



**PRI Research on *Gacaca* report
Report IV**

**“The guilty plea procedure,
cornerstone of the Rwandan justice system”**

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The guilty plea procedure, cornerstone of the Rwandan justice system

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Introduction

After the 1990 – 1994 genocide and massacres, more than 120 000 people accused of having taken part were put into prison. The importance of the litigation linked to this tragedy made it impossible to respect the principle of a reasonable period of remand detention¹ for these prisoners.

Changes in the penal laws authorised the detention of prisoners for a long period of time without a formal justification in their case for this detention. Indeed, a great number of prisoners at the time did not have files or if they did the files contained very few charges. In order to fix this irregularity the government and in particular the Public Ministry forced themselves to complete those files which were still empty or hadn't had a proper prosecution file put together.

Different strategies were used so as to speed up the court process for those accused of genocide: “collective court-cases” of groups of people having committed the same crimes together, “travelling” court where the courts would sit at the same location as the crimes committed, using a confession procedure and presenting the accused to the local population².

The *gacaca* jurisdictions were also set up with the aim of speeding up the judicial process and also use the confession and the guilty plea procedure which enables the accused to have a reduced sentence and to finish the second half of the sentence performing Community service (see annexe 1 – the genocide law of 1996 and the *gacaca* law of 2001 both stipulate that those who choose to confess their crimes in the genocide will be given a reduced sentence). This confession procedure has become the cornerstone of the judicial system dealing with the genocide: all are encouraged to participate (except those, of course, who are innocent). The deadline for confessions and therefore the right to benefit from lighter sentencing has been fixed at March 15th 2003.

The Presidential communiqué dated January 1st 2003 reiterates the importance of this confession procedure and the guilty plea for genocide and crimes against humanity (see below).

The confession procedure seems to have taken inspiration from the Anglo-Saxon “plea-bargaining” system whereby the defendant is allowed to plead guilty for a reduced sentence – a system which has its own problems (see Report – I). According to Ntampaka³ it also goes against Rwandan traditional law:

“When we talk of *gacaca*, two main characteristics can be pointed out: the active role played by the population in determining the laws and the conciliatory nature of the decisions taken. The custom is that it is preferable to come to an agreement than to go to court. Taking someone to court is an act of enmity and should only be a last resort.”

Confessing in front of the victims is considered an insult and an aggravating circumstance as it is considered as a show of force. In fact only those who have very strong family support may

¹ According to Rwandan law, “preventive detention is an exceptional measure which can only be used in very serious cases (such as genocide)”. Imbleau, Martin & Schabas William A.: « Introduction to Rwandan law » Québec : Yvon Blais, 1997 : 53-54

² Delvaux, Sophie : « National and International penal systems faced with the punishment of the crime of genocide in Rwanda : The *gacaca* and the challenges facing the State and law enforcement in Rwanda » ; Brussels, ULB, 2002 (thesis).

³ Ntampaka Charles : « Rwandan *gacaca*, participative, repressive justice » ; R.D.O, 2001.

confess in front of their victim: the family is then obliged by religion to avenge the person outside their family who has committed this crime on one of theirs. Revenge is carried out on the male members of the parental family of the delinquent. Normally it is the head of the family who asks forgiveness in the name of the delinquent⁴.

The observation of the public confessions carried out so far by our team (see Report – III) have confirmed Ntampaka's analysis; indeed, the attitude of the prisoners is more one of arrogance and strength than one of sincere repentance. This would also explain partly why so few people come to give evidence apart from certain survivors and some prisoners in a hurry to get out of their prison.

Encouragement to plead guilty – a characteristic common to many judicial systems around the world – and according benefit to those who do so could be detrimental to those prisoners who are innocent or who don't have a case and seems to go against the penal principle of the "presumption of innocence" creating a "presumption of guilt". However, on condition that one remains vigilant as to the status of the innocent, plea-bargaining remains most probably the best available method for speeding up the genocide court cases and to reach the objectives of the *gacaca* jurisdictions.

Recommendation: continue as much as possible the presentation of prisoners whose file are empty or not complete to the population (cf. Report I about pre-gacaca) and give them priority during gacaca sessions – even before those who have confessed.

Certain prisoners have declared that they have come under pressure to plead guilty and that the declarations recorded do not always represent what they wished to say. The following case is an example and is not the only one we came across:

« There were problems with the Magistrate's files⁵ that could lead to serious consequences: the court employees sometimes transformed our confessions and forced us to sign things we had not said. For example, if we declared having witnessed people being killed they would write down that we had been the ones doing the killing! P. from Gishamvu/Butare »

Guilty pleas : the situation at the end of 2002

The Public Ministry⁶ continues to make the prisoners aware of the benefits of pleading guilty and the procedures involved. Documents containing these confessions are then sent to the *gacaca* jurisdictions. This procedure of recording confessions is – as we have already stated – considered a key element for the eventual success of the *gacaca* programme and seems to be producing positive results:

⁴ Cited in Delvaux (2002), see note 2

⁵ Documents prepared by the Public Ministry and which gather together all of the elements of each case.

⁶ See: « The role of the Public Ministry in the *gacaca* Jurisdictions » (Legal moves taken L.O. N° 40/2000 to 26/01/2001 establishing the *gacaca* Jurisdictions) & « Relations between the *gacaca* Jurisdictions Department and the Public Ministry », s.d.

Table 1 : Number of prisoners and confession procedures by province

1. Province	2. N° of prisoners (prisons and cells) Jan. 2003	3. N° of prisoners who confessed ⁷ 31/12/02	4. % col. 3/2
Kigali-city	17 141	3 130	18,3
Kigali-rural	6 925	2 883	41,6
Gitarama	17 228	5 669	32,9
Butare	19 718	7 380	37,4
Gikongoro	4 794	2 046	42,7
Cyangugu	5 799	1 202	20,7
Kibuye	6 884	3 772	54,8
Gisenyi	2 477	1 134	45,8
Ruhengeri	1 346	242	18,0
Byumba and Umutara	3 430	431 + 440	25,4
Kibungo	15 727	4 100	26,1
Total	101 469	32 429	32,0

This table shows that in fact a third of the prisoners had confessed by the end of 2002, but that enormous differences exist from one region to the next: in the north (Byumba and Ruhengeri), the east (Kibungo), the south-west (Cyangugu) & Kigali-city, the level of guilty pleas is lower than elsewhere; this is probably linked to the different way in which the genocide happened, the zones which were most affected by the war⁸ and the specific circumstances of each zone. What is surprising however is the fact that in the provinces where the numbers of genocide victims were among the highest in absolute and relative terms (like Butare, rural Kigali, Gitarama & Gikongoro), the percentage of confessions is above the average. The city of Kigali is an exception (relatively few confessions). Kibuye – where the genocide was particularly intensive and vast – now has the highest percentage of confessions. These differences may also be attributed to the different functioning methods of the magistrate's courts.

The following table, based on data from the RCN⁹, shows a rapid rise in the numbers of confessions collected in the six last months of 2002. The start of the *gacaca* jurisdictions in 12 pilot sectors (June 2002) also incited certain prisoners (not the 'intellectuals, more from the 'working classes') to confess: 65% of all of the guilty pleas were lodged in the last six months of 2002.

This rise is most certainly also due to a higher awareness among prisoners thanks to the Ministry's campaign¹⁰ to inform prisoners of the advantages of pleading guilty and confessing to their crimes.

⁷ According to the information in the « Table of what is involved in the Presidential communiqué as set out by prosecutors, representatives of the National Police in the provinces from the meeting on January 7th 2003»

⁸ In provinces such as Ruhengeri, Byumba and Umutara a number of inmates refused to file guilty pleas until the government had recognised the human rights violations (revenge and repercussions) presumed to have been committed by the FPR soldiers and survivors among the Hutu population. (see Report-I).

⁹ RCN-Citizens' network : General table of confessions 2001-2002, Kigali January 03

¹⁰ See: « The role of the Public Ministry in the *gacaca* Jurisdictions» (Legal moves taken L.O. N° 40/2000 to 26/01/2001 establishing the *gacaca* Jurisdictions) & « Relations between the *gacaca* Jurisdictions Department and the Public Ministry », s.d.

Table 2 : Confessions gathered by the Magistrate’s office during the 2001-2002 (data from RCN January 2003 – covers up until 31/12/02)

Magistrate’s Office	Confessions in 2001	Confessions in 2002			Total 2001-2002
		January - June	July - December	January - December	
Kigali	4 876	1 200	7 884	9 084	13 960
Nyabisindu	-	4 438	9 573	14 011	14 011
Ruhengeri	224	128	3 033 +	3 161	3 385
Cyangugu	-	-	-	-	-
Total	5.100	5.766	20.490	26.256	31.356
%	16,3	18,4	65,3	83,7	100,0

Within the prisons just as among the population (for example at Umutara), certain people continue to believe that there will not be an amnesty for those who confess, that it is just propaganda on the part of the government. They are convinced that it is impossible that a person who has killed can move back up the hills and live there! In a number of prisons the inmates express similar worries. An inmate from the Gisenyi prison who has confessed said:

“The state wants us to confess but isn’t helping us. Our families are under threat, our brothers are hunting out our wives and children... the State should do something, especially the local authorities, particularly as the rumour is going round that we will be killed eventually.”

Often the worries are exacerbated by certain negative experiences or rumours going round the prisons such as :

Only a year ago, B. was found innocent by the First Instance Court in Butare in a judgement dated December 1st 2000. After the declaration of his innocence B. couldn’t leave the prison as the survivors in his native region demonstrated against his sentence and he was thus kept in prison and died there before the problem could be solved.(Umuseso, Nov. 2001)

The *gacaca* Jurisdictions: the population is reticent about confessing or testifying

Among the free citizens who are participating in the *gacaca* jurisdictions, with the exception of the survivors, very few are prepared to testify or confess and if they do the crimes involved are that of pillage and not of murder: they can’t see any direct advantages in pleading guilty.

For example, in the seven cells of the Gahini pilot sector, up until the end of the month of August there were four recorded confessions (three for pillage – one of which was rejected – and one case of murder).

There are however some rare exceptions, like for example on the Gisenyi pilot sector where – even before the *gacaca* session had begun – a certain F. from the Rukaragata cell pleaded guilty to murder:

“ I decided to tell nothing but the truth, up until now I’ve been at home and not in prison but I’ve decided to plead guilty to being a criminal: On the night of the 27th of April 1994, I myself in the company of a Mr. A. from this cell and others, took out 14 people who we then threw into the waters of Lake Kivu. I was in the company of 16 other people (who’s names he gave). The innocent people whose lives we took are the following (he gave the names of 7 victims). I cannot remember the names of the other

innocent people we murdered but I will remember them and give the names over to facilitate the jurisdictions.

I plead guilty to having stolen the slates from the house of Mr. N and A in the company of three people... (he gave the names). He finished up by saying: "In particular, I fall to my knees in front of the whole of Rwandan society and the Rwandan people, but above all in front of the families of those who lost their lives because of me, and I ask their forgiveness. "

Another person from the same sector :

" I've decided to plead guilty to the crimes I committed in 1994. I threw my grandson into the water as his father was a Tutsi, but once the justice system has recorded my act I think that my sentence will be reduced as I have confessed as a free man and I recognise that I have done wrong and have asked for forgiveness from the family as from all of Rwandan society. "

Both appear to have pleaded guilty of their own accord, after the awareness programmes carried out by the authorities on various levels on the advantages of the confession procedure.

Inmates continue to plead guilty

At the end of December 2002, the total number of inmates having pleaded guilty was already higher than the estimates presented in the first PRI report; this number may still rise to a great extent following some recent developments. The efforts by the Magistrate's office – with the help of NGO's such as RCN or ASF – seem to have had results. Most of the cases now need to be researched more fully.

The Public Ministry began the establishment of 'Magistrate's files' (one or more files per case which recap all of the information concerning the case) which must be sent on to the *gacaca* jurisdictions in the cells where the accused are suspected of having committed crimes of genocide or crimes against humanity. According to the information we have, these files are not available everywhere and sometimes arrive very late. However, the *gacaca* jurisdictions of each 'cell' of the pilot sectors have for the most part received the 'list of accused' for each cell, these are also prepared by the magistrate's office and consist merely of a list of names of people on which the magistrate's have a file. These lists are used for the most part in the 6th sessions in the jurisdictions when the lists of the accused are declared by the General Assemblies. As we mentioned in a previous report, certain legal experts have expressed their unease as to the informative role played by the Magistrate's office, due to the potential impact of these lists and files on the eventual decision-making process of the *gacaca* judges. However, up until now these fears seem to have remained unfounded.

In the Umutara (Gahini/cell Umwiga) pilot section, however, we did see a case where the General Assembly of the *gacaca* jurisdiction added a name to the list of accused after the Magistrate's had sent on their list. In general, the survivors speak of the problems of those freed by the magistrates – for the most part 'intellectuals' who should be classed in category n° 1.

The 'no cases'

In parallel with the awareness programme of the advantages of the guilty plea, the public Ministry continued to gather together the elements concerning the inmates who have 'no cases' or those whose files contain few charges (see report – I on the pre-*gacaca*). After being introduced to the population, certain inmates with no files against whom the public expressed no accusation, were provisionally acquitted. According to RCN¹¹, who is supporting the Magistrate's office in its work presenting the inmates to the public, 11 659 inmates were thus presented to the public by the end of December 2002. At the end of this presentation process, 2 721 inmates, i.e. 23.30% were provisionally acquitted which represents 2.5% of the total prison population (2 721 out of 106 980); this move does reinforce the rule of law. The others are returned to prison before appearing at the *gacaca* courts.

Recommendation : It would be a good idea to continue this preparation so as to provisionally release the greatest number possible of inmates considered to be truly innocent before the gacaca jurisdictions judgements begin at a national level (see below also).

The value of confessions

In order to qualify the confessions must include:

- a detailed description of the events of the crime,
- information on collaborators and accomplices,
- apologies for the crimes committed.

One may make a guilty plea at any time, but at the latest when the accused has been to court. It is the task of the *gacaca* jurisdiction to evaluate whether or not the confession corresponds to the truth during the public audience of the chair. After the public audience, the *Inyangamugayo* of the Chair will decide if the guilty plea is to be accepted or rejected.

It is not unusual, as one would expect, that the inmates make partial confessions (when they know that proof exists of their guilt), or confess to minor misdemeanours. Certain inmates – but also those who are not in prison – try to present credible testimonies in order to save other inmates and to accuse individuals who are deceased, in exile or who are their enemies (false testimonies).

In a number of prisons the inmates have begun their own *gacaca* with the encouragement of the authorities (see Report – I). They have established – from 1998 onwards – a list of people who have committed crimes (with names, crimes, locations etc.). These lists of events can be very useful but must be used with extreme caution. They are used by the *gacaca* jurisdictions, together with other documents, to classify prisoners in the four categories. They are also used to “pre-categorise” the prisoners who could benefit from provisional release as per the Presidential communiqué dated 1st January 2003.

The testimonies brought forward by the inmates themselves, especially for crimes as serious as that of genocide are always a problematical source of information. They often include omissions,

¹¹ RCN : « General table of presentations 2001-2002 » ; Kigali, January 2003

half-truths and/or outright lies and we follow Goldhagen¹² when he outlines that the only useful methodological position is to reject all testimonies of the accused which tend to whitewash or claim innocence if they are not confirmed by other sources of information. As a result, as long as the *gacaca* courts or the regular courts have not seriously verified that these confessions are true and sincere, they are of little value.

This point is illustrated by the following table – based on the data from the Magistrate’s office of Nyabisindu (Gitarama, Butare and Gikongoro) regarding 3 006 inmates accused of genocide who confessed. The data on the recorded confessions is probably among the most complete available as the general prosecutor of Nyabisindu is known to be one of the most efficient and dedicated. The table shows that more than 80% of the inmates are classed in Category n° 2, which corroborates the estimates we had already made (report 1). As expected, the categorisation made by the inmates themselves (in fact a group of prisoners from the central prison in Kigali – PCK) were more indulgent (according to them only 34% had participated in murders). Given that these 3 006 cases of confessions cannot be precisely verified, to find out whether they are complete or sincere, these confessions are surprising by the high number of serious crimes recorded.

Table 3 Inmates who confess by category and the crimes of homicide committed

Inmates who confess (N=3,006)	People murdered by the accused		Observations
	N	%	
People murdered without accomplices	989	5	This data shows that, according to their own declarations, the 3006 ‘génocidaires’ inmates were the ringleaders, actors, co-actors or accomplices in the murder of 19,851 people, which comes up to an average of 6.6 people per accused. If we take away those from Cat. 3 & 4 (372), the average is a bit higher: 7.5. An average which makes little sense however as the table also shows that most of the murders were not committed by solo individuals but by groups: only 5% of the murders were committed without accomplices. This shows the importance of the dynamic of the social group in carrying out a genocide. A person alone in general will not kill another person.
People murdered with accomplices	18,862	95	
People murdered in total by the accused	19,851	100	
The same inmates by category (N=3005)	Categorisation		
	N	%	- Over 80% of the « confessing » inmates are from Category n° 2 (actors, co-actors or accomplices in voluntary homicides). - Only 12 accused are placed in the Category n° 1 for rape, in other words 4 out of a thousand of all confessions which indicates it is most likely a serious underestimation of the reality of the situation and an indication that
Category 1	168	6	
Category 2	2,465	82	

¹² See his book (Daniel Goldhagen: “Hitler’s Willing Executioners. Ordinary Germans and the Holocaust.” London: Abacus 2001) about genocide testimonies by German perpetrators as a problematic source: “Aside from memory’s natural deficiencies in portraying events of often over eight (...) years past, the perpetrators have powerful motivations for concealing, evading, dissimulating, and lying. Their testimony is replete with omissions, half-truths, and lies.

They, it should not be forgotten, were giving testimony to police interrogators and other legal authorities about crimes which were considered by their own society (...), and by the world at large to be among the greatest in human history. Many perpetrators had spent years (...) prior to their testimony denying to others, whether by silence or prevarication, the degree of their involvement in genocide. Even when they could not completely hide that they had given to it their souls, their inner will and moral assent. To do otherwise was to declare to family, and friends, to their growing children, to their now disapproving society: “I was a mass murderer and am (or was) proud of it.” (...) And indeed it is easy to demonstrate that they do lie rampantly, by word and by omission, in order to minimise their physical and cognitive involvement in the mass slaughters. Because of this, the only methodological position that makes sense is to discount *all* self-exculpating testimony that finds no corroboration from other sources. Most criminals assert that they have been wrongly accused of the crimes. They certainly neglect to volunteer information about other criminal acts that they may have engaged in, of which the authorities are ignorant.”

Category 3	151	5	certain confessions are not complete. - Few of those confessing are in categories 3 and 4 and they will probably be released quite quickly.
Category 4	221	7	
Total cat.1-4	3,005	100	

Without checking on the ground it will be very difficult to establish the truth (which is one of the objectives of the *gacaca*). And according to RCN¹³: “right now this verification, the inquiry, is not taking place; because of the high number of inmates, the growing number of which are turning to the guilty plea and the lack of resources in human and equipment terms within the Public Ministry.”

The Presidential Communiqué dated January 1st 2003¹⁴

On 1st of January 2003, at everyone’s surprise, was issued a communiqué from the Presidency of the Republic regarding the provisional release of different categories of prisoners.

Even though this communiqué is very recent, and its consequences are still hard to analyse, it seemed to us to be important to study this straight away in as much as it could have an enormous impact on the way the *gacaca* programme functions on the prison system and on justice in Rwanda in general.

In the communiqué (see annexe 2), the President asks « *that for the duration of a month, the judicial instances examine, according to the law, the cases of the inmates who have confessed, and in the event that these confessions are in accord with the organic law of the gacaca jurisdictions, and if the person who has confessed risks spending more time in prison than is estimated by the organic law then this person should be released immediately pending judgement.*” The communiqué asks that “*the same measure be applied to minors between 14 and 18 at the time of the crimes for which they are charged*”. The President of the Republic recalls also the “*instructions relative to the release of those who are old or seriously ill*” and asks that “*these continue to be applied.*” He also requests the relevant authorities, “*regarding those who have already confessed and been judged before the gacaca laws came into effect (...) to examine the situation and to take the measures that enable them to benefit from the same advantages as those who confessed according to gacaca law.*”¹⁵

“*All those people with the exception of the old and the seriously ill will be released and will be transferred to the solidarity camps¹⁶, and then will be reintegrated into society. However, those who have confessed to crimes of genocide will respect the legal dispositions such as the Community service Programme.*”

¹³ RCN: “Programme of support to the formal justice system. Urgent support to criminal procedures related to the Rwanda genocide litigation – Activities report, December 2001:May 2002” RCN Kigali, July 2002, p. 48.

¹⁴ General Magistrates and Supreme Court: « Instructions concerning the implementation of the Presidential communiqué of January 1st 2003 regarding the provisional release of inmates from different categories » Kigali January 9th 2003 (includes the Presidential communiqué of 1/01/03) – see annexes 2 & 3

¹⁵ The President added ‘*this also concerns ordinary criminals who risk spending more time in prison than is intended by law*’ ‘(...) *also for those inmates imprisoned for acts of infiltration.*’ We are interested above all in those accused of crimes of genocide committed between 1/10/1990 and the 31/12/1994. The number of ordinary criminals is estimated at 3 857, the infiltrators at 505.

¹⁶ These “solidarity camps” have been set up in order to house those released from prison for a period of two months so as to facilitate their reintegration in the community and to gather as much information as possible about the genocide. The inmates will also be treated to « moral chats ».

The positive points of the communiqué

PRI is in favour of what is set out in the communiqué. The fact that 30 to 40 000 inmates are to be released after more than six years of pre-trial detention seems to be a positive thing. This will also lead to a reduction in the current serious overcrowding in the prisons and the bad living conditions that result. The fact that certain groups of minors between 14 and 18 in 1994, as well as the aged and the ill (as well as the groups of ‘infiltrators’ and ordinary criminals who should no longer be incarcerated) are to be released also reinforces the rule of law.

The equality of treatment between those already judged having confessed under the previous laws and those who confess now under the *gacaca* is also a positive move.

The table in annexe 3 based on the Magistrate’s Instructions resulting from the Presidential Communiqué gives an idea of the categories of inmates concerned by these releases and the conditions for their release.

Theories on the reasons for this communiqué

It is probable that legal reasons alone could not explain the decision of the government to take such wide-reaching measures on the justice system (amnesty, provisional release, pardons etc.), especially during the end of year holiday season. It is probable that political, economic and financial reasons were also taken into consideration. People interviewed in the hills also recalled that elections were to take place soon, and that this Presidential decision favoured “reconciliation” between the Government and the general population. The intervention of the President should therefore be seen in a broader context than the mere justice process. It should be recalled that this is not a Presidential pardon but a reminder of the law on genocide that is already in force in Rwanda and a call that this law be fully enforced. It is also possible that donor’s concerns regarding the situation in prisons have also played a role.

The government perhaps wished to get the *gacaca* programme off to a flying start by freeing many prisoners who have confessed as they are the ones who talk and have the most information, more than the survivors. The *gacaca* programme is actually taking longer than expected, while the participation levels of the population are dropping and that tensions among different members of the community arise now and again (temporary or not). The absences, late arrivals and lack of participation of the population in the *gacaca* jurisdictions have been observed by our researchers in almost all of the regions. Moreover, those who have confessed have involved many others – some talk about 250,000, although this figure is probably too high – and even if not all “accomplices” are arrested, the most serious cases will. This will entail a purely logistical aspect and raise the issue of space available in the prisons and the need to allow the imprisonment of these new accused.

Finally, this measure can be seen as a first stage in the reinsertion of prisoners before Community service starts.

The potential consequences of the communiqué

Provisional releases and solidarity camps (« Ingando »)

During the month of January, a short while after the communiqué, the first groups of old people and ill prisoners were released back into their communities (around 2 360 people).

Before the end of January the National Commission for Unity and Reconciliation (NCUR) began preparing 16 sites around the country as to receive the newly freed prisoners (around 19 500 people). These ex-prisoners will in theory stay in the *Ingando* for two months to prepare their social reintegration so that it goes as smoothly as possible. According to certain observers (WFP for example) everything seems to be in order and functioning without any problems.

The NCUR doesn't only take care of running the *Ingando*, it also runs training courses for ex-prisoners so as to enable their integration. Classes are given on the causes of the Rwandan "evil" its nature, the history of Rwanda, the genocide, post-traumatic stress and the social consequences of their re-integration once leaving prison. Very diverse themes are dealt with: unity and reconciliation, the *gacaca* jurisdictions, the principles of democracy and good governance, legislative, executive and judicial powers, justice and human rights, development strategies for Rwanda, the role of the population in security maintenance, the fight against paedophilia, AIDS, malaria and civic education about the elections.

The authorities also hope that the time spent in the solidarity camps will enable them to glean more information about what happened within communities during the genocide.

What truth ?

Great caution will be needed to check the confessions and ensure that they are "complete and sincere". However, it does seem that in some places, not all necessary caution is taken before releases are decided. For example at Byumba it seems that the Prison Directors, the *gacaca* commission of the prison and the Magistrate's office are using the results of the *gacaca* in the prisons in order to pre-categorise the inmates who can be released. It should be recalled here that the decision of whether a confession should be accepted or rejected is one of the responsibilities of the *gacaca* courts.

Doubts were also expressed by Rwandan correspondents over the phone during the radio programme « Revue de la Presse »¹⁷: "there isn't enough time to carry out serious inquiries on the freed inmates...". However the Ministry of Justice affirmed its belief that no well-known criminal would be released. The decision to release the inmates will not be taken by one person, but by a commission of justice employees who will be working on the ground. The data they will collect will be put together with that which is gathered by the judges of "integrity" during the *gacaca* and with the information that comes to light in the solidarity camps. In theory we should be in a position to decide whether or not to send someone back to prison.

The "guests" of these solidarity camps will be asked to recount how the genocide happened in their region and therefore contribute to revealing the truth. Activities gathering together the ex-prisoners and the members of the community (survivors and others) will be organised. The authorities seem to think that this will result in more information emerging that will enable them to recognise false testimonies or false or incomplete confessions. In this case the inmates concerned will be brought back to prison. Very recent information (which we were not able to confirm yet) state that about 2 000 persons which were in the camps have been sent back to prison, probably because their confessions were found to be incomplete or false. Such "corrections" are likely to increase concerns in prisons.

¹⁷ See "Revue de la Presse" from 24/01/03 to 21h00.

Preparation, awareness and implementation

According to information which we were able to collect, it seems that the presidential communiqué gave rise to different interpretations, particularly in the beginning. Those responsible for applying this Communiqué asked themselves if they should free all of the minors or only those who had confessed and who weren't in category n° 1; whether they should free all of the seriously ill inmates (and if so, what are the criteria, is someone eligible if they are HIV positive?); is someone considered old from the age of 65 or 70 (and it is sometimes very difficult to determine people's age). The definition of "well-known criminal" (therefore category 1) doesn't seem to be very clear either: is it someone who has killed 7, 10, 20, 50 people or more? However, clarifications were soon provided by the Magistrates' Instructions which followed the Presidential Communiqué.

Finally the problem of keeping "innocent" people in detention remains as it was not dealt with in the presidential communiqué. The Minister of Justice very recently asked that "prisoners whose file do not contain substantial indications that they participated in the genocide be prepared to be taken to the solidarity camps instead of keeping them in prisons, and that meanwhile their file be completed or in case there are no proofs that they are released." This contributes to the rule of law.

The impact of the Presidential communiqué on the attitude and behaviour of those accused of genocide

Most of the prisoners with whom our researchers spoke were thrilled when they heard the Presidential Communiqué.

Note : these summaries of interviews, as well as all others following in this report, are quotes or summaries of discussions which the researchers held with members of the relevant groups. We have always tried to work with a significant number of persons in order to be representative, but these are only samples. The abstracts or summaries presented here reflect the discussions that were held, but can not be considered as the opinion of the whole group.

Nsinda inmates (16/01/03) :

We, members of the *Gacaca Amizero* group have welcomed and are very happy with the Presidential communiqué which is the right answer at the right time for our preoccupation with all of the days we have spent in detention. This communiqué came at the right time for reconciliation.

Here in Nsinda like the rest of the country; the announcement by the Justice Minister that 5 000 inmates were to be released 2 000 of which were already free was a source of great joy.

Byumba II inmates (17/01/03) :

If we had the means and the freedom we would organise a party to manifest our joy at hearing the Presidential communiqué...

We were very happy when we heard the communiqué in favour of minors, old prisoners, those who confess and the ill.

We were so happy when we heard it that some prisoners didn't sleep all night with happiness.

We were so happy with this communiqué from the President of the Republic and we commit ourselves to learn how to live in peace with the people outside.

First of all we thanked God for his influence.

The inmates are more positive and have more hope than before but they are also worried due to the lack of clarity of the communiqué. Firstly, this communiqué gave a lot of hope to certain groups of inmates who in fact were not releasable. It is difficult to erase the traces of this false hope, despite the growing awareness, which was followed by intense disillusion.

Worries/questions from inmates January 2003

Nsinda – 16/01/03

In order to reach the number of released prisoners (40 000), the communiqué made by the President will have to be followed to the letter by applying the law: in other words, release the old prisoners, children who were involved in the genocide as minors (14-18), provisionally release those who have pleaded guilty from all categories (except category 1) and release the seriously ill without basing it on any other law we do not know.

The choice that was made of the old people to be released from all of the prisons in Kibungo gives us very little hope (only 100 old people out of 18 000 inmates).

The inmates want to know what the criteria will be for the younger ones or those who confess ?

Some are saying that people will want to prevent the President's decision from being acted on: they cite Ibuka as an example... despite the fact that the releases had already taken place.

Others are waiting to see what will happen.

What about the innocent who don't confess ?

Are we being sent to the solidarity camps immediately or home first ?

How will we be able to support a wife who has had children with other men since our imprisonment ?

How will the minors who have no family left be taken care of ?

Byumba II – 17/01-03

The joy is not exactly complete : there are 70 year old men and some even older and sick prisoners who are still in prison.

The President didn't specify something for these people to be released.

People are asking why the guilty are being freed and not the innocent.

My son's wife (in prison also) has had a child with another man. I told him that he must recognise that the woman's body is the source of so much sin as she is weak and that he and others must forgive their wives. The freed husband and the other man will have a drink together to show that the freed man forgives the other man for having a child with his wife. So once we have been freed the State will have to make sure we get our wives back... we will have to know how to make our wives have AIDS tests before being « with » her after we have been freed.

Once freed the problem of our plots of land which have been distributed to other people must be examined. We should find out how to solve the problem either from the local authorities or from family... If the state asks everyone to cooperate it will work.

As a result of the communiqué there was a rise in the number of guilty pleas in the past few weeks. We should wonder how many more will happen before the March 15th deadline – if it is not pushed back again. The inmates often think that they will also benefit from the decision, and they are right according to a high ranking civil servant in the Minijust – according to this civil servant, 3 000 new guilty pleas were recorded in the week following the communiqué.

We should also ask ourselves if the 'innocent' are not going to start confessing crimes in order to be freed. Certain cases which have yet to be checked have been mentioned for example in the Gitarama and Kibuye prisons. The families of certain inmates are convinced that they are innocent but feel that in order to get out of prison one has to be guilty of theft or murder.

This category was not at all mentioned in the President's communiqué even though a Magistrate's instruction dated January 9th calls attention to the « no case » group : « *The inmates without cases or who have incomplete cases will be freed as the objective is to do justice* ».

The Public prosecutor is asked to : « *examine the files of the following cases : those who have already finished their sentences but have not yet been freed and those who have been found innocent by the court and have been reimprisoned for new crimes* ».

The impact of the Presidential communiqué on the attitudes and behaviour of the genocide survivors and the rest of the population

The general population

As expected, the reaction of the general population including the majority of the local authorities has been similar to that of the inmates. People everywhere have been talking about the communiqué and a great majority are favourable to the decision taken by the President :

A local authority (Cyangugu) : the population is very happy at the President's decision. In the beginning, the survivors said it was a privilege given to the « genocidal Hutus » but they have started to understand.

The President's decision is very encouraging, unity and reconciliation are possible. Kagame is preparing the elections. The mobilisation has started well. We are prepared to support him. It is time to move on. (some students from a secondary school in Cyangugu)

Do not mention our relative « *umubyeyi* », the president. Tell him that Cyangugu has ended the elections already. We did not expect such a decision. Not an old man (*umusaza*) no, he is not a '*umusaza*', he is a « *umutama* » (a sage), he is very intelligent. This is very interesting. Tell him he is already elected. (a farmer).

But in Ruhengeri some people seem to be fearful of the Ibuka who did not receive the presidential communiqué very well. Some women – who have had other partners and even other children – are worried about their husbands coming back (three inmates have already repudiated their wives).

In general in Ruhengeri, the population is more confident in the *gacaca* and in the possibility of a real reconciliation.

The survivors

Certain groups of survivors in the hills said they felt quite vulnerable and did not seem to be prepared to understand let alone accept such a measure. Just as for the group of inmates, an awareness campaign is not enough to correct the first reaction of anger and fear for the future, the lack of trust in the justice programme.

The survivors that our team met in the hills (but not their organisation Ibuka which supports the communiqué officially) are generally disappointed and worried:

Summary of interviews in the different sectors

In Kayove (Gisenyi) : Since the radio broadcast of the Presidential Communiqué regarding the release of prisoner, the survivors have shown a high level of discontent, saying publicly that the government might as well free every prisoner even those in category 1 as they say that this act is bringing back the Holocaust that they had just managed to forget. They no longer appear at the *gacaca* sittings...However, when the executive secretary of the district explained the communiqué in detail, and the fact that the releases were not pardons, even the survivors seem happy, in particular when the Army commandant guaranteed their safety.

In another sector of the same district, a local authority denied the rumours that said the President didn't recognise the genocide for its true horror and that he was just trying to get the Hutu vote in the upcoming election. The District authority said that the population must go beyond the lies to get to the truth.

In Kibuye, certain survivors say that the confessions of the inmates should not be taken into consideration (especially those of the intellectuals) as they are partial, therefore according to them, these inmates should not benefit

from provisional release. They do not agree with the decision of the President. Ibuka would like to participate in the verification of these confessions.

Certain even say that they will not go to the *gacaca* meetings to accuse those who will not be punished. Others say that the decision to free the prisoners taken by the President is merely the first step in his electoral campaign.

In Gikongoro, a number of survivors were not very happy with the presidential decision and the upcoming release of the prisoners offended them even after having listened to the explanations behind the President's decision.

In Ruhengeri, certain survivors asked « Why did the President make this communiqué », they are not happy and some no longer wish to accuse anyone in the *gacaca* sittings. They fear the aim of the communiqué was to appease the families of the inmates coming up to the election.

In Byumba (Muhororo) the *gacaca* sittings didn't take place during the last two weeks of January even though the quorum of 100 people in attendance was not required for the 7th meeting, the accused, the accusers and even the judges were missing. The survivors say why bother as the State has already made a decision. The families of the inmates want to await the arrival of the inmates before starting the courts again.

Higher awareness, adequate security measures and treatment of post-traumatic stress could help the group of survivors to deal with this new situation. Satisfactory compensation for the victims of the genocide would be a decisive contribution.

However, it is by no means certain that we can come to a satisfactory conclusion with the most vulnerable group of all : the women and widows who were raped during the genocide (see Report - I).

We know that rape, now categorised in category n° 1 was one of the instruments of the genocide. Very few people have confessed to having raped women. This means that there are probably rapists in every category and so among those who will be released. As we can see in the table below regarding 3 006 of those accused of genocide who have confessed, the fact that only 12 of those accused are classed in the first category for rape, in other words 4 out of a thousand tends to indicate a serious underestimation of the reality of the situation and the fact that certain confessions would be incomplete.

Reactions of the Gitarama rape victims

Some of the rape victims were « depressed, desperate, practically ill» after the communiqué was announced.

They regret having testified as to what they saw and went through during the genocide (...).

They should have kept their mouths shut (...) they feel they've wasted their time by going to testify.

They are afraid «we're going to be murdered» and don't want to stay in the same places (without family or children...).

They are disappointed and angry... they feel abandoned by the government which was supposed to do them justice, (but) which instead pardons the murderer¹⁸...

They swear they will no longer take part in the *gacaca*.

But it's the President who is giving the pardon, there is nothing to be done... they are resigned to the fact.

Recommendation : it would be appropriate to initiate specific projects for rape victims

¹⁸ Especially since the government has yet to pass the law on damages... reconciliation is not possible for them.

Potential consequences on community life after the reinsertion of those who are on provisional release:

It is still very difficult to tell, but a few theories can be formulated from observations on the ground. It is likely that the government will have more credibility among the general population. This will probably less be the case among the survivors but this group is in a minority within the population.

The population's interest in *gacaca*, already decreasing, will probably drop. It actually seems unlikely that the *gacaca* jurisdictions will reverse the decisions of provisional release which will have been taken. It is probable that the *gacaca* sittings will just reconfirm the pre-categorisation that occurs just before the release.

Community service might also be adversely affected. Community service is an alternative sentence which is pronounced at the trial. According to the Ministry of Justice¹⁹ people should start working straight away in the solidarity camps – so, before being sentenced. This work which is part of the reconstruction of the country can be road upkeep, planting trees, work to fight erosion, house building etc. This will mean a sort of Community service without sentencing or a form of *Umuganda* for a few days a week, with more constraints than usual, and without the infrastructure of the true CS having been put into place. The “real CS” would be set up afterwards, after the *gacaca* judgements? It is probable that changes will occur in the CS programme which is not a bad thing in itself if the changes are well explained and prepared. This would appear to be absolutely necessary taking into account the fact that the concept of « work as punishment » was very common under the colonial period under the term « forced labour » and it harks back to the exploitative relationship of « boss-client » which was common in Rwanda under the term « *ubuhake* ».

There shouldn't be any real safety issues in terms of politics, or ethnic issues (despite this provisional release, the demobilisation of the soldiers, the return of the refugees, the elections), even though certain survivors feel traumatised and in danger. Reconciliation between the general population and the survivors/returned exiles will not happen overnight but these groups will learn to live together without fear or mistrust.

¹⁹ See “Revue de la Presse” Friday night 24/01/03 at 21h00.

Conclusion

PRI welcomes the decisions contained in the Presidential Communiqué which contribute to a strengthening of the rule of law. For these measures to be implemented in the best conditions, PRI encourages the government of Rwanda to ensure that the movement of large numbers of inmates be well prepared, an awareness campaign be carried out, the solidarity camps in which those released will spend the first two months be organised, the safety of all be guaranteed, psychological counselling be organised, etc.

PRI would like to call the government's attention on the importance to maintain the prerogatives of the *gacaca* jurisdictions, particularly as concerns the categorisation of prisoners and sentencing. A careful checking of prisoners' confessions is also a key to establishing the truth, which is a central objective of the *gacaca* jurisdictions.

It is crucial to sensitise the population and to prepare the implementation of these decisions, which otherwise could appear as a form of impunity, which numerous 'rescapés' already denounce.

Recommendation: an interactive and ongoing awareness campaign for all concerned, psychological support for the survivors, psychological preparation for the inmates to be freed could help, in part, to solve the problems cited above

The situation of prisoners without files requires particular attention. Not releasing or not presenting these inmates to the population in order to collect information about their case could lead to a situation where inmates are considered as « presumed guilty » if they don't confess. This category is estimated at over 1,000, which is probably lower than reality.

Recommendation : priority should be given to the gacaca to continue to present those with no cases if at all possible.

4. The influence of these measures on the functioning of the *gacaca* and the Community service should be precisely considered. It is likely that these two mechanisms will be changed both in their functioning and objectives.

Klaas de Jonge

PRI, Kigali January 2003

Annexe 1 : Categorisation of people judged and sentences

Category of crime	Confession procedure	Sentences	Court
1: planners, ring-leaders, known murderers, rapists ... ;	No confession or insufficient confessions	Death penalty or life prison sentence	Criminal court
	Confessions made before the name appeared on the list of presumed category 1 prisoners	Life sentence or 25 years prison sentence (cf. 2, line 1). No CS.	District <i>gacaca</i> jurisdictions
2: murderers and accomplices	No confession or insufficient confessions	Life sentence or 25 years prison sentence. No CS.	District <i>gacaca</i> jurisdictions
	Confessions before the <i>gacaca</i> <u>after</u> having been put on the category 2 list compiled by the local <i>gacaca</i> jurisdiction	15 to 12 years in prison for the first half of the sentence 2 nd half : release and CS.	
Concerned by the Presidential Communiqué	Confessions before the <i>gacaca</i> <u>before</u> having been put on the category 2 list compiled by the local <i>gacaca</i> jurisdiction	12 to 7 years in prison for the first half of the sentence 2nd half : release and CS.	
3: assault without the intention to kill	No confession or insufficient confessions	7 to 5 years in prison for the first half of the sentence 2 nd half : release and CS..	Sector <i>gacaca</i> jurisdictions
Concerned by the Presidential Communiqué	Confessions before the <i>gacaca</i> <u>after</u> having been put on the category 3 list compiled by the local <i>gacaca</i> jurisdiction	5 to 3 years in prison for the first half of the sentence 2nd half : release and CS.	
	Confessions before the <i>gacaca</i> <u>before</u> having been put on the category 3 list compiled by the local <i>gacaca</i> jurisdiction	3 to 1 years in prison for the first half of the sentence 2nd half : release and CS.	
4: material damage only		No prison or CS. Civil damages to be paid unless an out of court settlement can be reached	Cell level <i>gacaca</i> jurisdictions

Annexe 2: Presidential Communiqué

The Office of the president has today issued a communiqué relating to various categories of persons in detention who run the risk of being imprisoned for periods longer than the penalty provided for by the law.

These include persons who have confessed of crimes of genocide and who are not in the first category, minors who were between 14 and 18 years old at the time they committed acts of genocide, and other persons accused of ordinary crimes.

His excellency the President has instructed the relevant judicial institutions to examine, within one month and in accordance with the procedures stipulated by law, the cases of the above mentioned detainees, and to grant provisional liberty to all detainees who run the risk of being detained for periods longer than the period of imprisonment set by the law. The release of those detainees is without prejudice to the continuation of criminal proceedings against them.

The president has also reiterated that the decision of the government relating to the release of the elderly and very sick detainees continue to be implemented.

He has also given instructions to relevant authorities to examine the cases of persons accused of genocide, who confessed before the law establishing Gacaca courts came into effect with a view to affording them the advantages available to those confess under the law establishing Gacaca courts.

Furthermore, His Excellency the President has instructed the relevant authorities to examine persons accused of infiltration so that they receive treatment comparable to that extended to those who have recently returned from the DRC.

His Excellency the President has expressed thanks to all those who are involved in the Gacaca courts process and calls upon all Rwandans to continue to participate actively in the smooth functioning of the Gacaca courts.

Annexe 3 : Concerned inmates by the presidential communiqué

The following table is based on the magistrate's report (interpreted by the author) and gives an idea of the categories of inmates concerned by the presidential communiqué and the release conditions

Categories ²⁰ of inmates concerned	Number In total	Provisional release Conditions per category according to the instructions from the General magistrate's office. The following conditions apply to all, the inmates must : - be in category 2 or 3, accused of genocide and/or other crimes against humanity committed between 1/10/90 and 31/12/94 ; - Have used the confession procedure and have pleaded guilty (some exceptions : minors <14 years old and old inmates not from category 1) - Have ones confession recorded by an Public officer (OMP) ; - Have spent more than half of ones sentence in detention as outlined in the terms of the <i>gacaca</i> law for the crimes for which they are accused.
Number of inmates from categories 2 and 3 who have confessed (It remains unclear after the Instruction if this category includes all of category 3 or only those who have confessed).	32 438	To be released: - Those from category 2 who have confessed, but who do not appear on the <i>gacaca</i> (JG) cell lists and who have spent at least 6 months in prison ; [Those from category 3 who have not confessed or whose confessions have not been accepted will be released if they have spent more than 3 1/2 years in prison ; - Those from category 3 who have confessed after having been placed on the category 3 list compiled by the cell JG will be released after 2 1/2 years in prison (a category which is almost non-existent as few lists have been compiled to date) - Those from category 3 who have confessed and who have spent at least 1 1/2 years in prison.
Minors aged between 14 and 18 at the time of the genocide. Minors in category 1 face 1à to 20 years sentences, and half of what is planned for adults in categories 2 and 3.	4 559 (2 838: if we count only those aged 15-16-17). It is sometimes difficult to determine the age of a minor and the figures are to be taken with precaution.	Minors from category 1 or those from category 2 who have not confessed or whose confession has not been accepted by a Public officer will not be released. To be released: - Those who were under the age of 14 at the time of the genocide and who are still in prison (approx. 151); - Minors from category 2 who have confessed before being added to the JG lists ad who have spent over 3 months in prison ; - Minors from category 3 who have confessed after having been placed on the category 3 list compiled by the cell JG will be released after 1 1/2 years in prison (a category which is almost non-existent as few lists have been compiled to date)

²⁰ These categories are not all exclusive, there are certain overlaps (for example, minors can be categorised in the category 'minors' and in the category « confessed ») and the total number of releasable inmates could be much lower if the defined conditions are taken into account.

		<ul style="list-style-type: none"> - Minors from category 3 who have not confessed (or whose confession was not accepted) will be released if they have spent at least 1 year and 9 months in prison; - Minors from category 3 who have confessed and have spent at least 9 months in prison;
Incurable diseases	2 095	<p>Those in category 1 who are seriously ill or those who have already been judged will not be released (they can however request a conditional release from the Justice Ministry);</p> <p>To be freed;</p> <ul style="list-style-type: none"> - other seriously ill prisoners (on the basis of medical files or accepted by a committee).
Old prisoners	2 927 (70 + : 1 881)	<p>Those in category 1 who are very old or those who have already been judged will not be released.</p> <p>To be freed:</p> <ul style="list-style-type: none"> - Those from the other categories aged 70 or over (it remains to be seen whether they will have to have confessed and if they can request conditional release).
Inmates who have confessed before the <i>gacaca</i> law came into effect	2 994	- The inmates who have already been judged and who are serving their sentence can ask for a conditional release from the Justice Ministry.
The 'no case' inmates (no data or false accusations)	1 079 (probably a serious underestimation)	This category is not mentioned in the communiqué but in the Magistrate's Instructions (see elsewhere).
Total	49 376	The 'no case' inmates are not included in this total but the 'infiltrators' (505) and the ordinary criminals (3 857) are.

Annexe 4: Comments of the President of the Department of *Gacaca* Jurisdictions 6th Division of the Supreme Court

Page 4, 1st paragraph:

« indeed, the attitude of the prisoners is more one of arrogance and strength than one of sincere repentance »

The President wished to nuance this statement by explaining that some if them were also very sincere in their confessions.

Page 4, 2nd paragraph:

« Encouragement to plead guilty – a characteristic common to many judicial systems around the world – and according benefit to those who do so could be detrimental to those prisoners who are innocent or who don't have a case and seems to go against the penal principle of the “presumption of innocence” creating a “presumption of guilt” »

The President explained to us that some people had already been released through the *Gacaca* (according to the report of the 6th Division of the Court of end December 2002, 22 persons had already been released).

Page 4, 5th paragraph:

« There were problems with the Magistrate's files²¹ that could lead to serious consequences: the court employees sometimes transformed our confessions and forced us to sign things we had not said. For example, if we declared having witnessed people being killed they would write down that we had been the ones doing the killing! P. from Gishamvu/Butare »

The President explained that the prisoners always have the right to retract their confessions or have them corrected.

Page 6, paragraph *« Gacaca* Jurisdictions; the people are reluctant to confess or bear witness»:

*« Among the free citizens who are participating in the *gacaca* jurisdictions, with the exception of the survivors, very few are prepared to testify or confess and if they do the crimes involved are that of pillage and not of murder: they can't see any direct advantages in pleading guilty »*

The President explained that, according to the report of the 6th Division of the Court of end December 2002, 213 persons confessed in the first 12 pilot sectors, among whom persons belonging to the second category.

Page 7, phrase *« the detainees continue confessing »*, 2nd paragraph:

« According to the information we have, these files are not available everywhere and sometimes arrive very late ».

The President explained that the lists are sent first and that the prosecution files are only sent for the 7th meeting. During the first phase (12 pilot sectors), all the files were distributed on time. For the second phase, the 7th meeting was awaited before the files were distributed. The 6th Division of the Court wished to know where PRI had found delays in the distribution.

*« As we mentioned in a previous report, certain legal experts have expressed their unease as to the informative role played by the Magistrate's office, due to the potential impact of these lists and files on the eventual decision-making process of the *gacaca* judges »*

²¹ Documents prepared by the Public Ministry and which gather together all of the elements of each case.

The President explained that the lists are only used when the general assemblies have finished their work. Thus, the lists do not influence the judges' decisions. These lists are very important in the case of any criminal who did not live in the relevant cell. His/her name would appear on the prosecution list whilst the general assembly would not have found his/her name.

Page 11, paragraph « Theories on the reasons for this communiqué »

« It is probable that legal reasons alone could not explain the decision of the government to take such wide-reaching measures on the justice system... »

The President wished to explain that this decision had been taken solely on a legal basis; it was only a reminder of a measure already taken for minors and the elderly.

Page 11, paragraph « Theories on the reasons for this communiqué », 2nd paragraph:

« The gacaca programme is actually taking longer than expected, while the participation levels of the population are dropping ... »

The President explained that, according to their report of end December 2002, participation varies from one region to another, however it remains stable on the whole.

Page 17, 2nd paragraph:

« ... It actually seems unlikely that the gacaca jurisdictions will reverse the decisions of provisional release which will have been taken... »

The President explained that in the first 12 pilot sectors, before the releases, the lists had been sent by the prosecution and the classification was not necessarily respected by the *Gacaca*. This was verified in the 12 pilot sectors and the decisions taken by the prosecution did not influence the judges.

Page 18, 2nd paragraph:

« PRI would like to call the government's attention on the importance to maintain the prerogatives of the gacaca jurisdictions, particularly as concerns the categorisation of prisoners and sentencing »

cf. comments below

Annexe 5: Comments on PRI's report on the Research into Gacaca, of 25 March 2003

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Page 2

The communiqué of the Presidency of the Republic of 01 January 2003, instead of the communiqué of the President of the Republic (10).

The impact of the communiqué emanating from the Presidency of the Republic, instead of the Presidential communiqué.

Paragraph 3: The communiqué emanating from the Presidency of the Republic, instead of the communiqué of the President of the Republic.

Paragraph 5: Confession before the victims is traditionally interpreted as an insult and an aggravating circumstance, as it is considered to be a demonstration of strength.

This statement is false, given that in all societies it is recognized that confessing to a fault or breach of the law means that it is already halfway to being pardoned.

Page 4

Paragraph 1, all: In fact, through our observations it seemed that the prisoners' attitude was rather a demonstration of arrogance and force than sincere repentance.

The results observed in all the Country's prisons demonstrate the opposite, as there have been many sincere confessions, and the recent decision of the Government counsel to postpone the deadline of 15/03/2003 for a further year, to receive confessions, reinforces this affirmation.

Page 6

Paragraph 6: This paragraph should be deleted, as Umuseso Nov. 2001 is not a reliable reference.

Page 10

Paragraph 3: The communiqué emanating from the Presidency of the Republic, and not the communiqué from the President.

Paragraph 5: The President of the Republic, whereas the communiqué mentions his Excellency the President of the Republic.

Paragraph 5 al.14-15: « by freeing a large number of prisoners who have confessed, because they are talking and they have more information ». There is a contradiction with the contents of page 8, last line, and page 9, para 1: « the evidence given by the accused is unreliable ».

Page 13

Paragraph 1: « 2000 persons who were in the camps were allegedly sent to prison ».

This is false. It is recommended that real facts should be given and not rumours.

Paragraph 2: Preparation, sensitisation and implementation of the measures

The content of the paragraph is false, given that a National Committee was set up to monitor the implementation of the contents of the communiqué emanating from the Presidency of the Republic.

The committee is preparing useful instructions to avoid possible abuse. Unfortunately, this is not mentioned anywhere in the paragraph.

Page 14

The contents do not faithfully portray reality, as the communiqué was distributed and sufficiently explained and the prisoners understood its tenor very well.

Page 15

Paragraphs 1-4 mention innocents as if trials had already been held. The author is mistaken, as he is unable to provide proof of these allegations in respect of the Rwandan genocide, which has had no equivalent worldwide.

Page 16

The contents of the page are not objective, as the NGOs, IBUKA among them, benefited from the sessions of exchanges and information that reassured the survivors in particular and the population in general. The successful sessions of instruction in the INGANDO in all the Provinces and the Council of the City of KIGALI are a convincing example.

Page 17

The contents of this page do not reflect the reality in the country; also the research on rape cannot provide objective results in so few days. The contents are therefore subjective. It is recommended that the research be carried out in greater depth and that the results are published with objectivity.

10. Page 18

The contents are a simple enumeration without any reliable argumentation.

11. CONCLUSION

The conclusion does not reflect reality either. It should include:

the action of the authorities concerned by the communiqué emanating from the Presidency of the Republic;

the action of NGOs;

the population's reactions before and after the information sessions;

the role of the INGANDO, and end by praising the efforts of the Government and the Rwandan people, who are slowly but surely moving towards national reconciliation and the eradication of the culture of impunity.

Amb. Joseph MUTABOBA
General Secretary