



**PRI Research on *Gacaca* report
Rapport I**

« Gacaca jurisdictions and its preparations »

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1. Introduction

1.1. Penal Reform International (P.R.I.)

Penal Reform International is an international non governmental organisation founded in 1989 and registered in the Netherlands. Its head office is in UK, and it runs offices in France, Romania, Russia, Nepal, Kazakhstan, Georgia, Costa Rica and Rwanda. PRI has a consultative status with the United Nations and with the Council of Europe and observer status with the African Commission for Human and Peoples' Rights.

PRI seeks to achieve penal reform while recognising diverse cultural contexts, by promoting:

- the development and implementation of international human rights instruments with regard to law enforcement, prison conditions and standards;
- the elimination of unfair and unethical discrimination in all penal measures;
- the abolition of the death penalty;
- the reduction in the use of imprisonment throughout the world;
- the use of constructive non-custodial sanctions which encourage social reintegration while taking account of the interests of the victims.

PRI activities vary from needs assessment missions to thorough programmes of technical assistance to the prison services and civil society initiatives .

PRI programmes focus on the reduction of the use of imprisonment and the development of Community Service as an alternative to custody. PRI also works towards improving prison conditions and the management of justice through the developments of programmes as varied as judicial assistance, prison farms, training of prison staff, and assistance to vulnerable prisoners.

In Rwanda the collaboration between the Government (Minijust & Mininter) and PRI has focused on four main areas since the inception of the PRI programme in 1998 :

- Training of Prison Department personnel;
- Development of micro-projects at prison establishments;
- Improving the living and working conditions for prison staff and detainees,
- Advising and researching the planning phase of the national Gacaca initiative.¹

PRI's Country Programme 2002 and beyond, intends to build on these achievements and the learning gained in the following ways :

- Strengthening the good management of prisons & humane treatment of prisoners,
- Responding to the particular needs of vulnerable detainees & prisoners. (*"jeunes génocidaires"*, female detainees, older prisoners and BaTwa),
- Supporting the development & implementation of Gacaca and Community Service².

¹ This has included organising with the Minijust an international seminar on Community Service as a sentence provided by the Gacaca law and available to Gacaca tribunals as well as undertaking sensitive and complex research into responses to proposals with a range of groups and individuals concerning Community Service.

² PRI manages and supports a Rwandan co-ordinator who advises at national level development and implementation of the Community Service programme which will be a core element of the Gacaca process. This coordinator works in close co-operation with the Ministry of Justice, which will recruit and employ Community Service Supervisors, PRI will provide comprehensive orientation and training to these specialist staff, based on PRI's experience of similar initiatives in several other countries.

The Gacaca research in Rwanda is, as we described above, also part of a broader project launched by PRI in October 98 entitled “New models of Accessible Justice and Penal Reform in Developing Countries”³. One focus area of the project is the role of traditional and informal justice systems in securing access to justice for people, particularly vulnerable groups, in Africa. A comparative study in a number of African countries, including South Africa, Tanzania, Malawi, Mozambique, Rwanda, and other countries with relevant practices concerning restorative justice, alternative dispute resolution, informal justice and alternative ways of dealing with vulnerable groups is being prepared, based on existing literature, contacts with penal reformers and government officials in the region, visits to relevant projects and policy oriented field research.

1.2. Purpose and mandate

The introduction of the Gacaca jurisdictions is generally considered to be the major element in efforts to date to achieve national reconciliation and justice in Rwanda following the 1994 genocide. The enormity of the challenge faced by the national government in resolving the cases of thousands of individuals charged with offences related to crimes of genocide or against humanity, during a period when the country is struggling to re-establish economic and social normality inside Rwanda and peace in the whole region, cannot be underestimated.

The purpose of this report produced by the PRI team at Kigali, is to inform and advise the planning and practice of the Rwandan authorities charged with this responsibility and also provide the generally supportive and concerned international community with the data necessary for them to gauge progress and developments in Gacaca programme activities.

By aggregating, translating and interpreting the comments, reactions and experiences of a variety of groups of ordinary Rwandans over time, it is the intention of the researchers, at the request of the national authorities – specifically the Ministry of Justice and the Gacaca department of the Supreme Court (the 6th Chamber) – and the international community to provide honest, objective, scientifically-based findings to underpin and guide the design and implementation of the Gacaca procedure at regular intervals during its life-span to maximise its potential for success via a process generally identified as action research⁴.

PRI is grateful to the UK Government’s Department for International Development (D.F.I.D.) for its support to this initiative.

1.3. Methodology⁵

1.3.1. Working methods

³ The objectives of this broader project are the following :

- 1-Describe, promote and implement new models of justice fairer to the people.
- 2-Promote penal reform in order to avoid excessive and unnecessary recourse to prison.
- 3-Publish an exhaustive study on the subject, to be used as a reference and guide for any government official or member of the judiciary or member of the judiciary willing to promote penal reform or new models of justice.
- 4-To conduct policy oriented (applied) field research and evaluations concerning the use of alternative ways of criminal justice.

⁴ See for the study objectives and the methodology the following research proposals: Klaas de Jonge : “The Gacaca research project in Rwanda. An in-depth field study concerning Gacaca jurisdictions and community service”, PRI: Kigali, February 2000 and Klaas de Jonge: “ The ‘Pre-Gacaca’ research”, PRI: Kigali, February 2001.

⁵ See: Schensul, Jean J. & LeCompte, Margaret D. (eds): **Ethnographer’s Toolkit**, Vol 1-7 ; London : Altamira Press, 1999 ; Greenwood, Davydd J. & Leven, Morten: **Introduction to Action Research**; London: Sage Publications, 1998.

The terms of reference of this research stipulate that it is an intensive case study, conducted in at least two areas in Rwanda – one rural and one (sub) urban – on the three levels of the district, the sector as well as the cell, taking into account also the composition of the population.

The research methodology is principally qualitative and participatory: the sessions of the pre-Gacaca project were, and those of the Gacaca jurisdictions, will be observed, recorded and analysed. In-depth and semi structured interviews and focus group discussions⁶ will be held with the different parties involved and with other relevant persons/groups in the area concerned. This seems to be the only possible way to collect some reliable data in a situation where people will be in general highly suspicious of persons asking questions about the subjects the Gacaca jurisdictions are going to handle.

The context of the trials will be studied, the procedures followed and the participation of the different actors and groups during the processes (with extra attention to women and juveniles). The background and legitimacy of these actors will be studied and the outcome of these trials evaluated, from the side of the victims (genocide survivors and their families) as well as from the side of the accused (pre-trial detainees and their families). The evaluation will also be done in relation to human rights norms and fair trial standards, while at the same time taking into account the exceptional Rwandan circumstances.

Afterwards, for some of these cases the implementation of the Community Service scheme will have to be studied, concerning the awareness and attitudes of the population towards Community Service.

Action Research?

This social study is deliberately oriented towards action. We find that it is an effective tool for both understanding and improving conditions of the Gacaca programme. It is seen as a research with a social change agenda, together with the stakeholders (genocide survivors, bystanders, perpetrators and government) and taking into account the situation of these stakeholders it seeks to support action leading to a more just or satisfactory situation for the people involved in the Gacaca process.

We started with a research question, which seemed of major importance to the participants in the planned Gacaca process such as ‘what are the problems according to the various stakeholders in the Gacaca process and how could these problems be resolved’. Based on the expressed views, needs and interests of various groups inside the population we tried to identify the key problems and to indicate some possible solutions, directed also by the life experiences of the members of our own research group, discussions with other partner organisations and the existing literature about genocide and post-genocide in Rwanda and elsewhere. The goals and objectives of the Gacaca programme (see the Gacaca law) constituted the standard against which we collected our data and in this way our research should also be seen as a form of evaluation and monitoring.

As mentioned above the research data were collected by direct observation (as for example in the case of the elections of the Gacaca judges and the pre-Gacaca meetings attended by hundreds of persons) and recording (as in the case of the pre-Gacaca meetings and most of the

⁶ Focus Group Discussion is a research technique used to study knowledge, attitudes and beliefs of certain groups, especially aimed at collecting data about social change

interviews), unstructured open-ended in-depth interviews with certain individuals and group interviews (focus group interviews/FGI) with about 15 persons (groups of women; men; genocide survivors; detainees; people in exile before 1994; bystanders, family of detainees; people who had been in exile after 1994; detainees who confessed or who didn't confess etc). With the individual and group interviews alone we reached over 200 persons and many more if included the material of the pre-Gacaca sessions.

It is true that we focussed specifically on Gitarama for practical reasons (accessibility, funds etc) and the fact that the pre-Gacaca meetings started there when we wanted to start our research. In the near future we hope to do some more research in other regions.

During the pre-Gacaca meetings and the interviews afterwards, we observed that the population in general, when discussing genocide, justice, the Gacaca jurisdictions and its preparations and the reconciliation question, classified the world around them in perceived antagonistic cultural categories⁷ such as a regional one: 'those of the North' & 'those of the South' and even more frequent an ethnic one: Hutu, Tutsi, Twa (although this last category was mentioned much less).

Although the study did not originally include ethnicity, this experience forced the research team to take also the concept and role of ethnicity into account to understand the views, needs, fears and interests of various groups concerning the Gacaca programme and its consequences. Research experience over several months has reinforced the clear impression that the importance of ethnicity remains crucial for many Rwandans in describing their own identities and relationship to others. We think that this must be understood and accepted to be overtaken. This division appeared to us as central within the population, but it is not the only one. People also oppose one another as survivors/witnesses or male/female or prisoner who confessed/did not confess.

This was also taken into consideration when organising the Focus Group Discussions in order to allow more substantial exchanges and freedom of expression in an effort to guarantee comprehensive and objective results. In our recommendations, we suggest means to incite Rwandans to gather around more constructive poles (women, juveniles, etc.) which transcend the ethnic notion, rightly fought by the government.

We are convinced that our research is both reliable (the results of the study can be duplicated by other researchers) and valid (our instruments are accurate and what we have learned can be applied to other populations) and comparable with similar research methods used elsewhere. It is however true that if the report would have been a purely academic one (which wasn't our objective at all) we would have presented our material and case studies somewhat differently. But once again, the aim of this work is to support the Gacaca process in order to help it achieve its objectives of national reconciliation at best.

1.3.2. Timing and participation

Although the field research started only at the end of April 2001, preparations started much earlier, as one element of the research coordinator's main activities previously (interim project co-

⁷ These are mental categories, perceptions. In all cultures, men categorise the world around them in cultural categories, and the way they do it influences their interaction with the world.

ordinator, “Community Service” researcher). These included obtaining authorisation to conduct research from different Government departments; recruiting and training of a research assistant; study of existing material and the translation of some documents from Kinyarwanda into French; participation in a conference in Cape Town (SA) at the beginning of February: *Genocide, the Rwandan Experience and the South African Transition* and various visits to the ‘collines’ to finalise locations where the research would be undertaken.

Our small research team started the field research in the province of Gitarama and to a lesser degree in Kigali town and the province of Murambi.

As planned, we participated in a number of public “pre-Gacaca” meetings and we conducted series of focus-group and individual interviews with the different groups involved : officials, genocide survivors (among them women who were raped) and various groups of prisoners (those released and those who were returned to prison for the completion of their court files). The photographer, Marco Longari, made a specialised reportage of some of these public meetings.

The period from May to July was used in particular for data collection, leaving the formal recording, the analysis and conclusions for a later date.

Nevertheless, even our “raw” research notes proved already to be useful and made it possible to suggest improvements to certain organisational aspects of the above mentioned pre-Gacaca meetings, in order to arrive at a better understanding of how to explain the rather difficult Gacaca-law to a largely under-educated and completely uninformed population. Some Gacaca documents and forms were also changed after having them tested in the field.

We hope that some of our findings to date in particular will lead to a change of policy, for example improved security for those detainees who confess and who are threatened by other prisoners⁸.

1.3.3. Meetings and contacts

We discussed some of our findings with the organisers of these public pre-Gacaca meetings (The Public Ministry and Citizens Network/RCN) and we were able to help in this way to improve the introduction⁹ to these presentations of detainees without files to the population in the Ntongwe and Runda districts (Gitarama). This was particularly the case in discussing the questions asked and the fears expressed by different population groups we had interviewed concerning these presentations and the future *Gacaca* courts. During the introduction given by the prosecutor and his staff, they started to address these questions and fears.

Because - at least in Ntongwe - the local authorities seemed not at all to be interested¹⁰ in these public meetings and even less in their outcome (the conditional release of some of these detainees - about a fourth of those presented), the only awareness-raising of the population in the countryside at the lowest administrative level took place during these public meetings.

Some of our findings were first discussed with the Ministry in charge of the prisons (Mininter), such as the lack of confessions by prisoners, the need to separate those who confessed from

⁸ PRI : « La procédure d’aveux et le TIG – Rôle du Mininter », Kigali/Paris, July 2001.

⁹ See research data PRI and internal report RCN: « Présentations à la population – sensibilisation juridictions Gacaca »; Kigali, Sept. 2001.

¹⁰ This indifference of the local authorities (in this case of Ntongwe) is regrettable, because the local authorities seem to be more trusted than any other government instance or even religious leaders.

other detainees and the need to improve security both inside the prisons, and in the community at large. Although understanding and broad agreement was expressed with our findings and recommendations, budgetary constraints were said to limit the potential for introducing any major changes as a result.

We presented our findings also to a recently established working group of donors and international NGOs (“*Groupe de travail de concertation sur le processus Gacaca*”) under the auspices of the European Union/EU, which after some discussions and some alterations, accepted our recommendations¹¹.

These were later raised during a high-level meeting of Government officials and Ambassadors representing the most important donor countries, so far, without any concrete results. This inevitably questions the real potential for the international community to contribute to the success of the *Gacaca* process.

Although the international community in general agrees with the benefits of the *Gacaca* programme already mentioned, there were and still are, some serious doubts of whether the *Gacaca* jurisdictions would work, because of the enormous bureaucratic and logistical problems to manage such a programme on a national scale. There were also some human rights and legal worries concerning the impartiality and independence of the lay judges and the right to defence: especially the fact that even for defendants of Category 2 (who risk life imprisonment) formal legal representation is excluded.

1.3.4. Research Team

Klaas de Jonge is a Dutch anthropologist with over thirty years experience of research and development practice. Having joined PRI in January 1998, initially to establish the organisation’s programme in Rwanda, Klaas de Jonge has co-ordinated the work of the *Gacaca* research full time since May 2001.

- Klaas de Jonge, Research Co-ordinator
- Léonilla Musengimana, Researcher
- Charles Kayibanda, Researcher
- Salim Bucyanayanda, Driver/Logistician/Research Assistant
- Marco Longari, Photographer

¹¹ See: « Réunion de concertation sur le processus Gacaca; Délégation de la Commission européenne – 30 août 2001 ».

2. Findings

2.1. The Gacaca jurisdictions and its preparations : an overview

In 1994, about a million Rwandan citizens¹² were slaughtered during a genocide directed against the Tutsis and the murder of Hutu political opponents, planned and carried out by the former Government. Approximately three millions were forced into exile. The country was devastated. The institutions responsible for justice and law enforcement (courts, police, prisons etc.) ceased to function.

After the genocide, up to 130 000 persons accused of organising or taking part in the genocide were put in prison in very difficult conditions. Seven years later, some 125 000 of them were detained, awaiting trial. A general amnesty wasn't seen as a solution, because it was broadly accepted by the new Government (Government of National Unity), the people of Rwanda and the international community that there should be accountability for genocide and massacres in order to eradicate the culture of impunity and to reinforce respect for the rule of law and the principle of 'due process'.

The Government came to the conclusion that the classical system of justice couldn't be the only answer to the justice problems Rwanda was facing.¹³ That is why the Government started since 1998 to look for an other way to deal with this problem, leading in 1999 to the proposal of a purely Rwandan alternative for the classical system of justice : Gacaca jurisdictions as a new system of participatory justice (a kind of *reinvented* traditional way of community based conflict resolution), in which the whole society would participate. The Government published in July 1999 a draft document about "Gacaca tribunals"¹⁴, which was followed by series of discussions with several population groups and the international community. After various other versions of the above draft, the "Gacaca law" was finally adopted and published in March 2001.¹⁵

2.1.1. Objectives and organisation of Gacaca Tribunals

According to the Government¹⁶ the advantages of the new type of Gacaca tribunals will be the following :

1. Neither victims nor suspects will have to wait for years to see justice done : *acceleration of trials*;
2. It will *reduce the costs* to the taxpayers of maintaining prisons¹⁷ and make it possible to meet other urgent needs;
3. The participation of everyone in the community in telling what happened, will help - better than any other way – to *establish the truth*;

¹² December 2001, the Rwandan Government published the number of Genocide victims during a period of about four years: from 01/10/1990 until 31/12/1994, 1 074 017 persons were killed of which 93,7% were Tutsis.

¹³ Although the Rwandan government had done remarkable work in the sphere of justice as shows the study "Five Years after the Genocide in Rwanda: Justice in Question", ICG Report Rwanda N°1, 7 April 1999. It recognized that with the actual rhythm of the classic system, it would take over 100 years to judge all.

¹⁴ "Gacaca tribunals vested with jurisdiction over genocide crimes against humanity and other violations of human rights which took place in Rwanda from 1st October 1990 to 31st December 1994", Kigali: July 1999.

¹⁵ "Organic Law of setting up 'Gacaca Jurisdictions' and organizing prosecutions for offences constituting the crime of genocide against humanity committed between October 1, 1990 and December 31, 1994"; Official Gazette of the Republic of Rwanda, 15th March 2001; pp 33-65.

¹⁶ "Speech of the Vice-President and Minister of Defence on the Occasion of the Opening of the Seminar on Gacaca Tribunals"; Kigali, July 12, 1999.

¹⁷ As a consequence of the Gacaca justice system many detainees will leave the prisons, but Rwanda will probably remain long time a country with a huge prison population (see later).

4. The Gacaca tribunals will ensure the accountability for genocide and other crimes against humanity faster than the classic courts : *uprooting the culture of impunity*;
5. The new tribunals will introduce *innovative approaches to the criminal justice process* of Rwanda, such as work related penalties (Community Service), which will help the re-integration of criminals in society.
6. The rule of law will help the process of *healing and national reconciliation* in Rwanda, which is seen as the only guarantee for peace, stability and the future development of Rwanda and the empowerment of its people.

The persons accused of genocide are divided into 4 categories¹⁸:

- category 1 are those accused of planning and organising the genocide or of being notorious murderers, plus those who committed rape or sexual torture,
- category 2 are those who have committed homicide or their co-accused and accomplices,
- category 3 are those who committed serious assaults against people without the intention to kill and,
- category 4 are those who have committed offences against property.

The accused falling in the first category will be tried by ordinary tribunals : the “Courts of First Instance”/Magistrates’ Courts.

For all other cases, the Government has to set up about 11 000 Gacaca jurisdictions, each with 19 elected judges, considered to be persons of integrity. These lay judges will receive some training before the courts start their activities. The election of these lay judges took place from 4-7 October 2001 during which over 254 000 persons were elected. The training of these “persons of integrity” will start at the beginning of 2002.

There will be four levels of jurisdictions for the different categories of crimes (2, 3 and 4) tried by the Gacaca courts. Appeals will only be possible for second and third categories and will be examined by the higher administrative level, respectively the district and the province.

- The 9201 cell/*cellule* jurisdictions will search for the facts, categorise the defendants and try the cases of the fourth category (no appeal);
- The 1545 sector/*secteur* jurisdictions will deal with the third category cases and
- The 106 district/*district* (former *commune*) jurisdictions will hear the cases of the second category and the appeal cases of the third category.
- The 12 jurisdictions at the level of the province/*province* (former *préfecture*) or Kigali town will deal with the appeal cases of the second category.

At each level of jurisdiction there are three structures:

- 1) the General Assembly (at cell level the entire population of 18 years and above; a group of about 50-60 elected ‘persons of integrity’ at each of the other levels),
- 2) the Seat (Siège): 19 judges in every jurisdiction and
- 3) the Coordinating Committee consisting of 5 persons chosen among the 19 judges.

Gacaca tribunals will not be empowered to sentence defendants to death. Sentences of convicted persons who were at the time of events between 14 and 18 years old will be half of the adult

¹⁸ See for further information besides the above mentioned Gacaca organic law, table 1 (Annex) and the following publications: Daniel de Beer : «Loi Rwandaise du 30 août 1996 sur l’organisation des poursuites des infractions constitutives du crime de génocide ou de crimes contre l’humanité. Commentaire et Jurisprudence », Kigali/Bruxelles 1999 ; “Manuel explicatif sur la Loi Organique portant création des Juridictions Gacaca”; Cours Suprême, Département des Juridictions & ASF-B ; Kigali, Octobre 2001.

equivalent. Children who were at the time less than 14 years old won't be tried and will be released.

With the exception of those defendants from category 2 who refuse to confess and plead guilty, it has been decided that half of the term of imprisonment of all the other defendants who are classified in category 2 or 3 can be substituted by the sanction of community service work. Time spent on remand prior to conviction will be off-set against sentences.

There is no penalty for defendants who are classified in category 4. In case no amicable settlement can be reached concerning the restitution of property which was stolen or destroyed, the Seat of the Gacaca jurisdiction for the Cell will fix the reparation to be made.

Persons who have been tried already by the normal courts will not fall within the remit of the Gacaca jurisdictions.

The co-ordination arrangements for the development of Gacaca seem problematic¹⁹:

The Ministry of Justice is in charge of the elaboration of the texts of all Gacaca related laws (Indemnisation²⁰) and decrees (Community Service), while the Gacaca Jurisdictions Department of the Supreme Court, the so called 6th Chamber, doesn't have any legislative power. Although fundamental for the success of the Gacaca courts, the Community Service programme is seen as a measure of execution of a sentence (which by law it is), not falling under the 6th Chamber, but under the authority of the Ministry of Justice²¹. Although a presidential decree has been drafted to deal with Community Service, at January 2002 this had yet to be finished and signed. At the same time Mininter is responsible for prisons and the transfer of the detainees while Minifin (Finance Ministry) controls and distributes the Gacaca budget.

The 6th Chamber, supported by the NGO ASF, produced in October 2001 the first version of a training manual for the Gacaca judges and the training of the thousands of judges is scheduled to take place during March-April 2002.

The Office of the Prosecutor (*le Parquet*) will only have an informative role by sending abstracts of all their genocide investigation files (*fiches*)²² to the concerned Gacaca Jurisdictions. It had been planned to complete the preparation of the files of all detainees before the end of the year 2001 and to speed up the production of the *fiches* for the Gacaca Jurisdictions,²³ targets which proved over-ambitious, given the lack of skilled capacity available.

To settle the enormous genocide case load and to accelerate the whole process, the Office of the Prosecutor (supported by the NGO *Citizens Network / RCN*) started, at the end of 2000, a project

¹⁹ See PRI, RCN, ASF : Mise en place des Juridictions Gacaca : Enjeux structurels et organisationnels ; Kigali, Février 2001.

²⁰ The National Assembly voted for a compensation fund as a reparatory measure for victims of the genocide to redress past wrongs and a bill was drafted to compensate the survivors, but little was done to take this question further. See « Projet de Loi portant création, organisation et fonctionnement du Fonds d'Indemnisation des Victimes des infractions constitutives du crime de génocide ou de crimes contre l'humanité commises entre le 1^{er} Octobre 1990 et le 31 Décembre 1994 . » and the report of ASF/MINIJUST about the « Séminaire sur la réparation pour les victimes du génocide et des crimes contre l'humanité commis au Rwanda entre le 1^{er} Octobre 1990 et le 31 Décembre 1994 » (Kigali, du 07/06 au 09/06/2000).

²¹ See the report of the « Séminaire sur les Travaux d'Intérêt Général » organised by the Ministry of Justice, in cooperation with Penal Reform International (Kigali, 11-12 January 2000) and the various draft decrees concerning Community Service order. The latest version is dated August 2001 : « Projet d'Arrêté Présidentiel relatif à la peine alternative à l'emprisonnement de Travaux d'Intérêt Général ». Certain specialists would have preferred if the Community Service would be defined by a law and its legal issues discussed and decided in parliament, and not by a presidential order.

²² Some evaluators expressed their concern about this presumed "informative role" of the Office of the Prosecutor, because of the possible impact of the written *fiches* on the decision-making process by lay judges. According to them the impact of these written *fiches* could become too important, because they could give a strong impression of guilt to the lay judges, in particular if substantial evidence is mentioned in these *fiches*. See: "Appendix to evaluation report by Karl Peter Puszkajler and Joachim Kaetzler. The introduction of gacaca and its impact of the judicial defenders project"; DCHR, January 2000.

²³ See « Analyse des opérations de remplissage et de saisie à l'ordinateur des fiches destinées aux Juridictions Gacaca », Kigali, 13 Novembre 2001. Until that date only a quarter of the *fiches* had been finished.

to regularise the situation of the detainees without files or with incomplete files of which, at that time, there were still many. A number of these detainees were later presented to the population of the communities in the hills where they were presumed to have committed their crimes. The population was invited to give testimony in favour or against these detainees and as a result of these “pre-Gacaca *meetings*” some of them were released ‘provisionally’ if no evidence could be established concerning participation in serious crimes during the genocide.

This new Gacaca system is focused on participative justice and on the reconciliation virtues attributed to it. According to the Minister of Justice, the population who was in the *collines* during the genocide will be “witness, judge and party”.

And indeed, these Gacaca jurisdictions will combine the powers of the traditional Gacaca courts, of the “ordinary” tribunals and even of the public prosecution department. According to the Gacaca law, these jurisdictions can make investigations, summon any person to appear before court, carry out house searches, order preventive detention, pronounce sentences, fix damages and confiscate goods.

Although these new “Gacaca jurisdictions” have been called - as we mentioned above - after a traditional way of conflict resolution by the same name, they are quite different from this original model in which in principle the whole adult male community participated (women and youth didn’t participate directly). The traditional Gacaca had as main objective “not to determine guilt nor to apply state law (...) but to restore harmony and social order in a given society, and to re-include the person who was the source of the disorder”²⁴. Most conflicts the Gacaca dealt with were of a civil nature, related to land rights, marriage problems, damage to property etc., although it could also settle some criminal offences of a minor kind, such as petty theft. The sanctions resulted in a kind of settlement, for example the payment of a compensation. It was not the individual wrongdoer but his/her whole family which was held responsible. Serious crimes like theft of cows and assassination were in general dealt with by the king (*mwami*).

In time the traditional Gacaca became more formalised. Such traditional-style Gacaca courts continue to function currently in Kigali town as well as elsewhere in the country, where they continue to deal with the resolution of minor conflicts, such as about the ownership of a house after a divorce, the unlawful occupation of a house (Kigali) and in rural cases concerning for example the restitution of a cow, the partition of a plot, the failure to fulfil a promise to repair the damage done to a house or an unpaid debt. The judges - nowadays some local authorities at the sector level - listen to both parties involved in a dispute. Afterwards the judges ask questions, followed by queries from any member of the local community who wants to intervene. The judges summarize what has been said and come to a conclusion. They ask the two parties to accept the verdict, if they do so the case ends there, if not, further investigations can be made or the case can be transferred to a classic court. The conclusions are written down in a notebook and signed by the parties involved²⁵.

²⁴ Vandeginste, Stef: “Justice, Reconciliation and Reparation after Genocide and Crimes against Humanity: The proposed establishment of popular Gacaca Tribunals in Rwanda”, Addis Ababa, 8-12 November 1999 (Conference paper).

²⁵ It could be a good idea to give these courts also a function during and after the processes of the Gacaca jurisdictions to deal with small community conflicts that could arise as a consequence of these processes, for example over community service work, arguments between liberated prisoners and survivors, etc. In South African there is a lot of experience, not only with reconciliation experiments like the Truth and Reconciliation Commission, but also with other models of community-based conflict resolution, which could be very useful in a situation where the legacy of the genocide period (widespread sense of insecurity, dependency and victimhood) can still be apparent, but where after the Gacaca processes members of the same community will have to co-operate again. For example, the Community Peace Programme (CPP) is working on peacemaking and peace building in both semi-rural and urban communities in South Africa. The aim of CPP is, through training and practice, change the prevailing mentality: from one in which people feel the only solutions are violence, and a state response that applies force, to one in which people are empowered to solve their problems before they become police and court problems. If the above-mentioned more traditional gacaca courts can’t do this, other institutions should be set up to fulfil this role.

From a theoretical point of view PRI - which is highly interested in the role of traditional and informal justice systems in securing access to justice for people in Africa and elsewhere²⁶ - has some concerns at the implications of mixing formal and informal justice systems as proposed by the Gacaca law. Based on experiences elsewhere in Africa, it takes the view that informal forums should be kept separate from the formal court system, and that only formal courts, with all the necessary procedural safeguards, should unwittingly try persons or where the possible punishment is severe (such as imprisonment).

However in Rwanda it is impossible to carry this out within a reasonable time, given the sheer numbers of persons accused, and the current situation presents an exceptional case (Stevens, 2000, p.156) where theory must bow to reality. Under these circumstances, PRI supports the Rwandan government proposal to create «informal-style» Gacaca courts, the decisions of which will be enforced by the State. As we have seen above, these Gacaca courts will not operate under as strict legal and procedural standards as apply in classic courts but, primarily for this reason, will be much quicker and cheaper. There is no question that all those persons charged with offences which can lead them in prison under the genocide law should be tried with all the procedural safeguards recognised as necessary for a fair trial.

This Gacaca programme takes place in the context of a much more general development process, which is at the moment still characterised by a very high level of poverty, which can hamper the delivery of major social objectives the Government has in mind, such as restoring confidence in Rwandan's institutions (among others, the justice system) or the achievement of reconciliation among the population. Although of extreme importance, our study won't address these kinds of questions.

2.1.2. Community Service (CS) as a sentence

Our research during the second half of 2001 clarified that knowledge about this topic was virtually non-existent.

According to the Gacaca law a Community Service order is a sentence passed by the Gacaca jurisdictions whereby the offenders - convicted for a crime of genocide or crime against humanity - may be sentenced to carry out unpaid work within the community for a relative length of time, providing they are willing to co-operate.

As the table (see Annex 1) shows, the option to substitute the second half of the prison sentence with an equivalent period of Community Service applies only to certain categories of convicts: those in category 2 who have confessed and all those within category 3.

As with the Gacaca jurisdictions in general, the introduction of Community Service is intended to combat impunity, to repair the social tissue and promote reconciliation. Besides these general objectives it hopes also:

1. To give an incentive to confess, in particular to convicts in category 2,
2. To resolve the problem of overcrowding and reduce the burden of such a huge prison population on the State's budget,
3. To participate to the social rehabilitation of detainees and use this work force to contribute towards the development of the country.

²⁶ See below and the reviews of literature made by Joanna Stevens for Penal Reform International: "Traditional and Informal Justice Systems in Africa, South Asia, and the Caribbean", PRI: London/Paris 1998 and "Traditional and Informal Justice Systems & Access to Justice in Sub-Saharan Africa", PRI: London/Paris 2000.

The tragedy of genocide occurred only seven years ago, emotions about genocide are still very strong and many victims and others are still profoundly traumatised. This will make Community Service in Rwanda a radically different initiative from that in other countries, above all because this type of sanction is usually reserved for offenders with short sentences who do not represent a risk to society. In Rwanda, Community Service is even being proposed for certain Category 2 prisoners, who were seriously involved in the genocide and massacres, who fully confess their crimes to the satisfaction of local tribunals.

To the population in the countryside in general, nothing is yet known about the sentence of Community Service (CS) as an alternative to imprisonment. The detainees interviewed had heard about it, without knowing any details and most of them appreciated Community Service as an alternative to prison, but some were uneasy and afraid of acts of vengeance.

The Tutsi population (survivors and returnees) were in general shocked when they heard that even persons who had killed could be released conditionally in this way and would therefore return as neighbours to their old communities.

According to some survivors « it is inconceivable that a person who has killed should receive the benefit of a reduced sentence; it is unthinkable that one would be able to live with such a person...»; «When they come back to live among us they could exterminate us!»; «These people could run away again...»; they also ask: « what advantages would survivors gain from these community service orders »²⁷.

Here are some further examples:

Accounts 1 – Survivors

It is inconceivable that a person who has killed should benefit from a reduced sentence. It is unthinkable to live with such a person and there is a risk that it may provoke another genocide;

Do you think I could sleep calmly while seeing him (my own criminal) constantly close by? Do you think I could live with my killer? For me, he should remain in detention in his 'cachot' or in prison...

These people may take refuge again...

I don't expect anything good from this work; these people should be kept in a place where I won't see them, then we can be at peace.

If the sentence is served in this way, whom will it benefit? The State or the survivors?

Will the Community Service orders that the detainees carry out be for the benefit of the orphans or the widows of the genocide? It would be better to keep them in prison.

CS could create problems for the survivors, who will see people in close proximity who killed their people;

On the other hand, CS could help reduce the number of people who are consuming the State's budget.

But will the State, in its turn, compensate the survivors? What advantage will survivors gain from these CS orders?

It is the State that supports them. All they need do is go on working for it and stay there [in prison].

This work will not help the survivors. (...) We have had former experience with the notorious funds for aiding the survivors;

The survivors will have nothing. (...) Why then should the prisoners not work directly for the survivors? It would be a form of compensation.

²⁷ We would recommend that the issue of the relation between Community Service and local development in general be reviewed, particularly with regard to how it would benefit the survivors and other vulnerable groups.

It is a good thing to get the detainees out of prison to work, but it should be for those who have confessed to their crimes and have asked for forgiveness.

There may be detainees who will be more than 10km distant from the worksite. In such cases, what will the productivity of such work be?

But for those who really ask for forgiveness, all you need to do is release them instead of making them serve their sentences close to where I live.

Accounts 2 – Prisoners

We have received explanations and that is a good thing;

We have appreciated this alternative to prison; Community Service is to be supported.

But there will be people who will be unable to do it, especially the elderly, the sick, the women and in short, all vulnerable people;

Will Community Service orders take the detainees' skills into consideration?

Are services (doctors, teachers...) also provided for?

Proposal: a detainee who is a doctor or a teacher could work 2 to 3 days as part of his sentence and the remaining days as paid work to help his family... This would be a way of achieving reconciliation.

Concern: In the case of a survivor who is afraid of living near a detainee of the 2nd category, who is provisionally released in order to carry out CS orders, what will the State do if there are a lot of them and they persist in this attitude?

On the issue of the survivors' concern about living with the criminals: it may be well founded (...) but there are concerns on both sides and that raises the issue of forgiveness...

To respond to these fears it is necessary to raise the awareness of the population in general, especially of the survivors and prisoners. Raising awareness regarding the Gacaca jurisdictions has commenced, although still insufficient, but not for Community Service. Especially because the concept of "work as punishment" was well known during the colonial time as "forced labour" and also has close associations with the notion of the ancient Rwandan exploitive "*ubuhake*" patron-client relationship²⁸, it makes a thorough explanation of what Community Service is an absolute necessity.

Considerable concern has been expressed that although the Gacaca courts will soon start functioning, almost nothing has been done in relation to Community Service. Imagine that the Gacaca courts start functioning and that sentenced prisoners would opt to perform voluntary work for the benefit of the community during a number of hours determined by the Gacaca court, instead of going to prison. If some pre-conditions are not fulfilled and if the Community Service scheme is not ready, this could lead to a failure of the Gacaca programme²⁹ by generating tremendous distrust within the population who could then refuse to participate honestly and sincerely.

Many institutions will probably need extra investments in order to be able to integrate a person in such a way that the man or woman serving a Community Service order can do useful work on behalf of the community. If it is not properly implemented and there is nothing for him or her to do in such an institution, the placement could be seen as a very soft option, as a kind of hidden amnesty.

²⁸ See about the development of the *ubuhake* relationship in time: Newbury, Catherine: "The Cohesion of Oppression. Clientship and Ethnicity in Rwanda, 1860-1960"; New York, CUP 1988 and Vansina, Jan: "Le Rwanda ancien. Le royaume nyiginya »; Paris: Karthala, 2001.

²⁹ See a letter of PRI (of 1/02/2001) to the Minister of Justice.

If the institutions hosting an individual subject to a Community Service order were not yet ready to receive them, these persons would probably have to return to prison, which would, inevitably create a very negative initial impression of the Gacaca programme.

Setting up Community Service³⁰ will give rise to several questions, as indicated above, that must be carefully examined and resolved. If all precautions are not taken in order to acknowledge the needs and feelings of the victims and their families, this mechanism could become counter-productive, at least in some aspects. Furthermore, the number of people potentially involved, the extension of the process over several years, the potential length of sentences and the very short delay before the first sentences are pronounced contribute towards making this a very particular and complex problem.

The aspect of security should be discussed in depth by the Ministries responsible for the national police and the local defence force, respectively the Ministry of the Interior and the Ministry of Local Administration. This does not only apply to the situation outside prisons, but also inside the prisons for which the Ministry of the Interior has a big responsibility.

The anxiety for the future among the Tutsi population in general and the genocide survivors in particular translates itself in a strong feeling of insecurity among this population group, especially amidst the most vulnerable such as women and elderly people:

Accounts – Survivors and their relatives

Now we just manage to scrape by and in an atmosphere of insecurity... we are disliked, ... nobody listens to us.

The Tutsis are very few in number within the population as a whole and we are afraid of them.

The principal authorities have been elected by the mass composed mostly of Hutus. There is, for example, only one Tutsi in authority among all the people recently elected ...

A judge who is a survivor will feel insecure.

People who will act as witnesses must receive protection to safeguard their security.

It is said that people's security is provided for during the Gacaca proceedings. If this consists of the « local defence », they cannot be trusted;

The « local defence » may also be accused, as they are the children of the criminals who are in prison or outside it.

We are elderly people scattered about here and there, without any strength to defend ourselves...

There are people who have spent many years in prison, but are innocent. They were arrested as a result of false testimony (...) Don't you think that the innocent people we have charged may resent us and even wish to harm us?

2.1.3. The lack of sufficient awareness-raising among the population

Although it is our opinion that the acceptance and success of the Gacaca courts will depend in large part on the level of awareness about and knowledge of the Gacaca jurisdictions, the information among the population in general, the detainees and the genocide survivors about

³⁰ See PRI's "Report on Community Service in Rwanda", Kigali/Paris, April 2001. It showed that besides the Ministries that will be involved in the Community Service programme, various organisations are willing to play a role in such a Community Service programme, but without the adoption and publication of the Community Service decree, few persons or organisations are willing to start something in practice.

these jurisdictions continues to remain insufficient, despite related discussions spanning two years or more.

While many people had been well aware of the coming of the Gacaca Jurisdictions, accurate knowledge (period May-July 2001) about the Gacaca law (which had been passed some months earlier) was very limited: there was limited awareness of the categorisation of crimes and the sentences for these crimes; little was understood of the “confession and guilty plea” provision of this law, and nobody had any idea about a “community service order” as an alternative to a prison sentence. These findings agree with those of others³¹, although ours seemed even less positive, partly it is assumed, because our study was conducted among the rural population of Gitarama with a low level of education.

Although generally speaking the Gacaca jurisdictions were considered positively, in part because it was seen as a Government decision one couldn't change and partly because, everybody agrees that the classical justice process takes too much time, there nonetheless existed a high degree of misinformation, mistrust, doubt and disinterest in Gacaca as a whole. It was with both interest and concern that our research also indicated that the acquisition of more knowledge about the Gacaca process didn't lead to a more positive attitude towards Gacaca. On the contrary, those who knew more about it believed less in the Gacaca jurisdictions than others³², raising fundamental questions regarding the future development of awareness-raising initiatives.

Most surveys to date have not asked questions on the ethnic identity of the respondents or have not included this factor in their analysis of the results³³. But because the perception of the population has everything to do with their ethnic identity and their experiences during the genocide, we decided to take this factor, amongst others, into account in PRI's own research design³⁴.

Some of the observations made and fears and concerns expressed by both Tutsi and Hutu groups about the Gacaca jurisdictions included:

Accounts 1 – Survivors and others

We are not against it being held, but the *Gacaca* project is taking too long;

The *Gacaca* is being held to minimise the genocide. Because *Gacaca* was for minor offences, such as theft, libel...

(...) It is well known that this is manipulation by the State, as a means to obtain money from foreign governments (...) All those who have a big belly work in the *Gacaca* jurisdiction (...).

We wish that these people who killed our people should be kept in prison and released later.

The sentences passed by the *Gacaca* are very light... those people will be released too soon.

³¹ Centre de Gestion des Conflits, Ministry of Justice & John Hopkins University: "Perceptions about the gacaca law in Rwanda : evidence from a multi-method study"; Kigali, April 2001 and Schotsmans Martien: "A l'écoute des rescapés. Recherche sur la perception par les rescapés de leur situation actuelle » ; Kigali : GTZ, December 2000.

³² See note n°32

³³ The publication mentioned in note (33) didn't address this question and although the Liprodhor study did, it didn't use these data for its analysis: Liprodhor: "Juridictions Gacaca au Rwanda. Résultats de la recherche sur les attitudes et opinions de la population rwandaise" ; Kigali, 2000.

³⁴ For a discussion about the “ethnicity question” see below.

What is the *Gacaca* for? ... It has already been held, given that the prisoners are walking free outside.

When they return to live among us they could exterminate us!

We, the survivors, were hidden and we didn't see anything. The people in prison know the situation very well. We hope they will tell the truth, but what if they don't...?

The Hutus who remained in the hills during the genocide should be interrogated, as they know very well who killed our people. We do not believe what the survivors say. (...) The survivors can only indicate clues during the interrogations. It is the group of criminals who must tell the truth.

It is the State that prepared the *Gacaca* just as it is the State that prepared the genocide;

Women receive no help to speak about the problem of rape...

If the detainees were presented to the population, what would happen if the number of survivors in the hills were tiny compared with the large number of detainees' family members?

Do you think that someone could denounce their child, their friend or brother-in-law? There is reason to feel uneasy about this possibility.

Some people were killed in other villages; how will the criminals be known?

We see the detainees go out, as we live very close to the place where they pass by. You ask some of them to tell you who did it [killed]; they will answer that it was the people of Byumba. But in that case, who killed my children while they were together with yours? And my cows, who separated them from yours in order to kill them?

When a detainee is released he may come and persuade the others outside prison not to say anything. We who are alone, who will support us?

When the *Gacaca* takes place, the files of those people should be brought and read out before the population. They will be able to denounce each other as they have already done when their files were being prepared.

Accounts 2 – Prisoners

The process that has been started is good in itself but it should be accelerated so that people have more self-confidence;

The schedule for the *Gacaca* project should be respected;

We hope that *Gacaca* will take place without delay;

Trust in the *Gacaca* project: the *Gacaca* will allow them to take a position, i.e., either a release or to know how many years of prison they will get after trials are held;

Woman: she does not know the advantages provided for in the law on the *Gacaca*, but she hopes that these courts will change the situation (long term detention) experienced up to date;

One should promote the success of this project (*Gacaca*) to all the different social classes, as also to the survivors;

Concern: people may think that they should give testimony to accuse rather than discharge the detainees;

Concern: he is afraid that a group of intimidators [survivors] may be formed;

Concern: the advantages of the *Gacaca* project may be sabotaged, even by the authorities with bad intentions;

The State does not respect the rule of law; it is guided by feelings. It is the State of a small group: the survivors...

Current justice leans too far to the side of the survivors, which leads to impunity for them. As long as this continues, not much can be expected from this justice (*Gacaca*);

How would the international community intervene if there were « imperfections » in the defence of the detainees' rights?

Why has the duration of the genocide been extended? It is said that the genocide started on 1/10/90 ending on 31/12/94. Why not at the end of June 1994?

The *Gacaca* will not succeed if we do not consider that the genocide started with the entrance of the forces of the FPR in 1990 and after their victory in 1994. The latter should also be considered genocide killers as they exterminated the Hutus en masse.

Women: the *Gacaca* is taking a long time; it is not obvious that the truth will prevail; will there not be intimidation...? The *Gacaca* could well separate the guilty from their descendants or everybody will be punished for a crime committed by a single person (issue of complicity); we are arrested for the crimes of our children or husbands (issue of individual or collective responsibility); the difference between genocide and plain killing is not clear.

Will the detainees be able to defend themselves?

From the consistent responses recorded within our research process during the concerned period, it is clear that the Tutsi population interviewed (genocide survivors and returnees) - although they didn't say that they were actually against the *Gacaca* jurisdiction - didn't believe very much in its potential or claimed "benefices". They blame the old regime for organising the genocide and now criticise the Government "for liberating dangerous criminals who should remain in prison". They doubt if the truth will come out because the few survivors didn't see very much which they could present as evidence and they question the willingness of the detainees and their families to speak out. They reported overwhelmingly that they felt very insecure and abandoned by everybody, even by their own organisations such as Ibuka.

The remaining population (especially the detainees and their families) is much more positive: the *Gacaca* courts can accelerate the trials, release the innocents (the majority, according to them) and punish the real criminals. But they also have many doubts about the role of the State and the fairness of the trials. They complain about the slowness of the process and the lack of efforts aimed at awareness-raising.

The only source of information for the population of the rural areas of Gitarama, Butare and Umutara has been until now the radio, which makes people aware that *Gacaca* will start "one of these days", leading to considerable scepticism and at best³⁵ only marginal improvements in knowledge regarding the initiative. Although the *Gacaca* courts were regularly mentioned at meetings and by local authorities, this was always done in a very general way ("it is good..."), without much further explanation.

Efforts by departments responsible for the awareness campaigns on the *Gacaca* courts evidently missed their goal in this aspect and one can doubt if awareness raising through discussions with the population has been allocated a sufficiently high priority to date on this basis. Many so called awareness programs in Rwanda are organised from a top-down perspective and have more characteristics of dictating *Gacaca*³⁶ than of sensitising the audience via open dialogue or interactive approaches.

³⁵ For example when the radio mentioned that the Minister of Justice, who had been present during a presentation of detainees without files to the population of a commune in Cyangugu to find out who were guilty and who were innocent, intervened by having arrested some persons on the spot who were pointed out, during this meeting as accomplices in crime who were still in liberty.

³⁶ The fact that during the last months, hundreds of young people (most of them unemployed) were more or less picked up, against their will, to undergo in 'solidarity' camps a kind of 'Gacaca training' for some months, underlines this point.

2.2. *The pre-Gacaca*

2.2.1. “Presentations” of detainees to the population³⁷

The PRI research team assisted at and participated in several presentations of the detainees to the population, which constitute the 2nd phase of a project of the Prosecutor’s Office, assisted by the NGO Citizens Network (RCN). During the first phase 20 000 dossiers were identified, revised, completed or produced, which officialized the legal situation of many³⁸ detainees previously without files or incomplete files. Although about 18 000 of these dossiers still need some further investigation, this is really a great success and it shows, that using this method, it would be possible to accelerate the preliminary investigations considerably and to complete the dossiers of all Rwandan remand prisoners in about two years!³⁹

During the second phase, of the 1 800 detainees out of 20 000 against whom there was no or insufficient evidence that they had participated in the genocide (including some of other groups, such as 4th Category detainees, minors and elderly people), 800 have been presented to the population. Of those about 200 were released conditionally and the others (about 600) went back to prison to appear in 2002 before the *Gacaca* courts. Although this is a small number, it helps us to gain insight into the functioning of the “real” *Gacaca* processes and the eventual problems, which could take place. The general population didn’t participate to a significant degree, although better in some districts than in others, and always less in the beginning than later on. For a detailed description of one of the first presentations that took place, see Annex 2.

The introductions (in Kinyarwanda) at these presentations by the “*Procureur*” (PG) and his assistants were very important, because often for the first time the general population and the prisoners were exposed to a long and thorough explanation about *Gacaca* and its preparations, presented in the context of Rwanda’s recent history and given in a very accessible and entertaining way (Ntongwe/Gitarama May 2001):

Recording – translation from Kinyarwanda

P.G.: In 1994 Kinani [Habyarimana’s nickname] was killed in an aeroplane by unknown people (...). The extremists used this as a pretext to achieve their evil purpose of extermination. Thus, people such as Bagosora and Nahimana Ferdinand, whose names you often heard on the radio, and other Northern people, became famous. They decided to set up the Banyenduga Government in order to manipulate them more easily. They set up SINDIKUBWABO as President. It is he who had the Tutsis in Butare decimated, am I lying? He mobilised the best killers, up to about 20 [of April 1994] something, when he arrived in Butare. Many of you heard him on the radio when he said « Hey, people of Ndora, what are you waiting for to get started? ». They went off with the Presidential Guard of Habyarimana. They terrorised people. Anybody who was afraid of killing was killed himself on the 21st of April. These events took place here in Ntongwe, remember? The whole formal funeral procession passed by here. The funeral procession for the body of Habyarimana passed by on this road. You saw it, didn’t you? Is it not here that the killings started two days after the funeral procession? Is it not here that people were killed only because of their facial appearance, shooting them without even knowing if they were Tutsis?

- Yes, we saw that! said a farmer.

³⁷ See : Klaas de Jonge: « The “Pre-Gacaca” research », PRI, Kigali, February 2001.

³⁸ So many, that the official statistics are treated as highly confidential, as almost secret, which probably means that the percentage of detainees without dossier (prisoners who had never met an OMP/ « *Officier du Ministère Public* ») must have been embarrassing high.

³⁹ See: RCN: « Projet AID-PJG – Résultats cumulatifs (Du 19 mars au 21 septembre 2001) », Kigali, Sept. 2001.

And the interahamwe of this region were supported by giving them large sums of money and telling them to continue their work. Did not Bagosora pass by here? Here, on this self-same road? A bad fruit was sown among you and then they left. Now they are in Europe, in America and who knows where else. You were deceived, you killed each other. Rwandans themselves destroyed their own country, but everything comes to an end. Everybody who killed thought that it would end this way without any further consequences.

Our country has always been known for impunity. People have been killed from the 1960s until 1973. If one killed a Tutsi, it was considered normal. From 1973 until 1990, yes, it was normal. From 1973 until 1990, if it was a Tutsi or a Munyenduga, it was normal. Do you understand that? Do you? I would like to tell you, Rwandans, my fellow countrymen and women, that those times of impunity are gone. The aim of this meeting today is to reveal the truth. Lies and intrigues are out of fashion.

The discussion itself of the cases of some group of detainees also gave some ideas as what to expect during the real Gacaca procedures (Case of detainee without much in his file):

Recording – translated from Kinyarwanda

P.G.: Those two girls in the back, come here. Those two ladies. Those over there. Sit down. There is a man wearing a jacket, you too come here. Those who are accusing please come here and those who are acquitting also (...). Is it only of genocide that you can speak? It is extraordinary that you know that man over there and he does not deny it.

Let me tell you something, given that I know how curious Rwandans are, I know what happened here. Why are you interested in your neighbour when everything goes well, but in his misfortune you ignore him? Do you know him?

- No

P.G.: He was never known, he never appeared during the war that lasted – how many months? Before the arrest of Ntungura and the flight of the people to Save, did you not know him? But why is it nobody has mentioned the Burundians? Don't you know what harm they inflicted here?

- What I know is that he had just learned how to use a rifle, it was Saturday; I learned from the children in the house who were fleeing that they had met him in Shyira, but he did not kill them. He came to us and asked: Where are the children of Nyiragihanga and Nyiramitubu? People started fleeing on Saturday.

P.G.: He worked with an agronomist from Mukunguri, the older brother and younger brother of Alfred, called Jacques. It was he who rallied the public in the meetings of the CDR [political party of the Hutu extremist group: Coalition pour la Démocratie et la République (Coalition for Democracy and the Republic)]. And so nobody knew this although these meetings were held in plain daylight? We all knew it; I was also at Mukombozi (partisan and/or militant of the Social Democratic Party - PSD). Do you hear me? Let me tell you openly, I promoted the ideals of the PSD a great deal and I do it even now, it is my right!

[The P.G. would like to make people understand that to participate in political parties is not a crime per se, and that he too campaigned and continues campaigning for his party, PSD. But in this he contradicts the Government, which is trying to keep people from campaigning during this period of transition.]

- Another time when we fled, I found him at the roadblock of Nyamukumba. As we arrived in the village, they shot at us and chased us away.

P.G.: He was at the roadblock of Nyamukumba, and you did not know it? You were the President of the CDR. aah-fff [he laughs loudly] Come here, yes, at least you.

- What I know of him is not a lie, in any case it is said that we are good friends.

- Yes, that's true [some women confirm it]

- I know that he carried this rifle, I saw him pass on the road in front of my house and he carried the gun.

P.G.: Do you know that man? He is a survivor.

- Yes, I am a survivor.

P.G.: Do you have anything against this man? He carried a gun at the roadblock. As President of the CDR he chaired meetings everywhere that you mentioned.

- When he was President of the CDR.... [The P.G. interrupts him.]

P.G.: And you, are you also a survivor? You were incriminated with that man.

- Nothing.

P.G.: Those who are not survivors and who do not have charges to bring against him, where are they? Do they remain silent? Does that mean that even here in Ntongwe, there may be a problem between the survivors and those who are not survivors? How will you live together as neighbours?

- When he returned from the course on how to use the rifle, it was Saturday, he was in a white Daihatsu, and he carried it openly. He was in the company of a soldier.

P.G.: He was with a soldier, do you hear me? We will tell you, but you know more than we do. That mother laughing over there. Tell us, come on tell us. I am listening. Those who know something about him, does everybody accuse him? Do you accuse him? Go and register over there. If there is nothing else, then he should go back there. According to your testimonies, he is not discharged, then he should return there [to prison]. We shall consider his case and see what is to be done. That is the procedure. After that we hand the dossier over to the Gacaca and then the trial will be yours. How long will you remain silent? You are doing your children a disservice and yourselves too. Emmanuel, [2x] you know how to read, don't you? You know the law. Do you? I urge you to respect it in practice/ You will thus show yourself to be better than them.

Emmanuel goes back to prison and will have to wait until the Gacaca starts. The "Procureur" advises him to confess and goes on (Case of a detainee who confessed) :

Recording

Attention, attention! This man is called Sylvestre, Kayenzi Sector, Kayenzi Cell, who knows him? Look around you beginning from below. Let those who know him put up their hands. OK. Come here, up close. Do you know him? Do you all know him? Do you mean to say you don't know him when he hails from Nyabitare? Do you know anything about him? Come here. Do you know anything? Is there anybody who will discharge him? Somebody at least to accuse him? You are really strange. I am really curious about this Gacaca. Do you accuse him?

- Yes

P.G.: What do you accuse him of?

- I accuse him of the death of my husband.

P.G.: Did you lodge a complaint at the Public Prosecutor's Office?

- No

P.G.: Go now and lodge a complaint at the Public Prosecutor's Office that he killed your husband. What was his name?

- He was called Emmanuel Kalisa.

P.G.: Do you accept this charge?

- Yes

P.G.: You have never lodged a complaint at the Public Prosecutor's Office. We are ready to deal with your complaints but you never lodged one. That is a mistake. You should come and complain. Who else? What do you charge him with?

- I charge him with being co-author in the death of Kalisa

P.G.: OK . You too? With whose death do you charge him?

- I charge him with the death of all my brothers. He exterminated them.

P.G.: How many were there?

- One was called Pascal Habiyambere, the other Kanani Frédéric, and he then killed six children of Pascasie.

P.G.: Are you in agreement with all that they have said?

- Yes, I agree.

P.G.: Can you tell us their names?

- I no longer remember their names, but I agree.

P.G.: Is there anyone else who would like to charge him with something other than what has been mentioned? Apart from the survivors, is nobody else going to charge him? Who are his neighbours from his cell? Those of the Kayenzi Cell? Where are you? Put up your hands (...). I would like to put it to you that you are very far from saying the truth. This man was brave. He has recognized his crimes and pleaded guilty. All those we have mentioned, he has already recognized them and has begged for forgiveness, you understand. Do you want to protect him by remaining silent when he himself has acknowledged his crimes? Do you understand that? Next year he will return. He will have served half his sentence, which has in any case been exceeded, as he pleaded guilty before anybody charged him. When was he arrested? In 96, so he has just completed five years and more in prison. You understand that he has served more than half his sentence. When the Gacaca starts next year, let us tell those present here, this man will return home. If he begs for your forgiveness, will you grant it? *[Shouts of displeasure and the P.G. laughs ironically]*. Whether you like it or not, it is the law of the country [he laughs louder], let them shout and go back to your place. *[He is still laughing]*.

So, I who no longer have my relatives, what will you tell me? But I must say it to free myself. We must bequeath our children with new fruit. So you will go on thinking about it, and murmuring nananaaaa *[murmurs of grief]* and your sperm will produce children who will produce children who will say nananaaaa. Whether you want to or not, you must bequeath your children with a good education, good fruit. Although we have suffered, although we have lost all our people, we must not do everything in our power to make others suffer, don't you agree? Free yourselves. I have already been freed. You cannot bring the dead back to life. But this one is one of the brave persons whom we should introduce to you because there are some who do not want to plead guilty, in the hope that you will protect them and discharge them. But he has recognized his crimes. At the Gacaca they will be discharged, do you understand? But when everything is done here, in the presence of everybody, it is a sign that the Gacaca is already done. He has confessed, he has pleaded guilty, nothing more will be said further than what has been revealed here, it will not be proven anywhere else. As for saying that you will not forgive him or that you will not do this or that, that is very bad. Whether you like it or not, the law is the law and the country is the country. It will be rebuilt, don't you agree? Well, what now? We will get used to it; we shall begin to live. That is the law. If he had not confessed, he would be imprisoned for life, but he did admit his crime. The law is the law. Be kind, it is his right. (...)

PGs discourse shows that he tries to sensitise and inform the population in a broader way : for example about AIDS - see below - although it isn't true what he said, that AIDS is less prevalent in prisons than elsewhere. Sometimes certain groups were shocked, like when he said, laughing, that this murderer who confessed was a very brave man and that he would be released whether they agree or not....

The last example concerns the case of a young woman who was released (provisionally) the next day. The PG stresses the fact that the perpetrator of a crime is responsible for it and not his or her family members.

Enregistrement

P.G.: Florence. What is your date of birth? Why are you afraid?

- I am 25 years old.

P.G.: What sector are you from, what cell?

- Nyakabungo sector, Byimana cell.

P.G.: All of you from the Byimana cell, do you not know Florence? Put up your hands! Do you know anything about her? Nothing! Who are the survivors of Nyakabungo and of her cell? Have they all been killed? And those who charged her formerly, have they been decimated? It is high time to tell the truth! You, old lady, you are probably a monitor, or you have been one. Are you a neighbour of this girl Florence?

- I know her. She is innocent.

P.G.: Let your declarations and your identification be recorded. You there, the man with glasses, are you this girl's neighbour? The other one, who knows her? You, old man, it is you I want.

- I know her but we are in different cells.

P.G.: What is your relationship to her?

- She is the daughter of that woman.

P.G.: I know, everybody is responsible for his or her own actions. Do you know anything about her? Do you not know anything else about her?

- No.

P.G.: Criminal offences are personal. One is not responsible for the crimes committed by one's parents, nor by one's children. Do you know anything concerning her? Do you know how she behaved during the war?

- No, we are not neighbours.

P.G.: Who are the neighbours who know her? Do you know anything about her? How did she behave during the war? No, nothing. That woman in red, or rather young man, do you know anything?

- Nothing. [Laughing all round].

P.G.: How long have you been in prison?

- About 7 years.

P.G.: She will soon have spent 7 years in prison. She has been lucky because she has been protected from the pandemic, AIDS! Do not hesitate to take her as your bride! There is really a condom called « Prudence ». Unfortunately, I don't have one on me; otherwise I could give it to you. Nothing is easier than getting hold of one! An accident is never foreseeable, but it happens.

This child, do you know her?

- No, we don't know her.

P.G.: In the dossier in our possession, it is alleged that she is responsible for the death of two children: BATAMURIZA and MUTETERI. It would be the same as if we equated her acts with those of her mother. She is allegedly her mother's accomplice in betraying and assassinating people. Is this true? Do you agree? [No reply]. When we asked the OMP who carried out the inquiry, he answered that the accused pleaded not guilty, that he himself does not have any evidence, and that this would require further inquiries. It is you who will have to make the inquiry and come up with evidence. Do you know anything about her? No! Nothing! And you, the survivors, what do you say about it? Nothing. Responsibility for a crime is personal. Anyone who has new evidence against her may give it to us. Current law forbids us to hold this child in prison for a long time without a valid reason. We shall release her provisionally until we have evidence, as the offence of genocide never lapses. Therefore, this child will return home tomorrow morning [*Loud and prolonged applause*].

Although the way the meeting in Ntongwe (Gitarama) was organised and the various groups responded wasn't always appreciated by the public and raised many questions :

Accounts 1 – Survivors and exile returnees

Testimonies for discharge (neighbours, etc.) were more numerous than testimonies of accusation (survivors).

We should not be made to take exclusive responsibility for judging the killers as we were in hiding.

Presentations were made while the surviving children were at school (...), whereas these children should be giving testimonies. They were thus unable to see the presentations and as some of the detainees had no witnesses to charge them, they were freed. What will be done?

Releases made at the time of the presentations do not prove the innocence of those concerned. Some people are presented when their victims are absent and the public prosecutor is happy to release them, but you should know that this gives rise to conflicts.

Those who are not survivors do not want to say what they have seen or even done.

The survivors must go themselves seek evidence.

The Hutus did not want to denounce them.

How can a single individual determine the release of all the accused?

Those who are not survivors did not want to speak because it was the first time.

The Hutus did not want to denounce someone although he had confessed (the P.G. blamed the people).

The people attribute all the crimes to the people in the East: Kibungu, Bugesera

Rape was not discussed.

Against the release of detainees who have killed (detainee who confessed); finds it impossible to forgive him.

Even if he confessed, he should remain in prison.

The presentation started late. It made people wait too long.

The presence of all the population concerned should be mandatory (survivor: absolutely necessary...).

The people were not divided by sector, but mixed: there was a tendency for one to hide behind the other and whisper (suggestion: the people should be grouped by their sector of origin).

The first trial procedure was disorderly.

The local authorities did not accord sufficient importance to this operation.

There was no awareness-raising about participation (lack of awareness-raising).

Accounts 2 – Relatives of prisoners and prisoners

Some of the survivors joined forces to accuse the prisoners who had no file.

Why do they want us to accuse somebody and do not accept that we acquit people with whom we have family relations?

How can a single individual accuse all the prisoners brought before the public?

How can one understand that a person only remembers to accuse an individual after 7 years in prison?

This procedure is clear and brings us hope that the *Gacaca* trials will be successful.

Some women were accused of complicity and of having shown the gangs of killers where people were hiding.

Members of the prisoners' families were unable to give testimony, although they did express their desire to do so, and they are unhappy about it.

The survivors bring accusations against whole families, especially when there is an *interahamwe* in the family.

Later a new element was introduced during these presentations which, on occasion, seems also to improve the number of confessions, as well as the participation of the population. That is that groups of religious detainees (mostly members of one of the many protestant sects) who claim to

have confessed for reasons of faith try to appeal the audience to do the same. They dance with bibles in their hands and sing about God and Heaven, but also about the necessity to tell the truth and to rebuild the country. In public they tell about the crimes they have committed and they ask the population for forgiveness. They are called the “*groupes de choc*”, because they also give recalcitrant detainees who are presented, but not released, an ‘*injection*’, a pep talk to confess. Although a personal initiative of the quite impressive prosecutor, the Government seems to accept this innovation, which is remarkable, given the often-difficult relationship between the relative secular state and the various religious denominations⁴⁰.

2.2.2. Confession Procedure & Guilt Plea

The data presented here have been collected in prisons among prisoners and during pre-Gacaca sessions. However, they give an idea of what could happen during the Gacaca sessions if the incentive and accompanying measures are not revised.

Detainees who wanted to apply for the confession procedure and to plead guilty in order to benefit from a reduced sentence were able to do so. Confessions were accepted from 2 600 detainees out of 20 000 who took this opportunity during the research period. The above also shows however that the number of complete confessions among detainees remains very low⁴¹ (13%), which has to be related to the generally insufficient levels of confidence in the procedure. Nevertheless, the number of people who confess is still rising and will probably continue to do so, if the detainees see that some who have already confessed have been released by the *Gacaca* courts much earlier than others in the same situation who are not involved in the procedure.

Most detainees often start making only partial confessions (if they know there is evidence available) or for minor crimes. Some seem to have organised themselves in such a way - and they have had years and years to plan this - that they try to present consistent testimonies, tending to spare other prisoners and others (family members, friends and powerful persons or those with means) and to accuse individuals who have died, are outside the country or/and they blame those accomplices who managed to remain at liberty in order to let them “take the rap”.

Confession Procedure & guilt plea

Respondent groups and individuals reflected the consistent impression that the population in general doesn’t know much about the confession procedure, with exception of many male detainees and some of the genocide survivors. Women detainees don’t know much about this procedure as well. They seem to consider it as something that applies only to male detainees. They don’t seem to know that the sentence for accomplices in murder (as is often their case) falls under the same category as the person admitting or convicted of murder. Although this is indeed the case according to the law (the Gacaca law, as well as the genocide law), in practice, whenever applied, the judges of the classic courts seem to be more lenient towards female defendants than towards men. Whether the same will apply at the Gacaca tribunals has still to be seen.

Accounts 1 – Genocide survivors and exile returnees

⁴⁰ Probably because of the failure of the senior leadership of (especially) the Catholic Church to condemn the genocide, the Government is worried for example about the (more traditional oriented) Gacaca meetings organised since 1996 by some priests to reconcile its believers. This attitude seems to have changed.

⁴¹ However one has to bear in mind that even a small number of detainees who confess, can indicate a much larger number of accessories: in Kigali Central Prison/PCK 278 detainees, mentioned the names of 1941 perpetrators (themselves included) presumed to be responsible for the killing of 3700 persons during the genocide (see table 1).

Individual interviews and focus group discussions (FGD)

If he begs for forgiveness, we may grant it, but that depends on each individual...

We contest this system of confessions that encourages criminals to confess in order to receive a reduced sentence. 7 years is nothing for someone who has killed and I believe all of them will confess in order to obtain their release.

They refuse (the confessions) because they are jointly implicated in the murder or the crime, they are accomplices; the files will help to identify other criminals.

The detainees who are real murderers prevent the others from making confessions;

When they are together they tell each other the truth and denounce each other;

Why this pardon? (...) The fact that these people are still alive in prison means they have already been pardoned.

I do not want to forgive them; these criminals should be jailed;

Female survivor (very traumatised): if I had other concerns I would not hesitate to forgive them...

Accounts 2

Individual interviews and FGD, mainly with prisoners

We have received explanations about the advantages of confessing; for someone who has really committed an offence it is good to make a confession ...

Several people in this village (Runda) were killed by refugees coming from Kigali and Byumba, however none of them is in this prison;

Few confessions? Those who have accused them unfairly do not want them to be pardoned (Runda: 500 innocent people among 800 detainees...): we can't just invent a crime to make people happy...

If he confesses and denounces somebody, he will be disliked inside prison or by people on the outside;

Prisoners are discouraged because the State has still not done anything for those who have already confessed;

For someone who has spilt the blood of one or more persons it is difficult to confess; often Rwandans are (simply) afraid or they are afraid of saying things publicly;

To confess to a crime requires that one must overcome oneself. Confessions are an individual issue.

There will be no truth in the *Gacaca*, either for the Hutus or for the Tutsis.

The survivors are in a better position, they are always well understood and have the last word. However the remaining mass has no means of defence...

Some genocide survivors told us that they don't trust the Hutu population in general and the detainees in particular, which they view all having been willing executioners during the genocide or their accomplices, none of whom merit any mercy or pardon at this point. They also doubt their willingness or possibility to make full and genuine confessions. Other victims are willing to pardon those who give a frank and candid admission, especially if their own socio-economic could be improved.

Detainees are again much more positive about the confession procedure, but often refuse to accept any responsibility for the genocide ("we are innocent, so why confess") or mention various obstacles, excuses or mitigating factors.

The public presentations of prisoners without files to community groups at pre-Gacaca hearings show that the population in general hesitates to make accusations at such events and that genocide survivors often don't know with any accuracy what happened at first hand. So, in order

to know the truth much will depend on the witness statements of the prisoners themselves, and, above all, of the persons who have confessed

If the same were to occur during the meetings of the full Gacaca jurisdictions, it would mean that the success of the procedure itself would depend in a large scale on the number of offenders who confess and plead guilty. The reduction of the sentence (see Annex 1) and the possibility of commuting half to community service is the price to pay for knowing the truth and promoting reintegration and reconciliation between different groups of Rwandans.

In order to be accepted as a confession, declarations must contain:

- a) a detailed description of everything relating to the confessed offence;
- b) information relating to collaborators and accomplices,
- c) excuses given for the offences.

Although most male detainees (the ones in the prisons more than those in the “cachots”) are aware of the advantages of the confession procedure (a significant reduction in their sentences) the number of confessions made to date remains very low. For example not more than 11% of the detainees in the Central Prison of Gitarama have so far taken advantage of this possibility.

The reasons for this are as follows:

1. continuing lack of awareness of this procedure (especially among women);
2. hope that there will be no proof of the crimes committed;
3. innocence;
4. no improvement in the situation in custody of those who have already confessed (often even the contrary, see points 6 and 7);
5. the legal proceedings of those who confess often don't advance more quickly than those who don't;
6. distrust on the part of prisoners who believe that the authorities will change its promise to reduce the sentences after receiving the confessions (“it is just a trick”);
7. fear of informing on collaborators and accomplices who are still at large and of reactions amongst members of the community during the Gacaca proceedings;
8. social pressure and intimidation from other prisoners on the part of those who have confessed and members of their families outside prison.

As the start of the fully fledged Gacaca programme approaches, prisoners seem to be better informed about the confession procedure, but this has not been translated so far into a quick increase in the number of confessions themselves.

At the same time social pressure, threats (even death threats) and intimidation of those who have confessed (especially those who have confessed ‘everything’ and not only the offences that were already known) have considerably increased, as well as their marginalization within prisons and even from their families in home communities. This pressure will probably increase even more and could lead to increasing threats and worse consequences still to members of that category of prisoners.

Much more information about this procedure and the separation of those detainees who have confessed from other prisoners (especially of the hard liners) should therefore be introduced as quickly as possible. According to Mininter (responsible for the prisons), there is no money available in existing ministerial budgets to organise this, although they see its necessity⁴².

⁴² This was explicitly stated during two recent seminars for the staff of Mininter and for all prison directors, organised by PRI about Community Service and the confession procedure.

However, commitment to the success of Gacaca jurisdictions expressed so explicitly by the international community could be demonstrated in very concrete terms via their support of such measures.

2.3. Gacaca in prisons - statistics, rumours and fears :

In several prisons the detainees - encouraged by the authorities - started their own Gacaca. The prisoners formed committees who heard the confessions from the inmates. For example in Kigali Central Prison (PCK) the Gacaca commission heard, during the past three years, 1127 confessions from a total of about 8 000 inmates. The detainees organised themselves by geographical sector and confessed before the others of the same area.

Here follows a short description of a “Gacaca session” in a prison (Rilima Nov 2001) about the death of an unknown woman killed in a certain sector:

The detainee Gacaca judges - the so called committee “*urumuri*” (the Light) - were sitting in a small court inside the prison packed with people, under some shabby plastic sheeting. They would preside over the discussions. Gacaca security guards who were also detainees but recognisable by their bonnets, kept an eye on the crowd.

The president of *Urumuri* recalled the name of the cell where the weird woman had been shot dead and asked next if any fellow inmates from the immediate neighbourhood could say something about this murder.

One person reacted and the president asked him if he had seen anything. He said no, but he had heard the shooting and because he got frightened, he had run away, but while doing so, he had seen the woman’s body but not the perpetrators. He had been together with his younger brother and five neighbours, most of them now inmates of this same prison. One by one the Gacaca security guards fetched the person mentioned from their quarters elsewhere and brought them before the committee to testify. Afterwards some were sent back to their quarters:

Account

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One of the judges (J): Were you not on patrol in this place?

Interrogated Person (I): No

J: How do you know all this?

I: We heard the noise and we went out to look.
J: Was there anybody in your home who had guns?
I: I don't know. (pause) There was nobody.
J: Were there no neighbours near the place where this woman was killed?
I: Nobody was near the place.

Witness (T):

These people know everything, they are hiding the truth; I was with Ndagijimana. We were going to buy rice and in the place where they killed that lady we found people whose names I do not know, but some of whose faces I recognize...

He showed two among those who confessed to burying the lady and said he knew another one he sees in prison. Those who had been sent away at the beginning were recalled and he recognized one of them.

He pointed out the one who was holding the woman's identity card and explained that she was standing near them. He stated that after their arrival, a certain Kidibori came along, who was brought by somebody he did not know on a motorbike, and as he had a gun, he asked why the woman was not being killed and immediately shot her. He mentioned the name of another person who had been there, but as he was ill he was interrogated in bed and he confirmed everything that the witness had just said.

This investigation revealed - according to the Committee - the responsibility of the two brothers for the killing of the woman. Both denied any involvement and declared that they didn't know the perpetrators : the younger one had been near the house of his mother to guard her grazing goats and he had only met his older brother and friends when they were busy transporting the body of the woman.

After having gathered all the information concerning the death of this woman, everything said was written down and shown to the participants in order to check if each agreed with the way it had been recorded.

We asked the Gacaca committee of Kigali prison (PCK), which seemed the best organised of those we witnessed, to give us the complete results of their work for two "communes" about which the prisoners had given a lot of information regarding what had happened during the genocide: one urban commune Kacyiru, in 1994 consisting of 5 sectors and 23 cells, and a rural one Bicumbi with 15 sectors and 90 cells. The results were really amazing: 230 handwritten pages with tables and descriptions in French and also a version in Kinyarwanda (211 pages). They presented lists with names of persons originating from these communes who were killed (during the genocide as well as during the fighting between combatants) indicating where that had happened, lists of wounded , cases of rape which took place in these selected areas and lists with material damage caused.

Finally they listed the persons, as far as was known, who according to them had committed these crimes: the names of the killers; the groups they belonged to and their leaders; the names of minors who participated in the genocide; the place where the surviving perpetrators are now and names of individuals who could give additional information.

The lists of those suspected of these genocide crimes should certainly be used with a lot of caution. However, we think that the lists of events that happened (persons killed, wounded or raped and material damage inflicted per cellule and per sector) could be very helpful for the Gacaca judges at the cellule level, when they start drawing up their lists. We got the idea that the possibility of transferring this kind of data, compiled by the various Gacaca committees in the prisons, to the various cellules or sectors had not been foreseen, because of the presumed

unreliability of the data. Although certainly true for the lists of perpetrators, there is no reason to suppose that the same would be the case for the lists of events. A practical problem arises from the administrative reforms since 1994, which led to changes of names and borders of some sectors and communes.

Based on this data concerning the perpetrators, while acknowledging their lack of reliability, we can try to get some further insight. According to their statistics, from 814 persons incarcerated for genocide in the PCK and originating from rural Kigali (Bicumbi), only 278 (34%) would have participated in the killings in that area and the others would have committed other offences or are innocent.

Table 1: PCK data concerning killings in rural Kigali (Bicumbi):

<u>Victims:</u>		<u>Participants killings (genocide):</u> N		%
Victims of genocide:	3 700	<u>Detained:</u>	583	30
War casualties:	3 745	PCK (814 detainees from		
Other causes:	757	Bicumbi in total):	278	
<u>Total:</u>	8 202	Gikondo	141	
		Remera	150	
		Other prisons	14	
		<u>Deceased:</u>	398	20
		<u>At liberty:</u>	960	50
		Inside Rwanda	706	
		Outside Rwanda	92	
		Whereabouts unknown	162	
		<u>Total:</u>		100%
				(N= 1941)

If we try to extrapolate on the basis of the above data (a sample) presented by the Gacaca committee of the PCK, about one third of the genocide detainees participated in the killings and the remaining two thirds committed lesser offences or none, according to the detainees themselves.

If true, most of these remaining prisoners (Category 3 and 4) could be (conditionally) released during the Gacaca hearings: about 74,000 out of a total of 112,000 detainees and also that part of the Category-2 prisoners who confessed (say 28,000⁴³).

However, according to these statistics, many perpetrators who had killed during the genocide are still at liberty inside Rwanda and could be arrested during the Gacaca: about 46 000. One can imagine that many will try to leave the country to escape arrest, but Rwanda will still retain a huge prison population of about 60 000 [10 000 non-confessors + 46 000 new arrests + about 3 000 Category-1 people]. Even allowing for considerable variance or inaccuracy in these estimations, the number of Category-2 inmates could in reality be much higher and the number

⁴³ Nowadays, there seem to have been about 20 000 confessions, all probably made among category 2 detainees, which makes for the near future 28 000 confessions a reasonable estimate.

of perpetrators who are still in freedom, however this is however would not mean that the total number of inmates would be much lower, on the contrary.

According to other, less empirically-based estimates (from Government & NGO representatives) 70-80% of the inmates would probably fall under Category 2 (about 84 000 out of 112 000) of which at least a quarter, perhaps a third (28 000, see note-44) will confess. This means that about 56 000 of the 2nd Category detainees will have to remain in prison and with new arrests of those perpetrators still at liberty inside Rwanda (say 10-15 % of the actual prison population or at least 14 000) we can expect, after *Gacaca*, a prison population of about 73 000 [56 000 non-confessors + 14 000 new arrests + 3 000 Category 1 people]!

Some observations:

Estimations which project a total of between 60-70 000 detainees at the end of the *Gacaca* process would mean that the prisons would remain overpopulated, that the costs of the prison sector would remain very high and that the conditions in which the prisoners have to live would probably deteriorate further. The above estimation can vary considerably - in one direction or the other - if there were to be a big change in the number of confessions and/or in the number of arrests of those “*génocidaires*” still at liberty or if the Government were to develop alternative policies for these “newcomers”.

Big numbers of new detainees would continue to be a considerable burden, not only for the prison sector (Mininter), but also for the justice sector (Minijust).

This issue needs to be considered now. One way to deal with the “new genocide detainees” (at least for those from Category 2 who want to confess & those in Category 3) would be to look from the outset at alternatives for imprisonment would be proposed even before any imprisonment takes place: for example community service orders and/or a Rwandan version of the South African Truth and Reconciliation commission, perhaps even leading to some kind of general amnesty, although we do not favour this option.

Because of rumours about possible large-scale arrests during the *Gacaca* jurisdictions, the sense of insecurity and fear seems to have grown over the last six months of our research period, especially among the Hutu population in the countryside. But even amongst local and international NGOs speculation exists that new arrests could even reach a number of some five hundred thousands, which seems groundless to us.

These figures are to be considered with caution. They are only extrapolations based on data the reliability of which is not always established, or estimates based on the observation of the *Gacaca* preparation. However, it seems almost certain to us that the prison population will remain high during several more years. We therefore strongly advise to anticipate this issue, whether during sensitisation campaigns or within the government, in terms of budget and organisation.

2.4. The election of *Gacaca* judges in Rwanda

Our research found that before the election of the *Gacaca* judges both population groups stressed the fact that these judges should be persons of real integrity. Yet, both groups doubted each others impartiality.

Accounts 1 – Survivors and relatives

At the time of sentencing, a judge from the family of one of the detainees will tend to be partial, whereas a judge who is a survivor will feel unsafe.

Where will we find judges who are not closely related to one group or the other?

At the time of the elections, will there be a specific percentage of judges who are survivors?

Given that the family members of those who participated in the genocide are in the majority, I don't see what we can do in order to have judges who could defend us.

At the /, won't there be more Hutu than Tutsi judges? Will they not be biased towards the detainees who belong to their families?

There are communities where all the Tutsis have been killed and only Hutus are left. Who will give testimony to charge the detainees? Who will organise the elections? Who will be elected? Won't it be those who killed?

Accounts 2 - prisoners

There is concern about the choice of judges... there will be few so-called 'wise people' who could bring the Gacaca proceedings to a good outcome.

Capable judges will be found, but with the reservation that it is difficult to find a really wise man or a 100% impartial person.

As long as they are not paid, the work of the judges will not be effective (corruption) and justice will not be rendered.

As a rule, all the authorities are Tutsis and it is said that they are in charge of preparing the population to elect the judges.

How will they not corrupt this population, or even these judges? NGOs should supervise the elections of judges for the / so there is no corruption and no intrigue, as the outcome of the Gacaca depends a lot on the nature of the judges.

From 4-7 October 2001, the election of about 254 427 Gacaca judges took place, an important step in the setting up of 11,000 tribunals where over a hundred thousand detainees, suspected to have participated in the 1994 genocide will be tried.

Several journalists covered this event, and described very well the atmosphere of these days (see Annex 4).

However, the key issues raised by local respondents during our research exercise consistently questioned the acceptability of the electoral process to many ordinary Rwandans.

Our data derives from the work of a small PRI research team which observed a pilot-election in Kabagari district (Gitarama) that took place at the end of August, and later the election process itself in the urban districts of Kanombe, Kacyiru and Gikondo (Kigali town) and in the rural districts Kamonyi and Murambi in Gitarama and Umutara Respectively.

2.4.1. The election process

Like all the others we observed that on the first day of the elections (4/10) there was a massive turnout, although less so in the rural districts than in the urban ones. Although many participants certainly interpreted their "civic duty" to vote as an obligation to do so ("*il faut bien répondre à l'obligation de l'Etat*"), the ambiance of this first day was cheerful and relaxed. Nowhere were people herded or coerced to the places where the elections took place.

However, in many places in Kigali town, members of the "Local Defence Force" asked the population to close the shops and small markets. In others they stopped people who wanted to

leave the site of the elections (schools) before these were finished or they stopped bike-taxis leaving the quarter. But the use of physical violence was rarely reported.

However, had we observed this process only from the first day of the elections, we would have missed the impact of preparations that took place in the preceding period, such as the sensitisation campaign, but above all the work to make sure that certain persons would be presented as candidates for the elections on the lowest level, that of the cellule.

As mentioned previously, many of the so-called awareness programs were insufficient and often organised from top-down instead of sensitising the audience via discussions from both sides. In this case, the general sensitisation campaign started very late and was quite inadequate (at least - without exception - in all the districts where we did research) to mobilise the people and to make them understand the importance for all population groups to participate in the election of the Gacaca judges, especially in the countryside, but also in town. The massive participation was rather due to the fact that people thought they had an obligation to vote.

A particular misconception which our research frequently encountered was the persistent rumour that the judges would receive a salary and/or other important advantages. This certainly stimulated the interest of some candidates in becoming a judge, but could cause a backlash in the near future when this would prove not to be true.

As to be expected from the mutual distrust which we consistently noted, the lack of information about Gacaca sometimes led to quite narrow expectations from both population groups (genocide survivors and ex refugees from 1959 and 1973 who came back after the genocide on one hand, and the family of detainees and other Hutu who hadn't participated in the genocide on the other). The first group (and especially the Tutsi ex-refugees, who were often even more active than the *rescapés* themselves) participated very actively and tried to get as many representatives elected as possible, presumably to make the most out of their minority situation and also because they considered Gacaca as a way to arrest finally those criminals who are still at liberty. The second group participated, but was much less interested in being elected as judges partly for the same reason (afraid for new mass arrests) and also because they believed that just the same they wouldn't win - an attitude, which was also observed during the district elections of March 2001.

Only during the last week before the elections were awareness campaigns intensified considerably: by means of radio, television, newspapers and also by Ministers and parliamentarians during the October 1 celebrations (Patriotism Day). President Paul Kagame made a speech on the eve of the elections, appealing to voters to participate fully and again on the day itself. Women from Kigali marched through town with posters with the words "the truth heals", in support of the Gacaca courts and to encourage their "sisters" to participate in the elections. In the countryside some hastily organised meetings took place at cellule and sector level, which in general were not so well attended.

2.4.2. The preparation of the success: the *Nyumbakumi*

The main task to prepare the event was conferred upon the shoulders of the *Nyumbakumi*, the "Ten-House groups" and in particular on its leaders, who only one week before the elections started, had heard that they had an important role to play.⁴⁴ They had to pass from house to

⁴⁴ It is interesting to note that in a previous version (no date) of the election-law this role for the '*Nyumbakumi*' was not mentioned, but that voting was obligatory : "Le vote est obligatoire pour tout Rwandais (...)"(art. 5). This last article was dropped in later versions (26/06/01), but the role of the "*Nyumbakumi*" was now accentuated (art 38): « Chaque '*nyumbakumi*' désigne un nombre d'intègres au moins égal au nombre nécessaire devant être présenté par chaque '*nyumbakumi*' (...). Après

house in order to stimulate all eligible adults to participate and they had to draw up lists of “integer” members (“*Nyangamugayo*”) of their Ten-House groups who would be proposed as “people of integrity” on cellule level. These lists were handed over to responsible persons at the cell level, before the elections. Some *Nyumbakumi* proposed many candidates, others only a few, although overall, not much “election” activity took place at this level inside the Ten-House group.

On account of this, quite a few of the candidates were certain that they would be judges before the elections had started. People were very conscious of this controlled way of proceeding and some made quite vociferously critical remarks (such as: “*it looks like a play that we are performing here*”) - when the leaders of the Ten-House groups on election day mentioned the names of the “elected” *Nyangamugayo* to be put forward as candidates.

The voting system⁴⁵, like in most elections in Rwanda until now, was indirect. In the meeting of the General Assembly of the *cellule* (all the eligible people of that cell) the candidates selected by the Ten-House groups were presented to the public, who were asked to comment (is he or she a person of “integrity”, a real *nyangamugayo*?) or criticise. The public could also propose a candidate. What the criteria of integrity implies, we can deduce from some candidates –but not many- who were rejected for various reasons as drunkenness, immoral behaviour (adultery, prostitution), not paying debts, participation in looting during the genocide, being quarrelsome, beating his wife or being an “extremist”.

The elected candidates at cell level (about 28) were given a mandate to elect, this time in writing and in secret, the persons (5-10) to be sent to the Sector level, the Seat of the Gacaca jurisdiction of the cellule (19 members) and a Coordination Committee of 5 persons chosen among these 19. The same process was repeated at the higher levels of the sector, district and province.

From the results of these elections (especially in town), we noted that the candidates presented at the level of the cell were often persons who already hold certain functions at the level of the Ten-House group or at the committee of the cellule and who were already recognised as being “wise” men or women (“*Nyangamugayo*”) during the March 2001 elections of district counsellors.⁴⁶ In the light of these preparations, it was not surprising that the elections of the Gacaca judges at cell level then passed off quietly, in what might be seen as a disciplined and fair manner, which was, in itself, quite an achievement.

So, the poor sensitisation - especially in the rural areas - was more than compensated for by a mobilisation of the basic structures of the cell (the leaders of the Ten-House groups) and this policy turned out to work very well. However, with respect to the content of the process, among both the voters as well as the organisers at the lowest levels, the poor sensitisation led as a consequence - besides the points we already mentioned above - to some mistakes in the procedures followed : a lot of discussions (especially about drawing lots), consultations over procedures, of higher instances, the re-running of voting procedures and delays. The lack of microphones didn't make it easy for the responsible persons (representatives of the election commission and local authorities) to be heard by everybody. Materials for the elections, although sometimes arriving late, were more than sufficiently available everywhere.

But these were due only to practical problems and not to consequences of interference by the authorities, which behaved in general very well.

l'élection dans les '*nyumbakumi*', l'Assemblée Générale se réunit, les candidates choisis sont présentés (...).» Probably this was done to have a better guarantee of success and more control over the outcome.

⁴⁵ Cf Annex 5

⁴⁶ This could mean that – as in the case of these district elections (see, ICG: “Africa Report N°34”, 9 Oct. 2001) - the political control of the election process of Gacaca judges has also been quite effective.

2.4.3. The end of ethnicity and other divisions?

In his address to the nation, President Paul Kagame⁴⁷ called on Rwandans to elect, without discrimination, people who are honest, principled and hardworking and he asked specifically the women to participate fully in the Gacaca Courts. These courts should establish the truth about what happened, to expedite the backlog of the Genocide, to eradicate the culture of impunity and to consolidate the unity of the people. He also made an appeal to guard against what may lead to disagreements or divisions arising from the elections.

These were indeed, very important guidelines and words of encouragement. To what extent have these elections contributed to their realisation? It is too early for a full answer, but some early impressions were gained:

- In terms of attendance the elections were a success: according to “National Electoral Commission”⁴⁸ (NEC) 87 % of the Rwandan electorate participated;
- Although there was a high degree of participation of women (almost always they had the majority in the General Assembly of *cellule*) the statistics of the NEC show that relatively few women were nominated as judges, varying from a third at cell level to a fifth at the level of the province (see table below). This preponderance of male judges reflects incidentally the differences in literacy rates between men and women (especially among the population of 30 years and older⁴⁹) and the fact that many Rwandan women still seem to consider the task of a Gacaca judge more appropriate to men.

Women elected as judges (in %), and the level of education (both sexes combined) per administrative level.		
Administrative level	% Female judges	% Judges with primary school not completed or less
Cellule	35	44
Sector	23	35
District	26	5
Province	19	0

- Formal education was an important factor in selection at all levels. But even on the lowest administrative levels, those of the *cellule* and the sector, the majority of the judges had at least completed primary school. At the district and province level a high percentage of the judges had completed secondary education or higher (respectively 46 and 60%).

Concerning the professions of the elected judges: at the cell and sector level the majority of the judges were peasants (respectively 91 and 80%). At the district and province level the biggest category consisted of teachers and other state functionaries (respectively 48 and 68%).

⁴⁷ “The New Times” 8-10/10/2001 p.3

⁴⁸ See their statistics distributed during a GTZ meeting on 31/10/01.

⁴⁹ Department of Statistics : Rwanda Development Indicators N°3; Kigali: Ministry of Finance and Economic Planning, Kigali, July 2000 p. 267

If we see the combination of education & profession as an indication of social class we could consider the judges on the cellule and sector level to belong to the lower peasant class and the judges at district and province to the (lower) middle class.

It is clear that both sexes and all social classes participated in the elections of the Gacaca judges.

- Given the ‘consensual democracy’ model of this Government, it is important to see if the different population groups are presented and have the feeling that they indeed are represented in a fair way, especially because of the fears that were expressed during our research concerning the impartiality of the chosen judges, the ‘real’ objectives of Gacaca etcetera.

This is difficult, because of the absence of such data at national scale. But based on our limited case studies in Kigali town, Mutara and Gitarama we can observe that ethnicity also played an important role.

Case 1 : Kamonyi district (Gitarama)

Cellule N had 407 eligible persons of which 332 (82%) participated (majority women). The 8 Ten-House groups of this cell presented 108 candidates of which 7 refused and 13 were rejected. One of the leaders at cell level, who was also a representative of Ibuka, had reportedly gone around –before the elections started- to tell the *rescapés* that they should not vote for Hutus, because they wouldn’t be impartial judges with so many family members in prison.

Although there were some mistakes in the procedures and some delays, in overall terms everything went quite well. The Mayor passed by during each of the three days of the elections at the cell, sector and district level and tried to give some extra information about the elections and advice where necessary. She intervened immediately when she observed that a small group during the elections for the Gacaca jurisdictions in Taba started telling others not to vote for *rescapés*, a kind of campaigning, which was not allowed, but attempted everywhere (especially at the higher levels where people didn’t know each other well).

Chosen judges by sex, background (<i>rescapé</i>/ex-refugee) and administrative level				
Judges chosen per administrative level and by task	Female judges	Of which <i>rescapées</i> /ex refugees	Male judges	Of which <i>rescapés</i> / ex refugees
Cellule N (General Assembly: about 400)				
Sent to sector (8)	2	?	6	?
Seat (19)	5	1	14	2
Coordination Committee (5)	1	0	4	0
Sector R (General Assembly: about 56)				
Sent to district (3)	1	0	2	1
Seat (19)	5	1	14	2
Coordination Committee (5)	2	0	3	1
District K (General Assembly: about 56)				
Sent to Province (5)	1	0	4	1
Seat (19)	2	1	17	4
Coordination	0	0	5	2

Committee (5)				
Province Gitarama : <i>no data</i>				

Although some were not happy, many Rwandans who had participated declared they were quite satisfied with the results because all the sectors were presented, the Hutu had still a majority and the survivors and former refugees had 5 out of 19 judges at the District level, more than they had initially hoped for.

Ethnicity and experiences during the genocide played a role, but didn't seem to lead to more disagreement or division, on the contrary some of our respondents from both population groups cherished more hope than before.

But not everywhere did it go so well, as shown in the next case.

Case 2 : Murambi district (Umutara).

The district of Murambi seems - in this area - one of the most affected during the genocide. Many massacres took place and many perpetrators are detained in the prisons of Byumba.

As elsewhere, the awareness campaign started late and was insufficient according to our research finding. In Murambi the tension between the two main population groups and the feelings of insecurity were high on both sides. Few Hutu were willing to be candidates for the post of Gacaca judge for reasons already mentioned above. Cases of manipulation and lobbying to influence the process were mentioned, not only along ethnic lines but also according to the origin and/or political options (returnees from Uganda and Tanzania from 1959, mostly anglophones and supportive of the RPF, in majority Tutsis ; Hutus against survivors or other groups of the population, mostly Hutu and Francophone), or other criteria⁵⁰. Nonetheless, during the elections themselves everything went fine, in a calm and disciplined way.

From the candidates presented by the Ten-House groups to the General Assembly of the *Cellule* (A) 39 judges were chosen (27 men and 12 women), representing the different components in the community.

The discussions were lively and some persons were rejected from both sides : some because they had participated in the 1994 genocide and others (survivors and returnees) who had been involved in acts of revenge afterwards. Many Hutu however complained of bias : after such a discussion a man was rejected by *rescapés* because of his brother who had been active during the genocide, while two Tutsi men who were accused of having participated in acts of revenge in 1996 were accepted as judges, in spite of complaints.

Of the Seat of one of the 13 sectors of Murambi (Gakenke) 12 out of the 19 members were men and 7 women. The Coordination Committee (5) of this sector consisted entirely of ex-refugees who had fled in 1959 or later and who had returned after the genocide.

From the 65 members of the District, 53 were men and 12 women and according to local informants the majority were '*rescapés*'.

The 7 persons sent from the District level to the Gacaca jurisdiction of the Province consisted of 6 men (of which one Hutu) and 1 woman.

Many of the interviewed people expressed the feeling that despite a Hutu majority in the district as a whole, the Tutsi judges form a majority on almost all levels and in particular on the higher ones, reinforced the existing distrust between the two groups. This can also be seen from an

⁵⁰ The background of the people does not necessarily match their ethnic belonging. For example, among the returnees are some Hutus, mostly for monarchist families.

anonymous pamphlet, distributed just after these elections -in the Rukara district- saying that the Hutu were against the elections and that they planned once again the extermination of all Tutsi. This increased the insecurity in the region and caused some Hutu, especially some *released* ex-detainees, to flee to Uganda or Tanzania.

Recently (21/12/01) the president of the election commission of Rukara died. This incident is surrounded by rumours: some say it was a motor accident, others (especially the Hutu population) are sure that he has been murdered, out of jealousy (he had a motorbike and a good salary), because of his involvement in the genocide or because of the support he was presumed to have given to fellow detainees. There are also rumours that he had received threats just before he died. The real cause of his death hasn't been established yet, to date.

One can conclude that in Murambi ethnicity turned out to be an important but divisive factor.

Case 3 : Kigali Town

Like elsewhere there was a massive turnout in Kigali, according to the statistics of the NEC, even higher (over 90%) than in the rest of the country. The sensitisation campaign started here also too late and was inadequate. The atmosphere was good nevertheless and everything went well.

Because in town people tend to know each other less than in the countryside, it is more difficult to evaluate the role of ethnicity, which actually seems less entrenched. Having said this, it has been observed by our researchers in three districts of Kigali (Kanombe, Kacyiru and Gikondo) most candidates were Tutsi ex-refugees. One who was elected in Gikondo said : *“During the presentation of the integer candidates, one could see that all the three tribes (Hutu, Tutsi, Twa) were presented but that the number of Hutu appeared very small”*. The same has been observed in Kacyiru (an other judge) : *“The persons who fled the country before 1994 put themselves forward in large numbers”* and somebody from Kanombe wondered *“it looks like the ex refugees from 1959 have received special awareness training...”*

The results of the elections caused the *rescapés* and ex-refugees to say with some satisfaction *“n’abacu gusy”*, meaning in this context “we were the only winners”.

We have already discussed some of the reasons why so few Hutus were willing to put themselves forward as a candidate. The fact that many of these ex-refugees who had returned (mostly men over 40 years of age) didn't have a permanent job, could explain their willingness to become a judge, especially if they believed they could earn something.

Nevertheless, at the cell level the representation of the different groups of the population seemed satisfactory, but at the higher levels ex-refugees are often over-represented.

The organisation of genocide survivors Ibuka was not very pleased with the outcome of these elections and its president asked the Government to recommence them, because according to him – in Byumba for exemple – even some persons who were accused of crimes of genocide had been elected as judges.

Detainees in Kibuye who complained that certain of their old accomplices has also been elected confirmed this phenomenon. But then again others complained that there were *rescapés* who had been elected as judges that had participated in acts of revenge.

However, the lack of sensitisation was certainly partly responsible for the lack of enthusiasm among the Hutu population to present candidates and the results of the elections in certain areas are unlikely to help very much to diminish their feelings of insecurity and mistrust of the Government.

The fact that after the October 2001 elections last year little was done (no further sensitisation, no training) and that the time planning of the whole process was vague and too flexible seemed

to discourage many “judges in waiting”. It can reasonably be expected that the lack of important financial benefits, will most probably demoralise them even more.

One of the main worries of members of both population groups is the fact that the judges on the level of the cellule - with little formal education - have such an important task as the establishment of lists with facts of incidents, making investigations, evaluating the “fiches” transferred by the Office of the Prosecutor and categorising the defendants. Many intellectuals fear that - even with some training - this is too much to ask from the lay judges of the cellule level.

Based on the above data, we can conclude that the electoral process was indeed acceptable.

3. Recommendations

We hope that the following sometimes critical points will serve to improve the Gacaca process as an instrument for justice and reconciliation, which we still see as a system that provides hope, and according to us more hope than any other system, be it the classical justice system or one such as the Truth and Reconciliation Commission in South Africa.

3.1. Main observations and recommendations

1. The justice side of the Gacaca programme is well under way. The second objective of Gacaca jurisdictions, reconciliation, is not. Although putting an end to impunity is an important pre-condition for reconciliation, it would not be enough. Further reconciliation activities are a necessity.
2. The Reconciliation Commission's role within the Gacaca programme is recognised as crucial. Yet, its activities are either unknown to the general public or dismissed as biased, in particular by the Hutu population. It needs to be streamlined and urgently empowered.
3. If reconciliation and uncovering the truth are still objectives to be pursued in Gacaca court sessions, these should allow discussions about human rights violations which do not fall under the definition of genocide in a legal sense. If this is not allowed, justice will be undermined and hopes for future reconciliation will suffer.

It is a necessary pre-condition for the success of the Gacaca programme that all the Gacaca related laws or decrees, such as the Community Service decree and the Indemnisation law are signed before the Gacaca courts start to operate, that the necessary infrastructure is in place and that the population knows what Community Service and Reparation are all about. If not this could lead to a failure of the Gacaca programme as a whole.

We would recommend that the issue of the relation between Community Service and local development in general be reviewed, particularly with regard to how it would benefit the survivors and other vulnerable groups.

Community Service could be designed and organised in such a way that it may be used and seen by genocide survivors as a form of reparation. Especially because the expected indemnity would probably be very modest and probably also very disappointing for the '*rescapés*'.

The awareness campaigns concerning Gacaca do not reach their objectives. Neither in the cities (lack of interest), nor in the countryside (lack of information) is knowledge about the Gacaca jurisdictions sufficient. This is especially true concerning the execution of the Gacaca jurisdictions in general, the role of Community Service as an alternative to imprisonment, the indemnity for genocide survivors (this group harbours often quite unrealistic expectations), the role of the Gacaca judges and the security situation in the hills and inside the prisons. Moreover the sensitising of the prison population remains largely insufficient. Their "knowledge" is often characterised by misinformation.

In order to improve the knowledge among the population about the Gacaca courts, all the institutions involved in the Gacaca: Minijust (Justice Ministry), 6th Chamber, Minaloc (Local Administration Ministry), Mininter (Interior Ministry), National Unity & Reconciliation

Commission and various local and international NGOs should co-operate more, to start a more consistent intensive awareness campaign.

Because the confession procedures can be considered as the core of the Gacaca jurisdictions, it is strongly advisable to improve the situation of those who confess:

- By physical segregating, where necessary, detainees who confess from others (the international community should finance at least a part of the amount necessary to realise this);
- By giving those who confess some incentives as for example:
 - Priority to participate in work parties;
 - A bit more time with their families during visits as a kind of compensation and in order to explain to their families about the why and how of their confessions, to sensitise them and to counter the pressure on these families in their communities, etc.

Moreover, an acceleration in the recording of confessions by the government could only be a positive contribution.

One can imagine that during the Gacaca programme and afterwards the tensions could sometimes rise for example between detainees fulfilling Community Service orders and genocide survivors. In a situation where the legacy of the genocide period (widespread sense of insecurity, dependency and victimhood) can still be apparent, but where after the Gacaca processes members of the same community will have to co-operate again, it could be useful to have the possibility of community-based conflict resolution models in addition to resorting to police intervention and standard legal processes. Perhaps the more traditional Gacaca courts, might continue to function and fulfil such a role.

It is likely that after Gacaca jurisdictions have completed their responsibilities t prisons will still have large numbers of detainees. This means the prison sector will remain overburdened, and conditions inside these prisons are likely to deteriorate further over time. This will cause further problems for future attempts at reconciliation. Support to the prison department should therefore attract more attention, support and resources now and in the long run. One also has to look for alternatives to custody.

High-level consultation meetings, between the Rwandan Government representatives and donor countries will not lead, on their own, to any concrete advances in the Gacaca programme. Additional channels should be used if effective monitoring is to take place and if relevant modifications of the Gacaca programme are considered to be desirable.

Policies to redress the situations outlined above should be considered and action should start now.

3.2. Sensitive issues which need careful consideration:

As we state at the beginning of this report, a great number of responses gathered during the last research period emphasise that there are some other issues which may need careful consideration in the starting process of the Gacaca. These include the question of rape as a category 1 crime; the Gacaca courts and the violence allegedly committed by the RPF soldiers during 1994, and the debate around the ethnic identity.

3.2.1. Rape as a category 1 crime

African Rights⁵¹ was one of the first, to show that the systematic rape of surviving Tutsi women was one of the genocide instruments and that the women were the rewards of genocide. Many were both raped and subjected to extreme physical torment. Some were later murdered and others were held as sexual slaves. A lot of these women became pregnant and bore a child of their rapists, many contracted AIDS.

Later studies⁵² estimated that as many as 250 000 women were raped between 1990-1994 and that 30 000 pregnancies resulted from rape. 67 percent of the surviving women are considered HIV positive.

The same African Rights publication states that rape as a weapon of war shatters the sense of security and identity of the victim, and isolates her from her family and community. Many of them are stigmatised and often ostracised. They combine feelings of shame with the burdens of grief and suffering, and they found in general little sympathy and solidarity inside their communities.

During our research in 2001 we found the same situation largely pertained, despite more social counselling which had been made available by organisations such as AVEGA (Association des Veuves du Génocide d’Avril) and ARCT (Association Rwandaise des Conseillers en Traumatisme). We even had the impression that recently the feelings of insecurity and despair among these women increased as a consequence of the approaching Gacaca jurisdictions as old memories were revived in anticipation of public hearings and admissions. Many ask for medical (Aids Tests etc) and psychological treatment.

Accounts – Women Survivors

(...) We felt some anxiety especially about accusing those who killed; it was becoming a big secret and we felt humiliated.

We women are generally despised and always underestimated, while men who have undergone the same misfortune that we have, do not encounter any humiliation from the members of their families, not even the perpetrators of genocide. As long as we do not have shelters [houses], we are humiliated and it is the cause for aggression against women.

Will I say that I have been raped or that things happened in this way or that way? Never.

Rape: In the past, we did not dare tell, but now this is no longer the case. We would like to denounce it, but when we do, they tell us that these are lies, as we should have denounced it sooner.

I think that people (who have committed rape) should be punished...

Talking about it is not easy. Most (women) don't have the courage to do so even though they have been raped, it is very hard.

It is not necessary that my mother should know about it because I was raped in her absence, I would prefer that she should remain ignorant of it.

What I wish is that at the Gacaca they don't make us tell all the facts before the whole assembly. If so, I will only cry...

Rape did not necessarily occur in public. How can one accept the testimony of the victim without there having been a witness? What will happen when the accused pleads not guilty?

⁵¹ African Rights: “Rwanda: Death, Despair and Defiance”; London: African Rights, August 1995 (Revised Edition), Chapter 10: “Rape and Abduction of Women and Girls”.

⁵² Quoted in a recent research proposal of IRC-Rwanda concerning sexual gender violence.

How is one to recognize criminals who raped in other sectors and will be judged in their home community? Will they not be considered innocent?

During the Gacaca we shall undoubtedly be molested. Even now, when we accuse somebody, people say: Those people are mad. Do they accuse us in order to bring back to life the members of their family who were killed? Or they say that they don't eat anymore, they don't work anymore, and their only aim is to accuse others. All they want is to have us killed. Can't they leave us in peace?

In most of the files that have already been prepared, we have not mentioned rape and we hope to add this at the time of the Gacaca.

(...) Among the rapists, some were released when the detainees were presented to the people, whereas they had been charged at the time of their arrest. We want to know if the State will charge them and punish them severely.

Right from the first of these accusations we should have denounced this crime (rape) but the Judicial Police Officer (OPJ) who was there did not want to hear of anything except accusations against those who had killed. The OPJ finally made me give up the case.

With regard to the ordinary criminal courts, I don't think I will get any satisfaction. At the Gacaca, I saw him and I myself gave testimony about what he had done.

With regard to the customs and habits of the Rwandans, we find that men give little thought to women's problems. Men always act as if women's ideas were unimportant...

As to a suitable punishment (for rape) that we would propose and that would satisfy us, they should be killed. I cannot find any other sentence than to kill them!

It is clear that although the women demand heavy sentences for rape (which was often combined with the killing of their husbands and all or some of their children), they show more confidence in the Gacaca courts than in the criminal courts. However what seems very significant for these women - and this fact is quite universal - is that the severity of the penalty seems to be less important, than to hear the verdict that the person who committed rape is the punishable guilty person. The actual classification of rape in Category 1, doesn't make it likely that many women who were raped will hear this pronouncement as this entails a death sentence or at least a very heavy sentence.

According to the law as it currently stands, all forms of rape or sexual torture (from 'simple' rape to gang rape and mutilation of the sexual organs) are classified as a category-1 genocide crime. That this should be the case is presumably based upon the fact that rape must indeed be seen as a genocide crime because in Rwanda rape of Tutsi women was the rule and its absence the exception⁵³. Although rape is a sex-specific abuse it served specific political functions during the genocide period to humiliate the entire victim population. According to the rationale of the *génocidaires*, even the offspring of rape would - according to Rwandan culture - be seen as a Hutu and therefore add to the eventual elimination of the whole Tutsi population and ensure total Hutu domination.

Accepting this rationale, one can doubt that the broader aims of justice and reconciliation might be served to by making rape a category 1 crime. In effect, this means that few women will come forward to testify and almost none of the detainees to confess that he committed rape, because of its "automatic" severe punishment. According to our research data the pressure on these women by their communities not to testify are enormous and the procedure protracted: first they have -during the meetings at the cell level- to tell the predominantly-male judges of their own community (in public or in camera) that they have been raped, by whom and under which circumstances. On the basis of this information these lay judges will then have to decide in which category the accused will be placed. If the charge is one of rape (and there is no definition

⁵³ E/CN.4/1996/68, Report of the Special Rapporteur on the Situation of Human Rights in Rwanda.

of rape, nor sexual torture) then the defendant will be included in category 1 and his file transferred to the criminal court, providing that the accused had not admitted the offence in advance.

Following this, the woman will have to go through the whole frustrating process of the criminal court system and as Martien Schotsmans⁵⁴ showed, even if they decide to do so, convictions for sexual crimes remain extremely rare⁵⁵, because of various reasons she explained in her study.

Although the authorities have expressed reluctance to change this categorisation, in line with the sentiments strongly expressed by some representatives of Rwandan women's organisation, we hope it would be possible to reopen a debate about this issue. Based on its research the PRI-team feels that the current categorisation seriously prejudices the interests of an already very vulnerable group of women⁵⁶.

3.2.2. Open debate about the recent past during Gacaca ?

One of the main objectives of the Gacaca courts will be to achieve reconciliation and justice in Rwanda. In order to achieve this and to eradicate for good the culture of impunity, the population is asked to tell the facts, disclose the truth and participate in prosecuting and trying the alleged perpetrators who committed either crimes of genocide or crimes against humanity, which took place between October 1, 1990 and December 31, 1994.

We found during our research in the second half of 2001 that the expectations concerning an eventual reconciliation between the two groups are not very high. The victims because of their recent traumatic genocide experiences during which about one million of their population was killed and their consequent impoverishment. The Hutu because they believe that reconciliation depends in the first instance not on them, but on the Tutsi population and the Rwandan state, and that neither is very much interested in this broader consideration, leaving the Hutus themselves with confusion regarding a possible role for themselves in an eventual reconciliation process :

Accounts 1 – Survivors and returnees

Reconciliation? The Hutus killed our people, pillaged our possessions, ate our cows and yet that has not prevented us from living together and sharing our food and drink. What greater reconciliation do you still want?

I do not understand why they have not continued executing those who were already condemned to death ...

Why not first ask the FPR and the MRND to reconcile or the authorities of the old regime and those of the current regime. For instance, ask Twagiramungu and Sebarenzi to come back for this reconciliation.

The war is not yet over. I cannot trust any Hutu. They are dangerous.

Tutsis have been threatened since time immemorial.

After the sentences were passed, no compensation was made to any survivor; one would like to know what the State is doing...

Survivors are not helped, whether they are widows or orphans...

⁵⁴ Schotsmans Martien: « Le droit à la réparation des victimes de violences sexuelles pendant le génocide : analyse de l'état actuel - obstacles - suggestions de solutions » Kigali, ASF, mars 2000.

⁵⁵ Even if the sentences are very heavy, they are seldom pronounced, due to the difficulty of producing evidences.

⁵⁶ See annex 3: « Résumé de la réunion de 29/08/01 au Bureau de PRI sur les poursuites pour le viol ou les actes de tortures sexuelles. »

Why are there no projects to help survivors?

Female survivor (very traumatised): if I had other concerns I would not hesitate to forgive them...

(Young woman): (...) the people who are not survivors insult us... Nobody greets us and when the sun begins to burn, one cannot ask anybody for water to assuage one's thirst, even though they were our neighbours... I don't think that we shall enjoy this reconciliation at home.

Accounts 2 – Prisoners

There is still a long way to go. One can ask 4 questions: how, why, when and where reconciliation could be achieved?

One should start with the rehabilitation of Rwandan culture, which was destroyed.

That could be achieved in the countryside through mixed marriages, drinking beer together, etc.

Encourage love of your neighbour without limits and banish hate.

Why does the problem of ethnic separation not exist in churches? There are no churches that are either just for Hutu or Tutsi...

People should be frank and tell the truth. Reconciliation would then be possible.

There is a major problem, which is the ignorance of Rwandans. A long process of raising awareness and teaching will be needed.

Real democracy needs to be instituted.

Good governance: people in power should recognize that they work for the people and should take their ideas into account.

Those in power, represented by the authorities, must ask for the people's forgiveness. It was they who planned the genocide.

The Rwandan State is responsible for the killings that took place. It should ask for forgiveness, reveal all the crimes committed, the problems that were created, and find solutions.

The State has acknowledged its responsibility; it has set up the Genocide Survivors' Assistance Fund; this is its contribution.

What is the State planning for the refugees who are still abroad, in order to achieve widespread reconciliation?

It is the authorities who slow down the process (of reconciliation).

There are concerns on both sides. It requires a State with the strength to allow people to be treated on an equal footing.

In the case of survivors who are afraid of living near detainees of the second category, released provisionally to carry out Community Service orders, what would the State do if there are many people like them who persist with this attitude?

A free justice system is needed, one that is not biased towards one or the other ethnic group.

A justice system that is not extremist, not only for the members of Ibuka, but a justice for all.

Laws are needed that contribute towards respect for human rights;

After the genocide, the Hutus lost a lot of their own people. Justice should also be applied in this case, otherwise reconciliation will find itself blocked.

Mutual understanding is needed: each party should recognize its faults and ask for forgiveness;

There have been deaths on both sides, but only the people from one ethnic group are mentioned.

People want to generalise by calling everybody [Hutus] criminals or killers, whereas, on the other hand, people want reconciliation.

We wish for reconciliation. It has nothing to do with us, it has to do with the survivors; we need to meet them... We could use the telephone as a means of communication...

(During such meetings) avoid being represented by extremists of either side (Hutu: there was no genocide; Tutsi: all Hutus are killers).

The survivors should take the lead as they have the opportunity to give or deny pardon.

The survivors do not want to tell the truth whereas we, the detainees, have started admitting our guilt.

Through the DIDE project (Runda), we have tried to become reconciled with the survivors of Runda by inviting them to share in our crop production, but they have refused. That shows that they are not willing to attempt reconciliation.

To get at the truth, it would be necessary to visit the communities (*cellules*) to establish a list of those who participated in the genocide.

If reconciliation is indeed one of the main aims of the Gacaca process, it would help if all the parties involved could at least *talk* about their sorrow during the sessions of the Gacaca courts: it goes without saying, especially the genocide survivors or “*rescapés*” (principally Tutsi, but also some Hutu) should have every possibility to relate their sufferings during the genocide, but also the others who suffered, such as the Tutsi-refugees who were in exile and even those Hutus who were victims of acts of revenge or who suffered in the camps in Zaire after the genocide, or the BaTwa⁵⁷ who are most of the time forgotten. Also the question often asked by released detainees, who remained in prison for a number of years on remand without any proof of their guilt, whether they might be entitled to some form of compensation.

The sensitivity of such issues addressed here should not be ignored, especially in the absence of a meaningful compensation scheme⁵⁸.

Many people hope to hear the truth about the period: survivors who want to know what happened to their relatives, where they are buried, who participated and who did not; Hutus who, while acknowledging the genocide, want that light be shed on the following exactions. This is legitimate, but should not minimize at all the 1994 genocide⁵⁹ and the double-genocide thesis should be dismissed. To reduce at the same time the fear, anger, sadness and distrust amongst the different ethnic groups a number of respondents have argued that a more open debate about the recent past and the encouragement to cooperate and a willingness from all sides (“*rescapés*”, prisoners, returnees and the community) to listen to each other⁶⁰ would go a long way towards justice and reconciliation.

⁵⁷ The BaTwa are in a very difficult position. Most of the time they seem to be forgotten, by everybody, by Rwandan and foreign organisations alike. They form a very small group, who historically have always faced discrimination, principally because of their ethnic identity. They have adopted various strategies to survive as best they could, such as trying to remain neutral or by allying themselves with the group in power, which meant changing their alliances with changes in the regime. Many who tried to remain neutral or who opposed the genocide were killed, many others participated in the genocide and were killed afterwards or were imprisoned (quite a big number seems to have disappeared in prison). As a group they experience all sort of difficulties because, although they are still considered as the lowest in the social hierarchy - as BaTwa - they are not allowed to use their own ethnic identity in their struggle for social-economic emancipation and acceptance as Rwandans, becoming victims of the “we are all Rwandans” discourse. They are not and will not become accepted if they are not allowed to explain their specific history, experiences and future projects as BaTwa in the wider Rwandan society.

⁵⁸ In view of the perception of the genocide survivors who feel very insecure the reconciliation or even just living together in peace will not be realised without concrete and meaningful support for the victims of the genocide. As we stated above, the indemnisation law hasn't been passed yet, although the Gacaca courts are expected to begin soon.

⁵⁹ Rwanda is a clear case of absolute genocide, because of the fact that the policy of the Rwandan state was the annihilation of all the Rwandan Tutsi and that military and police units and citizens were given order to carry it out to the last person. According to us, there has been in Rwanda only one genocide, the one described above and in no way we can speak of a “double genocide” as some supporters of the *génocidaires* did.

⁶⁰ According to the Rwandan psychologist Simon Gasibirege (Interview 27/09/01), because of the mutual fear and anger, which are dangerous sentiments, people tend not to listen to each other. At the moment one compares each others sufferings and each one believes that he/she had suffered more than the others, which he sees as a serious problem because if one is unable to feel sorry for the other, one can't understand each other. Like us, he observed that Tutsi and Hutu seem to have a quite different comprehension of the genocide, which make it difficult to discuss. Gasibirege thinks that the Rwandans don't have anymore

This - it has been argued by various respondents - might eventually form the basis for mutual acceptance, the development of mutual trust and finally of reconciliation, without which the danger of renewed violence will always be present.

We were told on many occasions that such a debate could also include some human rights violations (acts of revenge and reprisal) allegedly committed by RPF soldiers during 1994⁶¹, such as for example in the commune of Runda where RPF soldiers killed unarmed civilians, many of them women and children. Although they were not crimes of genocide, these killings could be considered as falling under the category of “war crimes and crimes against humanity”, which the Gacaca law can also deal with.

These violations will probably not be discussed during the sessions of the Gacaca courts, because the authorities made it clear that one should make a distinction between genocide crimes and other crimes and that soldiers who had killed persons for revenge, had already been punished⁶².

These types of crimes can also be dealt with (as indeed they were in Runda) under the normal criminal law by military or civil tribunals. But, victims of such crimes (often detainees and/or their families) fear that they will never be discussed if not during the Gacaca jurisdictions. This group invokes this point in the name of reconciliation –although one can doubt if this is their real concern.

The feeling of a strong bias in favour of the Tutsi and against all Hutu is –as we observed during our research- quite common among the Hutu population in general: the idea that the Government uses double standards (and as for example examples are given) the way the commemoration of the genocide (and of the killings) is organised and the discourse used⁶³, not any longer Tutsi/Hutu, but often victim/perpetrator (*rescapé/génocidaire*).

It would be good if this kind of question could be addressed during the awareness campaign.

3.2.3. Betting on justice, not on reconciliation

As mentioned above, many Rwandans remain doubtful about the justice sector in general and the *Gacaca* jurisdictions in particular. As far as awareness campaigns are taking place, they stress much more the juridical than the socio-political aspects of the process. And although this Gacaca process must be seen - according to us - primarily as a socio-political process, its direct implementation is completely in the hands of lawyers who tend to stress only the legal side. “We apply only the law” is not only the official attitude but also of ASF (Attorneys Without Borders) who helped the 6th Chamber to prepare a very useful but exclusively technical manual for the Gacaca judges. As far as we can see, real insight in restorative and non-legal aspects is not easily forthcoming.

With the exception of some introductions to the presentation of detainees and some radio programmes, most of which don't reach the population in the rural areas, we found that the

common values, which makes it difficult to come to a shared understanding of the genocide and the strategies to adopt for a further peaceful development.

⁶¹ Human Rights Watch, « Leave None to Tell the Story, Genocide in Rwanda », New York, March 1999, pp 702-735

⁶² GTZ translation (4/10/01) of a radio message at the eve of the election: « Dans son discours le Président de la République a souligné que l'on doit faire la distinction entre crimes de génocide et autres crimes. Il a indiqué que pendant le Génocide, les personnes civiles qui portaient des armes et qui se comportaient en militaires ont tué et ont été tuées dans les combats, d'autres personnes ont été tuées par vengeance mais les militaires qui se sont vengés ont été punis. Les personnes de mauvaise foi, qui sont contre l'unité et la réconciliation, qui cherchent à minimiser le Génocide et poursuivre les combats, accusent le FPR d'avoir commis le Génocide des Hutu, cela n'est pas vrai. »

⁶³ See also Nigel Eltringham & Saskia Van Hoyweghen: *Power and Identity in Post-genocide Rwanda*, in : Doom, Ruddy & Jan Goris (eds): “Politics of Identity and Economics of Conflict in the Great Lakes Region”, Brussels: VUB University Press, 2000;

existing fears (impartiality and independence of the Gacaca judges; the difficulties of finding the “truth” in a post-genocide situation) are very often not addressed and “reconciliation” remains just an often quoted word without much substance. Community Service as a sentence and as a possible tool for reconciliation isn’t well explained and Government’s intentions regarding the compensation of genocide survivors, a pre-condition for further peaceful developments, remain unclear.

At the beginning of the discussions about Gacaca (mid 1999) there were strong expectations that the “truth” (the facts) would come forward: everybody had seen what had happened and people would speak out; even talking about rape wasn’t seen as much of a problem. Besides - so it was said - perjury would be punishable by up to 3 years imprisonment...

Participating in several presentations to the population of detainees without files and presumed to be innocent, it became clear that the reality is often quite different: the majority of the population present doesn’t speak out (for reasons mentioned earlier), doesn’t say anything to charge the detainees who are presented and if it does, it is only to discharge them. The participants display a “wait and see” attitude, leaving it to the “*rescapés*” to incriminate those presented. This attitude makes the genocide survivors often more and more exasperated with their silent fellow-citizens, according to our observations sometimes “forcing” them to “dress up” their own evidence. Over time, the consequence of all this could be a growing mistrust and frustration among both groups.

It is worth noting that some Rwandan social scientists (for example the psychologist Simon Gasibirege and the researcher Charles Ntampaka) have quite a different opinion about the definition of “truth”. According to Ntampaka⁶⁴ “truth” is a quite variable concept for each person, depending on the interests at stake, trust in the authorities and the degree of obedience towards them, and one’s place in the social hierarchy and the community.

If the classical justice approach is given greater emphasis, finding the absolute “truth” (the facts) will be the main objective of the Gacaca courts and under the circumstances described above, a very difficult one. But, if one would put more emphasis on the reconciliation aspect, the Gacaca courts could perhaps help to bring about a more commonly-acceptable and negotiable approach to the concept of “truth” and its interpretation in the determination of guilt, innocence and just desserts..

3.2.4. The identity issue and the Gacaca process

In contemporary Rwanda, it is politically highly sensitive to talk about Tutsi, Hutu or Twa. The reason for this policy is of course self evident and can be understood, as ethnicity has been manipulated by former governments to discriminate and exclude the Tutsi population resulting in a situation of violence that later culminated into the 1994 genocide. In addition, the fact that nowadays opposition parties operating from outside the country, like ARENA⁶⁵ based in the USA and Canada, stress the fact that Rwanda contains three ethnic groups and demand power sharing on this basis, doesn’t make it easier to discuss the ethnicity question.

Because of this, discussion and debate on the Gacaca process becomes sometimes wholly unintelligible or at best very confused, because these ethnic identities are still a very important social reality: for most adult Rwandans a person’s self-conception is still primarily constructed

⁶⁴ « Vérité et opinion dans la société rwandaise traditionnelle », Dialogue n° 221, Mars-Avril 2001, pp 3-24

⁶⁵ See GTZ news translation of 27/11/01: “A Californie, Congrès du parti politique d’opposition présidé par Sebarenzi Joseph Kabuye, ancien président de l’Assemblée Nationale, en exil »

around one of these ethnic-political identities and often to a lesser degree on their identity as a Rwandan citizen. The ethnic hatred in the past was a product of conscious political and ideological manipulation⁶⁶ inspired by the regime in power at the time, but the continuing strong ethnic sentiments⁶⁷ and mutual feelings of fear and insecurity which we observed during our research can't be overcome by denying their existence and saying "we are all Rwandans now" or "ethnicity has been shed".

While recognizing that for most Rwandans different ethnic groups exist within the wider population (albeit with very close ties because of their common language, culture, religion and a high frequency of intermarriage across groupings), legislation could make any form of discrimination or segregation based on real or presumed ethnic differences liable to penalty, like the new anti-discrimination law indeed does⁶⁸. By the same token, combating racial discrimination is not served by denying that certain differences, as for example in colour, can exist. It only becomes a problem as such when real or presumed differences are used to devalue a specific group and to justify exploitation and discrimination - as for example in South Africa during the *apartheid* regime, or to bring about the elimination of a particular group (Armenians, Jews or Tutsis).

What seems necessary and urgent then is not so much the denial of ethnicity, but the deconstruction of the antagonistic and hostile feelings of ethnicity and the development of other morally positive identities and commitments (national, religious, professional or others, such as 'we women', 'we workers' etc). This seems essential and the Gacaca jurisdiction sessions, if taken as a restorative justice model, could be one of the ways to contribute to this. For this to happen, enough space should be created for everyone's voice to be heard.

Should the issue of ethnicity be ignored within the Gacaca procedures? It could be argued that developing a policy focused on the "deconstruction" of negative ethnic discourse, showing how former governments have manipulated public perception, coupled with the "construction" and promotion of alternative identities (national, religious, professional and others: "we women"), would support a positive perception of social identities and an acceptance of diversity, including the ethnic one. The recognition of Rwanda's socio-political realities (as was shown for example during the elections of Gacaca judges) would strengthen understanding and national cohesion and benefit generations to come.

⁶⁶ In order to stay in power and to redirect the growing dissatisfactions among the population against them, the former Government managed with great skill to devalue the minority group, making of the Tutsi the 'out-group', the scapegoat par excellence. The Tutsi were scapegoat-ed as the source of all misfortune and evil. The former regime managed to push the buttons to inject a negative and destructive image of the Tutsi and by doing this, inequality and exclusion increased, leading to the spreading of hate, legitimising violence, impunity and finally to genocide. The former regime succeeded in making people accept this negative image which was diffused by means of social interaction in the local communities in such a way that many members of the Hutu majority (the 'in-group') started feeling it was right to exclude all Tutsi, to use violence against "them" and finally to exterminate "them". A culture of 'obedience to authority' and series of negative sanctions and positive incentives did the rest.

⁶⁷ One of the first words I learned in Kinyarwanda was the question "is he one of us?" ("*ni uvacu*" or "*ni uvacu gusa?*"), referring to the speaker's ethnic identity: Hutu, Tutsi or Twa.

⁶⁸ According to the 1991 Constitution, now under discussion, "all citizens are equal before the law, without distinction based on race, color, origin, *ethnic origin*, clan, gender, opinion, religion, social position or other reasons" (article 16). Recently (October 2001) the Rwandan parliament passed an anti-discrimination bill defining discrimination as "any act, utterance or writing aimed at depriving a person or group of persons of their rights, by reason of sex, *ethnicity*, age, race, colour, opinion, religion, nationality or origin..."

4. Planned future activities and issues for further investigation until the Gacaca courts take off

- Based on information collected, conducting a more quantitative base-line study on the perceptions of Gacaca jurisdictions;
- Identifying what role regional differences play (the situation in Kibuye, Byumba, Gisenyi and Ruhengeri) in the perceptions of Gacaca jurisdictions;
- Further work on the issue of 'rape as a category-1 crime' in regards of the law and its application;
- Working towards the introduction of necessary changes for the living situation for detainees who have confessed;
- Helping with the awareness-raising;
- Observation of and participation in the continuing presentations of detainees to the population;
- Continuing to observe the release of prisoners, the eventual reintegration of detainees and the reactions of the population;
- Continuation of interviews with genocide survivors (among them women who were raped), detainees (those who confessed and those who did not) and with the families of these prisoners concerning the Gacaca and its preparations (presentations, the elections, etc);
- Interviews of other categories of the general population and of representatives of different groups: religious (Catholic, Protestant and Muslim leaders), trade-union representatives, etc.

ANNEXES

Annex 1 : Table 1

Categories of crimes	Confession & Guilt Plea Procedure	Sentences	Tribunal involved
1: planners; active persons in position of authority ... ; well-known murderers; rapers	Has not confessed to crimes or confession is unsatisfactory.	Death penalty or life imprisonment	Magistrates' Court
	Has confessed to crimes, <u>prior</u> to his/her name appeared on the list of presumed criminals of category 1.	Life imprisonment or 25 years of prison (see 2, first line). No community service.	Gacaca Jurisdictions at District level
2: authors of murders, co- authors or accomplices	Has not confessed to crimes or confession is unsatisfactory.	Life imprisonment or 25 years of prison. No community service.	Gacaca Jurisdictions at District level
	Has confessed to crimes before the Gacaca Jurisdiction <u>after</u> been put on the list of category 2 drawn up by the Gacaca Jurisdiction at Cell level.	15 to 12 years of prison for the 1 st half of the prison sentence. For the 2 nd half: release and carrying out community services.	
	Has confessed to crimes before the Gacaca Jurisdiction <u>prior</u> to being put on the list of category 2 drawn up by the Gacaca Jurisdiction at Cell level.	12 to 7 years of prison for the 1 st half of the prison sentence. For the 2 nd half: release and carrying out community services.	
3: attacks without intention of causing death	Has not yet confessed or confession is unsatisfactory.	7 to 5 years of prison for the 1 st half of the sentence. For the 2 nd half: release and carrying out community services.	Gacaca Jurisdictions at Sector level
	Has confessed to crimes before the Gacaca Jurisdiction <u>after</u> been put on the list of category 3 drawn up by the Gacaca Jurisdiction at Cell level.	5 to 3 years of prison for the 1 st half of the sentence. For the 2 nd half, release and carrying out community services.	
	Has confessed to crimes before the Gacaca Jurisdiction <u>prior</u> to being put on the list of category 3 drawn up by the Gacaca Jurisdiction at Cell level.	3 years to 1 year of prison for the 1 st half of the sentence. For the 2 nd half, release and carrying out community services.	
4: offences against assets	-	No prison or Community Service sentence. Civil reparation of damages caused to other people's property, in case no amicable settlement could be reached.	Gacaca Jurisdictions at Cell level

Annexe 2 : “Pre-Gacaca” exercise in the district of Gitesi on Friday 22/12 and Saturday 23/12/2000.

On these two days 64 prisoners, men and women, dressed in their pink uniforms, were brought to a field in two RNC trucks. On the field a few chairs under some plastic sheeting (because of the rains) for the distinguished guests as the Minister of Justice, local administrators, representatives of the 6th Chamber of the Community Service, of the Reconciliation Commission, Ibuka (organisation of survivors of the genocide), some police officers, and NGO representatives (among them of RCN and PRI) etc. Some genocide survivors (less than 10) from this area were sitting on benches besides them.

Opposite them the population, in half a circle, at least 2000 men, women and children, standing and waiting, sometimes in the pouring rain, hiding under colourful umbrellas, banana leaves, and pieces of plastic.

At one side, a table with some clerks who noted the names of the prisoners appearing and of the witnesses “à charge” and “décharge”. Some policemen (not many) were present as well.

The first day, all the guests were presented to the population. Several authorities, especially the first day when the Minister was present, held long introductions, about the genocide, the necessity to eradicate the culture of impunity, to establish the truth at grass roots level and to contribute to reconciliation. The role of the Gacaca tribunals was explained. It would be different from the actual gathering, because this time there were no elected local judges who would sentence, but it would be just a way to have certain cases without files or insufficient evidence checked under the direction of official lawyers...

The ceremony was directed by the public prosecutor (*procureur général* /PG) of where (at the time) Ruhengeri M. Jean Marie MBARUSHIMANA, a tall impressive man who clearly knew how to capture the attention of all those present. The whole ceremony was in kinyarwanda.

The prisoners were called in groups of about 12 detainees, lined up, waiting to be summoned. Some of these men and women in pink had new looking and nicely ironed uniforms, white socks and shiny shoes or *nikes*, others were poorly dressed and went barefooted.

The PG called one, took his arm and raised it, asking the crowd: “who knows this man” or woman. Each time some people out of the crowd raised their arms. Sometimes many, sometimes very few. They left the crowd to face the PG and the detainee. The PG then asked if they were related to the prisoner, because if so, they couldn’t testify in favour of this detainee. The remaining witnesses were asked if they had to say anything pro or contra this person in question, concerning his or her role during the genocide. Sometimes the statements were contradictory.

Each time one or more of the genocide survivors came also forward to testify. Their testimony was crucial, because if they, too, said that according to them the accused hadn’t done anything, he or she would almost certainly be released. In case of doubt, from anybody, but especially from a survivor the person remained in custody for further investigations.

The clerks took the names of the prisoner and the witnesses who came forward to give evidence pro or contra.

The population was listening very attentively, sometimes murmuring as a reaction to what they heard, sometimes showing approval, sometimes disapproval. Sometimes they were death silent, sometimes there was laughter. Sometimes they reacted to a question or statement of the PG or

clapped when one of the detainees from their community was considered to be innocent and they heard that he/she would be released.

In general the emotions were very much controlled. Men showed a bit more aggressiveness, women a bit more sadness when they told their stories. Sometimes facing the prisoner directly, standing on a very close range of the accused. The questioning was done by the PG. Mostly the prisoners remained silent all the time, they also showed very little emotion, neither the declared innocent, nor the declared guilty.

For example a white-haired elderly tall woman, leaning on a stick was declared innocent, neither witnesses among the crowd, nor the survivors had anything to say against her personally: yes, her sons had killed, but she didn't, she even helped some Tutsi to get away. The woman, quiet listening, looking almost not present, didn't say anything, didn't show any reaction, not even when she heard she would be free after having spent more than five years in prison.

Many of the women victims who came forward to testify were Hutu out of mixed marriages, at the time Tutsi men who were murdered with their children, often by neighbours or even by close relatives of these women. When such a statement was followed by a similar one from the side of the survivors, the outcome was certain: no release and further investigation to establish a more complete file/dossier.

When somebody proved to be innocent, the question remained, why this person had been detained in the first place. Often a personal settlement because of jealousy, debts or other interests. In principle this kind of false testimonies would be investigated further.

The waiting prisoners were sitting in the grass. Children of the crowd were playing with and around them. Nobody took them away, although we heard about some prisoners the most terrible stories how they had slaughtered men, women and small children indiscriminately.

Complete silence, followed by whisperings, when a prisoner appeared without anything in his file. From the crowd nobody came forward to defend his case. Witnesses said angrily: "how is this possible, we gave already evidence against this man, he was the head of a barrier, he tortured and mutilated his victims ("cut the legs of my mother with an axe...") and killed at least 100 persons", giving one example after the other... Everybody was afraid of this man as he walked around with his bible in one hand and killing Tutsi's with his axe...He took women as sex slaves. What happened with his file, how could it have disappeared? More or less implicating that there might have been corruption...

None of the detainees presented here and who appeared to be guilty had ever tried to get a reduction of their sentences by confessing, probably hoping to get away with it without confessing. People who appeared innocent hadn't confessed either, which is understandable.

One women survivor who gave evidence against a prisoner who had killed some kids, said: he was not the only one who killed them. I just saw a boy who is present here and who killed also... She indicated the young man and the police took him in. The crowd murmured After some time the woman came back and said, I was just told and I believe what they said, that the boy had been forced to do so. He killed a small child, but he was told to kill it, otherwise they would kill him...

Horrible stories were told, of guilt and innocence. One detainee after the other came forward and his or her case was discussed. The population, often in the pouring rain, remained very much involved. Almost nobody left and the number of bystanders seemed even to increase. From the 64 detainees presented 26 (or 41 %) got *released*.

During the first day even the Minister and other persons sometimes intervened, asking questions themselves. The second day only the PG did this and the the population participated more actively than during the first day. This shows that the less the official authorities intervene, probably the more the process might be participatory.

Personally I found this ceremony an impressive one and in addition to doing justice, it might have the same function as the South African Truth and Reconciliation Commission (TRC) ⁶⁹ where people (the population concerned, the victims, the perpetrators and officials all together), perhaps for the first time, could tell and hear a part of what happened during this traumatic period, which could be the first step to come to reconciliation.

Certain children of this commune being present, might hear these stories for the first time, being too young at the time of the genocide or hearing the “truth” from only one side. The “why” however wasn’t discussed. Probably lies were told also, but perhaps less than in the classic courts. This reconstruction of events during the genocide, might revive all the terror experienced and it would be good to have people/services who could deal with traumatised people (especially survivors) when the real Gacaca starts.

Although the planned Gacaca courts will be organised differently, the above experience gives hope that this way could be a successful one to deal with the past.⁷⁰

⁶⁹ According to a South African lawyer the Gacaca court is perhaps, a more direct and less formalised form of the South African TRC hearings – the advantage of the Rwandan process is that it is accessible, uncluttered by formalistic rules and allows victims to play a direct role in effecting the outcome of the sanctioning process. The problem that he mentioned though is that the TRC hearings were not aimed at a criminal sanction whilst the Gacaca appears to be directed at determining punishment. According to him the challenge is to find a balance between legal rules and accessibility (personal communication by Andrew Brown 14/02/01).

⁷⁰ Not everybody has this same opinion:

The South African scholar Jeremy Sarkin is extremely negative about long-term prospects of reconciliation for Rwanda through means of the Gacaca tribunals and “pre-Gacaca” exercises because of -according to him- the politics of exclusion of many from political, social, economic, land and other issues. (Cape Town Conference 5-7/02/01 & E-mail 19/02/01). According to him what Rwanda really needs is a kind of Truth and Reconciliation Commission (TRC) and not Gacaca.

Peter Uvin (E-mail 16/02) stresses the fact that the Gacaca is part of a much more complicated social dynamic, and its impact will only come about through its mediation with these other dynamics. This could allow one to be simultaneously rather positive or hopeful on the Gacaca process itself, and yet negative or worried about the dynamics of justice and reconciliation in Rwanda. He also poses more fundamental questions as: what should our attitude be, towards something like Gacaca (or any other event or policy we happen to agree or disagree with) within a broader climate of fear, repression, and exclusion? Shall we applaud these initiatives, and support them, as steps in the right direction (“better than nothing”) or shall we abstain from supporting them for fear of being suckered into complicity with a farce or, worse, a tragedy? Concerning the gacaca proposal he advocates a policy of critical support by the donors (see his discussion paper “The Introduction of a Modernized Gacaca for Judging Suspects of Participation in the Genocide and the Massacres of 1994 in Rwanda”, 2000)

Annex 3 : Résumé de la réunion de 29/08/01 au Bureau de PRI sur les poursuites pour le viol ou les actes de tortures sexuelles.

Présents : 17 personnes des organisations suivantes : Parquet Général, CICR, EU, USAID, ASF, RCN, ARCT-RUHUKA, Rwanda Women Network, HRW et PRI.

Invités, mais pas présent : Minijust, Migeprof, 6^{ième} Chambre, NURC, Procureur de Gitarama (excusée), Centre de Gestion de Conflits, IBUKA, AVEGA-Agahozo, PRO-FEMMES et Haguruka.

Raison de la réunion : Des inquiétudes sur les conséquences de la classification du viol et des actes de tortures sexuelles dans la première catégorie.

Introduction du groupe de recherche *Gacaca* de PRI:

1. La peine pour cette infraction est très haute : la peine de mort ou l'emprisonnement à perpétuité. Et dans le cas où une personne fait ses aveux et qu'ils sont acceptés, elle peut être classée dans la deuxième catégorie (prison à vie ou 25 ans).
2. Les conséquences de la dureté de cette peine sont :
 - a. Qu'il y a très peu d'aveux (sur 8000 détenus de la PC de Gitarama, un seul a avoué qu'il a violé une femme).
 - b. Qu'il y a une pression énorme sur les femmes violées pour ne pas relater ce genre de faits devant les juridictions Gacaca de la cellule : menaces de la part de la famille des prévenus, manque de sécurité. Tout cela dans une situation déjà traumatisante dans laquelle ces femmes se trouvent.
3. Question : que faire pour qu'il y ait plus d'aveux concernant cet acte de guerre et plus de témoignages de la part des femmes violées, sans augmenter leurs sentiments d'insécurité, de culpabilité et d'humiliation ?

Discussion et recommandations:

1. Selon les juristes et la majorité des personnes présentes, il vaut mieux continuer de classer ce crime de viol dans la première catégorie, mais stipuler ou (1) que le juge du tribunal de 1^{ière} instance peut tenir compte des circonstances atténuantes (représentant du Parquet Général), ou (2) de définir la peine pour viol en conformité avec celle du code pénal : si le viol a causé la mort de la personne, le coupable sera puni de mort, et dans les autres cas, le viol sera puni d'un emprisonnement de cinq à vingt ans. Argument contre (point de vue d'une minorité) : ces propositions (dont le deuxième -2- semble la meilleure) ne résolvent pas du tout les problèmes mentionnés ci dessus (conséquence de cette peine haute -2a & b) : l'importance du viol comme un acte et crime de guerre ne sera pas montrée ! Peut-être serait-il mieux de classer le viol et les tortures sexuelles dans la deuxième catégorie ou de classer certains actes de viol (comme cela est fait pour des meurtres) comme catégorie I (viol avec l'intention de tuer) et autres actes de viol comme un crime de la deuxième catégorie.
2. Il serait souhaitable de définir le viol et les actes de tortures sexuelles.
3. Il serait souhaitable de séparer les détenus qui ont fait leurs aveux des autres.
4. Toutes les personnes présentes étaient d'accord sur le fait que la sensibilisation de la population en général (aussi concernant le viol) est absolument nécessaire et qu'elle est jusqu'à aujourd'hui insuffisante.
5. Tous sont de l'opinion que les +/- 250 OPJ- femmes ont besoin d'une formation concernant le viol et les actes de tortures sexuelles.

Annex 4: Hopes And Fears As Kigali Launches Participative Justice

By Julia Crawford, Hirondele News Agency (Lausanne), October 11, 2001

Kigali/ Arusha, October 11th, 2001 (FH) Rwanda's election of some 260,000 judges to serve in 11,000 new genocide courts has kicked off an experimental project in post-genocide "people's justice" that is raising both hopes and fears. Having been present at the polls, Hirondele here takes a look at some of the questions that both Rwandans and international observers are asking themselves: Was the electoral process acceptable? Will the judges be up to their task? Will people tell the truth about what happened in 1994, or will there be a spate of reprisals, security problems and new traumas for the population? Will the authorities interfere in the judicial process, or will this really be people's justice?

Was the electoral process acceptable?

It certainly seems to have been acceptable to most Rwandans Hirondele spoke to, although president of the election organizing committee Protais Musoni admits there were some procedural problems. He attributes these to the lack of education and training of grassroots organizers, and says mistakes are being corrected.

There was a mass turnout of the population last Thursday, probably over 90%, for the first round of "elections". Adults in towns and villages throughout the country were asked to endorse or reject candidates proposed by their representatives in "nyumba kumi" (units of ten households). This was done in public meetings where citizens were given the opportunity to step forward and "criticize" the candidates. In the wake of genocide, this exercise could have been explosive, but it seems to have been generally good-natured and disciplined.

Undoubtedly, there was pressure to attend the meetings, both from within the community and from the authorities. In Kigali, for example, I was woken up at 6.15 a.m. local time on Thursday by a van blaring a message through a megaphone: "Rwandans wake up, it's time to fulfil your civic duty", or words to that effect. The previous day I had asked a lady teacher working in a Rwandan village whether many people, like herself, would be travelling to their places of origin to vote. "Everyone will vote," she replied. When asked whether they might not take advantage of the public holiday to drink beer instead she hesitated, smiled and responded: "Afterwards." She was right on both counts.

"No secret ballots? Public meetings to designate candidates and denounce people?" asked one foreign human rights activist incredulously when he heard how the meetings were run. I pointed out that this was a poor country which the international community had failed, both at the time of the genocide and by not doing enough to help bring swift trials afterwards. He stuck to his guns: "But this is Stalinian! It would not be accepted anywhere else in the world!"

Rwandans inside the country do not seem to perceive the elections that way.

Even if they were perhaps pressurized to attend meetings, they were not obliged to participate actively, or put themselves forward as judges.

Nevertheless many did. Even if some have doubts about Gacaca, most people expressed a fervent desire to see it work. They say they are fed up with waiting for justice, and hope Gacaca can offer a way out of their society's current problems.

In five years of genocide trials in Rwanda, the existing courts have tried only about 6,000 people, less than 5% of the current prison population. The UN's International Criminal Tribunal for

Rwanda (ICTR) has passed only nine judgements in four years of trials, despite an annual budget of some 80 million US dollars.

Will the judges be up to their task?

Even Rwandan officials at the highest level have expressed some concern about the quality of the Gacaca judges. Not only do the "people's judges" lack formal training in law, but many at the lower level are also illiterate.

The government has promised training for these judges, expected to start at the beginning of next year and to last a few months. International non-governmental organization Avocats sans Frontières (ASF, or Lawyers without Borders) in Rwanda told Hirondele it has official approval for a two-week seminar in December 2001 to train the judges' trainers. So far, these trainers comprise 125 people from the Rwandan Supreme Court.

ASF, which is providing technical assistance on Gacaca, has also produced a handbook on the Gacaca law which it will release in November. Rwanda's "organic law" setting up Gacaca is complicated, and ASF boss in Rwanda Ahlonko Dovi of Togo says his organization felt it was necessary to produce a manual that could be used by everyone, including the judges. "We remain concerned about Gacaca, but we want to contribute positively," Dovi told Hirondele. While stressing that it was a personal view, and not the official position of ASF, Dovi proceeded to admit that "as a lawyer I cannot help but be worried".

His fears, he said, were based on the fact that the judges may not have sufficient time for preparation and training; that the rights of the defence are not ensured; and that the population may not have been sufficiently prepared for Gacaca. "The judges not only lack sufficient legal knowledge, but often they lack a basic educational grounding," Dovi told Hirondele. "It is absolutely vital to focus on the training of these judges."

The judges are presumed to have been elected as upright members of society, free from any spirit of ethnic or racial discrimination. They will be required to ensure that both accusers and accused get a fair hearing, especially as suspects will not have the right to a lawyer. Thus the judges are only likely to inspire confidence if they show themselves to be genuinely impartial. Indeed, if the people of Rwanda are to remain committed to the Gacaca process, they must have confidence in their judges.

Already, some survivors have raised doubts about how "clean" some of the judges may be. Gacaca electoral commission boss Protais Musoni, who is also an architect of the Gacaca project, says the law has provided for an ongoing "cleansing" process, to which complainants may make recourse.

Village Gacaca courts have three levels: a General Assembly of the adult population, the Seat (19 judges) and its coordinating committee. According to the law, says Musoni, complaints can be taken to the General Assembly, which is empowered to remove judges if they are not performing properly.

"We have been teaching that it is better to use truth as early as possible, from now on. There may be some who may not have been that forthright and went into the courts when they are not clean, but as I say it's a process," Musoni told Hirondele. "If you are not clean you will get off and other people will come in. So it's a cleansing process that will come up."

Will people tell the truth, or will there be a spate of reprisals?

This is a very real fear, and the fear factor will be crucial to whether Rwandans are prepared to tell the truth or not about what happened during the genocide. "What will be the reactions to Gacaca, to the results that it comes up with, to the reparations it orders?" asks Ahlonko Dovi of ASF.

"Will there be reprisals against those who are set free? What will be the reaction of victims to the liberation of their families' butchers?" Other observers point out that the Gacaca law provides for reduced penalties for genocide suspects who confess their crimes, and that suspects brought before the Gacaca courts may be ready to denounce others who are still walking free. If such accused are perceived as "bothersome witnesses", will they be removed? Will there be threats against their families, against the judges? Not to mention genocide survivors in the community who may also be subject to threats and security problems.

"That would be terrible if it happens," says Musoni. But he believes the Rwandan authorities have a high stake in making the process work, and will be vigilant. "It's a process, I would say, which is very new," he told Hirondele, "with quite a number of risks along the way, and I hope that the High Court will be very close to how the cases are being tried, explaining, guiding and so on, so that we end up resolving this issue."

As to whether people will tell the truth to the Gacaca courts, independent journalist and Gacaca election observer Eugène Cornelius says it will be a gradual process. "People will tell the truth, but we can't expect them to tell the truth straight away," he says. "Gacaca is a process. At first they will come forward timidly. I think that when the first trials start, they won't come forward straight away, especially as Rwandans are not people who are spontaneous. It's with time, with the search for truth, that the truth will finally triumph."

Even if people do tell the truth, there is concern that this could cause a high degree of personal trauma. It will not be easy, for example, for people to talk about how their neighbours killed their families, how they were raped or tortured in public. Women's groups in particular have expressed concern about this.

The South African experience, as that country's "Business Day" newspaper recently commented, has shown that truth and reconciliation may heal some wounds but it may also open up new ones. The Rwandan authorities seem ill prepared so far to cope with that eventuality. And the international community, once again, seems ill prepared to help.

Will the authorities interfere in the judicial process?

Some observers contend that the Gacaca process is political and will be subject to political interference. Certainly, the 1994 genocide in which some 800,000 Tutsis and moderate Hutus were killed occurred against a background of ongoing ethnic tension and civil war which broke out when pro-Tutsi RPF guerrillas invaded from Uganda in 1990. The RPF is currently the dominant force in Rwanda, despite the fact that Tutsis make up less than 15% of the population.

Disenchanted members of the majority Hutu population suspect the authorities of bad faith. Some are quick to point out that the Gacaca courts do not have the power to judge violations of human rights by the RPF before, during or after the genocide. The official response is that RPF "acts of vengeance", not sanctioned by the regime, cannot be put on the same level as planned genocide. The authorities say that alleged RPF crimes will continue to be tried by the ordinary courts.

The mandate of the Gacaca courts is from October 1st, 1990, when the RPF invaded Rwanda, to the end of 1994. This is presented as a reconciliatory gesture by the current regime. Even if Gacaca courts cannot try alleged RPF crimes, the context of invasion and war is likely to be invoked in the process of truth-telling about genocide.

Quite apart from the version of history that Gacaca courts may come up with, personal and political interests are nevertheless likely to be at stake.

Hirondelle saw little evidence of political interference during judges' elections at the cell (lowest administrative) level, which is closest to the population. The cell level Gacaca courts will judge only relatively minor crimes, although they will be responsible for reviewing the categories in which genocide suspects are placed and hence the penalties they face.

Some observers suggest that the risk of interference of all types is likely to be greater at the higher administrative levels. The stakes will be higher, for example, at the level of district level Gacaca courts which will be judging Category Two genocide suspects. According to the law, people in this category may face life imprisonment.

The Gacaca courts will have the power to judge suspects charged with all but the highest category of genocide crimes. Since 1996, Rwandan law has divided genocide suspects into four categories:

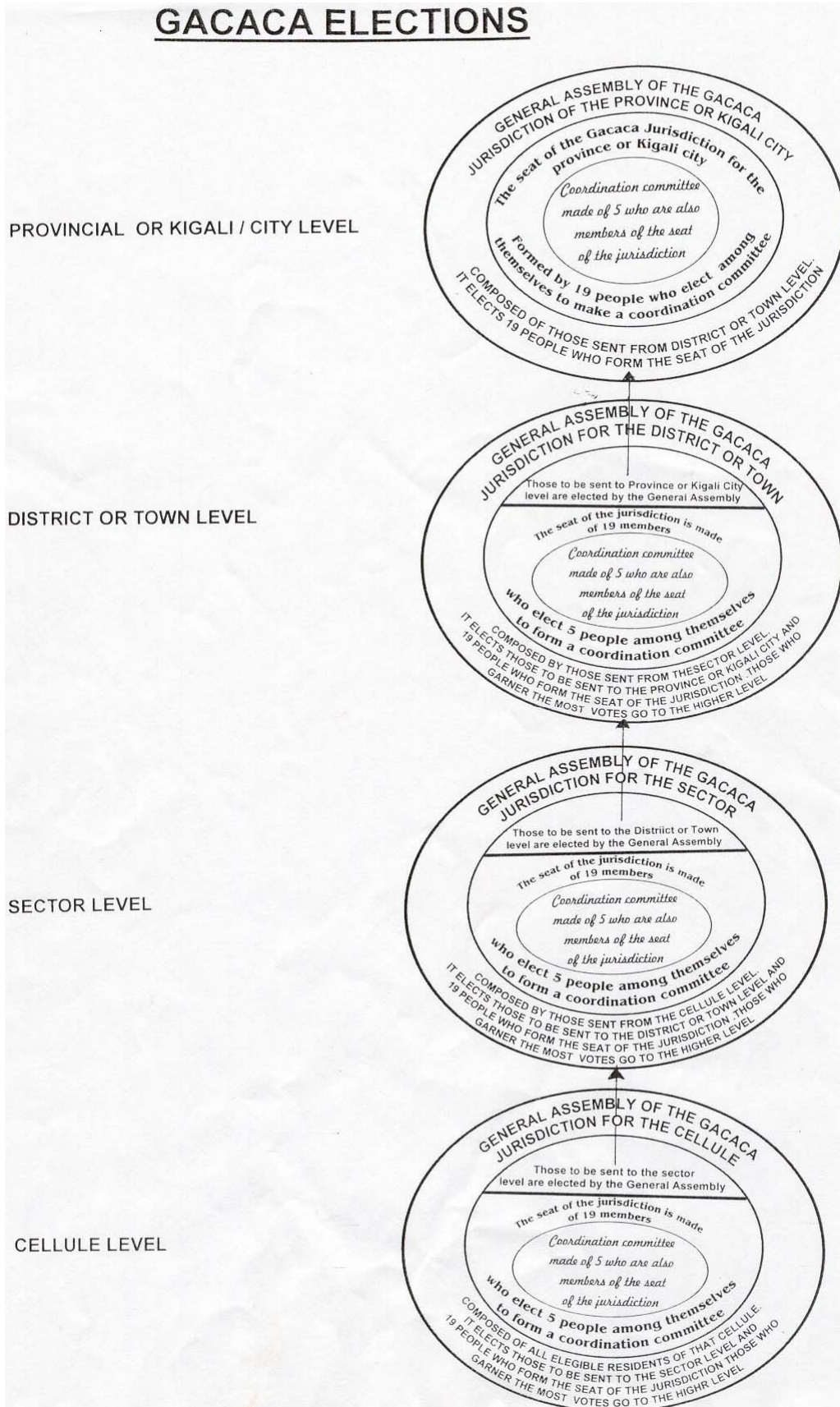
- Category One consists broadly of suspected planners, rapists and those who killed with "zeal" or "excessive wickedness". Such people will still be tried by the ordinary courts.
- Category Two consists broadly of suspected genocide perpetrators. They will be referred to Gacaca courts at the district level.
- Category Three is defined as "the person who has committed or became accomplice of serious attacks without the intention of causing death to victims". Such suspects will be referred to Gacaca courts at sector level.
- Category Four consists of "the person having committed offences against assets". Such people will be tried by Gacaca courts at cell level.

Province level Gacaca courts will serve as appeal courts. Appeals for each category are to be referred to the immediately higher administrative level.

Despite all the abovementioned risks, Rwandan citizens, officials and NGO representatives who spoke to Hirondelle expressed hope that Gacaca would work. Their general message seemed to be: "don't let's try to undermine it, we don't have much alternative. Let's be vigilant, but let's wait and see".

Annex 5: Gacaca Elections

GACACA ELECTIONS



Annex 6: Material available (May-December 2001):

- 30/04 détenus (1) Runda
- 7/05 détenus (2) Runda
- 8/05 rescapés (1) Runda
- 11/05 femme rescapée Runda
- 11/05 femmes détenues Runda
- 15/05 femmes détenues Runda
- 18/05 rescapés (2) Runda
- 24/05 présentation (1) Ntongwe
- 1/06 présentation (2) Ntongwe
- 5/06 femme Hutu rescapée
- 11/06 détenus Taba
- 27/06 abbé Simalagde
- 3/07 aveux PC Gitarama 1
- 3/07 aveux PC Gitarama 2
- 3/07 aveux PC Gitarama 3
- 11/07 aveux PC Gitarama
- 12/07 Gacaca traditionnel à Kimironka (Kigali)
- 16/07 maire de Ntongwe & conseiller de Nyakabungu
- 17/07 fiches Taba
- 20/07 formation forcée Gacaca
- 23/07 fiches Ntongwe
- 26/07 fiches Bugoba
- 2/08 'fiche individuelle de l'accusé' (Ntongwe)
- 2/08 'fiche appel ou opposition de jugement' (PCK)
- 10/08 presentation detainees Ntongwe to the population
- 10/08 idem
- 13/08 genocide survivors (women) Nyakabungu
- 13/08 raped women, some suggestions
- 14/08 continuation presentation detainees Ntongwe
- 16/08 traditional gacaca Bugoba/Taba
- 17/08 presentation Nyakabungu etc
- 14 & 17/08 comments presentations (Kinazi, Nyakabungu)
- 22/08 interview raped woman (Nyakabungu)
- 24/08 presentation Ntongwe
- 24/08 detainees Gitarama about rape
(+ letters of Gitarama detainees asking for pardon)
- 28/08 theatre play about genocide by organisation of women survivors
- 28/08 conversation with an elder (Kinanzi)
- 29/08 meeting about rape and sexual torture (PRI)
- --/09 interview Simon Gasibirege
- 1-3/09 conversations Murambi
- 07/09 radio programme gacaca (1)
- 10/09 material prison-gacaca PCK (230 pages)
- 13/09 interview with raped women

- 14/09 radio programme gacaca (2)
- 17/09 meeting BaTwa (CAURWA)
- 23/09 presentation detainees Runda
- 24/09 interview director school Runda
- 27/09 Minister Mucyo in Ntongwe
- 28/09 interviews with members of some women's organisations (Runyinya)
- 30/09 presentation detainees Runda (2 documents)
- 09/10 election 4-7/10/2001
- 11/10 presentation detainees Runda
- 16/10 presentation detainees Runda
- 22/10 interview detainees Murama
- 23/10 interview bishop Ruhengeri
- 25/10 interview detainees Gisovu (general)
- 31/10 interview detainees Gisovu (who confessed)
- 03/11 interview detainees Murama (who confessed)
- 16/11 interview detainees Kibuye (heneral)
- 20/11 interview genocide survivors Kigese
- 03/12 interview detainees Kibuye (who confessed)
- 04/12 interview detainees Kibuye (who confessed)
- 06/12 interview female detainees Relima
- nd Interviews PCK (Geny/Fiona)