the shorter-term goals of the justice system, because of the social need for removal of uncertainty, but care must be taken not to neglect the longer-term goal of judging, which may be even more crucial particularly in the aftermath of a violent conflict. The difficulties and tensions still polarising property offence cases illustrate this all too sharply.

Various factors underlie this situation, including the lack of cooperation displayed by some perpetrators, the extreme poverty of both victims and perpetrators of property offences, the conditions in which third category crime cases are tried, as well as the confusion that can surround the legal framework on the execution of orders.

The economic situation of households, especially that of widows or women whose imprisoned husbands are no longer able to contribute to the household budget, is often not compatible with a monetary compensation solution. Goods are often seized from capital that is very low in value. Mostly it consists of land, the removal of which leads to a substantial reduction in household income, leading to a reduced ability to generate income, or even an inability to ensure food security. The execution of judgments therefore has risks that are both social and economic.

It seems that reparation for damaged property cannot be solely placed on the head of those responsible for the acts of looting and destruction. There are two reasons for this: the financial insolvency of a vast majority of perpetrators is one, and the assessment of the value of the goods at their present value is another.

The establishment of an indemnity fund, mooted as early as 1998, was abandoned after a number of abortive draft laws[37], in favour of a support and assistance fund to survivors[38]. This scheme

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35 There were 612151 people accused of property offences by October 2008, of whom 609144 had been tried by that same date. Source: Rapport annuel du Service National des Juridictions *Gacaca*, October 2008.

36 RICOEUR P., Le juste, Paris, Editions Esprit, 1995, p. 206.

37 The first, a draft law drawn up in 2001, made the *Gacaca* courts responsible for setting compensation amounts for "damaged or lost goods, compensation is set by the *Gacaca* courts according to a tariff set out for the project". This very detailed tariff set out prices per kg for looted subsistence, fruit and industrial crops, the cost of the fencing broken down by construction material (euphorbia, dracaena, cypress, reed, wood, brick or stone), the price of livestock (a cow was assigned a range of value between FRW 10,000 and 100,000; a goat between FRW 1,500 and FRW 5,000, a hen between 500 and 2000 FRW), household objects (cupboards, radios through to kitchen utensils and TVs were assigned a very wide tariff of between 1000 and 20,000 FRW); buildings, according to their material, ranging from straw to bricks; their location (a house in a rural area was assigned a value lower than a house in a commercial centre, itself lower in value than a house in an urban area).

A sum was also assigned to each loss of human life. The compensation for the murder of a spouse was

seems on inspection[39] and despite governmental efforts, not to be up to the task of compensating the victims of the genocide. The debate about the establishment of a compensation fund will doubtless continue to influence the settlement of property offence litigation.

The prevarication that has characterised this issue is proof of the complexity of setting up a compensation scheme. There are at least two reasons may explain this complexity.

The first is political. The 1994 genocide was part of a complex process of State derailment and disorganisation that began before independence and increased over the decades. Whilst that theory, the principle of continuity, would demand that the State take on the duty of reparation it seems in fact that the burden may be too onerous for it.

The second reason is economic; the very high number of victims as opposed to the financial situation of the Rwandan State imposes the establishment of such a scheme.

As the activities of the *Gacaca* Courts draw to a close[40], it will be important, after the legal process is over, to carry out an assessment of the execution of agreements and judgments handed down in property offence cases; the success of the reconciliation process will partly hinge on the

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set at 3 million FRW, 2 million FRW for a child, 1.5 million for the loss of parents, 1 million for brothers and sisters, 500,000 for grandchildren, uncles and aunts, … Disability was compensated on a sliding scale- a person of 18 years or less between 1 and 5% disabled would receive 200,000 FRW, and person more than 80% disabled would receive 2 million FRW. A person over 55 years more than 80% disabled would receive 1 million FRW. The parents of the disabled person would also be paid compensation according to this project. See Annexes to draft laws of 2001.

The document clearly set out in its introduction the fact that the compensation fund was crucial because the accused were not in a financial position to carry out any reparation. It went on to state that the possessions alone of people convicted of the crime of genocide or crimes against humanity not being enough to cover the amount of reparation, the Organic Law on the Gacaca jurisdictions and on the organisation of prosecutions of genocide crimes or crimes against humanity and makes the establishment of a compensation fund crucial; the fund will be financed by damages and interest paid to it by people who have been found guilty in law of acts of genocide or crimes against humanity and are insignificant in the face of the size of reparations required.

The second law drafted in 2002 made provision for identical amounts for all survivors, ie 12,000,000 FRW, or 19,900 Euros.

A turning point seems to have been reached in 2004 with the Gacaca law that made no reference to compensation, but simply stated that other actions to be carried out for the benefit of victims will be determined in a separate law. (see article 96 of the law).

38 See Law 69/2008 of 30th December 2008 setting up a Fund for support and assistance to survivors of the genocide against Tutsis and other crime against humanity committed between 1st October 1990 and 31st December 1994, establishing its organisation, sphere of competence and operation, Official Gazette of the Republic of Rwanda of 15th April 2009.

This document dissolved the FARG, set up in January 1998, and also seems to have put an end to any hope for a real compensation fund. The mission statement is fairly clear on this point: support and assistance to victims does not necessarily mean compensation but rather support to enable the victims to extract themselves from the difficulties which the genocide and other crimes against humanity have caused.

As was also explained by the NSGJ Executive Secretary, the State opted for a "socio-economic course of action" rather than a legal one, and to establish of a social assistance fund with more scope than the old FARG. The motivation behind this project is very different from the previous one; it represents a clear political desire to leave behind the rationale of compensation, which probably proved too expensive.

The new Support and Assistance Fund for survivors of the Genocide will however have more money than its predecessor the FARG. Its mission is exactly the same however: to support and assist needy survivors. Its definitions on the subject are clear: the term "support and assistance" means any moral and material support and any assistance of any nature given to survivors of genocide and other humanitarian crimes.

39 See ibid, p. 44.

40 The process is planned to end in December 2009.

effectiveness of the reparation process.

In order to achieve this, we propose in the first part of this document to examine the execution of agreements, in the light of the challenges presented by reconciliation and the victims' right to reparation; in the second part we will cover the execution of restoration condemnations, judged against the yardstick of both the law and socio-economic conditions.

Part one

The implementation of agreements: reconciliation vs. the victims' right to reparation

Agreements, amicable settlements between the parties, form part of an overall reconciliation policy chosen by the Rwandan authorities to settle cases arising from the genocide. The aim is to bring closer together the victims and the perpetrators of the genocide in order to further peaceful cohabitation.

Various factors adversely affect the smooth execution of these agreements, threatening the very aims of the reconciliation that they are supposed to assist. The very nature of these agreements highlights some aspects of an ambiguity that the parties mention only when the agreements come to be executed. The execution process of the agreements also highlights the limitations of the whole process, and the dilemma faced by the various actors in the reconciliation process. The "enforced execution" of these agreements seems for example appears to be a contradiction in terms, so jarring are the two elements within the context of a reconciliation process.

In order to better understand the challenges posed by these agreements, we must first describe their various types, and secondly outline the difficulties surrounding their implementation.

Section I. Types of agreement

There are two types of agreements that may best be classified according to the way in which they are concluded: the first comes about as the result of a negotiation between the parties to a conflict, without the intervention of a third party- for example the authorities or a *Gacaca* judge; these are what we shall call "negotiation agreements". The second type is arranged through a third party: local authorities or *Gacaca* judge for example; these we shall call "conciliation agreements".

A. Negotiated agreements

Negotiation is a contract that concludes an existing dispute, or aims to prevent a dispute from arising. It is the result of a desire to negotiate, and implies that the parties will agree to mutual concessions. It cannot be contested legally, but may be appealed against on the grounds of the conditions under which it was drawn up.

The ultimate aim of this type of alternative form of conflict resolution is to reach an agreement in a less costly way than going through a trial. This is what the convicted interviewees reported:

> *"When the Gacaca came some said: let's not go starting a trial that we'd lose and then have to pay more. Let's just go to the person and give them their stuff back."*[41]

Apart from this cost-benefit analysis, there was also mention of feelings of "failure" in the party losing the trial.

41 Interview with a perpetrator, 21st September 2006, n°1402.

"I thought that in a trial you don't just let them do what they want to you. We only had two witnesses from the same household to testify for us. There were others who testified against us, and in the end we lost and had to pay up."[42]

Furthermore, the issue of proof is a crucial part of the negotiation, and must in theory be written and signed by the parties. This is not always the case in Rwandan property offence cases; many such agreements are verbal. This was confirmed by an interviewee:

"There was nothing written down. She told me, since we've got our stuff back there's no need to write anything down. She told me that the whole thing was cleared up and that she wouldn't be looking to get any more money from me. She told me there was no hard feelings."[43]

The lack or concealment of the proof of agreements and dishonesty of the parties, are the usual cause of tensions over the execution of agreements. In the case of dishonesty or concealment, the aim is usually for the guilty party to avoid having to pay up, and for the victim, to be able to demand a second reimbursement for their damaged property. In the absence of any written agreement with the victim, the debtor is obliged to pay again amounts already paid.

"At that time there was no proof of payment, you gave them what they wanted just to get them off your back. When the Gacaca courts started, some victims went and demanded to be compensated again. If you said you'd already paid, the victim demanded to see the proof, the receipt. Since there wasn't one, of course you had to pay again. If there's no receipt, you have to understand that the Inyangamugayo can't look into people's hearts and tell who's lying and who's telling the truth. The person who wants the compensation can be lying just as much as the one who is accused. If the Inyangamugayo doesn't have any proof of reparation, the accused person has to pay for everything again."[44]

Another type of agreement is an agreement concluded with the help of a third party, which we will now examine.

B- Conciliation agreements

Conciliation is an alternative conflict resolution method that involves the intervention of a third party who, after listening to and analysing the parties' points of view, suggests a solution. It is different from mediation, which is a mentoring process, and from arbitration that is more binding. Because the parties accept the help of a conciliator of the own free will, they are free to accept or refuse the solution suggested.

Conciliation, the most frequently used method of conflict resolution[45], aims to restore order to a

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42 Interview with a guilty party, 20th September 2006, n°1400.

43 Interview with a perpetrator's wife, 30th March 2007, n°1552-1553.

44 Interview with a *Gacaca* court leader, 4th April 2008, n° 1959.

45 On this topic, see DURAND C., "L'ancien droit coutumier répressif au Tchad", in Penant, 1977, p. 172; P. F. GONIDEC P.-F., *Les droits africains* (…), pp. 12-13 ; VANDERLINDEN J., *Les systèmes juridiques africains,* Coll. Que sais-je ? Paris, P.U.F., 1983.

p. 21 and following; see also, DAVID R., "*Les grands systèmes de droit contemporain"*, 8è édition, Paris, Dalloz, 1982, p. 566, n°503; M.S. W. Bapela, who stated that "in traditional African Society, legal proceedings are community affairs aimed at reconciling the parties and restoring harmonious relations within the

situation seriously disrupted for a while by a grave breach of a rule. The conflict is resolved either by the structures within society[46], or is entrusted to socially acceptable third parties who carry out the mediation[47]. This last scenario is the one in which the *Gacaca* judges operated, in their role as conciliators in agreements concluded in their courts.

At the beginning of the national phase of the trials[48], the *Inyangamugayo* were authorised to conclude agreements. The parties were requested to conclude their agreements before the *Gacaca* Courts; these agreements were then validated in a statement signed by both parties, then signed and sealed by the court.

The increased awareness of this method of resolution explains why in some areas most property offence cases are now resolved through agreements.[49]

Data collected in the field have highlighted a divide between urban and rural areas. In towns, looting was mostly carried by groups of individuals that are hard to identify.[50] This explains why there is less recourse to agreements in towns than in the countryside. This is due to the fact that rural areas have retained more of their traditional structures. The more community-spirited environment of the countryside are far more favourable contexts for resolution by mediation.

The type of agreement, and more particularly the context in which they are agreed, along with the socio-economic environment, all have an obvious effect on their implementation.

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community","The People Courts in a Customary Law Perspective", Unpublished paper, Institute of Foreign and Comparative Law, UNISA, 1987, cited by CONSEDINE J., *Restorative justice. Healing the effects of crime*, Ploughshares Publications, 1999; R.S. Suttner, "Towards Judicial and Legal Integration in South Africa", *South African Law Journal*, LXXXV, 1968. This notion hinges according to some writers on the fact that the group remains, whilst the individual, being ephemeral, disappears after a short time. See on this topic, GONIDEC P.-F, *Les droits africains. Evolution et sources*, Paris, L.G.D.J., 1968, p. 12; ROULAND N., *Anthropologie juridique*, Paris, PUF, 1988, p. 147.

46 Family structures, secret societies, etc.

47 Local or religious authorities, etc.

48 The *Gacaca* process entered into its national phase, ie its extension to the national level at the start of 2009. This phase is a continuation of the pilot scheme that began in June 2002, with 80, then 751 Cells out of a total of 10,000.

49 As was the case in the Kavumu Sector, where three hundred agreements were concluded before Cell *Gacaca* Courts.

50 For example the town of Butare, in which the lootings were according to local people, carried out mainly by soldiers and "people from Burundi".

Section II. The implementation of agreements

The agreements have had the merit of bringing calm to property offence litigation. The underlying rationale behind the agreements is to ensure social cohesion and has enabled trials that would have proved more costly and more likely to give rise to tension to be avoided in some areas. This option is part of a global reconciliation policy deployed by the Rwandan authorities.

The scheme has however shown some limitations at the execution stage for several reasons that will be discussed further in this report. We should for this reason outline first the rationale underlying the agreements, then their limitations.

A. Ensuring social cohesion through the amicable settlement of property offence cases

The central place given to agreements aims primarily to encourage the amicable settlement of property offence cases. In so doing, the conditions are laid down for reconciliation by avoiding recourse to a trial that would cause tension between the parties.

1- Avoiding trials

The Organic Law of 1996 specified that property offence cases should preferably be settled through "amicable agreements" that were to be carried out with the "support of citizens", who were supposed to contribute their witness statements to the process. The document goes on to state that the legal procedure begins only if the conciliation process breaks down[51].

Similarly, a 2001 law reiterates this preference for a negotiated settlement, by specifying that people who at the date of entry into force of the law have agreed on an amicable agreement with the victim, either in front of the public authorities or in arbitration, may no longer be prosecuted for the same events[52].

The NSGJ[53] goes further still, encouraging judges and authorities to raise public awareness about the value of agreements, and to check before each trial whether the parties are able to settle the matter amicably instead. If they are, once the parties have agreed on the method of resolution the *Gacaca* judges' role is limited to validating the agreement[54].
Many agreements were concluded in this way, which explains why comparatively few cases were

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51 Organic Law 81/1996 of 30/08/96 Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since 1st October 1990, Official Gazette of the Republic of Rwanda n°17 of 1st September 1996, article 14, d.

52 Organic Law 40/2000 of 29/01/2001 setting up "Gacaca Jurisdictions" and organizing prosecutions for offences constituting the crime of genocide or Crimes against Humanity committed between 1st October 1990 and 31st December 1994, Official Gazette of the Republic of Rwanda no 6 of 15th March 1996, article 71.

53 National Service of *Gacaca* Juridictions.

54 Article 2 of NSGJ Instruction no 14 states that people who have concluded these agreements between themselves or with help from administrative authorities must put them before a *Gacaca* Court which then draws up a deed for the agreement. See Instruction 14/2007 of 30th March 2007 of the Executive Secretariat of the National Service of *Gacaca* Jurisdictions on compensation for property damaged during the genocide and other crimes against humanity committed during the 1st October 1990 and 31st December 1994.

passed on to courts of law.

In some areas, there have been no trials for property offences.

> *"In fact there have been hardly any trials. When the Gacaca process started, we asked the accused if they wanted trials or whether they wanted to opt for agreements. They chose agreements and form themselves into groups of all those involved. They agreed amongst themselves and presented the arrangement they'd come up with to the court. Then each person's share of debt was worked out. No account was taken of what was looted by whom, nor how much. The important thing was to work out who has taken part in the lootings and to divide into equal parts the total amount to pay back. They did this of their own volition and then informed the Inyangamugayo of what they'd decided."*[55]

> *"In our Cell, we tried to encourage people to go for agreements. We didn't have to hold any third category trials, but we did make those guilty of property offences aware that they had to make up with their fellow citizens (the victims), and they tried to pay back the value of the goods they'd damaged during the genocide.*[56]

Choosing an amicable settlement avoids having to resort to the law or to a sanction that would entrench and disagreement between the various groups.

Rwandan society traditionally favours conciliation[57] as a means of settling disputes, in a desire for peace and social harmony. The parties seek reconciliation with the assistance of their neighbours, rather than the application of a sentence that might encourage feelings of hatred and disagreement between the groups. There is a popular saying, "Before going to the court, better to go the elders on the hill". Unless the offence is serious enough to merit a sentence of death or banishment, reconciliation and compensation for the wrongs caused are achieved by both parties offering compromises[58].

The following extract clearly illustrates the lack of trust in the trial process:

> *"Rwandans have a tradition of hatred between the two parties to a legal trial. But if the two individuals manage to reach an agreement over their dispute, stronger links are forged between the families and the friendship is preserved."*[59]

This is echoed by Michel Alliot in the following maxim: "Africans hate closing an argument with a ruling based on a pre-existing law."[60]

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55 Interview with a Cell executive secretary, 10th March 2009, n°2352.

56 Interview with a *Gacaca* judge, 28th January 2009, n°2315.

57 *Ubwiyunge* in Kinyarwanda.

58 On the subject of the conciliation procedure, see especially BAYONA Ba MEYA MUNA KIMVIMBA M., "Le recours à l'authenticité dans la réforme du droit au Zaïre", in Dynamique et finalités des droits africains, Paris, Economica, 1980, p. 242 ; VANDERLINDEN J, *Les systèmes juridiques africains*, op. cit. , pp. 21 et s.

59 Interview with a third category convict, 05 August 2008, not recorded.

60 ALLIOT M., "Le juge: une figure d'autorité", World convention on the anthropology of law, ENM, Paris, *24th to 26th November 1994*, ed. BONTEMS C., Paris, l'Harmattan, 1996. This explains the mistrust towards the official system that was suspected of fanning the conflict instead of helping solve it. DIGNEFFE F, FIERENS J., *Justice et Gacaca. L'expérience rwandaise et le génocide.* Presses Universitaires de Namur, 2003, p. 15.

There is, it seems, a clear preference for "negotiated ruling" [61], that is more in harmony with traditional African conflict resolution methods; it aims firstly to restore the balance disturbed by the offence, and secondly to restore community harmony in a process that is often likened to reconciliation. It is this link between reconciliation and the amicable settling of property offence cases that must now be described in more detail.

2. In search of reconciliation

The issue of reconciliation usually involves politicians in the search for a new direction for society, especially after a violent conflict such as the one experienced in Rwanda. This explains why reconciliation appears repeatedly in most post-conflict processes.

Reparation for damage caused to genocide victims is one of the key goals of the reconciliation process. Encouraging agreements forms part of this goal, as is illustrated in Instruction number 14 from the NSGJ:

> *"Alongside restitution and reparation, we have not overlooked that one of the goals of the Gacaca jurisdictions is reconciliatory justice. It's why, before starting a legal case, we have to first check whether any of the accused are willing to restore property and pay damages without involving the Gacaca court, because this willingness shows that the perpetrators have a conscience and are sorry for what they've done."*

The gap between theory and practice in the field bears witness to the complexity of the issue. We may also ask whether the search for peaceful cohabitation is not rather too quickly likened to reconciliation. The term seems to be bandied far too much in post-conflict situations, including Rwanda. There is no exhaustive definition of it, nor a shared vision of what it might mean. The definition suggested by the National Unity and Reconciliation Commission (NURC) includes such a large number of elements that it amply demonstrates the complexity of the term:

> *"Unity and reconciliation for Rwandans is best defined as the customs of citizens who believe that they share a joint nationality, culture and rights, who are characterised by mutual trust, tolerance, respect, equality, complementarity and truth, and who are ready to help each other heal the wounds left over from the bad period they have experienced so that at last they may begin to evolve in absolute peace."*[62]

There is however a consensus in acknowledging that this is a long-term process. This was the tenet of a speech given about the South African Truth and Reconciliation Committee by Archbishop Desmond Tutu: *"The reasonable mission of our commission is not to reach reconciliation; but rather to promote it."*[63]

Kriesberg's definition is in the same vein: "*Reconciliation refers to the process by which parties that have experienced an oppressive relationship or a destructive conflict with each other move to attain or to restore a relationship that they consider to be minimally acceptable."*[64] Louis Joinet's approach supports this idea by

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61 LE ROY E., « L'ordre négocié. A propos d'un concept en émergence », in Philippe GERARD P., François OST and Michel VAN de KERCHOVE (editors) *Droit négocié, Droit imposé* ?, Bruxelles, Publication des Facultés Universitaires Saint Louis,1996, p. 341-351.

62 *Politique nationale d'unité et réconciliation,* National Commission for Unity and Reconciliation, August 2007, pp. 4-5.

63 HAYNER P., *Unspeakable truths: confronting state terror and atrocity*, London Routledge, 2001. For other definitions, see: BLOOMFIELD D., BARNES T., HUYSE L., *Reconciliation after violent conflict, Stockholm: International Institute for democracy and electoral Assistance*, 2004; ASSEFA H., "Reconciliation", in *Reychler, L. & Pafenholz, T., Peacebuilding: a field guide*, Boulder: Lynne Reinner, 2001, p. 336-342.

64 KRIESBERG L., "Changing forms of coexistence", p. 60, in Abu-Nimer, Mohamed ed., *Reconciliation justice, and coexistence : theory and practice*, Lexington books, 2001, p. 47-64.

suggesting straightforward conciliation as a first step because, as he puts it "by immediately attempting reconciliation one runs the risk of the concession process turning into a compromise of principles." [65]

The use of agreements to settle property offence cases raises some issues in the light of the above, although it is undeniable that these agreements have frequently enabled tensions to be defused, and have made the proposed solutions acceptable to the parties. Agreements have brought together victims and perpetrators of property offences, in the aftermath of the rifts and well-founded mistrust that existed after the genocide. However, the difficulties and disputes arising from their execution lead one to believe that conciliation and reconciliation have perhaps been confused. Concession seems to have been confused with compromise of principles.

B- Limitations of agreements at the execution stage

The agreements raise some questions on the very ambiguity of the concept as well as to the conditions surrounding their execution.

1. Ambiguity of the concept of agreement

Controversy created by the execution of agreements is intrinsic to the very nature of these agreements on the one hand, and caused by the lack of proof on the other hand.

a) A misunderstanding about agreements

The conditions in which some agreements were drawn up have muddied the concept of agreement. Some of these agreements were concluded at the behest of the authorities and sometimes even under duress. It now seems that in many cases, the terms of contracts were not clearly established between the parties. Firstly, victims did not in the aftermath of the genocide readily accept the paltry sums offered as compensation for their property, and secondly, because of their precarious socio-economic situation, they were unwilling to give in to the authorities' desire for appeasement.

As far as the perpetrators of property offences are concerned, agreements were often drawn up out of fear of a trial in which they would be sentenced to pay much larger amounts. Refusing agreements could in itself be considered a lack of willingness to be reconciled with the victim, and lead to more severe treatment during the trial.

In other cases, it was the difficulty in identifying the perpetrators of property offences that gave rise to the misunderstandings. Looters often came from other places:

> *"We got to a point where people displaced from other areas settled here and looted the belongings of Tutsis from this area. Survivors from this Cell blamed their neighbours. Because of this, those who returned property were held responsible for the disappearance of all a victim's property from their house."* [66]

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65 JOINET L., *Questions de l'impunité des auteurs des violations des Droits de l'Homme* (civils et politiques), ibid.

66 Interview with a *Gacaca* jurisdiction president, 21st September 2006, n° 1402.

In the absence of any clues as to the identity of the looters, concluding such agreements on the whole amount of the compensation leaves behind feelings of bitterness that can emerge at the time the agreement is executed.

Some years later, the fragility of these agreements becomes apparent. In some cases, things happened as though in a game of poker in which nobody shows all their cards, expecting repercussions. The following extract illustrates this point well:

> *"They do not want agreements. They would rather that no-one knew of the events. You forgive them thinking that you're doing a good thing, but then you realize that you're wasting your time. In short, they haven't accepted the agreements. If they had accepted them, they would have respected them. Instead they say: let them go and get paid by the Mukantaganzwa. It's the State that ends up paying. Did the State not just prevent us from selling our land? So that you don't end up stuck in the loneliness you find yourself sinking into, you prefer to keep quiet and give up... you realise that these so-called agreements are just a trick."* »[67]

The valuation of goods by the *Gacaca* Courts at their current value also fuels frustration and dissatisfaction.

As far as the proof of these agreements is concerned, the lack of a written document goes a long to explain subsequent disputes at the execution stage.

b) Proof of agreements

The difficulty in proving the existence of agreements, due to the fact that they are often verbal, amply demonstrates their limitations, as the lack of a right to execution does with the written ones.

- Limitations of the spoken word

"Verba Volant, scripta manent" goes the Latin dictum, aptly encapsulating the issue of agreements in Rwanda. It expresses very well the problems of proof in African communities in which the oral tradition is central[68], particularly in the context of adversarial disciplinary council of elders.[69] In this culture an oral agreement is usually enough to seal an agreement. Asking for

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67 Interview with a survivor, 10th March 2009 n° 2353.

68 See on this topic, KONATE D., « Tradition orales et écritures de l'histoire africaine : sur les traces des pionniers », *Présence Africaine*, *N° 173, L'Histoire africaine : l'après Ki-Zerbo.* Pour ce qui est du Rwanda, Cf. *Aspects de la culture rwandaise,* Centre de la bibliographie rwandaise de l'Université Nationale du Rwanda, 1972, pp. 43-59.

69 Les palabres agonistiques sont entendues comme « une réduction d'un conflit par le langage ». A l'opposée, les palabres « iréniques » se tiennent en dehors de tout conflit : à l'occasion d'un mariage, d'une vente etc… [translator's note : I am not sure how to translate this given that it is an explanation of a word that I have not been able to use in English, with a fine distinction that I do not think exists in English]

Cf. BIDIMA J. G., *La palabre, une juridiction de la parole*, Paris, Michalon, 1997, 45/46. C'est une institution chargée de sens. Aussi dans les langues bantu par exemple, [le terme palabre] désigne à la fois la justice, en tant que vertu ; le magistrat, dans la mesure où le juge incarne la sagesse ; enfin l'institution judiciaire, l'espace où est rendue la justice », Cf. OBANDA S., « La palabre, un apport à la mondialité ». p. 1. www.african-geopoliticts.org, consulté le 18 April 2007.

written proof in this kind of situation can be perceived as a lack of trust[70].
This explains why in the settlement process of property offences there is often no written document. Even where agreements have been written down, the parties do not feel more bound by them because they are written.

In the absence of a written document, and sometimes even of witnesses, perpetrators are prosecuted and sentenced by the *Gacaca* to pay amounts already paid, or the value of goods already returned. These cases of double restitution are a cause of both dissatisfaction among the debtors and worry about the reconciliation process, as is shown in this extract from an interview:

> *"What I can tell you for certain is that making people pay twice has really made some suspicious. It's as though one ethnic group is given preference over the other, and that the second one is seen as neglected even though the responsibility falls to a few individuals rather than to everyone. Even if we can't say it out loud, we will have to get along together, but it will be a tense cohabitation. Before this happened people had rekindled their friendships, by giving people cows, by intermarrying; since the Gacaca process came in, things have got worse. Even though people are not going to do malicious things, problems start to arise in peoples' minds."*[71]

The absence of proof also increases the likelihood of fraud, where sums are paid via the administrative authorities.

> *"The Sector authorities recently had a Cell executive secretary imprisoned. He then had to pay up part of the money he'd stolen. Our worry is that we do not know where the money that was paid back went, since it seems that ground roots authorities were taking their cue from their superior and taking money for themselves. Stolen money was mentioned in the report that he'd drawn up, that mentioned the names of those he'd received it from, and the amounts they'd paid. Some had however paid up but weren't listed, or the amounts listed were different from what had been paid."*[72]

Where payment is impossible to prove, the perpetrator has to pay up again.

> *"We did indeed request the sum from the authority but they said that they could pay it only to someone who could present a receipt."*[73]

Aside from the issue of proof, the issue of entitlement arises, on which the agreements must be based. This needs to be studied.

- Lack of a proof of entitlement to execution

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70 This oral tradition is also a traditional part of Rwandan culture. There are various types of oral tradition: "the people's oral tradition" which is transmitted free from any kind of checks or controls, and couched in words that every person chooses for themselves; the oral tradition of wisdom, that has been couched in set formulae, representing a condensed version of a cultural group's beliefs; the "official" oral tradition, which is intended to be transmitted in the same language as the original, under the control of a body specifically set up for the purpose; finally the vital oral tradition, the one which is crucial to the survival of a group and without which the group would disintegrate or to which the group clings as a way of ensuring its survival as a group. See "Aspects de la culture rwandaise", Centre de la bibliographie rwandaise de l'Université Nationale du Rwanda, 1972, pp. 43-59.

71 Interview with the wife of a convict, 24th July 2008, n° 2075.

72 Interview with a survivors' representative, 14th June 2008, n°2036.

73 *Ibid.*

Under the terms of article 194 of the law on civil, commercial, social and administrative procedures[74], *"enforced execution, whatever form it takes, may only be used where there is a proof of entitlement drawn up and concluded in accordance with the law and with the assistance of the public authorities identified by this law and that are the object of the execution procedure."*

The execution procedure is a seal affixed by the jurisdiction president on to a copy of the ruling or decision, or by order of a judge. Anyone holding one of these documents is entitled to execution of the legal ruling, or where relevant, to enforced execution[75].

The format of the seal is defined by article 197 of the law on civil, commercial, social and administrative procedures[76] that also sets out an exhaustive list of entitlements to execution. These include *"rulings, orders, arbitration decisions, notaried documents containing an enforcement sales clause, public tender contracts, and foreign rulings deemed by the competent authorities to be binding."*[77]

As far as agreements are concerned, article 2 of NSGJ instruction 14 states that "for an agreement on compensation to be legally valid, the Cell *Gacaca* Jurisdiction draws up the relevant document for the involved parties, which is an agreement report on the property damaged or looted during the genocide."

Similarly, transactions concluded between the parties, as well as conciliation agreements drawn up with the help of local ground roots officials must be validated by a Cell *Gacaca* jurisdiction.

The validation procedure is carried out before the jurisdiction general assembly and requires the participation of members of the public present, who are expected to contribute witness statements, help in the valuation of goods to be returned, payment terms, etc... These agreements are then recorded on the appropriate forms and validated by the parties as well as by the *Inyangamugayo* of the Cell *Gacaca* jurisdiction. These forms constitute the proof of the agreement. They do not however contain execution clauses as prescribed by the civil procedures code. This raises some issues as to what recourse there is in the event of non-execution.

In theory, drawing up an agreement that is properly validated and respected by both parties should wipe out the debt. What happens however should the debtor not freely honour his undertaking? The creditor should in theory retain their right to appeal to the *Gacaca* jurisdiction at Cell level to have the perpetrator of the damage convicted. In practise however many different approaches are used, on a scale up to enforced execution of agreements.

B- Enforced execution of agreements: a paradox in the reconciliation process

The enforced execution of agreements that have not been honoured is a real puzzle in the settlement of property offence cases. These agreements form part of a wider national reconciliation policy, and are a recurrent theme in the settlement of genocide litigation.

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74 See Law 18/24 of 20th June 2004 setting up the Civil, Commercial, Social and Administrative Procedures Code.

75 GUILLIEN R. and VINCENT J., Lexique des termes juridiques, Paris, Dalloz, 2001, p. 270.

76 Law 18/2004 of 20th June 2004, ibid, article 197.

77 See article 195 of the *Civil Procedures Code.*

It is striking to note that the NSGJ[78], whilst recommending the enforced execution of agreements, makes no provision for any fresh attempt at reconciliation before resorting to this procedure. This at least would have the merit of restating the main aim of agreements, which is the peaceful settlement of property offence cases. It is true that in practice the parties often begin fresh negotiations before the enforced execution process can be launched. The dichotomy between the aims of reconciliation and the solutions put forwards in the event of non-execution ably translates the dilemma in which the actors in the process find themselves when faced with the issue of reparation.

We have had the opportunity to observe that the enforced execution of agreements varied from one area to another. Such responses are based on NSGJ recommendations that state that in the event of non-execution of the agreement, the victim may request enforced execution. [79].

Three responses were noted:
In some areas, the executive secretary uses the agreement report as though it contained an execution clause in accordance with directives given by the sector executive secretary.

> *"We were told that we had to go in front of a tribunal to get an execution clause. The executive secretary went to find out. He found out that the execution clause wasn't required for rulings in Gacaca Courts. You have to use the agreement report for the damaged property."*[80].

In some areas on the other hand, victims request an execution form from their local Cell *Gacaca* jurisdiction, which they then present to the executive secretary in order to request the seizure of the debtor's goods. This practice was based on a note from the NSGJ on the seizure and sale of goods, according to which *"the document to use [in the event of a public sale] is the execution form for damaged property duly filled in by the Gacaca jurisdiction that originally gave the ruling."*[81].

The following note sent to bailiffs aimed to explain that an order from the president of the appeals court authorising a public sales, commonly called ruling of the appeals court president on public sales *"is not to be commonly used in implementing Gacaca court rulings, given that these jurisdictions are extraordinary, with their own way of operating."*

Because the validated agreements are akin, in the minds of the people and even of the local authorities and *Gacaca* judges, to legal decisions, there are instances of enforced execution of agreements, sometimes on the mere justification of copies of rulings from *Gacaca* courts.

> *"It was noted that agreements were not often respected, and that the victims had appealed to the judges. The judges transferred the cases to the coordinator and the legal expert who all recommended that they have copies of the judgment made up for anybody who might refuse to honour their undertakings."* [82]

This practise may in some cases be a psychological tool to use against the debtor. In this case, the victims may, despite the agreement concluded, request from the judges a copy of the ruling, that they can then use

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78 See on the topic SNJG pamphlet « Des audiences sur les biens endommagés pendant le génocide », et « Poursuite des infractions contre les biens endommagés pendant le génocide », 3rd August 2006, p. 5.

79 See on this topic SNJG pamphlet « Des audiences sur les biens endommagés pendant le génocide », et « Poursuite des infractions contre les biens endommagés pendant le génocide », 3rd August 2006.

80 Interview with an executive secretary, 10th March 2009, n° 2352.

81 Note from the NSJG executive secretary to the bailiffs on the execution of Gacaca jurisdiction judgments abourt property damaged during the genocide, 6 January 2009.

82 Interview with a *Gacaca* jurisdiction president, 2nd February 2009, not recorded.

should the debtor fail to honour his undertaking. The debtor will nonetheless pay the amount as agreed when the agreement was concluded.

It should be noted that in some cases, enforced execution is the victims' only hope in the event of the debtor being unwilling to settle up. These practises do however, besides the issue of their validity, raise the question of coherence within the national reconciliation process.

Whilst it is still too early to fully evaluate the overall impact of these agreements on the reconciliation process, we are in a position at this stage to outline some themes through interviews collected in the field.

It is important at this stage to underline the fact that opinions on the issue are divided; some see the agreement mechanism as a factor for reconciliation, whilst others see it as a hurdle. This is case for people who feel innocent but have nevertheless been forced to pay for looted or damaged property. This was what some *Inyangamugayo* judges maintained when interviewed on the subject. [83] It sometimes happens during the information gathering process that individuals who have been falsely accused, sometimes by the real perpetrators use this process to minimise their share of repayment.

From our observations some of the survivors share this pessimism:

> *"Unity and reconciliation will not work. We thought we'd become reconciled with these people. We even agreed to let them off part of the reparation, but they won't pay us anything. Even those who end up paying do so unwillingly and say that they're making us rich".*[84]

The first section of this report reveals the complexity of the process of executing agreements. The main thing that transpires is the difficulty in finding a peaceful solution to property offence cases that also comes with an effective right to reparation for victims. The very range of these amicable agreements means that different proofs are required. The proof of agreements drawn up through conciliation seems easier to establish because of their validation by the conciliators, either local authorities or *Gacaca* judges. On the other hand, those concluded by negotiation between the parties have often not been written down.

Implementing these agreements proves that the mechanism has to a certain extent achieved one of its goals, which is to avoid trials. However disputes at a later date and tensions generated at times lead one to believe that they are not always fully understood and that a certain amount of ambiguity remains. The enforced execution of such agreements is also a cause of confusion about its aims.

Finally the implementation of agreements is fraught with difficulties and raises worries that reappear at the time at which the reparation orders are executed. We shall now study this phenomenon.

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83 Interview with some judges, 3rd November 2006, n° 1454.

84 Interview with a survivor, 10th March 2009, n° 2353.

Part Two

The execution of reparation orders: the weight of the law versus socio-economic reality

The execution of reparation orders and agreements is heavily affected by economic issues and by the poverty of part of the population, that heavily influence the atmosphere surrounding executions. Spontaneous execution is therefore rare; most often it happens following negotiations between the parties after the ruling.

On the other hand, where there is no spontaneous payment or agreement between the parties, enforced execution is supposed to be used exceptionally as the only way left to obtain satisfaction for the victim; it is however becoming the rule in some instances. There are several reasons for this: unwillingness of those convicted, disputes about trial procedures, but also an expectation of intervention by the State.

We will in the first instance present the conditions surrounding voluntary execution, and in a second instance the difficulties surrounding the enforced execution of reparation orders, along with some of the solutions being used.

Section I

Voluntary execution

Some of those convicted voluntarily pay their reparation debts. These are however only a minority, since the execution of reparation orders is very considerably influenced by economic issues. This is what we shall investigate in the first section, before moving on in the second section to an analysis of the various execution conditions.

A. The influence of economic factors

The general observation is that the situation is characterised by unavoidable economic issues. Many of the guilty parties looted or destroyed property that they are now unable to pay for at today's prices.

Survivors living daily on the hills with the perpetrators of these lootings are very aware of their economic situation, as is illustrated in the following extract:

> *"If we'd known that it was our neighbours who would have to reimburse us we would never have requested restitution because they don't have the means to return anything, and we are making them into enemies whereas before we were cohabiting well. (...) They have begun to fear us and avoid us; we notice that there's a problem between us. What saddens us is that they think that we're the cause of their misfortune, as though we were accusing them even though we didn't know anything about it."*[85]

85 Interview with a survivor, 8th March 2007, n°1525-1526.

The authorities and *Gacaca* judges also assess the situation and are worried about it, as testifies this Cell secretary:

> *"A child came and said that he acknowledged that his father was guilty of this crime and that he was ready to pay. But he asked for permission to sell his father's forest because he wanted to go to university. (...) At the time of paying the damages and interest, the money would be taken from this prisoner's property. On the other hand, we were riding roughshod over this child's right to an education. (...) in the end, by solving one problem, we created another. It was attractive to obtain satisfaction for the victim, but we were left wondering if the child had not also become a victim of his father's crimes."*[86]

In the face of the extreme poverty of some of those convicted, victims are often very realistic in granting either partial or total exoneration to perpetrators, depending on the amounts and events involved. This is what some interviewees said:

> *"The Gacaca jurisdiction had decided that they should pay 97,000 Francs each. I reduced it to 20,000 Francs each."*[87]

> *"In short there are cases where you have to act as a reasonable human being. I'll give you my example: it was a widow like me whose husband had played a major role in the looting of my property. I exonerated her because I felt we had the same problem. It depends on the individual, I wouldn't do it for just anybody. I exonerated her of my own free will. I was moved by her behaviour during the trial to exonerate her- she told all the truth without hiding anything. My conscience made me act like that when I saw her behaviour and saw that we had the same problem."*[88]

Victims almost invariably link their reaction to a request for forgiveness from the accused, or at least their explanation of how they would carry out the reparation. This issue is a recurrent theme in the interviews:

> *"A person who is showing good will to pay is one who comes and pays at least a little bit of the debt or who at the very least comes to apologise and say that he can't afford to pay yet.*
> *There are other debtors who go straight to the victims and pay up. The only problem with that is that there isn't anything written down when that happens. During open meetings, we remind people that anybody who has a document must have it validated with their local Cell so that the right execution form can be filled in by the relevant authority, and so that they can keep copies to be used as reports."*[89]

> *"Where people are insolvent, it would be more fitting for them to allowed to bow down before their victims and ask for their forgiveness and therefore get a reduction in their debt."*[90]

Some apply to the authorities on the issue requesting them to instruct convicts on the justification for the reparation process, as they did for confessions.

> *"The authorities should raise the awareness of people to this behaviour, by telling them that compensation is not*

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86 Interview with a Cell executive secretary, 14th February 2007, n°1496.

87 Interview with the *Ibuka* First Secretary, 2nd September 2008, n° 2130.

88 Interview with a survivor, 6th November 2008, n° 2224.

89 Interview with a Cell executive secretary, 10th March 2009, n° 2352.

90 Interview with victims, 25th September 2008, n° 2160-2161.

aimed at making them poorer but to re-establish unity and human dignity."[91]

"This boy, Jiji was his name, some people who had looted his house came to find him to ask for his forgiveness, and he was willing to let them off half the amount they should have paid him." [92]

In this symbolic platform it is the move by the perpetrator of the damage in apologising to the victims that constitutes the reparation, rather than the monetary compensation or equivalent reparation.

An exoneration granted by a victim is usually validated by Cell executive secretaries and recorded on a form signed by both parties. This effort by victims is not always acknowledged however: in some cases, rather than record the amended sum on the execution form, some executive secretaries record that the whole debt has been extinguished.

This is a practise that goes against the aims of the reconciliation process, in the sense that written acknowledgment of the exoneration confirms for the victim the fact that their "sacrifice" has been acknowledged. In the same way, the guilty party is not afforded the chance to congratulate themselves for having paid off the entire debt, which could in itself give rise to new conflicts.

Economic factors can also in most cases elicit sympathy in the victims, leading to a change in the reparation terms. This is what we shall examine next.

Execution terms

There is provision for reparation terms in the 2004 Organic Law. [93] They are composed of damage and interest or in restitution where possible, or its equivalent where not possible. [94]. The choice is at the judge's discretion after consultation with the accused person. [95] It must be noted that in practise, judges rarely sentence to anything other than monetary compensation. Because of this, alterations are more often seen in the negotiations between the parties after the ruling.

The victim and guilty party may conclude agreements after the ruling, often on their own initiative, but at times with the assistance of the Cell executive secretary. The two parties agree on new terms that consist either in compensation by work, a repayment schedule[96], or a transfer of land.

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91 *Ibid.*

92 Interview with a womens' representative, 16th January 2009, n° 2309.

93 Organic Law 16/2004 of 19th June 2004 establishing the organisation, competence and functioning of Gacaca courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity committed between October 1st 1990 and December 31st 1994.

94 See article 95 of Organic Law N°16/2004 Of 19/6/2004 Establishing The Organisation, Competence And Functioning Of Gacaca Courts Charged With Prosecuting And Trying The Perpetrators Of The Crime Of Genocide And Other Crimes Against Humanity, Committed Between October 1, 1990 And December 31, 1994.

95 According to article 68 of the Gacaca law, the court explains to the defendants the types of reparation provided for in the organic law to repair the damage caused, asked each one for his or her preferred method of reparation and their deadline for making reparation once found guilty.

96 Interview with a Cell executive secretary, 5th December 2008, n°2279-2280.

1- Compensation by work

The debtor may offer to work for the victim by way of compensation. This possibility is provided for in law[97] but is not often used by the *Gacaca*. Where the parties agree on this alternative, an agreement is concluded for which the executive secretary draws up a report.

> *"Sometimes, the guilty party agrees that the order be carried out but says that he has not enough money to pay, nor any property to sell at public auction. He then suggests that he carries out work equivalent to the value of the damaged property. Even if he hadn't suggested this during the trial, we accept it as we are supposed to get the people on our side before executing orders. Their agreement is written down in the presence of the bailiffs and followed up in order to check that it is carried out."[98].*

This reparation method has the merit of guaranteeing repayment, but also presents some problems. Reparation is only certain in the case of small amounts of money, and the measure may be likened to forced labour, which is forbidden by international conventions. Even inside Rwanda, it has pejorative connotations, recalling an ancient form of servitude called *Uburetwa:*

> *"We thought that even suggesting to someone that they work in your fields as a way of paying them back didn't really have good connotations. This is what we Rwandans call Uburetwa, which means "that man enslaved me". From that you can see that it will not be well thought of."* [99]

Because a large majority of the population live from agriculture, the guilty person may be reluctant to accept this form of reparation, as he will have to neglect his own fields and the only source of income for him and his family while he works for the victim. This is illustrated by the following extract from interviews with executive secretaries, who are charged with executing rulings, and are in consequence faced with some complex situations:

> *"There are also cases where one person is sentenced to pay for the property of eight others even though he is poverty-stricken and only survives by working someone else's land. The Gacaca jurisdictions may suggest that such a person repays through working for the person whose property they damaged. But that person may well say that that they can only eat after they've worked for someone else. What can he eat if you ask him to work for the victims by way of payment? If someone destroys your house, you can't ask him to work for you by way of payment if he's not going to be able to eat that evening. How can he work for you? He might come back to steal the plants he's cultivating for you (...) "You have someone who is asked to repay more than eight people even though he only lives from day to day from labouring in another man's field. If you suggest that he work without being paid, he won't be able to eat."* [100]

Apart from repayment through labour, the parties can agree on a repayment schedule.

2. Repayment schedule

Given the reduced financial means of some guilty parties, full payment of the compensation in one

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97 See article 95 of Organic Law N°16/2004 Of 19/6/2004 Establishing The Organisation, Competence And Functioning Of Gacaca Courts Charged With Prosecuting And Trying The Perpetrators Of The Crime Of Genocide And Other Crimes Against Humanity, Committed Between October 1, 1990 And December 31, 1994.

98 Interview with a Cell executive secretary, 9 October 2008, n° 2185.

99 Interview with a *Gacaca* jurisdiction vice-president, 11 September 2008, n° 2151-2152; Interview with a survivor, 12th September 2008, n° 2154 ; Interview with a survivor, 17th April 2007, n° 1568.

100 Interview with a Cell executive secretary, 10th October 2008, n° n°2186.

instalment is often not possible. Both guilty party and victim are often in similar socio economic circumstances, which makes the victims more receptive to the idea of being paid the compensation in instalments.

> *"If for example a person has to pay ten thousand francs, when they are getting only three hundred a day in wages for working someone else's land, they wouldn't be able to earn that amount of money in a month or even two. When the person manages to get hold of a bit of money, they take the money to the victim as a peace offering and tell them that they cannot get hold of the whole amount in one go because they have no livestock to sell to make that money or haven't yet got another job. They ask the victim to accept gradual payments when they've sold a bunch of bananas or some sweet potatoes or some cassava."* [101]

That extract illustrates very well the extent to which dependency of reparation depends on the socio-economic activity of the debtors because most of them are poor farmers, they prefer to be able to defer payment until after the harvest.

As a general rule, this type of payment also suits executive secretaries who have to face the difficulties inherent in enforced execution, as was stated by the following interviewee:

> *"We found a case where the people had refused to pay up. After they got a paper from us telling them we were going to seize their property for resale, instead of coming here to pay up, they went instead to see the victim they'd wronged. They paid a little bit and signed the agreement agreeing to pay other instalments bit by bit. We couldn't blame them because when they do it like this they make our job a whole lot easier."* [102]

Another payment method is the direct transfer to the victim of part of the perpetrators' land.

3. Transfer of land to victims

Some debtors transfer part of their land to the victims as a way of executing their sentence. The process is not in itself extraordinary, but the lack of arable land means that this process deserves some attention. A plot of land may be transferred to several victims to share between them. This has been mostly observed in the southern part of the country where plots are generally smaller than the threshold set for seizure. The guilty simply transfer a part of their farm to the victims who either share it out amongst themselves or put it up for sale and then share the proceeds.

> *"In some areas ten or twenty victims will get together each with their execution form and go to see the same perpetrator. When they realise that the victim has nothing, they give up hoping to be paid. If he offers them a small plot of land, they take it. There are no conditions since it's forbidden to seize land that is used to feed the debtor's children."* [103]

This method of reparation, along with those presented above, forms part of a process of asking for forgiveness and of explanation about the negotiations requested:

> *"The surface area of these plots is not connected with the value of the property that the victims would have received by way of compensation for their property. It's just that when the convicted do things like that (handing part of their farm over to their victims), they do it as part of the agreement and/or to ask for the victims' forgiveness. The convicted person says that he must hand over what he has. And he goes on to tell the victims: you know that I can't farm for you as a way of repaying what I owe you, and that I have nothing else to give. In this situation, the victims*

101 Interview with a resident, 22nd July 2008, n° 2065.

102 Interview with a Cell executive secretary, 28th August 2008, n° 2115.

103 Interview with a survivor, 26th November 2007, n° 2258.

accept what the convicted is presenting them with and go away without grumbling."[104]

Apart from these compensation methods, remains the problem of those who for various reasons do not voluntarily execute their sentence. In this case, the final solution is enforced execution of the sentence.

Section II

Enforced execution

In the event of a refusal to pay, enforced execution seems to be the only way to obtain satisfaction for the victims. Under the terms of article 253 of the Civil Procedures Code, *"If the party that loses does not voluntarily carry out the ruling in the required time, enforced execution occurs on his property, by seizure and forced sale."*

In the case of property offences, this process has major challenges that need to be analysed. We shall firstly present the causes, and then explain the implementation of the process.

Causes

There are many causes linked to different factors, among which three appear more compelling than the others. They are partly due to a lack of willingness of perpetrators, partly to disputes following the ruling, and finally to the expectation of State intervention.

Lack of willingness of some perpetrators

The reluctance of some guilty people to voluntarily execute their sentence is still a major problem in settling property offence litigation. It seems that lack of willingness of some perpetrators is the root of some reparations not being executed. This bad will can take on different forms, such those who engineer their own bankruptcy in order to avoid having to pay up:

> "*Their main aim is that the victim should not get their property. It's not that they can't afford it, but their aim is to say that if the victim cannot find anything to seize they will give up on being compensated."* [105]

> *"It was at that time that the old man, having learned that the case had reached the executive secretary, sold his farm to his son in law. He kept a very small farm for himself. Then he said: "What are they going to find to take here?" He sold his fields to prevent them from being seized."*[106]

The same goes for payment in excessively small instalments. Some debtors adopted the strategy of breaking down the total amount to pay into extremely small instalments in such a way that the repayment is not in any way "useful" to the victim. The following extracts illustrate this stance:

> *"This money I'm going to give you will be useless to you- I'm going to pay bit by bit in very small amounts. What use will they be to you?"*[107]

Or,

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104 Interview with an executive secretary, 5th December 2008, n° 2303.

105 Interview with a *Gacaca* jurisdiction vice-president, 11th September 2008, n° 2151.

106 Interview with a survivor, 12th September 2008, n°2154.

107 *Ibid.*

"They can take our stuff but they won't be any use to them." [108]

Proof of the extreme bad will of some guilty parties can be seen in the fact that as the seizure is due, they pay at the last moment to avoid their property being seized. This was confirmed by this executive secretary:

> *"Often, when I put up a poster advertising the enforced execution, those involved get together and come to an agreement. The proof is that often the beneficiary won't come back to me to request enforced execution."* [109]

This bad will casts uncertainty over the reconciliation process, as testified by this survivor:

> *"The first thing we told them was that we had to get together and be in agreement. Instead, there were more and more problems. They say that they won't forget that we're making them pay up, they're saying that to put pressure on us. What we'd need for the scars to heal would be for them to pay up and then for us to live in peace."*[110]

Aside from bad will of guilty parties, disputes about the conditions in which property offence trials are held is another cause of non-execution.

Consequences of the judgment process

Deliberate failure to execute property offence rulings is often supported by disputes about the conditions in which the trials were conducted. There are three recurrent factors: firstly the lack of witness statements, secondly the lack of opposing views, and thirdly the lack of expert valuation of the property.

Lack of witness statements

We should point out at this stage that the legal resolution of genocide cases, for which the *Gacaca* jurisdictions were conceived, is essentially predicated on voluntary large-scale participation by the population, which is required to bear witness to what they did, suffered, saw or heard.

It is then up to the *Inyangamugayo* to organise councils that should enable a precise picture to be built of individual levels of responsibility of the accused. [111]

From our observations in the field it appears that participation this kind of event is dropping markedly, which may doubtless be explained by the increasing disillusionment of part of the population towards the whole process.

As far as witness statements are concerned, two main stances have emerged within the *Gacaca* Courts. One is an unwillingness to speak at all, which is akin to a kind of solidarity named *cecéka*, which means "silence" in Kinyarwanda, and which we described in an earlier report[112]. This silence is often motivated

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108 Interview with a survivor who is also an *Inyangamugayo*, 25th September 2008, n°2159; Interview with some victims, 25th September 2008, n°2160.

109 Interview with a Cell executive secretary, 10th October 2008, n° 2186.

110 Interview with a survivor, 25th September 2008 n° 2159.

111 Article 64 of Organic Law 16/2004 of 19th June 2004.

112 See « *Le jugement des infractions contre les biens commises pendant le génocide : le contraste entre la théorie de la réparation de la réalité socio-économique du Rwanda* », *Penal Reform International*, July 2007, p. 70.

by a fear of reprisals, that might take the shape of false accusations of involvement in the genocide. This can also sometimes be done by convicted people seeking to minimise their own share of the reparation.

In both cases, this has increased the complexity of the execution process, as testified by this interviewee :

> *"This can really put off people who see that they have been unjustly convicted, and makes the execution of the rulings even more difficult."* [113]

There is also a certain amount of complicity over witness statements, especially where there are family relationships or friendships linking witnesses and perpetrators of property offence cases.

On another note, it appears from our observations that some accused people will more readily confess to killings than to lootings. The extreme poverty of some convicted parties explains this apparently paradoxical situation. Even where the perpetrator is in a financial position to pay the reparation, confessing to looting can be a heavy burden on a family's resources should livestock or buildings be seized in the event of voluntary non-compliance. From this stems the tendency to conceal property offences, in favour of more readily revealing second category crimes. For those that own up to these crimes, and whose confession has been accepted, part of the sentence is commuted to community service.

Judging property offence cases is also faced with the complex issue of identifying the perpetrators of lootings and destruction. In some cases, this proves impossible, stretching the fundamental principle of identifying the exact perpetrator to breaking point.

Lack of identification of the individual perpetrator

In some areas, lootings were carried out by groups. [114] In the absence of witness statements, it is often impossible to identify all the looters. The *Gacaca* jurisdictions tended to sentence all the accused to the same share of compensation. This was confirmed by a *Gacaca* judge:

> *"There are places where the houses were destroyed, but not one person could be found to confess to the destruction and damage. As for us, members of the court, we made the village people come to give us more details, since during the information collection process, we received little satisfactory information about property damaged or looted. For this reason we had to do another information gathering process. Some acknowledged that they were responsible for the destruction of property, others did not. We drew up a list, decided what each person must pay and set the payment deadlines."*[115]

> *"There is poverty, but also the fact that someone who says they took a plate is sentenced to pay the same amount as someone who looted doors or roof tiles or someone who took a television. This makes some people reluctant at the time of paying up."* [116]

Situations then arise in which convicts pay disproportionate sums compared to their level of involvement. For example a person who confessed to having taken wood from a destroyed house during the genocide finds themselves forced to pay 108,000 Francs, the same as people who had taken objects of real value. [117]

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113 Interview with a person sentenced to repayment, 12th September 2008, n° 2154.

114 This was the case in Butare where looters were said to have come from Burundi. The *Abakiga* were said to have looted Gisenyi and the *Abapagasi*, Kigali.

115 Interview with a honest judge, 18th June 2008, n° 2038.

116 Interview with the son of a convict, 2nd February 2009, n°2327.

117 Interview with a debtor, 11th March 2009, n° 2359.

Sometimes the goal can be to involve as many people as possible in order to make the reparation more certain, as is demonstrated in the following extracts:

> *"Some made false accusations in order to have less to pay each. They accused innocent people. When local people were asked to denounce people who'd come from a long way away to loot furniture, they couldn't name them. They were forced to pay up even though they hadn't done the looting. In that instance, the local people were unjustly convicted."*[118]

> *"I was with him and knew everywhere he went. He was accused to reduce the amounts to pay. I agreed to pay. If for example there were 20 of them and the property was valued at 20,000 francs, the amounts to pay were smaller with a few more people added."*[119]

> *"We just drew up lists. There were no trials. If they say for example that you have to pay four thousand francs, there has to be 30 people for each person's share to be reduced."*[120]

> *"The problem is that where there aren't very many people who are responsible for the damage, they look for others who weren't responsible, so that the amount to be paid can easily be gathered; this is a cause of insecurity even though there was no accuser. Most of the people responsible for the damage have fled; they don't want to accuse them. I wonder why I should pay in the place of someone who has fled."* [121]

> *"Sometimes there are people who are condemned to pay two or three hundred thousand Rwandan francs. So that there are more people to contribute, you end up accused even though you had nothing to do with it. If you ask to give your side of the story, the courts say that they don't want any confrontation. So you pay up along with the guilty. The issue of reparation ought to be handled more transparently and give people the chance to explain themselves. In fact, the reparation trials are just a process of drawing up long lists and requesting payment from people."* [122]

These feelings may be fuelled by the lack of rigour noted in some trials: there is sometimes a lack of opposing contributions, and a failure to establish individual responsibility. In every case, the lack of expert valuation of the property means that approximate values are used and those involved are left feeling that the goal was not so much to reach a fair judgement as to find people who could be made responsible for paying the reparation.

This difficulty in identifying looters may also be abused. Where there were "cascades" [123] of lootings, the administrative authorities and sometimes even the judges lay the burden for the reparation on the whole community without any kind of trial. Where this happened, the *Gacaca* jurisdiction for the Cell appeals to the residents of a community for help in identifying the perpetrators. Should this fail, the *Inyangamugayo* draw up a list of residents that they transfer to the Cell executive secretary who uses it in the execution process. This practise is confirmed in the following extracts:

> *"The people who carried out the destruction have not been identified. The Inyangamugayo then made an inventory of the property damaged in this house so that the neighbours could be made to pay. This is how I was made to sign for the payment. I was told that the law stipulates that where the perpetrator of the destruction is not recognised,*

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118 Interview with a convict, 12 September 2008, n 2155.

119 Interview with the wife of a convict, 15th December 2008, n° 2299.

120 Interview with a convict, 6th May 2008, n° 1983.

121 Interview with a resident, 23rd July 2008, n°, 2070.

122 Interview with a convict, 6th May 2008, n° 1983.

123 This expression is used to describe lootings carried out by people from other places, such as the ones in Butare, that are said to have been carried out by people from Burundi.

neighbouring households get together to pay for the damage." [124]

"If there's an amount of two or three thousand francs to pay for example, and we see that there not enough people to pay it, the Gacaca jurisdictions draw up a list. At the time of execution, you wonder how you ended up on the list when you weren't called to appear before the court and didn't do anything to start with. They say that it's just the way things go."[125]

"A house was destroyed and when they asked the neighbours to say who was responsible for the damage, they didn't want to. They said they didn't know anything. The Inyangamugayo then decided to make all the neighbours around pay up to make reparation for the property. (…) I wouldn't say that is was an agreement, and I don't know if I'd say it was a trial given that the Inyangamugayo called them and read to them the legal stipulations in the event of a case like this, and they asked what could be done about it. As the law says that where the people who damaged a victim's property can't be identified, his neighbours have to make the reparation."[126]

"One victim's house was destroyed and I heard that I was on the list of perpetrators, but I haven't paid him yet because he hasn't asked me for anything. They asked the people and no-one said who had destroyed his house. During the information gathering process the judge decided to sentence all the neighbours to pay."[127]

"Deciding that all the victim's neighbours were responsible is caused by the fact that it has not been possible to find a single person who is proved to be responsible for the damage caused, because the people on site kept quiet and didn't name anyone. It was necessary to make a decision. Since the truth was concealed, there was no other way to go ahead, and this kind of trial can't stay open."[128]

In other words what happens in some cases is that the reparation is simply assigned to someone. Whilst it is true that in some cases the looters were neighbours, it seems incomprehensible that they claim not to have seen anything, when the lootings were often carried out in broad daylight.

This process of laying the responsibility on the residents of an area contravenes the principles of presumption of innocence and individual responsibility.

We should point out that there is no actual legal provision for such a process. Instead, the process was recommended to the *Inyangamugayo* and executive secretaries in an NSGJ training manual in the following terms: *"Where the perpetrators are not known, the local authorities for the Cell in which the genocide crime was carried out will, along with the local population, support the victim in ensuring their livelihood."* [129]
Practices observed in the field are based on an interpretation of this recommendation, as was explained by this *Gacaca* judge:

"The district coordinator (DC) explained during a meeting that he held for us that there is a law that says that if the victim's neighbours do not confess to having damaged or looted a person's property or do not name anybody else, it is possible to order that neighbour to pay for the victim's property. In practise, I haven't had to ask for this, because others in the hierarchy take charge of it such as the DC and another manager; that one told us there was no other way, that the property had to be paid for no matter what. (...) In fact, we were told that no damage could not have anybody responsible for it. Furthermore, they said that the person's neighbours or others in the Cell should be made to

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124 Interview with a debtor, 17th March 2009, n° 2366.

125 Interview with a convict, 6th May 2008, n° 1983.

126 Interview with a Cell executive secretary, 10th March 2009, n° 2352.

127 Interview with the wife of a convict, 2nd February 2009, n° 2326.

128 Interview with a *Gacaca* jurisdiction president, 18th June 2008, n° 2038.

129 *Poursuite des infractions contre les biens endommagés pendant le génocide.* NSGJ training manual, 3 August 2006, p. 5.

pay."[130]

Local managers always try to convince the people of the validity of such a ruling, by arguing for the victims' need for assistance. Those involved in the reparation process generally resign themselves to paying up:

> *"These are the consequences of the genocide, we have to give in happily. (...) I have noticed that they didn't argue, at most they were silent, thinking that it would either happen or not. They must feel that the others have given in, and I think that everyone would accept the ruling because the others accepted it even though they weren't happy about it, because there's nothing they can do about it; also it was necessary, since an offence had been carried out, since the victim would have no other means otherwise. Given that the victim's property had been damaged, those who were nearby were deemed responsible. And everyone understands that they would have nothing, that it was like a way of helping them. We have to explain it so that they don't feel unjustly convicted, since there was no other way of doing it."*[131]

By placing the burden of the reparation on the largest possible number of people, each person's share of the debt is reduced. This makes the decision more palatable, as was reported by this executive secretary:

> *"What made the process easier is that we had just harvested some crops and when people were told they had to pay 8,200 Rwandan francs, they realised it was a very small amount; and then they decided to pay up with any bother."*[132]

According to our interviews in the field, this strategy aims to put pressure on the residents to make them name the true perpetrators of the property offences. This was explained thus by a *Gacaca* judge:

> *"It stopped after the Gacaca judges for the Cell jurisdiction took measures to sentence anyone who lived around where the property offences were carried out."*[133]

The dissuasive nature of the measure was confirmed by the NSGJ executive secretary[134], whose opinion was that it was designed to encourage the population to denounce the perpetrators of these offences. This strategy may have proved itself productive in that it has enabled some perpetrators of property offence cases to be identified, but it is still controversial because of the injustice it generates. Mere problems in identifying the perpetrators cannot justify resorting to such an option. The *Gacaca* jurisdictions should fulfil their role in seeking individuals responsible for these offences.

Implementing such decisions has obviously proved difficult due to the injustices that flow from them[135]. Furthermore they risk compromising the reconciliation process.

> *"That's what worries me: after you've paid up who can you appeal to? That's my concern at the moment. I'm worried they'll come to take the only things I have to live off and sell them at auction."*[136]

On the other hand, the perpetrators of property offences will sometimes come to a kind of agreement

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130 Interview with a *Gacaca* jurisdiction president, 18th June 2008, n° 2038.

131 *Ibid.*

132 Interview with an executive secretary, 28th January 2009, n°2315.

133 Research report carried out 14th to 16th January 2009.

134 Interview with NSGJ Executive Secretary, 3rd March 2009.

135 See on this topic: Interview with a Cell executive secretary, 28th August 2008, n° 2114-2115; also, interview with a person sentenced to repayment, 12th September 2008. n°2154.

136 Interview with a convict, 6 May 2008, n° 1983.

amongst themselves. This practise, called *kugura umusozi* literally means "to buy the hill". This is the notion of taking the blame for crimes committed by others in order deflect the attention of the *Gacaca* from them. Rich people could then maintain their position in society. The person who takes on the responsibility is condemned to make reparation for all the lootings and degradation committed on his hill. He then goes to his acolytes in a kind of *action récursoire* to get them to pay their share.

Beyond the lack of individuality in the sentencing, another worry affecting the property offence trials is the lack of opposing arguments, which we will analyse next.

Lack of contradictory debates

The adversarial principle, the *audiatur et altera pars* system, is one of the basic procedural guarantees. The right to an adversarial procedure means that each party must be able to access and discuss all the pieces of evidence and notes submitted to the judge in order to influence his or her decision.[137]

It is linked to a certain extent to the principle of presumption of innocence, and comes into its own at the time of sentencing when it takes a central place in the presentation of the proofs, that must be oral and public. We should remind you that similarly to the principle of equal weapons, the adversarial system is one aspect of a fair trial. [138]

Defined in this way, the right to an adversarial system must be effective. This effectiveness presupposes that the defendant is truly and not merely theoretically able to become aware and become familiar with all the evidence and notes on the case.[139] Where necessary this may oblige the State to a positive duty to ensure that the applicants have in their possession, or at least be clearly and proactively informed of, the addition to the case of a new piece of evidence or note.[140] The right to a defence are one of the mainstays of fundamental rights.[141] This right is recognised in international conventions such as in article 10 of the Universal declaration on human rights, as well as in the International Convention on civil and political rights. [142]

At the national level, the Rwandan constitution underlines the point forcefully: "The right to be informed of the nature and cause of charges and the right to defence are absolute at all levels and degrees of

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137 Forum Corporation, para. 39 ; H.A.L. vs Finland, para. 44.

138 For an overview of the concept, see especially: Van Drooghenbroeck, the European court of human rights, Three years of ECHR jurisprudence, 2002-2004, Bruxelles, Larcier, 2006.

139 In the Ocalan case for example, the European court of human rights ruled that it was unacceptable that the defendant was able to access the 17,000-page dossier compiled against him only at the first hearing. Ocalan (GC), para. 147.

140 In the Goç case, the appellant complained that he had not been given a right to reply to the ministry's conclusions because he had not been allowed to see them. The court ruled that there had been a violation of article 6 of the European convention on human rights, despite the fact that the conclusions had been lodged with the notary public where they were available for consultation by the defendant on request. In fact, they ruled, "the principle of fairness dictated that the appeals court clerk should have informed the appellant that the notice had been lodged there and informed him of his ability to respond in writing to the conclusions. The fact of expecting the appellant's lawyer to take the initiative of regularly inquiring whether any new information had been added to the case was unduly burdensome on the lawyer. Goç (GC), para. 57, See also Yvon, para. 39.

141 ROUSSILLON H., « Contrôle de constitutionnalité et droits fondamentaux, l'efficacité des droits fondamentaux », in *L'effectivité des droits fondamentaux dans les pays de la communauté francophone, Actes du Colloque international tenu à Port-Louis, Maurice, en octobre 1993, AUPELF-UREF*, Série « Prospectives francophones », Editions Eric Koelhler Fleury, France, 1994.p. 371-379.

142 Ratified by Rwanda in 1975.

proceedings before administrative, judicial and all other decision making organs".[143] The constitution goes on to state in article 19 that "every person accused of a crime shall be presumed innocent until his or her guilt has been conclusively proved in accordance with the law in a public and fair hearing in which all the necessary guarantees for defence have been made available".

Furthermore article 10 of the Civil Procedures Code stipulates that "no person may judged without having been heard or called to testify."

Despite these legal provisions, our observations suggest that accused persons are often judged in their absence. This is often the case with accused persons undertaking community service, or imprisoned people, or of people who have moved house.

> *"The victims come and they set the value of their property; the judges ask the accused people to ensure the repayment but without leaving them the opportunity to defend themselves or to explain away the accusations made against them."*[144]

The lack of transport is often cited as a reason for non-appearance. It seems inconceivable that such a reason, not dependent on the will of the accused should lead to them being deprived of a fundamental right, which is the right to defend themselves in front of a tribunal. Lack of means of transport is not a valid reason for accused persons not to have access to their fundamental right to be heard at their own trial.

At best they are represented by their family- for example parents appearing at trials for their children, wives appearing for their dead or absconded husbands.

This representation is in many cases so ambiguous that the real status of the "representative" is difficult to define. Legally, they are merely witnesses. This is claimed by some interviewees:

> *"We are successors but we were not involved, we are just here as witnesses."*[145]

> *'It says in the ruling that some people are represented by their mother. She says that she gave her sons' and daughter in laws' addresses. Her sons went away to study after being questioned by the Gacaca court; they have not evaded justice. She wonders why she has been asked to be their representative even though they have wives. It is a problem since she acknowledges that she is their mother, but is not representing them as they are adults. The court must summon them or their wives but she says that she is not representing them and cannot therefore pay for them."*[146]

> *"If for example an attack at your house, or my house, or at a neighbour's house is blamed on someone, and that person is not there to defend himself, everything is blamed on him, and his family who have stayed behind because they know nothing. There again there is injustice."*[147]

> *"We went to Gisenyi to see him and I told him; I asked him for details about where he did the lootings and he said that he wasn't dead, that he was there, that he should be summoned to say for himself where he'd looted. They didn't summon him then, and I agreed to pay."*[148]

This explains why some "representatives" refuse to pay the reparation amount, or else pay up reluctantly:

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143 Article 18 of the Constitution of 4th June 2003.

144 Interview with a person sentenced to repayment, 31st March 2009, n° 2390.

145 Interview with a Cell coordinator, 29th May 2007, n°1634.

146 Interview with a Sector executive secretary, 1st April 2009, n° 2391.

147 Interview with the wife of a convict, 24th July 2008, n° 2075.

148 Interview with the wife of a convict, 15th December 2008, n° 2299.

"Sometimes a parent will appear in their child's stead, or a wife instead of the husband who carried out the offences. Sometimes the perpetrator is dead or is a refugee in another country. We cannot easily go ahead with the execution of such sentences because those who are sentenced to pay up say that they are not responsible for the offences. They pay up reluctantly. If they do not pay up, they want to appeal for a reduction. They're always on the lookout for reasons to stop the execution of the judgement."[149]

In some cases, problems with the execution of sentences are the result of confusion over who in practise is the person responsible in law for the reparation.

Confusion about the legally responsible

Under the terms of Article 8 of NSGJ Instruction number 14, the person legally responsible for the damage is the perpetrator themselves or failing that, their successor.

Article 9 of the same document also states that "where the property in question has been damaged by a minor with no property of their own, the parents are legally responsible." On the other hand, if a person who was a minor when the events occurred is now able to pay their own reparation, he or she is legally responsible.

Despite these legal provisions, our observations show that there are confused situations in which people pay for someone else without it being clear in what capacity they are paying. The following extracts illustrate this situation quite aptly:

"It seems that the engine had been looted by his son who was a mechanic living nearby. Since the son was not there, it was up to the father to pay up. He had his own house, and had even just got married. He had his own family. We didn't insist, and made those who were present pay up." [150]

"The repayments were causing conflicts within families. The father is too old to pay for his son. He asks why he has been summoned to appear before the court. Women are being asked to pay for their brothers. A woman should not have to pay for her brothers out of her husband's family's property." [151]

"A married woman is sometimes asked to pay for her brothers. The husband's family protests saying that the family property is not the brothers' property. We then have to alter the schedule as under the law the husband's family cannot pay for the wife's brothers."[152]

This issue of who is legally responsible may be compared to that of opposition by a third party. Under article 176 of the Civil Procedures Code, "any ruling is liable to opposition by a third party unless the law provides otherwise." This appeal aims to have a ruling overturned or altered for the benefit of the third party appealing against it. It challenges the validity of the issues ruled on that are now being questioned, and requests that new law be created, either in fact or in common law.[153] Article 86 of the 2004 Organic Law however provides for appeals that are justified only where there missing party has a serious and legitimate reason for not appearing at the trial." [154] The law does not in theory forbid opposition by a

149 Interview with a Cell executive secretary, 28th August 2008, n° 2116.

150 Interview with the family member of a convict, 27th March 2009, n° 2388.

151 Interview with an executive secretary, 1st April 2009, n° 2391.

152 Interview with a Sector executive secretary, 1st April 2009, n° 2391.

153 *Civil Procedures Code,* article 173.

154 Organic Law N°16/2004 Of 19/6/2004 Establishing The Organisation, Competence And Functioning Of Gacaca Courts Charged With Prosecuting And Trying The Perpetrators Of The Crime Of Genocide And Other

third party. Despite this, practice has shown that the parties are unaware of this possibility of appeal. Such a right to appeal would enable disputes at the time of execution to be defused.

The legal settlement of property offence cases highlights some limitations in the *Gacaca* jurisdictions, such as the valuation of property without the assistance of expert valuers.

Lack of expertise on property evaluation

Under the terms of the procedure laid down for property offence trials, the *Gacaca* court must, after hearing the parties in the trial, and having sought further details from members of the public, deliberates *in camera* in validating the list of damaged property, its value and the perpetrators of the damage.

Like standard tribunals, the *Gacaca* Courts are in theory able to resort to an expert in order to shed light on their rulings. Practise has shown however that the *Gacaca* judges to not request expert assistance with the valuation of property, and instead set the value on the basis of the parties' witness statements and with information from the general assembly of the jurisdiction. The honesty of witness statements is however very dependent on the parties' vested interests; property may be over-valued or under-valued according to the parties' level of influence on the trial. Furthermore, the fact that the trials are held many years after the events can make the parties' valuations very approximate. It seems therefore that making use of an expert in determining how much reparation is due should remove any doubt on the value of property and thereby defuse any tensions that can occur during the execution process.

From our observations, it appears that the valuation of property is a major issue in property offence cases. Difficulties or estimates by *Gacaca* judges on the value of property can only worsen the parties' sense of frustration, and their scepticism on the fairness of the justice meted out. The following extract illustrates well the judges' difficulties in objectively determining the value of property:

> *"The jurisdiction transmitted us a list of all those who had been involved in the victim's property, and the victim had estimated the value of it at 4 million [Rwandan Francs]. The judges however contested this valuation, saying that it was excessive since a victim who had more property had only requested two million, whilst this one who had less was asking for four million. They decided therefore to revise the valuation of the property. I heard that the person wanted one million the second time. If it had been done transparently, they would have called all the suspects and got them to talk with the victim, but we weren't called. The people kept quiet."*[155]

From our observations and interviews it seems that where there is a lack of objectivity about the value of property, over-estimates are often mentioned. The following extracts illustrate this:

> *"When the owner of the destroyed house came, he asked that it be written that everyone should pay 108,000 Francs, whether they'd taken a piece of wood, a stick or a whole pile of sticks. He asked that everyone pay the same amount. They couldn't refuse. Those who could find the money have already paid up, even though we were only a bunch of women and we only took away firewood. In this group, nobody was ever accused of taking any roofing iron or tables."*[156]

> *"I didn't do any looting; I was pregnant, everyone knows I didn't go anywhere to do any looting, apart from the fact that I had an eight year old child. I sent him to go and buy me some tobacco, after the war was over; he found an old stool in a banana field; it was old and worn; he picked it up and brought it home. I didn't have any trouble with her, and yesterday my child called me over to look at what was written on the door, that I was a looter and that I should*

Crimes Against Humanity, Committed Between October 1, 1990 And December 31, 1994.

155 Interview with the child of convict, 2nd February 2009, n° 2327.

156 Interview with a resident, 11th March 2009, n° 2358.

pay 50,000 Francs."[157]

In some cases, the valuation of property is left up to the discretion of victims, and carried out without the accused even being there. Our observations are backed up by the following extracts from the *Umuseso* newspaper:

> *"In establishing the value of damaged property and their current value, most members of the families sentenced to pay reparation maintain that the damaged property was overvalued because they didn't use an expert. It's the survivors who set their own value on their property, and courts just agree with them. In most cases, the accused are not invited to attend and the courts are in cahoots with the survivors in setting the amounts to be paid."* [158]

Furthermore, and contrary to common law, reparation cases put before the *Gacaca* have no upper limit on damages. By comparison, the upper limit on cases put before the conciliation committee is three million Rwandan Francs. Compensation set by *Gacaca* Courts often exceeds this ceiling used in the common law, sometimes by a lot. It seems that *Gacaca* judges have excessive powers, without the safety net that is crucial to the delivery of fair justice.

Among the causes of non-execution of sentences, we should also note the expectation of State intervention in compensating victims.

Expectation of State intervention

The voluntary non-execution of sentences is sometimes due to the conviction by some guilty parties that the State will step in to compensate victims.

Two main reasons are given for this expectation: on the one hand the State's responsibility in the genocide, and on the other hand the financial insolvency of guilty parties. This last point is being addressed, albeit somewhat inadequately still, by the recent creation of an assistance and support fund for survivors.

a. *State responsibility in the genocide*

The denial of individual responsibility by some guilty parties is a major problem in settling genocide cases. This lack of willingness to accept responsibility is not very surprising given the extremely serious nature of some of the acts and therefore the sentences they risk. Instead of facing up to their actions, many prefer to hide behind community or cultural causes, such as submission to authority, as a way of evading responsibility. It is true that the daily killings and lootings were supervised and managed by leaders. This is why many prisoners will blame their actions on their superiors. "We were only obeying orders", they say. "We were manipulated by bad leaders." [159]

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157 Interview with the mother of a convict, 29th January 2009, n°2323.

158 Extract from an article in the Umuseso newspaper n° 345 of 23-26 March 2009.

159 See on the topic of the ideology of massacres, the work by Daniel GOLDHAGEN, "Hitler's Willing Executioners: Ordinary Germans and the Holocaust", Vintage, 1997; see also Christopher BROWNING, "Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland", Harper Perennial, 1993, that explores many factors of atrocity to varying degrees. He analyses the behaviour of men of 101 Battalion of the German reservist police, who carried out massacres in a Polish village in 1942. Most were fathers, and were too old to be sent to the front. The writer highlights the ideological indoctrination, the wartime atmosphere and the fact that violence begets violence like a "raging horse" to cite Clausewitz' metaphor. Browning also analyses submission to authority in the meaning used by psychologist Stanley Milgram. Submission, either forced or implied, is a reason often advanced by mass-murderers when they find themselves being tried. Apart from these variables, the writer covers the flat structure of these killer groups, group conformity, the feelings of brotherhood, not wanting to "dump the others" who are willing to do the "dirty work", the fear of not being liked or of being wrong.

Because of this, some expect the State to compensate the victims, because of its responsibility in the genocide.

> *"For the execution of reparations to be effective, the State needs to be involved. The offences were committed under its responsibility, so it ought to bear the consequences. Even if it's not able to compensate the victims and even though it has helped them by educating their children and providing healthcare, it ought also to use whatever means it has to encourage debtors to pay back. It should also get help from the international community which was also partly responsible for the genocide unfolding in front of it."* [160]

> *"The State should pay up as it does for healthcare plans for the poorest citizens."* [161]

> *"The State must intervene so that the victims are able to get reparation for their property since the perpetrators of damage and looting of property did it with the support of the State. If it hadn't supported them, it wouldn't have let them happen. It's only my opinion but I think that that if you decide that people who have destroyed or taken other people's stuff should pay one and a half million francs, then the State should take a part in the compensation by paying five hundred thousand, and the rest should be found and paid by the perpetrators. In this way, the compensation will be paid."*[162]

> *"If the perpetrator of an offence is poor, responsibility falls to the State. People were encouraged by the authorities to commit the crime of genocide and it wasn't stopped."*[163]

Others on the other hand call for increased awareness of the authorities towards the need for exonerating people from reparation payments:

> *"I would ask the government to undertake to repair the damage caused to victims because it has already declared the perpetrators unable to answer for the damage. This will enable the victim to rely on the State as it acts in loco parentis. It may also decide that no reparation will be paid, and request that the population should keep cohabiting peacefully since the bad deeds have already been done. In this case, the victim should not expect any reparation. When the State decides that a person's damaged property will not be compensated, they don't feel like a* Rwandan *citizen. The principle is that everyone will pay their share, but if like in our case you snatch one child's bowl away from them to give it to another child, it's obvious that the first child will be sad. Instead of taking the first child's bowl away from him, it would be better to tell the second child that you will find him his own bowl. You could reason with the second child and tell him that you will force the person who damaged his bowl to find another even if he's not able to, but it's a parent's duty to say these things."*[164]

> *"There are many who aren't in a position to repay. These people are the responsibility of the State. If the State wants those of us who lost our family not to also lose our property, they should keep these people busy so that they are able to pay us."*[165]

On top of the State's responsibility in the genocide, the financial insolvency of many of the people convicted is cited as a reason for State intervention.

Lack of solvency of many convicted people

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160 Interview with an Inyangamugayo survivor, 5th November 2008, n° 2223.

161 Interview with a witness, 22nd August 2008, n° 2113.

162 Interview with a resident, 21st March 2007, n°1536-1537.

163 Interview with a Gacaca judge, 15th October 2007, n°1784.

164 *Ibid.*

165 Interview with an *Inyangamugayo* survivor, 23rd May 2008, n°2015.

The socio-economic situation of many guilty parties remains a problem in the settlement of property offence cases.

It has already been explained that the poor would not have to pay, and a list of the poorest people would be drawn up so that they could be exempt from paying. It was also said that their socio-economic situation would be studied and a sensible solution arrived at. [166]

Some are suggesting therefore that the State should take the place of those who are insolvent.

> *"I propose that the State should pay in the place of these people (...) It's the State's responsibility to make reparation for the damage caused to victims. If I had to demand reparation, why ask an insolvent person for it? The State should guarantee reparation."* [167]

> *"Unless the State takes other measures by saying that the victims should be helped in other ways since our country is truly poor, nobody can afford to pay. Many people are poor farmers, and they are involved in these property offences. You then realise that in their situation they can't possibly pay. There are even people who have owned up to such large-scale property destruction that even if they handed over their land, they still wouldn't be able to pay off the damage."* [168]

> *"The State could do its utmost to set up a project that could help the poor to carry out their reparation orders so that the survivors can also be strengthened in their rights."* [169]

Others on the other hand suggest that the State should give the guilty the means to pay their reparation debts:

> *"If the State does not want us to lose our property, they can use them by giving them work to do as long as they have the money to pay them."* [170]

This expectation of State intervention also explains why property was over-valued without the perpetrators caring much:

> *"Before, when they planned the reparations for property, many people thought there would be a reparation fund. Among the residents, were many poor people who had damaged property and who didn't have anything to sell at auction. When the person whose property was sold say they had such and such property, they didn't contradict them, thinking that it wasn't going to be them paying the money. Because we thought that the State would pay, we didn't really care. We had a few problems when we realized that we were going to have to pay. If you thought that some could help you, you might want to earn more."* [171]

> *"In the old days, people thought that money might come from abroad, because the victim said they'd had such and such property. The people didn't understand that they were going to have to pay up. People also said that such and such a person had said that they owned a thing even though it wasn't true. But, since we*

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166 See Observation report on an awareness-raising meeting in the Northern Province, 5th March 2007.

167 Interview with a survivor, 4th June 2007, n° 1636.

168 Interview with a Cell Executive secretary, 5th December 2008, n° 2303.

169 See Interview with a person sentenced to reparation, 22nd August 2008, n° 2111.

170 Interview with a survivor, 23rd May 2008, n° 2016.

171 Interview with the sister of a convict, 23rd February 2009, n°2342.

didn't think that we were going to have to pay the money from our own property, we thought it was nothing to do with us."[172]

"Because we are in a unity and reconciliation State, I think that as far as the State and the victim are concerned, something should be done so that [the victims] can exercise their rights. If you're asked to pay even though it will leave you with nothing to live on, you might be traumatised, thinking that somebody will come to make you pay even though you have nothing. I think the State of national unity could do something so that the victim is not sad; either they can wait or they give them a little bit like damages and some interest, where from I don't know."[173]

The survivors' support and assistance fund: a makeshift?

As we mentioned before, this fund was set up after years of prevarication. It takes over from the *Fonds d'Assistance aux Rescapés du Génocide* (FARG) set up in 1998. Law 69/2008 of 30th December 2008[174] that legally established the new fund defined the beneficiaries as any survivor of the genocide.[175] It outlines some main beneficiaries among the most needy: orphans under 18 years of age, survivors' children suffering from incurable illnesses or other disability caused by the genocide.

The term "assistance" is defined in law as support for survivors of the genocide. [176]

The fund's aims, as set out in article 4 of the law, may be divided into two categories- legal and social.

The legal aim is for the fund to represent the victims by becoming another party to civil cases. The damages and interest recovered are paid into the fund rather than the victim, and are then handed out as support and assistance to survivors (article 21). The fund also has the power to carry out recovery of the damages and interest allocated by the jurisdictions.

The social aim is to build accommodation for older people without families or those known to be poverty-struck, for orphans, widows, people disabled by the genocide and to assist with school fees for poor child survivors of the genocide. It also provides healthcare for needy survivors, the disabled, those who have incurable illnesses due to gender violence, including AIDS. The fund also aims to grant a pension to poor older survivors as well as to those who were left permanently disabled by the genocide, and to improve living conditions for survivors.

A large number of contributors[177] finance the fund, whose income is divided as follows: 6% of the State's annual budget, contributions from donors, value added generated by community service, damages and interest from first category convicts, interest from bank deposits, and finally the funds from the old *Fonds d'Assistance aux Rescapés du Génocide* (FARG).
The new scheme is different from the originally planned indemnity fund, a long time in the planning stage but then abandoned. A draft law of 2001 left it up to the *Gacaca* Courts to set the amount *"for damaged or lost property, compensation is determined by the Gacaca Courts according to a tariff annexed to this draft law."* This tariff was extremely detailed, setting out prices for looted subsistence, fruit or industrial crops, prices for

172 *Ibid.*

173 *Ibid.*

174 Entered into force on 30th April 2009.

175 Law 69/2008 of 30th December 2008, article 26.

176 Law 69/2008 of 30th December 2008, article 3 (3).

177 Law 69/2008 of 30th December 2008, article 22.

fending according to the material it is made from, livestock[178], household objects.[179] A sum was also assigned to each loss of human life. [180]

The forms filled in by judges were then to be transferred to the compensation fund. The text clearly set out the reasons for the fund, why it was necessary. The meagre possessions of those convicted of genocide crimes or crimes against humanity were not enough to cover the cost of the reparation; it also states that the compensation fund could be topped up with income other than from damages and interest paid over by people held legally responsible for acts of genocide or crimes against humanity, which are in any event minimal compared to the size of reparations needed.

The second draft law drawn up in 2002 anticipated an identical amount of compensation for every survivor. [181]

In the absence of voluntary execution of orders, and where there is no compensation scheme, forced execution is often the only way of successfully ensuring that victims' right to reparation is implemented.

Enforced execution of orders

Legally the execution of reparation orders on property offences is the responsibility of the Cell Executive secretary, the Sector Executive secretary or a professional bailiff. [182]
This procedure, as applied to rulings handed down by *Gacaca* Courts, raises various issues about both its justification and its format. The procedure has three main factors that need to be examined: the legal, the socioeconomic, and the administrative aspects.

The legal factors: confusion over the legal framework surrounding execution

Legally, the execution of reparation orders has two major weaknesses: in the very text of the laws that cover them, and also on the interplay between the common law procedures and the rulings handed down by *Gacaca* courts.

178 A cow was assigned a value of between 10,000 and 100,000 FRW, a goat between 1500 and 5000 FRW.

179 The tariff for household objects, from wardrobes to radios to kitchen utensils to televisions was very wide as it was designed for « cutlery », ranged from 1,000 to 20,000 FRW.

180 Compensation for the murder of a spouse for example was set at 3 million FRW, 2 million for a child, 1.5 million for parents, 1 million for brothers or sisters, 500,000 for grandchildren, uncles and aunts, etc… For disability, a person under 18 years of age between 1 and 5% disabled would receive 200,000 FRW, a person more than 80% disabled would receive 2 million FRW. A person over 55 years of age more than 80% disabled would get 1 million FRW, as would the parents of a disabled person, according to this compensation project. See Annexes to draft law of 2001.

181 This amount was estimated at 12,000,000 FRW.

182 See article 5 of Instruction 14/2007 of 30th March 2007 from the Executive Secretary of the national service of Gacaca jurisdictions on the compensation scheme for property damaged during the genocide and other crimes against humanity committed between 1st October 1990 and 31st December 1994.

Enforcement as provided for by the NSGJ Instructions on execution

Article 194 of the Civil Procedures Code outlines the need for an execution mechanism to back up the seizure and execution procedure.

The *Gacaca* courts do not however have such a mechanism. The NSGJ note previously cited also mentions that due to the extraordinary nature of these courts, such a mechanism is not necessary, adding that the execution form for damaged property is sufficient to enforce rulings.[183]

As a general legal principle, special rules give way to general rules. In this case, the issue is what power the NSGJ instructions actually have. They are in fact circulars, a text aimed at the members of a service, company or administration. They are usually aimed at being used as guidance notes on interpreting a legal text or regulation (e.g. a decree or decision) so that the text will be applied evenly across the whole territory. These recommendations only apply to public sector workers (they are internal circulars). In some cases the circulars introduce new rules (regulation circulars); an appeal for abuse of power is then possible.

We should point out that there is a basic disagreement with the professional bailiffs' association[184] that declares itself to be not competent to execute rulings handed down by *Gacaca* Courts when they come without the execution clause as provided for in article 194 of the Civil Procedures Code.[185]

In practice however, professional bailiffs are involved in seizures and execution of rulings, even though most executions of rulings are carried out by Cell executive secretaries in a conditions that we shall now examine.

The difficult interaction between the common law procedure and the terms of NSGJ Instruction 14

There is to date no specific legal provision for executing reparation orders handed down by *Gacaca* jurisdictions which means that common law intervenes. In practise however variable procedures are being applied by different executive secretaries. The same goes for the deadlines for the execution of judgments.

Under the terms of article 200 of the civil procedures code, rulings and documents containing an execution clause are executed within three months from the date at which the party that was declared the winner in the ruling, decree or order requests execution, once they are no longer liable for appeal or starting from the date at which the document containing the execution clause is lodged.

In the absence of a deadline, the execution of rulings handed down by courts varies from area to area, and the task of allying the victims' the right to reparation and maintaining social cohesion. This lack of deadline and tendency of execution agents to prevaricate may also be explained by the financial fragility of the convicted.

Article 260 of the Civil Procedures Code does not, contrary to NSGJ instruction 14, forbid the seizure of the main house, with the result that bailiffs who act in executing reparation orders handed down by *Gacaca* courts act on the basis of common law, and also seize dwelling houses. This confuses amongst the population and the executive secretaries who use the aforementioned instruction for reference. Another result is that the citizens are not treated equally in the law, as the outcome of the procedure, and the property that may be seized, are very different according to whether the seizure is carried out by an

183 See letter from the NSGJ Executive Secretary, 6th January 2009.

184 Brought in by Decree 31/2001 of 12th June 2001, establishing the professional bailiffs' organisation.

185 Interview with the President of the Professional Bailiffs' Association, 5th May 2009.

executive secretary or a bailiff.

In the face of such a two-tier system, clarifications need to be made in order to rectify the inequality of treatment and to guarantee the smooth execution of rulings.

The legal difficulties outlined above are not the only obstacles to the smooth implementation of rulings on property offences. Socio-economic factors also affect the procedure, and the causes and repercussions need to be studied.

Socio-economic factors

It seems as this report unfolds that the socio economic factors strongly affect the implementation of *Gacaca* Court rulings on property offence cases. These are highlighted especially acutely in the repossession of buildings and the fear experienced by some people about buying seized and forcibly sold property.

Seizure of real estate: a cause of uncertainty about the post-Gacaca phase

Due to their social and economic importance, the seizure of land and houses polarises people, and is a source of tension that can adversely affect the reconciliation process. In order to fully take stock of the situation, the first step is to describe the issue of land, and secondly to study the problem of seizure of houses.

- *The issue of land- historical asset and impact on the Gacaca process*

One aspect of the issue of land is that the challenges that affect it will necessarily come before any analysis of the links with the settlement of property offence cases.

- *Study of the issue of land*

Given the crucial place occupied by land in Rwandan society, seizing it is a major source of worry affecting the success of the reconciliation process. Land, as in many other countries, is both a material and a symbolic possession.[186] Land is part of the identity of a family or the social group. Furthermore, since most Rwandans live in the countryside and work in agriculture[187], land is the most obvious source of wealth[188], whilst at the same time coming under economic and demographic pressure. The issue of land has therefore always been a major source of problems. This was highlighted in a study published by the National Commission for Unity and Reconciliation: "Since 1959, the fear of not having enough arable land has fuelled an "ethnic hostility" which reached its height in the genocide of 1994."[189]

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186 See VIRCOULON T., « Les conflits fonciers : du sous développement à la violence », *RCN Justice et Démocratie, Bulletin n° 27, Premier trimestre 2009*, p. 10. This writer says that "religious beliefs valuing belonging and the forces of magic transfer an enormous amount of symbolism to the land of the ancestors."

187 In 2006, 54.6% of the country's GDP came from agriculture; source: *RCN Justice et Démocratie, Bulletin n° 27, Premier trimestre 2009,* p. 12.

188 A study by the National Commission for Unity and reconciliation concluded that feelings of poverty are most acute among rural people without land (between 49 and 58%) and decreases in proportion with the number of plots farmed. See *Propriété de la terre et réconciliation*, National Commission for Unity and Reconciliation (NCUR), July 2005, p.7.

189 *Propriété de la terre et réconciliation*, National Commission for Unity and Reconciliation (NCUR), July 2005, p. 7.

The report also states that 31% of households stated that had only ever cultivated one piece of land that belonged to them, while four households in ten had rented plots. [190]

The links between the issues of land and challenges faced by the reconciliation process should not be ignored, especially considering that "the fallout from genocide litigation seem to have shifted into the civil law, especially focusing on the issue of land." [191]

As far as the execution of reparation orders is concerned, the major challenge is the surface area of land available to be seized. We must study the issues surrounding it, and more specifically their influence on the enforced execution process.

- ***Links with the execution of reparation orders: the puzzle of the unseizable half hectare***

The CNUR study cited above states that "a plot size of less than a hectare cannot easily support anyone from agriculture." [192] It is doubtless for this reason that article 7 (e) of NSGJ Instruction 14 stipulates that a half hectare of field cultivated by a perpetrator of damage and his family may not be seized for sale at public auction. It seems that many people own less than a hectare anyway, which means that the execution of reparation orders is very compromised in the case of guilty persons who only own land, whose surface area is not enough to allow it to be seized for resale for the profit of the victims.

This result is a dilemma for executive secretaries tasked with executing rulings, and who are divided between the victim's right to reparation and abiding by the letter of the law. Variable situations ensue which can be explained by at least three factors.

The first is the lack of understanding of the people tasked with executing the judgments, despite the training given by the NSGJ on the topic. The following extract from an interview with an executive secretary illustrates this well:

> *"As far as the problems I encountered are concerned, I should mention the regulations on the share of the family property. I think it's about half -I'm not too sure of the exact proportion- that can't be seized because it's needed by the debtor to ensure his own survival. All I know is that the house where the debtor actually lives can't be taken. I know that rule. Sometimes we have trouble understanding all these rules. I don't know if it's half or a third of a hectare, it's not all that clear. I asked the Inyangamugayo to lend me the documentation on the regulations."* [193]

The second factor is the fact that many landowners farm less than half a hectare. The result is that if this prescription were respected it would be impossible to compensate the victim. Sometimes therefore Cell executive secretaries tasked with carrying out the execution of sentences ignore this prescription in order to give the victims satisfaction.

The third and final factor is the difference between rural and urban areas. Unlike the case in the countryside, a plot of less than half a hectare can have a far higher value in town than in a rural area. This concern is summarised thus by this executive secretary:

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190 *Ibid.* p. 18.

191 *RCN Justice et Démocratie, Bulletin n° 27, Premier trimestre 2009,* p. 14. It should be noted that land issues are so crucial that 80% of the cases put before civil law tribunals involve land. See Marko Lankhorts & Muriel Veldman, *La proximité de la justice au Rwanda, Rapport socio-juridique sur les modes de gestion des conflits fonciers*, RCN Justice et Démocratie, March 2008.

192 *Propriété de la terre et réconciliation*, National Commission for Unity and Reconciliation (NCUR), ibid.

193 Interview with a Cell executive secretary, 26th November 2008 n° 2261.

"As far as urban plots of less than half a hectare are concerned, a half hectare can be valued at up to fifteen million Rwandan francs, if a debtor has to repay three million francs. Instead of forbidding the seizing of smaller plots of less than half a hectare, its value should be taken into account. The size of the plot alone should not be a good reason to avoid one's duty to repay the victim." [194]

The issue of land is of particular concern in the eastern parts of the country due to the redistributions to repatriated people that happened there in 1959. In the West on the other hand there were many seizures, especially around Lake Kivu. The result of these two situations is that people often own plots that are smaller in surface area than the threshold allowed for seizure. The land is often also the only possession of those convicted, which means that reparation orders are often difficult to execute.

Aside from the issue of land, seizing houses is a major challenge in the settlement of property offence cases. We will now turn to the various aspects of this problem.

Seizure of houses

The seizure and sale of houses is mostly an urban phenomenon, where people generally do not own arable plots of land, unlike rural people. Under the terms of article 7 (e) of NSGJ Instruction 14 a house in which a perpetrator of damage and their family lives may not be seized for resale. For this reason, executive secretaries often have some trouble satisfying victims where the convicted person owns only his house.

On the other hand, if the execution is carried out by professional bailiffs, they are able to act under the terms of article 260 of the Civil Procedures Code, and seize dwelling houses. This is not always understood by the population, and is often perceived as a humiliating experience. The following extract ably illustrates this point:

"*Then, he humiliated me: he said that me and my children we had to go because we didn't matter. But we didn't know where to go."*[195]

Aside from the issue of buildings, there are many questions being raised over the reaction of potential purchasers to the property put up for sale at auction. There seems to be a certain reticence on the part of the population to buy property that has been seized. The reasons for will now be analysed.

The fear of buying seized property

It is often difficult to find buyers for seized goods because of the atmosphere in which the seizures are carried out. The neighbours often refuse to buy their neighbour's seized land, in order not to become the "enemies" [196] or out of fear of being labelled an *Interahamwe* sympathiser.[197]

This dearth of purchasers may also be due to the population getting together as a show of solidarity to agree not to buy their neighbours' property at auction. This is what the following extracts seem to suggest:

"In this area, because many people committed offences, the people all stick together and nobody dares to buy his

194 Interview with an executive secretary, 1st April 2009, n° 2391.

195 Interview with a convict, 27th March 2009, n° 2388.

196 Interview with a witness, 26th September 2008, n° 2163.

197 Interview with a witness, 26th September 2008, n°2163.

neighbour's property out of fear that their property will be bought when their turn to sell their property at auction comes around. No buyer comes forward when we try to hold auction sales."[198]

"The sticking point in this issue is that the criminals are clever. Sometimes during auctions they get organised and agree not to buy the thing that is being sold, so as to show them that there are no bidders. So, when the time comes for the auction they all stand to one side. And the bailiff will say: "Who wants to buy this?" and they say "Nobody!" At the moment there are some properties that have been seized but are still here because there were no buyers because of the criminals' plans."[199]

"Actually, it does sometimes happen that people get together and agree. They think that since such and such a neighbour's property is to be sold at auction, the neighbour might think that they refused to lend them money so that they could afford to buy their cow in the sale. And that might be a reason why people are so cautious even though they might like to buy their neighbours' possessions. You realise then that they had agreed in advance to prevent the sale."[200]

If no purchaser comes forward, victims may sometimes take possessions that are to be sold at auction in order to find buyers themselves.

"Sometimes people get together and agree not to buy their neighbours' goods that are being auctioned off. This may mean that the victim is moved to buy the goods like all the other buyers. There are concerns if it's land or buildings. I think as a victim that I couldn't accept this land to cultivate it. What I could do is find a purchaser and tell the office in charge of selling the property so that it can sell it and give me my money. The problem is then avoided of me being the direct purchaser."[201]

In order to get reparation therefore, victims may themselves look for potential purchasers.

Executive secretaries charged with executing reparation orders are faced with real dilemmas which need to be analysed.

The dilemma of enforced execution: stuck between a duty to execute orders and the need to maintain social cohesion

Cell executive secretaries have a dual role to play in the process of carrying out reparation orders handed down by *Gacaca* Courts. Part of their role consists in maintaining social order in their administrative areas. Furthermore, they act as non-professional bailiffs. This dual role is difficult to carry off in the complex situation of property offences as it opposes the requirement to ensure social cohesion with duty of reparation for victims.

The fear of causing conflict and the risk of adversely affecting the reconciliation process

The extreme poverty of some debtors often dissuades executive secretaries from starting the forced execution process. [202] This is because they are concerned, in their role as local authority emissaries, with maintaining the peaceful co-existence of the population. This is illustrated in the following extracts:

198 Interview with a Cell executive secretary, 10 October 2008, n° 2186.

199 Interview with a judge, 11th September 2008, n° 2152.

200 Interview with two victims, 25th September 2008, n° 2161.

201 *Ibid.*

202 Interview with an executive secretary, 28 August 2008, n° 2114-2115.

"When we have to execute the sentences, sometimes the debtors don't have enough money to pay. We set up meetings between them and the victims. We examine their income. If they reach an agreement, the creditor can accept knowing that he's not going to get back the whole amount he lost. We try to encourage agreements."[203]

"The wronged party has to know that it's in our interest that nobody be unfairly treated because we act in the role of both bailiff and administration manager. Some ignore us and use a professional bailiff who doesn't have any responsibility for making sure no-one is treated unfairly. When executing a judgment we know it's a person from our area and we follow up to see if the procedure has gone ahead. It's just a profit-making venture for a professional bailiff."[204]

In some cases of resistance reported by interviewees, the tension surrounding the execution of some property offence judgments is evident:

"When a bailiff wants to go ahead with a forced execution, it's hard for him. Some difficulties can lead to resistance. I just saw two instances of resistance, which I reported to the police. One of those resisting paid up without problems after having been placed in the custody of the police. He even apologised publicly so that the people would see that resisting was not good. We forgave him. There's another case that isn't over yet. We've already auctioned off his field, but he carried on cultivating it and damaging the things on it. He's now built a little house on it even though the field has been sold. When the purchaser tries to cultivate it, the convict threatens to kill him with a machete. For his own safety, we've asked him not to argue with the guy, and to wait for the police to come and secure the field."[205]

These events obviously have a effect on the involvement of executive secretaries in the execution of judgements. They tend to encourage the conclusion of new agreements about payment terms, and display a degree of caution about starting forced execution of judgments. This stance is not always appreciated by the victims who liken it at best to delaying tactics and at worst to collaboration with the guilty.[206] The debtors by contrast often perceive the diligence of some agents executing the judgements as a lack of awareness of their socio-economic conditions.

On analysis, it seems that the executive secretaries are central to the execution of reparation orders, but that whatever they do they can incur the wrath of the parties. It seems that the reconciliation process will in part depend on their skill in managing this phase of the genocide case settlement.

The following extract drawn from an interview with an executive secretary bears witness to the problems they have in their role as local authority in responding to the expectations of all the parties:

"The survivors accuse us of lack of responsiveness in carrying out reparation orders in their favour. The debtors for their part accuse us of asking them to pay when they haven't done any looting. We are called to meetings because of this and we have to go along to explain ourselves."[207]

We should at this time point out that the extreme poverty of the parties, be they victims or guilty parties, partly explains the frustrations and dissatisfaction noted. As we pointed out in a previous report, poverty is a major influence on the reconciliation process.[208] The Rwandan President has

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203 Interview with a Sector executive secretary, 1st April 2009, n° 2391.

204 *Ibid.*

205 Interview with a Cell executive secretary, 9th October 2008, n° 2185.

206 Interview with an executive secretary, 10th October 2008, n° 2186.

207 Interview with a Cell executive secretary, 10 October 2008, n°2186.

208 See « *Gacaca* et réconciliation, le cas de Kibuye », Rapport de Recherche sur la *Gacaca*, PRI, May 2004, p. 6.

spoken on this topic: *"A poor person cannot hand weave unity and reconciliation... The country's economy must be complementary to the process of unity and reconciliation."*[209]

Poverty is therefore on the one hand a cause of uncertainty on the effectiveness of the reparation process, and on the other a cause of anxiety due to reduced income-generating ability. This adversely affects the reconciliation process. The following extracts illustrate this:

> "*When they see us going to a meeting, they say: "There go the survivors to get some money! When you get home you go to bed desperately thinking: I'm not going to live till tomorrow."*[210]

> *"When repayment for damaged property is discussed, the reconciliation process between victims and the guilty parties take a step backwards."*[211]

> *"A request for reparation will cause hatred within the population. Selling a field will make the perpetrator of the property offences poorer; he will lose his field, his children will die of hunger, and he will not be happy. Since they're trying to bring the Gacaca courts to a conclusion this year, it would be preferable that a sensible repayment deadline should be set, up to two years, so that they can repay the debt in three or four instalments. That would be one of calming down the situation. Otherwise, there will be problems. In our Cell for example, some guilty people began to complain after they'd paid for the wood they'd taken during genocide. They said they'd only taken two pieces of wood, but had been sentenced to pay for twenty trees. They swore they'd get revenge against the victim who had asked for their property."*[212]

These instances of dissatisfaction and frustration demonstrate how fragile the fabric of society still is despite the efforts deployed to encourage reconciliation. One expression appears again and again in the interviews we conducted: "Not to solve a problem by creating others." It is reveals the atmosphere in which the reparation orders are being executed. The following extract drawn from an interview with an executive secretary illustrates this:

> *"The debtor must pay. If he can't pay, we tell the victim that we don't want to make another person poor, but we will place them, the victim, into a programme for vulnerable people that hands out accommodation to the homeless such as genocide survivors. This is what is the law stipulates. You can't make one person poor to bring justice to another. What we've taken from the debtor won't make the creditor rich. Because of this, we channel people towards organisations that take care of the needy."*[213]

Given the restrictions that bind executive secretaries in executing orders, some victims see a real advantage in going to professional bailiffs. They seem more active and are willing to go ahead with seizures without agonising over them. Their actions are seen by some convicted persons however as going against the aims of the reconciliation process. The following extract illustrates this well:

> *"I think that the situation is complicated by bringing in a professional bailiff. They don't care about reconciliation- they are only interested in money. If they didn't want money, they wouldn't dare auction off my house where I live*

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209 Address by the President of the Republic at the close of the Third National Summit on Unity and Reconciliation held in Kigali, 7th to 9th May 2004, cited in, « La pauvreté et la réconciliation : deux réalités incompatibles », *La Nouvelle Relève* n° 488 of 15-30 May 2004, p. 5.

210 Interview with a *Inyangamugayo* survivor, 25th September 2008, n°2159.

211 Interview with a *Gacaca* jurisdiction president, 24th April 2009, n° 2412 and 2427.

212 Interview with two survivors, 18th April 2007, n°1569.

213 Interview with an executive secretary, 1st April 2009, n° 2391.

with my seven children."[214]

We should mention that resorting to bailiffs is not common. There are still few of them[215], and they cost too much, to be an attractive option for many.

We have just explained the influence of legal and socio-economic elements in the process of executing reparation orders. To these two factors, should be added administrative difficulties, which we shall now examine.

Administrative factors

We have outlined three reasons in this section that justify the difficulties noticed in the execution of reparation orders by executive secretaries: firstly a lack of training; secondly, transport problems; and finally, an overload of work. [216]

On the first point, victims sometimes complain that those charged with executing judgments do not do so, giving preference to their administrative duties, or struggle to conciliate it with the difficulties of their role as a bailiff. This is revealed in the following extracts:

> *"It is the job of Cell executive secretaries, but they don't do it. They focus on the work for which they are paid, and neglect their Gacaca activities. We are forced to go and beg them to do it."* [217]

> *"I might show you the judgment forms I have. There are lots of them. If I have a hundred execution reparation order forms, it's quite hard to get through them all in a month and do my other work as well."*[218]

For this reason, some are keen to see the State empower only professional bailiffs to carry out the execution of orders. The following extracts from interviews with executive secretaries bear witness to this desire:

> *"Actually, this bailiff work is not easy because it's about executing all the sentences. And we have to move quickly because if someone has had property damaged, of course they need reparation. We would prefer, while the law is being reformed, if one person could be specifically charged with this issue at sector level. Otherwise, with several people responsible for it, we may make mistakes."* [219]

> *"In the event of non-execution of agreements, we struggle to get out into the field to value the property. Before selling someone's plot at auction, we have to have a document proving ownership. This isn't easy when people don't respect their undertakings. We then have to try to the document at the sector offices which is quite hard to do."* [220]

Some executive secretaries seem to have only a limited grasp of the legislation on enforced executions. This is illustrated in the following extract:

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214 Interview with a convicted woman, 27th March 2009, n° 2388.

215 63 professional bailiffs for the whole country.

216 See also the similar situation in Burundi, KOHLHAGEN D., *Le tribunal face au terrain. Les problèmes d'exécution des jugements au Mugamba dans une perspective juridique et anthropologique*, *RCN Justice Démocratie, 2008, p. 47-48*.

217 Interview with a victim, 11 February 2009, not recorded.

218 Interview with a Cell executive secretary, 9th October 2008, n° 2185.

219 Interview with a Sector executive secretary, 7th November 2008, n°1823.

220 Interview with a Cell executive secretary, 10th March 2009, n° 2352.

> *"All I know is that a house that is lived in can't be sold. I have to admit that I don't know the law, we don't know it at all. In the booklets we have, I couldn't find anything about it. The only thing I know well is that you can't put a lived-in house up for sale. You see I'm telling you that we can't sell half the possessions, but I'm not sure, I don't know if it's right, it might be one third, I don't know. I asked the Inyangamugayo to lend me their booklets so that I could see what was in that law."*[221]

It seems therefore crucial to improve the skills of agents tasked with executing the rulings or there is a real risk of accumulating irregularities that will adversely affect the smooth application of the law. The conditions in which an execution is carried out have a knock-on effect on the social climate, and threaten the efforts towards national reconciliation.

221 *Ibid.*

CONCLUSION

This report highlights the complexity of property offence litigation, and especially the difficulties surrounding its settlement.

The *Gacaca* trials have had the benefit of acknowledging the victims' right to reparation, affording them the chance of a double reparation: a legal one, ie one that gives them a course of action - in this case reparation, but also social, in that they gain status.

The settlement of property offence cases responds to a desire for justice and for the restoration of the *status quo ante*. This seems impossible to achieve however. It may in part be supplied by reparation, through fair compensation for the damage, but its effectiveness is still a major challenge. The execution of agreements and reparation orders crystallises all the fears and frustrations expressed by victims and are perceived as another form of victimisation.

It is also crucial that the justice dispensed to convicted people be fair, in order to remove any doubt over the process. Because reparation affects people's socio-economic conditions, it not unusual for it to cause tension and frustrations, particularly in a difficult socio-economic context like Rwanda. The complexity of property offence cases caused some of our interviewees to say that *"the issue of the execution of reparations orders is more complicated than the prosecution of second category offences in which people are convicted of killing others."*[222]

Given the economic situation of most of the convicts, there is a real risk of large-scale seizures in the next few years. Apart from the situation of solvent but unwilling convicts, seizure is a catastrophic event for people who do not have enough to live on, which is also the situation of most of the victims.

The interaction of anxiety-inducing factors that are the pressure of a debt that is impossible for some guilty parties to repay, the uncertainty of reparation for some victims, and the dominance of land issues in forced execution procedures, against a backdrop of overpopulation and a shortage of arable land all constitute major risk to the reconciliation process.

In conclusion, it is important that both parties to a conflict feel that justice has been carried out. This is what the following interviewee wanted, when throughout her interview she repeated the same message like a cry of distress:

> *"What I wish is for the State and not just the Cell or Sector, should come to visit the areas where these events are taking place to see what's happening, and thereby bring justice to those who are suffering from injustice; this central State should come and see us and bring justice to us as well. We want the authorities to come and see the conditions in which the property is sold and especially see that it's done legally. I don't want to be worrying about the fact that my things will be sold without the State even knowing how it's being done. We would tell them our problems, what we're faced with. But the authorities should help us, should make the right choices for us, because many of us haven't much education."*[223]

This feeling is also echoed in the following extract:

> *"That's why I said that these property reparation cases are fishy. If nothing is done, they become a ticking time bomb."*[224]

The observations and interviews carried out for this report reveal many frustrations and worries for both

222 Analysis report of 24th, 29th April 2009 and 2nd May, 7th May 2009.

223 Interview with a resident, 29th April 2009, n° 2418.

224 Interview with a guilty person, 27th March 2009, n° 2388.

victims and convicted parties that must be taken into account. They are linked to the factors we have outlined throughout this report that obstruct the smooth execution of agreements and reparation orders.

The first factor is the lack of and poor interaction between the legal texts that regulate the execution of *Gacaca* Court judgments on property offence cases.

The second is linked to the socio-economic whose severity and extent seriously affect the optimal settlement of these cases.

The final factor is an administrative one, linked to failings in training and in the follow up of execution procedures by executive secretaries in their role as administrative agents.

The execution of agreements and reparation orders, along with community service, will be one of the major challenges of the post-*Gacaca* phase. The smooth running of these procedures will influence the success of the reconciliation process.

Given the irregularities and difficulties noted in the execution of agreements, of reparation orders and given the worries expressed by actors in the *Gacaca* process, we suggest that in accordance with our study/action methods we should assist in optimising the potential of the process as a reconciliation tool. In order to achieve this, we recommend the following:

1. Emphasising the duty of reparation, through awareness-raising sessions

Trials are a form of institutionalised theatre designed to solve the dichotomy of freedom and responsibility.[225] Legal rituals are a way of underlining to the guilty person that he or she belongs to a joint culture, and that there are certain taboos that underlie human relationships. The duty of reparation has aimed to regenerate the social fabric.

It is important therefore when settling property offence to emphasise the duty to compensate victims, given the reluctance of some convicts to comply. It would be appropriate in this respect to raise their awareness why this duty is justified, as a corollary of the principle of individual responsibility. Insisting on the principle of the individual responsibility of perpetrators of property offence cases does not in any way diminish that of the planners and leaders of the genocide.

Whilst it is true the perpetrators did not organise or order the genocide, they were nonetheless central to the crimes being committed as they were the final link in the criminal chain, and they also crystallise the difficulties of the post-genocide phase. They are the people who live in the actual hills where the events took place, and daily have to face the surviving victims. There is a need to take this category of person into account, and especially to make them aware of their responsibility and duty to provide reparation for the wrongs committed against the victim.

In the event of insolvency, it is reasonable to seek alternatives to monetary compensation. One solution would be for example the promotion of reparation by equivalent reparation such as working for the victim.

We are aware that this solution can be used only for small amounts of compensation. We would have to ensure however that the work be carried out in a small time frame, so that it does not risk becoming akin to slave labour.

For larger amounts of reparation, where the convicted person is not solvent, it is important to raise the awareness of debtors of the need for reparation, even if only symbolic, according to their ability to pay,

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225 VERDIER R., « Note pour une étude anthropologique et historique du pardon », in *Le pardon*, Papers gathered by Jacqueline Hoareau-Dodinau, Xavier Rousseau and Pascal Texier, Pulim, 1999, p. 45.

with the balance being underwritten by a compensation scheme.

2. Implementation of a compensation scheme

The implementation of a compensation fund was planned then abandoned when a fund for support and assistance to survivors was set up instead. Due to the insolvency of many convicts, the right to reparation remains hypothetical in many cases. In order for victims to obtain reparation, it is crucial to set up a compensation structure whose aim is to take care of genocide victims. Reparation seems to be one of the most tangible State efforts in remedying the ordeals suffered by people. It is also a crucial element in any transitional justice scheme.

On this topic, we recommend that meetings be set up within Cells to gather suggestions from the population on the solutions that could be implemented to tackle the insolvency of some convicts. The meetings of the various opinions, from victims, convicts, and the population at large will calm the mood surrounding the issue of execution. Various organisations will be asked to attend these forums, including survivors' organisations, the NCUR, whose reconciliation programmes could contribute to the debate and find solutions that are viable for all those involved. The participation of civil society is also crucial due to their special position in communities.

3. A moratorium on seizures: a breathing period for training executive secretaries and for carrying out consultations

Abiding by the rules on seizure and execution is a central element that executive secretaries must master before beginning any work in the field. Our observations, as well as the interviews carried out with some executive secretaries revealed how inadequately prepared they are for carrying out seizures and executions of rulings. Guesswork that is prejudicial to both parties can also be observed, particularly in such a fragile socio-economic climate. It is therefore crucial to run regular training sessions on the issue.

Furthermore, it is important to avoid getting victims involved in the seizure procedure in order to reduce the risk of conflict. It is also crucial that everyone should respect the legislation on guilty persons, to avoid a shifting of responsibility. The governing principle must be that the person responsible for the damage is the one responsible in law, or their successors where relevant.

The last factor is the two-level process due to different uses of the law by executive secretaries and bailiffs that means that citizens are not treated equally in law. Clarifying the law is crucial in order to right this unequal treatment and ensure the fair execution of judgments.

In order to ensure effectiveness of the execution process, and optimise the *Gacaca* process under the reconciliation umbrella, we recommend a follow-up in the field backed by the national authorities, in order to assess irregularities and generate appropriate solutions. It is crucial to ensure the best possible settlement of property offence cases. If this does not happen, not only will the reparation process for victims be compromised, but so too will the whole of Rwandan society. This concern was aptly encapsulated by Wendy Orr in her slogan "Reparation Delayed is Healing Retarded." [226]

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[226] ORR W., "Reparation Delayed is Healing Retarded": in *Looking Back, Reaching Foward: Reflections on the Truth and Reconciliation Commission of South Africa*, managed by Charles VILLA -VICENCIO and Wilhelm VERWOED, Le Cap, *UCT Press*, 2000, p. 241-242.

ANNEXES

REPUBLIC OF RWANDA

National Service of Gacaca Jurisdictions

Document no…… ....provisional stay of execution of the seizure of the property of a person accused of genocide.

Province / City of Kigali ……..
District / Ville de ……..……
Sector……..……..
Cell……..……
Gacaca Jurisdiction ……..……

Defendant's details: Defendant form n°…… (if *available*)

Surname and first names……..……
Father……..……..Mother……..……..……..……..……..……..……..……..…
Address: Cell……..…… ……Sector……..……..……..……..……..……..……..……..…
District/Town……..……..……Province/City of Kigali……..……..……..…
Other……

Gacaca Jurisdiction ……places a release on the property ……..

Property seized	Identification	Address			
		Cell	Sector	District	Province/Kigali
1.					
2.					
3.					
4.					
5.					
6.					

Reasons: (please tick)

…….. - The owner was a cleared by ……jurisdiction on……
…… - The owner has paid his debt in another way …….
…… - Other (please explain)……

As soon as the decision is made, the abovementioned owner recovers all his owner's rights.

There are seven copies of this document

Copies for information to:
- Provincial authority/ City of Kigali……
- District Authority……
- Sector Authority ……
√- Cell Authority … *Kanserege*……
- Instigator of the seizure……..
- Owner from whom the property was seized……

Name and signature of Gacaca committee members

1. *R. Kennedy (Signed)*	2. *Manzi Martin*	3. *Mukamudodo*	4. *Sezibera J-Bercumas*	5. *Umubyeyi Cécile*
6.	7.	8.	9.	Date and Jurisdiction stamp

REPUBLIC OF RWANDA
DECLARATION JUSTIFYING THE EXECUTION OF A JUDGMENT ON DAMAGED PROPERTY

Province …….. /City of Kigali
District/City …….
Sector ……
Cell…….

Gacaca jurisdiction ……

Defendant's details : Defendant form number (if relevant)…….

Names (surname, first names, nickname)
…….
Father's names ……..…….
Mother's names……...

Current address : Cell ……. Sector…….
District…….Province/City of Kigali …….....
Other address ……

Gacaca jurisdiction ……...after noting that Mr/Mrs ……..refused to make reparation for damage that s/he caused to the victim's property, in accordance with *Gacaca* Jurisdiction on case number ……..on ……, orders the seizure and sale at auction of the following property in order to execute this judgment.

Property damaged	**Details**	**Location**			
		Cell	**Sector**	**District/Ville**	**Province/City of Kigali**
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

In accordance with article 199 of law 18/2004 of 20/06/2004 establishing the Civil, Social and Administrative Procedures Code that lists the categories of persons deemed competent and listed in this article, the public auction of property seized on …… ……(15 days from the judgment date).

This declaration is drawn up in seven original copies

<u>Copies for information to</u>:

- Provincial Governor of /City of Kigali……
- District Mayor of /Town.....
- Sector Executive Secretary ……
- Cell Executive Secretary ……
- Perpetrator of the Damage……
- Victim ……
- Jurisdiction…… ……

Names and signatures/ finger prints of *Gacaca* Jurisdiction members

1	**2**	**3**	**4**	**5**
6	**7**	**8**	**9**	Date…….. Jurisdiction Stamp

REPUBLIC OF RWANDA
NATIONAL SERVICE of GACACA JURISDICTIONS

DECLARATION OF EXECUTION OF PROPERTY OFFENCE JUDGMENTS

Province……./City of Kigali
District ……
Sector ……
Cell……..

Gacaca jurisdiction ……

Defendant's details : Form N° (if applicable)……

Surnames, first names, nicknames
……

Father's names…… …Mother's names …….

Address : Cell ……..Sector ……..
District ……Province/City of Kigali…….
Other ……

The Gacaca jurisdiction …….. , having realised that Mr/ Mrs ……has been unwilling to execute Jurisdiction judgment number …….. handed down by Gacaca Jursidiction number…… on ……., orders the seizure and sale at auction of the property listed below, in order to restore it to its owner:

Description of property	**Objects of value**	**Location of property**			
		Cell	**Sector**	**District**	**Province/City of Kigali**
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

In accordance with article 199 of Law 18/ 2004 of 20th June 2004 establishing the Civil, Social and Administrative Code, all agents covered by this regulation are requested to proceed with the public auction of the property that was seized on ……. (15 days from day of judgment).

This declaration must be filled out in seven original copies.

Copies for information to:

- Provincial authorities/City of Kigali, ……
- District Authorities …….
- Sector Authorities ……..
- Perpetrator of the damage ……
- Victim of the damage ……..
- Jurisdiction …….

Surnames, first names, signature or fingerprints of court members

1	2	3	4	5
6	7	8	9	date …… Jurisdiction Stamp

REPUBLIC OF RWANDA
National Service of Gacaca Jurisdictions

Document number…… provisional seizure of property on a person accused of genocide

Province / City of Kigali …*V.K.*…..
District / Town …*Kicukiro*……
Sector……*Gikondo*……..
Cell……*Kanserege*……
Gacaca Jurisdiction……*Kanserege*……

Defendant details: Defendant form no ……(if *relevant*)
Surnames and first names…*NYANDWI Léonard*……
Father…*SEGIHERA.*.
Pierre……..Mother…*NDARIBESHYERA..V.*……
Address: Cell……*Kanserege*…… ……Sector…*Gikondo*……
District/Town…*Kicukiro*……Province/ City of Kigali…*V.K*.....……
Other……

Charges : Death of *SEMANZI and his family and loading their bodies into a car* ……
……

Property seized:

Property seized	Description	Address			
		Cell	Sector	District	Province/City of Kigali
1. *1 house*	*dwelling*	*Kanserege*	*Gikondo*	*Kicukiro*	*City of Kigali*
2.					
3.					
4.					
5.					
6.					

The seized property may not, until further notice, be:
• sold √
• altered √
• given away √
• concealed √
• transferred √
• mortgaged √

The administrative Authorities informed of this decision are requested to monitor it..
This document is drawn up in seven original copies.
Copies for information to:
- Provincial Authorities / City of Kigali……
- District Authorities ……
- Sector Authorities ……
√- Cell Authorities … *Kanserege*……
- Seizure instigated by……..
- Property seized from ……

Name and signature of committee members

1. *R. Kennedy (Sé)*	2. *Manzi Martin (Sé)*	3. *Mukamudodo (Sé)*	4. *Sezibera J-Bercumas (Sé)*	5. *Umubyeyi Cécile (Sé)*
6.	7.	8.	9.	Date and Jurisdiction stamp

REPUBLIC OF RWANDA

REPORT ON AGREEMENTS CONCLUDED ON PROPERTY LOOTED OR DAMAGED DURING THE GENOCIDE

Province……./City of Kigali
District …….
Sector …….
Cell ……..

The Cell *Gacaca jurisdiction* accepts the agreements concluded between the persons listed below, today …….:

Details of defendant: **Defendant's form number (if relevant) ……..**

Names (surname, first names, nickname)
…….
Father's names …….
Mother's names……

Current address : Cell ……. Sector …….
District……Province/City of Kigali ……..
Other address ……..……..

Victim details/ owner of the looted or damaged property

Names (surname, first names, nickname)
……..
Father's names ……..…….
Mother's names ……..

Current address : Cell …….. Sector ……..
District/Town……Province/City of Kigali ……
Other address……...…
Mr/Mrs…….. has restored to Mr/ Mrs …… the property listed below that he/ she acknowledges having looted or damaged during the genocide
The looted or damaged property is listed below:

Property	Basic details	Location of looted/ damaged property		
		Cell	**Sector**	**Province/City of Kigali**
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

The defendant agrees to restore the property as follows :

1. Restoration of looted property : ……..……..
2. Payment of an amount equivalent to the value of the property damaged……..…...
3. Grant of livestock or other object in payment ……..
4. Defendant has/will carry out the following work……for (X days) work will consist in ....., and has fulfilled/agrees to fulfill his/her undertaking within .....

The two parties agree and sign below/ affix their finger prints.

Perpetrator of the damage……
Victim .....……..……

Drawn up in three original copies

<u>Names and signatures or finger prints of *Gacaca* Jurisdiction members</u>

1	2	3	4	5
6	7	8	9	Date : Jurisdiction Stamp

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