Monitoring and Research Report on the *Gacaca*

Trials of offences against property committed during the genocide :

a conflict between the theory of reparation and the social and economic reality in Rwanda

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Summary

Right from the outset, decisions by the *Gacaca* Courts at "Cell" and "Sector" levels in matters relating to property offences *Gacaca* during the genocide (looting, destruction of and damage to real estate and personal property) have proved to be a problem area and continue to give rise to numerous disputes for various reasons.

Firstly, the large-scaled looting which took place during the 1994 tragedy and which, to a large extent, was organised from the top down, constitute a complex set of events. Although many people were involved in one way or another, the extent of each individual's responsibility varied widely. On the one hand, some members of the *attaques* stole and destroyed not only in order to acquire wealth for themselves, but also in the hope that by doing so they would wipe out all trace of the victims of the genocide. This formed part of the extermination plan and from that point of view, looting were an integral part of the genocide. On the other hand, whereas some individuals looted and benefited from the chaos in that they improved their standard of living by appropriating property that appeared to have been abandoned, others did so simply to survive when the general insecurity had made it impossible to farm the land. These two latter groups looted without agreeing to or forming part of the genocide plan. Consequently, it is not easy to determine the degree of each individual's responsibility.

There is a further complication in that there was a second round of looting which took place whilst the owners were in exile and some of them have been unable to recover their property since returning to Rwanda. Today, they feel frustrated because they can't claim their property in *Gacaca* proceedings and yet they themselves may be ordered to make repayments to the very people who were implicated in that second round of looting.

A third problem is that upon their return from exile, some of the survivors received payment in respect of their property either as a result of a procedure known as the *entente*, ("friendly settlement") or as a result of pressure by the authorities. Today, they may feel frustrated because they believe that what they received then is insufficient compared to what is currently being repaid at the outcome of a *Gacaca* hearing. So, some of them seek to reopen their claims. The absence of written evidence of the *ententes* makes it difficult to prove that they ever took place.

Thirteen years after the events, the *Gacaca* Courts are faced with a very difficult task, further complicated by the fact that the procedure under the law on property offences itself may cause problems. The authorities contend that the Gacaca proceedings should only be used where parties have failed to reach a friendly settlement. Nevertheless, since the introduction of the formalised Gacaca procedure, there have been many instances where the intervention of the Gacaca courts in these *ententes* has been so far-reaching that the *entente* procedure is beginning to look like the more formal court proceedings.

Two further major elements cause serious problems at the hearings. Firstly, the law provides that where the looter is absent (because he is dead, in exile or in prison - and there are a great number of these cases), he can still be tried and his or her heirs, or those who have taken over his or her business, must make the repayments. Inevitably this leads to disputes if the value of the property left by the looter is less than the sum ordered by way of repayment, or when the property has already been divided between members of the family.

Secondly, the use of the *in absentia* procedure means that the defendant's *mens rea* (the defendant's intent to commit the offence(s) (s)he is charged with) is not considered. Even where a defendant is represented at the hearing by members of his/her family, these often do not know what the defendant did or didn't do and are therefore unable to run any defence.

Furthermore, there may have been a series of events. For example, a house may have been looted on a number of successive occasions by a number of different people. This makes it difficult to establish who took what. The courts' way of dealing with this is often to first find the value of the property at issue and then divide that value in equal parts by the number of co-defendants. The net result is that a person who has participated in the destruction of a house and who took a great number of personal belongings, may end up having to repay the same amount of money as a person who arrived last on the scene and took a bowl or some wood from the debris so as to be able to cook a meal. It is also worth bearing in mind that a number of these judgments are given at Cell level, the lowest level in the *Gacaca* proceedings and that the Panel, which is made up of lay judges, may find it difficult to cope with a procedure that changes continually.

Once an order has been made, its enforcement may also run into problems. Decisions relating to property offences are usually expressed in monetary terms. Given that the people of Rwanda live in extreme poverty and that the sums ordered by way of compensation for loss of valuable property (houses, livestock, mattresses, etc.) are often quite considerable, the majority of those ordered to make repayments are unable to comply with such orders. Where that is the case, the law offers two "solutions". Firstly, a court can order confiscation or forfeiture of property. Since in Rwanda the property in question is usually land or livestock, such an order may then plunge people into even greater poverty as they lose not only tangible property but above all their main means of survival. Secondly, the court may order that the repayment be made in the form of work carried out for the benefit of the victim. This is contrary to international law and, in our view, could pose a serious social threat.

Although the factual circumstances are difficult and complex, we believe that there may be a way of easing the tension which would also, to some extent, satisfy both the victims and those looters who did not commit any killings. That solution is compensation in respect of the loss of loved ones and of the loss of property, and this solution has been available since 1996. However, recent political developments show that the authorities are now considering setting up a social help funds on the same model as the earlier FARG (*Fonds d'Assistance aux Rescapés du Génocide*, the Help Funds for the Survivors of the Genocide) and have abandoned the whole concept of compensation. Yet, compensation might have been one way of helping Rwanda to move towards a more peaceful cohabitation by taking the edge off the disputes caused by, amongst others, Category 3 (property) offences.

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METHODOLOGY

Since January 2006 a research team from Penal Reform International has been looking closely at the decisions in property offences taken by the *Gacaca* Courts both at Cell and at Sector levels. At the same time, the team continued its research into trials for offences against the person as well as the system of the *Travaux d'Intérêt Général* or *TIG* (Community Service), so as to have a general overview of the justice system that deals with the genocide.

PRI has followed its usual methodology, i.e. its research focused on action, which in this case means improving the quality of the decisions taken by the *Gacaca* Courts and making the best use of the potential offered by that procedure so as to achieve reconciliation. To this end, PRI will communicate its analyses and recommendations to the relevant Rwandan authorities.

PRI hopes that its recommendations in respect of the *Gacaca* procedure will be heeded by the authorities and in particular by its main partners, the *Service National des Juridictions Gacaca* (the National *Gacaca* Courts Service, hereinafter referred to as the *SNJG*) and the Secrétariat Exécutif du Comité National du Travail d'Intérêt Général (the Executive Secretariat of the National Committee on Community Service, hereinafter the *SNTIG*). We would also hope that new pathways can be found to solve the ever growing problems within the *Gacaca* procedure and that all the participants in that process will have access to an independent and objective analysis.

For our purposes, we have adopted a qualitative methodology consisting of trial observations at "Cell" and "Sector" levels as well as interviews with members of the public. We have the assistance of seven local interviewers who live in the locality where they carry out their observations and three research assistants who are based in Kigali and regularly carry out field work. With the help of a research coordinator and two deputy coordinators, each one of them describes and analyses the data gathered, which are then compiled, compared, collated and discussed by the whole team before the analytical and thematic reports are drafted. The team is completed by three typists and five translators who transcribe and translate the tape recorded interviews and reports that are forwarded by the interviewers.

The most complicated aspect of our work was, firstly, the cross referencing of the information gathered so as to check whether the cases described were genuine and, next, to establish whether cases were isolated or reflected general trends within the *Gacaca* procedure. Although the laws and regulations, *Instructions* and the training manuals are drafted and prepared at national level, in practice there are great local differences in the Gacaca procedure and the decisions given by the *Inyangamugayo* as the social context and the historical events vary considerably from locality to locality. The genocide assumed different faces in different parts of the country. This is why, in addition to the researchers in Kigali, we also have local interviewers in each of the country's provinces. These interviewers live in the locality where they carry out their observations and this enables them to gain a better understanding of the influence of the specific, local conditions. This report shows very clearly that the local context of the genocide has a strong bearing on the way in which the procedure is applied by the various *Gacaca* Courts.

Generally speaking, interviews with members of the public were carried out on a one-to-one basis, so as to foster a feeling of trust. This was not always easy to achieve, for although interviewees were assured that they would remain anonymous, the *Gacaca* procedure is currently

the subject of heated political debate. In addition to that, the current social climate generates noticeable distrust between various social groups. The net outcome was that some of the interviewees were too frightened to speak out and this restricted what we could do to some extent, particularly as we tape recorded the interviews for the sake of completeness and accuracy, unless the interviewee objected to such recording. Questions were formulated as quasi-open questions so as not to inhibit the interviewee's response.

There was one further potential problem. The texts had to be translated from Kinyarwanda into French which could lead to bias in the target text. The best answer to this potential problem appeared to be for a second translator to double check every such translation against the original Kinyarwanda.

We were thus able to examine a maximum number of interviews and to establish whether there were any particular trends. We did not attempt to generalise too much, for Rwanda is a diverse country and problems vary from locality to locality.

For this report, we carried out 321 interviews on the subject of property offences: 47 of these were carried out with survivors, 69 with the *Inyangamugayo*, 41 with defendants, 28 with local officials and 28 with defendants who had been acquitted. The remainder consists of neighbours, persons involved in *Gacaca* proceedings or any other person who wanted to speak with us. In addition, our local interviewers carried out more general interviews, during which property offences would often crop up without necessarily being the main topic.

All the tape recorded interviews have been numbered for easy reference and the reference numbers are included in the page footnotes.

As we have said in our earlier reports, this study does in no way pretend to be exhaustive, nor does it generalize its observations or main conclusions. Further research is necessary and so is cross referencing with other analyses. Despite this reservation, the results presented in this Report clearly show that there are strong and undeniable trends within the various social groups.

PREFACE

The *Loi organique* N° 10/2007 of 01/03/2007:

Speed at the expense of quality and fairness

Although this Report is mainly concerned with the decisions in matters relating to property offences taken by the *Gacaca* Courts, we believe that it would be useful to deal with the amendments to the 2007 *Loi organique*, before turning to the heart of the matter. The 2007 law introduces amendments to the 2004 *Loi organique*. The 2007 *Loi organique* is also due to be amended, but that has not happened yet.

On 1st March 2007 the *Loi organique 16/2004 of 19 June 2004 establishing the organisation, competence and functioning of Gacaca Courts charged with the prosecution and trial of perpetrators of the crime of genocide and other crimes against humanity committed between 1 October 1990 and 31 December 1994* (hereinafter referred to in brief as "*LO 16/2004"*) was amended by the *Loi organique 10/2007 of 1 March 2007 amending and completing Article 51 of LO 16/2004* (hereinafter referred to in brief as "*LO 10/2007"*).

These amendments are very important for they introduce changes to several fundamental points and, we believe, these need to be highlighted. The two crucial amendments introduced by the new law are: (1) the new classification of offences together with a new schedule of penalties, and (2) the principle of increasing the number of *Gacaca* Panels.

Both amendments have their roots in the need to speed up the resolution of the conflicts arising from the genocide.

Once LO 10/2007 had been voted through, two Instructions were sent by the Service National des Juridictions Gacaca (SNJG) to the Courts: (1) *Instruction Nr. 11/07 of 2 March 2007*[1] setting out the principle of increasing the numbers of courts and (2) *Instruction Nr. 13/2007 of 20 March 2007*[2] explaining the new classification of criminal offences.

1- The amendments to Category 1 and 2 offences

Category 1 and 2 offences were drastically modified with effect from 1 March 2007. Under Article 11 of the new *LO 10/2007* amending and completing Art. 51 of *LO 16/2004*[3], Category 2 offences have been expanded to include a number of the earlier Category 1 offences, which

[1] *Instruction Nr. 11/07 of 02/03/2007*, issued by the SNJG, on the creation of committees and their members. The texts and the various instructions are available on the SNJG's website www.inkiko-*gacaca*.gov.rw.

[2] *Instruction Nr. 13/2007 of 20/03/2007*, issued by the Executive Secretary of the SNJG, aims to assist the *Gacaca* Courts to implement *LO 16/2007* of 16/6/2004 as of 1.3.2007.

[3] *LO 10/2007* amending and completing Art. 51 of *LO 16/2004* was published in the *Journal Officiel de la République du Rwanda* on 1 March 2007.

used to be triable only before the national courts (such as offences committed by well-known murderers, torturers and other persons involved in degrading acts on dead bodies[4]) and are now to be tried by the *Gacaca* Courts. The workload of the *Gacaca* Courts has therefore increased quite considerably and this amendment has a number of consequences for both the criminal law and the criminal procedure.

Life sentences: *Gacaca* Courts are now competent to impose the maximum sentence

To start with, the sentencing powers of the *Gacaca* Courts have been changed. Well-known killers, torturers and other persons accused of having committed degrading acts on dead bodies, who are now to be tried before the *Gacaca* Courts, may, upon conviction, be sentenced to the maximum sentence available in Rwanda today, namely life imprisonment (Rwanda abolished the death penalty in July 2007)[5].

This new sentencing regime is cause for concern, for if according to the Preamble to the 2004 Law,[6] the battle against impunity is one of the duties of the *Gacaca* Courts, it was also always clear that offences carrying the heaviest sentences were to be tried by the national courts.

The fact that the *Gacaca* Courts can sentence a person to life imprisonment raises a fundamental question, because the defendants, who, more often than not, are illiterate, have no access to legal representation and are tried by lay judges in circumstances in which the qualification of offences requires a particular technical skill which lay judges do not necessarily possess.

It seems to us that there are also purely practical problems: many hearings are not held *inter partes* and the courts are sometimes finding it difficult to make findings of fact, given the tense social context in which fear is omnipresent (the survivors fear that if they speak out, they will become the victims of reprisals, whilst witnesses for the defence do not speak out for fear of being accused of minimising the genocide or of being accused in turn). Consequently, it is not always possible to guarantee that people are free to speak and yet, this is a principle that is central to the efficient and fair functioning of the *Gacaca* Courts.

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[4] Under the amended terms, Category 2 offences now include:
1. the well-known murderer who distinguished himself or herself in the area where he or she lived or wherever he or she passed, because of the zeal which characterized him or her in killings or excessive wickedness with which they were carried out together with his or her accomplices;
2. the person who committed acts of torture against others, even though they not result in death, together with his or her accomplices;
3. the person who committed dehumanising acts on the dead body, together with his or her accomplices;
4. the person whose criminal acts or criminal participation place among the killers or authors of serious attacks against others, causing death, together with his or her accomplices [*sic*];
5. the person who injured or committed other acts of serious attacks against others with the intention to kill them but did not attain his or her objective, together with his or her accomplices;
6. the person who committed or participated in criminal acts against persons, without any intention to kill them, together with his or her accomplices;

[5] *Loi organique 31/2007* of 27/06/2007 abolishing capital punishment was promulgated on 25 July 2007 and came into force on that same date by publication in a special issue of the Official Journal of the Republic of Rwanda.

[6] The Preamble provides: "Considering the necessity to eradicate for ever the culture of impunity in order to achieve justice and reconciliation in Rwanda and thus to adopt provisions enabling rapid prosecutions and trials of perpetrators and accomplices of genocide, not only with the aim of providing punishment, but also reconstituting the Rwandan Society that had been destroyed by bad leaders who incited the population into exterminating part of the Society". *LO 16/2004* as amended by *LO 10/2007*.

We would therefore suggest that the most serious charges, which carry the heaviest sentences, ought to remain the exclusive remit of the national courts.

The far-reaching changes to the *Travaux d'Intérêt Général* ("TIG"), or Community Service Orders

The change to the classification of offences affects sentencing in another way as well: from now on, it will be possible to make *TIG* orders lasting as long as 14 years. That means that well-known murderers, who now fall within Category 2, can apply for a *TIG* order for half of the length of their sentence. They can even be given a suspended sentence, if they have pleaded guilty.[7] That in turn means that as their custodial sentence may be as long as 29 years, [8] and where their Article 14 confession and guilty plea is accepted, they may receive a *TIG* order for 14 1/2 years. This latter sentence is then halved again, for the authorities seem to favour a *TIG* in the form of work camps, which are easier to run and can be more easily adapted to any future changes in sentencing policy.[9]

The main activities in the work camps are building houses for the destitute, quarrying stone for the roads and reinforcing the radical terrace system. According to SNTIG forecasts, the number of potential *tigistes* could well reach 300 000 to 500 000 people.[10] The SNTIG emphasizes the "educational" aspect of these camps where the *Tigistes* receive professional training, a civic education and attend literacy classes. Although we believe that this is a positive element, it is still the case that these individuals are going to be locked up[11] and separated from their families and often forced to do hard labour. The question therefore arises whether the *Tigistes* and their families may not see a *TIG* order, which is served in a camp, and a sentence which is to be served in a prison, as two identical sentences, particularly as in some prisons, prisoners work any way.

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[7] Under Art. 14 of *LO 10/2007* amending Art. 73 of *LO 16/2004*, Category 2 offenders may apply to have for half of their sentence commuted into a *TIG* order and one third or one sixth commuted into a suspended sentence, depending on when they have pleaded guilty, the remaining one third or one sixth still needs to be served in prison. Where the offender pleads guilty before his/her name has been included in the list of accused persons, one third of the sentence is commuted into a suspended sentence and one sixth is served in prison. Where s/he has pleaded guilty after his/her name was included in the list of accused persons, the reverse applies: one sixth is commuted into a suspended sentence and one third is served in prison. Anyone who pleads guilty at any time during the proceedings at first level will be entitled to half of his/her sentence being commuted into a *TIG* order. Anyone who refuses to plead guilty or whose guilty plea is rejected by the *Gacaca* Court shall serve his/her full sentence in prison.

[8] See Art. 14 of *LO 10/2007*.

[9] According to a statement made on 3 July 2007 by the Deputy Executive Secretary of the SNTIG at a meeting of sponsors and other participants in the *Gacaca* process.

[10] Discussion with the SNTIG, June 2007.

[11] It appears from our discussions with the SNTIG, that *tigiste*s may receive visitors on Sunday and may be granted exit permits for special occasions, such as a death or birth in the family, a sick child and when they are called to give evidence before the *Gacaca* Courts.

In another fundamental amendment, the SNJG published *Instruction Nr. 15*[12] which aims to resolve the catastrophically high number of prisoners[13] and therefore provides that Category 2 prisoners who have been sentenced to serve half of their sentence in prison, shall first serve their *TIG*, followed by the custodial part of their sentence. This *Instruction* provides that: "Whereas the prisons are unable to cope with the number of persons convicted and sentenced to a custodial sentence,[14] (...) Any person who has been charged with a Category 2 genocide offence or other crimes against humanity and who has pleaded guilty, or has admitted culpability in court, has shown repentance and asked for forgiveness (the procedure set out in Art. 54 of the *Gacaca* Law), and whose plea has been accepted by the Court, shall serve the sentence imposed by the *Gacaca* Court by first serving his/her *TIG*, then his/her custodial sentence and finally the suspended part of the custodial sentence".[15]

Following this Instruction, the Sector *Gacaca* Courts received the "Authorisation to begin to serve a sentence by first serving a *TIG*" forms. This form enables the court to state that a person who meets the requirements may serve his/her *TIG* prior to serving his/her custodial sentence and lastly his/her suspended sentence[16.] A letter dated 16 June 2007 and addressed by the SNJG to the "Sector" Courts and the Appeal Courts, reminded them that prisoners whose guilty plea has been accepted should be released pending the start of their *TIG*.[17]

A solution to the dramatic overcrowding the prisons had to be found. The overcrowding became worse as the number of panels per court increased. However, the new measure merely postpones the inflow into the prisons and may well prove to be insufficient. If it aims simply to organise the turnover in the prisons, as people sentenced by the Gacaca Courts receive different sentences, the real issue remains that the Rwandan prisons simply cannot cope with the huge numbers of convicted criminals. It must be remembered that apart from the Category 2 prisoners who may benefit from a *TIG*, the Rwandan prisons system must also accommodate convicted persons whose guilty plea was rejected by the courts, those who did not plead guilty and all those charged with Category 1 offences.[18] The latter group will, upon conviction, receive very long custodial

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[12] SNJG *Instruction Nr.15/2007 of 1 June 2007* on the implementation of sentences imposed on defendants who make use of the guilty plea, guilty final submission, repentance and forgiveness procedure and whose plea is accepted by the *Gacaca* Courts, ref. SNJG/T006. Hereinafter "*Instruction Nr. 15/2007*."

[13] According to the statistics supplied by the SNJG during the 3 July 2007 meeting, there were 97.000 men and women in detention. The prison population had reached alarming levels, which had never been so high before in Rwanda. Following the release of those persons who had to serve their *TIG* after the publication of Instruction Nr. 15, the number of inmates went down quickly. On 18 September, there were 70 593 detainees, according to the SNP, the national prison service. Nevertheless, the prisons remain overcrowded.

[14] SNJG *Instruction nr. 15/2007*.

[15] *Ibid.* Art.1. Moreover, the time spent waiting after the sentence and prior to serving the *TIG* order is deducted from the suspended sentence. Translation from Kinyarwanda into French by PRI.

[16] République Rwandaise, SHJG, Ref./T008, Certificate for serving a sentence by first serving the *TIG* part thereof.

[17] According to *Instruction Nr 15*, time spent waiting either in custody or on bail is to be deducted from the suspended sentence.

[18] According to the SNJG statistics, there are 77 269 such detainees. These were the figures at the end of the

sentences and will not be able to apply for any *TIG*. And then there are those prisoners who are convicted under the ordinary laws.

There is a further problem in that it is difficult to convince the *tigistes* that, having worked for several years without pay, they are now to return to prison. The *TIG* loses its rehabilitatory value and becomes difficult to accept both psychologically and socially.

Even although at present there is no legal instrument to this effect, it is highly likely that persons sentenced to a *TIG* will not go to prison subsequently and that the work camp will replace the prison sentence for those Class 2 convicted prisoners who availed themselves of the Art. 54 confession procedure. It is worth mentioning that during a meeting of various national and international actors in the Gacaca process on 3 July 2007, the SNJG Executive Secretary explained that a person who conducted him/herself satisfactorily during his/her *TIG*, would not go to prison, but would just serve his/her *TIG* and the suspended sentence. It is therefore possible that the law will be amended in that sense.

This begs two questions: (1) what are the criteria for measuring "good conduct"? and (2) who will decide whether a convicted prisoner is to go to prison or to be released after serving his/her *TIG*? Under Art. 17 of *LO 10/2007*, if a *tigiste* fails to serve his order properly, it is the *Gacaca* Court in the sector where the *TIG* is served that fills out the return form, based on a report from the Community Service Committee. However, it is clear that it will be difficult for the courts to evaluate such reports and moreover, the wording of the article appears to give the courts little discretion in the matter.[19] We believe it is important to define the assessment criteria more clearly and to ensure that where a *tigiste* is alleged to have failed to carry out the work satisfactorily, s/he is offered the opportunity to explain him/herself to the Court. The Court can then decide whether the *tigiste* should be sent to prison, released or allowed to continue his/her *TIG*.

There is little doubt that this measure, which enables a convicted prisoner to serve his/her *TIG* before serving the custodial part of the sentence, will make it possible to release a great number of persons, but it will still fail to resolve the problem of prison overcrowding completely. It remains to be seen whether the overcrowding problem would not merely be transferred to the work camps.

What is more unfortunate is that the Art. 54 confession procedure is the only criterion for establishing whether someone may apply for a *TIG*. We know that Category 2 comprises a wide range of offences, from the "well-known murderer" whom the law defines as someone who has shown "zeal" and "excessive wickedness"[20] during the killings and who has killed a great number of people, to the person who has caused physical harm without killing. Moreover, many *Gacaca*

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investigatory stage and will doubtlessly go up during the trial and sentencing stage as further charges are laid.

[19] Art. 17 (2) of *LO. 10/2007* provides: "In that case, the Community Service Committee in the area where the convicted person is carrying out community service shall prepare an ad hoc report and submit it to the *Gacaca* Court of the Sector where community service is perlodged which will fill in the form to return the defaulting person to prison. In case this is not possible, that report shall be submitted to the *Gacaca* Court that tried the person serving his or her community service".

[20] The definition remained unchanged from 1996 until the *Gacaca Law* as it stands in late 2007.

Courts convict people for having participated in the road blocks that prevented people from escaping without killing directly, an offence unknown to Rwandan law.[21]

Given that there is only one criterion for granting a *TIG* and a suspended sentence, anyone who has participated in the roadblocks without killing another person directly or anyone who caused wounds without causing death, but who does not plead guilty, may have to serve a custodial sentence, whereas a "well-known murderer" who has pleaded guilty, may apply for a *TIG* and a suspended sentence.

This sort of situation could have been avoided if the guilty plea had not been retained as the sole criterion for granting a *TIG* and a suspended sentence and if defendants convicted of the less serious Class 2 offences had also been given the right to apply for a *TIG* and a suspended sentence, i.e. regardless of whether they pleaded guilty or not. The law does make this provision, but only in respect of "persons having committed criminal offences against others without intending to cause death, or participated therein". These persons may apply for a *TIG* and a suspended sentence, even if they have not pleaded guilty.[22] However, it would seem that in practice the lay courts find it very difficult to decide whether the defendant acted intentionally or not.

It would appear to us that when the next law is drafted, one approach could be to review the scale of sentences further so as to:

- introduce the *TIG* as the main sentence for certain Category 2 offences, regardless whether the defendant has pleaded guilty or not, whilst maintaining the principle of a reduction in the sentence for a guilty plea: the sentence could be shorter if the defendant has pleaded guilty.
- use the *TIG* as an alternative to half of the custodial sentence for the more serious offences, in particular for the "well-known killers"
- review the length of *TIG* sentences in order to avoid overlong sentences
- limit the time spent in a camp under a *TIG*

2- Witness evidence after the increase in the number of *Gacaca* Panels

Next, it would seem to us that the increase in the number of panels has favoured speed at the expense of quality and fairness. Art. 1 of LO *10/2007* provides that "a *Gacaca* Court may have more than one Bench where necessary". That increase has led to a corresponding decrease in the number of judges per Bench (or Panel). Where the number of panels was increased, the number of office holders and substitutes was correspondingly decreased from 9 office holders and 5 substitutes (as per the 2004 Law) to 7 office holders and 2 substitutes (as per the amendments introduced by the 2007 Law) thus making it possible to allocate the judges to the new panels.

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[21] The SNJG's Executive Secretary has on a number of occasions reminded the various sponsors that this offence, like the carrying weapons, was not included in the *Gacaca* Law. She did so in particular during a progress meeting on 3 March 2007.

[22] See Art. 73 of the *LO 16/2004* [...] as amended and completed by the *LO 28/2006* and *LO 10/2007*.

At Sector level, the 1545 existing Sector panels went up by a further 1803 panels, thus more than doubling the total number of panels. At appeal level, a further 412 courts were added to the 1545 already in existence.[23] Moreover, although the basic principle set out in *Instruction Nr. 11*24 was that only courts with more than 150 cases could increase the number of panels, the Executive Secretary of the SNJG stated, in a meeting with observers of the process and sponsors, held on 3 July 2007, that exceptions had been made and that certain courts, in particular those in the North of the country, had increased the number of their panels, even though they only had 30 or 40 cases to try, in order to ensure that the process was not further delayed and to avoid the population losing heart.

So "elections" were held and judges were moved to the newly created panels. The General Sector Assemblies also decided that some judges could move up from "Cell" to "Sector" level. The panels then proceeded to elect their Vice-Presidents and Presidents. The number of Cells was also increased.[25]

The fact that various Panels within the same *Gacaca* Court may hold their hearings on the same day makes it more difficult to get the population to give evidence, because people can't attend several hearings at the same time. Witnesses may have been summonsed in advance to a hearing but further witnesses may be discovered when they spontaneously show up at the hearing and contribute to it. The Courts attempt to resolve this problem by ensuring that Panels try cases relating to the same Cells. Indeed, *Instruction Nr. 11/2007* provides that: "cases resorting under the same Cell *Gacaca* Court shall be transferred to a single Panel for the greater convenience of the defendants, the complainants and the witnesses".[26] Nevertheless, some people may have witnessed crimes that took place in different Cells and are therefore not available when their evidence would have been helpful at the two trials that are held simultaneously.

We also noticed that in certain Sectors the *Gacaca* hearings are held several times a week in an attempt to speed up the process. This is the case for example in Mutete (in the Province du Nord, formerly Byumba), where the General Assembly meets on Mondays and Saturdays, in Kiramuruzi (in the Province de l'Est, formerly Mumutara) where the General Assembly meets on Tuesdays and Sundays and at Kashari (in the Province de l'Ouest, formerly Kibuye), where it meets on Tuesdays and Thursdays.[27]

On top of that there are, of course, the weekly Cell hearings of property offences.

This considerable increase in the speed with which matters are dealt with has had a number of consequences: the population is less involved and people are disappointed, despite the

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[23] These details were provided by the Executive Secretary of the SNTIG during the *Gacaca* progress meeting of 3 July 2007.

[24] *Instruction Nr. 11/07.*

[25] Cf. Art. 2 of *Instruction Nr. 11*. This document sets out clearly how any increase is to be implemented.

[26] *Ibid.*, Art.8.

[27] These facts were noted by PRI researchers when they visited the area.

authorities' attempts to make them more aware of the procedure and to exercise some pressure.[28] This also brings with it a greater risk of corruption amongst the judges who are expected to do an enormous amount of work and therefore have less and less time to earn their living, for it must not be forgotten that they are not paid for their work in the Gacaca hearings. And finally, the task of the *Gacaca* coordinators, who have to monitor the work done by the courts for which they are responsible, has become much more difficult. They have less time to check whether the documents comply with the law, in particular those documents that are required for putting people into prison. This in turn increases the risk of unlawful detentions.

The increase in the number of Panels has also led to an extremely rapid rise in the prison population between March and June 2007. The rise would have happened anyway, even without the increase in the number of panels, but it would have been spread over a longer period of time. Whereas at the start of the national phase of the hearings in July 2006, 800 people would be put in detention/prison every week on average, by March 2007, that average had increased to 1700. That is more than double since the number of Panels was increased. However, after *Instruction Nr 15* was issued, a great number of people were released in order to serve their *TIG*, and the increase has started to slow down.

It would seem to us that the new law has led to problems in all these areas. Although the population and the authorities would like to complete the whole process quickly, it would be regrettable if that greater speed were to be at the expense of justice, for it is already taking its toll on the judges and discourages the population from participating.[29] Mistakes may occur much more easily. Moreover, the process of establishing the truth requires a detailed and rigorous examination of the facts which is not possible in the current accelerated procedure. This may therefore give people the impression that justice is a matter of the luck of the draw and thereby reduce the population's motivation and discourage its involvement.

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[28] Attendance at *Gacaca* hearings is not the only duty people have to fulfil. They also have to do their *Umuganda* or mandatory "day of work", which in some regions is a weekly duty, although according to national instructions is should be a monthly one, the night watches, and various other compulsory meetings. In some localities, the *Inyangamugayo* have been exempt from these duties, but we noticed that this is not the case everywhere.

[29] To give just one example here: since the sentencing reforms of March 2007, the courts are finding it difficult to give the correct sentence and this despite the training they have received. They need to set the sentence in accordance with the law, then divide it by two to work out the *TIG* period, and then into a third or a sixth, or vice versa, depending on the stage during the proceedings at which the perpetrator pleaded guilty, in order to determine the period to be spent in custody or on a suspended sentence and then they need to remember to deduct any time already spent in custody.... We noted numerous cases where the courts experienced difficulties or even got it wrong.

By way of example, we quote this individual who was serving a *TIG*: *"I believe I was given the correct sentence, because I was given a 12 year custodial sentence. As I had just spent 11 years in prison awaiting trial, I was told that I would have to serve a TIG for 2 years and 54 months. Even if they got the length of the TIG wrong, I'll serve it anyway, because it is not like serving a prison sentence. So I will serve my TIG, I'd put it even more strongly, I am delighted."* Interview with two released prisoners, Nr. 1210-1211.

Introduction

Compensation: a solution to the difficulties arising out of decisions in property offences?

It would be a mistake to underestimate the local impact of decisions handed down by the *Gacaca* Courts in property offences.

It is true that measured against the murder, rape and torture that went on during the 100 days of genocide and looting are just offences against property and what would appear to be of lesser important. We are dealing here with theft, not murder and the Cell *Gacaca* Courts do not hand down custodial sentences; instead they make orders for reimbursement under a civil and not a criminal procedure. This, together with the fact that the Category 3 trials began later, is why the usual observers of the *Gacaca* procedure tended to focus on the more serious offences against the person which were tried at Sector level. So it took a while before it was appreciated that the Cell Court proceedings for property offences were causing problems and disputes. It is also true that these decisions were given at what used to be the lowest administrative level and were more difficult to monitor: their sheer number made it hard to get an overview of the way in which they operated, for there are over 11 000 Cell *Gacaca* Courts. Each one of these courts was confronted with its own, peculiar problems, depending on the individuals on the one hand, and the local context of the genocide, on the other.

Both the principle and the wording of the legislation put decisions in property offences in the realms of "reparation" rather than "punishment". The looters must make good the wrong they did by repaying money or returning that which they stole. Reparation and punishment are really the two realms of settling the huge disputes caused by the Rwandan genocide - there are a number of international publications that discuss this issue directly[30] or indirectly.[31] Most of these examine reparation in respect of both the loss of life and of property.

In Rwanda itself, the very first discussions on the subject of reparation focussed on the pecuniary aspect, that is to say, a sum of money by way of compensation for damage caused to persons and property. As early as 1996 there were plans to set up a compensation fund[32] which was to provide compensation in respect of deceased, injured and disabled persons as well as stolen or destroyed property. Two Bills to this effect were drafted in 2001 and 2002 but they were never passed and have now been dropped. We will return to this point at the end of this report as it would now seem clear that this Fund is, as it currently stands, the whole burden of

[30] For example the *International Covenant on Civil and Political Rights* adopted and opened for signature, ratification and accession by the General Assembly resolution 2200A (XXI) of 16 December 1966 and which came into force on 23 March 1976, ratified by Rwanda in 1975, or the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment* adopted and opened for signature, ratification and accession by the General Assembly in its resolution 39/40 of 10 December 1986, which came into force on 26 June 1987. Rwanda has not yet signed the latter.

[31] See the *Principles and guidelines on the right to reparation for victims of gross human rights violations*, United Nations, 2005.

[32] Cf. also Heidy Rombouts, *Victim organisations and the politics of reparation: a case study on Rwanda*, Antwerp University, and Stef Vandeginste, *Réparation pour les victimes de génocide, de crimes de guerre et de crimes contre l'Humanité* (Reparation for the victims of genocide, war crimes and crimes against humanity), L'Afrique des Grands lacs, Annuaire, 2000-2001.

compensation falls upon the looters themselves, who have to make the repayments ordered by the Cell and Sector *Gacaca* Courts.

However, reparation for loss of property which relies solely on the looters' ability to repay is not a viable proposition in Rwanda. When a *Gacaca* Court makes a repayment order (because the parties have failed to reach a compromise), it estimates the disputed property at its current value. That value tends to exceed the perpetrators' ability to pay back, particularly when it the property at issue is a (stolen) cow or a (destroyed) home. The vast majority of looters is unable to repay such sums of money. If a poor family has to sell its own property in order to satisfy the *Gacaca* Court orders for repayment, or if its property is confiscated for the same reason, it may be driven to the brink of absolute destitution and tragedy. At the same time, the survivors feel no less frustrated as they are waiting with little hope of any settlement. It is therefore not surprising to see disputes arise between individuals.

In other words, *Gacaca* decisions are very important. Their effect on the social relations between the survivors and the rest of the community is enormous and where there is a feeling of insecurity locally, they aggravate that feeling. We observed that repayment orders often lead to tension and feelings of injustice which affect both the convicted person and the victim. Both sides are dissatisfied and greatly worried. We noticed that at a number of *Gacaca* awareness meetings, the Cell repayment orders triggered more questions than the Sector repayment orders.[33]

From our own observations, we are able to identify several important issues relating to decisions in property offences. These decisions explain why the population is worried. These issues, to which we will return in greater detail later in this report, are:

- the complex nature of the looting during the genocide makes it difficult to identify the goods that were looted and the persons who committed these offences; it therefore becomes difficult to give a fair hearing and do justice;

- the procedure lacks clarity and leads to considerable tension within families; the *Inyangamugayo* find it difficult to ensure compliance with the orders;

- the enforcement of the orders is particularly difficult in the current economic and social climate in Rwanda, and whatever the form of the order, whether by repayment, confiscation or work, many orders are not complied with and this leads to numerous disputes.

In this report we will present the difficulties caused by the repayment orders from two different perspectives:

- the legal perspective: we will see that it is the law itself that causes problems and that the *Inyangamugayo* sometimes fail to implement it correctly; the practice often deviates from the purpose intended by the law and the SNJG's *Instructions*.

[33] Observation report on a *Gacaca* awareness meeting in the Kavumu sector, Province du Nord, formely Byumba, 5 March 2007.

- the socio-economic perspective: the current climate in Rwanda, which sets the conditions in which these hearings take place, makes it impossible to enforce the orders.

In the light of all these elements, we will examine whether it might be possible to replace the current orders with an alternative solution. Would it not be preferable to suspend all Class 3 orders and let the *Gacaca* Courts determine the nature of the damage suffered and then envisage reasonable compensation which would be paid by the state?

PART ONE

Genocide and exile as aggravating factors in property disputes

The treatment of Class 3 offences, i.e. the theft and destruction of property, is very complex and at present gives rise to a great number of disputes. In order to understand why it is so difficult to resolve the issue of repayment in respect of property plundered during the genocide, it is important to understand how the looting took place for it is the nature and the organisation of the looting during the genocide that determine the way in which the repayments are dealt with today and explain to a great extent why this gives rise to so many problems. Although the *Gacaca* Courts clearly suffer from structural weaknesses (see our earlier, detailed reports on the frequent amendments to complex legislation, insufficient training for the judges) and societal complications (the tense social situation which makes it difficult for people to speak freely and a general desire to get on with it as quickly as possible), one should not underestimate how difficult the work done by the *Inyangamugayo* really is (whether in general terms or, more particularly, in the area of the Category 3 decisions). This is the subject of this Report.

There was large-scale looting and it involved a wide range of levels of responsibility. Now, more than thirteen years after these events, the *Inyangamugayo* have to decide who took what, who took the cow, who took the washing up bowl and this is a very complicated task. For over a decade, it has also raised fundamental and practical issues in Rwanda, in particular in the area of real estate. Moreover, some people stole just to survive, without in any way supporting the genocide policy, and yet today they are prosecuted in the *Gacaca* Courts and are severely punished.

Part I of this Report will therefore address the important issue of the varied and complex nature of the looting and plunder in order to gain a better insight into the current problems. This is even more important given that there are very few reports on the plundering and destruction that took place during the genocide.

The task before the Gacaca Courts, which includes establishing an inventory of damaged property and identifying the perpetrators, is further complicated by the fact that some thefts were committed whilst the owners were in exile and that the stolen property was returned to them as soon as they had returned home.

1. Looting and the "genocide economy": "It was Christmas every day"[34]

At the time of the mass murders, agricultural activity had more or less come to a standstill and looting quickly became systematic and organised activities which formed the basis for a veritable "genocide economy".[35] As far as the leaders were concerned, the purpose of the massacres was to redistribute wealth, firstly to themselves, but then also to the exclusive benefit of the "Hutus" in general, since according to the genocide plan and in the minds of its participants, no "Tutsi" was to survive.

Looting took place throughout the country and was therefore widespread. Many people tried to benefit from the killings in order to acquire property for immediate consumption, such as alcohol or crops that were still standing in the fields, or longer lasting property such furniture, cattle and, above all, real estate, very sought after and so very difficult to acquire. For it is the case that throughout the genocide, in many parts of the country, plots of land belonging to the victims were reallocated to new owners, although the manner in which this was done varied from *préfecture* to *préfecture*[36]

Although there was great poverty as well as an uneven distribution of wealth in the country and although the mass murderers did not act solely out of financial considerations, it is obvious that the desire to acquire property was a strong incentive to kill which the leaders of the mass murders exploited to incite their fellow citizens to commit murder. As many researchers have demonstrated, the most active militia were often recruited amongst the young people who had nothing to do, were poor, had no land or job, and no hope of ever being able to acquire real estate or valuable property. They were facing economic inequality with no prospect of social promotion. This fed their hatred to the point where it could be manipulated and entertained by extremist leaders and ultimately led to their participation in and support for the genocide. The desire to acquire material property with a strong symbolic value (power, being someone in the community, recognition, higher social status) through the massacres and to accumulate plundered goods pushed people to take part in the genocide and led to looting on a vast scale, since every victim was stripped, every house emptied, or as one participant in these massacres explained: "The day started with killing and ended with looting. The truth is, the rule was to kill on the way out and loot on the way back".[37]

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[34] Statement by a convicted prisoner made in 2004. This man, who was an intellectual, participated in the test runs for the *Gacaca* hearings, which were held in the prisons. He wrote a report on the events during the genocide for PRI basing it on his own, first hand experience as well as that of other prisoners who gave evidence to the *Gacaca* Court. Having confessed under Art. 54, he was released in 2003 after a guilty plea, he was sentenced by the *Gacaca* Courts and served a *TIG* order. One chapter in that document deals with the plunder, a subject that crops up indirectly in all the other chapters. The document shows clearly how plunder was one of the reasons for the mass murders.

[35] This is how it is explained by a man who was convicted for his part in the genocide for a report written for PRI (cf. footnote 1 of his report): "Whilst the killings went on, no one went to work in the fields. We all said to ourselves: What is the point of working the land if I can harvest without doing anything? (...) We became a bit lazy (...) we forgot about sowing and hoeing (...) Killing was more profitable than growing crops".

[36] Although the geographical borders have changed (the former 12 *préfectures* (including Kigali) correspond to the current 5 "Provinces" (including Kigali)), the distribution of administrative and political responsibilities has not.

[37] Statement of a released prisoner, made in 2004.

Looting was also an integral part of the genocide programme and therefore encouraged by those officials who had decided to get involved in the genocide; they wished to remove any trace of the victims by either acquiring or destroying their property. In some parts of the country once the plunder had been completed, whatever was left of the houses would be burnt or destroyed and replaced by crops so as to remove any reminder of their former owners. Moreover, the extremists took the view that as a group the "Tutsis" had always been granted economic privileges and that therefore acquiring or destroying their property was a form of revenge and humiliation, essential aspects of the desire to exterminate them.

It is worth noting that even although we have been able to speak with many people about this subject and even although it is possible to draw some general conclusions about the plunder and looting at national level, the way in which these activities were organised varied widely from region to region. Reallocation of land, one important cause of many disputes today, is one example of the many different ways in which plots of land were redistributed to new owners once the former owners had been killed or had fled. However, there was no time to redistribute the land in the North because the FPR's armed forces had moved in quickly from Uganda. By contrast, all those we spoke to confirmed that in Kibuye and Gisenyi such redistribution was carefully organised under the supervision of certain local officials. Moreover, the nature of the looting seems to have varied depending on whether they took place in town or in the countryside.

It must be remembered that there were two types of looting during the genocide. There was the extensive, systematic and collective looting organised by the *attaques* and which was an essential part of the extermination plan. These *attaques* seized mostly valuable property. The rest of the population committed another type of looting which was not really organised and did not constitute approval of the genocide plan. Some property, such as crops, was looted by neighbours, and many people took what the gangs of organised plunderers had left behind because they wanted to improve their standard of living or because they needed to survive in circumstances of bitter poverty. It is important to keep the distinction between those two types of looting clearly in mind, for it is one of the most difficult issues with which the *Gacaca* Courts are confronted today.

The most desirable property was the victims' livestock and land. The most fertile land was set aside for those holding public office and the most active murderers. The allocation of these plots of land led to tense relations between the mass murderers. And if, apart from the killers, large sections of the population also took part in the looting, the levels of their participation varied enormously. This must never be forgotten, particularly as the *Gacaca* Courts may award large sums by way of reimbursement. Such repayments may and do cause very real difficulties for some families. To illustrate the varying levels of liability, we shall first describe the different levels of participation in looting by the *attaques* on the one hand and the population at large on the other. We shall then deal with the very complex issue of the appropriation of land belonging to the victims.

Looting by the *attaques*: planned, systematic, large-scale, collective action

Most of the plunder and looting was committed by what the Rwandans themselves call the *attaques*. These mobile groups of armed men, made up of either *Interahamwe* (the Hutu militia trained to kill), FARG soldiers, or "ordinary" citizens trained to commit mass murders, would first kill and then plunder. The most striking feature of the genocide is the extent and the degree of organisation of both the killings and the accompanying plunder and looting: those who supervised the genocidal mass murders were the same as those who supervised the plunder and looting. Often, the looting and destruction would be encouraged by those local officials who supported the genocide. However, one should be careful to avoid generalisations. Some of the looting in Kigali, for example, was more much haphazard and not organised from above. It would be more accurate to say that the way in which the plunder and massacres were carried out, varied from region to region.

All the witness statements that we have been able to collect so far suggest that whenever people were targeted by the *attaques*, their property would be systematically looted. As one of the ex-participants in the genocide put it:

> *"We began the day with killing, we ended it with looting. The rule was, you kill on the way out and you steal on the way back. When we killed, we worked in a team, when we stole, it was each person for himself, or in small groups of friends. Except for the drinks and the cows, these we were happy to share".*[38]

> "*In my cell, we had to start by killing everyone; first you had to kill the people. But you must understand that once the person is dead, his/her property must be taken away by his/her executioners".*[39]

The looting were often perpetrated by gangs and that makes it difficult today to identify the individuals who were involved and to determine how much must be paid back: how does one decide who took what, when 50 people plundered a house together?

Generally, throughout the country, anything that could be stolen was indeed stolen: cattle, home furniture, abandoned crops in the fields... Homes were stripped of their doors, windows, roof tiles or sheets of corrugated iron (very sought after). The wooden frames around which the houses were built would be stolen and used for cooking and heating and trees were cut down for the same reason.

Often, the ruins of the plundered houses would be further destroyed and burnt, and new crops planted on the same spot, thus removing all trace of the previous owners. The reallocation to new owners of the land stolen from the people who had been hunted down, would prevent the latter from returning.

Even victims' clothes were stolen: the victims were often stripped naked before being slaughtered, or the plunderers would stop by later to recover whatever they could from the corpses, whether clothes, jewellery or money, which the victims would have hidden on their

[38] Statement of a released prisoner made in 2004.

[39] Interview with a released prisoner, 20 June 2007, Nr. 1645.

person. Frequently, the victims would be blackmailed before being killed: they would be told that their lives would be saved, or that their sufferings would be less, if they gave money. Then, once they had handed over all their savings to the killers, they would be slaughtered. Some people did manage to buy themselves out. This is what one genocide killer has to say:

> *"Once we had finished, we would calculate the value of the property: the money that the Tutsis had tried to take away with them, under their clothes, into death... The money of those who had offered it of their own free will in the hope that they wouldn't suffer... In our Sector, some farmers hid Tutsis whom they knew, for payment. And then, once the Tutsis had put all their savings on the table, they were left in Death's arms."*[40]

So the looting was extensive and systematic and that means that the amount of stolen property was enormous, as one released prisoner states.

> *"All day long, we saw a great number of people bent double under the heavy weight of what they had stolen. Men, women and young people followed the same route, walking in single file."*[41]

The looting was anything but disorganised - in rural areas in particular, it was often carried out under the supervision of leaders, who would also be in charge of the massacres. People in political and government positions, soldiers and Interahamwe, all gave orders42 to the numerous looters under their command:

> *"Apart from a few, isolated instances, the looting and the killing were organised by supervisors*".[43]

> "*The looting was supervised by the same people who supervised the slaughter. You couldn't have one group of people supervising the looting and another group supervising the slaughter. It was more the case that those who ordered the killings also ordered the looting."*[44]

All these interviews show that the redistribution of looted property was organised from the top down. Officials of all ranks as well as *Interahamwe* would help themselves to the most valuable property, such as cars, mattresses, bicycles, radios and, obviously, cattle. According to the statements we collected, they would then distribute part of the stolen property to those who had carried out their orders and leave the remains to the population, which would then share out amongst themselves, especially the crops abandoned in the fields. According to one old man whom we interviewed, the *Interahamwe*, would keep the "lion's share"[45] to themselves or share it

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[40] Written statement of a released prisoner, made in 2004.

[41] Statement made in 2004 by a released prisoner.

[42] Cf. a written statement made in 2004 by a released prisoner.

[43] Written statement of a released prisoner, made in 2004.

[44] Interview with a released prisoner, 20 June 2007, Nr. 1645.

[45] Interview with an old man on 1 June 2007, Nr. 1611. Interview with a survivor, dated 14 June 2007, Nr. 1633, providing further details on the top-down distribution.

with those with whom they had special connections. Interviewees also told us that valuable property would be centralized for the benefit of the leaders:

> *"As I said before, the (local) officials and the people whom I have mentioned [the Interahamwe] divided the really valuable property, i.e. the banana and coffee plantations or any other fertile fields and no one dared take these without permission."*[46]

> *"Where really valuable property was involved, the gun carrying leader of the attaque and the former local councillor would organise the criminals and order them "to take that to my place".*[47]

> *"When the looting was going on, it was those who headed the "attaques" who took all the valuable property for themselves. Other members of those "attaques" would take property of lesser value (...) the leaders really dominated it all, they had the guns and they could order the members of the attaques to carry the booty to their place".*[48]

> *"The valuable property was collected together, that is mattresses, valuable household goods, like TV sets, cupboards and wardrobes, fridges and that sort of thing. There was nothing left for the local people. All the valuable goods were handed out to those people who had played an important part in the events".*[49]

> *"The Interahamwe from the neighbouring sectors were the first to grab the booty. They piled up new radios, big cows, cupboards, easy chairs, sheets of corrugated iron. Days when minor acts were perpetrated were more profitable for us, because then we had first choice. When the gang plundered together, they would really rake it in. There was so much, we stopped squabbling. And yes, many became rich, particularly the leaders/chiefs, for they could chose before anyone else and did chose the best quality, the luxury items. The rich people were best at negotiating, because that is what they used to do before. They piled up the corrugated iron sheets and that sort of thing for their future business".*[50]

Anyway, according to this witness from the Province de l'Ouest (formerly Kibuye Province), it would have been dangerous for the countless pilferers who had to take orders from officials, soldiers or *Interahamwe* to take really valuable property:

> *"It is said that anyone could appropriate really valuable property, but that is not true, not when the "attaque" leaders were around ... If you took any such items without permission, you risked your life. First, the leader would make his choice and you had to carry the items for him. Then it would be your turn to chose and take less valuable property".*[51]

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[46] Interview with a resident, 1 June 2007, Nr. 1611.

[47] Interview with residents, 14 June 2007, Nr. 1632.

[48] *Ibid.*

[49] Interview with a released prisoner dated 20 June 2007, Nr. 1645.

[50] Written statement made in 2004 by a released prisoner.

[51] Interview with residents, 14 June 2007, Nr. 1632.

It is clear that in some cases the lure of profit was one of the reasons for the killings in a society in which murder had become acceptable and improved one's social standing.

The leaders used the looting and the greed of the killers, who had nothing, to incite them to commit the massacres. The supervisors would reward and encourage the most active killers by giving them substantial property. The spirit of competition fostered through the distribution of property and the encouragement of greed, comes through strongly in the interviews that we carried out with "attaque" members, who killed and looted:

> *"After the slaughter, various groups would come together in a specific area, where all the looted goods would be distributed in a party mood. The purpose of these distributions was to encourage competition. He who had killed a lot would be rewarded with a bicycle, a mattress, a motorcycle, an engine ... The supervisor would hand out their share to each of the killers. The other accomplices would keep their mouths tightly shut and just applaud all the public announcements. During this wave of slaughter, when there were rewards, everyone did his best to deserve these prizes for encouragement. And top of the list would be those who had tortured the Tutsi victims".*[52]

> *"He who was hated because he had not participated in the killings, would receive nothing. He was worthless; he even deserved to be hounded. He wouldn't get anything. It was the killers who would grab the property and they were in league with those responsible for the Cells and the "Nyumbakumi" [groups of ten houses]".*[53]

> *"He who had excelled at the slaughter and the looting, deserved a reward and would receive the property that was taken during the plunder and the killings (...) All the property would be collected in one place and then distributed according to each plunderer's part. Sometimes, there would be money, because some people had tried to buy themselves out, but in vain, because we killed them anyway. We also found money in their homes, their bedroom, their bed, their wardrobe and various other places where they would have kept things. Whenever that happened, the money would be handed over to the officials who would then redistribute it according to their ranking."*[54]

This released prisoner from the East also highlights the fact that the killers would receive material rewards:

> *"If you killed someone, it was obvious that you could take that person's valuable property".*[55]

According to this same released prisoner, the rapid progress of the genocide was in part due to this greed:

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[52] Written statement made in the course of 2004 by a released prisoner.

[53] Interview with an old man, 1 June 2007, Nr. 1611.

[54] Interview with a released prisoner, 20 June 2007, Nr. 1645.

[55] *Ibid.*

"How was the plunder carried out? The inhabitants responded in great numbers because there was something immediate and tangible in it for them (...) I believe that is why the genocide could happen so quickly, because, you see, once the person had been killed, people could benefit from it".[56]

According to this Inyangamugayo from the former Province of Kibuye, theft was also encouraged by people in positions of power, who told the population that looting was normal and legitimate:

"The councillor himself would say: you, who live in a straw hut, why would you not be able to get roof tiles from such and such? You, who have no door, why would you not be able to help yourself to a door? (...) One could see that people joined in the pilfering because they were so poor or because they were encouraged by those in positions of power to steal the sheets of corrugated iron which they could use to replace the straw roofs on their own houses".[57]

Often, livestock would be killed and shared out on the spot, drink would also be shared, and in some places, they even organised parties to reward and encourage the killers. Sometimes, the perpetrators of the mass killings would get together and share the goods that they had stolen and these parties were yet another opportunity for the leaders to motivate their troops, there would be singing and dancing and propaganda speeches, as this witness tells us in the following excerpt:

"In the evening, after the killings, we would meet up and celebrate. We were all friends. We would decide which one of us would tell the others how the killing had gone and he would count the booty that each of us had acquired. Our leaders would make us stand in line, the spoils would be laid out on the floor. The councillor would chose strong and vigorous men who would distribute the spoils amongst us. We shared the drinks, we ate roast meat. Only the supervisors drank Primus and Mützig, they ate well-roasted meat and well-seasoned bananas and soup (...) We would remain at the place of the meeting, begin to sing songs, dance... The killings made us talkative and partial to food.[58] *Whilst these shameful events were taking place, there were no marriages, no christenings, no soccer matches or volley ball matches, no church services. We were no longer interested in such celebrations. We couldn't care less about these Sunday trifles. We were celebrating non stop. We drank as much as we could. We ate our kebabs as if nothing had happened (...) Because so many radio cassette players had been stolen, families could play as much music as they liked".*[59]

Some of the statements that we collected from the killers show the celebratory, almost orgy-like nature of the genocide, the free-flowing alcohol, the availability of meat at all the meals, the merry mood...

However, things weren't organised in the same manner everywhere. For example, those whom we were able to interview about the looting in Kigali, underlined that here individual,

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[56] *Ibid.*

[57] Interview with an *Inyangamugayo*, 13 June 2007, Nr. 1626-1627.

[58] *Written statement of a released prisoner made in 2004.*

[59] *Written statement of a released prisoner made in 2004.*

independent initiatives played an important part. A president and a vice-president of the Cell *Gacaca* in Kigali explain further:

> *"According to our information, no one received any looted goods, the spoils were not shared out in any organised way. Every person looted for him/herself."*[60]

> *"Everyone plundered for himself, the distribution wasn't organised".*[61]

This last statement takes us to the issue of looting by those members of a poverty stricken population who were not implicated in the massacre and who used the genocide to steal abandoned property either to improve their own standard of living or just to survive.

Looting by the population: using the mass killings to improve the standard of living or stealing for survival

Whereas some of the plunder and looting was planned and supervised by those who led the genocide and property was redistributed according to rank, this was not the case everywhere in the country. The killers were not the only looters. According to witnesses whom we have heard, the looting and looting happened in various stages:

> *"The attaques were strong and very well organized. Their purpose was first to kill people, then grab any really valuable household goods that could be easily carried off, such as mattresses and clothes. When the attaques came to kill people and found none, they would break the doors down and steal everything. Once they had done with the houses, it was the turn of the local population who would carry off the wood from the house and use it for cooking. Then there were the cows; here again, it was the strong men, in particular the Interahamwe, who would grab them. And if the cow was slaughtered and a neighbour passed by, he would be given bits of the meat."*[62]

Or in the words of this *Inyangamugayo*:

> *"The "attaques" would take valuable property, such as cows, goats, bicycles, etc. But their main purpose was to kill. Once they had finished, the population would come and steal the abandoned property because of the hunger everywhere. (...) There were those who said, I won't join in now, but once the "attaque" has done the killing, I will take a mattress because I haven't got one".*[63]

This man from the West Province (formerly Kibuye Province) also describes the different stages of the looting:

> *"Then there was the property out on the fields. Once the local population knew that the owner was now either dead or gone, it would take the harvest, it was particularly the women, children and also the men. As far as the houses were concerned, people would take roof tiles, wood, even fencing and barns would be*

[60] Interview with a President of a Cell Gacaca, 9 June 2007, Nr. 1621.

[61] Interview with a President of a Cell Gacaca, 9 June 2007, Nr. 1622. For the less "top-down organised" nature of the looting in Kigali, see also the interview with *Inyangamugayo*, 4 June 2007, Nr. 1613.

[62] Interview with a president of a *Gacaca* Court, 13 October 2006, Nr. 1430-1431.

[63] Interview with an *Inyangamygayo*, 13 June 2007, Nr. 1626-1627.

destroyed. The walls of the house would be destroyed by the person who had inherited the property of the person who had been hunted down. Most of the looting in and around the houses would be done by the members of the "attaques", but the local population could remove the less valuable property which the attaques would leave behind."[64]

According to one man from the Province de l'Ouest (formerly Gisenyi):

"The local population would take the initiative and steal food, such as manioc and beans. They would find it in the fields and then harvest it. As far as the land, the banana groves, the fields, the coffee or eucalyptus plantations, it was the person in charge who would take them with the help of these Interahamwe leaders."[65]

Similarly, this president of a Gacaca Court witnessed the looting in Kigali:

"There were two types of looting. There were the leaders of the attaques, who were known to many people. And then there were the ordinary members of the attaques, not the leaders. (...) And obviously, then there were the neighbours, who would turn up after the attaques had left and who would take the little there was left, for a lot of property would already have been stolen by the attaques".[66]

So it is fair to say that during the genocide, there were several types of killers in the same way as there were several types of looters. Since 1996, successive laws aiming to resolve the genocide conflicts, have sought to categorize the killers, but looters too come in various guises. There were the supervisors, who, generally speaking, were also the leaders in the massacres; then there were those who handled the stolen goods and who traded in looted property for their own benefit; those who carried out orders and appropriated items of little value and finally there were the people who came last and took the "left overs" in order to survive, for little work was being done on the land.

First there was a majority of "small time looters", recruited amongst the very poor, who were also the "small time killers" who merely carried out orders during the genocide. They were content with whatever property their leaders let them have. Those who had never eaten meat,[67] fed themselves every evening on the cows stolen from their victims. It must be understood that before the genocide, the vast majority of the population had never been able to afford meat: meat was a treat for special occasions. Just as it is today.[68] Similarly unusually, they would have beer every evening...

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[64] Interview with local people, 14 June 2007, Nr. 1632.

[65] Interview with an inhabitant, 11 June 2007, Nr. 1623.

[66] Interview with a *Gacaca* President, 9 June 2007, Nr. 1621.

[67] It is worth remembering that the majority of the Rwandans very rarely eat meat, even today. In a 2005 opinion poll carried out by the CNUR (Commission for National Unity and Reconciliation), recent consumption of meat was one of the criteria for measuring the level of poverty of a household and this showed that a mere 22.8% of those who replied had eaten meat recently. Cf. CNUR, *Propriété de la terre et réconciliation, (Ownership of land and reconciliation),* July 2005, p. 14.

[68] This is what a man, convicted for his role in the genocide, explains in a document written for PRI in 2004: "Talking of everyday life, we would have boiled or grilled meat mornings and evenings. Those who previously had

"As far as we were concerned, we were carefree and we had eaten our fill. We didn't bargain. We drank with the money that we uncovered. We ate the juiciest beef, once our leaders had had enough. We slept well because of the good food and we were tired at the end of the day."[69]

There is no doubt that the alcohol they were offered or that they bought it with the money taken from dead bodies – and there was plenty of it -, made them more effective when it came to killing. Some people who made plenty of money from the thefts paid the looters who were working under their orders just with drink. For example, in Muhari in the Province de l'Ouest (formerly Cyangugu Province), the leader of the Interahamwe owned a bar would reward the small-time looters who brought him their booty with beer.

> *"We drank so much that the price of beer quadrupled. But the drinkers didn't care, because they had the money from their booty".*[70]

It is likely that greed also was a major reason for the killings. One man told us that "many Tutsis were killed when people wanted to steal their property"[71.] Given the circumstances - cruelty was socially acceptable and even enhanced one's status - everyone tried to benefit from it and make personal gain, and whatever his social status, he/she would benefit to varying degrees:

> *"The poorest people took advantage of the spoils. So did the rich people, because they had enough money to buy the goods from the poor and stockpile them. Everyone was involved in the looting, everyone gained from it. (...) The down-and-outs, the poor who had never had anything, they were suddenly able to grab a galvanized roof, clothes, kitchen utensils, sometimes even a plot of abandoned land, if they knew how to go about it. There were even some tramps who managed to escape their destiny. They became rich before they knew what to do with their wealth. They used their booty to get themselves rich women whom they would never have dared approach before*[72]

The poor would immediately use up the property that they never dreamt before they would ever be able to afford, whereas the rich people accumulated it and used it for trading. Some people became extremely rich during the genocide and a whole economic system based on looting developed during the genocide. For example, there was a veritable traffic in looted property from Cyangugu to Zaire (now the Democratic Republic of Congo or the "DRC") and many Congolese would be waiting on the other side of the border in order to buy the stolen goods. It had become so lucrative that some Rwandans would destroy their own houses in order to sell on the building material, particularly when they left for exile, ahead of the advancing FPR army. In Kibuye, some of the people we spoke to explained that some influential persons who had been

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only had meat for Christmas, stuffed themselves day after day, although before, they would have been content with no more than beans from a pot when he returned from the fields.

[69] Statement of a released prisoner, dated 2004.

[70] *Ibid.*

[71] Statement of a released prisoner, dated 2004.

[72] Written statement of a released prisoner, made in 2004.

hoarding the looted property, had sold it precipitately before their exile in Zaire.[73] One of our interviewees also mentions the trade in looted goods being sold in Tanzania.

In Cyangugu we met one young woman survivor, who, when talking about those accused of Category 3 offences, made the difference between the "carriers" and the "recipients" and told us she was disappointed that the "carriers" were punished more severely simply because they had been seen. Her view was supported by this Inyangamugayo from Kigali, who said *"the people who slipped in after the "attaques" carried off less valuable goods which had been left behind by the "attaques" themselves; it is these small time thieves who were subsequently identified"*.[74]

There was large scale involvement in the looting. Unlike the killings which, apart from a few exceptions, were mostly carried out by men, women played an important part in the looting. They stole from neighbours, around their houses; often even children took part, helping their parents to carry off the looted goods and now they, too, must pay. There is a considerable body of evidence that it was often the women who would take part in plundering the harvest and stripping the dead of their clothes before the bodies were thrown in the communal graves.[75]

> *"He who was unable to go looting because he had to go away or because he was weary of all he had done, could send in his wife. We saw women rummaging through houses. Women stole a lot of clothes, bowls, jugs, wedding photographs and devotional pictures (...) In the Nyakabungo sector, women stole blood soaked clothes, unconcerned about the need to wash them."*[76]

> *"During the killings, the women continued to prepare breakfast, but would go looting during the day. They piled up the goods instead of the harvest, so they were rather pleased."*[77]

> *"Women too had to go looting because they were hungry and thirsty because during that time, no one tended the land."*[78]

> *"Well, they played a special part. Women like cooking, they like food. It was April a time of the year when normally there is hunger everywhere, because there is no harvest (...) Their work was above all to get the provisions. You see, the men had no time to deal with that, because they were involved in the killings or because they were after much more valuable property. It was the women who were involved in looting for food. They also liked clothes, so they also were looking for those. (...) That is the part they had to play, because they were no match for the men when it came to looting for meat. (...) They also destroyed houses in search of wood for heating."*[79]

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[73] We refer in particular to our discussions with inhabitants, 14 June 2007, Nr. 1632.

[74] Interview with a *Inyangamugayo*, 4 June 2007, Nr. 1613.

[75] See African Rights "Not as innocent as they would appear, when women turn killers", August 1995, p. 89.

[76] Statement made in 2004 by a released prisoner.

[77] Written statement of a person released from prison, made in 2004.

[78] Written statement by a released prisoner made in 2004.

[79] Interview with a released prisoner, 20 June 2007, Nr. 1645.

Sometimes, women had to loot, just to survive. Apart from the organised lootings, there were other forms of looting, the general chaos served to improve the standard of living or to meet basic needs. People, often women, would arrive in the wake of the gangs of looters and would take whatever they needed to survive and feed their families from the houses that had been destroyed. From what some of those we interviewed told us, it is clear that it was often the poorest people who carried out this sort of looting.[80] These are the people who today question the way in which the *Gacaca* Courts decide on an individual's responsibility. We have observed that often, these are the people who receive hefty repayment orders, on par with those imposed on the main looters.

The story of Joséphine and Josée [81] is a case in point. They were driven to looting by need. These two women looted the harvest during the genocide and later made up for it by working without payment for one of the victims who owned the field. During the genocide, their husbands, who were ill with malaria, could not work. So they decided to steal beans from the field at night so as to be able to feed them properly. This field belonged to a "*Tutsi*" woman who had fled and one of the most influential killers in the region had taken the land. Before the genocide, Joséphine and Josée had worked for this woman and so they decided to take the food they needed from her land:

> *"We were really hungry. We wondered why we should continue to suffer when other people had enough to eat. We decided to go and steal (...) Before the war, we worked for the others. We worked this person's land and she would give us a basket with potatoes, or a bunch of bananas, or two helpings of beans. After the war broke out, we didn't have enough to survive. (...) When our husbands fell ill and the war started, it was the women whose husbands were strong enough, who found the food, because they grabbed other people's property. We had nothing to do (...) We thought it would have been cowardly of us to let them die of hunger when we were strong enough. So we decided to take tools along with us and steal the beans, just like everyone else was doing, because they hadn't planted them either."*[82]

However, it turned out the field was being watched and the two women, when they were spotted, panicked and fled, dropping their baskets. As we have said before, it was often dangerous to go looting without the agreement of those organising the genocide. The women were seen and the leader of the killings, who had appropriated the plot, threatened to kill them:

> *"When he turned up, he was carrying a short stick. This stick was covered in nails. He said "Bring the small hoe, dig a hole and let her then sit in it. She'll see what I am going to do to her (...) I was really afraid, I thought, this is the end of me".*[83]

The women pleaded and their lives were finally spared, but they were fined 700 FRW [84] which they had to pay to this man. They had to sell some of their belongings to pay the fine. We will

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[80] Interview with a woman, 15 May 2007, Nr. 1593.

[81] Pseudonymes.

[82] Interview with two women who work by way of repayment, 29 March 2007, nr. 1551.

[83] Id. previous fn.

[84] About 0.90 euros

come back to this case, because it turns out that after the genocide they worked free of charge for the owner of the confiscated land. She had survived and the women had to repay her for stealing the beans.

Identifying the looters: a common problem

It is a fact that looting was often committed by gangs in which members had varying degrees of responsibility and it is therefore often difficult to establish who took what. But there are many other factors that make it very difficult to identify the looters.

For example, when we interviewed a number of people in the south of the country (particularly in Butare), many of them mentioned the lootings by the Burundians. It needs to be remembered that after the assassination of President Ndadaye, the first elected President of Burundi in 1993 and the subsequent mass killings, several hundreds of thousands of Burundians[85] crossed the borders to seek refuge in Rwanda and had become part of local Rwandan life. When the genocide started, many crossed back into their own country - and a number amongst them took looted property with them.

> *"It was the Burundians who slaughtered the cows, and then they fled. They haven't come back yet. We are being told that the damaged property will be restituted, but those who left the country cannot be prosecuted".*[86]

During the genocide, the population moved around extensively and some of the looting may have been committed by people passing through. Some of the *attaques* came from far away. Many of the people we spoke to, mentioned *attaques* that had come from afar. According to these men from the former province of Gisenyi:

> *"It is impossible to say with certainty who stole the cows and the goats during the raids. People came from all over the place, from Gishwati, Gihuymba, Akanage. It was impossible to know where they came from. They turned up, rounded up our cows and goats. The same with the coffee plantations. These people just turned up and took away the harvest."*[87]

According to the interviewee, these were the same roving *attaques* that urged neighbours to loot neighbouring victims:

> *"At first people were reluctant to take their neighbours' property. It proved necessary to bring in "attaques" from far away regions. (...) Their members stole all they could get hold of. So then the people living in this Cell complained that it was the "attaques" that grabbed the property of those who had been hunted in their own Cell. And so they in turn began to take property. All the inhabitants took part because there was no one in authority who was going to punish them for it."*[88]

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[85] For further details on the part the Burundi refugees played in the genocide, see Human Rights Watch/FIDH, *No witness shall survive: the Rwandan genocide*, Karthala, 1999 and in particular pp. 160-164 and 418-422.

[86] Interview with a man who has returned property, 2 November 2006, Nr. 1447.

[87] Interview with an inhabitant, 1 June 2007, Nr. 1611.

[88] *Ibid.*

Some of those we spoke to in Gisenyi indicated that the Abakiga committed some of the looting[89] and in Kigalin we learnt that the Abapagasi[90] were implicated in the looting there. Some of our interviewees in Kigali also mentioned that the gangs of looters, who also killed, came from other regions91. So the looters moved around a lot and that makes any identification and recognition today even more difficult for the *Gacaca* Courts.

In town, looting followed a different pattern: shops and rich homes would be looted either under the supervision of the military or of individual persons. It was different from what happened out in the rural areas, as mentioned earlier. In Kigali, public service buildings, office buildings and buildings housing international organisations were systematically ransacked by a great number of people. Moreover, it would seem that in Kigali, the looting took place before the massacres. According to *African Rights*, the shopping and business parts of town were plundered for two days after the attack on the Rwandan president's aeroplane, often upon the instigation of the army and the *Interahamwe* and with the participation of the civilians[92]. We spoke to a great number of people in Kigali and they emphasized the more individual nature of the looting and the plunder during which "*everyone just helped himself*"[93].

In the capital Kigali looting was much more disparate and the army played a greater part. This pattern was repeated in other cities. It was inevitable that towns, with their mass of goods and riches, should attract looters from all over the country. This typical pattern of town looting together with the much greater mobility of those living in towns make it very difficult for the *Gacaca* Courts to identify the looters today. The town courts are lagging behind their rural counterparts in the area of property offences. As one judge in Kigali commented to us, the lack of looting cases pending in his sector is due to the fact that those who live in his sector were rarely the perpetrators.[94]

A further complication arises in those areas that are close to the refugee camps that were set up by the FPR military as they moved forward: the people who were brought together in these camps had no possessions and so to survive, they had to help themselves to property left behind in the abandoned houses in the area (kitchen utensils, mattresses, blankets and other basic needs items).

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[89] People living in the mountainous areas of the country (mostly the North). Cf. the interview with an *Inyangamugayo* from the former province of Kibuye, 13 June 2007, Nr. 1626-1627.

[90] Day labourers who work on farms or building sites.

[91] Interview with several *Inyangamugayo* , 4 April 2007, Nr. 1613.

[92] African Rights, *Death, Despair and Defiance*, revised 1995 edition, August 1995, p. 1003.

[93] Interview with an *Inyangamugayo*, 4 June 2007, Nr. 1613.

[94] *Ibid.*

Redistributing the victims' land

Where there is competition for land and resources, there will often be disputes. Rwanda was the most densely populated country on the African Continent and land was in short supply. The situation was therefore already extremely tense[95]. According to the National Committee for Unity and Reconciliation: "*since 1959, the fear of shortage of land for agriculture has fed an "ethnic hostility" which culminated in the 1994 genocide.*"[96] A Rwandan anthropological expert adds "*the genocide obviously offered land as a kind of bait. The farmers who murdered their Tutsi neighbours would benefit because they would then be able to take their land. And this is precisely what happened: as soon as the Tutsis were murdered, their executioners grabbed their property and recovered the land belonging to the victims. This was a sort of "kubohoza"*[97] *with bloodied hands.*"

It is true that a plot of land is the only wealth known to many Rwandans and that during the genocide, of all the property that was redistributed, land caused the greatest number of disputes between the looters. Once the Tutsis had been chased or killed, parts of the population started to compete with each other in order to obtain their plots of land. This was not the first time such rivalry occurred: during the events in 1959 and in the early 60s, the population had been able to grab the fields of those who had fled the country or who had been displaced, in particular towards the marshy, inhospitable region of Bugesera. During the 1994 genocide, some Rwandans hoped that they might benefit again from the situation by acquiring land that belongs to the victims.

The genocide project aimed to exterminate the Tutsis and then proceed to the redistribution of the land to the Hutus, and in particular to the officials up to the rank of *préfet* and the leaders of the mass killings. This is what a released prisoner told us about the redistribution of the plots of land:

> *"We all knew that we would all have our share (...). We all knew that the plots would be shared out once the Tutsis had been exterminated, that we shouldn't touch the property as long as the enemy was still present (...) We all knew that after the genocide, except that of course it wasn't called the genocide but*

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[95] Cf. in particular the 2005 Rwanda Report published by the UNDP.

[96] Commission Nationale pour L'Unité et la Réconciliation (CNUR), *Land ownership and Reconciliation*, July 2006, p. 7.

[97] "*Kubohoza"* is a special word that was used frequently during the war. It has several, very different meanings. The basic meaning is "liberation", but depending on the context, it can acquire a more ironic connotation and mean "squatting", "take by force that which is not yours", "loot" and even "violate/rape". Often it is used to refer to the looting during the genocide. The history of this word is extremely interesting: its first recorded use dates from 1990-1994, when multi-party political systems first began to emerge and the Rwandan farmers rose up against the fact that land was granted to high officials and officers belonging to President Juvénal Habyarimana's following. This land was rarely worked. So some people argued that the fallow land should be redistributed to the farmers, hence the term *kubohoza*, which used to mean both "liberate oneself" and "appropriate". The expression then came to be used to refer to a victim's land which farmers who were dragged into the genocide, allocated to themselves. After the genocide, the term was also used to describe the occupation of properties belonging to people who had fled into exile. Cf. Antoine Mugesera, 'Towards an end to uncertainty in land, cause of all conflict', in the *Revue Dialogues, The real estate stakes in Rwanda*, July-December 2004.

"extermination of the enemy", that once Rwanda's enemy had been exterminated, the property would be redistributed."[98]

In a few areas around the country, the victims' land was redistributed under the supervision of local officials. This was particularly the case in the South and the West, where the genocide went on for longer. In some areas, such as Kibuye, those who wished to take land had to make an application in writing. An inventory of victims' property would be drawn up and those people who wished to "keep" [TN: the French "garder" means both "look after" and "retain"] land that belonged to people who had disappeared. Often, the applicant's political connections or his/her participation in the massacres would determine whether s/he was to receive re-allocated land and what sort of land that would be.

So, in one sector of the former province of Gisenyi, part of the population first shared the harvest amongst itself and then the *Interahamwe* and the political leaders organised the redistribution of the arable land - the most active killers and the officials would be rewarded with the best coffee and banana plantations.99 Those who had administrative powers organised meetings with the population to organize the distribution of land:

"The truth is that once people were killed, their property would be quickly shared out amongst the inhabitants, but with the help from the local officials. First the local population grabbed the land which was bearing soy and beans without asking those in power for permission. It was later that the officials set up meetings with the population to agree on who was going to have the most valuable property, i.e. the banana and coffee plantations that had belonged to those who had been killed."[100]

"We shared amongst ourselves the coffee plantations, the fields, the vegetable plots and the flower beds and the banana plantations belonging to those whom we killed. It was done under the aegis of the person in charge and his assistants. If they had not been there, it would not have happened."[101]

In Gisenyi the land was rented out to new owners. Official documents were drawn up to this effect. This is the story of a man who now fears that he may be ordered to make a repayment for a field that he had rented. He had carefully kept the document showing that he paid rent for it:

"During that same time, those in charge received orders to distribute the fields that used to belong to the Tutsis to the population so that it could "look after" them. There were typewritten forms which set out what sums needed to be paid, the reason, the name of the owner and the name of the person who was going to work it".[102]

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[98] Interview with a released prisoner, 20 June 2007, Nr. 1645.

[99] Interview with an old man, 1 June 2007, Nr. 1611.

[100] *Ibid.*

[101] Interview with a local man, 11 June 2007, Nr. 1623.

[102] Interview with two men, 13 June 2007, Nr. 1628.

According to several men from the same locality:[103]

> *"Once the killing was over, there was a quiet period which enabled the leaders to receive permission to distribute the fields. These leaders would tell you which plot you had to farm and that you had to pay 400 or 500 FRW for the use of the land."*[104]

> *"We paid tax. You had to pay 300 FRW tax for one hundred square meters."*[105]

> *"About the fields. The mayor who was there ordered everyone to pay 1000 or 2000 FRW106 for a field, those who had money paid up and received a field that had belonged to a Tutsi. This could be a banana plantation, a coffee plantation, a field (...) as far as the fields go, they told us they had received an order approving the distribution, and those who had killed, took the fertile land."*[107]

One of these typewritten documents entitled "contract to manage on behalf of the local "*commune*" (town or village)108 is dated 22 June 1994 and shows that a man undertook to run the property "left" (the exact wording used in the contract) by the victim on behalf of the *commune* in return for payment of a rent of 600 FRW per annum. So the sums involved were very small, "almost nothing", according to one of those we spoke to.

Another man told us that he himself had received very little property because his "conduct had been unworthy", meaning he had not taken part in the killings. He also mentioned these contracts and the consideration paid in return for a fertile field. His is not the only witness confirming that the "genocide authorities" planned that the property of those who had been murdered should be rented out on a long term basis and did not consider that there might be survivors and that they would come back. He explained:

> *"These contracts were good. Those who had seized the power set the conditions for those who wished to accede to property; they did so with the collaboration of the authorities. They told the person to whom they gave such property that they could take it back if he did not comply with their wishes. At first, he would promise to comply with all they asked him to do. He also promised to pay the taxes which would be based on the size of the property that had been entrusted to him. The minimum rent was 1000 FRW. Some people had to pay more than 1000 FRW. This was a yearly tax, payable at the end of the year. As you know, the government soon changed and the "contractual" year was never completed."*[109]

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[103] [TN: Footnote absent].

[104] Interview with a man, 13 June 2007, Nr. 1630.

[105] Interview with an old man, 1 June 2007, nr. 1611.

[106] About 2,60 euros.

[107] Interview with three looters who paid back under a friendly settlement, 13 June 2007, nr. 1629.

[108] Further information about these contracts can be found in an interview with an inhabitant dated 1 June 2007, Nr. 1611.

[109] For further details about these contracts, see the interview with an inhabitant, 1 June 2007, nr. 1611.

Another witness on the subject of the land:

> *"It is true that people were killed in 1994. Their property, whether beans, banana groves or coffee plantations, was given away by those in charge of the Cell and the "Nyumbakumi" (...). Not all the inhabitants benefited. Some were scorned, so they didn't get anything. Nepotism was the order of the day. Most of it went to the people in power because it was they who did the distributing."*[110]

It would seem that, as with other valuable goods, the best land went to those who had participated in the killings. According to this man from Gisenyi, it was the *Interahamwe* who held the power over the distribution of the land:

> *"If you wanted a good piece of land, these were the people you contacted, not the political officials. Other strong persons joined these two and they were the ones who decided which field would be given to whom. They could decide not to give anything to such or such a person because he or she had not helped them during the war. Many people did not benefit from the distribution of land, or were given barren land."*[111]

Later he adds:

> *"They could decide that such or such a person did not deserve anything because he or she had not supported those who killed the Tutsis. The fact that you had not supported [the killers] was considered to be a criminal offence, so then they decided that that person would not get any of this property".*[112]

Similarly, a released prisoner from the former province of Umutara in the North told us that some of the most "courageous" killers would receive arable land and gave us examples, although they also mentioned that no real land (re)distribution had taken place in the East of the country because "there was not enough time as the FPR's army quickly arrived on the scene"113. It is true that land was not (re)distributed everywhere in the country. For example, in the North and East the FPR's army moved in rapidly from Uganda and the authorities didn't have the time to organise the redistribution. In another part of the country, Rukara (towards the South), according to those we spoke with, the *Interahamwe* had enough time to kill people and loot their cows, but no appropriation and redistribution of the victims' land took place because the FPR army had conquered this territory as early as mid-April 1994[114.]

However, in Kibuye land seems to have been redistributed. Here, according to some witnesses, committees were created to "protect" the victims' land, which was now considered to be State property. According to this inhabitant, it was again the killers and the influential and rich people who benefited:

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[110] Ibid.

[111] *Ibid.*

[112] *Ibid.*

[113] Interview with a released prisoner, 20 June 2007, Nr. 1645.

[114] Cf the interview with a Cell Executive Secretary, 6 May 2007, not tape recorded, and an interview with a *Gacaca* coordinator, 8 June 2007, Nr. 1620.

"When the families of those who were hunted had been exterminated, it was almost the end of the killings, the Councillor began to distribute the land. The rich man would turn to the Councillor. But it was especially those who had killed who obtained land. The others who benefited and received land were those who had money. They would ask the Councillor for cows or would offer money in exchange for land. (...) It was the Councillor who held the land, the good plots of land that used to belong to the Tutsis were now occupied by those who were in positions of authority, the Councillors, the people in charge, the leaders of the "attaques"....".[115]

According to a judge from the former province of Kibuye:

"Once the Tutsis were killed or had disappeared, the Sector Councillor gave the order that he wanted money, 3000 RFW for a plot of arable land. (...) The plots were in his hands, the sharing would be done in his presence and he would issue a receipt to the person who wanted land."[116]

So if the killers were the first to be rewarded, one also needed to have money or influence if one wanted to acquire a plot that belonged to a killed person.

However, sometimes people didn't wait for these formalities and Tutsi land would be occupied and farmed without any sort of supervision, as in Gashari (in the former province of Kibuye). But generally speaking, the authorities would not allow this to happen and would stop it as it caused chaos.

There is no need here to explain the importance of ownership of land in densely populated Rwanda: land is a rare commodity and the vast majority of the population survives on subsistence farming. The redistribution therefore led to conflict in some cases:

"When the plots were divided up, there were arguments, particularly over the banana plantations. So our authorities had to intervene".[117]

According to this same witness, the angry disputes and the strong desire to own land were so bad that those who had participated in the mass murders might have ended up killing each other, once the genocide was over.

"We were drunk with the idea of sharing out the Tutsis' land. If the "Inkotanyi" [the FPR's army] had not conquered the land and forced us to flee, we would have started to kill each other as soon as the last Tutsi had been killed. We were no longer able to lay down our machetes."[118]

This man from Gisenyi confirms that the sharing out of the land almost drove the mass murderers to kill each other, even within the same family:

"During the genocide, there were lots of people who behaved badly and they nearly killed each other."[119]

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[115] Interview with inhabitants, 14 June 2007, Nr. 1632.

[116] Interview with an *Inyangamugayo*, 13 June 2007, Nr. 1626-1627.

[117] Statement of a released prisoner, 2004.

[118] Statement of a released prisoner, 2004.

Similarly, another person from the former Province of Umutara told us that the sharing out led to the killers allegedly killing each other.

> *"It was a good thing that the "Inkotanyi" arrived on the scene quickly here. If they hadn't, they would have started to share out the property that belonged to those had had been made to flee. They were going to kill each other when they began to share out the property that belonged to those who had been forced to flee".*[120]

Some people refused to attend the meetings where property was redistributed, "saddened by what had happened". They did not approve of the mass killings.[121] For although there was extensive participation in the looting (and the general poverty should not be forgotten), there were just as many courageous acts[122] and some people who had refused to kill also refused to loot.

The redistribution of land often also explains why homes were systematically destroyed. As mentioned before, this was to remove all trace of the previous owners. Moreover, the boundaries of the plots were often changed, thus changing the pre-genocide geography.

In the former *commune* of Kayove in Gisenyi, the homes of those who had been killed or hunted down seem to have been destroyed as a result of a Directive to that effect which was issued by the local officials. Some of these made it clear at meetings that all traces had to be removed so that the international community would not be able to find out what had happened. This old man from the former Province of Gisenyi confirms once again that the officials encouraged the looting:

> *"When the houses were given away, the officials ordered that they be destroyed, that way no one would be able to find out where the Tutsis used to live. We were told that foreigners from other countries might look to discover where they used to live (...). Some inhabitants were obliged by the local officials to remove the roofs and use them on their own homes".*[123]

> *"If you were living on the land, you were obliged to destroy whatever was left of any house on it, so that the white people couldn't take pictures of the ruins".*[124]

> *"Anyone who received a plot had to destroy any house on it... There were rumours that white people might turn up and they shouldn't be able to see any ruins, because that might make them think the people who used to be there had been killed".*[125]

The statements below, made by various inhabitants of the former Province of Kibuye who witnessed the genocide, make it clear that the systematic destruction of property that had once belonged to the Tutsis was part of the genocide programme:

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[119] Interview with an inhabitant, 1 June 2007, Nr. 1611.

[120] Interview with a survivor, 20 June 2007, Nr. 1644.
[121] Interview with an inhabitant, 1 June 2007, nr. 1611.
[122] Cf. Penal Reform International, *Les Justes: entre l'oubli et la réconciliation*, November 2005.
[123] Interview with an old man, 1 June 2007, nr. 1611.
[124] Interview with an *Inyangamugayo*, 13 June 2007, 1626-1627.
[125] Interviews with inhabitants, 14 June 2007, nr. 1632.

"It was hatred of the Tutsis. They said that nothing that had belonged to the Tutsis should be allowed to remain in the same place, they lay waste the forests and the banana plantations."[126]

"At that time, their hearts were like those of hyenas. They didn't even want to keep the livestock. They said that nothing that had belonged to the Tutsis should remain visible to the eye".[127]

"Initially the banana groves were laid waste out of cruelty. They had fed their hatred of the Tutsis and said that if a Tutsi returned, he should not be able to find his banana grove, not even if it had been razed to the ground, and that anything belonging to any Tutsi had to be wiped from memory".[128]

This statement by a man from the former Province of Gisenyi confirms this and shows that officials urged and threatened people to destruction and looting:

"At one time the officials said that all the Tutsi houses had to be destroyed, so that no one would be able to ask us later who committed the destruction or the killing. Those in charge organised meetings to inform the population. They said that no one should continue to live in a house with a banana leaf roof when you could get roof tiles, and if you didn't comply, your house would be burnt down and whenever they [the FPR army] found an unoccupied house, you had to say where the owners had gone."[129]

According to another person from the same place, an *Umuganda*130 was even organised to destroy these houses:

"Houses were not to be part of the property that was distributed. That is why if you received a field, you were obliged to destroy any house on it immediately. If you said that you couldn't do it, a Umuganda was organised to help you do it. The officials could not allow a house on the hill to be uninhabited. Where I lived, I noticed that the officials encouraged people to destroy these houses. Everywhere I went these houses were destroyed rather than used, even in town."[131]

Here is further, clear evidence that the purpose of the destruction was to ensure that the owners would not be able to return:

"They [the officials] decided that even though we had killed Tutsis, we couldn't be sure that we had killed them all. They didn't want any Tutsi who had escaped to be able to return to his/her home".[132]

The purpose of systematically destroying the houses was two-fold: to ensure that the owners would not be able to return and to prevent foreign observers and the FPR army from finding any visible traces of the large-scale massacres. That is also why the land boundaries were redrawn. At Kigali-Ngali and in the North of Gitarama, homes and banana plantations were replaced by fields of manioc or sweet potatoes and plot boundaries were re-drawn.

[126] Interview with a survivor, 14 June 2007, nr. 1633.
[127] Interview with inhabitants, 14 June 2007, nr. 1632.
[128] Ibid.
[129] Interview with persons ordered to make restitution payments, 13 June 2007.
[130] Mandatory community duties.
[131] Interview with an inhabitant, 1 June 2007, nr. 1611.
[132] Ibid.

Today, that situation leads to problems, for how are people who have spent several weeks working land that belongs to victims and who have paid rent for the right to do so, to make a repayment? These people, who are not necessarily the killers, don't want to pay back. We observed a trial of three persons in the former Province of Byumba. They had asked officials for a field belonging to a victim and this had been granted to them during the genocide. The genocide ended before they could bring in their harvest. Today, the *Gacaca* Cell Court before which they are tried, orders them to pay back 30,000 FRW.[133] They don't want to because they have been unable to harvest anything. The court has held that asking for the victim's land and then working it, was a criminal offence, even if they did not participate in the murder and that if they had been able to work the land for longer, they would have had to pay back even more.[134]

The same problem arises in respect of people who bought looted property and who since then have been ordered to return it to its original owner. There is another problem that is frequently raised during our interviews: there are people who held property on behalf of their neighbours who were forced to flee; that property was then stolen from them in turn. Now, they may be ordered to make the repayments, because the perpetrators of the theft are absent. That is what these men from the former Province of Kibuye refer to:

> *"Some had to flee and couldn't take their livestock with them. The person to whom the cattle had been entrusted was attacked in turn, because that livestock allegedly belonged to the Tutsis."*[135]

> *"Anyone who intended to keep a cow belonging to a Tutsi would be robbed in turn."*[136]

So the complex nature and the vast scale of the looting during the genocide make the task of the *Gacaca* Courts very difficult. There is a further serious complication which leads to further conflict: a lot of property was looted while the owners were in exile.

2 - Looting whilst the owners were in exile

During July-August 1994, and even earlier in the East, about two million Rwandans fled the country ahead of the FPR army and sought refuge in neighbouring countries, mainly in former Zaire (now DRC), Tanzania and Burundi. They abandoned their homes and their personal property, which were then looted.

And so it was that those who had survived by going into hiding or by living close to the borders (for example on the island of Idjwi), returned to their villages and found that their property had disappeared. They had to search through their neighbours' houses (neighbours who had now gone into exile) in order to find whatever they needed to survive, because they had nothing left. Their homes had been destroyed during the genocide and they had to seek shelter in the houses of those who had had to flee. We met one person who had lived in a house belonging to a person who spent two years in exile.[137] Moreover, in the early, post-genocide days the survivors

[133] Approx. 40 euros.
[134] PRI, *Trial Observation Report, North Province.*
[135] Interview with inhabitants, 14 June 2007, nr. 1632.
[136] Ibid.
[137] Interview with people who reached a friendly settlement, 21 March 2007, nrs. 1543-1544.

often lived together in trade centres, shops and bars, where they felt more secure and less threatened.

Some survivors told us that during these attempts to find whatever was necessary to survive, they were helped by members of the FPR's army. This was, for example the case in Bugesera in the Province de l'Est (formerly Kigali-Ngali), where we collected several witness statements. When the survivors returned to their property, they went from house to house, accompanied by the FPR army, to rummage and look for their own property, because they had nothing left. They took abandoned goods, any material that they needed, they fed on the crops that had been left in the fields. Sometimes they broke into houses that had been secured. Often, the military supervised the distribution of the abandoned crops and cows.

Sometimes, officials would allocate houses to the survivors. One woman, left alone with three children after her husband had been injured by a machete and then burnt alive during the genocide, told us the following:

> *"I went to live in a house that belonged to people who had gone to the Congo. We went to see a Sector Councillor and he agreed to put us up there. We lived in these houses, but we couldn't work the land around it. We would go out into our fields and then come back to this house."*[138]

Some of these houses contained little personal property because those who had fled either took as much as possible with them or destroyed some property so that the FPR couldn't lay its hands on it. Other houses contained lots of property because the owners had left in a great hurry, in a panic, and that is also how some of the looting happened.

Some people had left behind goods of considerable value which had gone by the time they came back. Today, they feel deeply offended when a Gacaca Court orders them to pay back what they looted during the genocide, because they have such difficulty in claiming back their own property which has disappeared.

Some of them lost their cows, as did the survivors during the genocide, because they couldn't flee with them. Often, they asked people who were staying behind to look after them, but not everybody got their cows back. This is what we were told by a man who lives on the banks of Lake Kivu, close to the border with the Democratic Republic of Congo:

> *"There were those who fled the war and who couldn't leave with their cows because they left in motorized canoes. They couldn't load the livestock on board. (...) So when they fled, they left their cows with the people who were staying behind. And when those who had fled the massacre returned, they tried to find out where those who had kept the cows had left them. If the cows were still there, they took them back. Mine too had been slaughtered!"*[139]

This is what a woman had to say after she was ordered to make a repayment on behalf of her husband and her two sons, who had looted during the genocide and are now all three in prison:

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[138] Interview with a survivor, 7 March 2007, nrs. 1523-1524.

[139] Interview with a *Gacaca* Chairman, 13 October 2006, nr. 1430-1431.

"We have been accused of looting. However, when we fled, we left some of our property behind, such as houses, animals and other belongings. We have not been able to discover who took them!"[140]

And according to this other woman, whom the Court also ordered to pay back a large sum for having looted property of little value which she had taken from a house that had been destroyed after the killers had gone through it:

"After the shooting we left our house in a panic. All we could take was the children. We couldn't even take the small jerry can that we use for fetching water. So we left all our furniture and kitchen utensils behind in the house. When we came back, it had all gone."[141]

This problem was referred to in many of the interviews we had. Both the survivors and those who returned from exile had been the victims of looting and there is a feeling that it is unfair that only the survivors are allowed to make a claim for looted property before the *Gacaca* Courts.[142]

These people have to pay back whilst their own property too has been destroyed and some of them are extremely poor. This is the account of a woman who was ordered to pay back and whose houses were first occupied and then destroyed whilst she was in exile. According to her, survivors destroyed the houses of those who had fled into exile, stealing the corrugated iron in particular which they used for building their own houses :

"I live in a hut that is about to collapse. At night, when it rains, I borrow an umbrella to protect my child and myself. I can only sleep when the rain stops. I would also like to say that our houses were destroyed. So I have to continue to make the repayments for the damage caused although I don't have enough money to do so. That's my financial position (...). When we came back from exile, our houses had been razed to the ground. We have been told that they were destroyed on orders from the former councillor, who is now dead, and another woman. She actually lived in the house and once she returned to her own home, our houses were destroyed. She even stole the roof tiles and the councillor stole the sheets of corrugated iron which he used as fencing for his own garden."[143]

According to her, her husband complained to the authorities and claimed a repayment for his houses, but in vain.

"No! When my husband complained, they told him that he first had to pay back for the damage he had caused and then wait for the right moment to file his own claim."[144]

Similarly, this man fled when the FPR arrived. When he returned he found that his property had been destroyed. He was accused of having stolen a cow and paid back by working free of charge for its owner:

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[140] Interviews with four women who have been ordered to make repayments, 7 February 2007, nr. 1486-1487.

[141] Ibid.

[142] Ibid.

[143] Interview with a couple ordered to make a repayment, 3 November 2006, nr. 1452.

[144] Ibid.

"I did not have a cow of my own. But we had goats and other property, such as houses. When we returned home, our houses had been destroyed, the goats had gone. In short, our houses were empty. (...) I had three goats. I have been told that it was my brother in law who killed them. He was my sister's husband. I didn't ask for the names of those who had destroyed the houses, it was pointless. I have now built another house. They just told me that these houses were destroyed by people who were looking for firewood."[145]

And according to this judge, who also underlines the problems that flow from this sort of situation and confirms that these complaints are being disregarded, some people who lived in the houses of those who had fled, took the iron sheets and used them to roof their own houses:

"When the authorities asked people to leave the houses that they were occupying, some people removed the roofs and used these to cover their own homes, so that when the Gacaca process started, some of these home owners filed claims. They wonder why they are being ordered to make repayments whilst their homes too, were destroyed. And yet, their own claims were dismissed."[146]

When complainants raise this issue before the *Gacaca* Courts, they are referred to the national courts, according to the same judge who, talking of the theft of cows from those who fled into exile had this to say:

"When the Gacaca Courts began their work, we were told that we had to deal with genocide facts and that where facts were unrelated to the genocide, we had to refer these complainants to the national courts. The net result was that we sent people who had ordinary complaints to the national court system.
- Did any of them take their complaint to the national courts?
-No. They are too lazy to do so."[147]

The authorities made some attempts at resolving the unlawful appropriation of land belonging to people living in exile: some transgressions have been punished and houses and land have been returned to their rightful owners. For example, between 2001 and 2002, a special team from the Parquet Général [the Public Prosecutor's Office]148 dealt with this issue after a visit from the Republic's Procureur Général [the Prosecutor General] to the Central Prison in Kigali. He heard numerous detainees (most of whom were still awaiting trial) who complained that their property was being occupied unlawfully. So a special team was set up to deal with this problem. Members of the team visited various locations together with the detainees to sort out the disputes. However, this initiative was limited to Kigali Province. It came to an end because the Town Hall argued that this sort of dispute ought to be dealt with by the local administrative authority.

To complicate matters further, there have always been countless disputes over land ownership in Rwanda and these often led to legal proceedings[149] and so disputes over land that was appropriated whilst owners were in exile take the same course. Before the new Land Act came into force in 2005, there was no registration of land and title in Rwanda and written law and

[145] Interview with a man who has made the repayment, 2 November 2006, nr. 1447.
[146] Interview with a President of a Gacaca Court, 13 October 2006, nr. 1430-1431.

[147] Ibid.
[148] Interview with the *Parquet Général*, 25 June 2007, not recorded.

[149] For further details on this subject, see RCN Justice & Démocratie, *Le problème foncier dans les juridictions rwandaises* ("Land issues before the Rwandan courts"), 2006.

custom overlapped resulting in a complicated situation full of uncertainty. The local authorities were not always able to resolve the disputes and a fair number of these disputes ended up in the Tribunaux de Grande Instance [the intermediate tier of the national courts]. There are further complications: the unresolved issue of those who returned to Rwanda after 1959, i.e. people who had fled from the violence in 1959 and the early 1960s and who, upon their return, found that their property was now occupied by new owners. The 1993 Arusha Peace Agreement between the FPR and the State of Rwanda confirmed the principle that refugees, and in particular those who had fled in 1959, are entitled to recover their property upon their return. However, the Agreement also provides that where a refugee had been absent for more than 10 years, the "recommended" (the very word used in the Peace Agreement) action would be not to claim the property back from its new occupant. Instead, the government was to make available new land in Akagera. The Agreement caused further problems as land was made available for the returning refugees, in particular in Akagera, and then allocated. So there were numerous expropriation proceedings in the 1960s, some organised by those who were in power at the time. Inevitably, this led to disputes and arguments when the refugees returned and the authorities allocated the land. Some of these disputes were then settled by the Courts.

Arguments over land are often closely linked with arguments within families (because of the inheritance rules) or between neighbours (because of boundary disputes). Depending on the value at stake, the dispute can be settled before the *Abunzi*, or Conciliators, or in the lowest tier of national courts (*Tribunaux de base*) or before the next, intermediate tier of courts (*Tribunaux de Grande Instance*). The courts often have great difficulty in deciding the dispute in the absence of tangible evidence, such as written documents or title deeds, and so they sometimes have to decide solely on the basis of oral evidence.

So there is a structure in place which would enable people who have lost their land whilst they were in exile to bring a claim. But this structure is less accessible than the *Gacaca* Courts. And it is clear from our interviews that people often do not know where to bring their claim, they dare not make a claim, and because they cannot vent their complaint in the *Gacaca* proceedings they feel that too little attention is being paid to their predicament. This in turn leads to further problems, because they cannot understand why survivors should be entitled to claim repayment for the loss of their property whilst they themselves are not.

3 - Post-genocide repayments

Some repayments and restitutions were made as soon as the survivors returned. There are instances of survivors who were able to recover their property. In some cases, this was done on a friendly basis, in an *entente*. The fact is that some people preferred to return the stolen property of their own accord. There were also instances of people who had been truly looking after property on behalf of the survivors and who returned that property to the rightful owner upon his/her return.

There have also been instances of agreements that were concluded under pressure from local administrative officials or from the FPR army. It would seem that the national courts were rarely involved in these cases, which were sorted out either before the army soon after the end of genocide and before the country's institutions had been rebuilt, or before the administrative bodies, mainly at Sector level.

Often the local population helped to identify the looters. Moreover, voluntary restitutions took place because in the post-genocide mood, huge numbers of people were arrested for alleged genocide offences, and so many of them feared that they would be accused of having participated in the mass killings and would be arrested as well. Others were quite simply deeply sorry about what they had done:

> *"But there were people who, knowing that the rightful owners were there, felt uncomfortable about having property that did not belong to them but to someone else. So they returned the property.*
> *I can give an example of what happened to me: there was someone who had taken our big cooking pot and s/he returned it to us together with other items. Then there was someone else who was really gallant and returned two forks to me. This was done as a friendly settlement, to be able to live with oneself again."*[150]

The next case, from the former province of Gisenyi, is interesting. Here, four families, under pressure from the authorities and without realizing that the owners might return, had participated in the destruction of a house during the genocide. They proposed to rebuild it for the victim when she returned and found nothing but ruins:

> *"We were four families in all. Once the house had been destroyed, we left with the roof tiles, the doors and the wood. When he returned, the victim asked us whether we knew who had destroyed her house. We replied that it was us who had done it. We explained how we had shared out the roof tiles, the iron sheets and the doors amongst ourselves. He then asked us how we expected him to live without a roof over his head. We proposed that we rebuild his house. He did not make any fuss. We even used wood from his own forest to build the roof. And he certainly didn't want to make things more complicated."*[151]

These people got on with each other before the genocide and according to one of the looters; they participated in the destruction of the house because the State had ordered that all abandoned houses be destroyed. The looters even sold part of their own property to pay for the materials needed for rebuilding the house. Since then, they get on, they "share"[152] and have had their agreement validated before a *Gacaca* Court. However, in this interview these people confirm that such successful agreements were only possible where people were only accused of looting and not of killing.

In another interview, a man told us that in his locality, it was the accusations of participation in the genocide and the resulting arrests that ended the *entente* process that had started soon after the end of the genocide:

> *"We would have liked to start with this in 1998 but as many people were suspected of having been involved in the genocide and were arrested as a result, the process was put on hold (...) In normal circumstances people would have followed their conscience and started the agreement process after the war. Here, in the Rukondo Cell we had made a start and it was only later that they decided to adjourn this*

[150] Interview with four women who were ordered to make repayments, 7 February 2007, nr. 1486-1487.

[151] Interview with people who came to an agreement, 21 March 2007, nr. 1543-1544.

[152] *Partage* (Sharing) is a very important aspect of Rwandan culture and society: it means groups of people getting together and often sharing banana or sorghum beer, or other drinks, sometimes even a meal. It is a sign of friendship.

process after they arrested the offenders. So that is why we didn't want to continue to cause further upheaval amongst the population. Especially as people who had stolen the cows were put in prison. So we decided it would be better to wait and see what the State would tell us to do about it."[153]

More often than not, once the survivors had identified their stolen property with the help of the population, they turned to the local officials who at that time acted as mediators between the parties, as this man explains:[154]

"The agreements to restitute property began as soon as the genocide had ended. As soon as the survivors returned from their refuge, they set about finding out who the looters were. It was the local population that gave them the information by telling them what they had seen themselves.
The survivors would then take their lists to a local official, in particular the person in charge of the Cell or the Sector Counsellor, and ask him to help them to find their property. Where it was not possible to restitute the property, the survivors asked for the property to be evaluated and money be paid by way of reparation. The local official would then bring the offenders together so as to reach an agreement about how to make the repayment. In some repayment cases, perpetrators who had property that was not theirs handed it over without any further ado. In others, those who had to make repayments shared the total sum to be repaid so as to allow each individual to raise his share of the sum to be repaid and to hand over the money to the person concerned. Either way, repayments were made in the presence of a local official who would sign the document which set out the reasons for the repayment."

Other people again went to the lower national courts (*Tribunaux de première instance*), but in the case mentioned by our interviewees (the dispute over four cows), the court referred the matter back for a hearing in the presence of the local population. Most of the restitutions and repayments were sorted out outside the court system and were supervised by local officials.

An Executive Secretary at Cell level who spoke with us, mentioned the *fouille*, or "search", a reference to the period during which the survivors and all the exiles spent looking for their property. Her statement provides a good insight into the complexity of the matter. The large scale looting after the genocide was followed by a first round of "searches" during which the survivors are alleged to have taken property they needed to start up a daily routine again. This was then followed by a second round of "searches" by those who returned from exile:

"It's true that just after the genocide war, there was what is known as the "search", that is to say collecting all the things one found. But I would like to emphasize that this problem has now been resolved. When the others returned from exile, say from the camps in Tanzania, they could identify what belonged to them and then go straight to the authorities and ask for the property to be returned. That property would have to be restituted immediately. There was such a search here and here no one has anything anymore that is not his or her own (...). The authorities were quite actively involved; even in meetings they would ask the person who had something that didn't belong to him or her, to return it as soon as possible. We even said that if that person didn't do this promptly and the owner succeeded in proving title, the person who failed to return the goods would be considered a thief. So people were obliged to return the property directly."[155]

[153] Interview with a Cell Coordinator, nr. 1398-1399.

[154] Interview with a local resident, 19 September 2006, nr. 1396.

[155] Interview with a Cell Executive Secretary, 14 February 2007, nr. 1496.

According to one survivor, the restitutions were mainly the result of denunciation and everyone repaid his or her share:

> *"It all started when the refugees from the events in 1994 returned. It was they who began to expose the looters and in particular those who had participated in the destruction of houses belonging to genocide victims. (...) This in turn resulted in agreements about the value of the houses that had been destroyed. (...) As soon as the victims had returned, the perpetrators came to a settlement with them about the looted property and this was done before the person in charge of the Cell, so as to avoid that either would cause trouble later on. For example, if five or six of them had destroyed a house, its value would be established, that sum was then divided by their number and then each individual knew how much he or she would have to pay back."*[156]

In Mutete (Province du Nord, formerly Byumba), the authorities asked the looters to return the stolen goods (mostly sheets of corrugated iron) to a public area, anonymously and at night. These were then returned to their owners or redistributed amongst the survivors, according to their needs.[157]

On the other hand, those people who had fled ahead of the advancing FPR at the end of the genocide and whose property had been stolen during their period in exile, encountered more problems when they tried to reclaim their property. The interviews make it clear that when they returned from exile, they were afraid to reclaim their property, doubtlessly because they feared being arrested. At that time, the authorities did not have the means to check all the genocide accusations and huge numbers of people were being arrested. There is no doubt that some of the accusations were false and that they were made in order to keep land or personal property that had been appropriated while the owner was in exile.158 The fairly high acquittal rate in the *Gacaca* Courts (more than 20%),[159] suggests that this hypothesis is correct. So people who returned from exile were right not to draw attention to themselves. The following excerpts enable us to gain a better understanding of the situation at the time:

> *"We were very scared when we returned home. And we were not desperately obsessed with our property (...) If we spotted an item in another household, we did not ask for it back, we were too scared."*[160]

> *"If you wanted to get rid of someone, you complained about him to the military. They would then put that person in their prison. If that person was unlucky, he would die there."*[161]
> *"As you know, he who has just returned is scared".*[162]

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[156] Interview with a woman survivor, 20 July 2006, nr. 1403-1404.

[157] Interview with a President of a *Gacaca* Court, 23 November 2006, nr. 1467-1468.

[158] See Gerard Prunier, *The Rwanda Crisis: History of a Genocide*, Fountain publishers, second edition, 1999, p. 323.

[159] According to the Executive Secretary of the SNJG in a meeting on 13 March 2007.

[160] Interview with four women who received orders to pay back, 7 February 2007, nr. 1486-1487.

[161] Interview with a President of a *Gacaca* Court , 13 October 2006, nr. 1430.

[162] Interview with a man who has made a repayment, 2 November 2006, nr. 1447.

This fear also explained why some of the people we interviewed told us that they paid back for property they had not looted: they just wanted to avoid any argument with the survivors and the military.

> *"So, I was accused of having looted sheets of iron and then of having stolen a mattress and that was a lie (...) First, she (the owner of the house that was looted) asked me to return the mattress to her. Given the climate of insecurity, I did not deny that I had taken this mattress (...) She asked me for it only two days after the military ["Inkotanyi"] had arrived."*[163]

There were cases of compelled repayments which bypassed all normal legal procedures and were imposed under the supervision of some of the armed members of the FPR or the local officials. It appears from our interviews that this situation occasionally led to misuse, abuse, theft and ill-treatment, as in the following case:

> *"Some people were forced to make repayments. If you had a cow and next door there was a victim whose cow had been stolen, they would come and confiscate your cow. Often it was the Sector officials who would order people to pay up. In this district, many of the survivors later became local officials. They threatened the local population so much that everyone became scared. Everyone paid up just to get out of it. These survivors were always sad because all they had was a pile of rubble. And if an accused person was ordered to build a house, he had to do so quickly, if he wanted to avoid trouble."*[164]

> *"The survivors who had children, brothers and friends amongst the military were protected by them when they forced their way into the Hutu homes pretending that they were looking for stolen property which they wanted to recover. They took advantage of the situation and took property that wasn't theirs."*[165]

> *"We paid back, we were not worried or angry. We had agreed to pay as part of the* entente*, back whereas the IPJs166 forced people who were brought in against their will. Those on the hills who agreed to pay back practised real reconciliation. Those who had been brought before the IPJs, paid back because they had been beaten up."*[167]

> *"Some defendants made repayments because they had suffered ill treatment. For example, some admitted their offences after one of them had been beaten up by a police officer or a soldier. So then the others got scared and confessed. Very soon after these incidents, the restitutions came to an end!"*[168]

It would seem that in some cases, the population was ordered by the authorities to rebuild the houses.[169]

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[163] Interview with a man who has made a repayment, 21 March 2007, nr. 1536-1537.

[164] Interview with a President of a *Gacaca* Court, 21 March 2007, nr. 1542.

[165] Interview with a Inyangamugayo, 13 October 2006.

[166] *"Inspecteur de police judiciaire*", detective officer.

[167] Interview with a man who has made a repayment, 2 November 2006, nr. 1447.

[168] Interview with a couple that was ordered to make repayments, 3 November 2006, nr. 1452.

[169] Interview with an old man, 1 June 2007, nr. 1611.

Repayments made to the survivors immediately upon the return, are now being challenged in the *Gacaca* Courts. Few of them had been recorded in writing and so there is no evidence that the repayments were ever made. Both parties would have considered that asking for a receipt was a sign of distrust. And so it is that during our interviews both defendants and judges have exposed and censored the fact that some individuals claimed repayment in the *Gacaca* Court when their property had already been returned or rebuilt in the post-genocide period. This is what a woman *Inyangamugoyo* had to say:

> *"It all started after the Tutsis, who had fled to the Congo, came back. At that time they were still Tutsis, but that is no longer the case, because we are now all Rwandans. Upon their return to Rwanda, people contacted them to give them the names of those who had destroyed their houses. The survivors then went to see those in charge and asked them to put pressure on these guilty individuals and make them pay back. And that is what happened. However, the majority of the survivors are dissatisfied, which is why they now want to be paid again, even where there was written evidence."*[170]

Another judge told us:

> *"The war happened quite a while ago now. Some people have made repayments to the victims to compensate for the loss of property, but there are no written documents to confirm this. This is now a problem, when a victim claims reparation whilst the person who caused the damage maintains he has already repaid. That is when the court needs to step in, otherwise people end up paying twice."*[171]

Today there is a further issue in relation to the restitutions made at that time: the value of the property was underestimated. Given the destitution then, the survivors accepted very small sums of money by way of repayment and some now feel wronged, because they see that for identical items the *Gacaca* Courts determine much higher values. There is this case of the woman who, shortly after the genocide, received 1000 FRW[172] by way of repayment for a stolen cow (this was very little, even during the immediate aftermath of the genocide), whereas today a *Gacaca* Court would estimate a cow to be worth 100 000 FRW, i.e. 100 times the value she had accepted.

> *"But then I did not receive the real value for the cows that were stolen from me (...) That is not right because you wouldn't be able to buy a cow for 1000 Francs today! How did this come about? (...) It was just after the genocide in 1994, when we met the people who had killed our cows and this is how, in 1995, my colleagues decided that we ought to accuse these people or tell the authorities what they had done to us. And of course government wasn't working properly. So that is why we decided that it would be better if they were to pay at least something for the cows they had killed. It was better than if we were to go on not being on speaking terms. Everyone was very poor after the war, we accepted the money they offered us, but of course, we weren't happy about it, especially me. (...) I don't think that with this sort of money you would be able to buy even a goat! (...) Why can't I ask for the issue of my stolen cows to be re-examined? The people they killed cannot be brought back to life, but as far as my cows are concerned, why shouldn't they pay a decent price for them?"*[173]

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[170] Interview with an *Inyangamugayo*, 20 September 2006, nr. 1404.

[171] Interview with *Inyangamugayos*, 9 March 2007, nr. 1531.

[172] Approx. 1,30 euros.

[173] Interview with four women, 11 May 2006, nr. 1223.

The *Gacaca* Courts determine property at today's value[174], which is much higher than it was then. So it is understandable that this woman is unhappy. She is not alone. Another woman, who is quoted below, received 40 000 FRW for her two houses that were destroyed:

> *"And when I compare the 40 000 FRW to my two tile-covered houses, I see that we were paid well below the real value of our property. But we had no choice and we accepted the money (...) Real estate was really pretty worthless in those days! They were valued at 40 000 FRW. Worse, my house was valued in my absence, because I had gone to the hospital with my sick child. It was my brother-in-law who told me about the 40 000 when I came back (...) So I told him that I wouldn't have accepted that valuation if I had been there. Instead, I would have asked that the offenders rebuild my house, because right now, when I work the land or do the brewing, I cannot shelter from the sun or the rain, if there is no neighbour nearby! My brother-in-law calmed me down, telling me that I had nothing to complain about since it was the person in charge of the Cell who had determined the value and that the others had agreed."*[175]

This is an illustration of how complicated Category 3 cases before the *Gacaca* Courts can be.

In Part I of this Report, we set out the scope and the complexity of the property offences with which the *Gacaca* Courts are dealing. In Part II we will examine how the courts go about their work in order to try and identify any areas that could be improved.

[174] The first Instruction from the SNJG concerning property offences, dated 3 August 2006, provides that *"where this property does not exist, its value shall be established at the rate applicable on the day of the trial"*.

[175] Interview with a female survivor, 20 July 2006, nr. 1403-1404.

PART II –

Property offences before the *Gacaca* Courts

Right from the beginning, all of the legislation concerning the creation of a justice system intended to deal with the genocide makes provisions for the inclusion of property offences. Since the creation of the *Gacaca* Courts, property offences must be tried at Cell level and if a person is charged with both Category 2 and Category 3 offences, the property offences can also be tried at Sector level.

It is difficult to establish the precise date on which the *Gacaca* Courts began to try these offences at Cell level, because although the information gathering stage ended when the trials went country wide in July 2006, some of the courts at Cell level took much longer to complete their investigations. Added to this, the *Gacaca* Courts were instructed to encourage friendly settlements in order to limit the number of trials, and here again, there are numerous local variations. Finally, some courts, in particular those in Kigali and other cities, experience great difficulties in identifying the looters and this slows down the search for the truth considerably. On the other hand, in some regions, there have been a great number of friendly settlements and a much lower trial rate - so much lower that some Cell courts have already completed their work. However, at the time of writing this report, some Cells, in particular those in Kigali, have not yet been able to try any Category 3 offences.[176]

However, we have been able to observe and analyse a number of friendly settlements and trials and have identified several problem areas. Firstly, there is some confusion about the difference between a friendly settlement and a trial; there are problems with trials that ought to take place in the presence of all the parties in order to decide on the defendant's guilt or otherwise; there are problems with the fact that the defendant's heirs in succession or family have to make the repayments; and more generally, there is a problem with determining the degree of criminal responsibility of each individual.

1) The creation of the *Gacaca* Courts and the legislation concerning property offences

There are several types of legislation dealing with property offences:

- Firstly, the *Lois organiques* ("Organic" or "Institutional laws") on the organisation of the prosecution of genocide offences: the 1996 Law[177] and the two *Gacaca* Courts laws of 2001[178] and 2004[179] that followed, set out the general principles in relation to the offences as such.

[176] Interview with an *Inyangamugayo*, 7 March 2007, nr. 1520.

[177] *LO nr. 8196* of 30 Aug 1996.

[178] *LO nr. 40/2000.*

[179] *LO nr. 16/2004*

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- Once the *Service National des Juridictions Gacaca* or "SNJG" (the National *Gacaca* Court Service) had been set up, it began to issue documents to be used in training sessions with the *Inyangamugayo* which set out the legal rules. The SNJG also publishes more formal *Instructions*[180] which adjust the procedure where practical difficulties show these to be necessary. Several such documents have been issued in respect of property offences and were sent to the courts: a January 2005 Manual setting out the trial procedure rules[181] already contained a great amount of information on resolving Category 3 offences. This was followed on 3 August 2006 by a further training manual which aims to train the courts. It contains a chapter on trials of Category 3 offences. Finally there is a numbered and signed *Instruction* nr. 14/2007 dated 30 March 2007 which was sent to the *Inyangamugayo* in the course of April 2007.

To some extent, these various laws and the further layers of rules purporting, in particular, to provide answers to practical problems, have caused further problems for the *Inyangamugayo*. It is quite difficult for the judges to assimilate all of these texts and to implement them correctly, particularly given the legal uncertainty and the improvised solutions that they have to find as they go along. Moreover, in some areas of the country, the texts simply do not reach the courts on time and the courts then have to rely on their oral training.

Before describing the texts that deal with the trial of property offences, we will first address certain issues that recur in the various legislative texts. These include the fact that friendly settlements are to be preferred above trials and that the sentences are more lenient than those provided for in the Penal Code. The legislation changed in this respect between 1996 and 2004: the procedure is progressively being worked out in greater detail.

More lenient sentences and reparation: in search of restorative justice?

Legislative texts dealing with property offences show clearly that reparation is considered to be more important than punishment. Property offences committed during the genocide were decriminalised in 2001 and now the penalties are more lenient than those available under the Penal Code. Indeed, they are referred to as "reparation" rather than "punishment".

The 1996 Law already provided that where no friendly settlement can be achieved, the courts shall decide these issues but "*where the defendant is given a custodial sentence, such sentence shall be suspended*".[182] So under the 1996 Law, those who are found guilty of property offences may receive a suspended prison sentence. This is more lenient than the penalty available under the Penal Code, which provides that theft without violence or threat carries a maximum sentence of 5 years imprisonment.[183] However, many people who were convicted of genocide related theft offences (i.e. under the 1996 Law) received prison sentences available only under the Penal Code.

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[180] Since its creation the SNJG has published 15 *Instructions* on a range of issues, such as arrest for perjury, granting of permissions to foreign observers, the review procedure, explanations relating to amendments to the law, etc.

[181] The Republic of Rwanda, SNJG, *Trial procedure in the Gacaca Courts: Truth, Justice, Reconciliation*, January 2005.

[182] *LO nr. 8196*.

[183] Art. 399 of the Penal Code. See the *Décret-loi nr. 2177 of 18 August 1977 introducing the Penal Code*, which entered into force in 1978 by publication in the Official Journal of the Republic of Rwanda, nr. 13 bis.

The 2001 Law[184] creating the *Gacaca* Courts de-criminalized property offences. Art. 71 in particular provides that "*Persons charged with Category 4 offences shall, upon conviction, be sentenced to pay no more than civil law compensation for damage caused to another person's property. The panel of the Cell Gacaca Court shall decide how this obligation is to be fulfilled*". The Law further states that this provision shall only apply in the absence of a friendly settlement.

At Cell level, *Gacaca* Courts try only property offences. However, reparation applies to all persons guilty of property offences and this is why those convicted of Category 1 or 2 offences will also have to pay reparation for any damage they have caused to property. Consequently, property offences can be tried not only before the Cell *Gacaca* Courts, but also before the Sector *Gacaca* Courts and the national courts.

Where property offences are concerned, the law makers emphasize the importance of reparation. The general trend seems to be to introduce a sort of restorative justice that is to say that the victim is central to the whole process which should promote reconciliation. The concept of restorative justice emphasizes the fact that justice must concern itself first and foremost with compensation for any harm done to the victim and not with punishment of the offender. It is the victim's needs that are at the heart of the legal procedure. When implemented, compensation can take on various shapes: restitution, compensation, apologies, features that are also found in the traditional *ententes* and friendly settlements in Rwanda. Numerous authors underline the importance of mediation or a face to face meeting between the victim and the offender in order to determine how the damage is going to be made good, and here again, the friendly settlement seems to be the best reflection of this concept of restorative justice. We did propose this idea at the end of our previous report on the TIG.[185] It is true that in some cases, parties are able to negotiate and agree reasonable amounts and this enables them to some extent to continue living together in peace.

But one has to bear in mind Rwanda's specific social and economic context which is one of general poverty. Reparation, as decided today in the *Gacaca* Courts, whether through a friendly settlement or at the conclusion of a hearing, may take the form of repayment orders that are beyond people's means and so become a punishment once more. Some of the people we spoke to told us that they would rather go to prison than sell their land in order to raise the money for the repayments. For selling their land would mean losing their income and their families would suffer as a result.[186]

A preference for "friendly settlements"

The 1996 Law already provided that property offences should be settled through "friendly settlements" with the "help of the citizens". The latter must provide the evidence necessary to identify the looters and the stolen property. Where the parties fail to reach a settlement, "provisions available under the criminal as well as the civil law shall apply". This means that

[184] *LO nr. 40/2000.*

[185] Penal Reform International, *Rapport de monitoring et de recherché sur la Gacaca : le TIG en phase pilote, quelques pistes de réflexion*, March 2007.

[186] That is *"he who knows the right people does as he likes"*. Interview with four women, 11 May 2006, nr. 1223.

parties may turn to the courts and ask them to resolve the dispute.[187] It is clear from the various legal texts that "friendly settlements" are the preferred solution.

This was the case in the immediate aftermath of the genocide, when often under the supervision of administrative officials "friendly settlements" were sometimes reached on a voluntary basis and sometimes as a result of coercion. This explains why relatively few complaints reached the courts, as most were dealt with directly by the lower ranks of local officials.

Like the 1996 Law, the 2001 Law emphasizes in its Articles 51 and 71 that no person who, at the time the Act came into force, had reached a settlement with the victim on a "friendly" basis, or as a result of a hearing before an administrative authority, or as a result of arbitration, could be prosecuted a second time for the same offence. The 2004 Law, which reclassifies property offences as Category 3 offences, reiterates that principle in its Art. 51.

The SNJG's *Instructions* are equally unambiguous on this point. They go even further in that they encourage the courts and the various authorities to encourage the population to reach a settlement and to check before any hearing or trial that parties really do refuse any friendly settlement.

According to the Aug 3 Law, referred to in our introduction "efforts must be made to achieve a compromise before bringing the matter before the courts". That law also provides that "the use of restitution or reparation does not mean that we have forgotten one of the main objectives of the *Gacaca* Courts which is that of conciliatory justice. That is why the courts should first *"check whether anyone is willing to make restitution and payment without any intervention from the courts, before agreeing to hear the complaint, because this willingness shows that the perpetrators in question are aware of what they have done and repent their actions."* So "friendly settlements" are clearly part of the "reconciliation" approach.

If the parties agree to compromise, the *Inyangamugayo*'s role is to "validate" the agreement on a form made available by the SNJG. Art. 1 of the SNJG's *Instruction 14* provides that resolution is to be the principal mode of settlement and that a hearing is only available where it has proved impossible to reach a settlement.

This Article further adds that the authorities must make the population aware of the availability of friendly settlements *"as part of the process of strengthening unity and encouraging reconciliation among the people, the lower ranking officials shall make the population aware of the possibility of friendly settlements in respect of compensation for damage to property which can then be submitted to a Cell Gacaca Court for validation."*[188]

Article 2 of the same *Instruction* provides that persons who came to a friendly settlement "either amongst themselves or with the help of officials" shall submit their agreement to the *Gacaca* Court which shall draw up minutes of the agreement. During the meetings at which the population was made aware of the availability of the Gacaca process, the SNJG representatives emphasized that friendly settlements and reconciliation were important and that trials weren't

[187] *LO nr. 8196*.
[188] *Instruction nr. 14/2007* of 30/03/2007. Translated from Kinyarwanda into French by PRI.

necessary.[189] The courts themselves also had a duty to make the population more aware of friendly settlements and indeed, in some areas of the country very few looting complaints ever got as far as court. For example, in some Cells in the former Province of Gisenyi (Gabiro, Muhororo and Syiki, in the Kavoye Sector)we observed hearings at which all the disputes were resolved by way of friendly settlements.

The provisions of *Instruction 14* relating to "friendly settlements" aim to encourage such settlements. In this they are different from the provisions in the various laws which deal with the recognition of agreements that have already been reached.

The procedure

The *Gacaca* procedure for property offences falls into three stages: information gathering, the hearing and the enforcement of the court's decision. All of these are regulated by means of various successive laws and *Instructions*.

Collecting the information

It was the responsibility of the *Gacaca* Courts to draw up the inventories of goods looted during the genocide and the lists of those accused of looting them. This stage, known as the investigatory stage, was finally completed in July 2006, when the nation wide trial stage opened, even although some *Gacaca* Courts had not yet completed the investigatory stage and case papers had not yet been fully prepared. The task of putting together the list of deceased persons, looted property and defendants had been entrusted to the *Nyumbakumi*[190] as well as to the Cell authorities who would fill in the forms supplied by the SNJG. This was done by either calling the population to village assemblies or by visiting people at home.[191]

One of these forms was headed "Property damaged or looted in each household". There would be one form for each household that had been the victim and it would have to include a description of the damaged item, the nature of the damage (theft, destruction or deterioration), the quantity of goods concerned, the date of the looting, the names of those who had participated in the looting as well as the names of their fathers and mothers.

Most of the time it was the survivors who provided the lists of the goods that had been looted and the population as a whole would give the names of those who were alleged to have carried out the looting: people who had been seen looting, people who had been seen with looted goods, people about whom someone had said that they had looted.... All the names thus put forward were included in the list and just as in trials for offences against the person; the alleged perpetrators would have to wait until the hearing before they could challenge the accusation.[192]

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[189] Observation Report on a Gacaca awareness meeting in the Kavuma Sector in the North Province, formerly Byumba, 5 March 2007

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[190] This term first designated an administrative unit consisting of 10 houses (*"*nyumba*"* means "house" in kiswahili and *"*kumi*"* means "ten"); it has now been extended to include the person in charge of that unit. The administrative reforms abolished the *Nyambakumi*.

[191] See Penal Reform International, *Rapport de monitoring et de recherché sur la Gacaca, La récolte d'information en phase nationale*, June 2006.

[192] Ibid.

During this stage, the only statements to be gathered were those made on behalf of the prosecution, just as in cases of offences against the person. We were able to see that this caused problems at those Sector or Cell hearings that failed to follow the principle of the inter *partes* hearing.

Moreover, it wasn't always possible to locate or identify the alleged looters whose names had been included in the list. This is a particular problem in those town areas where looting was carried out by non-local *attaques*.

The trial

Where defendants are charged with looting and/or other destruction of property offences, they are to be tried by the Cell Gacaca Court, provided that the defendants on those charges have not also been charged with Category 1 or 2 offences. Art. 94 of the Gacaca Law provides:

> "*Damage to property shall be tried in the Cell Gacaca Court, unless the accused is also prosecuted before another court*".

This provision assumes that the various levels of the courts cooperate effectively. For example, if a Cell *Gacaca* Court makes an *in absentia* repayment order against an individual (and this is a regular occurrence), the Sector *Gacaca* Court should be informed. Similarly, if an individual is convicted on property offences in a Sector Gacaca Court, it is important that the Cell *Gacaca* Court be informed of this, so as to avoid a second trial of that individual for the same offence.

We have observed that at Sector level, defendants are ordered to make repayments in respect of property only if they have admitted to having looted it. It would appear that the Sector *Gacaca* Courts do not have the lists of looted property that have been drawn up by the Cell *Gacaca* Courts, because these lists are retained at the Cell *Gacaca* Courts. The Sector Courts attach little importance to property offences and increasingly they refer these matters back to the Cell Courts so as to avoid duplicating convictions and overestimating the sum of money that an individual must pay back when the co-defendants in the looting are absent.[193]

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[193] Report on an interview with two *Inyangamugayo*, 23 April 2007. See also the Report on an interview with a person convicted by the Gacaca Courts, 23 April 2007 and Report on an interview with a witness, 26 April 2007. See also Avocats sans frontières, Monthly *Summary Report Gitamara*, August 2006; *Monthly Summary Report Cyangugu*, Jan 2007; *Monthly Summary Report Kinuye*, Jan 2007.

Under Article 68 [194] of the 2004 *Gacaca* Law[195], setting out the Rules of Procedure in relation to the trial of property offences in the public hearing stage, the President first calls the complainant household. He recapitulates the list of goods that have been damaged or stolen and are included on the Victim's Form. He then gives the floor to anyone who wishes to add anything to what has already been mentioned on the form, the Panel then "approves the list of damaged property".[196] The court then calls the names of the persons who participated in damaging the property belonging to this household based on the list of defendants.

Each defendant may then defend himself/herself and all persons attending the General Assembly may respond. Then "the Members of the *Gacaca* Panel approve the list of victims, damaged property and defendants".

Enforcing court orders

The kinds of reparation that may be ordered by the court are set out in Art. 95 of the 2004 *Gacaca* Law in the following terms:

> *"Reparation proceeds as follows:*
> *1° restitution of the property whenever possible*
> *2° repayment for the ransacked property or carrying out the work worth the property to be repaired"*

[194] Article 68 provides:
"For files relating to the offences against property, the hearing proceeds as follows:
1° the President of the session states the household concerned with the case;
2° the President of the session recalls the household's property damaged and known, on basis of the list of victims and damaged property
3° the President of the session gives the floor to any person who has anything to add to the information on the list;
4° the seat for the Gacaca Courts adopts the inventory of damaged property;
5° the President of the session reads the names of the defendants having damaged the household property, basing on the list of defendants;
6° each defendant presents his or her identity;
7° the President of the session requests the representative of the suffered household or any person interested to give his or her evidence;
8° the secretary of the Court states each of the damaged property and their authors;
9° the President of the session asks each defendant to react to the accusations and present his or her defence;
10° the President of the session asks the household representative or any person who so wishes to react to the defendant's declarations;
11° the Seat for the *Gacaca* Court adopts the list of the victims, damaged property and the authors, each defendant is given the floor to react;
12° the Seat of the Court explains to the convicted defendants, modalities for granting compensation provided for by this organic law, by asking each defendant to decide on his or her means and the period of payment in case of conviction;
13° the secretary of the Court reads the statement of hearing; the Seat checks the conformity of its content with the declarations and, if need be, the statement of hearing is corrected;
14° the Seat asks the plaintiff and the defendant whether they have anything to add to the hearing;
15° the parties to the trial and the Seat members put their signatures or
fingerprints on the statement of hearing;
16° the hearing is declared closed, unless the Seat deems it necessary to postpone it so as to check certain issues.

[195] LO nr. 16/2004.

[196] *Ibid.* Art. 68.

The terms on which reparation can be ordered are repeated in the various procedural guidelines issued by the SNJG as well as in *Instruction Nr. 14/2007*. According to the 2005 Procedural Rule Book, the enforcement of a judgment or an order is the responsibility of the Cell Executive Secretary upon application by the victim.

According to the various laws and rules, it is the court that decides how the order is to be carried out, although it must consult the defendant. Under Art. 68 of the *Gacaca* Law, the Panel of the relevant court shall explain *"to the defendants the various ways in which the damage can be repaired under the Loi organique; [it] then asks each defendant in what manner he/she would prefer to make the reparation and informs him/her when this should be done once he/she has been found guilty"*. Moreover, Art. 69 provides the terms that must be included in orders made in property cases.[197] Such orders shall contain *"the procedure and the period during which the reparation is to be made"*. This detail is just as clear in the Procedural Handbook for *Gacaca* Orders, which requires the courts to ask defendants how they would wish to make the repayment.

However, we observed that now the trials for property offences have begun, most courts do little more than determine the monetary value of the repayment that is to be made. The few examples of repayment in the form of work that we were able to observe, were all the outcome of private arrangements between the parties, after the court order. On the other hand, we noticed that in many of the "friendly settlements" repayment was made in the form of work for the victim.

Moreover, both the *2004 Gacaca Law* and the two *Instructions* that quote it, provide that "where the person who has been ordered to make reparation, fails to comply with the terms and the due date specified in the order, the order shall be enforced by a public body". Where people are unable to make the repayments, their goods may be seized and sold at auction and a form for this purpose has been made available to the *Inyangamugayo*. However, some possessions may not be confiscated, namely 2/3 of the food stuffs intended to feed the perpetrator and his family, 2/3 of his wages, 1/3 of his old age pension, 1/2 hectare of his field, his house, his bedding and his clothes as well as those of his family and any tools he needs for carrying out his trade or profession.[198] This provision reiterates part of the provisions set out in Art. 260 of the Code of Civil Procedure[199] and reads: "the part of the personal property that would otherwise reduce the debtor to poverty and make him a burden on the community" may not be seized and thus excludes some items from any confiscation. It is however worth noting that *Instruction nr. 14* protects that individual's house as well as part of his field, neither of which are protected under the Code of Civil Procedure. So the protection has been extended. Another point is that the

[197] According to this article, the order must mention the following: "1° the Court that has passed it, 2° the names of the Seat members who gave rulings; 3° the identity of the parties to the trial; 4° the damaged property requiring reparation; 5° the facts presented by the parties; 6° the motives of the judgment; 7° the damaged property which must be repaired and the defendants responsible; 8° the identity of the victims and the inventory of their damaged property; 9° the modalities and the period for reparation; 10° the presence or absence of the parties; 11° if the hearings and the pronouncement of judgment were made public; 12° venue and date for judgement; 13° the provision of this organic law which have been applied".

[198] The original provisions, which were communicated to the courts on 3 Aug 2006, were more restrictive in that they protected only 1/2 of the wages and only "the house of a local". They have been changed since.

[199] *Law nr. 18/2004 of 20 June 2004 creating a Civil, Commercial, Social and Administrative Code*, Official Journal of the Republic of Rwanda, 43d year, special issue, bis of 30 July 2004 as amended.

Gacaca Courts have the power to freeze assets[200] in order to prevent defendants from selling the assets before their trial. A house may also be frozen under Art. 285 of the Code of Civil Procedure, which provides: *"any creditor or any other person concerned may file an objection with the custodian of the title deeds or the District or Town Executive Secretary for the area in which the property is situated in order to prevent alienation of the debtor's property."*

However, despite all these safeguards, the poverty is such that freezing orders may precipitate people into abject poverty. For example, 36.9% of the population lives in extreme poverty: what they can afford to spend on food is less than what is needed to fill the minimum food basket.[201] How are they then supposed to survive if 1/3 of their food is seized? Similarly, in a country where the fertility rate is 5.7 children per woman, a 1/2 hectare field cannot even begin to feed a family[202]. According to an opinion poll carried out by the CNUR in 2005, 9/10 of the family households took the view that a family could not live on less than 1 hectare.[203] Local government is only too aware of these problems and its representatives have often told us that destitute defendants would not have to make repayments, that lists would be drawn up of the poorest people so that they could be exempted from repayments, that they would look more closely at the economic situation of the poor and that a solution would be found.[204]
Another solution needs to be found so that all victims are reimbursed and not only those people who were looted by individuals who are comfortably off today. In order to ensure equality before the law, which promises reparation, the State ought to make provisions for some compensation, at least in those cases. The same problem also occurs in the national courts when they make repayment orders.

Lack of an appeal procedure

Art. 89 of the *Gacaca* Law expressly excludes any form of appeal from decisions in property offences. However, the Procedural Rule dated 3 August 2006 does add: *"where there is an obvious mistake, the Cell Gacaca Court that made this error shall review its decision. Where this is not possible, the matter shall be transferred to another Court with the same powers. We remind you that as in all reviewable trials, the higher court also has this power."* This somewhat obscure passage would appear to be more closely related to a review procedure than to an appeal procedure and contradicts Art. 93 of the Gacaca Law which provides that *"the Gacaca Court of Appeal is the only competent court to review judgments passed under such conditions"*.

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[200] According to the *Procedural Note of 3 August 2007*, when these circumstances arise, the defendant may use and enjoy his assets, but cannot sell them or give them as security or give them away or damage them.

[201] The figures quoted here were taken from the *Preliminary Poverty Update Report, Integrated Living Conditions Survey 2005/2006*, published by the National Institute of Ruandan Statistics in Dec 2006. Cf also http://www.statistics.gov.rw.

[202] UNDP, *Human Development Report 2006: Beyond scarcity: Power, Poverty and the Global Water Crisis*, Table 5, demographic Trends, p. 299.

[203] National Commission for Unity and Reconciliation, *Land Ownership and Reconciliation.*

[204] Observation Report on an Awareness meeting in the Kavumu Sector, Province du Nord, formerly Byumba, 5 March 2007. Report on an interview with a Cell Executive Secretary, 6 May 2007. Report on an interview with a *Gacaca* Coordinator, 8 June 2007. Interview with a *Gacaca* Coordinator, 7 March 2006, not tape recorded.

We observed that in some cases, the parties who felt wronged turned to the administrative officials, and in particular the *Gacaca* Coordinators, who would then ask the courts to review their decisions. This interference in judicial matters outside any properly regulated procedure, may be risky for the parties as they may be facing legal uncertainty.

For example, the *Gacaca* Coordinator whom we met in March 2006 told us that there was no substance in the argument that there was no appeal procedure, for if a person was unhappy with a decision, the court could always review its own decision.[205] He told us that when people were unhappy, they would turn to him. He would listen to their claims, organise a meeting with the *Inyangamugayo* and if the objections seemed well-founded to him, he would ask them to review the case. In one case which we observed in the North, a survivor who was unhappy with the valuation of his property turned to the District *Gacaca* Court Coordinator who in turn went to the Court. The Court then re-evaluated the property.[206] We can also add that during our interviews we heard numerous people from both sides ask for the creation of an appeal court. The Courts themselves, which would like to get it over and done with as quickly as possible, are not in favour of such an appeal court.

2- The friendly settlements validated by the *Inyangamugayo*

We referred earlier to the fact that there were a number of friendly settlements after the genocide. When the *Gacaca* Courts started their work in respect of property offences in 2006, new attempts were made by the Courts and the administration to raise awareness of this process once more.

In theory one of the main features of a friendly settlement is that it is achieved through negotiation and therefore takes account of a person's ability to pay. That is not the case with the court orders which assess the property at issue at its real value and disregard the offender's ability to pay.

This is what one survivor observed *"the genocide survivors adjust the repayments to what the offenders can afford to pay back"*.[207] So in certain cases, the friendly settlements reflect both a form of reconciliation and a sense of realism. The looters know that if they are to stand trial, they will be ordered to pay much higher amounts and the victims know that it is likely that the real value of their property will never be paid.

Let us take a Cell in the Kayove District in the former Province of Gisenyi which we observed closely for some time. Since the start of the friendly settlement process, it has validated 87 such settlements and the total value so far is 2 123 600 FRW, i.e. an average of 24 409 per friendly settlement. This is not an inconsiderable sum. Compare this to the total value of the 14 orders made by the court between 24 April 2007 (the date of the first order) and 12 June 2007 and

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[205] Interview with a Gacaca coordinator, 7 March 2006, not tape-recorded.

[206] Analysis Report of 20 March 2007.

[207] Interview with a survivor, 15 May 2006, nr. 1211.

which reached 1 042 000 FRW, i.e. an average of 74 428 FRW per order...[208]. It should be added that in respect of the friendly settlements 1 092 600 FRW, or 51%, have already been repaid, whereas at the time of writing the Report, only 14 000 FRW had been paid in respect of the court orders. That is just over 1%. Of course, one needs to bear in mind that the friendly settlements had begun before the trials and that in this particular Cell Court, the defendant has one month to pay. Nevertheless, some defendants have looted in several places, are destitute and obviously not able to make the repayments... These figures show clearly that it is in the financial interest of both sides to reach a friendly settlement.

The terminology that accompanies the concept "friendly settlement" is also interesting. Many of those we spoke with associate "friendly settlement" with "forgiveness", because the sum to be repaid has been reduced. The average sum per settlement in the Kayove District (almost 25 000 RFW) may seem quite a lot of money, but it should be remembered that some friendly settlements relate to the destruction of homes or the theft of cows. And whereas some of the parties to friendly settlements had agreed that a cow is worth 10 000 FRW[209], the *Gacaca* Court valued a cow at 100 000 RFW[210] or even more if the animal was particularly valuable. Similarly, a goat valued at 2000 FRW[211] in a friendly settlement and was valued at 10 000 FRW at trial.

The "forgiveness" is therefore not merely a waiver of the payment, it is a compromise. Indeed, several people have told us that they forgave the looters for their own peace of mind and to allow these looters to go to heaven. Religion plays quite an important part in the confessions and in the asking for forgiveness both before the *Gacaca* Courts and during the friendly settlements. One woman told us that she had forgiven people who came to ask her for forgiveness after the court decision so that "they could go to Heaven", but that there was no question of relieving them from making the repayment. Another woman, a looter who asked her victim for forgiveness, told us that "she told us that she would forgive us so that we could feel at peace again and could work, but that we still had to pay back".[212] Yet another survivor commented: *"Given that they came to see me and sincerely asked my forgiveness, I didn't try to make it difficult for them. I forgave them but insisted that they make the repayment, the amount of which they themselves had just decided"*. So there is a sort of "religious" forgiveness and a "material" forgiveness. We also met people who had granted both forms of forgiveness and discharged the other party fort he duty to repay, or organised a simple sharing of beer and Fanta. This is the story from the woman.

> *"The Gacaca Court asked me whether I was prepared to settle with those who would ask for my forgiveness (...) We could reach an agreement, or continue with the trial. I told them that I would prefer a friendly settlement. When I indicated that I would be willing to reach a settlement with those who had looted my belongings during the night, seven people came to see me. (...) We only talked about the personal property, not the house. No one came to see me about the house. As far as the personal property was concerned, two men got together and came to ask my forgiveness. I had decided that one person might have taken the window, another tumbler, just like yet another could have turned up and left empty handed. I couldn't ask someone to pay back five or ten thousand francs. That is why I told him that I*

[208] PRI Summary Report of 13 June 2007.
[209] Approx. 13 euros.
[210] Approx. 130 euros.
[211] Aprrox. 2.60 euros.
[212] Interview with four women who were ordered to make repayments, 7 February 2007, nr. 1486-1487.

would forgive him. And he said "Just like that?" And I told him "Do what you can do". I couldn't demand that someone pay back five or ten thousand francs when what he had taken away was worth no more than a thousand francs. I would have found that very difficult. These seven individuals decided to buy some Fanta and we shared this. (...) One person brought two thousand francs. I don't drink alcohol. I bought Fanta and I bought him what he could drink. We shared the drinks and I forgave him. The next day, the others turned up and again, we shared drinks. It led to a sort of companionship. So far I have had no problems with them and it has been the same for them. I ask each one of them to do what their conscience tells him/her to do. If they stole clothes, well, I still have other clothes, I have chairs on which I can sit, I also have pots for cooking. I told them that whoever is ready can come and I will forgive."[213]

This is therefore symbolic reparation: the looter asks for forgiveness - it is not about money or material goods.

The following excerpt from a survivor's account is particularly interesting in that it contains all the elements that make up a friendly settlement, including forgiveness, reconciliation and a financially viable solution:

"You must never forget that with the current rate of inflation, the value of damaged property has soared. That is why, for example, I cannot ask a defendant, who has destroyed my home, to rebuild it. He wouldn't be able to do it. So, as I forgive them, we examine together how we can reduce the value of the goods they destroyed, without referring to today's prices, because they would not be able to pay back at today's rates. And that would invalidate the forgiveness. That is why I look at ways in which I can forgive without reducing them to poverty, for if I did that, tomorrow they would steal or do some other vile things to enable them to make their repayment to the victim."[214]

So friendly settlements have made it possible to resolve numerous disputes and can constitute an extra-judicial way of resolving the tension caused by the looting by allowing the two sides to play an active part in resolving their dispute and reaching an agreement. The fact that they take the initiative and set the terms makes it easier for them to accept the outcome.

However, we have also come across numerous instances of courts confusing "friendly settlements" and "court orders" in which hearings that should have been conducted in court as friendly settlements, were actually conducted almost as if they were trials. Firstly, in numerous cases, the courts do not restrict themselves to raising awareness of the process and validating the outcome. For example, according to one interview that we conducted with an *Inyangamugayo*[215] in the former province of Cyangugu, the Panel had not received the SNJG's handbooks and relied on oral training. He told us that the *Inyangamugayo* would visit the defendants at home and suggest a friendly settlement. They would then organise a General Assembly which would determine the amount to be paid back. We observed such a "quasi-friendly settlement" in the former Province of Byumba : it was the court that decided the amount. Our interviews confirm that this happens frequently.

[213] Interview with a survivor, 7 March 2007, nr. 1523-1524.

[214] Interview with a survivor, 15 May 2006, nr. 1211.

[215] Interview with an *Inyangamugayo*, 7 March 2007, nr. 1520.

We observed a General Assembly, which the judges described as a friendly settlement, but which was, in reality, run much more like a trial. One of the judges explained to us:

> *"At first, it looks like a trial, because we call the parties together. In a friendly settlement, the offender approaches the victim in order to reach a settlement and then asks us to validate it. In this case, the parties were unable to reach a friendly settlement so we called them all together and asked them whether they could reach a settlement. Ultimately, they all agreed, even the victim. That is why we stepped in, to ease the way. We decided who had to pay what and how much and confirmed this in writing. It was really more like a friendly settlement than a trial (...) It may have looked like a trial, but it really was a "friendly settlement"."*[216]

> *"I would like to add something to what my friend has just said. If we had conducted a trial, it would have been much more time consuming. The sentences would have been twice as heavy. This case was wholly unlike a trial."*[217]

It would appear that often in the minds of the judges, the difference between a "friendly settlement" and a "trial" lies in the amount they order to be paid back.
We later met with the two parties to this "friendly settlement" in Byumba. The victim, a survivor, was unhappy, because he thought the sum that had been ordered by the court was insufficient, whilst some of the defendants were equally unhappy because some claimed their innocence or felt that the amount to be repaid was too high... It would therefore not be entirely accurate to describe such cases as "friendly settlements". There are "friendly settlements" within the meaning of *Instruction nr. 14*. And even if the desire to reconcile may have to be squared with a number of other factors, such as pressure from local officials, the parties' social status (quite an important factor), or an urgent need for money, these settlements are encouraging and useful as an expression of reconciliation, because people can live together in peace once again. On the other hand, one should not be tempted to read too much into the apparently great number of friendly settlements, since a fair number of these are not really "friendly settlements" at all.....

Moreover, many of these friendly settlements are reached because people fear trials which result in much higher repayment orders than friendly settlements, and often fail to hear both sides.[218] Parties may agree to a friendly settlement and yet be unhappy with the outcome. Even where the alleged looters claim their innocence, their fear of a trial may lead them to prefer a friendly settlement.

This is what were we told by a man who claims to be innocent but accepted a friendly settlement because it meant he wouldn't have to pay as much as at the outcome of a trial:

> *"In June I was told that I was accused of being one of those who had participated in looting the victims' property. But the truth is that I never went there. Recently I had to appear before a Gacaca Court. Normally speaking, if you have been accused by three people, you must accept your guilt. I was accused by*

[216] Interview by PRI with an *Inyangamugayo*, 20 February 2007, nr. 1507.

[217] Ibid.

[218] Cf. *infra.*

more than three people (...) ultimately, I pleaded guilty because it was difficult to convince them (...) I wanted to avoid any further problems and immediately accepted the reconciliation."[219]

According to the judge in the following excerpt, a refusal to reach a friendly settlement is considered to be evidence of a refusal to seek reconciliation and so must be punished severely. This judge appears not even to consider the possibility that an accusation may be false:

"We were talking about the trials. The people who stand trial are defendants in property offences who have refused to seek reconciliation with their victims. Where the person has sought to settle with the victim, s/he will have to pay 5000 FRW, if s/he has not done so, s/he will be sentenced to pay twice that amount (...) People who do not seek reconciliation with their victims are punished severely. We determine the value of the looted or damaged property, we then deduct the value of what has already been restituted and the people who have chosen to stand trial pay the difference. So you see, people who choose to stand trial just make life more difficult for themselves."[220]

This presumption of guilt is cause for concern. A refusal to admit to guilt is seen by the court as a refusal to seek reconciliation. Allegations are neither challenged nor scrutinized and so a defendant will find it difficult to put his case in the Cell *Gacaca* Courts. The following paragraph illustrates this point.

Survivors too may prefer to avoid a trial because they don't want to create trouble in their neighbourhood, like this old woman, who was injured, lost most of her family and found her home destroyed after three and a half years in exile (because she was too afraid to return) "I didn't want to complain to the court, because that might have led to more trouble".[221]

Although friendly settlements may lead to a better relationship between victims and looters, there may be reasons other than the desire for accepting a friendly settlement. Friendly settlements may also cause frustration and dissatisfaction.

3 – The transfer of liability to heirs and property managers

According to the laws governing the trial of property offences, where the accused has died, his successors, that is to say those who have inherited from him, must make the repayments. The *Law of 3 August 2006* provides that "Where the defendant has died, his heirs become liable de cujus". Our observations have shown that this is a widespread phenomenon and the SNJG's own figures confirm this.[222] Out of the 818,564 people accused during the investigatory stage (this figure includes the 308,738 persons accused of Category 3 offences), more than 120,000 are reportedly dead or living in exile. If these individuals have committed property offences, the burden of the repayments will fall upon their families.

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[219] PRI interview with a person who has been ordered to make a repayment, 20 February 2007, nr. 150.

[220] PRI interview with an *Inyangamugayo*, 20 Feb 2007, nr. 1507.

[221] PRI interview with a female survivor, 20 September 2006, nr. 1403.

[222] These statistics, which were communicated to the sponsors and partners in commercial undertakings during a meeting on 13 March 2007 on the investigatory stage, are available on the SNJG's website, www.inkiko-gacaca.gov.rw.

Moreover, if the defendant is absent for reasons other than death, the burden of any repayment will fall upon those members of his family who run his property. This applies particularly to defendants who are abroad or in prison.
This transfer of liability causes many problems, one of which is that the hearing does not take place in the presence of all the parties, another that it leads to disputes within families. By way of illustration, we will focus on one particular category of people upon whom this situation has a considerable impact: the looters' wives.

Family conflicts

To begin with, there are a great number of people who do not accept that they have to pay for other members of their family, because they do not consider themselves liable for another person's actions. So they sometimes try and discharge the liability on another member of the family. Let us take an example. In the countryside, an individual's wealth traditionally consists of the land inherited from his/her parents. It is the parents who decide, before they die, how their plots of land are going to be shared out. They then organise a sharing out ceremony during which a new head of the family will be appointed. So each child knows what plot of land he/she will inherit from his/her parents or upon marriage. If the children have to make repayments for something their father has done, how are they going to decide who should sell what land in order to make the repayment?

We observed one trial in which a man objected to the fact that he had to pay for his brother's looting, a brother who had not returned from exile. According to him, his brother's wife should make the repayment and as in so many other families, this started a family dispute. To make it worse, in this particular instance, the looter's property was insufficient to cover the repayment.

> *"My big brother was a married man when he did this. I was a young boy. I was still living with my parents. I received a summons to appear in court and so I did. I explained that it wasn't up to me to pay in his place (...). It is his wife who inherited his property.*"

In another case, the three wives of one man who was in prison in Gysenyi couldn't agree who would have to make the repayment for a house that their husband had destroyed. Each of them maintained that she had not benefited from the looting, that it was the others who ran the husband's property and they all accused each other of having participated in the looting[223]. During the friendly settlement proceedings before the court, two of the wives refused to sign the minutes.

Lack of hearing *inter partes* hearings

One thing became clear during our observations of *Gacaca* proceedings at Cell level and that is that the issue of the defendant's criminal liability is rarely raised. One of the main reasons is that many of the defendants are not present at the hearing. They may be represented by their heirs or their children or those who run their property, none of whom would necessarily know anything

[223] Interview with the first wife of a defendant, 2 November 2006, nr. 1450-1451. Interview with the second wife on 2 November 2006, nr. 1450 and with the third wife on 2 November 2006, nr. 1451.

about the defendant's activities or actions during the genocide. It is also often the case that the defendant remains in prison because the National Prison Service (SNP) doesn't have the means to produce him/her at the hearing. Other defendants have died or are missing.

Although there are lively discussions and noisy disagreements during hearings at Cell level, they tend to be about the value of the property to be repaid and the exact number of looted items. They are rarely about the defendant's criminal liability. It has to be remembered that the courts deal with the property in detail and where it is reasonably easy to establish how many cows someone possessed before the genocide, or from what materials his house had been made, it becomes much more complicated when the court needs to establish the number of stolen roof tiles, chairs, chickens, pots and pans, forks, bags of beans, buckets, clothes, mats or bowls...

Poverty is everywhere in Rwanda and Rwandan people have on the whole few belongings. However, 13 years on, it is very difficult indeed to challenge the lists of stolen and damaged property that the survivors have drawn up during the investigatory stage; the only exception being goods of great value. We have observed sessions where lists were contested (that does happen) but the arguments were often vague and based on mere personal conviction rather than exact memory, even where valuable items were in dispute: "I remember you were poor, you couldn't have had 5 cows"[224] or "I remember you had 2 cows, not 5".

In many interviews we heard people complain that the lists were sometimes exaggerated and that it was difficult to challenge these:

> *"Generally speaking, those who claim a repayment, claim more than they had. They claim for goods they never owned. An individual, whose house had 30 sheets of iron, now claims 300. This is a problem. (...) People become victims of injustice. As you know "it is not always wise to tell the truth". He who is thinking of making adverse comments, knows this may turn against him and so he keeps quiet. Most of the time, the survivors claim as much as they can and occasionally one succeeds in defeating their claim."*[225]

> *"Just an example. There was this survivor who claimed that he had a dictionary worth 150,000 FRW. Well, he was just an ordinary man and his children weren't at school. And it has to be said that no one in this region had a dictionary. It is the same sort of thing as the survivor who claims eight plates when he only had two, or the one who claimed ten chickens when he only had two. And that causes real problems when it comes to repaying. People don't even have enough property to make the repayments, so what are they supposed to do when they are faced with exaggerated claims!"*[226]

But it is not easy for the survivors to remember everything exactly either. Indeed, one of them told us that even if it is difficult to forget something that one has once owned, the trauma she had suffered had made her memory unreliable and she found it difficult to remember everything. She therefore had to ask one of her neighbours to help with the list.[227]

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[224] This is a case we observed ourselves.

[225] PRI interview with inhabitants, 7 March 2007, nr. 1523.

[226] Interview with a *Inyangamugayo*, 20 Sep 2006, nr. 1404.

[227] Interview with two survivors, 14 Feb 2007, nr. 1497.

It is also obvious that the disputes arising from murder charges have an impact on decisions in property offence cases. We discovered at the end of a particularly lively *Gacaca* hearing during which there were some violent verbal exchanges between a survivor and members of the community about the number of cows that had been stolen from her, that the person who challenged her inventory had been denounced by her as a member of the attaque that had killed her grandmother.[228]

However, the case remains that those who have been accused have no means of defending themselves. These are a few observations made by judges who confirm that it is impossible to tell the guilty from the innocent, whatever the circumstances:

> *"It is impossible to tell the person who is wrongly accused from the person who has committed the offence."*[229]

> *"Anyway, some people will try and conceal their part in these offences. It is difficult to decide whether they are guilty or not."*[230]

There are a number of reasons why hearings may take place without all parties being present; we have dealt with these in the first part of this Report. Two of these are the complexity of the facts and, equally importantly, the defendant's absence from the proceedings, depriving him of the opportunity to present his case. He will be represented by members of his family instead. One can see how this comes about when a person is dead, or living in exile but we noticed that prisoners and tigistes accused of property offences rarely appear in the Cell *Gacaca* Courts. That renders any proper *inter partes* hearing impossible, no matter what the court tries to do about it, because most of the time those who represent the defendant don't know exactly what he has done. This situation is partly due to the fact that the courts don't have the means to produce the defendant in court and partly to the fact that property offences are rarely tried at Sector level, because the Sector Courts deal mainly with murder charges or often content themselves with dealing with guilty pleas for destruction.

So most cases of looting and destruction are brought at Cell level and the trial is distorted by the absence of the accused. This is the comment of a man who had been ordered to make repayments[231] on behalf of his brother, who had been accused of stealing cows. He had cried out "My problem is that I have no means of knowing what he has been charged with!"[232]

This is the story of another man, whose son is in prison for the part he played the genocide and is also accused of having stolen firewood. The father protested because he had never seen any

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[228] Observation Report on a Cell *Gacaca* Court, 13 Feb 2007, and Interview with two survivors, 14 Feb 2007, nr. 1497.

[229] PRI interview with an *Inyangamugayo*, 20 Feb 2007, nr. 1507.

[230] *Ibid.*

[231] We use the past tense because this man, who had inherited nothing from his brother, was excused from all payment once he had explained his case to the higher, Sector Court.

[232] Interview with an inhabitant who had been ordered to make repayments, 14 Feb 2006, nr. 1498.

firewood. He too underlines the unfairness of convicting a person without first hearing him or her:

> *"I asked [the Court] how it could have come to this decision, when [my son] had not even appeared in court. I was told that he did not have to appear in court because he couldn't appeal anyway and that there is nothing anyone can do about it. I told the Court that I could not make repayments in his place if he had not even appeared. I asked the Court to produce him so that he could win or lose his case. I was told that I had better not say anything because there was nothing I could do about it. I kept silent. I am not a talkative sort of man. I left it. And then I was told to stand up and ordered to repay forty two thousand seven hundred plus extras and the Court told me that I would have to pay up, just like the others. (...) I insisted and asked how I could be made to repay if the accused had not appeared to put his case? Why should I have to pay these thousands of francs when I had never even seen the firewood? The Court told me I couldn't do anything about its decision. I said: "And how about all those people who went to destroy M's house, none of them mentioned N [my son]. So am I supposed to believe that he went there just with his old auntie? Didn't any of the others see him carry off the firewood?". The Court said there was nothing I could do about it. I didn't know what to do anymore. I went to see [my son] in Nsinda to tell him. He told me that they should have waited for him so that he could put his case. We were told that we had to pay back before the end of May. It is a huge problem for me, but there is nothing I can do about it."*[233]

This man who has been ordered to pay for his son, who is in prison, refuses to do so as long as his son has not appeared in court and now fears that the order will be enforced against him. This sort of situation does little to promote reconciliation. Such orders are perceived to be unjust and are therefore not accepted, or else they are complied with grudgingly and create resentment against the parties who have received the money.

Generally speaking, we noted that in absentia decisions occur frequently and that it is very difficult for a defendant to put his or her case in trials for Category 3 offences. Furthermore, even if the defendant is present, s/he finds it difficult to put his/her case, as can be seen from the following accounts:

> *"We were talking about property offences - I haven't seen many defendants put their case. They call ten people, who stand up in front of the Panel and judgment is given, the defendants don't say anything."*[234]

> *"First we were told that we would be brought before the court as a group and that all the accused would have to stand up before the public to hear the charges against them. That day, all the accused who were present had to stand up and we were told that they wanted the trials to be over quickly and that they didn't want anything to hold them up. So we had no opportunity to give more details. Each prosecution case was read out and those who had been accused of looting were not allowed to say anything. We were told that we would have to make repayments and that a conviction for a property offence could not be appealed. He who had been convicted would just have to pay up."*[235]

[233] Interview with three men who have been ordered to make repayments, 7 Feb 2007, n 1485-1486.

[234] Interview with three men who have been ordered to make repayments, 7 Feb 2007, nrs. 1485-1486.

[235] Ibid.

It is a matter for concern that, as these earlier interviews show, some lay judges, who do not always apply even the most basic concepts of law, do not know the difference between an unappealable decision and the right to put one's case in a trial court or before an appeal court. In their minds, the right to put one's case only exists in appeal proceedings.

The fact that it is so difficult to defend oneself is undermining the trials for property offences. There is a further complication, which is peculiar to trials for Category 3 offences, and which can lead to false accusations. Where a house has been totally ransacked and stripped, it is difficult to establish who took what. So the court listens to the General Assembly, assesses the total value of the house and its contents and then divides that amount by the number of defendants. It is therefore in the interest of the defendants to implicate as many people as possible in the looting, because the greater the number of defendants, the smaller the amount each will have to pay back.

In the following account, we hear a man who has been accused because he had money and was able to help and pay for those who had destroyed a house:

> *"Because I sell food here on the market and the victim's family was rich, the perpetrators accused me so that I would help them to make good the damage they had caused (...) If you plead not guilty, all the perpetrators get together to persuade the court that you were one of them. If you argue back, they just double what you have to pay. So you agree to pay back like the others rather than get involved in arguments (...) I have some experience and I realized that these offenders against property wanted to falsely accuse others so as to spread out the liability."*[236]

Too often, the population does not speak out and it is difficult to establish who was really involved in the looting:

> *"To make matters worse, people who were there during the genocide and in particular those who were in our Cell, kept silent. When someone is wrongly accused, his innocence should be shown by the same people who were in the same Cell at the time and by those who caused the damage for which a claim has now been filed. The problem is that no one does this. So the accuser, benefits from the silence. As judges we try to be impartial. If someone is wrongly convicted, it is the fault of the population which keeps silent about the events they witnessed".*[237]

A woman who escaped the genocide told us that people who lived in her locality were suffering from what she called the "Ceceka syndrome"[238], meaning they would not disclose who had committed property offences.

According to some of those we spoke to, this silence is caused by the fear of being accused, either because so many people were involved in the looting or because it is so easy to be wrongly accused:

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[236] Interview with a person ordered to make a repayment, 20 Feb. 2007, nrs. 1507.

[237] PRI interview with an Inyangamugayo, 20 February 2007, nr. 1507.

[238] Kinyarwanda for "keep stum"/"keep your mouth shut".

"To be honest, almost everyone on the hill was involved. If you didn't take the house, you took the wood for heating. So you don't accuse your neighbour, because the neighbour may well accuse you in turn." 239

In the following excerpt we hear a woman who was ordered to make repayments. According to her the Court said that if a person is wrongly accused of looting but incapable of disclosing the names of the real perpetrators, that person ought to make the repayments:

"Yes, some people did give evidence [for the defence]. They told the court that I didn't go anywhere. But according to the rules of the judicial investigation, where a person is accused of Category 3 offences and fails to disclose the names of the real perpetrators, s/he will have to pay back, even if s/he is innocent. I was not able to challenge the Gacaca Court's decision, because I did not give the names of the real perpetrators and I was considered even more blameful because I did not see who committed the offences."[240]

"The problem with decisions in property offences is that when someone is wrongly accused of having stolen this or that item and fails to identify the real perpetrator because s/he didn't see him/her do it, s/he will have to pay up. Worse, s/he is ordered to pay a sum of money that s/he never had."[241]

The woman who speaks in the next excerpt has had to pay 42,765 FRW[242] on behalf of her deceased brother, who had participated in the destruction of a house by stealing several sheets of corrugated iron from it. She sold her brother's field to make the repayment and this is what she had to say:

"When the trials [for property offences] began, we were told that defendants could neither protest nor appeal. We were told that the defendant would just have to accept the accusation and pay back promptly. A list was read out with the names of those who held property belonging to the victim and whoever was there in the place of the absent defendant was to pay on that defendant's behalf. My brother was dead. After the Gacaca Assembly I told the presiding judge that I had not heard any charge brought against my brother. I wanted to know why he had been included in the list, even though he was dead and could no longer put his case. The judge answered that it was useless to protest or appeal, we had to accept that we would have to make the repayments. So then we agreed to repay. All the accused agreed to repay, because that was what the law told us to do, or so they say. We tried to find means of making the repayments. We had been told that we would have to pay by the 1st of May. We tried hard and, having found the money, we paid back (...) For me the problem is that the defendant was dead, that he is accused of having committed certain offences and yet there are no witnesses for the prosecution and the defendant can't give his side of the story. Worse, the person who represents the defendant must repay in his place by selling the defendant's land. That is what we were told. They added that all the complaints would have been dealt with by March. After that date, the State was to take over the prosecution. We were also told that there is no time bar for genocide crimes and therefore we must repay, whatever the cost. We immediately sought to sell his field and we paid back. No one else asked questions when the presiding judge of the Cell Gacaca Court told us that we were obliged to pay back and mustn't try to defend ourselves. When I

[239] PRI interview with a Inyangamugayo, 20 Feb 2007, nr. 1507.

[240] Interview with four women who have been ordered to make repayments, 7 February 2007, nrs. 1486-1487.

[241] Ibid.

[242] Approx. 57 euros.

asked those who had looted property in that house whether they had seen my brother there, they told me they hadn't. There was no prosecution evidence against my brother and yet I have not been able to find anyone who could tell me why he should have to make a repayment. We decided to pay back immediately."[243]

It is worth remembering that it is indeed not possible to appeal from a decision in Category 3 offences, but some people use their social or economic status to persuade some officials to intervene and succeed in getting the decision reviewed.

Furthermore, unlike the Sector *Gacaca* Courts, where a guilty plea may bring a reduction in the sentence (reason why there are many guilty pleas in those Courts), there is no reduction for a guilty plea in respect of Category 3 offences (unless one considers that a friendly settlement is a form of guilty plea with a correspondingly lower sentence):

"The people who ask for forgiveness for looting are those who stole property of little value. They stole beans, crops standing in the fields, potatoes dug up from the fields. That is the sort of person who will ask for forgiveness. But the individual who entered someone else's house and grabbed the goods he found there, that individual doesn't come forward now. The truth is that the people who stole valuable property, such as cows, or those who destroyed homes, aren't exactly queuing up yet."

So the real problem today with the Category 3 offences is the lack of *inter partes* hearings and the real possibility of wrongful convictions. And as can be seen from the earlier excerpts, the Courts have problems with understanding and applying the law. The training offered by the SNJG would seem to fall short.

The burden of the repayments on vulnerable parties[244]: the case of households run by women or children

The impossibility to defend oneself from accusations based on facts one doesn't know anything about, particularly affects looters' wives. These women are often in charge of a family because the husband is dead, or in exile, or in prison. And although poverty affects a large part of the population, there is one section that is particularly destitute and that is the household headed by women. They are particularly badly affected by repayment orders.[245] We shall see that although there are reasons in law why a woman should pay when she has inherited from her husband[246] or runs their joint property in his absence, on a socio-economic level, such orders are disastrous.

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[243] Interview with a woman who has paid back, 14 Feb 2006, nr. 1498.

[244] Both the National Institute of Rwandan Statistics and MINALOC define households headed by women as well as those headed by young people as "vulnerable".

[245] As well as those run by children, i.e. individuals under 21 years of age who, according to the same study represent 0.7% of the Rwandan households.

[246] Since the genocide, women have acquired the right to inherit. This was not the case in 1994. Family Law used to provide that women could not inherit from their husbands or their parents. But the genocide has led to a substantial number of household headed by widows and the law has had to adapt to the country's new society. Parliament therefore adopted *Law nr. 22/99 of 12/11/99* which complements *Book I* of the *Civil Code* and introduces a Part V on matrimonial property, gifts and successions. Men and women now have the same rights in respect of their original family's estates and their matrimonial estate.

There are a great number of households in Rwanda that are headed by women. This is the inevitable consequence of the war and the genocide and the subsequent massive imprisonment of those who participated or are presumed to have participated in the genocide. According to figures published by the National Statistics Institute, 42.1% of the households in Rwanda are headed by women. That is a very high percentage. 18.7% of Rwandan households are headed by widows, the remainder (23.4% of the population) consists of households headed by single mothers, women whose husbands live in exile and above all, women whose husbands are in prison.

These women-led households do not benefit from a husband's work and therefore suffer serious economic loss where the family lives mainly on agriculture. They are poorer than other households and 60.05% of them live below the poverty line, whereas the figure for the country as a whole is lower at 56.9%. According to a comprehensive survey of the living conditions of households carried out by the National Statistics Institute, households headed by women and those headed by children are considered vulnerable.[247]

Yet in many of the cases we have observed, single women have to make repayments for looting committed by their husbands. Indeed, the Sector *Gacaca* Court may make a repayment order against a woman whilst at the same time sending her husband to prison for his involvement in offences against persons and property[248]. The enforcement of the order, i.e. the repayments, hits the family, and in particular the woman, badly. It is the woman who will have to satisfy the conditions of the order and pay for the looting committed by her husband and she often will have to sell her property, in particular land or cattle which enable the family, and the children, to survive. In fact, that land is often the only means of survival the family has. And although for a long time compliance with repayment orders issued in the Sector *Gacaca* Courts was not monitored and supervised by local officials, they are now issued in the Cell *Gacaca* Courts which are beginning to insist on the payments being made.

The same problems occur when the defendant is in prison, has disappeared or died. It is the women, or other members of the family, who represent them in the Cell *Gacaca* Courts and then make the repayments. Here, the problem is even more complicated because although some of them have participated in the looting themselves (as we saw earlier in the report), many do not know what their husbands were doing and have not benefited. As mentioned earlier, the leaders of the mass murders took property according to rank and the small scale looters often received goods for immediate consumption, such as meat or alcohol. It is therefore difficult for these women to account for facts that they know nothing about. Here is the account of one woman, who made the repayments on behalf on her husband before the *Gacaca* Courts were set up. He was in prison and her account illustrates the difficulties women meet in such situations:

> *"I can't tell you who decided the value of the damaged property, because I wasn't there when that was done. So I agreed to repay a sum that had already been determined, eight, ten thousand, etc. All I know is that the counsellor in question, who is now in charge, told me what sums I had to pay back. He also asked me to attend the ad hoc meetings where guidelines would be given for the restitution of the damage caused during the genocide. So it was I who signed the repayment documents which my husband hadn't*

[247] Cf. National Rwandan Institute for Statistics, *Preliminary Update Poverty Report, Integrated Living Conditions Survey 2005/06*, published in December 2006 and MINALOC.

[248] This is a widespread practice.

signed. I don't carry my husband on my back like a child so how would I know what he was up to? I decided that I should try and get on with the victims (...) Every time a victim claimed that my husband had damaged his/her property, I gave in, because I could not know what my husband did during the genocide."[249]

So this woman accepted to repay without knowing whether the accusations were founded or not. Another woman, whose husband was convicted by the *Gacaca* Courts, tells a similar story. She didn't know about the repayments that had to be made until she was summonsed by the Cell Authorities. Her property was then confiscated. She states that she never knew about the goods her husband had stolen and did not benefit from them:

"According to this document I had to pay three hundred forty thousand Francs in respect of N.'s property. I said "I haven't got three hundred forty thousand Francs. What property is he supposed to have stolen?" "Four cows and a radio" was the answer from the local official. I told him "He never brought any meat home, nor any cow."[250]

In the following excerpt, a woman states that she would prefer the State to keep her husband in prison rather than oblige them to sell their plot of land, because she doesn't want to be punished for looting she did not commit and for which her husband is solely responsible. This excerpt is interesting for another reason: during the interview there was another woman with her and their exchange shows the kind of tension that these trials can cause:

"But anyway, rather than sell the land, they must keep him [my husband] in prison. So the State should keep him there, otherwise I won't be able to feed the children. What are you supposed to do if you are ordered to pay one hundred and twenty thousand francs for one cow? [a survivor sitting next to her mutters that they must pay back because they are the ones who ate it]. Whatever, I'll ask the State to keep him, because he committed these offences of his own free will and we didn't plan them together. Anyway, I can't afford the repayments. You know where I live, the house is about to crumble and I don't know whether I will be entitled to the Umuganda that would help me to rebuild this house. So they shouldn't be asking me for compensation! [A survivor sitting next to her mutters that if one is poor, one shouldn't commit genocide]."[251]

Children too may find themselves having to pay back on behalf of their dead parents. We came across the case of a girl whom we will call Sophie. When we interviewed her in 2005 she was 15. So she was 4 at the time of the genocide.252 She is an orphan, both her parents having died of Aids and is now heading a family of three children, her brothers and sisters. She is destitute and therefore receives help from her parish. She has had to make repayments for looting perpetrated by her parents. Sophie has been to see the people who claim that her parents had stolen from them during the genocide to ask for their forgiveness and to ask them to waive the repayments. They refused. They asked for 5000 FRW and she has had to find this sum from the production of her banana plantation. According to her *"the children don't know what happened during the war, and they are obliged to make good the damage caused by their parents"*. She is asking the State to help these children to pay the compensation for the goods damaged by her parents, because *"a baby is always*

[249] Interview with two persons who have been ordered to make repayments, 2 November 2006 nr. 1452.

[250] Interview with the wife of a defendant, nr. 1589.

[251] Interview with four women, 11 May 2006, nr. 1223.

[252] Interview Report, 19 August 2005.

innocent". And she cannot defend herself because there is no way for her of knowing what her parents stole, if indeed they stole anything at all.

4 - The issue of individual criminal liability

If it is difficult to establish what was looted 13 years ago, it is even more difficult to establish who took what, particularly as the accused are often not present in court and are represented by members of the family. Moreover, once the hearings proper have begun, there are few confessions or guilty pleas. And so on the whole the courts are inclined to assess the total sum to be repaid which they then divide by the number of identified defendants who each pay an equal share. And so a person who has destroyed a house in order to remove all traces of its owners and all the evidence of the murder, may be ordered to pay back the same amount as the woman who went through the debris to collect some wood for cooking. Both are accused of having destroyed the house and no distinction is made in the part they played in that destruction.

However, as we have already seen in Part I of this report, there are different categories of looters and our observations show that today, the *Gacaca* Courts do not take proper account of the various degrees of responsibility. Some people stole without being part of an organised theft, just to feed themselves. Some stole to better their position, a slightly different degree of criminal liability, but they did not agree with the genocide project. Yet all receive heavy sentences.

The first question that springs to mind is whether people who came after the organised gangs of looters and picked up the left-overs in order to feed themselves and their families ought to be held criminally liable.

Moreover, Art. 1 of the *2004 Gacaca Courts Ac*t provides that the *Gacaca* Courts deal with *"offences falling within the scope of the genocide and other crimes and humanity and perpetrated between 1 October 1009 and 31 December 1994 and such offences as defined in the Criminal Code that, according to the charges brought by the Public Prosecutor, or prosecution witnesses, or the accused's confession/guilty plea, have been committed with the intent to commit genocide or other offences against humanity"*. And whereas, as we mentioned earlier in this report, the looting formed an inseparable part of the genocide in that its purpose was to remove people and their properties, it is also clear that in certain cases the thieves had no intention to exterminate a group of people, but simply sought to stay alive or to improve their standard of living. Bearing in mind also the extreme poverty everywhere, the question arises whether people accused of having stolen wood from the ruins of a house in order to cook a meal, or meat from a cow that had already been killed, appreciated that they were part of a genocide plan. Our observations have shown that people are often convicted of such offences by the *Gacaca* Courts and that the sums they must repay are sometimes high and even exceed the value of the stolen property.

The two following cases were particularly striking and will be looked at in details. They raise quite an important issue: that of finding a balance between impunity on the one hand and formal court proceedings on the other. For although there were circumstances, in which the looting formed an inseparable part of the genocide, it is also true that there are occasions when formal justice metes out severe punishment to those who have committed very minor offences. Is it really necessary to convict a person and order him or her to repay the wood or the washing up bowl taken from the debris, thirteen years after the event?

During the genocide, a woman, let's call her Marie, took wood for cooking from the ruins of a house. It never occurred to her that this could be seen as looting:

> *"And so it was that on my way (...) to buy sorghum which I wanted to put in the banana juice which I had brewed from ripe bananas, I passed by N's place. I noticed people who were shaking the ceiling of her living room. The sheeting that covered the house had already disappeared. (...) I asked them for fire wood as they had just brought down the roof. But I didn't know that it was wrong to do this, I wanted to do the right thing, I didn't know I was committing a sin. However, they didn't say anything. On the contrary, everyone one had a machete, chopped off the wood and then left with it. So all the wood was taken from this roof and nothing was left. All that was left were the reeds that served as stakes[253] (...) I picked these reeds and grilled the sorghum that I had just bought."*

Similarly, she took the intestines from a cow that had been killed and stripped of most of its meat by the looters:

> *"Once I got home, I saw men going down quickly from Gahini to the marshes where there was a cow. I wouldn't know who was there. They killed it quickly and each of them left with a piece of meat. Having seen that they had worked quickly and that on the whole they don't pay much attention to the hooves, I thought that perhaps they might not have taken those. So I quickly went there to see if they were any left, for I could take them and cook them with manioc leaves. When I arrived, I saw there were no hooves left, but the intestines were still there and I took those."*[254]

After the genocide she became a protestant and after her return home, she heard much talk of the looting and the repayments. She realized that she had committed a "sin" and decided to confess, first to the Christians in her locality and then to the victims and before the *Gacaca* Court:

> *"Whilst we were abroad I became a Christian. I realized that taking those reeds was a sin and my conscience troubled me. So I told the Christians who were with me about it, indicating that I had sinned by stealing the fencing and I asked God for forgiveness (...)*
> *No one knew that I had taken these reeds, except those with whom I prayed and who had probably forgotten about it. So I stuck my hand up and stated that I stole the reeds without any bad intention, just because I thought they had been left behind. And I asked the General Assembly for forgiveness. The Gacaca Chairman asked the Assembly whether a charge should be brought against me for this offence. Everybody answered that I should be forgiven."*

However, when the sentence was delivered, each of the persons who had participated in the looting of that house was ordered to pay 42 765 FRW, an enormous sum:

> *"I had taken only some brushwood. When I was ordered to pay 42 765 FRW, I felt that I had not been forgiven although I had honestly asked for it (...) It is not right that I should have to pay the same amount as the person who stole the roofing or the person who destroyed the house. All I had done was to take a bit of fencing".*

[253] These hold up the fencing that marks the property boundaries.

[254] Interview with four women, 7 February 2007, nrs. 1486-1487.

She asked the victim's children for their forgiveness and they agreed to forgive her "so that they could be at peace" but they did not waive or reduce the amount to be repaid. She believes that this way of dealing with things can only increase the tension between people:

> *"I could accept having to repay if they had asked me for the real value of what I took. I would be able to live in harmony with them as I promised them. But if I have to work my guts out to pay a sum of money that I have never owned myself just for a pile of firewood, I wouldn't be able to love the person to whom I gave it".*

This is a typical example of a trial which does not seek to establish the individual liability of each of the defendants or to work out what each defendant should be paying. Here someone has taken firewood and receives the same sort of justice as someone who has destroyed a house. This is not an isolated case. But according to an Inyangamugayo who was on the Panel that tried this woman, she was ordered to pay back a large sum of money because she had failed to disclose the identities of her associates, even though she maintained she had not seen them.

> *"For example, there is the case of this woman who asked to be forgiven for having taken away firewood. She said she had taken the reeds, but the house had been destroyed and it was obvious that it hadn't been destroyed by just one person. So she was put into the same category as those who destroyed the house. Another example: this woman says that she saw people share meat from a cow in Gahini and that she went there together with her child. When she arrived, they had finished the sharing and she just took the guts which she put in her clothes. She and her child left with those guts. When we asked her for the names of the Gahini inhabitants whom she had seen there, she said that there wasn't anyone when she got there. We decided that she would have to pay back the cow because she failed to disclose the identities of her associates, even though the cow had been killed. She was the only one whose guilt had been proven. If we were to ask the person who took a basket to pay back the value of the basket, the victim wouldn't receive anything. We wouldn't find any offenders. That is why we take our decisions like this. We know that there are rumours, but there is no other way we can do this. If we believed everything they tell us, they would all be forgiven and no one would have to pay back anything because their confessions are a sham. So the victims wouldn't get anything and the Gacaca Courts would be useless to them."*[255]

So the courts do realize that some of the sums to be repaid exceed the value of the stolen goods, which doesn't help the discussion, but they also want to give satisfaction to the survivors who demand compensation:

> *"Let's take the case of the five individuals who took the manioc harvest from someone else's field and whom we order to pay back a sum of money that is the exact equivalent. One of these five would then complain that this was unjust, because he only carried off two small baskets of manioc. He realizes that the sum of money he is ordered to repay is unrelated to the value of what he has taken. There was someone who said that he would have no problem with paying back two bunches of bananas. We know that people confess or plead guilty to very minor offences, but people have died, houses have been destroyed and farm animals have been stolen."*

In another case, the general issue of individual criminal liability was further complicated by the issue of the liability of children who helped their parents to loot during the genocide. Under Rwandan law criminal liability starts at 14, but in civil law this is not the same. Under Art. 9 of

[255] Interview with an *Inyangamugayo*, 14 February 2007, nr. 1498.

Instruction nr. 14 "where the property has been damaged by a child that was always supervised by its parents and who had no property of his own, its parents shall pay back. Any person who has damaged property whilst being a minor and who is now able to repair the damage (...) shall do so in person." What does this really mean? We have come across several cases involving persons who were minors at the time they committed the offences and who today must pay back not only the damage caused by their parents (like little Sophie) but also for their own looting, even though at the time they acted upon their parents' instructions. If they were less than 14 years old, how could they have known that it was a criminal offence to steal wood?

Here are the accounts of two young men, who claim they were 10 and 12 at the time of the genocide. Today, they must each pay back 42 000 FRW for helping their father with carrying stolen wood :

> *"During those dark days, our mother sent us to fetch water. We went into the house of this man who used to be our neighbour. Here we came across our father who was destroying the house. He had bundled the fencing into two bunches which a man like him could have carried. (...) We replied that our mother had sent us to fetch water. He asked us: What's the point of water if we haven't got any fire wood? He ordered us to put down the containers immediately (...) He divided the fencing into bundles that we could then carry home. And so we went home (...)*
>
> *Then the time came when these offences had to be tried and I was accused of having been involved. I had to ask the survivors for forgiveness. I didn't blame myself for anything and I was able to explain. Even the neighbours knew that at the time I was 12 years and 4 months old. (...) We were told that we would have to pay back. Our father was ordered to pay over ninety three thousand. I was ordered to pay over forty two thousand. Even my little brother was ordered to pay back forty two thousand, even though at the time he wasn't even ten yet."*

And according to his brother:

> *"As it was our father who told us to carry the fire wood, I don't think that we should have been charged. We had to obey our parents (...) We explained that it was our father who had told us to carry this fire wood whereas we had come to fetch water. We gave our version of events and told them how old we were at the time. As my older brother has just told you, I am the same age as he. Later we learnt that the Presiding judge had convicted us. Yet we believe that we were innocent. (...) Given our age at the time, we should not have been charged. We were children. We had to do as we were told. We had no intention to destroy the house. Anyway, we would not have been able to do this. We think the problem is that we were convicted although we were obliged to do this. (...) We were very young children, no one could accuse us, we didn't go anywhere else. Even there, we didn't do anything. We would not even have dared go there on our own, the place was a ruin and no one was living there. The head of the household had been killed. We were terrified, we used to run past it when we had to fetch water. We found our father there, he was destroying it and he called us. We begged him to let us go without going there and he replied, he was angry, and asked us to come. We didn't want to make him angry, so we obeyed him. That is how we came to carry wood."*[256]

[256] Interview with three men who have been ordered to make repayments, 7 Feb 2007, nr. 1485-1486.

Individual criminal liability is a real problem in the *Gacaca* Courts and some of those we spoke to told us that this is why they think restitution cannot ease reconciliation. This is what a young woman survivor from the former province of Cyangugu told us:

> *"I doubt that restituting property will reconcile us. Those who stole only half admit to it. Even if I had seen people, I wouldn't know what they had taken. If they plead guilty, they have to say what their associates took. It would be unfair to order someone to pay for a table if all he took was a mug. Whatever he is able to give you, he will resent it deeply. It wouldn't be a problem to return the item that was stolen. But it is sad to hear that someone is ordered to pay back forty thousand francs, whereas he would have found it difficult to find property in that value, because there were hoards of looters. We hear that there are people who are ordered to pay more than they took and now go hungry. Just think what the consequences will be."*

And she mentions the case of K, a man who traded in looted property. He paid peanuts to the looters, or even just a bottle of beer, although they brought him numerous items. According to her, these people, who mere carried out instructions, are ordered to pay back the same amounts as the organisers of the looting, who are the main culprits:

> *"There were those who talked the others into looting and those who destroyed houses and brought the looted goods to the talkers who paid for the goods. What is surprising is that these talkers paid hundred and sixty francs for goods that could fill a whole house. And yet, all these people are ordered to pay back the same amount. Often, farmers will say that they worked for those who had sent them out to loot. And as it is the workers who were seen, they are now the ones who are prosecuted. They say where they took the stolen goods. What is surprising is that they all pay back the same amounts. (...) He who was paid 150 or 160 francs is of the view that he is the victim of injustice. It is the talkers who should have been ordered to pay back and their workers can help them to do so."*[257]

According to her, these repayment orders, which ignore the individual criminal liability issue, may well lead to conflict:

> *"For example, in our trial, K. ordered that the goods be moved to his place. He would sell them. He worked with a committee. It is that committee that should be ordered to restitute the property. That committee ought to look for the people who could help it to restore the property. If everyone is ordered to pay back the same amount, those who carried out the orders will always be in conflict with those who gave the orders. We would like to see that more attention is given to those who played an important part in the looting. They should be more involved in the restitution. That could lead to reconciliation. Otherwise, they will kill each other. To give you just one example: here is a worker who brought a table to his boss. The boss gave him a bottle of beer. Now they both pay back the same amount of money. This is a problem. It is impossible to know how they feel, but they've got a problem."*[258]

So some people think that the amounts that have to be repaid are too high, as does this man in his ironic account:

[257] Interview with a survivor, 8 March 2007, nr. 1525-1526.
[258] Interview with a woman survivor, 8 March 2007, nr. 1525-1526.

"Moreover, even if the latter weren't really involved in the destruction of their homes, they did the night rounds, so they had to take bits of woods to make fire. Just like when someone's dog has eaten the skin of someone else's cow, its owner must bear his share of the repayments."[259]

Determining criminal liability also means considering the issue of joint liability. The law of 3 Aug 2006 provides that *"where there is joint participation, everyone shall contribute to the repayments. Where that is the case, those who have the means to repay shall pay for those who do not have such means and the latter shall bring an action to be excused before the ordinary courts"*. The case of a woman whom we shall call N, and which we shall discuss later, illustrates the sort of problem that this provision can cause.

The confusion between the different levels of criminal liability is giving people who have to make repayments a strong feeling of injustice.

5 - Other problems: how to deal with the *imidugudu* built for the survivors and other benefits

The wording of some of the SNJG texts on property offences occasionally lacks precision and this causes further problems in that the courts construe the texts in their own way and such interpretations may vary from court to court. Moreover, it has become clear that in some areas of the country, and in particular in *Gacaca* Courts in the Cyangugu Cell, courts began to try cases without having received the text of *Instruction nr. 14*.

Here are two examples of provisions in the text of 3 Aug 2004 that have led to problems. The text provides firstly that *"Where property has generated benefit, for example cattle, the looter shall also return any such benefits, unless there is a reason for not doing so."* This has led to a great deal of debate in the Gacaca Courts, in particular in respect of cows that were in calf.

This has turned out to be a major problem: if the cow that was stolen or killed was in calf, should the repayment be for two cows? Would repayment have to be ordered in respect of every calf the cow has produced during 13 years? One Executive Secretary even told us of a case in which the cow's original owner claimed the milk the cow was supposed to have produced... The same issue arises in respect of any harvest from land belonging to the victims of the genocide.

Elsewhere, the same text provides that *"Where the Cell authorities, together with the local population, have assisted the victims without taking into account the stolen or damaged property, the victim may not make a claim in respect of such property"*. This provision causes problems for those survivors who have been given houses after the genocide. By way of example: in the Province du Nord (formerly Byumba Province), we took a poll in two adjoining sectors: Mutete and Kavumu. In Kavumu, houses were built for some of the survivors as part of the Umuganda and when the survivors sought to recover the value of the house that had been destroyed, the population protested and said it had already built houses for them. In the Mutete sector, Oxfam had built an umudugudu[260]. The survivors claimed the value of their destroyed homes because the population had not contributed to the construction of the new homes.[261]

[259] Interview with a couple who have been ordered to make repayments, 3 November 2006, nr. 1452.

[260] A collective housing estate. Since the 2006 administrative reforms, an *umugugudu* is also an administrative unit.

[261] *Summary Report*, January 2007.

The co-existence and superposition of these various legal and regulatory texts cause problems in trials and the courts often find it difficult to understand the procedure. When it comes to enforcing a judgment, there are, at present, further serious problems.

Part Three

The country's economy: a barrier to enforcing judgments

In the previous chapters we dealt with the issue of individual criminal liability and the disputes that arise when the family of the convicted person must pay. However, the *Inyangamugayo* are faced with another insoluble problem which is the subject of this chapter: how to set repayments at a rate that is reasonable and affordable and does not worsen the position of defendants and their families when these are already very poor. It is clear by now that this is an impossible task, for whenever the courts base the amount to be repaid on the current value of the disputed property, the outcome will far exceed the average farmer's income, which is about 200 to 300 FRW per day. In Part II of this report we mentioned the example of one Cell, where the average repayment worked out at 24 409 FRW for a friendly settlement and 74 428 FRW for a court order. Occasionally there are even more extreme examples, the details of which can be quite complicated. Take the man who was ordered to repay about 1 300 000 FRW for 13 cows, or another man who was ordered to repay 185 sheets of corrugated iron at the rate of 4500 FRW per sheet. In the former province of Gisenyi, we came across the case of a man who was ordered to repay 1 400 000 FRW for the destruction of three corrugated iron houses. And there was the case of the three looters in the former province of Cyangugu who were ordered jointly to repay 57 000 000 FRW and whose families will have to pay up in their absence.

It would be a mistake to underestimate the effect of these repayments, particularly where the defendants are at such a disadvantage and where the obligation to make the repayments may put at risk their very survival and that of their families.

For a better understanding of the impact of these judgments and the serious problems they may cause, one must bear in mind the general economic situation in Rwanda. The majority of the Rwandans live in dire poverty. In 2005-2006, 56.9 % of the population lived below the poverty threshold and 39.6% lived in extreme poverty[262]. Over 80% of the population lives in the countryside, where poverty is greater than in the cities[263]. The Provinces du Nord and de l'Est (i.e. the former provinces of Gikongoro, Butare and Kigali-Ngali[264]) are the worst affected. Moreover, people see themselves as being very poor. According to a poll conducted by the CNUR on the economic circumstances in households, 81% of those who responded said they were poor and 54.4% said they were very poor or extremely poor.[265]

A further difficulty is that the individuals who are accused of looting are often also accused of more serious genocide crimes. They, or a close member of their family, may therefore either be

[262] Cf. Institut National des Statistiques Rwandais (Rwandan National Institute of Statistics), *Preliminary Report*, *Op.cit.*, Dec. 2006.

[263] In 2004 18.5% of the population lived in urban areas, cf. UNDP, *Op. cit,* Table 5, 'Demographic Trends', p.299.

[264] Rwanda National Institute of Statistics, *Op. cit.*, Table B.1, Extreme poverty headcounts by location, p. 46.

[265] Commission Nationale pour l'Unité et la Réconciliation (CNUR), *Propriété de la terre et Réconciliation*, July 2006, p.13.

serving a custodial sentence or have completed one. Their absence reduces the family's available manpower and will further aggravate its precarious circumstances.

Measured against the backdrop of the genocide, repayments, confiscations or labour provided on behalf of the victims appear to be mere material problems, but given the general economic situation, one can see their dramatic affect on the families. Already fragile household are toppled into bitter poverty as they are battle with debts that they can't repay. This is illustrated by the following example, in which two women, who claimed repayment for property that had been stolen from their father, tell how killers will confess to their crimes more readily than looters[266]:

> *"Those who are tried for killing admit their guilt. But things become more complicated in respect of property offences. Those who actually do admit that they have looted or damaged property know they will have to repay so they confess to property of little value (...). Life is priceless and so the killers are put in prison (...). And they then take the view that their sentence serves as reparation for the killing. But when it comes to making repayments, they refuse. (...) They don't want to make repayments, because they don't want to see their own property reduced in value. But when they have killed, they are not afraid, because no value can be attached to human life."*[267]

This sort of reasoning has very serious implications, because according to some of the accounts, it is worse to have to make a repayment than to have to go to prison or to serve a *TIG*. We have already mentioned the case of the woman who told us she preferred that her husband be kept in prison rather than having to make repayments on his behalf.

These facts show how difficult it would be to enforce repayment orders: in very many cases, the individuals concerned are simply unable to pay. Where that is the case, the law provides two solutions: the court may order confiscation of property by way of enforcing the original order, or it may order that work be carried out for the benefit of the victim of the looting. The latter solution is often perceived as the better alternative whenever it is likely that no repayment in whatever form will be forthcoming. However, we do not believe that it is the most appropriate answer to the problem.

Confiscation and the pressure caused by repayments

Where a convicted person fails to make the repayments, his or her property, and in particular his/her land, may be seized. In the cases that we monitored, land and cattle were the types of property most often seized. Land is the biggest source of income in Rwanda so that when that is confiscated, it is one of the means of survival that is taken away. Even though it is increasingly difficult to actually make a living from the land, because it is divided into ever smaller plots, it constitutes the sole wealth for the majority of Rwandans. Apart from its vital economic role, it also plays a very important part in social and family life.

Parents who cannot transfer land to their children, feel deeply humiliated, they feel that they have failed. That humiliation, that pressure to make the repayments, may well lead to extreme

[266] It is worth noting that a confession and/or guilty plea in respect of a Category 3 offence does not bring a reduction in the sentence.

[267] Interview with two survivors, 14 Feb. 2007, nr. 1497.

responses. This is the account of one woman, whose husband committed suicide after his plot was seized.

> *"At present we have to restitute the property. Most of the people who have to do this cannot comply with the orders because they are poor and they have nothing left that can be confiscated. This is very worrying for everybody. For example, my husband killed himself because he had no means of restituting the property (...) He had been telling me for a long time that he could not make the repayments because he didn't have the money. (...) The others are saying they will follow his example. You ought to start thinking about what can be done to avoid this sort of situation because those who live here are very worried. In other Cells, some people just make off."*[268]

In the course of an awareness raising meeting[269] which we attended, one woman cried out that she had been ordered to make repayments whilst her husband, who was in prison, had not even been called to the hearing. She added that her plot of land had been seized and that she would hand her children over to the State because she had no means of feeding them and then she would commit suicide.

The following account shows how repayments and the ensuing famine can be used to "eliminate" certain people:

> *"Look, there are widows with children who are held accountable for what their husbands did ... It is a big problem (...) Many things threaten us. People are obliged to make good the harm they did, there is poverty among the population and that leads to famine. As far as we are concerned, this is just a way of getting rid of some people."*[270]

Confiscation of land also punishes the next generations, as for those [TN: French ambiguous: an explanatory epithet or a restrictive one?] Rwandans who live exclusively off the land, inherited land is the basis for wealth for the next generation - it enables them to develop further and make social progress.

One confiscation case in particular shocked us deeply. We have not been able to observe many confiscation cases because so far the time granted for making the repayments has not yet run out. As stated earlier, the courts grant the persons convicted of looting offences time to pay, often several months. However, the example that we propose to examine in greater detail here, is particularly striking and raises serious concerns for the future.

N's case combines all the features referred to above: the pressure on the women who have to make the repayments and the tragic outcome of confiscation procedures. N, a woman, is 56 and has 9 children. Her husband has been ordered to serve either a *TIG* or a custodial sentence, she

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[268] Interview with the wife of a released prisoner, 5 Sep 2006, nr. 1387. It is worth mentioning that following this tragic outcome, the court waived this woman's repayments.

[269] Observation Report on an Awareness Raising Meeting in the Kavumu Sector in the North Province (formerly Byumba), 5 March 2007.

[270] Interview with a presiding Gacaca judge, 21 March 2007, nr. 1542.

can't tell which one because as far as she is concerned both have the same practical effect: his enforced absence. She doesn't know the length of the sentence or what he was convicted for.

She was ordered to come before the *Gacaca* Court and was ordered to repay 340 000 FRW for the three cows and the radio that her husband was alleged to have stolen during the genocide. He did not commit this offence on his own. Yet the Court told this woman that she must first pay the full sum and then bring proceedings against his co-offenders for recovery of their share. This was because the Court applied the principle of joint and several liabilities we mentioned earlier.

> *"I was told to pay the full sum and then take the other people to court to claim their contribution, which I had paid on their behalf, back from them. I told the court "I haven't got 340 000 FRW". "If you don't find the money, we will find it" was the answer. What I have got isn't worth that much, said I. "We'll come and get it" this Court said once again. I was given the date on which the Court would come and take for it".*

The Court gave her one week and she failed to comply. Her livestock, consisting of four goats, was then confiscated. Then they seized part of her plot of land and handed this to the victim of her husband's looting. The victim was present at the confiscation:

> *"It was the Coordinator who turned up with X's people (...). They brought in the goats and marked the boundary of the land with a kind of tree "dracaena afromontana" which was put in the courtyard next to the house. "We are giving you one week to get the money together. If you fail to do so, this land will go to the person whose property was damaged". That is what they said. I tried to get the money, but was unsuccessful. Two weeks later, I was summonsed and told that I would be no longer allowed to work this land if I didn't raise the money. So, I haven't worked it since."*

Once a large part of her fields had been confiscated, most of her children left home to see if they could make a better life for themselves elsewhere. Only two are still with her:

> *"Once our property had been confiscated, they realized that they could no longer survive. So they decided to leave and try their luck elsewhere. When I told the children about it, they replied "we don't know what to do, we can live somewhere else. Those of us who can find a way to stay alive, will survive. It is you who can't walk, so you will stay behind." This decision of my children moved me deeply. So the first one left, as if he was going off to church, but he wouldn't be coming back. Then the next one left as if he was just popping out to visit someone, and he wouldn't be coming back. Then the third one left. Those who remained with me here, put up with the hard life, but they tell me they will be trying to leave because they can't bear life here at home anymore."*

Soon after her banana grove was confiscated, a bunch of bananas was stolen from the field and this woman, who denies all liability, against whom there is no evidence and who, a few days earlier was the owner of the grove, was accused of having stolen this bunch of bananas. The local officials, acting as if they were a court, sentenced her to pay 10 000 FRW. She had to borrow money from her neighbours in order to pay the fine. This example is an illustration of the impact confiscation can have on the looters' families.

Work: from friendly settlements to "hard labour"

The law offers another solution: work performed free of charge by way of reparation. There are no provisions as to how this work should be carried out but in practice it is done directly for the benefit of the victim. We observed that this mechanism is used frequently as part of the friendly settlements and that it has been used since the end of the genocide. It is an informal process which has no basis in law and requires no legal formalities. On the other hand, it seems to be used far more rarely as part of the formal trial process and it would seem that in some instances, the courts and the population are unaware of its availability.

There are instances where this solution suits those who are not able to make repayments. Earlier in this report, we mentioned the case of Joséphine and Josée, the two women who worked for a woman survivor and from whom they tried to steal crop. The woman for whom they worked is a farmer herself. She is over 85 years old and lost 8 out of her 10 children during the genocide. One of these children threw himself into Lake Kivu out of despair. When we spoke with her, she told us that "unfortunately she had escaped being killed" by taking refuge on Idjwi Island. When she returned home, her houses had been destroyed and she was helped, fed and housed by a man to whom she owes her life. The latter was subsequently accused of having participated in the murder of one of her children. This is but one example of the complex social post genocide relationships ....[271]

In order to make good the harm they had caused, which was slight when measured against the genocide as a whole, these two women, together with five others who had also taken beans and manioc from the survivor's fields, went to see the old woman and asked her for forgiveness. Together the women looked after the old woman's coffee and banana plantations free of charge for a short while. The women shared the work between them so that they could also work for their own families. Since that time, the two women and the survivor have become friends and they even continue to help the old woman free of charge. The old woman is in bad health and she told us "they really look after me. When I have a problem, they come and help me".[272]

It would appear that many survivors would prefer the looters, and even sometimes the killers, to work for them directly. Our research on the Community Service Orders has certainly revealed that even though many survivors are afraid of having former killers too close to themselves, some objected to the Community Service Orders because the *Tigistes* were not working directly for them. As one woman exclaimed "Are you telling me that the blood of our dead relatives is being used to surface the public highway? Why can't they pay compensation by working the land for us?"[273] However, the survivors' views on the *TIG* and/or work performed for their own benefit, may well result from the fact that they are resigned to the fact that the looters can't pay and so they have given up all hope of compensation.

[271] Interview with a woman survivor, 29 March 2007, nr. 1550-1551.

[272] Ibid.

[273] Interview with four women, 11 May 2006, nr. 1223.

It is also clear that repayment in the form of work was used as part of the friendly settlements that were reached soon after the genocide. According to this man, some of the more incidental problems could have been avoided this way:

> *"It wasn't the poor who caused the many problems! We asked them to carry out manual work, such as work in the fields, and then we added up the number of days worked. Sometimes they turned up in twos or threes to work once or twice a week; this enabled them to work during the rest of the week to meet their own needs. And anyway, these were not the people who caused the problems. I would even go further and say that at the moment they get on well, for they share with their victims".*[274]

According to our observations, there are two ways of determining the duration of the work agreements, which in the vast majority of cases consist of agricultural work. The first approach, and the most common, is to reach a simple, informal agreement about a specific job that the victim needs to be done. The second is more unusual and consists of the court and the parties determining the amount to be repaid at the end of a hearing and then dividing this by 200 and 300 FRW (the usual rate paid for a day's work) to calculate the number of days to be worked.[275] In the latter case, if the convicted person has to repay a big sum, he will have to work a great number of days and we have come across one example of an individual having undertaken to work for more than a year in order to repay looted property of considerable value. This is what an Executive Cell Secretary had to say on the subject:

> *"Take this example. A man confessed to having destroyed three houses covered by a total of 178 corrugated iron sheets. The guilty man really did admit that he committed these offences. He asked the victim to give him a list of jobs to be done by way of repayment. The victim replied that she would do so once the court had determined the value of the property. The Court held the value to be 4500 FRW per sheet, this was then multiplied by the number of sheets (185). The net result is that he will have completed his repayment at the end of 2008. Both parties are satisfied with this result."*[276]

According to this Executive Secretary, the convicted person is satisfied because this way his property will not be seized and doubtlessly, he will be able to keep his land. However, it remains to be seen whether this person will still be happy once he has been working free of charge for a year. And what will his relationship be with the person for whom he is working at the expense of work that he should be doing for his own family?

Some people say they are happy to work by way of repayment, because it allows them to keep their property. This is what one of them had to say on the subject:

> *"Me, I have been lucky, because I am working for the victim by way of reparation. If I had been asked to repay money, I would not have been able to pay up".*[277]

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[274] Interview with a woman survivor, 20 July nr. 1403-1404.

[275] TN: footnote missing.

[276] Interview with an Executive Cell Secretary, 14 February 2007, nr. 1496.

[277] Interview with persons who reached a friendly settlement, 21 March 2007, nr. 1543-1544.

Can work on behalf of a victim be a viable alternative for people who cannot afford to pay back in money? Can it ease the tension? It is true that this way of executing judgments may enable former looters to keep their land, and even to establish easier relations where the offences were relatively minor and the work doesn't go on for too long. However, if either the looters or the survivors had had another option, they would not have accepted this work for the benefit of the victims. But the looters don't want to see their property confiscated and the survivors want compensation, even if the looters are unable to pay. Frequently, both sides are unhappy and just put up with this solution for want of anything better.

The work solution brings other serious problems with it. Even though working for another free of charge is socially and culturally acceptable in Rwanda, it is a less than ideal answer to the issue of repayments and in our view the practice is questionable.

Firstly, take a household which relies solely on subsistence farming. Losing one pair of working hands is a major handicap and may turn into a real economic problem, if the work agreement goes on for too long. The next two interviewees explain how some families may be driven into poverty as a result:

> *"I know of someone who had destroyed the victim's house. The victim demanded that she work for her behalf by way of repayment. The victim had asked for a small sum of money that would have been discharged by a few days work. The offender looked after a coffee plantation. She worked alternatively for this victim and for others in order to earn enough to pay for food. She had no time to work her own land. Then the victim realized that the offender could die from hunger and told her "I see that you are willing to repay the amount, which is very small anyway, but I can also see you have no time to work for yourself, so you may end up stealing and then your house may be sold. I forgive you. Go and work your own land, I'll do the rest of my field myself."* [278]

> *"But the problem is that the growing season only lasts about a month. The victim will expect the person who is making the repayment to work throughout that period, without any break. When can the offender then work to keep his/her own family? If the offender provides the victim with food during the dry season, how is his/her own family going to survive in the meantime?"*[279]

Where an offender works for someone else without getting paid and thereby runs the risk of not being able to provide for his own family, he may begin to feel resentful towards that other person after a while, particularly as often the victim and the offender genuinely disagree about a house or a cow:

> *"Many guilty people say they won't be able to pay and will work instead to pay off their debt. And whilst they are doing so, they haven't got the means to feed their own families, wives or children. I have noticed that these guilty people will pay but it won't improve the relationship between themselves and their victims"*[280]

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[278] Interview with people have reached a friendly settlement, 21 March 2007, nr. 1543-1544.

[279] Ibid.

[280] Interview with an Inyangamugayo, nr. 1536, 19 March 2007.

Moreover, if the work isn't to cause too many clashes, the relationship between victim and looter shouldn't be too contentious at the outset - and that is not always the case. Some victims may accept these work arrangements in the hope of taking revenge; others again may well refuse the arrangements... This is highlighted in this story of a young man who, although he was only 12 years old at the time of the genocide, was accused of looting, together with his father. He has not been able to come to a work arrangement with the victims because relations between them are bad and the victims are afraid of him:

> *"When we come across them, they say "Just look at those "Interahamwe"! He and his father plundered us". You can't ask such people for forgiveness. They would scream and think that you have turned up to harm them, although that is not our intention".*[281]

To return to the case of the old woman referred to earlier as an example of positive conflict resolution, she did tell us that several other women had also worked for her in order to pay back but that relations between them and herself had remained very strained because the husbands of these women had been accused of having been members of the attaques that had killed several of her children.

Relationships may be strained and rubbing shoulders during work, and above all, working directly for a person, may become a source of disputes, even revenge, for victims can be frightened by the looters' frequent, physical presence and thus want to take revenge. At the same time, the ex-looters may feel that they are being subjugated and can be made to work at any time. This is the account of a woman whose husband has been ordered to make repayments. She even used the word "slave" in one of our discussions:

> "They treat us like slaves! There is this Rwandan proverb "He who is protected by the leopard can do as he pleases...".[282]

We have also come across a man who has repeatedly refused to work by way of repayment, although the victim asked him several times to come and the amount to be repaid is relatively large:

> *"Well, it started in 1996... He told the official dealing with the case that he wouldn't lift a finger for me until his dying day. I had suggested that he come and work for me for four days so as to repay the 1000 FRW he owed me for the property he had stolen from me together with other people. (...) The Gacaca Court sentenced him to 6000 FRW to reflect the value of the stolen livestock and the length of time that had passed since then. He was also punished for the contempt he had shown me by telling me that he wouldn't ever work for me to pay back my property, not until he had drawn his last dying breath (...) I spoke before the Gacaca and told them that he would not be able to pay back the 6000 FRW fine and that he was able to work and that he could come and dig out a WC for me... He undertook to do the work but then he didn't do the work (...) He refused to work because he says he doesn't work for nothing".*

Our next interview shows how this sort of situation may lead to discontent on both sides:

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[281] PRI interview with an inhabitant who has been ordered to make repayments, 14 Feb 2007, nr. 1498.

[282] Interview with four women, 11 May 2006, nr. 1223.

"People will complain about this sort of work (...) They will complain that they have to work for someone else. A defendant who has been fined 30.000 FRW to reflect the value of the damage he has done, won't be able to do work to that value. Once the value of the work has been determined, the victim will demand that the executioner work every day so as to serve his sentence. And both sides will be very unhappy. One side because the work isn't done quickly enough, the other side because he has to work for his victim every day."[283]

These problems are not unlike those that we underlined in our report on the Community Sentence Orders[284]. Before they realized that a *TIG* offered enormous advantages, Category 2 killers viewed this alternative to a custodial sentence as a form of hard labour, or Uburetwa, which used to exist in Rwanda in the pre-colonial days[285]. This servitude aspect is further underlined by the fact that the work is done for a specific individual.

Furthermore, the implementation of Art. 95 of the *Gacaca* Law allows the Court to decide that the convicted persons may pay back by working directly for the victim. This is contrary to international law, and in particular the 1930 ILO *Convention concerning Forced or Compulsory Labour*, International Labour Organisation which Rwanda ratified on 23 May 2001. Its Art. 2 provides that any work exacted as a consequence of a conviction in a court of law shall not be considered to be forced labour if "this work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations". In other words, it is clear that an order to work for the benefit of a private individual is a form of forced labour within the meaning of the Convention.[286]

It could also be argued that a court order to work for a specific individual by way of repayment comes close to a form of "servitude for debts", unless its form is strictly supervised by a public authority which would closely monitor the duration and the type of the work. Such servitude may well be one of the forms of slavery prohibited by Art. 1 of the 1956 UN *Supplementary convention on the abolition of slavery*.[287]

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[283] Interview with persons who have reached a friendly settlement, 21 March 2007, nr. 1543-1544.

[284] Penal Reform International, *The Community Service Order: Proposals for Further Reflexion*, March 2007.

[285] According to Catherine Newbury and Vansina, compulsory service, or "corvée", was introduced in Rwanda in about 1870 and used to be imposed on Hutu farmers in particular. It consisted of having to work two days out of five for the benefit of the "chief". This unfair practice widened the gap between the two social groups. Since the 1950s, the word "corvée" has often been used to describe the Tutsi exploitation of the Hutus in pre-colonial Rwanda. For further information, see Penal Reform International, *Du Camp à la colline: la réintégration des libérés,* May 2004, p. 28, and Catherine Newbury, *The Cohesion of Oppression, Clientship and Ethnicity in Rwanda*, 1860-1960; New York, Columbia University Press, 1988, and G. Mbonimana, "L'Intégration politique face aux institutions igikingi' and 'uburetwa' sous le règne de Rwabugiri (1867-1895)", in: Faustin Rutembesa, Josias Semujanga & Anastase Shyaka, *Rwanda, Identité et citoyenneté*, Cahiers du Centre de Gestion des Conflits, Butare, UNR, nr. 7, 2003, pp. 39-43.

[286] *Convention concerning Forced or Compulsory Labour*, International Labour Organisation, adopted on 28 June 1930, entry into force 1 May 1932.

[287] *Supplementary convention on the abolition of slavery, the slave trade, and institutions and practices similar to slavery,* adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608 (XXI) of 30 April 1956 and done at Geneva on 7 September 1956, entry into force 30 April 1957, in accordance article 13.

Weary survivors appeal for State intervention

Finding an adequate answer to the problem of the repayments is likely to be very difficult. It is clear that the survivors' requests for repayment in respect of the stolen (and unreturned) property is legitimate. It is also clear that in the majority of cases they will never receive any repayment. They are perfectly aware of that. The compensation ordered by the national courts in Category 1 and 2 trials will never be paid out directly to the victims. There are no other forms of compensation forthcoming. Mass murderers who have confessed and pleaded guilty receive increasingly lighter sentences. It is understandable that the survivors are weary and unwilling to take part in a Gacaca procedure that brings them so little benefit. Their weariness shows through in most of the interviews. Moreover, the repayment issue creates tension between the survivors and the defendants and adds to their feeling of insecurity.

A young woman survivor even told us that she regretted having claimed repayment for her property because of the tension that it caused between her neighbours and herself. She told us that when she leaves her home, people call after her in the street, insult her and say *"look at her; she's the one who is trying to ruin us"*.

> *"If we had known that it was our neighbours who were going to be ordered to make restitution, we would not have applied for it, because they can't afford it and now we are making enemies of those with whom we used to be on good terms (...) They are beginning to fear us and so avoid us. You know when there is a problem. What saddens us is that they believe that we are the cause of their misfortune, as if we were the ones who accused them whereas we know nothing"*[288]

There is little doubt that this sort of situation lead to strained relations between the various groups of society and resentment against the survivors whom some see as a privileged group because of the help they may have received from national or international organisations. These feelings are only too evident in the following interviews:

> *"Today the children haven't got enough money to go to school. People say that the children of the survivors receive help from the FARG and that the other children can't even go to school, even if they have passed the State exam"*[289]

> *"And then there are people who have to make repayments and who argue that such and such an owner of property they looted should not be asking for a repayment because he used to have a house with 20 sheets of corrugated iron and now he has 80 sheets, thanks to God or benefactors, or he has a motorcycle or a car, whereas before he didn't even have a pushbike"*[290]

Local and national officials as well as the courts are very aware of these problems and are worried. This Cell Secretary summarized the situation clearly and succinctly when he said that the repayment system solve one problem and create another:

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[288] Interview with a survivor, 8 March 2007, nr. 1525-1526.

[289] Interview with a Gacaca President, 21 March 2007, nr. 1542.

[290] Interview with a man who has made the repayments, 21 Marxh 2007, nr. 1536-1537.

"This child turned up and said that he accepted that his father was guilty of the offence and that he was prepared to pay on his behalf. But he also asked for permission to sell his father's forest because he wanted to go to university. (...) The remand prisoner's property will be used when the time comes to make the repayments. But at the same time, this will lead to the child losing his right to education. (...) So really, we solve one problem and then create another. It is a good thing that the victim has been compensated, but we do wonder whether it is right that the child too should become a victim of his father's criminal conduct".[291]

In another, unrecorded interview a male survivor raised the same subject and told us that the repayments were of little importance anyway. What he really missed were the people who had disappeared from his life. Of course the looters should pay, but it was a pity that their children were to suffer as a result.[292]

The courts are in a quandary and some really don't know what they could do to improve the situation:

"We, the "Inyangamugayo", do wonder what we are going to do! We wonder whether by selling a poor man's home, we are not turning him into a beggar!"[293]

As a result, the local officials, i.e. the Executive Secretaries at Cell and Sector level, have been ordered to write reports for the SNJG on the poor who will not be able to make the repayments. This was confirmed by the SNJG's Executive Secretary during the 3 July 2007 progress meeting on the Gacaca we referred to earlier. She added that "no one is expected to do the impossible". But what other ways are there to ensure that the survivors will receive compensation? The inability to pay leads to frustration on both sides and does nothing to ease the tension....

The survivors know that court orders will often remain dead letters. They are therefore asking the State to step in, either directly or more discretely, and provide compensation. They also often suggest that the State, rather than any individual, is responsible for the genocide.

"The truth is that the people who killed members of my family are all destitute, no one amongst them can afford to pay back. Even those who were not destitute at the time are so now because they are in prison. Only the State could return my property to me, for I don't see how I could claim it back from those people. And anyway, what's the point? First one would need to bring back the members of my family who were killed. (...) I would find it difficult, nay impossible, to forgive. But I don't know where to find the person from whom I could claim back my property, because no one has the means. If I mention the State, it is because it was the State as it was at the time that ordered people to kill one another, when the whole of my family was wiped out. That is why I no longer blame these people. Moreover, they live close by, they till my fields, I give them money and they brew beer from my bananas. So I am asking the State to pay because it was the State, as it was then, that gave the orders that my family should be murdered

[291] Interview with an Executive Cell Secretary, 14 February 2007, nr. 1496.

[292] Interview with an old survivor and his daughter, 15 February 2007, not tape recorded.

[293] Interview with an *Inyangamugayo*, 20 September 2006, nr. 1404.

and my property plundered. That is why I am asking you to tell me how I can ask the State to return my property to me."[294]

"I would like to turn to the State because I used to be friends with my neighbour, until the State talked people into destroying other people's homes. The State should take this question on board, because there was no hatred amongst the population. The State ought to work out sensible repayment systems instead of pressurizing people into fulfilling their obligations when they just haven't got the means to do so."[295]

"The State should cease to prosecute the perpetrators of minor offences and start thinking about helping the genocide widows by using the money that is now being spent on keeping people in prison"[296]

We would support the survivors' views that the majority of the looters will be unable to pay back these huge amounts of money. We would also support their view that reasonable compensation would have eased the situation.

However, this option seems to have been disappeared from the current legal debate for the time being.

The issue of compensation

If this report has focussed on the issue of reparation in respect of looting, it is because of the impact of this issue on the current social relations. We have seen to what extent it has become a major cause of disputes and injustice today.

An overview of the various forms of reparation in international law can be found in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* which was adopted by the UN in 2005.[297] Although these provisions are not binding, members are *"advised"* to follow their principles. The Resolution sets out various form of reparation, including restitution[298], compensation, rehabilitation[299], satisfaction[300] and guarantees of non-repetition[301]. Under the provisions of Art IX (20)

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[294] Interview with four women, 11 May 2006, nr. 1223.

[295] Interview with persons who reached a friendly settlement, 21 March 2007, nr. 1534-1544.

[296] Interview with a survivor, 7 March 2007, nr. 1523-1524.

[297] Resolution 60/147 adopted by the UN General Assembly on 16 December 2005.

[298] Art. IX (19) of the Fundamental Principles reads: "Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property."

[299] Art. IX (21) reads *"Rehabilitation should include medical and psychological care as well as legal and social services."*

[300] Art. IX (22) reads "*Satisfaction should include, where applicable, any or all of the following:(a) Effective measures aimed at the cessation of continuing violations;(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;(c) The search for the whereabouts of the disappeared, for the*

"Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services."

So compensation is just one of the many forms of reparation and consists of a financial award for loss suffered. In the context of this report, we will deal chiefly with compensation for loss of property. Although compensation for the death of persons is also an essential issue, we will not deal with it in detail here, for it really requires a separate full and dedicated report and therefore falls outside the scope of this report.

Since the first attempts at settling genocide disputes, various successive laws have been providing for the creation of a compensation funds which would, by paying out a sum of money, "repair" not only the of loved ones and physical injuries suffered as a result of the genocide but also the loss of personal property as a result of looting or destruction.

The decision to create this Funds was announced in 1996 and discussions about have been going on for ten years. Art. 32 of the 1996 law provides:

> *"Compensation granted to as yet unidentified victims shall be paid into Victims Compensation Funds which is to be set up and regulated by a special law*".

The compensation issue returned to the agenda in 1998 when the FARG was set up. This Funds offers social, educational, housing and health help to the survivors. A first draft provided that the two issues of compensation and assistance would be brought together in a single legislative text. As compensation turned out to be too complicated, this approach was finally abandoned.[302]

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identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;(f) Judicial and administrative sanctions against persons liable for the violations;(g) Commemorations and tributes to the victims;(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels."

[301] Art. IX (23) reads: *"23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:(a) Ensuring effective civilian control of military and security forces;(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;(c) Strengthening the independence of the judiciary;(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law."*

[302] Cf. Heidi Rombouts, *Victim organisations and the politics of reparation: a case study in Rwanda*, Antwerp University, 2004, p. 337.

The concept was reiterated in Art. 90 and 91 of the 2001 *Gacaca* law[303] which again provided for the creation of a compensation funds. Under the terms of Art. 90 *"the national courts and the Gacaca courts shall forward copies of their decisions and judgments to the Compensation Fund for Genocide Victims"*. These decisions and judgments were to contain the details of those persons who had suffered material loss together with an inventory of the damage to their property, a list of the victims' names and an inventory of physical injuries suffered as well as the amount of the compensation, calculated according to the tables which were to be included in the law regulating the Compensation Fund.

Initially the lists to be drawn up by the *Gacaca* courts during the investigation stage and to be confirmed, or not, later during the hearings, were intended to form the basis for compensation. So the original idea was that the *Gacaca* Courts were to play an important part in the award of compensation.

Two Compensation Bills were drafted, in 2001 and in 2002, but they never reached the statute book.

The 2001 Bill was quite specific: it was to be the duty of the *Gacaca* Courts to determine the amount to be paid *"in respect of damaged or lost property, the Gacaca Courts shall determine the amount to be paid according to the tables annexed to this bill"*. There was also to be compensation for loss of human life[304]. The courts were to supply this information on forms which were to be forwarded to the Compensation Fund.

The Schedule dealing with property had been annexed to the bill and was very detailed. It set out the cost per kg of rice, cereals, fruit, coffee etc, the cost of fencing according to the material used,[305] livestock,[306] household items[307], buildings depending on the materials used therein,[308] and their location.[309]

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[303] *LO nr. 40/2000* of 26/01/2001 as amended by *LO 33/2001* of 22/06/2001, which entered into force on 15 July 2001 by publication in the Official Journal nr. 14

[304] The value of the loss of human life had also been calculated. Compensation for the murder of a spouse was to be 3 million FRW, for a child 2 million FRW, for a mother or father 1.5 million FRW, for a brother or sister 1 million, for a grand child, uncle or aunt 500 000.... There was a schedule for disabling physical injuries: a person aged under 18 and disabled for 15% would receive 200 000 FRW, a person disabled for more than 80% would receive 2 million. A disabled person aged over 55 would receive less, so a victim aged 55+ and disabled for 80% would receive 1 million... Similarly, the disabled person's mother and father.

[305] The value varies depending on the type of vegetation (euphorbias, dracaeneas, cypres or reed) or building materials (wood, brick or stone) used.

[306] The value of a cow ranged from 10 000 to 100 000 FRW, a goat from 1500 to 5000 FRW, a chicken from 500 to 2000 FRW.

[307] Including wardrobes, radios, kitchen utensils and television sets. Again the values vary widely with ordinary cultlery estimated at 1000 to 20 000 FRW.

[308] Depending on the materials used, anything from straw to brick.

[309] A house out in a rural area being less valuable than a house in the middle of a trading centre. A house in a town

In its Preamble, the 2001 Bill stated in clear terms that one of the reasons why compensation was necessary was the fact that the defendants would not have the means to make any repayment. It stated in particular: *"Given that property belonging to those convicted of genocide crimes or crimes against humanity will be insufficient to cover repayments, the Organique Law instituting the Gacaca Courts also aims to set up a compensation fund which is to be financed by means other than the mere compensation payable by those who have been held liable in civil law for genocide crimes or crimes against humanity, for such means would not suffice anyway, given the scope of the reparation to be granted"*. The 2007 Bill creating the FSARG, the *Fonds de Soutien et d'Assistance aux Rescapés du Génocide*, the Help and Support Funds for the Survivors of the Genocide also provides that "the genocide was perpetrated by Rwandans against Rwandans. But it is a fact that most of the perpetrators are poor and will not be able to pay compensation to their victims." And indeed, that turned out to be the case, as this report has shown consistently. The perpetrators can not pay.

A new Bill was drafted in 2002. The initiative had been taken mostly by the Survivors' Association Ibuka which proposed that all the survivors should receive the same amount, 12 000 000 FRW or 19 900 euros.

The turning point came with the 2004 *Gacaca* Law, which no longer mentioned compensation. Art 96 merely provides that *"other forms of compensation the victims receive shall be determined by a particular law"*.

The 2007 Bill which is now before Parliament repeals the FARG (created in 1998) and replaces it with the FSARG. It no longer contains any reference to compensation. In answer to questions about compensation, the Executive Secretary of the SNJG, speaking at a meeting on 3 July to which we have referred several times, stated that the State had decided to go down the "socio-economic" rather than the legal road and intended to set up a "social assistance fund" with a wider competence.

The spirit of this Bill is radically different from that of the previous Bills and no victims' association was consulted when this Bill was drafted.

The FRASG is to have more funds than the FARG. The Bill retains the same financing mechanisms as those set out in the 2002 Bill.

So the FRASG is to have greater financial means than its predecessor, the FARG, but its mission remains the same: to support and help survivors in need. The terms are clear: "the expressions "support" and "assistance" refer to all moral and material support and any form of assistance to the survivors of the genocide and other crimes against humanity." The Fund's missions are essentially *"to raise and collect contributions and to distribute these to the genocide survivors, beginning with those who are most in need"*.[310] In particular, the Fund has the following powers: to coordinate collections, build homes for old people without family or the destitute, support genocide orphans, widows and invalids, all those who are homeless, provide medical care to HIV infected survivors, grant allowances to poor or disabled elderly persons, recover compensation payments due from Category 1 convicts and assist survivors so as to allow them to improve their standard of living.

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centre being the most valuable.

[310] Article 6 of the 2007 Bill creating, organizing and running a help and support fund for the survivors of the genocide and other crimes against humanity committed between 1 October 1990 and 31 December 1994.

The truth is that there is only one real difference between the 1998 FARG and the newly proposed FSARG and that is that the latter's financing mechanisms are more sophisticated than the FARG's and would therefore allow the FSARG to develop more important programmes.

Could support be one form of compensation? The Preamble to the 2007 Bill is clear on this point: "Support and help programmes for the benefit of the victims shall not constitute compensation. Rather they offer assistance that is owed to the victims in order to help them to overcome the serious difficulties they are experiencing as a result of the genocide and other crimes against humanity".

There is another question that one is entitled to ask: should the survivors be the only recipients of State help? Don't the sick, the poor, the orphans of non-genocide parents, also have a right to help from the State? We would take the view that such help should be given to any destitute person and not just to the genocide survivors. Compensation, not mere support, would be the only way to acknowledge the special status of the survivors, regardless of their income or social status.

However, it would seem that the Compensation Fund is not to be. It has been discarded for the time being and it is clear that it would require huge sums of money. The various compensation bills were clearly too ambitious from a financial point of view for a country with limited means and for the reluctant foreign sponsors. *"Even a millionaire survivor ought to receive compensation"*[311] one member of *Ibuka* told us. Though the FSARG may be necessary, and not just for the survivors, it is clearly a social assistance fund which cannot replace compensation. *Ibuka* has no doubt that the bill *"confuses reparation and assistance"*.[312]

It is a great disappointment to those who advocated the creation of a fund, with the *Avega* and *Ibuka* Associations leading from the front. It is worth mentioning that although these two associations played an important part in the drafting of the first two bills, they have not been involved at all in the drafting of the third.

In our view, it is a pity that the concept of compensation has been abandoned for it would have had a positive impact on the reconciliation process.

Having said that, compensation that is not reasonable and well thought out may have a detrimental effect on reconciliation by creating economic inequality between the survivors on the one hand and the general population on the other. If compensation is not to aggravate social inequality and cause jealousy and resentment towards the survivors, the following points would, in our view, need to be born in mind:

- the creation of a social assistance fund available to survivors as well as any other Rwandans in need of economic help, in parallel with the compensation fund;

- the compensation fund would need to be an integral part of a dynamic development policy;

[311] Ibuka interview, 14 June 2004.

[312] Ibid.

- compensation for loss of property should not be calculated on the basis of current value, as this is too unrealistic. A more realistic schedule should be worked out not only allowing each victim to receive compensation depending on the nature and the quantity of goods stolen but also promoting friendly settlements between victims and looters where appropriate. Similarly, compensation for the loss of life must consist of realistic amounts which reflect the survivors' real needs. Another possibility would be to compensate victims in kind, by giving them livestock or helping them to build a home for example.

We believe that, if proper attention is given to these points, compensation could help to resolve the tensions caused by the Category 3 decisions. In more general terms, it could be beneficial to the reconciliation process. It would require a great deal of money, but then there is a lot at stake. No doubt the budget priorities of the State of Rwanda would need to be reviewed so as to give the country the chance of achieving national reconciliation at some time in the future.

CONCLUSION

The enforcement of Category 3 decisions is still a long way off. We have been able to observe that there have been numerous friendly settlements but the enforcement of court orders for repayment causes us deep concern. Are we going to witness large scale confiscations? Or work which under international law would qualify as "forced labour" and which may well lead to further poverty amongst some sections of the population? Will the *Gacaca* Courts continue to issue repayment orders that will never be met?

In our view, an alternative to the current ways of enforcing *Gacaca* orders could resolve the dilemma. As we have stated in this report, one such alternative could be the payment of reasonable compensation commensurate with the economic needs of the survivors. This would offer two advantages.

For the looters, payment of compensation would mean that if they are insolvent, they are no longer subjected to the extreme pressure of settling a debt that they can not settle. Some of them would no longer have to lose the land or the cattle they need to survive. The first part of this report illustrated how poverty and envy can aggravate the violence. If the enforcement of the repayment orders were to be stopped, many already poor families would not slide into even greater misery which in turn can lead to resentment towards the victims. It would certainly help Rwanda on the road to peaceful cohabitation of victims and perpetrators.

For the victims, payment of compensation would mean an end to the disputes between the looters and themselves. It would provide them with a basis from which they can develop and increase their capital. Let us not forget that some have been homeless since the genocide. Compensation would also make them all equal before the law, since it would bring an end to a system in which those who happen to have been looted by rich people receive payment whilst the others are still waiting. It might even restore their confidence in the justice system - many lost that confidence after all the empty promises of compensation and the State's introduction of *TIG* and early releases.

In our view, it is vital that reparation becomes a reality, even if the economic conditions are difficult. According to Pablo de Greiff, in the eyes of the victims, reparation is often the most tangible proof that the State is making an effort and acknowledges that they are indeed victims.[313] Criminal justice will always fall short when it has to deal with crimes at this massive scale. Of course, justice and the search for the truth are important but so are positive measures that acknowledge that victims are victims and accept their suffering.

Justice is not the only route to "reconciliation", for although it eases some disputes; it creates others, as is only too obvious from the *Gacaca* Courts which today can no longer be regarded as having a positive impact on the reconciliation process. There are other routes, such as country-wide economic development and "reparation" that focuses specifically on the genocide victims; this would help them to cope with life, despite the horrors they have lived through. Although

[313] De Greiff, Pablo, *The Handbook of Reparation*, Oxford University Press, 2006, and in partiuclar the Introduction, 'Repairing the Past: Compensation for Human Rights Violations'.

tangible property is only a very small element, its effect must not be underestimated in a country as poor as Rwanda. So if what was stolen or destroyed during the genocide can be recovered, it may help people to get back on their feet, if only in economic terms. Such recovery could be one way of easing the increasingly obvious tensions within the population.

It is worth mentioning here that in their letter of June 2007 to the Secretary General to the United Nations entitled *"UN compensation for the victims of the genocide of the Tutsis, an inalienable right"* the *Ibuka*[314] and *Avega* Associations asked for compensation for the victims of the genocide. There can be no doubt that they have now lost all hope that a Rwandan government would take any remedial measures in the near future. One sentence from that letter perfectly illustrates the survivors' disappointment with the genocide justice system: "We have also seen victims of the genocide living in inhuman circumstances as a direct result of the genocide. They are waiting for justice to be done by them. That justice is called compensation".

[314] Although the *Ibuka* Association is the most powerful and the best known of the associations that defend the rights of the genocide survivors, it is of course clear that it represents a certain trend and not all of the survivors.