



Research Report on *Gacaca* Courts – PRI

Gacaca and Reconciliation: Kibuye Case Study

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Introduction

For the Rwandan government, the *Gacaca*, an original blend of restorative and retributive justice, is the main tool for reconciliation in Rwandan society.

The goal of reconciliation forms part of a truly national policy for the future development of the country. To this end, in addition to the *Gacaca*, a certain number of initiatives have been undertaken in order to facilitate several tasks: ensuring that the genocide is not forgotten, preventing new conflicts and promoting national reconciliation. These initiatives include, for example, the *ingando* (solidarity camps) for inmates on temporary release, but also for students, demobilized soldiers and different groups in the population. Others are the creation of a National Commission for Unity and Reconciliation (CNUR), inauguration of the Genocide Museum in Kigali and a projected Commission for the Prevention and Fight Against Genocide. These initiatives are at the centre of political life in the country and are the subject of varied and sometimes conflicting analyses¹.

In this report we will be examining the reconciliation process from the particular angle of the role played by the *Gacaca* in achieving this objective. This study will use, in part, the handbook on *Reconciliation After Violent Conflict*, published by the International Institute for Democracy and Electoral Assistance (IDEA)². In our opinion, this work was the most in-depth, relevant and recent on the issue. We will also rely on actual studies using the same methodological approach, such as the one done by Arthur Molenaar³ on Gikongoro, as well as on data collected by PRI interviewers and research assistants.

Methodological Approach:

According to IDEA (2003, p.12), reconciliation must be seen as both a goal and a process. It is the process that is of particular interest to us here. Kriesberg provides a similar definition⁴ and he sees reconciliation, “*as a process by which parties that have experienced an oppressive relationship or a destructive conflict with each other move on to attain or restore a relationship that they believe to be the minimum acceptable*”.

According to IDEA, the four interdependent criteria or objectives for reconciliation are:

¹ Opinions on the policy of reconciliation carried out by the Rwandan government vary quite a lot. They are either very positive, such as that of Baroness Lynda Chalker, a British ex-minister of Overseas Development, for whom *What characterises Rwanda is its boundless determination for reconciliation*; or very negative, such as that of Filip Reyntjens, Professor of Law and African Politics at the University of Anvers, who states that “*Ten years after the genocide in 1994, there is neither democracy nor reconciliation in Rwanda*”.

See DFID, “*Security and Justice Routes to Reconciliation. Rwanda case Study*”, Kigali, March 2004, p. 11 and Reyntjens, Filip; “*Rwanda, Ten Years on: From Genocide to Dictatorship*”, *African Affairs*, 2004, n° 103, pp. 177-210

² David Bloomfield, Teresa Barnes, Luc Huyse, *Reconciliation after violent conflict. A handbook*, Handbook series, International Institute for Democracy and Electoral Assistance (IDEA), Stockholm, 2003

³ Arthur Molenaar, *Gacaca: Grassroots Justice after Genocide. The Key to Reconciliation in Rwanda?*, Graduation thesis, University of Amsterdam, January 2004

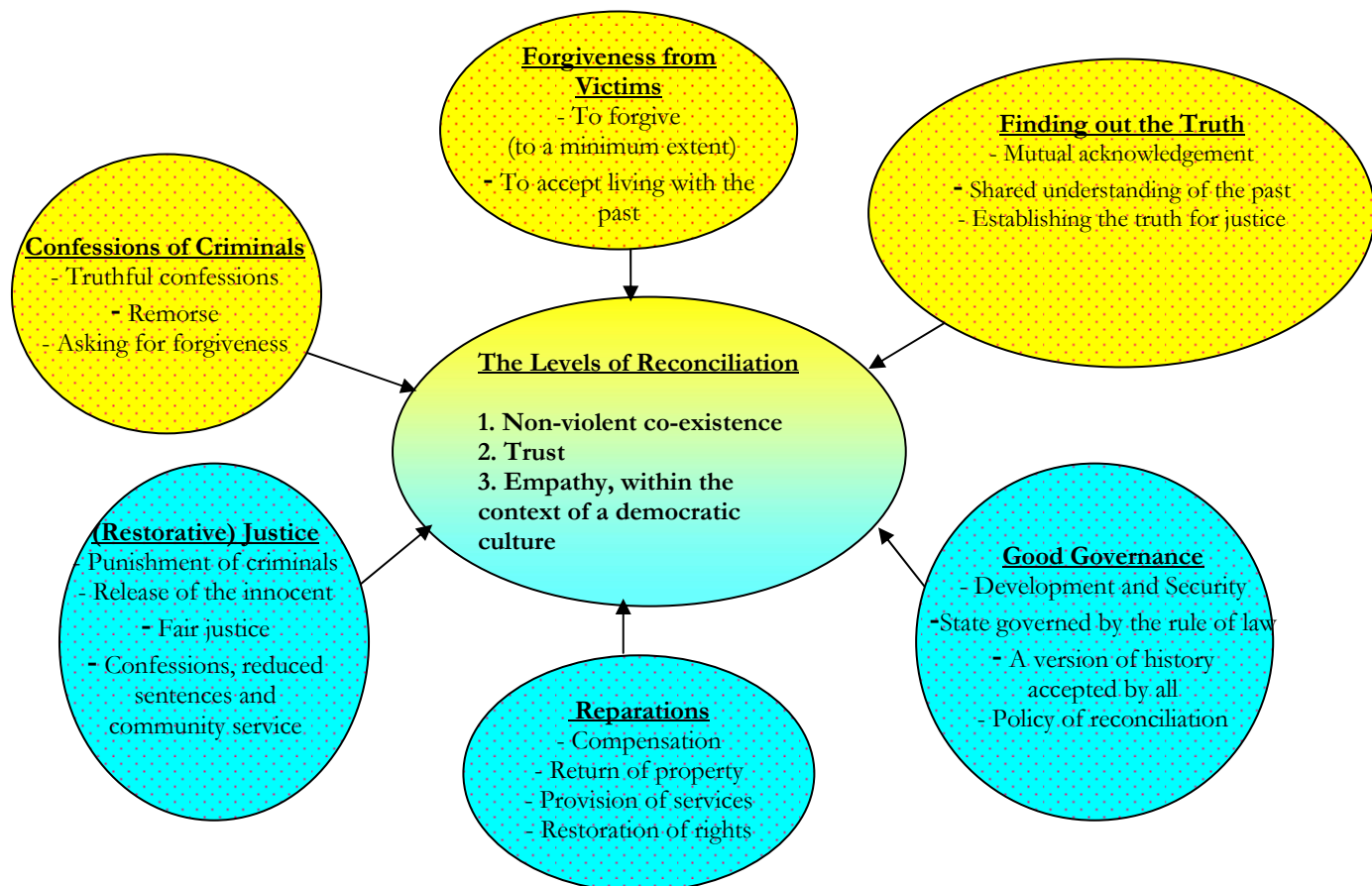
⁴ “*Reconciliation refers to the process by which parties that have experienced an oppressive relationship or a destructive conflict with each other move to attain or to restore a relationship that they believe to be minimally acceptable.*” In Kriesberg Louis, *Changing forms of coexistence*, p.60, in Abu-Nimer, Mohammed ed., *Reconciliation, justice, and coexistence: theory and practice*, Lexington books 2001, p. 47-64

- ✓ To find out/tell the truth (historical),
- ✓ To heal the wounds of victims through, among other measures, confessions and asking for or granting forgiveness,
- ✓ To carry out a form of restorative justice,
- ✓ To provide reparations/compensation (damages).

These criteria and objectives would be necessary to successfully carry out a process of reconciliation for which IDEA sets out three stages:

- ✓ Firstly, a *non-violent coexistence* without fear: the idea is to live together, without killing each other, in order to open a space for dialogue,
- ✓ Then, re-establishing *trust*,
- ✓ Finally, a certain form of *empathy*, i.e. the ability to put oneself in the place of the other and to experience his feelings and emotions.

The following diagram of reconciliation mechanisms shows how each criterion mentioned above contributes to achieving the final objective of reconciliation:



IDEA considers that non-violent co-existence, trust and empathy are sentiments that could only develop if there are few structural injustices in the political, legal and economic fields. This means government policies that promote peace, political and economic security and of course, reconciliation, based on principles of democracy and good governance⁵.

⁵ Using as a minimum definition of democracy: a system in which disagreements are solved without the use of violence. IDEA, 2003, p. 10

This report is based on the analysis presented by IDEA and intends to examine the following points in particular:

- The objectives of reconciliation as mentioned above, consisting of:
 - ✓ To seek and establish the truth
 - ✓ To fight against impunity through restorative justice
 - ✓ To heal the wounds through confession and forgiveness
 - ✓ To right the wrongs committed

- The national context of reconciliation: we will focus particularly on the economic and political situations, but also the way in which justice is done and perceived to be done by the population, as well as the way in which history is revisited today.

We will see how the confession procedure, at the centre of the *Gacaca*, plays a role that is both essential and ambivalent in this programme.

I. The Context of Reconciliation in Rwanda

Rwandan society is today undergoing massive changes and is attempting to rebuild itself after the events of 1994. As mentioned above, this context plays an important role in the operations of the *Gacaca* courts, as it represents a somewhat ideal terrain for reconciliation. Therefore, it seemed important to summarize it, although we considered this context as a fixed element within the framework of the *Gacaca* process and external to the process itself.

A. Security and the Economic Situation

The security situation in Rwanda is good and, according to some researchers⁶, the peaceful conditions in the country have resulted in an improvement in the living conditions on an economic as well as human level. Life expectancy has increased, infant mortality has fallen, the percentage of children in full time education has increased and the overall economic situation is cause for more optimism.

Yet, according to official Rwandan statistics⁷, the proportion of households living below the poverty level has increased dramatically between 1985 and 2000. It went from 45% in 1985 to 53% in 1993, 78% in 1994, before falling to 65% in 1999. Indeed, in 2000 the 20% richest Rwandans spent 52% of the national income, while the 20% poorest only spent 5%⁸.

We have observed the wide inequalities in Rwandan society today, where there is no middle class, which raises pointedly the issue of wealth distribution.

⁶ Stefaan Marysse and An Ansoms, *Evolution socio-economique au Rwanda et au Burundi*, in *Annuaire*, 2003, pp. 31-46 and Sarah Martens and Stefaan Marysse, *Evolution de la pauvreté et de l'inégalité au Rwanda : violences et contraintes structurelles*, in *Annuaire*, 2003, pp. 89-107

⁷ Direction de la Statistique, *Indicateurs de Développement du Rwanda N°3*, Ministère des Finances et de la Planification Economique, Kigali, July 2000, p. 1

⁸ Although this figure shows the existence of a terrifying poverty for a large part of the Rwandan population, it is entirely comparable with the figures for Africa in general. According to NEPAD's *Development Report 2003*, DBSA, November 2003, p. 27: in 1992, the share of the expenses of the richest 20% of households was 52% and that of the 40% poorest was only 14%. According to the same report, p.16, par capita, the GDP in Africa has fallen more than 1% per year since 1980. It is possible that the same situation exists in Rwanda or even worse due to the civil war and genocide in the years 1990-94.

Poverty is the main contextual factor influencing the process of reconciliation. During his closing speech at the Third National Summit on Unity and Reconciliation, which took place in Kigali from May 7 to 9, 2004, the President of the Republic of Rwanda had also emphasized: “*a poor man cannot build unity and reconciliation...The country's economy must complement unity and reconciliation*”⁹.

This poverty plays a particularly important role in Kibuye which is one of Rwanda's poorest provinces, as we have seen in the first report. More than 70% of its mainly rural population live below the poverty level. This fact has a direct impact on the participation of this population in the *Gacaca*. Their participation in the sessions is limited since their survival is often difficult and depends directly on daily work in agriculture. This situation slows the progress of the *Gacaca* process.

B. The Rule of Law

The rule of law is characterized by a respect for democratic life and human rights, but also by fairness in the judicial process. In our opinion, it is indisputable that the implementation of a true rule of law incorporating respect for human rights should be one of the basic elements of a reconciliation process.

On this latter point, the reports of human rights organizations¹⁰ such as *Amnesty International*, *Human Rights Watch* and *International Crisis Group* express important reservations. A Dutch NGO report¹¹ has recently also strongly criticized the state of human rights in Rwanda. In addition to the remarks of human rights organizations, the conduct of the 2003 elections was also widely criticized, including by the United States government, who is nonetheless the main supporter of the Rwandan government. This type of accusation is generally disputed by the Rwandan government¹².

The issue of fairness in law is also important. In 1994, only one genocide was carried out, against the Tutsis, but there were also massacres of Hutu opponents of the genocidal regime, crimes against humanity and war crimes committed by FPR soldiers or by some survivors against Hutu civilians. As these latter crimes are not dealt with in the *Gacaca* courts, many Hutus do not consider the *Gacaca* as a model of fair justice. Furthermore, although they know that they can press charges in the ordinary courts, they are generally afraid to take this step since they consider the justice system to be dominated by members of the ethnic group implicated or by the members of the party in power.

However, both the inmates and those released from prison think that it would be difficult to reconcile with each other without fair justice:

⁹ Safari Byuma, “*La pauvreté et la réconciliation : deux réalités incompatibles*”, *La Nouvelle Relève* n°488 May 15-30, 2004, p. 5

¹⁰ See the websites of Human Rights Watch on Rwanda, Crisisweb, International Crisis Group and Amnesty International.

¹¹ CORDAID, ICCO, KERKINACTIE, NOVIB, “Tell Our Government it is OK to be Criticised”. Rwanda Monitoring Project, Report 2003”, The Hague, February 2003.

¹² See, for example the reaction to the “Country Report on Human Rights Practices for the Year 2001”: “*Reply to Department of State 2001 Country Report on Rwanda*”, July 2002

Me, I like this Rwandan government's initiative on reconciliation, but there is something that could be questioned. If they really want to solve the conflicts between Rwandans, it must be as equals. It mustn't be said that only Hutus should seek out Tutsis to ask forgiveness. For example, during the *Gacaca* in prison, we were told to confess and plead guilty and ask forgiveness from those whom we have hurt. Now, there were some prisoners who did not commit any crimes and who were imprisoned unjustly. So, that was said but nothing was mentioned about these others who had people imprisoned unjustly. Why not tell the survivors to ask forgiveness from innocent prisoners who were released as the guilty have done for victimized families, for example. In my opinion, that's what should be done if we want to achieve reconciliation of all Rwandans. If not, it would be a one-way reconciliation.

- Released prisoner Aloys, Kibuyi city, Gitarama sector, Josi cell, October 2003 -

Several testimonies collected from inmates at Gisovu agree entirely with this view. In their opinion, reconciliation is impossible because the Tutsis continue to carry out the practice of ethnic segregation. Hutus who were killed by Tutsis and the FPR during the war and after seizing power are ignored. They add, however, that the two sides must be tried and must ask for forgiveness.

In order to make up for this situation, it could be envisaged that during the first *Gacaca* court sessions, separate lists could be drawn up of those who were not killed in the genocide but for other reasons, such as vengeance, etc. These lists could then be passed to a special commission (to be created) for further investigation.

The result of this action would be not only to foster confidence in the justice system but perhaps also to stimulate the people's participation in the *Gacaca* courts. The false idea of a double genocide could then be laid to rest. (See PRI, Kibuye Report I).

This general situation undoubtedly impacts the progress of the *Gacaca* sessions. Without complete confidence in the justice system of their country and in free speech, some Rwandans do not dare speak. They testify very little and, in the end, their participation in the *Gacaca* is of a wait-and-see nature. Thus, the establishment of a rule of law is essential for achieving the goal of reconciliation.

C. Rewriting History

When the release of inmates was carried out in 2003, the government developed educational programmes on reconciliation destined particularly to ex-inmates in the *ingando* solidarity camps (see PRI, Report VI, April 2004). All of the participants attended classes in justice, peace and history, among other subjects.

“Those who ignore their history are condemned to repeat it”¹³. The history classes seems to us to be particularly important, on the one hand, because it represents the first attempt at ‘rewriting’ Rwandan history since the genocide, and it is most likely this version that will be most widely disseminated among the population. On the other hand, these classes are going to have a direct effect on the convictions, attitudes and behaviour of the people who attend them. In this way, they will have an influence on the conditions of the ex-inmates’ return to the hills as well as on national reconciliation.

It must be noted that in comparison to the previous historical writings, what is taught in the camps has turned out to be the closest to the version that is accepted by the historian community

¹³ See IDEA, 2003, p. 168

as constituting the historical reality of Rwanda. But some distortion of historical reality remains.¹⁴ However, as long as a version of history acceptable to everyone does not emerge, there is a real risk that a government could take advantage of the “flaws” in the writing of this version in order to present itself as the one capable of finding a solution to ethnic conflicts, thus repeating the mistakes of the past¹⁵.

Although historians agree on some basic facts about the origins of the Rwandan people or the role of the colonists in exacerbating ethnic hatred, it seems to us that the version relayed in the *ingando* is wrong in certain other aspects, whether in its interpretation or in what is omitted. For example, it seems essential that among the stages that the work of memory and reconciliation should undergo are an acknowledgement of the genocide perpetrators’ individual responsibility for the suffering they have inflicted, which cannot entirely be minimized as being part of a monstrous plot. As such, their attitude during or after the *ingando* differs very little from the attitude that was prevalent in prison. They play down their participation and blame others, explaining the genocide as a consequence of very bad leadership. This is evident in the following testimonies of some released prisoners:

Félicien

In truth, what I personally got out of these *ingando*, is that we’ve been taught a class in history in such a way that everyone could understand it. In the past, as soon as we were old enough to understand it, we were plunged into ethnicity. Another thing is in relation to the leaders’ responsibility in the genocide. We have gained a lot and we especially have understood the pain this has caused and we have decided not to hold on to such things any more. We are ready to join with other Rwandans in fighting all sources of division.

Innocent

It’s a fact that when the leaders are good, so are their followers, so we will succeed without difficulty. When the leaders are bad, the followers are also bad. What I’m emphasizing is that with this government, the good things taken from tradition are presently applied in the *Gacaca*. We will get there.

- *Ingando Gisovu*, 25/02/03 -

D. The Government’s Reconciliation Policy

The government’s desire to pursue the goal of reconciliation is expressed through the steadfastness of its message on the subject of solving disputes stemming from the genocide and the fight against impunity. The measures used to arrive at this goal include launching the *Gacaca* programme, promises of compensation for genocide victims and implementation of the Community Service programme. This latter programme is an alternative sentence to incarceration which will be handed down by the *Gacaca* courts, that is also aimed at encouraging reconciliation. Even so, we have observed that the implementation of these programmes is very slow and the compensation project actually seems to be stopped.

Apart from justice relating to the genocide in itself, other actions have been initiated by the government in order to pursue the goal of reconciliation. There was a special mention made of

¹⁴ See PRI, *Report VI, From the Camp to the Hill, Reintegration of Released Prisoners*, Kigali/Paris, May 2004

¹⁵ On this point, see Johan Pottier, *Re-Imagining Rwanda Conflict. Survival and Disinformation in the Late Twentieth Century*, Cambridge, Cambridge University Press, 2002, p. 128

this during a meeting which took place in December 2003, in Budaha/Kibuye (see minutes of this meeting in the Annex). A manager in the National Commission for Unity and Reconciliation/CNUR listed the positive indicators for the reconciliation process started by the government:

- ✓ Deletion of the item “ethnic group” from identity cards,
- ✓ Setting up of the National Commission for Unity and Reconciliation,
- ✓ Return of 1994 refugees to Rwanda,
- ✓ Right of residence and free circulation: elimination of residence and pass permits,
- ✓ Replacement of the President of the Republic through elections and without violence.

These points are indeed extremely important in the path to reconciliation.

Moreover, the desire for reconciliation is found in statements made by some political authorities, illustrated especially by taking into consideration an important concern: to eradicate the idea that all Hutus are genocide perpetrators. Indeed, this issue seems to us to be crucial for conceiving and building a peaceful coexistence.

In a recent speech for the commemoration of the 10-year anniversary of the genocide in Kigali (April 7, 2004), President Paul Kagame paid homage to all those who risked their lives to protect their compatriots. This acknowledgement is essential for overcoming the biased view that all Hutus are genocide perpetrators. It also helps in the reconciliation of the Rwandan people.

These statements, collected during a *Gacaca* session, are testimony to this acknowledgement:

I thank God who has saved me, but I also thank certain people who I call Hutus and who did everything they could to hide me and share my suffering. Up to now, I've said that God worked through these Hutu people to save my life, and here I am today, I am still alive. Knowing this, I cannot say that it was the Hutus in general who carried out the genocide. The only thing is that those who did not participate should decide to tell the truth so that the word genocide is not used for them, and anyone could feel as their equal.

- Adéon, 19/03/04 Nyakarambi cell, Sanza sector, Budaha/Kibuye -

There are cases of men and women who were able to act differently during the genocide. In our opinion it is important to introduce them to the Rwandan population. This would contribute to bringing out the truth about the genocide¹⁶ and to reconcile the different groups within the population.

All of the above mentioned measures are very encouraging. In the political arena, one can nevertheless wonder about the population's perception of certain measures taken by the government. For example, the dissolution of the main opposition party, the Mouvement Démocratique Républicain/MDR (Republican Democratic Movement), was perceived by one sector of the population, as being against the policy of reconciliation promoted by the government.

One survivor, annoyed by the pressure he feels concerning reconciliation, confided to us:

¹⁶ See the case of Augustin (PRI, Report V), the case of the blacksmith (PRI, Report III) and the African Rights' publication, *Tribute to Courage*, August 2002

Why not first ask the RPF and the MRND to reconcile among themselves or even the authorities from the previous government and those of the present one? Ask, for example, Twagiramungu and Sebarenzi¹⁷ to come back for this reconciliation.

- PRI, Report I, January 2002, p. 51 -

Certain problems and their consequences on the progress of the *Gacaca* could be better understood with a quick look at the general situation in Rwanda.

Security and the general improvement of living conditions both constitute factors that facilitate reconciliation. However, several factors could have a negative impact on the wish for reconciliation and consequently, on the quality of participation in the *Gacaca* sessions. They include the phenomenon of a lack of any sense of responsibility which could lead to the rewriting of history, the fact that some categories of victims feel they are not being sufficiently looked after within the judicial process and the contradictions felt by a part of the population regarding the policies carried out by the government

II. The Place of Confessions in the *Gacaca* Process and Reconciliation

As we have already said and previously analyzed (See PRI, Report IV), the confession procedure is today the “lynchpin” of the Rwandan justice system. It gained this status in 1996 with the first Organic Law concerning the “*organization of trials for infractions constituting the crime of genocide or crimes against humanity...*”. It is still very much so in the law of January 26, 2001, which put the new *Gacaca* courts in charge of these trials.

The desire of the country’s political and judicial authorities to find a balance between the demands of restorative justice and those of reconciliation has notably resulted in the important position accorded to the confession process in both ordinary courts and *Gacaca* courts. By increasing the value of confessions through reduced or milder sentencing, they could at the same time encourage establishing the truth on the genocide events and reintegration of the accused into the society.

To this end, legal authorities organized huge awareness campaigns in the prisons to inform the inmates of their “right to confess” which turns into “it’s in your best interest to confess” given the benefits that they are supposed to get from it. These benefits include: temporary release, reduced sentences, or the possibility of carrying out part of their sentence in the form of community service.

The following table shows the success of this campaign:

¹⁷ Faustin Twagiramungu, the former prime minister of Rwanda after the genocide, former leader of the MDR and one of the candidates in the 2003 presidential elections; Joseph Sebarenzi, a survivor, former member of the PL and spokesman/ex-president of the National Assembly, presently living in exile.

Table 1: Number of inmates and confession procedures for prisoners throughout Rwanda and Kibuye province, at the end of 2002 and for Gisovu prison in 2004¹⁸

Place	Nbr. of prisoners who are alleged genocide perpetrators	Nbr. of accused who have confessed	% of perpetrators who confessed
Rwanda on 31/12/02	101,469	32,429	32.0
Kibuye Province on 31/12/02	6,884	3,772	54.8
Gisovu Central Prison on 24/03/04	3,364	2,132	63.4

The task of promoting confessions is undoubtedly producing results.

In Kibuye province, where the genocide was particularly violent, relatively few confessions were recorded up to 2001. However, this tendency has been reversed and at the beginning of 2003, this province counted the highest percentage of confessions in Rwanda: 55% compared to 32% for the entire country¹⁹. The most recent figures for the Gisovu central prison shows that the number of confessions has again increased. Since the deadline for confessions was pushed back to March 2005, this rate should increase even more.

However, by closely examining the circumstances under which these confessions are made, we have observed, on the one hand, the very often the wide distortion between the truth and the contents of the confessions, and on the other hand, a certain number of negative effects. The combination of all these factors obviously changes the people's perception of the process, first and foremost the survivors, which does not lead towards reconciliation.

In the two following chapters we review some of the negative effects of the confession procedure and their influence on the essential factors of reconciliation: the search for the truth and granting forgiveness.

¹⁸ See PRI, Report IV, 2003, p. 5. The Gisovu prison administration provided the data for this location. Gisovu is located in Gikongoro province administratively, but the prison is near Kibuye City and a large majority of those accused of genocide crimes in Kibuye province are incarcerated in this prison, even more so since the closure of the Kibuye prison in March 2003. The other people accused of genocide from Kibuye province are in Gitarama prison – about 1 600 – and 100 cases being appealed are in Ruhengeri prison.

¹⁹ In Gisovu, 315 people confessed in 2000, 427 in 2001, 1,807 in 2002, 2,022 in 2003, and 2,132 at the end of March 2004. The steep rise in 2002 is the result of a big awareness campaign carried out by the inmates of the small prison at Murama who were taken to Gisovu prison for that purpose. The presidential communiqué of 01/01/03 immediately brought about a new wave of confessions.

III. Seeking the Truth

A. Unverified Truth

In order to be admissible and thus taken into consideration to justify being released or receiving a reduced sentence, a confession must be complete and sincere, under Rwandan statute law. It must include a detailed description of everything related to the crime confessed, which means giving information on accomplices. Therefore, the confessor is supposed to “tell the truth” about the facts. Moreover, it must definitely lead to the confessor asking for forgiveness.

It is the task of the *Gacaca* court bench, to determine in a public hearing if a confession is truthful, and the *inyangamugayo* (*Gacaca* judges) must decide among themselves whether or not the confession is admissible.

However, it is not unusual for inmates to make partial confessions, or confess to minor infractions, a lot less serious than those that they have actually committed. Some accused inmates, but also some who were released, try to present credible testimony (since it is required by law for the confession to be admissible) which in fact spares the true perpetrators. Thus, deceased or exiled individuals, or those with whom they have personal disputes are accused.

There are many inmates who keep something in reserve²⁰, that is, they don't admit to all of the crimes they have committed for fear of being classed as category 1 accused. Others say very little in order to spare their friends or relatives. Others confess in place of the true perpetrators in exchange for bribes, to little effect, since the true perpetrators could very well be accused in the *Gacaca* courts outside of prison... Some inmates chose to confess to crimes they have not committed in order to benefit from temporary release.

Among the inmates who are prosecution witnesses, especially if it involves category 1 crimes, there are some who have escaped from prison. Others denounce their comrades who have also accused them.

- *Inmates from Gisovu, March 2004* -

These observations force us to limit the role of confessions in establishing the truth. Certainly taking confessions from criminals into consideration (even those “negotiated” with a view to attenuating sentencing or other judicial benefit) is extremely useful as we seek the truth about the events, and these confessions could not be rejected outright.

It is obvious, however, that these confessions must be used carefully. Testimony provided by the accused themselves, especially for crimes as serious as crimes of genocide, are always a source of problematic information. As we have seen above, they are often characterized by omissions, half-truths or lies.

As long as *Gacaca* or ordinary courts have not seriously verified the truthfulness of the confessions, they should not be taken as conclusive evidence. They would remain confessions “subject to” verification.

²⁰ The reason for these “reserves” is the rumours circulating in prison saying that “*no one will really be released...it's all lies*” prisoners also mention for this reason the re-arrests of released prisoners. Some inmates also believe that these releases are not organized “out of pity” but on the contrary to free up space so that others still on the outside could be subsequently imprisoned. According to them “*all Babutus must go to prison*”, (See Part I of this report on the importance of the speech made by the President of the Republic on April 7, 2004 acknowledging the “just people” of the genocide).

Certain foreign legislations and legal precedent practices offer pertinent clarification to the issue of the value of confessions, and caution is the most important aspect. Thus, according to a decision of the German Supreme Court²¹, confessions that result in a legal benefit (for example, a reduced sentence) cannot be the only evidence against co-perpetrators or accomplices if they are not corroborated by other conclusive elements.

This option has not been adopted by the Rwandans where, in almost all cases, the courts base their verdicts exclusively on confessions. Here, more than in other places, the confession is the “gold standard of evidence”.

Without going as far as using German case law, it would certainly be desirable for the first level judges or crown prosecutors in Rwanda to do their utmost to verify the truthfulness of the confessions given as much as possible. Ideally, this should be done before the last stage of the *Gacaca* courts work, that of trying the accused, and therefore before freeing them on temporary release. The law makes provision for this verification, but the practice of checking the confessions seems at present to be insufficient, although we are well aware of the difficulty of this task in the particular situation of Rwanda after the genocide.

B. A Partial Truth Due to the Number of People Involved

During the pilot sector sessions, it was realized that there were many more of the alleged genocide perpetrators still free (53% within the country, 13% in exile) than in prison (15%). These people were thus not brought to testify and this contributed to the difficulty encountered by the *Gacaca* courts in establishing the truth.

The following table illustrates the number of people who could still be accused at the end of the *Gacaca* process, from the figures taken from the pilot sectors.

Table 2: Number and Percentage of Accused by Situation*

Number and percentage of accused by situation in the pilot sectors:				
Accused <i>not incarcerated</i> in Rwanda	Accused <i>deceased</i> since 1994	Accused <i>in exile</i>	Accused <i>in prison</i>	Total number of accused
2,796	981	691	768	5,236 (data for Kibuye pilot sectors)
<i>53.4</i>	<i>18.7</i>	<i>13.2</i>	<i>14.7</i>	<i>100 %</i>
Projections for all of Kibuye:				
18,400 (those released included)	6,440	4,550	5,060	34,450 (total estimates for Kibuye)
<i>53.4</i>	<i>18.7</i>	<i>13.2</i>	<i>14.7</i>	<i>100 %</i>
Projections for the number of people who could be brought to testify:				

²¹ Supreme Court decision of January 15, 2003, p. 10-11 (Bundesgerichtshof/BGH, Beschluss vom 15. Januar 2003 – 1 StR 464/02 – LG München I). Please note that it was a common law case without any relation to the Holocaust).

* Source: data from Kibuye pilot sectors *Gacaca* courts at the end of April 2004 and projections for the national phase

18,400	-	-	5,060	23,460
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Of course, the large number of people still free and the large number of people on the list of accused greatly affects the search for the truth.

Although these figures are only projections based on limited data, they are still instructive. In Kibuye alone, it can be estimated that 23,460 people accused of committing genocide crimes are still alive and living in the country and could be brought to testify in the *Gacaca* courts. Extrapolating from these figures for all of Rwanda, this implies that about one quarter of the population (particularly males 17 years and older) could be accused of participating in the genocide. However, it must be remembered that it is not yet a question of trying the accused, but only the collection of information on each accused and the preparation of their individual case files. Although the bench announces that people should not be accused frivolously, in practice, accusations are often not thoroughly checked, which is making the list of accused longer²².

Nevertheless, despite the possibility of a some exaggeration, these figures seem to be quite credible because, as we have stated in the previous report, the killings in Kibuye province started immediately, peaking in mid-April 1994, and the genocide was almost finished towards the end of May. It is estimated that 59,000 Tutsis were listed as assassinated. Therefore the actual number of people who participated in the genocide is probably higher than the 6,884 who are presently incarcerated or on temporary release (See table 1, page 11).

Many survivors are of the view that Kibuye's population participated massively in the genocide and the high number of accusations are in line with that view. This causes much discontent among the rest of the population that reacts from time to time, as we have noted above, by expressing the words of the prisoner in Gisovu that "*all Babutus must go to prison*" and by complaining that the State was protecting one ethnic group.

Statistics from the National Department of *Gacaca* Courts regarding Kibuye courts show that about 9% of accused persons would be in Category 1 and 63% in category 2. This means that about 16,900 people (or more if category 3 crimes are included) would have to be tried for serious crimes of genocide.

These estimates allow us to conclude:

- ✓ that ordinary courts and *Gacaca* courts will have to face a considerably higher number of cases to deal with (and thus of people to be tried) compared to the number that was estimated at the beginning of the process;

²² We point out that the high number of accused is often put forward to attest to the smooth operations of the *Gacaca* process. However, it does not seem to be a good criterion for evaluating the success or the failure of *Gacaca* courts.

Out of all the people who are on the list of accused, it must be anticipated that some would be declared innocent, while others, who are guilty, will not be charged (especially members of wealthy and powerful families, who few people dare to accuse). False testimony for both the defense and the prosecution, as well as mistakes made in categorizing are to be expected in the national phase as they are already being experienced in the pilot phase. The SNJG itself acknowledges that a certain number of obstacles, such as those mentioned above, have prevented the pilot *Gacaca* courts from operating smoothly. Whatever happens, it is these courts that will have the responsibility of sorting out the truth from the lies and establishing the truth.

It also seems to us to be much more pertinent that the success or failure of *Gacaca* courts should be evaluated using the measuring stick of verdicts handed down more than the number of people accused, released or convicted. However, it is still too soon to make a decision on this point as the trials have not yet begun. (See PRI, Report VI).

- ✓ that this will obviously have a strong impact on the overall duration of the *Gacaca* process with all of its ensuing consequences²³, which is contrary to the *Gacaca* objectives of speeding up the genocide trials and reducing the prison population;
- ✓ that the risk of increasing the prison population is thus crucial;
- ✓ that in Kibuye province about 2,110 category 1 accused, or 9%, will have to be tried in ordinary courts of the first instance, which translates to years of work in preparing case files at the prosecution level in Kibuye province. Based on the optimum pace of 5 files per month for 4 or 5 full time prosecutors, this represents about 7 to 8 years of work.

The most important consequence of this phenomenon is, of course, that only a part of the truth is presently being heard, and it will probably take years to hear and try all of those who participated in the genocide.

We could also assume that a large part of the population would have to suffer the consequences of verdicts handed down and that fact risks causing a return of the tensions between the different communities. This could be detrimental to the search for the truth and to coexistence in the short term and to reconciliation in the long term.

As in 1997, when the Rwandan government realized that it would take at least 100 years to get through all of the genocide cases, ten years after the genocide, the legal equation seems once again difficult to solve. All hopes are focused on the *Gacaca* courts, which today bears the heavy responsibility of trying these cases. Further consideration seems necessary for again finding a realistic solution, a pragmatic compromise so that justice is done in an equitable manner.

Certain measures, including temporary and conditional releases, have already been taken since January 2003, demonstrating a realization of this quantitative challenge. Presently within the government (SNJG, Parliament, etc.), discussions have taken place on the possibility of handing down suspended prison sentences after conviction. This seems to be a conceivable and interesting solution, especially if it is combined with a sentence of community service representing not only half, but in the entire sentence.

It may be conceivable to categorize the accused in a more precise manner and to adapt the sentences accordingly, in order to avoid overcrowding which will be fatal to the *Gacaca* courts. A revision of the categorization of accomplices²⁴ will also lead to differentiating them from the true perpetrators of genocide crimes. For example, a return to the definition of complicity retained in the Organic Law of 1996, where only ‘*essential aiding and abetting*’ is punishable, could result in a considerable reduction of the number of accused of such crimes.

However, although these measures constitute solutions to managing the increased number of people to be imprisoned after trial, it must be noted that they risk creating misunderstanding and deeply shocking the survivors who will interpret them as a form of amnesty. It is essential then to accompany the measures with a campaign to raise basic awareness on the issue.

²³ The SNJG timetable, stipulating that the pilot courts should have finished categorizing the cases of accused by the end of April 2004, has turned out to be difficult to keep and detrimental to the quality of individual files and the categorizing process itself. Some *Gacaca* courts in Kibuye were not able to accomplish this, were not able to summon the accused to be heard before the court or have not properly filled out the case files. In some courts the benches have started to meet twice a week to meet the timetable requirements.

²⁴ For a more detailed discussion on this point see PRI - Report VI

C. Truth that Causes Fear

We couldn't help but notice through our interviews that reconciliation takes on different forms depending on the community in Rwandan society. For survivors, reconciliation goes first and foremost through a legal process (preferably through the normal judicial system, but if that is not possible, at least through the *Gacaca* court system). Moreover, it must be accompanied by a revelation of the truth and apologies from the perpetrators of the crimes.

(...) unity and reconciliation rests on the act of telling the truth without reservations. If you find the person who caused you problems, you tell him all that he has done or you take him to court which will punish him. If he shows any desire to ask forgiveness by telling you the truth and showing you how he has caused you harm and he accepts to reimburse you if possible, or on the other hand shows you his inability to do so. If you think yourself capable of putting off this debt that he owes you, you can do it, because, the important thing is to tell the truth. But if he continues to deceive you, that shows that he is proud of what he has done. In my opinion he plans to repeat the offence. That is why I say that if sometimes the people don't tell the truth, I think that there are some among them who are happy about what happened because they don't want the perpetrators of the crimes nor the rest of the people who are alleged genocide perpetrators to be punished.

- Adéon, a survivor, 19/03/04 Nyakarambi cell, Sanza sector, Budaba/Kibuye -

This same legal process is detrimental to reconciliation of the population and especially the accused genocide criminals and their families, since it generates new accusations.

Furthermore, unveiling the truth could pose some problems. In particular, it could revive trauma in the survivors. IBUKA as well as PRI has made that observation²⁵:

The problem of being afraid to participate in *Gacaca* courts for fear of coming out traumatized is also being posed in Kibuye province. This fear is aggravated by the experience that some survivors have had in the *Gacaca* courts. The sixth and seventh sessions [for preparing the *lists of accused* and the *individuals case files of the accused* followed by categorization of crime perpetrators] constitute the key to this problem (...) These divisions, survivors/others [Tutsi, Hutu], are found [not only within the population, but] also on the judges' bench in certain cells in Kibuye province.

- Ibuka, 2003, pp. 11-12 -

Revealing the truth can also set off retaliatory acts or fear of retaliation on both sides:

Genocide survivors in Kibuye province are stigmatized. This is evident, for example, during happy or sad circumstances such as a funeral, bereavement and even during parties. Survivors who testify in *Gacaca* courts are particularly affected. Since the end of the war, some survivors have moved into business areas, far from their fields since their homes were destroyed and they were afraid for their safety. When some of them tried to build their houses in order to return to their village, their neighbours destroyed them.

- Ibuka, 2003, p. 18 -

²⁵ IBUKA, *Rapport d'activités des agents du projet d'appui aux victimes du génocide dans le processus des juridictions Gacaca*, Kigali, September 2003

A Hutu elder noted the same phenomenon of fear among the Hutus. They feel compassion for the survivors who are, according to him, forced to reconcile. He himself would not have the courage to do it:

People are afraid to tell the truth. They think that if they denounce such and such a person, they in turn will be denounced by them. However, it is very easy to know all of the people who participated in the massacres and genocide. All we have to do, those of us who saw it happen, is to denounce them. The prisoners also know who was with them when they went to kill people. Now, I would like to remind you that all of the acts were carried out in broad daylight. The problem is that the people do not want to say what they know, not because they don't know anything, but because they don't want to talk.

- Nkaka, 18/7/03, Nyakarambi Sector, Budaba district / Kibuye -

We conclude that discovering the truth, accompanied by a rewriting of the past, of Rwandan history in general and of the genocide in particular, seems to be more difficult than previously thought (see PRI - Report I).

People are often afraid and the different groups, such as the survivors and others, see the past differently. In mid-1999, at the beginning of the debates on the *Gacaca*, it was much hoped that the "truth", meaning the facts, would be established. As the elder said above, we thought that everyone had seen what happened and that people would talk. Even talking about the rapes did not seem to be a problem. Also, as it was said, perjury would be punished with sentences of up to 3 years in prison. The new *Gacaca* law has reduced the length of this sentence.

We saw that the reality is often very different. The majority of people attending the *Gacaca* court sessions do not testify. They adopt a wait-and-see attitude, leaving the survivors and inmates or released prisoners with the task of incriminating others. This attitude makes the genocide survivors more and more exasperated by the silence of their fellow citizens, often leading to increased distrust and frustration among the two groups.

If we favour a classic approach to justice, to find out the "truth", the facts, is one of the main objectives of the *Gacaca* courts. Given the circumstances described above, this objective is very difficult to attain. On the other hand, if we favour the reconciliation aspect, the *Gacaca* courts could perhaps contribute to the birth of an idea that is more negotiable and more acceptable to both sides, of the concept of "truth" and its interpretation in the determination of guilt, innocence and the just punishment for crimes.

According to one survivor, Rwandans do not have a choice, they must reconcile with each other and the general population is in favour of a peaceful cohabitation:

Unity and reconciliation are essential, since, however that may be, we must all live together in this country. So we must not live in conflict, because war does not benefit anyone. I think that there is no part of the population that believes they are blessed through war or no part that believes they have peace and another does not. Me, I accept them and I admire them. The only thing I see that could lead to this unity, is the truth.

- Adéon, 19/03/04 Nyakarambi cell, Sanza sector, Budaba/Kibuye -

IV. Healing the Wounds: From Confession to Forgiveness and Reconciliation

As we have indicated above, the confession procedure such as it has been implemented in Rwanda has two characteristics:

- on the one hand, it allows the sentences of inmates to be reduced (temporary release while awaiting trial, reduced sentences and the possibility of carrying out part of the sentence in the form of community service);
- on the other hand, in order to be admissible, the confession must lead to an apology from the person confessing.

The first characteristic, although easily explained by the desire to encourage confessions, poses a certain number of problems. In particular, it automatically ignores those who would not confess because they are innocent.

The negative effects of the confession policy were observed in Gisovu prison²⁶, Gikongoro province where, as in other prisons in the country, since 1998 the authorities have been encouraging the inmates to hold their own *Gacaca*. A *Gacaca* committee, the '*Ukuri* (truth) committee', prepares a list of crimes committed and their perpetrators and separates the alleged genocide perpetrators into the different categories.

In March 2004, out of 3,364 alleged genocide perpetrators in the prison, the numbers were as follows:

- those who confessed: 2,132
- those who were accused by their fellow inmates but refused to confess: 320
- those who were declared innocent by their fellow inmates: 327
- those who were not accused and who did not confess to any crime: 530

Prisoners already convicted are not included, which explains the difference between the total number of people listed and the number of alleged genocide perpetrators in the prison (3,364).

As the two latter groups were in the delicate situation of not claiming a temporary release without a confession, it was observed that some inmates tried to confess to crimes that they did not commit with the hope of being released from prison. It was also observed that in March 2004, some common law inmates tried to have themselves registered on the list of those accused of genocide who had confessed, hoping to benefit from a temporary release.

In addition, members of the *ukuri* committee often pressure category 2 alleged genocide perpetrators to confess and some of them were even put into solitary confinement inside the prison for several days, or punished in other ways, in order to make them "aware" of the need to confess.

But the sincerity of the confessions must be questioned. Although all of the "confessed" inmates say that they have told the entire truth, some of them admit, especially during interviews with people from outside of the process, that the reality is very different and that, for example, the forgiveness they are asking for while in prison doesn't make much sense. This forgiveness is "fake" and is only aimed at allowing them to "earn" temporary release.

From then on if, during the *Gacaca* hearings subsequent to this temporary release, the survivors feel that the forgiveness requested is artificial and without true expression of remorse, which is often the case in their opinion, then it is easy to understand how much this could jeopardize reconciliation.

²⁶ 3,809 inmates including 9 infants, 3,364/3,800 or 88.5% are alleged genocide perpetrators.

What influence could these negative effects have on the reconciliation process?

According to the experts working on the concept of “reconciliation”, apologies, if they are sincere, could have a certain impact and could lead to a form of symbolic healing (IDEA, 2003, p. 85). The apology however, must be accompanied by remorse and an acknowledgement, by the perpetrator of the crime, of the harm that he has committed.

Benoit Guillou²⁷ states that the forgiveness requested by the perpetrator of the crime and granted by the victims could help to open a new horizon by restoring positive feelings, characterized by empathy, kindness, and respect. As we have seen above, this forms part of the process of reconciliation.

However, the nature of the confessions made, either in detention or before the *Gacaca* court, is often far removed from this “sincerity”, an essential condition for participating in this necessary “symbolic healing”. The majority of survivors see this inadequacy in the “quality of the confessions”. They consider the confessions of inmates and released prisoners to be neither sincere nor complete and that the truth about what occurred during the genocide does not come out enough.

Consequently, they hesitate to forgive. They are then confronted with very strong social and political pressure to “reconcile” with the released prisoners who ask for it in spite of everything. Under these circumstances, forgiveness is experienced as an obligation for the survivor and, in the same way that the sincerity of the confession is questionable, the sincerity of the forgiveness accorded must also be questioned.

So, according to our Hutu elder:

People must tell the truth about what happened. If they don't there will be no reconciliation. But if the truth is told, I think that we can achieve it. For me, personally, I cannot expect to reconcile with the one who has killed the members of my family. At the time, to balance things out, one first thinks about vengeance. The State has prohibited us from taking revenge against those who have killed the members of our families.

Whether they like it or not, the genocide survivors are obligated to accept the plan adopted by the State. Through its prefects and ministers, the State only talks about reconciliation. How can the survivors be opposed to reconciliation? They have no other place to express their wishes. Instead of seeking a solution to this crisis, the State is proceeding with the release of alleged genocide perpetrators. How can one talk about reconciliation while the State also does not want to keep these people who have killed our loved ones far from us (in prison)?

- *Nkaka, 18/7/03, Nyakarambi Secteur, de Budaba district / Kibuye -*

Indeed, the release of thousands of prisoners, prior to trial and also before implementing the community service programme, is often perceived by some survivors as a sort of “unacknowledged” amnesty, and a return to impunity (see PRI - Report IV, 2003 and Report VI, 2004).

There is no doubt that this perception curbs reconciliation between the different groups. Although they know that these ex-inmates must still appear in the *Gacaca* courts to be tried, and that they are only on temporary release, the survivors generally do not consider these releases as an acceptable way to have justice done.

²⁷ Guillou Benoit, *Dix ans après le génocide au Rwanda. Les formes alternatives de lutte contre l'impunité*, Paris, April 2004 (Draft)

However, there are always exceptions, and the following case confirms that the contributions of the inmates and those released are sometimes appreciated:

We have asked prisoners to testify in certain cases, which the general population did not want to do. But we have gotten necessary information from them.
Released inmates have also helped us a lot in our *Gacaca*. We asked everyone to testify on what the people did not want to say. They contributed a lot to the collection of information on different cases. This is why the *Gacaca* in our cell is progressing quickly²⁸.

- *Gacaca judge, Buseso cell, Gihombo sector, Rusenyi district /Kibuye, nov.2003* -

The fact remains that if the confession procedure and guilty pleas are the backbone of the *Gacaca* process, and if a major and also legitimate effort is made to “promote the status of confessions”, then everyone must be aware of the fragility of a legal process that rests almost exclusively on confessions, and this without the least verification.

The *Gacaca* is still a process that is first and foremost legal and, among the requirements for seeking the truth, the verification of confessions made is mandatory.

This is also the price to be paid for reconciliation.

V. Reparations for Reconciliation?

Reparations or compensation²⁹ for victims is also one of the key elements of the reconciliation process. These reparations could include both financial and non-monetary measures, and the beneficiaries could be individuals, groups or communities. In any case, and whatever form it may take, reparations (as we have seen on the issue of forgiveness) constitute a form of symbolic healing for the losses suffered. It is of course preferable that the reparations go hand in hand with uncovering the truth and thus the exercise of justice.

To this end, the government has started two complementary processes which will complete and go along with the *Gacaca* process. They are the implementation of community service as a means of reducing part of the prison sentence and compensation for the victims.

Under the law creating the *Gacaca* courts, a sentence of community service is an alternative to imprisonment handed down by these courts. Anyone convicted could, with their consent, be handed this sentence, in order to carry out non-paying work in the community for a determined length of time, in a host institution.

As for the *Gacaca* courts in general, the goal of introducing community service is to fight impunity, repair the social fabric and promote reconciliation. Following the tradition of the *Gacaca*, community service could be introduced and explained as a true restorative sentence for the population and thus become an integral part of the reconciliation policy.

²⁸ However, 5 months later the reality is quite different. Among the 5 cells of Gihombo sector, only one *Gacaca* court has finished categorizing all of the accused before the deadline, which was the end of April, 2004 and it wasn't Buseso cell but Gasharu.

²⁹ *Compensation* refers especially to all financial damages resulting from violations: *Reparations* are a wider concept and includes the return of goods, compensation for the damages or loss suffered, reimbursement of expenses due to victimization, providing services and a restoration of rights. See <http://www.unhchr.ch/>

The genocide occurred only ten years ago so the emotions caused by this event are obviously still very strong. Many people, whether direct victims or not, are deeply traumatized. This situation could make community service in Rwanda a radically different experience from that of other countries, where it is essentially only applied for minor offenders. In this context, the idea of reparations is extremely important and even bigger challenge for implementing the community service sentencing programme.

As for the reparations process³⁰, it was supposed to have been implemented since the year 2000³¹ but it still has not actually begun.

Many survivors experience this situation as a marginalization of their group and they sometimes do not hesitate to show their anger. Inasmuch as they have now lost all hope of being compensated, whether by the perpetrators of the crimes (who most often are themselves very poor), or by the State (even though there is a sort of consensus between the prisoners and the survivors on the fact that the reparations is above all the responsibility of the State) they sometimes have to find other solutions which are at times questionable. (See PRI, Report V, April 2004).

These reparations, increasingly frustrating as they are long-standing, obviously cannot be part of the reconciliation process.

At the same time that the survivors are experiencing the frustration of not seeing anything coming to them, it must be noted that the issue of compensation now goes beyond the sole members of this group.

At Kibuye – during a meeting of the Commission Nationale d'Unité et de Réconciliation/CNUR (National Commission for Unity and Reconciliation) which took place on December 10, 2003 in the Bwakira area (Budaha/Kibuye), (see Annex) – the idea of not compensating only the survivors was shared by all in attendance, survivors and others. According to the attendees, the creation of a compensation fund for genocide survivors must be accompanied by the creation of another fund to compensate the following:

- ✓ released inmates found innocent,
- ✓ beneficiaries of individuals deceased in prison who were innocent,
- ✓ beneficiaries of individuals killed after the genocide,
- ✓ released inmates found innocent who lost their jobs.

The attendees at this meeting went even further by expressing the wish to combine the compensation schemes for all groups who claim to have a right to it in one way or another. The implementation of one “assistance fund for vulnerable people” was mentioned which could combine the funds of FARG, Minaloc, etc.

Through these situations (frustrations and new demands), one can see that the question of compensation is extremely sensitive and seems to now involve many sectors of the population who see themselves as victims, either of political events, or of institutions and their dysfunction. These demands, sometimes exaggerated, often legitimate, must receive a response that is adapted and not likely to jeopardize the reconciliation process.

In the last few months, the only response to these questions has been the discussions carried out as part of the work to reform the *Gacaca* procedure, which is still not finished at this writing.

³⁰ See the doctoral thesis of Heidi Rombouts: *Victim Organisations and the Politics of Reparation : A Case Study on Rwanda*, UvA, Antwerpen, 2004

³¹ The law concerning compensation for genocide victims has still not been enacted by the National Assembly although a new bill setting up the Compensation Fund (Fonds d'Indemnisation (FIND)) has already been discussed by the Cabinet in August 2002.

The *Gacaca* courts, as implemented under the Law of January 2001, must play a fundamental role in the field of reparations for damages, insofar as they contribute to preparing the lists of victims and the damages they have suffered.

How will the new law amend this provision in order to closely respond to the expectations of the population?

It is to be hoped that the reforms will take this reality into consideration and will especially give the *Gacaca* a wide enough leeway so that the people who participate in these court sessions will take ownership of this issue.

In any case, it would be necessary to take the opportunity of this reform to restart the dialogue between the authorities and the communities in the population, mainly the survivors. Restarting the dialogue on compensation will in itself be an important guarantee in the process of reconciliation.

Conclusion

In this report, we have studied the impact of the *Gacaca* on reconciliation, especially in Kibuye Province. The starting point was the model of reconciliation mechanisms developed by IDEA that we have adapted to the specific situation in Rwanda.

The government has made reconciliation one of the cornerstones of its policy and the *Gacaca* courts the main political instrument for the execution of this policy.

However, it seems that for various reasons, which we have attempted to analyze in this report, the quality of co-habitation between the different social groups is progressing only very slightly and the functioning of the *Gacaca* process, especially in “dealing with” confessions, often causes more problems than it solves.

In conclusion, we wish to review the main points examined in this report:

- Confessions and forgiveness: there are many, but they lack the necessary quality

Confessions and asking forgiveness by the criminals and granting forgiveness by the victims, if they are considered sincere, are important elements of reconciliation. In principle, they could contribute to healing the victims’ wounds and restoring a bit more positive feelings between the perpetrators of the crimes and the victims.

We have seen that the confession procedure is the “cornerstone” of justice for the genocide, and thus for the *Gacaca*. It aims to balance the demands of restorative justice with those of reconciliation.

Although the promotion of confessions has had remarkable results, as for their number, we were able to determine in the case of Kibuye that these confessions were not sufficiently verified, causing a series of difficulties:

- incomplete confessions, often made partly under a form of socio-political pressure. They do not seem sincere (lack of remorse) and are actually received as such by the victims;
- forgiveness not granted immediately, or granted unwillingly, also under a form of socio-political pressure. For many survivors these confessions do not lead to the truth;
- continued incarceration of inmates who do not confess and who perhaps have valid reasons not to.

The quality of confessions made under the described conditions by the people accused of genocide, either in prison or in the *Gacaca* courts, often lacks a great measure of the sincerity necessary for achieving a “symbolic healing” and thus reconciliation.

- Is the *Gacaca* Restorative Justice?

Considering the preparatory work of the *Gacaca* courts, it is conceivable that when the process is launched through the country, there will be a large number of accusations involving people who are presently free. It is estimated that the number of accused still incarcerated in Kibuye Province is 5,060 and the number still free is about 18,400 (including those on temporary release). Of these 23,460 accused, more than 70% could be tried for serious crimes of genocide and be placed in categories 1 and 2.

It is difficult to think that this quantitative data would not have logistic, legal and financial consequences. And it could also impact reconciliation due to increased mutual distrust, fear and a

feeling of insecurity which exists between Hutus and Tutsis. The new accusations risk presenting a major obstacle to the reconciliation process.

Therefore, there is a need to now consider looking into other mechanisms for establishing the truth as well as for trying and punishing the large number of accused. One of these mechanisms could be, for example, *suspended* sentences linked to sentences of community service. Revising the categorization of accomplices would also contribute to finding a solution to this problem.

While for the survivors, reconciliation with the (alleged) genocide perpetrators and their families goes through the judicial proceedings, for the perpetrators, new accusations in the *Gacaca* courts completely stop this reconciliation. Under these circumstances, the *Gacaca* courts are probably not the most desirable spaces for dialogue, where the truth could be told about what occurred during the genocide. Although co-habitation exists today within the population, between those involved in the genocide and the victims, it could quickly deteriorate if the groups increasingly do not accept each other. New accusations, most likely followed by new arrests, could feed this distrust and destabilize the social climate.

- Reparations:

Our observations show that reparations for the victims, one of the key elements of the reconciliation process, which must be accompanied by uncovering the truth, risks not being achieved. Indeed, there has been little progress made on the issue despite the promises of compensation made several years ago to the survivors. Furthermore, other victims – in addition to the survivors – are demanding compensation, for example, the people released from prison who were innocent.

- The Context:

The *Gacaca* courts fit into a context that includes more than justice and reconciliation. They are also concerned with security at the provincial level and with the level of development in the region. Although Kibuye is now peaceful, poverty in this province, more acute than elsewhere, is a negative influence on the reconciliation process. This is particularly revealing in the often incomplete families of survivors. They generally live in very vulnerable conditions, without much hope for the future, without hope for reparations from the State for the losses they have suffered and without hope that the families of the genocide perpetrators (usually poor themselves) could one day compensate them.

Another contextual factor which enters into play for Kibuye is the question of the Rule of law. For the prisoners and the Hutu population the present justice system is unfair. The inevitable consequences of this are to increase the distrust between the different groups.

Finally, the fact that there is not yet a version of the history of the genocide that is acceptable to all sectors of the society, also does not help to establish the truth locally about what happened during the period from 1990 to 1994. However, the fact that the government is fighting against the widespread idea that Hutus are the genocide perpetrators is already very positive because it makes it clear that some Hutus also risked their lives to protect their compatriots.

Recommendations:

We recommend the following:

1. Put in place legal solutions adapted to the situation of **prisoners who have not confessed** and who could be innocent:
 - a. Speed up the procedures that concern them,
 - b. Make them a priority,
 - c. Order them released under certain conditions;
2. Ensure a **true verification of confessions** is carried out by the people and judges;
3. Organize presentations to the Rwandan people which will **celebrate examples of men and women** who acted differently during the genocide and who risked their own lives or sometimes those of their families to save Tutsis or other persecuted people;
4. During the first *Gacaca* court sessions, make a separate list of those who **died during the period from 1990-1994**, not from genocide crimes but from other causes, such as acts of vengeance, which could be considered war crimes and come under the jurisdiction of the *Gacaca* courts.
These lists could then be passed on to a special commission (to be created) for further investigation;
5. Produce a **version of the history of the genocide** that is acceptable to all the different groups in Rwandan society;
6. Take a fresh look at the **Community Service** sentence, so that it is no longer an accessory sentence to the principal custodial sentence, but a principal sentence in itself – *suspended or not* – for those who had never been incarcerated. It could also serve as a restorative sentence for the benefit of victims so as to promote return to the community and social cohesion;
7. Consider reviewing the **categorization of accomplices**. In our opinion, a return to the definition of complicity retained in the organic law of 1996, where only '*indispensable aiding and abetting*' is punishable, is appropriate and would no doubt lead to a considerable reduction in the number of people accused of such crimes;
8. Restore the dialogue between the authorities and the different groups in the population, mainly the survivors, regarding the issue of **reparations and/or compensation** in order to encourage the process of reconciliation.

ANNEX:

Report on the meeting of the Commission Nationale d'Unité et de Réconciliation /CNUR (National Commission for Unity and Reconciliation) of December 10, 2003 in the Bwakira area (Budaha/Kibuye).

On December 10, 2003, a meeting (round table) of the Commission Nationale d'Unité et de Réconciliation /CNUR took place in the office of the former Bwakira commune, Budaha district. After a district representative introduced the speaker, the CNUR representative for the province first thanked all of the guests for having responded to the invitation and apologized for arriving late (the meeting was scheduled to start at 9:00 a.m. and he arrived at noon).

He then announced the agenda:

1. Report on the ideas collected from Kibuye residents regarding unity and reconciliation, report updated during the visit of His Excellency the President of the Republic to Kibuye province on May 5, 2001.
The report contained the following points:
 - A) The positive indicators on unity and reconciliation in the daily life of the Rwandan people,
 - B) The negative indicators (of division) on unity and reconciliation in the daily life of the Rwandan people.
2. The second point consisted of seeing what has not yet been accomplished today after the transition, with a view to correcting the situation. As with the first point, this consisted of noting:
 - A) The positive indicators leading to unity and reconciliation among Rwandans at the district or provincial level,
 - B) The negative indicators which prevent unity and reconciliation of Rwandans at the district or provincial level.

The Various Problems and Recommendations

For *the first point*:

A. Positive Indicators

- Removal of the term "ethnic group" from identity card,
- Setting up of the CNUR,
- Return of 1994 refugees,
- Right to residency and free circulation (elimination of residence permits and passes),
- Change of the President of the Republic without violence, etc.

Positive points related to the objectives of unity and reconciliation:

- Inmates who have pleaded guilty and asked for forgiveness,
- False accusations and arbitrary arrests have been reduced,
- Ex-FAR soldiers integrated into the national army,
- Terms *Ibipinga*, *Interahamwe* are no longer used,
- Hutus are not systematically considered *Interahamwe*
- *Ingando* were for all ethnic groups,
- The population has great faith in the *Gacaca* courts,

- Mixed marriages and sharing (*Gusangira* = to share) between the two ethnic groups are restored,
- Discrimination removed from the constitution of associations,
- Survivors are no longer the only ones responsible for burying the bones of genocide victims.

B. Negative indicators

- Firing of State employees without prior notice,
- The population's ignorance of the law,
- Authorities do not honour their commitments,
- Persistent rumours,
- Corruption in legal institutions, etc.

Negative points related to the objectives of unity and reconciliation:

- Lack of investigation into murders,
- Genocide survivors who demand more than what they owned previously,
- Terms used by some people that are hurtful to the survivors: *Gucuruza* genocide: genocide, bargaining chip,
- Meetings organized by genocide survivors that the general population knows nothing about,
- Survivors and the Tutsi ethnic group considered one and the same,
- Words spoken on the days of mourning which hurt some and traumatize others,
- The Ibuka association with its verbal attacks,
- No legal action taken against people who have made false accusations,
- Existence of two programmes for assistance to orphans (FARG - Fund for Assistance to Genocide Survivors - and Minaloc), which is interpreted as being ethnic: FARG for the survivors and Minaloc for the others.

The *second point*:

A. Positive Indicators

a) Political life, security, the economy, education, health

- Massive participation in elections of local authorities,
- Security of property and persons,
- Financial assistance to agricultural and economic associations,
- Harmonious cohabitation of the population and the army,
- Creation of mutual health insurance agencies,
- Students admitted to secondary schools based on their intellectual capacity, etc.

b) Unity and Reconciliation

- Segregation has been abolished in all areas of the life of the population,
- Good relations between the two ethnic groups (sharing drinks, associations, mixed marriages, help in case of illness to go to the dispensary or in case of attacks, etc.),
- Good relations between the population and repatriated refugees,
- Important role played by the church in the reconciliation of Rwandans.

B. Negative indicators

a) Political life, security, the economy, education, health.

- Lack of participation in community service (*Umuganda*),
- A wide gap in salaries,
- Corruption which is still evident in some state departments,
- Sentences handed down are never served,
- People are still afraid of the authorities. They do not talk about what is wrong, etc.

b) Unity and Reconciliation

- At present *Gacaca* courts have not started up throughout the country,
- The Fund for Assistance to Genocide Survivors (FARG) should be merged with other funds (Minaloc, HCR). Having only one fund would erase the feeling of division between Rwandan children.

Note: *Someone gave an example of students assisted by Minaloc for payment of school fees who were sent away during the exam period as Minaloc had not released the money. But the students assisted by FARG did not have this problem.*

- The compensation fund for genocide survivors should go hand in hand with another fund to be created for compensating:
 - Innocent people released from prison,
 - Beneficiaries of people deceased in prison who were innocent,
 - Beneficiaries of people killed after the war,
 - Innocent people released from prison who lost their jobs.

Note: *Everyone (survivors and others) agreed to the idea of not compensating only survivors, as well as the creation of one assistance fund for incapacitated individuals which would merge FARG, Mwanukundwa, HCR and Minaloc into one, instead of having the survivors assisted by one fund, another group by a different fund, etc.*

The **third point** whose objective is various problems and recommendations:

- Creation of agencies of the Unity and Reconciliation Commission down to the local levels,
- Motivation for handing over responsibilities for reconciliation to the local authorities (local defence, cell authorities, *Nyumbakumi*, *Inyangamugayo* (*Gacaca* judges), representatives of women's organizations, etc.)
- Authorities should respect the start time of meetings, then the population would do the same,
- Adjustment of salaries to market rates,
- Opening up the region (Kibuye-Nyabisindu Road) and restoration of the telephone antenna on Nzaratsi Hill so that the region could have access to telephone service,
- Free education for the junior secondary school years as was promised during the election campaign.

Observations

It was mentioned during this meeting that the local people spoke without fear of the local authorities sitting beside them.

The CNUR representative assured the people that everyone was free to express their ideas without fear of repercussions.

The issues that were not brought up during this meeting – as in other places where the *Gacaca* courts had already been launched - are:

- 1) Prosecution of those who participated in the genocide (and who are still free),
- 2) Prosecution of those who committed acts of vengeance.

Compensation was the only subject spoken about.

The invitees to the meeting included: sector councillors, cell authorities, primary and secondary school principals, representatives of women's organizations, health centre authorities, a representative of the Kirinda hospital, elders, youth representatives, representatives of associations, Batwa representatives and others interested in this conference.

The meeting was adjourned at 6:00 p.m.

PRI, Budaha, December 11, 2003