



Integrated Report
on *Gacaca* Research and Monitoring

Pilot Phase
January 2002 – December 2004

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Information presented in this document was collected by all of the members of the PRI team in Rwanda, and to them we extend our sincere thanks for their work.

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- *The Gacaca Research* -

The goal of the research program conducted by PRI on the *Gacaca* jurisdictions in Rwanda since April of 2001 has been to provide objective data to the national authorities in charge of the process -initially the 6th Chamber of the Supreme Court and now the National Service of the *Gacaca* Jurisdictions- in an effort to support the design and implementation of these jurisdictions.

“Action research” as a methodological approach

PRI’s methodological approach is similar to “action research” in that it is conceived as social research that is deliberately oriented toward action. Beyond a strict monitoring process based on the organic laws of 2001 and 2004, which remain the legal references, the research conducted by PRI is aimed at gathering and analyzing data about the perceptions and behaviors of different protagonists (genocide survivors, witnesses, detainees, associations, government agents, etc.) in order to create a tool for understanding the conditions in which the *Gacaca* process takes place.

Therefore, this action research is characterized by a pragmatic approach, i.e. one that is principally geared toward efficiency, given the needs and expectations of the beneficiaries. The first and foremost of these beneficiaries is the National Service of the *Gacaca* Jurisdictions.¹ With regard to its purpose, action research has certain limitations that distinguish it from academic research, the ultimate goal of which remains exclusively that of advancing knowledge in a given field. Here, the primary goal is to support the process being studied.

All the work conducted by PRI centers around three practical questions relating to the notion of “constructive criticism”: What problems are encountered in the *Gacaca* process? Why do these problems exist? What solutions can be found for them? Methodologically speaking, it is the opinions, needs and interests expressed by different social groups that have formed the basis of this research which, since 2002, has attempted to identify key problems and propose solutions in the form of recommendations. These solutions may have stemmed from the personal experience of each member of the research team, from discussions with partner organizations, persons interviewed, or from the existing literature on the genocide and transitional justice mechanisms. PRI has chosen not to participate in the implementation of these solutions in any way.

Research Materials

The preparation of reports is based on samples that PRI has tried to make as complete as possible and which are representative of the diversity of situations and perceptions encountered during the course of our research throughout the country. The information presented within the context of this integrated report derives from an entire set of data collected during the period from 2001-2004 and which has been used in the preparation of a series of reports.

¹ Rwandan authority responsible for the implementation of the *Gacaca* process

Namely :

- **562 interviews:**
 - 112 with survivors,
 - 125 with both accused detainees and sentenced detainees

- And **806 observation reports of the *Gacaca* jurisdictions**

This data set is the subject of a progressive release in the context of a program on the “documentation of the *Gacaca* process” conducted simultaneously by PRI. The purpose of this program is to disseminate this field data electronically and as widely as possible.

It is important to mention that the excerpts or summaries presented here reflect the statements recorded among the populations heard by PRI researchers and should not be systematically construed as representative of the opinion of the group as a whole. Thus, a survivor who is cited in the research is not speaking on behalf of all survivors. However, his words are mentioned because they illustrate a strong trend among the statements heard and collected in the field during this same research.

How the research was organized

The research team is composed of field investigators and research assistants responsible for processing the initial data obtained. The team is supervised by a researcher who analyzes and verifies the processed data. Occasionally, graduate researchers collaborate on PRI’s research activities. PRI made the decision to recruit Rwandan investigators who are from the areas they are assigned to survey. In this way, they can attend *Gacaca* sessions while also serving as direct witnesses to the reactions of the population both in the aftermath of the sessions, and on a daily basis. It seems that this method is the most efficient in assembling reliable information in a context where people are generally extremely mistrustful of anyone who comes to question them about the *Gacaca* jurisdictions and the genocide.

PRI’s research on the *Gacaca* program is essentially qualitative and participative, being based primarily on direct observation of the program and on interviews. The research combines two complementary methods of data collection: first, monitoring the functioning of the *Gacaca* jurisdictions observed, and second, conducting surveys and interviews among the population, in all its diversity.

The surveys and interviews are based on a group of themes that have been identified, discussed and adopted by PRI’s entire research team. The vast majority of the interviews were conducted on an individual basis.

Researching the perceptions of the population demands a particular depth of understanding that can only be achieved by asking open-ended questions on the pre-determined themes. The intended purpose here is not to collect data that conforms to factual reality, but to understand the meaning attached to events, and following on that, the attitudes, behaviors and positive or negative practices that this meaning generates.

Thanks to this methodology, PRI’s investigators who have a thorough understanding of the historical, political and social context of the chosen site conduct interviews and collect primary data that are then compared to secondary data to which the team has access. As indicated by the

references cited in the bibliography, these secondary resources allow us to validate and verify the reliability of the data obtained through individual interviews.

The processing of the data is primarily concerned with the interpretation and analysis of the content. This qualitative method seems one of the most relevant when researching complex questions, such as those which touch on the emotional dimensions of the persons surveyed.

Once the preliminary results are available, they are reviewed and corrected by PRI's researchers. An expert who is both recognized in this field and external to the team then reviews the results and evaluates their reliability and validity.

Research Limitations

As with any kind of research, this action research has certain limitations.

First of all, the "action" dimension of this research implies that certain biases must be taken into account, particularly with regard to questions of distance between the observer and the subject under observation, and the delicate handling of perceptions. For example, the researchers at PRI, who are all Rwandan, carry both consciously and unconsciously the scars from the sad events that have marked the history of Rwanda. The fact that they are rooted in a context characterized by a profound social rupture cannot fail to influence their perceptions and, consequently, their comprehension of the social realities which affect their society. In this sense, they are "insiders." This, however, does not mean that they are not qualified to reflect on the social problems in Rwanda. On the contrary, their "insider" knowledge guarantees a depth of understanding, particularly of the cultural context and the social stakes. However, in order to avoid biases linked to this "insider" status, their views are combined here with the more distanced view of an "outsider," i.e. an expatriate researcher.

Next, at the level of data collection, despite the scientific precautions taken, the semi-structured interviews with open-ended questions does not allow for consistency, which can make the handling of the information difficult. However, this qualitative method seems to us to be the only way to deepen and enrich the inquiry of issues as complex as perception and behavior.

It is also important to mention the possible risk of bias that might arise from the process of translating from Kinyarwanda into French. Every possible precaution is nevertheless taken in order to reduce this risk. First, the document is translated from Kinyarwanda into French, and the French version is then verified by a second translator. The verification phase is undertaken in order to identify linguistic imperfections that might alter our comprehension of the subject under discussion.

Finally, this study does not claim to be exhaustive or pretend that its observations and main conclusions are generally held or agreed upon by others. The findings from this research should, of course, be refined and considered in conjunction with the results of other studies. Despite this caveat, the fact remains that the findings presented in this highlight clear and convincing trends observed among different social groups.

Purpose of the Integrated Report

This report is not intended to discuss new elements of the *Gacaca* process in its pilot phase. Its primary purpose is to highlight issues that appear to be the most relevant throughout its implementation and which remain critical as it moves to the national and sentencing phases that began in the Spring of 2005.

Given that the collection of information took place at the start of this national phase², it also seemed important to revisit some of the challenges that emerged during the pilot phase. Moreover, given the announcement of a new amendment to the *Gacaca* Law at the end of the summer of 2005, we hope that the analyses presented herein may contribute to further reflection among all stakeholders who would like to see this transitional justice process succeed.

² The analysis of the national phase of information collection will be the subject of PRI's next monitoring and research report.

- Introduction -

The main causes of violence and mass crimes can be found in the long list of human rights violations that are committed systematically and with complete impunity. This is an impunity which causes us to avert our eyes from the suffering of victims and contributes to creating a climate in which individuals feel entitled to continue to degrade human dignity without fear of arrest, prosecution, trial or punishment. Such impunity is widespread in places where political will is absent and derives often from the fact that the State itself, or one of its own instruments -like the army- has committed or incited these violations.

The end of the last century saw a crucial transformation with the advent of an international criminal justice system, first with short-term mandates limited to Rwanda and the former Yugoslavia, and later, permanently, with the adoption of the statute which gave rise to the International Criminal Court. This constituted a major evolution from the previously dominant “amnesia” approach to the justice-focused approach that most hope will prevail today.

In 1994, approximately one million³ Tutsis and so-called “moderate” Hutus opposed to the massacres were killed in the space of three months. This genocide was planned and perpetrated by the former government of President Habyarimana. The country was devastated, and nearly three million people were forced into exile. Institutions responsible for law enforcement, such as the justice system, the courts, the police and the prisons... all ceased to function.

The new government believed that peace and national unity could only be achieved by striking at the roots of genocide and, in particular, the “culture of impunity.” The solution of a general amnesty was immediately dismissed and both the authorities representing the Rwandan people and the international community agreed that the perpetrators of the genocide must be tried. But exactly how could impunity be successfully combated while also attempting to reconcile two communities? How could such an endeavor succeed when so many had participated in the atrocities?

As of June 30, 2005, the International Criminal Tribunal for Rwanda, which is based in Arusha, Tanzania, had tried only twenty-four out of sixty former government officials detained there in the space of eleven years. Only a few isolated cases have been tried in foreign courts. Belgium has played a catalytic role in these extraterritorial trials, notably in the decision on the “Butare Four” which was handed down on June 8, 2001.⁴

In the aftermath of the genocide, more than 120,000 people were arrested and imprisoned in Rwanda for the crime of genocide, while the prisons were built to hold only 18,000.⁵ Rwanda was going to have to try these individuals even when the entire judicial system had been destroyed by the events of 1994: court buildings had been sacked, all qualified personnel had

³ According to figures published by the Rwandan government in December 2001, during the period from 1 October 1990 to 31 December 1994, the number of genocide victims reached 1,074,017, 93.7% of whom were Tutsi.

⁴ For more documents and sources pertaining to this trial, cf. the web site of RCN Justice et Démocratie : Assises Rwanda : www.assisesrwanda2001.be

⁵ Ten years after 1994, nearly 60,000 people accused of participating in the genocide are still behind bars, despite two waves of releases in 2003 and 2005, in application of the Presidential Communiqué of January 1, 2003.

either been killed, accused of genocide, or had fled the country. By the end of 1994, Rwanda had no more than twenty magistrates for the entire country.⁶

Thanks to generous assistance from various United Nations agencies, foreign governments and NGOs, the Rwandan government would attempt to rebuild the infrastructure of the judicial system and to quickly train new personnel who, whether qualified or not, would be in charge of handling the prosecution.

Genocide trials began in December 1996 in a climate of extreme tension. Confronted with considerable logistic and financial problems, Rwanda has nevertheless made concrete progress, and five years later, the number of trials increased eight-fold. However, regardless of their efforts to reconstruct the judicial system, the authorities are still at an impasse.⁷ At the rate of 1,000 verdicts per year, it will take more than a century in the regular court system to empty the country's prisons and cachots (jails).

The government would thus reach the conclusion that the judicial system could not be the sole solution. Starting in 1998, it would look elsewhere for answers -a step that would lead the authorities to propose a new justice system that, this time, would be in essence participatory and inspired by tradition. After several amendments to the initial project brought before the parliament in July 1999, and discussions with the international community, the first "*Gacaca* Law" was adopted and published in March 2001.⁸

The *Gacaca* courts would introduce a unique and innovative character to matters of transitional justice. For the first time, an entire population would be entrusted with the responsibility for judging persons accused of the crime of genocide and other crimes against humanity.

Conscious of the range of difficulties it would encounter, the Rwandan authorities decided not to launch the process immediately throughout the entire country, but to proceed in stages. The first stage, designated the "pilot phase," began in June 2002 and saw the process launched first in only 80 and later 751 cells out of a total of 10,000. Evaluations were to be made both during and at the end of this pilot phase, and would lead, if necessary, to changes in the process before the start of the "national phase." The first major change came with the adoption of the Organic Law n°16/2004 of 19 June 2004, which altered the 2001 legislation considerably.

It was in this context that Penal Reform International, which has had a presence in Rwanda since 1998, would develop -following its conception in April 2001- an "action research" program specifically geared towards the *Gacaca* courts. The goals of this program are to provide all participants in the process, and first and foremost the government authorities, with the elements necessary for improving the implementation of and optimizing the *Gacaca*, while taking into account the challenges and stakes raised by the process of national reconciliation.

⁶ Amnesty International, *Rwanda, the Enduring Legacy of the Genocide and War*. London, AFR 47/008/2004, April 2004, p. 27

⁷ Cf. in particular the ICG study: "*Five Years After the Genocide in Rwanda : Justice in Question*" (ICG Report Rwanda, n°1, 7 April 1999)

⁸ "Organic Law n° 40/2000 of January 26, 2001 creating 'Gacaca tribunals' and organizing prosecutions of offenses that constitute the crime of genocide or crimes against humanity committed between October 1, 1990 and December 31, 1994;" *Official Gazette of the Republic of Rwanda*, March 15, 2001, pp 66-98.

The different reports published to date by PRI⁹ have covered the pilot phase in its entirety since its inception including, notably, studies on the preparatory work on sentencing, the drawing up of lists of victims and perpetrators, categorization, the confession plea, as well as issues related to indemnification of victims, the setting up of the Community Service (CS) Program and the participation of the population.

The purpose of the present report is to offer a general and complete overview of the issues raised during the course of this first three-year period that has formed the “pilot phase.” At the very moment that the process has entered its national phase and as the first sentences are being handed down, it seems more necessary than ever to review several important stages that have marked this first phase.

⁹ All of these reports are available on PRI’s website : www.penalreform.org

- Part One -

Introduction and Implementation of the Gacaca Courts

From 2002 to the present day, the implementation of the *Gacaca* process reflects, it seems to us, a willingness to continuously adapt the institution to reality. First, it focused on bringing ownership of a traditional justice mechanism to Rwandans in order to adapt it to the exceptional challenge of prosecuting genocide and to transform it into an innovative mechanism of transitional justice. Secondly, this willingness was translated into legislative changes that supported the chosen empirical attempt to respond to the limitations and obstacles encountered during the progressive implementation of the process.

This first part, which is essentially descriptive and which revisits the origins and the early phase of the *Gacaca* process, illustrates this constant concern with adaptation.

1 – The *Gacaca* : for What Purpose ?

The Original Goals : the Restoration of Social Order

Up until the colonial period, the *Gacaca* was a traditional method of conflict resolution among members of the same lineage. When social norms were violated or conflicts arose (land disputes, damage to property, marital problems, and struggles over inheritance...), the parties were brought together during informal and non-permanent sessions presided over by the elders (*Inyangamugayo*). The primary objective during these *Gacaca* sessions was, in addition to ending the violation of shared values, to restore the social order by reintegrating the transgressors into the community. The principal goal of the traditional *Gacaca* was thus “*not to determine guilt nor to apply State law (...) but to restore social harmony and social order in a given society, and to re-include the person who was the source of the disorder.*”¹⁰

It must however be made clear that the most serious cases were not presented before the *Gacaca*. Blood crimes, in particular, were not handled by the *Gacaca*. In such cases, the operative concept was that of vengeance, to the degree that it was understood as a religious duty¹¹.

During the colonial period, a western-style judicial system was introduced in Rwanda, but the *Gacaca* remained an integral part of traditional practice. With Independence, State authorities took over the institution, dominating it. Local authorities then played the role of the *Inyangamugayo* and the *Gacaca* sessions handled local administrative issues.

¹⁰ Vandeginste, Stef, *Justice, Reconciliation and Reparation after Genocide and Crimes against Humanity. The proposed establishment of popular Gacaca Tribunals in Rwanda*, Addis Ababa, Conference, 8-12 November 1999.

¹¹ Cf. Ntampaka, Charles, “La conception des relations entre les vivants et les morts dans le Rwanda ancien,” *Dialogue*, Brussels, n° 225, 2001, p. 12

Until the creation of mediation committees in the second half of 2004¹², this brand of *Gacaca* continued to function across the country. It would regulate minor conflicts such as those pertaining to ownership of property following a divorce, illegal occupation of a house (in Kigali), and also, in the countryside, the restitution of a cow, division of a plot of land, refusal to honor a promise or an unpaid debt, etc. Judges, who were local personalities, would hear both parties involved in the dispute, ask questions, and then listen to statements from members of the community. A verdict would then be submitted to the two parties, who would either accept it - and the case would be closed- or further investigations would be undertaken, or the case would be brought before a regular court.

After the genocide, the Rwandan government, seeking to assist the Public Prosecution and the courts in handling the large number of detainees accused of genocide, considered the *Gacaca* early on as a possible solution. The “*Saturday talks*,” created and piloted by Pasteur Bizimungu, the former President of Rwanda -with the collaboration of representatives from the government and from civil society- led, in October 1998, to the creation of a commission mandated to study the possible application of the *Gacaca* to genocide trials.

The first organic law establishing the *Gacaca* courts for the prosecution of offenses related to the crime of genocide and crimes against humanity committed between 1 October 1990 and 31 December 1994, was thus adopted on 26 January 2001 and entered into force on 15 March 2001 (and modified and finalized in June 2001).

The Current System : Penalty Included

If the current *Gacaca* system, established for the purpose of handling the prosecution of genocide, is to be based on the traditional model in its embodiment of an approximate form of participative justice while also aiming to achieve the goal of repairing the social fabric, it nevertheless differs considerably from the original model. There are, in fact, wide variations between the traditional *Gacaca* -a community assembly vested with the mission of mediation and operating spontaneously at the local level- and the current system, which is a veritable criminal court, with retributive goals.

First, one major difference resides in the public nature of the sessions. In the context of the traditional *Gacaca*, the session would take place between the affected parties, would manage the conflicts within the same lineage, and would endeavor to not bring the problem into the public sphere.

Second, and certainly this is the major difference, each *Gacaca* used to operate in a completely spontaneous manner; the idea was above all to arrive at a mutual agreement, the product of a compromise between the interests of the relevant parties and those of the community. Individuals would appear of their own free will to testify out of their desire to remain part of the society whose rules they had infringed. The elders functioned as judicial arbiters and were free to make decisions that seemed the most appropriate.

Conversely, the contemporary *Gacaca* courts do not handle local conflicts. Instead, they handle the prosecution for an organized genocide that was first orchestrated by state authorities¹³. The *modus operandi* of these new courts is legally defined by the State rather than by local consensus.

¹² Cf. Organic Law n°17/2004 of 20 June 2004 “determining the organization, competence and functioning of the Mediation Committee,” *Official Gazette of the Republic of Rwanda*, n° special, 8 July 2004.

¹³ Cf. Amnesty International, *Rwanda: Gacaca: a question of justice*, London, AFR 47/007/2002, December 2002

The functioning of these courts, as well as the range of penalties they can pronounce, have been determined by an organic law. The electoral commission was charged with coordinating and supervising the elections of the *Inyangamugayo* -elections that were themselves called for by a presidential decree¹⁴. The supervision and coordination of the work for all of these *Gacaca* courts, which was initially under the control of a Department of the Supreme Court, is now handled by a State institution specifically created for this purpose, the National Service of the *Gacaca* Jurisdictions (NSGJ).

Authorized by the law to carry out investigations, to issue summonses, to order preventive detentions, but also to impose sentences, the current *Gacaca* courts combine the powers of the former traditional *Gacaca* tribunals with those of regular courts and even those of the State Prosecutor. These are, therefore, veritable criminal courts, endowed with ample jurisdictional competences. However, only a massive and voluntary participation by the population can establish legitimacy of these courts, as well as permit them to function such that the principal of procedural due process is respected.

In resorting to this hybrid and innovative system, the government anticipated the following advantages:

- The acceleration of trials: neither victims nor suspects should have to wait for years to see justice done,
- The relief of the prison system and the reduction of penitentiary costs, with releases occurring as a result of the acceleration of trials,
- The establishment of the truth, the participation of the entire community being perceived as the best way to reveal the truth,
- The eradication of the culture of impunity, the purpose of the *Gacaca* being to judge both genocide crimes and crimes against humanity,
- The reconciliation of the Rwandan people. The *Gacaca* should contribute to the reestablishment of social ties that were severely damaged by the genocide.

2 – The Revisions to the Organic *Gacaca* Law, or the Response to the Realities on the Ground

In keeping with the spirit that presides over any pilot phase, the first *Gacaca* Law of 2001 underwent, as a result of the difficulties encountered on the ground, a certain number of changes that were framed in a new organic law that was passed in 2004. Two aspects of this law warrant particular attention.

On the Categorization of Penalties Incurred

In order to distinguish between the different levels of participation in the genocide, the accused - according to the 2004 law- are placed in one of three designated categories, whereas the 2001 law contained four¹⁵.

¹⁴ Presidential Decree n° 12/01 of June 26, 2001 “establishing modalities for organizing elections of members of ‘Gacaca Jurisdictions’ organs,” *Official Gazette of the Republic of Rwanda*, n° 14, 15 July 2001

¹⁵ For more information, see in particular the following publications : De Beer, Daniel, *The Organic Law of 30 August 1996 on the Organization of the Prosecution of Offences Constituting the Crime of Genocide or Crimes Against Humanity. Commentary and Jurisprudence*, Kigali/Brussels, 1999 ; Department of *Gacaca* Jurisdictions & ASF-B, *Annotated Guide on the Organic Law creating the Gacaca jurisdictions*, Supreme Court, Kigali, October 2001

- First category : the planners, organizers, and ringleaders of the genocide; those who acted in positions of authority; well-known murderers, as well as those guilty of sexual torture or rape. The penalty incurred in this category can extend to the death penalty.

The redefinition of category 1 that was worked into the 2004 law was rather an expansion of this category, to which “*acts of tortures*” was added, including those which did not result in death, as well as “*dehumanizing acts on dead bodies*”. At the time, PRI expressed its concern with regard to this extensive redefinition, which ran the risk of increasing the backlog in the regular courts and the prisons.

- Second category : those who committed or assisted in the commission of murder or attacks against persons that resulted in death; those who, with the intent to kill, inflicted injuries or committed other acts of serious violence that did not result in death. The maximum punishment incurred in this category is 25 to 30 years’ imprisonment.
- Third category : those who committed serious attacks without the intent to cause death of their victims. In actuality, the third category proved difficult to manage; it was thus eliminated under the 2004 law and the defendants associated with this category were henceforth placed in category 2.
- Fourth category : those who committed offenses against property. With the 2004 law and the disappearance of the third category, this has become de facto category 3. The penalty incurred at this level consists of reparation for damages to property.

It must also be underscored that, aside from capital punishment (for convicted persons in the first category) and deprivation of liberty, the law requires that the accused in category 1 suffer a permanent and total loss of civil liberties. Those in category 2 are to suffer a partial loss of civil liberties (right to vote, eligibility for public service or teaching or medical staff positions in either the private or public sector, etc.)¹⁶.

With regard to the sentencing of persons between the ages of 14 and 18 at the time of the crime, these individuals incur only half the penalty of an adult having committed similar crimes. Minors who were less than 14 years of age at the time of the crime cannot be prosecuted.

Moreover, among the most important elements pertaining to the jurisdiction of these *Gacaca* courts, it is worth mentioning that they are not authorized to impose the death penalty. The prosecution of criminals in the first category who are subject to capital punishment is relegated exclusively to the jurisdiction of professional judges in the regular courts¹⁷.

Given the “prison challenge” that the prosecution of genocide represents, changes in the Community Service sentence were anticipated starting in 2001. However, while the first *Gacaca* law permitted the accused person (if his confessions had been accepted) to choose whether to accept his prison sentence or have it converted into community service, this opt-out right was retracted in the June 2004 law; from this point forward, acknowledgment of confessions

¹⁶ Article 76 of the Organic Law 16/2004 of 19/06/2004

¹⁷ Article 2 of the Organic Law 16/2004 of 19/06/2004

automatically means that half of the sentence will be served in the form of community service¹⁸. The convicted person loses his right to refuse to perform a community service task as a sentence.

On the Structure of the Courts

In the law of January 26, 2001, the structure of the courts was designed to reflect the administrative structure. In other words, each court would correspond to an administrative division: the cell (between 150 and 300 people on average), the sector (which encompasses several cells), the district and the province. With the 2004 law, the organization of the courts was simplified with a view to reducing the number of judges by improving their instructions and training, and consequently, their motivation. The district and provincial courts were thus eliminated.

Each court is composed of a General Assembly (at the cell level, this encompasses the entire population over the age of 18; at the sector level, it encompasses the seats of the cell court of the particular sector, the seat of the sector court and the appeals court, comprised of anywhere from 50 to 60 elected judges), of the Seat (originally 19 judges, and later 9 under the 2004 law) and the Coordinating Committee (originally 5 people chosen from among the judges, and later only 3 under the 2004 law).

The process itself is divided into three phases which were maintained under the 2004 reform:

- The entire process begins with the gathering of information: the General Assemblies of the cell-level courts are responsible for establishing a certain number of lists intended to retrace as closely as possible the actual events of the genocide as they occurred in their area :
 - the list of persons residing in the cell before and during the 1994 genocide,
 - the list of persons who died in the cell,
 - the list of persons residing in the cell who died outside of it,
 - the list of goods damaged,
 - the list of the accused who committed crimes of genocide inside the cell.
- This is followed by the fundamental phase of categorization. This task is carried out by the seat of the cell-level courts which must, based on information gathered, place the accused in one of three categories set out by the law¹⁹. Thus, both the referral of a case to the regular court (for category 1) or to a *Gacaca* trial court (cell or sector), and the range of applicable penalties (death penalty, life or a determined period of imprisonment, reparations) are dependent upon categorization.
- Finally, the sentence is handed down by the court competent court, according to the category into which the accused has been placed: the cell-level courts handle third category cases and second category cases from the sector level. First category cases are referred to the regular courts.

¹⁸ It should be noted that the implementation of this measure was entrusted to an Executive Secretariat specifically tasked with this issue (Cf. Presidential decree n°10/01 of 07 March 2005 “determining the modalities of execution of the alternative penalty to imprisonment,” *Official Gazette of the Republic of Rwanda*, n°6 of 15 March 2005).

¹⁹ Article 51 of Organic Law 16/2004 of 19/06/2004

3 – The Implementation of the *Gacaca*

It is possible to examine the initial implementation phase of the *Gacaca* by distinguishing three main junctures, each of which responded to a particular objective.

The « Pre-*Gacaca* » or the Implicit Acknowledgment of Innocence

One of the first key moments of this new process was, starting in 2001, the presentation of prisoners, organized by the Parquet General (Department of the Prosecutor General), with the particular support of the NGO “RCN Justice et Démocratie.” These presentations to the population took place before the actual launch of the *Gacaca* process.

These sessions were organized initially as a response to the willingness to normalize the situation of numerous detainees without files, and then to present to the population detainees whose files were incomplete and who had been found innocent by the “prison *Gacacas*.” It is, in fact, indisputable that the principle of the presumption of innocence was profoundly disrespected throughout this immediate post-genocide period, which saw thousands of people arrested and incarcerated on the basis of simple accusations and without the least argumentation or defense. It seemed evident, in the eyes of certain political and judicial authorities, that a certain number of these incarcerations had been the product, at worst, of massive arrests and malevolent accusations, and at best, erroneous testimony. If this could be explained by the chaotic environment of the first years after the genocide, it can no longer be justified in a context in which the rule of law is being restored and true justice for genocide is being put in place.

These presentations of prisoners to the population, organized by the public prosecutor’s office, first responded to the imperative to count the entire prison population and especially to ensure that each detainee would have a file. The next task was to rapidly determine the fate of those who, by all evidence, were innocent. At the same time, these presentations sometimes permitted the prosecutor’s office to obtain information from the population that would allow for the completion of the presented detainees’ files, and the subsequent transfer of these files to the *Gacaca* court²⁰.

These presentations took place on the hills where the detainees were presumed to have committed their crimes, and consisted of presenting them to the population who was invited on these occasions to testify and speak out, either to discharge (from liability) or to condemn the detainee, and recount what they had seen at the time of the genocide.

Following these presentations, detainees who were completely absolved of responsibility by the population were “provisionally” released. These presentations were therefore interpreted by the population to mean that a genuine effort to establish the individual responsibility of each detainee had begun in order to be followed up in the framework of the *Gacaca*.

Considered at the time to be a preparatory stage for the launching of the *Gacaca* process, these presentation sessions also provided the authorities with some notion of what they might expect in terms of future problems with the *Gacaca*, and provided the population an opportunity to familiarize itself with this new participatory process. A representative from the Public Prosecutor’s office conducted the introductory session that preceded the presentations. This

²⁰ At the time, some concerns were nevertheless raised with regard to the “informative role” played by the public prosecution. People in fact feared that the *Inyangamugayo* would regard these data sheets (“*fiches parquets*”) as indicative of the guilt of defendants to be tried and would lead them to believe they were relieved of any responsibility for verifying the information. Understood in this way, these data sheets were taken as an initial presumption of guilt.

introductory session was often the first time -and in certain cases the only time- that the population and prisoners received an explanation of the *Gacaca*. It should nonetheless be emphasized that, despite the personal stakes at these sessions, and although significant variations were observed from one district to another, the participation of the population was generally satisfactory, both in terms of attendance and willingness to speak out.

In many respects, these presentations to the population were a remarkable step in the preparatory phase of the *Gacaca* process. In fact, it was only during these public hearings -where all parties were present (the accused, victims, witnesses and all members of the community who wished to be) -that a debate between the different witnesses could happen. This facilitated the trial of cases, despite the fact that the accused person did not testify on these occasions.

Taking into account the freedom with which one could speak during these sessions and the active participation of the population, as well as the provisional releases that followed, the pre-*Gacaca* inspired high hopes about what the actual *Gacaca* process would be like once it was launched. In fact, in the course of these presentations, the population especially noted the fact that, on one hand, people could testify freely, and on the other, that many of the judicial authorities showed a genuine willingness to try to achieve equal justice because the innocent were taken into consideration. It was not, therefore, solely a justice of incrimination.

Nevertheless, it is instructive to emphasize that this freedom of speech and opening of trust toward justice were manifested primarily in 2001 and 2002, before the wave of provisional releases of confessed detainees, and therefore in a social context that was less tense. For one thing, the point was to testify about people who were already accused and not about persons who had never been the subject of any accusation by a judicial authority, which is now the case in the national phase. On the other hand, testimony made in defense of the accused would very often lead to his release.

These presentations thus allowed for the provisional release of a large number of accused that the population did not recognize as having participated in the genocide. Indirectly, the presumption of innocence that had been flouted during the first chaotic years after the genocide found meaning again in this difficult prosecution of genocide and it was the population itself that assured that this principle was put into practice. The participatory nature of the process and the publicity of the debates in the hills served as the best procedural guarantee for those detainees against whom no evidence for the prosecution had been brought: an accused detainee whose guilt the Public Prosecution could not prove to the population, and who was absolved of responsibility by the same population, was released.

According to Réseau des Citoyens Network²¹, which assisted the Public Prosecution in its work of presenting detainees to the population, 11,659 detainees had been presented by the end of December 2002. In the end, 2,721 defendants, or 23.3%, were provisionally released, although this represented only 2.5% of the total prison population (2,721 out of 106,980). Nonetheless, this gesture considerably reinforced the process of restoring the rule of law.

In terms of what this wave of presentations to the population in 2001 and 2002 meant for the presumption of innocence, one cannot help but notice what appears to be an inversion of values since 2003: the releases that took place as a result of the application of the January 1, 2003 Presidential Decree, as well as the priority given to judging those who had confessed and who

²¹ RCN, "General Chart of Presentations 2001-2002" ("Tableau général des présentations 2001-2002"), Kigali, January 2003

were thus guilty, again points up the problem of the imprisonment of the innocent. Prison time is often much shorter today for many perpetrators than it is for those in preventive detention who do not confess, and who, in some cases, are innocent. More to the point, certain families of detainees, convinced that their detained relatives are innocent, wonder if the latter will not be tempted to “invent confessions” in order to be released.

Election and training of the *Inyangamugayo* judges

One preliminary and fundamental stage in the implementation of the *Gacaca* courts was the election of the *Inyangamugayo* judges between the 4th and 7th of October, 2001. On this occasion, approximately 254,400 judges were elected throughout the country.

The election data collected by PRI is based primarily on the observation of a pilot election during the month of August 2001 in the Kabagari (Gitarama) district, and subsequently on the monitoring of the electoral process in the urban districts of Kanombe, Kacyiru and Gikondo (Kigali), and the rural districts of Kamonyi and Murambi (Gitarama and Umutara).

With the level of voter turnout having reached 87%²² according to the national electoral commission, it could be surmised that this election was rather successful in terms of participation. It seems that the weak sensitization of the population was compensated for by a strong mobilization of the *nyumbakumi* -the sensitization campaign having started quite late and often only one week before the elections. Information campaigns were then intensified via television as well as radio and in the press. The day before the elections, President Paul Kagame, for his part, delivered a speech calling for the full participation of voters, a message that was repeated the day of the elections. In the city of Kigali, women marched with signs bearing the words “*truth heals*” to encourage their “*sisters*” to participate. In the countryside, meetings were organized spontaneously at both cell and sector level, but generally attracted the attention of only a few.

It is thus in large part the strong mobilizing force of the *nyumbakumi* during the last weeks prior to the elections that might explain such an investment from the population. In fact, even though they learned what role they would have to play only a few weeks before the elections, the burden of the work was entrusted to them²³. This consisted specifically of going from house to house, motivating all adults of voting age and drawing up lists of persons regarded as persons of integrity, which would be transmitted to the cells. It should however be noted that the role of the *nyumbakumi* was sometimes negatively viewed by the population, which saw this as an attempt to control the candidates and thus the results of the elections: “*It looks like they are staging a play here.*” In certain places, where the *nyumbakumi* had proposed few names, the outcome of the elections was hardly a surprise.

The difficulty of imposing election criteria such as that of “morality,” and the population’s fear that these criteria might not be respected, explains this low level of participation. Our research has in fact shown that before this election, the entire population insisted a great deal on the fact

²² Cf. statistics distributed by the Commission at a meeting organized by GTZ, October 31, 2001.

²³ It is interesting to note that in a previous (undated) version of the electoral law, the role of the *nyumbakumi* was never mentioned, although the vote was presented to them as mandatory: “*The vote is mandatory for every Rwandan (...)*” (art. 5). In a later version of June 26, 2001, this article was withdrawn. Instead, a greater emphasis was placed on the role of the *nyumbakumi*: “*Each nyumbakumi shall designate a number of persons of integrity at least equal to the number required, to be presented by each nyumbakumi (...). After the election in the nyumbakumi, the General Assembly shall meet and the chosen candidates shall be introduced (...)*” (Art. 38).

that these judges be individuals who were **truly** “moral,” as each group doubted the impartiality of the other.

Testimonies from survivors:

At judgment time, a judge from the family of a detainee will have a tendency to be partial, while the survivor judge will feel insecurity.

Where are they going to find judges who are not closely related ?

During the elections, will there be a fixed percentage of judges who are survivors?

Since family members of those who took part in the genocide are in the majority, I can't see how we will be able to get judges who can defend us. Won't they tend to side with detainees who are part of their families?

On hills where all the Tutsis were killed and where only Hutus are left, who will give testimony to convict the detainees? Who will lead the elections? Who will be elected, won't it be those who killed?

Testimonies from detainees:

They will find capable judges, except that it is difficult to find a real sage or a person who is one hundred percent objective. There will be few people they call “sages” to run the *Gacaca* trials successfully.

As long as they are not paid, their work will not be efficient [corruption] and justice will not be done.

All the authorities are, in general, Tutsis, and people say they [the authorities] are the ones who are responsible for preparing the population for the election of the judges. How are they not going to corrupt this population, and even these judges?

NGOs should monitor the election of the *Gacaca* judges so that there is no corruption or intrigue because the outcome of the *Gacaca* depends a lot on the judges.

In a speech to the nation²⁴, President Paul Kagame called on Rwandans to elect honest, principled and hardworking people, and to do so without discrimination of any kind. Nevertheless, it cannot be denied that certain group-based forms of reasoning entered into these elections, each one nurturing particular expectations of the *Gacaca*. On one side were the survivors of the genocide and former refugees from 1959. This group tried to obtain the greatest possible number of representatives, partly in order to try to compensate for their situation as members of the minority, but also because they thought of the *Gacaca* as a means of arresting criminals who were still free. On the other side were those who were clearly less interested in being elected as judges, particularly among detainees' family members, because many feared they would later have to share the responsibility for new mass arrests.

On October 4th, the first day of the elections, a strong turnout was observed, particularly in urban areas. And, although many participants had regarded this vote as a “civic duty,” an obligation, “*one must respond well to State requirements*,” the atmosphere proved friendly and relaxed, in spite of everything -even if in certain places, and especially in Kigali, participation was lightly forced by the intervention of the *Local Defense Force* which urged the population to close stores and small markets.

²⁴ Cf. *The New Times*, October 8-10, 2001, p. 3

As in most elections in Rwanda, the elections of the judges of integrity took place by indirect vote. The candidates selected by the *nyumbakumi* were publicly presented to the cell population. Inhabitants were then called upon for comments and to give their opinions about whether this or that person was truly honest. At the time, it was still possible for the public to propose a new candidate. While it is difficult to determine what the criteria for integrity actually were, it is possible to cite the reasons why certain rare candidates were dismissed: alcoholism, behavior considered to be immoral (adultery, prostitution), failure to pay debts, participation in looting during the genocide, tendency to engage in quarrels, domestic violence, etc. The actual vote took place by lining up behind the candidate to whom one would give one's vote.

The candidates elected at the cell level received a mandate to elect, this time in writing and in secret, both members of the cell coordination committee and those to be sent to the sector level. The same process was repeated at the upper levels: sector, district and province.

It should be noted that at the cell level, candidates who were elected were essentially people who already exercised certain functions as *nyumbakumi* or within the cell committee. Despite a high level of participation by women, statistics from the Electoral Commission show that relatively few of them were elected as judges. The preponderance of male judges reflects the difference in literacy rates between men and women (particularly among those over 30 years of age²⁵), and the fact that a number of Rwandans still seem to consider the responsibility of a *Gacaca* judge as one reserved for men.

*Percentage of women judges elected and level of education (men and women collectively) by administrative level*²⁶:

Administrative Level	Female Judges (%)	Judges not having finished primary school (%)
Cell	35	44
Sector	23	35
District	26	5
Province	19	0

As the table indicates, level of education was also an important factor in selection, at cell level as well, since the majority of judges had at least finished primary school. At district and province levels, a large percentage of elected judges (46 and 60% respectively) had finished their secondary education.

With regard to the profession of judges elected, the majority of those in the sectors and cells were farmers (91% and 80% respectively). In the districts and provinces, however, most were teachers or civil servants (48% and 68% respectively). This allows us to conclude that the cell- and sector-level judges for the most part belong to the lowest peasant class, and those at the district and province levels belong to the lower-middle class. All are interesting indicators with regard to which social classes bear the greatest responsibilities in the *Gacaca*, and indicators that may shed light on the reproach often made about the lack of involvement of elites.

²⁵ Department of Statistics, *Rwanda Development Indicators*, n°3, Ministry of Finance and Economic Planning, Kigali, July 2000, p. 267

²⁶ PRI, Report I, p. 41

In order to allow these non-professional judges to practice, the 6th Chamber of the Supreme Court (Department of *Gacaca* Jurisdictions) produced in October 2001, with the assistance of Avocats Sans Frontières, the first training manual for *Gacaca* judges. Next, a training based on this manual was organized during the months of April and May 2002, before the tribunals became active. This training, however, which was limited to a maximum of 36 hours, proved insufficient, and the judges themselves recognized that it was difficult to master the *Gacaca* legislation in such a short time. What is more, with nothing to replace this exercise, a certain number of difficulties in judges' comprehension of the law only came to the fore when the activities of the jurisdictions began.

Following these difficulties encountered by the judges in the field and the revision of the law in 2004, various training sessions were organized over the course of the next years in order to deepen and update the judges' understanding of the texts. In the same spirit, simplified instruction booklets on the *Gacaca* Law, particularly with regard to procedures, were produced by the State institutions in charge of the *Gacaca*. In addition, a certain number of decentralized agents, called "*Gacaca* coordinators," were assigned throughout the territory to advise and support *Gacaca* judges in their task of implementing justice: All of these actions were aimed at helping these non-professional judges carry out their arduous task or judging the crime of genocide.

The Phased Launch of the Courts

Having decided to put into place a system of justice specifically designed for the prosecution of genocide, but without any model on which to base it, the Rwandan government made the decision to proceed carefully by beginning with a pilot phase. The goal was to acquire experience and evaluate the functioning of the process, in order to correct, if necessary, certain aspects of the project as it progressed, and before it was launched at the national level.

It should be noted that the government's announcement on June 18, 2002, that the launch of the *Gacaca* process would include a pilot phase, came as a surprise. In fact, during the first discussions of the *Gacaca* courts between Rwandan leaders working in the justice sector and representatives from the international community (donors and NGOs), government representatives were firmly opposed to the idea of starting this ambitious and innovative project on a small scale.

This announcement was also a surprise in that some of the conditions considered necessary for the success of the process did not seem to be fulfilled:

- The indemnification/reparation law had not been passed and the issue of what kind of compensation should be accorded to genocide victims remained uncertain, even though it was a key factor in encouraging victims to participate constructively in the process. This issue remains unresolved today.
- At the time, neither the funds necessary for the start-up of the Community Service system nor the infrastructure essential for its execution existed.
- Doubts had also been expressed as to the quality and duration of the training given to *Gacaca* judges²⁷.

²⁷ Cf. the internal report by Pierre St-Hilaire, *Critical problems emerging from the Gacaca "Training of Trainers" Seminar*, USAID, Kigali, March 2002.

- The “*fiches parquets*” (information sheets on each detainee) established by the Public Prosecution and required by the law to provide basic information for the *Gacaca* sessions, were not yet available. Indeed, a large number of them had been filled out, but their distribution remained, for the most part, unfinished.
- Elsewhere, the National Human Rights Commission (NHRC), in cooperation with civil society organizations, was supposed to conduct a follow-up on the functioning of the courts and the process in general. However, this structure was not yet operational.

It was, therefore, contrary to all expectations that on June 19, 2002, the *Gacaca* would start up in 79 cells across 12 pilot sectors (1 sector per province). According to representatives in the 6th Chamber, the selection of pilot sectors was made based on the following criteria:

- an elevated number of confessions (main criterion),
- availability of infrastructure,
- good results obtained at the end of the training given to *Inyangamugayo* judges,
- and in general, a cooperative population.

The second stage of the pilot phase began on November 25, 2002, with the launching of courts in 106 new sectors, in addition to the 12 that were already functioning, with 1 per sector. In practice, this entailed the participation of 672 supplementary cells.

It was only in 2004, after two and a half years of information-gathering, that the pilot courts finished their work.

Next was the issue of establishing a simultaneous launch of information-gathering at the national phase and of judgments at the pilot phase, and especially whether such a simultaneous launch was appropriate. Two possibilities thus presented themselves.

The first consisted of waiting until all of the *Gacaca* courts, at the national phase, had also finished their work of gathering information and categorization, in order to begin all of the judgment phases. The reason that this option was interesting was due to the fact that all of the sectors would then be at the same level, which would mean that the actual culpability of persons having committed crimes in different places would be established. This would then allow for the judgment phase of these accused persons to occur only in the cell where they had committed the most serious offenses. The purpose of this option was to avoid the duplication of trials.

Ultimately, however, the second option was chosen: the concomitant launch of the national data collection phase (on January 15, 2005) and the judgment phase of the pilot jurisdictions (on March 10, 2005). Thus the choice was made to have the accused appear in each cell where they committed crimes.

The government put forth the following arguments in favor of this solution: First, this solution permitted the population who had participated at the pilot phase to avoid having to attend the judgments indefinitely. At the time this choice was to be made, however, no one could actually say how long the data collection during the national phase would take. Second, having each accused person appear in each cell where he committed offenses was supposed to facilitate reconciliation by allowing all victims to face perpetrators.

A third, and essential, argument was that of accelerating the process. While it is true that courts in the pilot phase would finish the judgments more rapidly in the short term, the argument for speeding up the process is not relevant in the long term, since an accused person would only have been able to appear one time; with this solution he would have to appear multiple times. In addition, the duplication of judgments poses the problem of having to assemble all the sentences pronounced against the same perpetrator, in order to then determine the heaviest sentence that would actually be applied.

- Part Two - *Confessions Back on the Hills*

The *Gacaca* process is completely defined by and dependent upon two fundamental concepts: those of confession and forgiveness -two concepts which call into question the relationship between collective politics and individual approaches. This relationship was put to the test by the releases of 2003, and was one factor, among others, in the revelation of certain obstacles which exposed the limitations of the very concepts of confession and forgiveness as well as the politics of implementation.

1 – The Confession

The Central Placement of the Confession

Several methods have been used, either consecutively or simultaneously, to accelerate the genocide trials: the use of “group trials” for persons having participated in the same crimes, and “itinerant” trials which allowed tribunals to sit at the very locations where crimes were committed. But it is certainly the confession procedure and guilt plea that occupies the most space, to the extent that it can be called a veritable “cornerstone” of the *Gacaca* process, as it was referred to by PRI in a January 2003 report.

The incentive to confess is a characteristic common to many judicial systems in countries that have experienced mass crimes. On this point, speaking of “carrot and stick” politics, Archbishop Desmond Tutu evoked the confession procedure used in South Africa in these words²⁸ : “*Once the transition has succeeded, it is easy to say how one might have proceeded differently. [...] When certain torturers confessed, their loved ones often discovered for the first time how they had behaved. Families were traumatized, and some were divorced by their wives.*”

The confession procedure seems to have been inspired by the Anglo-Saxon system of “plea-bargaining,” and was particularly promoted by the Presidential Decree of January 1, 2003. Appealing to this procedure allows the accused to benefit from a sentence reduction and in principle to serve half of the remaining sentence in the form of community service. A collection deadline for confessions had initially been set for March 15, 2002, but it was extended several times. Since 2004, it has been possible to make a confession at any time.

For a confession to be valid, and thus to justify a release and/or a reduction in sentence, it must first be complete and sincere. In other words, it must contain a detailed description of the crimes committed, the names of the victims, accomplices, the place, and if necessary, the property that was damaged. Second, it must be accompanied by sincere apologies of the person who is confessing.

It is up to the *Inyangamugayo* judges of the seat of the *Gacaca* court to evaluate, at the time of the judgment, whether a confession conforms to the truth and to decide to accept it or reject it.

²⁸ Quoted by Sophie Pons (*Apartheid. L'aveu et le pardon*, Bayard, Paris, 2000, p. 192)

Confession in Prison, or « Prison Gacaca »

Early on, confession played an important role, because beginning in 1998, detainees, encouraged by the authorities, started their own “Gacaca” in several prisons. Organized as committees that heard the confessions of other prisoners, these “Gacaca” had the advantage of taking place inside the prison walls, thereby giving perpetrators a certain “freedom of speech.” However, at the same time, it proved much more difficult for perpetrators to lie since they were among the very people who accompanied them at the time of the crimes. On these occasions, detailed lists of victims, perpetrators and crime locations were drawn up.

For example, in Kigali Central Prison (“PCK”), the Gacaca committee heard 1,127 confessions over the course of three years, out of a total of 8,000 prisoners. Confessions were organized by geographic sector, in the presence of individuals from the same area. We asked this Gacaca committee, which seemed to be one of the best organized, to show us the complete results of their work on the two communes for which prisoners had given information, namely the urban commune of Kacyru and the rural commune of Bicumbi. The results seem astonishingly precise: 230 handwritten pages with charts and descriptions in French, as well as a 211-page long Kinyarwanda version. In these pages were lists mentioning the names of persons from these communes who were killed during the genocide, with details about how events unfolded, but also lists of persons who were injured or raped. At the end, one list summarized the names of the murderers, the groups to which they belonged, who their leaders were, the names of minors who had participated, as well as the present locations of perpetrators who had survived and the names of individuals who could provide supplementary information.

While these lists were indeed very interesting due to the enormous amount of detail they contained, they remain an information source that should be used with discretion. For a variety of reasons, they could be used to negotiate bargains between implicated detainees who would divide up the culpability for their crimes amongst themselves, and also minimize this culpability by imputing it to others. Nevertheless, these lists could be used by the Gacaca courts -in conjunction with other sources of information- to categorize the accused. The same lists also served to identify detainees who might benefit from a provisional release.

Weaknesses in the Confession Procedure

Because the confession is a key element in the Gacaca process, it is important to remain aware of the weaknesses that resorting to this quasi-systematic system exposes. Three major weaknesses can be cited here: the issue of what cultural meaning confession holds in Rwanda, that of the credibility of confessions, and finally the issue of sincerity.

The cultural significance of the confession, beyond its socio-juridical reach, can be summarized by the words of Michel Naepels: “*Confession is a positive response to an explicit accusation, produced in an interaction that takes place in an inquisitorial and asymmetrical context. It evokes both a revelation of the past (it is a verbal statement with a strong value of truth, and which serves as proof), and consequences both judicial (obligation to make reparation or submit to a sanction) and moral (disqualification of the person, endorsement of blame and social reprobation).*”²⁹ The confession takes place entirely through a social interaction, under circumstances that are specifically Rwandan.

²⁹ Naepels, Michel, *Baisser la tête, parler haut en Nouvelle-Calédonie*, p. 119 (characteristics illuminated by R. Dulong and J.M. Marandin in R. Dulong, *L’aveu. Histoire, sociologie, philosophie*, Paris, PUF, 2001)

But according to Delvaux³⁰, confessing in front of victims in Rwanda is traditionally considered an insult and an aggravating circumstance because it is perceived as a show of force. In fact, only those with considerable family support may confess in front of victims. And, it is usually the head of the family who asks forgiveness in the name of the delinquent. This holds major social implications with regard to the way confessions might be perceived by survivors, and particularly with regard to what might come of these perceptions in terms of reconciliation. For example, this could clarify the fact that during prisoners' hearings, detainees making confessions have often been perceived as particularly "arrogant."

Confession, how credible?

The question of the credibility of confessions arises in that it is not rare for detainees to make only partial confessions or to assign themselves only minor offenses, particularly if they know that only some evidence of their guilt exists. Some detainees, but also people who are free, sometimes attempt to alter their testimonies in order to spare certain individuals, by instead laying blame on people who are deceased, in exile or those with whom they currently have a conflict.

From a more "psychological" perspective, testimonies -and thus, confessions, too- provided by the accused themselves, especially for crimes as serious as genocide, are always a problematic source of information. This is because they often contain omissions, half-truths and/or outright lies. Consequently, we concur with Daniel Goldhagen³¹ when he stipulates that the only credible methodological approach is to reject all testimonies from the accused if they are not confirmed by other sources of information.

"There are many detainees who make omissions³², that is, who do not reveal all of the crimes they have committed for fear of being classified in the 1st category. Others say very little, in order to spare their friends or relatives. Others confess in place of the real perpetrators of crimes due to bribes taken from the latter, although in general without much effect, because the real perpetrators can be accused in the *Gacaca* outside...Certain detainees choose to confess to crimes they did not commit in order to benefit from a provisional release."

- Detainees from Gisovu, March 2004 -

Indeed, taking these confessions into consideration (even those "negotiated" with a view to a sentence reduction or other judicial advantage) is extremely useful and even inevitable in Rwanda, in the context of the research involved in establishing facts, and thus cannot be *a priori* rejected. But it is evident that these confessions should be used with great discretion, and the previously mentioned observations lead us to reconsider the weight that these confessions should carry in the establishment of the "truth." Consequently, as long as the *Gacaca* courts or the regular courts have not seriously verified the truthfulness of these confessions, primarily through cross-examination, they should have but little probative value.

³⁰ As cited in Delvaux (2002)

³¹ Goldhagen, Daniel, *Les bourreaux volontaires de Hitler. Les allemands ordinaires et l'holocauste [Hitler's Willing Executioners. Ordinary Germans and the Holocaust]*, London, Abacus, 2001

³² These "omissions" are explained notably by rumors according to which "there will be no true releases...that this is nothing but lies." Detainees also used to point to the re-arrest of those who had been released. Some even went so far as to think that the releases had been organized not "out of pity," but in order to free up space for future imprisonment of those who are still outside, the pretext being that "all *Babutu* must experience prison."

Confession, how sincere?

It seems that over the course of the different sensitization sessions conducted with prisoners on confession, the sincerity of the forgiveness requested was emphasized more than the sincerity of the confession itself; in other words, more than the articulation of the crimes committed and the circumstances surrounding it. This lapse has perhaps gone unnoticed, but its consequences could be grave.

Thus, on the detainees' side, some had a tendency to think that by confessing to only one part of their crimes, while asking sincerely for forgiveness, they were doing what was expected of them. Yet during the judgment phase, the incomplete nature of their confessions emerged and caused them to forfeit their chances of benefiting from Community Service. They had a great deal of difficulty accepting this situation, thinking that as long as they regretted their deeds sincerely, they should be released solely on these grounds.

At the same time, some survivors also placed their most fundamental expectations on the sincerity of the request for forgiveness, while the evaluation of this sincerity can only be exceedingly subjective. As a consequence, those who were dissatisfied with a perpetrator's behavior during his request for forgiveness had a tendency to feel duped, even when the accused had admitted all of his crimes.

With regard to this question of "sincerity," it is possible to see how gaps in understanding, in one way or another, fed expectations, and consequently disappointments, at the time of judgment. Yet disappointments, which generate frustrations, can in the long term prove dangerous to the *Gacaca*'s mandated goal of reconciliation.

2 – Forgiveness, or the Issue of Individual Responsibility in a Collective Process

At different times, PRI's researchers have observed the influence of religion on the reconciliation process within a country that is three-quarters Christian and two-thirds Catholic. While the concept of forgiveness emerges as a principal theme in the pastoral line of Rwandan bishops, it is also quite present in the discourse of political authorities on the *Gacaca* process and reconciliation.

Thus, on June 18, 2002, at the official launch of the preliminary *Gacaca* courts, President Paul Kagame expressed himself in these terms: "*The sins that were committed must be condemned and punished, but also forgiven. I invite the guilty to be courageous and to confess, repent and ask for forgiveness.*" This very strong appeal to the notion of forgiveness has not waned with time and the advancement of the process, such that in an interview granted in 2004 to the publication *Politique Internationale*, President Paul Kagame explained: "*It is important that the guilty confess to their crimes and ask forgiveness of the victims. On one hand, confession eases their conscience, but overall, these confessions comfort survivors who learn from them, even if it is painful, how their loved ones died and where their bodies were left.*"³³

Ever since, the boundary between that which belongs to the realm of faith or that of the law³⁴ often seems imperceptible.

³³ Interview with Paul Kagame, quoted by Colette Braeckman, in "Rwanda, dix ans après," *Politique Internationale*, n° 103, Spring 2004, p. 417

³⁴ What is meant here by "law" is the idea of a social behavior that is imposed upon an individual, of the kind that is expected by the authorities in the context of the politics of reconciliation.

Yet the authenticity of forgiveness, whether requested or granted, can only be known in the “heart of hearts” of the person involved. Forgiveness takes place in intimacy and belongs to each individually. As an intimate act, it is directly linked, for survivors, to their mourning and, for genocide perpetrators, to the acknowledgment of their individual responsibility for their actions during the genocide. In the end, these processes are highly individual, dependent upon personal experience and imbued with a rhythm specific to each.

However, is it not the case that in referring to the presidential speeches previously mentioned, it is noticeable how much forgiveness is presented as a completely separate step not only from the collective process that is the *Gacaca*, but from the process of reconciliation?

At this point, it is interesting to contemplate the circumstances which surround these exchanges of forgiveness and the importance assigned to them. It is also important to contemplate the misunderstandings that sometimes exist between certain victims who expect a request for forgiveness which they feel is owed them, and those who do not have this expectation or who simply wish that justice would be done.

The Request for Forgiveness by Perpetrators

“I already asked forgiveness for the things I did. They explained many times that we must ask for forgiveness, and they really emphasized this part. I have already attended two meetings with our *Gacaca* court. In our testimonies, we say what happened and how, and we ask forgiveness from the people at the meeting. In general, we don’t see any problem, because you explain what you did and you apologize. If you committed a murder and someone close to the victim is present, you can approach him and ask him for forgiveness. But in general, we do it during these meetings. Each testimony is required to be accompanied by an apology. ”

- Gitisi, Ruhango, June 2003 -

This testimony sums up quite well, for him alone, the problematic elements of the requests for forgiveness by those who were released, namely: pressure from the authorities, forgiveness as something owed and the public nature of the request.

In fact, intense sensitization campaigns were waged in the prisons, including high-level authorities, in order to incite detainees to plead guilty, confess and ask for forgiveness. This pressure might have resulted in the disintegration of the meaning of “repentance” and “apologies,”³⁵ the proclamation of the latter having been considered by perpetrators to be a simple step in the confession procedure, after the proclamation of crimes committed.

Ever since, what kind of credibility could survivors ascribe to requests for forgiveness which often take the form of simple, public, verbal apologies, more or less extracted under pressure and in the hope of being released from prison?

Moreover, this doubt is often corroborated by the attitude of released prisoners who dare only rarely to personally contact the families of victims. There are few who move beyond the testimony and public apology stage in the *Gacaca*, to make a more individual attempt at rapprochement with the families of their victims. For this reason, situations like that of Steph are exceptional cases:

³⁵ The *Gacaca* Law of June 2004 (cf. supra) speaks of a “*procedure of confession, guilt plea, repentance and apologies*,” while during the sensitization sessions and other statements, the last two elements are found to be part of what it known as the “*request for forgiveness*.”

“I got out of prison and I am free now. My biggest problem is that I have nowhere to live. When I came back, I couldn’t reclaim my land because I found it in someone else’s possession. I live at my brother’s place. I have not yet approached the authorities. But I have asked for forgiveness and they granted it.

During the genocide I killed two young girls who had been raped and sexually tortured. I found them already in bad shape, they could no longer walk except on all fours. Their health was in very bad state, because they had been badly mistreated. When they saw me, they asked me if there were a lot of people outside who would rape them, and they begged me to finish them off, which I did. To finish them off, I took a big piece of wood, and I struck each of them once. Since they were so weak, it was not much time before they were almost not breathing anymore and so that was it. I did it by myself because I was in a hurry. My companions and I buried them.

When I came home from exile, I went directly to the commune and I contacted the authorities to confess my guilt during the genocide. And they put me into the cachot, without any other form of investigation. A little while later, they took us to Byumba, and the prosecution filled in my file and I was presented to the Court where I was sentenced to a penalty of ten years.

Jeanne, the sister of the two young girls that I had killed, came to see me at the *Ingando*³⁶ in R, when I was taking a course. A ‘local defense’ came to tell me that someone wanted to see me. I went out and found her where visitors wait for the released...When I recognized Jeanne, I was filled with fear, but I tried to stay calm. After a short while, I regained courage. When she greeted me, I was really relieved... She took some time to comfort me, and then she told me: ‘I came to see you to let you know that you are welcome [at my house],’ and she gave me money (400 FRW) to buy a kilo of sugar. My friends asked me what Jeanne had come to do. I told them, but they said it was not possible, that there must have been some other ulterior motive behind this visit.

After leaving the solidarity camp, I went to see Jeanne whom I had offended. She was surprised to see me coming, but she welcomed me nicely and we talked with each other for a long time. She told me that she was really glad to see me and that she was happy that I had taken the initiative to visit her. She added that the doors of her house were open to me any time. I was really relieved. I told her that I was coming to ask her forgiveness and she responded: ‘The Government has forgiven you and I cannot refuse you the same. Do not be afraid to come here, there is food, there is drink, do not feel isolated. Come here, it is safe’. She thus gave me proof of her total support.”

- Gakenke, Umutara, 21 March 2003 -

If Steph’s case carries some hope for the future, it also illustrates the enormous importance of survivors in what is said to be a conciliatory step toward reintegration -a step which, nonetheless, can only be achieved by two.

Forgiveness by Survivors

Including the request for forgiveness in the confession phase creates confusion in the minds of some perpetrators, who, when released after confessing, believe that the State has forgiven them and thus demand that survivors do the same. This interpretation is more or less the same one held by some survivors, who, given that the decision to release detainees came from the authorities, tend to feel a certain obligation to forgive: “*The government has forgiven you and me, I*

³⁶ *Ingandos* are educational and reinsertion camps set up to receive released detainees for a three-month period according to the Presidential decree of January 2003. Cf. section 4 of this report, on releases.

cannot refuse it to you.”³⁷, or “We could not ask for explanations anywhere since it is the power [government] who released these people.”³⁸

However, alongside what one could call subjective interpretations -by both survivors and those released- of the “reality” of the releases, there are real cases in which pressure is exerted on survivors, and sometimes with the best of intentions. Thus, survivors explain that they grant their forgiveness because it is the “power,” “the State” or “the Church” that asks them to do so. This tendency to not dare refuse increases if the request is made during a public meeting, even if some survivors would prefer to simply “demand justice,” and put off the question of forgiveness until later.

The case of Murama is an example of such obedience to the authorities:

“A [female] local authority in Murama had noticed that a woman survivor was manifesting serious psychological problems. However, the other survivors tried to convince this woman to try to pass herself off as being more seriously traumatized than she actually was, the goal being to dramatize her reactions to the return of the ex-prisoners so that some of them would be put back in prison.

The local authority made this woman survivor understand that, despite her various problems, she should not allow herself to be susceptible to such manipulation. The survivor immediately accepted. Afterwards, the local authority contacted an agent from Unity and Reconciliation [Commission] in order to find solutions in case similar attempts occurred. She [the local authority] thus invited a few survivors who had been particularly affected by the events of 1994 but who were ready to forgive, and a few released prisoners, to speak to them about reconciliation while asking them to ask each other’s forgiveness and to grant each other forgiveness. Thus, each released prisoner stood up in front of a survivor in order to explain how he had committed his crimes, and finished by asking for forgiveness. After that, the survivor stood up in his turn and granted the forgiveness which had been just requested of him. And so it went until the last person’s turn.

The local authority recounts: “Then, when the released detainee’s turn came, the one who had committed crimes against this particularly traumatized woman, she [the survivor] melted into tears following the recounting of his acts. But, nevertheless, she ended up calming down, after our exchange of glances that reminded her of the advice I had given her. When her turn to forgive came, I was filled with joy to hear this woman grant her forgiveness with these words: ‘If you were really frank in what you said, I give you the forgiveness which you have just asked me.’ After this forgiveness, two other people who had committed crimes that pertained to her asked her, in their turn, for forgiveness. And fortunately, the woman also agreed to give them this forgiveness!”

Happy about the impact of this encounter, the local authority bought a drink with her own money, and gave it to the survivors and the released detainees, explaining to them that sharing this drink would be the symbol of their reconciliation. After that, she continues her story by explaining: “Nevertheless, this woman hesitated to share with her released detainee. Immediately, I looked at her and she stood up with courage and moved beside that released man. Without hesitation, she started to share [the drink] with this released person. Maybe it was the beginning of a reconciliation process between this released man and this woman.”

- Murama, Kayove, July 2003 -

³⁷ PRI Interview, Released Detainee, Gakenke/Umutara, 21 March 2003 (cf. *supra*, the excerpt from the testimony of Steph)

³⁸ PRI Interview, Survivor, Gitisi/Ruhango, June 2003

If a definition were to be formulated from this, we would state it as follows: Forgiveness is the attitude of the person who, having been victim of an offense, takes the initiative to cancel the moral debt incurred by the person who committed the offense against him, or who responds to a request by the offender who, in repenting the offense committed, requests forgiveness for it. The concept of forgiveness thus refers to its corollary, which is the act of repentance. In sacramental practice, forgiveness is granted at the end of a process of reconciliation, which includes several stages and conditions: admission of the offense, regret, confession, and reparation. Confession, however, does not exonerate one from all responsibility. To have recognized one's wrongdoing and to be forgiven do not in any way erase accountability for the act committed. Yet, for survivors as much as for perpetrators, moving through the various above-mentioned stages implies that it happens at a highly individual pace. Consequently, one grasps how many such attempts could -and only with great difficulty- be the goal of a "collective injunction."

However, what is required of the Rwandan population in terms of reconciliation -that is, asking some to seek forgiveness and others to grant it- even with good intentions, is likely to jeopardize the spontaneity of individual initiatives. Such requirements can even, in the long run, prove counterproductive as they give rise to the expectation, for survivors, of receiving a sincere request for forgiveness by perpetrators, and for perpetrators, the expectation of being duly forgiven -and as many such expectations are often unmet.

While the aim of reconciliation policies may be to inspire a certain attitude, and is thus likely to encourage or, on the contrary, thwart individual efforts with regard to the request for or granting of forgiveness, it cannot force them. Without a doubt, a greater emphasis on the "objective" elements, such as the completeness of confessions, could remove this pitfall and give more meaning to the encounter between the perpetrator of the crime and the victim at the time of judgment.

3 - The Challenge of the Releases

A Gradual release

The Presidential Decree of January 2003

In October 1998, the government announced a plan to release 10,000 prisoners without files. Faced with protests from hard-line government supporters and certain genocide survivor special interest groups, this number was reduced to 3,365 prisoners who were released gradually over a period of ten months.

However on January 1, 2003, to everyone's surprise, the President of the Republic requested the provisional release of certain categories of prisoners, among who were those who had already confessed, those who were sick, those who were minors at the time of offense and the elderly.³⁹

If these releases are the result of a political decision which has its own legitimacy, finding its true motives is a task as necessary as it is difficult. There is every reason to think that political, economic and financial reasons played an important role in the choice to effect these releases. Concern over reinforcing the rule of law cannot be the only motivation behind a decision of

³⁹ These releases have been the subject of several reports, cf. namely Report IV, *The guilty plea procedure, cornerstone of the Rwandan justice system*, PRI, Kigali/Paris, January 2003 and Report VI, *From camp to bill, the reintegration of released prisoners*, PRI, Kigali/Paris, May 2004

such magnitude, especially given the social stakes, and the fact that the decision came when end-of-year celebrations were in full swing.

People questioned on the hills at the time recalled that elections were to take place soon, and that this measure was taking on the contours of a “reconciliation” between the government and the population. It is also probable that donors’ concerns about the penitentiary situation and its expense played a considerable role. In the end, one can see that this move was a way of giving a boost to the *Gacaca* process by releasing a large number of confessed prisoners, i.e. those who had admitted their guilt.

On the whole, the Presidential Decree was joyfully received by prisoners and their families, even if the text itself elicited some concerns that were principally related to its lack of clarity.

“If we had the means and the freedom, we would have organized a festival to express our joy at this Presidential Decree. We were so delighted by this official statement in favor of detained minors, old people, of those who had confessed and the sickly. We were so happy the night we heard it that many prisoners did not sleep because of the joy. We were so happy with this official statement from the President of the Republic, and we are ready to learn to live properly with these people outside. We first thanked the good Lord who made him [the President] do it.”

- Detainees from Byumba II, 17 January 2003 -

In many testimonies, it appeared that the Presidential Decree initially gave rise to different interpretations. The authorities tasked with its application thus wondered: was it necessary to release all the minors or only those who had confessed and who were not in the first category? Was an HIV-positive person to be regarded as a sick person? Was a man elderly starting at age 65 or 70 (knowing that it is often difficult in Rwanda to determine the exact age of a person, especially an elderly one)? Some of these concerns however were later dissipated with the preparation of a circular developed by the Public Prosecution.

However, while the reactions of the population in general, including the authorities, did not truly differ from those of the prisoners, survivors who were met by PRI’s observers often expressed great apprehension. This apprehension was partly linked to a feeling of vulnerability; so much so that on the hills, survivors were ill-prepared to understand much less accept such a measure. The announcement of the first wave of releases thus caused great fear initially, and a number of them wondered how the released prisoners were going to behave, and feared that they might continue their crimes of the past. At that time, the president of a cell-level *Gacaca* court commented on the situation thus: “*Genocide survivors wondered whether these released prisoners, who had ‘macheded’ those who resembled them and eaten their cows, would continue their spite. They had this concern.*”⁴⁰

Even if, in fact, survivors were able to observe, with relief, that this was not the case, the apprehension still remains among a number of them today:

A survivor

“We feel that in the future our safety will be problematic. You understand that someone who killed our close relatives, and who today is given freedom, does not love us at all. I think that it will be difficult for us to delight in their release. I also think that work of the *Gacaca* courts is going to become more complicated. We thought that we were going to reconcile ourselves after they served their sentences. It would have been easy for me if I had been asked to reconcile with him after he had served his sentence. Then we would have had a basis on which make our reconciliation. How are we to reconcile ourselves with somebody who does not even know what he has done [whose acts were not formally

⁴⁰ PRI Interview, Gitisi, Ruhango, June 2003

established by a judgment, editor's note]? It is really a serious problem. But I must say that up to now, the released prisoners have still not done us any harm. We think that they have been sufficiently reformed or that maybe they are afraid. We do not know which way the situation will evolve. But, up to now they have not attacked anybody.”

- Gitisi, Ruhango, June 2003 -

Apart from the fear, which remains keenly felt by many survivors, is the expression of a great dissatisfaction and incomprehension. The idea that they have to cohabit, and more or less begin “to reconcile” themselves with people who have still not been convicted for the crimes they committed, is particularly difficult for them. Many actually feel that among these released ex-prisoners, a large number do not deserve to return to the hills. Thus, even while one of their principal organizations, Ibuka, officially supported the decree, this association was active in making sure that certain prisoners were not released after their passage through the solidarity camps.

Testimony of a survivor

“Truthfully, I must say that the release of the prisoners surprised us a lot. In our opinion, the law was not respected. We thought that people had been put in prison because of the crimes that they committed. These crimes are however very evident because we lost many people in this sector. And all of a sudden, we learned that the Decree from the Presidency had released the prisoners. That plunged us into total confusion. And we could not ask for explanations anywhere since it is the power [government] who released these people. However, the government should have taken our interests into account, by releasing them only after having judged them.

Thus, the innocent ones among them should indeed be released by this decree. But the guilty must be judged and convicted. In any event, they should not be released without a valid reason. There are even some who do not know why they were released. To release them without having prepared us mentally beforehand is to twist the knife in our wounds. You cannot say that all of the people who were released are innocent just like you cannot say they all are guilty. It is the justice [system] that should decide on their guilt or their innocence.

I agree that some of these prisoners should be released in order to be judged by the *Gacaca* courts. Obviously, since everyone did not commit the same offenses, I think that it would be wise to keep those who committed serious crimes in prison.”

- Gitisi, Ruhango, June 2003 -

Summary of interviews with survivors in different sectors:

In Kayove (Gisenyi), since the broadcasting of the Presidential Decree relating to the release of the prisoners, survivors have manifested great dissatisfaction, saying publicly that the government would do better to release any prisoner even if he is in the 1st category. They say that this act [the releases] revives the Holocaust that they had just forgotten. They therefore no longer show up at the *Gacaca* court sessions...

However, when the executive secretary of the district explained the Decree in detail, and the fact that this release had nothing to do with pardoning [the prisoners], even survivors seemed to rejoice, particularly when the commander of the army guaranteed their security.

In Kibuye, some survivors say that prisoners' confessions should not be taken into account (especially the confessions of intellectuals) because they are not complete. Thus survivors feel that these prisoners should not receive provisional release. They do not agree with the decision of the President of the Republic. Ibuka would like to participate in verifying these confessions.

Some dare to say they will no longer go to the *Gacaca* meetings to accuse those who will not be punished. Others say that this release decision taken by the President of the Republic is the beginning of his election campaign.

In Ruhengeri, some survivors wonder “why this official statement from the presidency?” They are not happy and some no longer want to accuse anyone before the *Gacaca* courts. They fear that the purpose of the statement is to ease the minds of prisoners’ families now that the elections are close.

In Byumba (Muhororo) during the two last weeks of January, the *Gacaca* courts did not function, although the quorum of 100 people was not mandatory for the 7th meeting. Defendants, prosecutors and even the judges were missing. Survivors say it is useless to worry about it because the State had already made its decision. The families of the prisoners prefer to wait for the prisoners to arrive before re-starting the judgments.

However, if these releases elicited a considerable number of confessions within the prison population in the weeks that followed, some prisoners’ joy turned to discontent when they became aware that the number of releases would be well below their expectations. Nevertheless, for those whose names were on the lists, their departure for the *ingando* was taken as a true chance, a first step toward life outside.

*Passage through the Solidarity Camps (ingandos)*⁴¹

Mainly in order to facilitate the social reintegration of these ex-prisoners, approximately twenty solidarity camps were set up throughout the entire country in order to receive the 22,000 recently released people.

The declared aim of the government was to “*re-educate the released detainees.*” Ex-detainees took classes for three months and participated in various work. The organization of these camps was entrusted to the National Unity and Reconciliation Commission (NURC).⁴² Once the construction of the camps was finished, the NURC was put in charge of a whole training program for ex-prisoners.

The courses given addressed subjects such as:

- the causes and nature of the “Rwandan disease,”
- the history of Rwanda and the Rwandan genocide,
- trauma and its social consequences,
- reintegration after prison,

And, diverse themes were addressed, such as :

- unity and reconciliation,
- the culture of peace,
- participatory *Gacaca* courts,
- principles of democracy and good governance,
- civic education about elections,
- legislative, executive and judiciary powers

⁴¹ For a more complete analysis of this stage cf. Report VI, *From camp to hill: the reintegration of released prisoners*, PRI, Kigali/Paris, May 2004

⁴² National Unity and Reconciliation Commission, NURC/CNUR. *Nation-wide grassroots consultations report: Unity and Reconciliation initiatives in Rwanda*, Kigali, date unknown.

- justice and human rights,
- development strategies for Rwanda,
- the role of the population in maintaining security,
- combating pedophilia,
- AIDS and malaria, etc.

Beyond the goal of reeducation for social reintegration, the authorities also hoped that these solidarity camps would enable them to obtain more information about what really happened during the genocide. Thus, at meetings where released prisoners and members of their original cells (survivors and others) were brought together, ex-detainees were invited to explain how the genocide unfolded in their area. The aim of these meetings was to favor new testimonies in order to detect false witnesses and incomplete confessions.

Interviews conducted with released prisoners reveal that most ex-prisoners had positive experiences in the camps, as the testimony of SH shows⁴³:

“The 1,200 persons or so present, glad to no longer be wearing the pink uniform of Rwandan prisoners, did their work with determination. The first week was devoted to the election of camp leaders and to building a large classroom. SH worked as a journalist, in charge of the national page [of the camp newspaper].

Shortly afterwards, the courses, taught by some high authorities, started. According to SH, this gave the participants great hope. The internal regulations of the camp were mutually agreed upon, knowing that any person who disobeyed would be strictly punished: the punishment for bad conduct (such as smoking hemp, for instance) was to return to prison.

SH viewed the *ingando* as an absolutely necessary stage to pass through in order to improve his understanding of current politics not only with regard to unity and reconciliation, but also in terms of government administration in general. The courses, designed for this purpose, were supplemented by speeches and many debates. The participants appreciated some courses more than others insofar as they discovered the opposite of what they thought they knew, for example, in the courses on Rwandan history and good governance.

Meetings with the local population were organized to try to begin social reintegration. Thus, they played football and volleyball, and built houses for the survivors. The *umuganda*, [community work] was carried out jointly, and finally this conviviality ended in a party where they danced and drank the local sorghum beer. In short, his impression seemed to be positive.”

... while perceived as a necessary stage, the courses were particularly appreciated:

“The solidarity camps to which we were taken before going back home were very important. We were told at great length what the *Gacaca* courts were. They explained to us where the idea to create these courts came from and the aims they hoped to achieve. We obviously tried to understand their philosophy.

We were also taught how we should behave towards the survivors of the genocide, in our families and in our villages. The people in charge of the solidarity camps and the various grassroots authorities also spoke to us about Community Service (CS). Some defendants will serve part of their sentences in liberty. In short, we are looking forward impatiently to beginning this work, although we do not know what kind of work we will be doing. We were only told that we would be doing work in the interests of the community. We were also told that we would have to do work to help develop our community, such as building schools.”

- Gitisi, city of Ruhango, June 2003 -

⁴³ Based on his/her own narration, December 2003

Coming from released prisoners, this kind of enthusiasm for these camps might be surprising and could lead one to doubt the sincerity of the testimonies collected, especially because it is true that, in the Rwandan culture, one does not entrust one's confidence to a foreigner spontaneously, *a fortiori* if he is a researcher or an investigator. These testimonies appear to us, nevertheless, to reflect the lived reality of released prisoners. The *ingando*, like the *Gacaca*, seems to take on a quasi-mystical dimension for these ex-prisoners, and many of them give the impression of perceiving their passage before these courts as a kind of purgatory through which all must pass.

Leaving the Camps, Between Fear and a New Reality

On the whole, even if there was apprehension, the majority of the ex-prisoners were delighted to be able to go home, and their families were delighted to be able to count on them again at home, as the following excerpts reveal:

A released prisoner

“When the *ingando* came to an end, my sister came to fetch me. I spent a few days with her before going to greet my old mother on the hill. My mother received me very well and cried, ‘I thought it was a lie. Thank God. No doubt he has listened to my prayers. Now, if I die I shall not be sad because I have just seen you again!’ After that, the neighbors came in large numbers to greet me. Everybody wanted to buy beer for me, but I no longer drink alcohol. Some think quite wrongly that I have changed my religion.”

- Butare-Ville, December 2003 -

The wife of another released prisoner

“Only God knows how happy I am. I admit that it is not easy to take a bucket full of food every week. What's more, it is not easy to live alone at home for someone [me] who was used to being with someone else. During all these years while he was in prison, our relationship only went downhill. So we have now started to cultivate it. You must understand that this release has made us very happy.

My husband is welcome; I found there was no problem. People are happy to see him back. Since this morning, he has been going round greeting people who asked him to visit. People do not mistrust him because he has admitted his misdeeds and said he was sorry.”

Another inhabitant of Gitisi

“The release of detainees made us happy, except that some of the persons released committed murders. Nevertheless, most of them are innocent. In any case, we are tired of having to feed them in prison. Personally, I was happy because a member of my family was released. We have lived together since his release and there is no problem so far. Instead of keeping them in prison, it would be better that they come and live with us, especially as unity and reconciliation have become a reality in our lives. After their release, we greeted them. For some of them, it had been a very long time since we had seen them. It was really lovely. We had banana beer. We shared it with them in an atmosphere of gaiety. It was difficult to realize that they had just left prison, but one mustn't forget that they were taught how to behave. There is total security and there is no problem between us.”

- Testimonies from Gitisi sector, Ruhango, May 2003 -

However, even if enthusiasm prevailed, leaving prison and the solidarity camp was far from easy for everyone.

A 1959 repatriate⁴⁴

“In Umutara, a solidarity camp was closing down and I had taken the initiative of escorting the people who left it. People walked slowly in small groups of three or four along the road. I then asked some of them where they were going. They replied that they were going to Kahi, close to the border. I asked them if they were waiting for transport, to which they replied that they were going to walk. I then continued on my way, however when I looked back I saw that some of them were sitting down. I therefore stopped again and asked those who had sat down if they wanted transport, but they replied ‘no thank you.’ This showed me that they were afraid of returning to their hills! I ask myself if they ever did reach their homes.”

- Umutara, May 2003 -

Fear was sometimes so great that some people, because of their crimes and their confessions, gave up on going back home to their hill and fled. For example, in Gikondo, a released prisoner who had made a complete confession preferred to flee, knowing that many people were unhappy about his release. But without running away, many feel the precariousness of their situation. Having been released provisionally while awaiting judgment, they feel particularly vulnerable. Everyone is afraid of possible new accusations, whether false or true, from survivors. As one released prisoner said: *“I might even go back to prison today, because our release is provisional.”*

But meeting survivors is not released prisoners’ only worry. They are also afraid of those whom they denounced as their accomplices and who are also at liberty. Moreover, it is not unusual that, after their confessions, their families run into trouble. Some of them even asked the police who were giving courses on security in the solidarity camps if there was any chance of some sort of protection being set up for them and their families.

An acquitted ex-detainee

“There were around twenty people in our camp who had received messages from their wives or their children, saying that things were not looking at all well for them on the outside.”

- Gishamvu, June 2003 -

In fact, these fears should not be neglected since some detainees’ family members, in Kibuye and Umutara, have been killed in suspicious circumstances, and these murders have not been solved to this day.

The Case of M

“In mid-June 2003, M, a released detainee, was attacked by some unknown persons, who wounded him in the arm with a firearm, with the intention of killing him. According to his neighbors, the perpetrators must have been survivors because he had already received threats from them. Even the other ex-detainees expected this as M had participated very actively in the genocide. Nobody knows where he is since he left the hospital in Kiziguro where he was being treated and since then nobody knows what has happened to him.”

- Kawangire sector, Umutara, July 2003 -

⁴⁴ 1959 repatriates are those who had fled the country in order to escape the massacres that occurred that year and who returned after 1994.

Apart from the fears discussed above, another enormous source of anxiety for released prisoners was the reality they had to face after having been cut off from it for so many years. This reality was sometimes completely different from the reality they once knew. The story of SH, who was released after five years in prison, is telling:

“ [...]”

- My companions in my age group have all started families. Others have finished their studies and have important positions in the administration of the country.
- The system of communications has improved considerably with mobile phones, and the cost of transportation has gone up enormously.
- Jobs have become very rare. Supply is far below demand, which is why there are so many unemployed.
- The style of dress has changed a lot, especially for women.
- With respect to justice, the population is aware of the importance of the participatory *Gacaca* courts, but there is a part of the population which is afraid of being denounced by those who have confessed. People no longer file complaints any old way as in the past; now they respect all the steps. The inhabitants appear to have mutual respect and look after their personal affairs.

Some members of my family help me as best they can, but the future remains uncertain. I would like to have a job, continue my studies and start a family. I met a girl who had helped a widow survivor accuse me of genocide. We greeted each other and had a conversation that was absolutely fraternal. I also saw my ex-fiancée again who has found another husband. Wherever I hand in my CV, I find it difficult to justify a blank period of five years. Furthermore, I realize that the accusation against me of participating in the genocide remains a negative label which is the real reason for rejection of my CV in many cases. It is serious (...) Nevertheless, during the presidential and legislative elections, I managed to find temporary work as an interpreter for the election observers of the European Union. This has enabled me to survive.”

Releases and *Gacaca*, What are the Pitfalls?

Even if the releases went well on the whole, and did not give rise to a sharp increase in insecurity as some believed they would, feelings of mistrust and fear remain the strongest among both survivors and released prisoners. Consequently, if individual attempts at *rapprochement* exist, they remain exceptional.

Whether one is facing dangers real or imagined, each individual develops his or her own system of protection in which the current social stakes and those that emerged from the genocide tend to fuse. In a situation where each person is trying to preserve his or her living conditions and to respond to his or her fears and uncertainties, an entire series of negotiations, intimidations or even manipulations can enter into play which ultimately amount to obstacles for the *Gacaca* courts.

Released prisoners are as conscious of the temporary nature of their situation as are genocide perpetrators who remain in liberty, and who have escaped accusations up to now and are afraid of having to answer for their acts before the justice system. All of them risk going to prison. Faced with such stakes, their attitudes may vary considerably, depending mainly on whether the position they hold on their hills is one of strength or weakness.

It is worth noting that very few make the spontaneous attempt to visit the families of their victims. Some simply seem to not feel the need to do so, while others avoid doing so because they are afraid of what survivors' reactions might be. Thus a recently released ex-detainee explained to PRI that he is cautious to not even go near the house, out of fear that its occupants will believe that he is going there to kill them.

Some of those who find themselves in a weak position try to avoid being sent back to prison by attempting to come to an arrangement with the authorities or the victims' families. Therefore the perpetrators of crimes and their families frequently forge agreements with the survivors in order to exchange their silence for the payment of a sum of money, or a payment in kind (cattle or goats). These arrangements which are strategies to bypass the *Gacaca*, do not of course provide any guarantee to released prisoners, as in the following case of an accused who tried to come to an understanding with a local authority:

JM, presumed genocide killer, but not yet brought to justice, became very fearful and anxious because of his situation. He is so restricted by his fear in day-to-day life that he is finding it increasingly difficult to work to ensure the survival of his family. He describes himself as living in a climate of total insecurity, experiencing the situation as a torture that will end in death; repeatedly saying that he would prefer to be arrested rather than suffer this torture in disguise.

JM is accused by CL (a grassroots authority⁴⁵) of murder. However JM alleges that he only saw the killers leaving. On that day CL lost four persons (his mother, younger brother, his wife and their child), who JM buried on the following day, aided by three other neighbors.

JM appears to have been wanted by the police since 1994. But when he returned to Kicukuru, in 2002, after pressure was exerted on his wife, he was not interrogated about the death of these persons, whom he admits to having buried himself. He only gave the names of well-known killers who lived in that cell, putting all the responsibility of the genocide on their shoulders. However these persons all returned home, to Ruhengeri and Byumba. He explained that those who had houses sold nearly all of them through the authorities at very low prices. He added that they were obliged to do so, more or less like he was, having given FRW 100,000 from the sale of his own house to CL in the hope that he would not denounce him, but he is not sure it will work.

- Kicukuru, Kigali-Ville, January 2004 -

Conversely, some perpetrators in positions of power will try to avoid arrest or re-arrest, while resorting to intimidation or even murder in order to make evidence disappear. While some actual cases of intimidation or violence against witnesses have been identified, many rumors on the subject have been circulating since the beginning of the *Gacaca* jurisdictions. This has contributed to creating a climate of insecurity.

In the context of this forced cohabitation, and faced with the various behaviors mentioned above, survivors also tend to develop different attitudes depending on their social influence and how isolated they are. Thus, a person who is relatively isolated, and who, in order to survive after the genocide, comes to an arrangement with the families of the perpetrators themselves, will tend to bypass the justice system by not testifying against the imprisoned members of these families. For these survivors it is a question, above all, of preserving the "de facto social peace." Testifying under these circumstances would rupture social ties which in certain cases are vital; for example, in situations where elderly people without family are dependent upon them.

⁴⁵ Rwandan term to designate the local authorities

On the other hand, some survivors who are conscious of the power that their testimonies confer upon them, and who have lost all hope of compensation (the State having not yet approved the law on indemnification), tend to seek other, sometimes problematic, solutions. The absence of compensation can partially explain the fact that some survivors attempt to avoid the *Gacaca*, and may also explain their alarmist reaction to the request for compensation by certain acquitted and released prisoners, on the basis of years lost in prison.

A survivor

“Recently one of the persons who were released said that the Government should pay them damages and interest for having detained them without reason. In reality, such a person does not even know why he was released!

In this country there are two categories of people. There are us, the survivors of the genocide, and there are those who perpetrated the genocide. Usually, everybody who has committed an offence should be punished.”

- Gitisi, Ruhango, June 2003 -

But beyond the question of indemnification, which, given the living conditions of survivors, must be urgently addressed, many survivors think that released prisoners should not have the right to return home, particularly if they have not been tried. Consequently, feelings of fear, impotence or anger are sometimes so great that some survivors try to do everything possible to have the released prisoners they consider to be a threat sent back to prison -even by committing perjury.

A [female] local authority in Murama had noticed that a woman survivor was having serious psychological problems. However, the other survivors tried to convince this woman to try to pass herself off as being more seriously traumatized than she actually was, the goal being to dramatize her reactions to the return of the ex-prisoners so that some of them would be put back in prison.

- Murama, Kayove, July 2003 -

In Kibungo, some survivors agreed to try to have a man arrested by mandating one of their numbers to accuse him of rape.⁴⁶ This she did. However, she was exposed and admitted that the accusation had been entirely fabricated by her two brothers. After this revelation, she came into direct conflict with them, as well as with some policemen who were present, as the false accusation had been prepared with their complicity.

She then feared for her own security, which led her to ask for protection during a *Gacaca* session, arguing that she was now hated by her brothers and could not even trust the police who were supposed to provide protection for her. At this point some members of her family said that she had received FRW 60,000 to reveal the secret! The man accused of rape was released.

- Birenga, Kibungo, June 2003 -

⁴⁶ With an accusation of rape, which is a 1st category genocide crime, the accused incurs a penalty of at least 25 years, and can receive the death penalty.

Conclusion

Coming back to the question of the confessions and to this period of releases, as well as to the other former or parallel processes which made them possible -such as the presentations of prisoners- we can suggest that a few important features of the *Gacaca* be taken into consideration at the national phase.

Thus, it seems to us that one of the strong points of this pilot phase was the priority given to those who had not confessed. Apart from the symbolic reinforcement of the presumption of innocence that it generated, it reassured the population about the *Gacaca*, which was seen as a true “system of impartial justice” and not simply as a “system that accuses.” This perception of the process seems to us likely to support participation from the population that is both massive and active in the positive sense. One might wonder what remains of this vision of the *Gacaca* -as an impartial institution, capable of recognizing the innocent- when one is witness to a mass exodus of thousands of families at the start of the national phase.

Another important factor to consider at the end of this pilot phase is the sincerity of the confession. Even if it seems that this problem has somewhat disappeared behind that of the sincerity of the forgiveness requested by those who confess, it remains central to the success of the process. In fact, even at a strictly judicial level, with the entire system depending on confessions, the urgent question of their verification would then arise, in particular at a time when the first judgments have begun.

Finally, at a time when a second wave of releases has just occurred in 2005, if we reflect on how the first wave unfolded, we can recall that, overall, everything went well in the hills. On the other hand, it is indisputable that these releases were accompanied less by an actual increase in insecurity (even if one should not deny its impact on all victims) than by a *feeling* of insecurity. This feeling prevailed in the survivor group and among released prisoners as well. It is imperative that this information be taken fully into account. The causes are multiple: this insecurity, which is mainly subjective, can be explained particularly by what some released prisoners perceive as a strong “feeling of exoneration of responsibility” brought about by their release. It is thus important to be vigilant about this and moreover to support this type of “extraordinary” measure in order to limit if not avoid confusion. The same types of problems could be encountered again, in particular with the development of the Community Service Program, which can also be perceived -by both victims and convicted perpetrators- as a way of casting a banal light on the latter’s responsibility.

- Part Three -
The Limits of Participation
And the Two Major Challenges of the Process

Of all the challenges surrounding the *Gacaca* process, PRI has found that the main limitations of its implementation reside in the reality and the nature of participation.

In addition, the present handling of these two questions -the “selective memory of the *Gacaca*” on one hand, and the compensation for survivors on the other- remains extremely problematic and is, beyond the *Gacaca* process, a major obstacle to reconciliation itself.

1 – A Participatory Justice without Participation?

Questionable Participation or Participation at All Costs?

Lack of Participation Among the Population

As a participatory system of justice, the great advantage of the *Gacaca* courts is that it summons the memories of the entire community in order to establish, through a community debate which theoretically allows for an exchange of information, the individual responsibility of each person. Consequently, it is understandable how essential the issue of the participation of the population is. Because without participation, the “truth”⁴⁷ is absent; without an equitable truth-seeking mechanism, the statement of accountability from each of the accused is highly subject to caution.

However, many observers of this pilot phase noted that the population, after having succeeded rather easily in overcoming a certain fear of the unknown, was quite curious in this early part of this phase, and was motivated to participate in large numbers in the first assemblies. But absenteeism very quickly became an increasingly noticeable phenomenon, to the point that, after some months, it became a heavy burden on the process. The survivors, however, were an exception. At most cell-level meetings, the quorum mandated by law proved increasingly difficult to reach, often requiring long hours of waiting when the hearing was not postponed. Sometimes the sessions took place without this quorum being reached, which generated other difficulties.

But beyond the weakness in participation in terms of physical presence, it was above all the sincerity of completeness of the population’s contributions to the establishment of the truth - particularly during the sixth assembly, when the lists of suspects were drawn up- that brought out the *quality* of to the population’s involvement.

⁴⁷ It is always a delicate matter to employ the term “truth.” Nevertheless, in this particular case, reference to the truth is made in terms of “social truth,” i.e. the history of the genocide as it emerges from debates between different members of the community at the cell level, and thus, the construction -as nearly as possible- of the reality of the genocide which will serve as the basis upon which judgments will be made. In this sense, “social truth” is one that may include obstacles, but obstacles that are communally acknowledged by everyone at a given moment.

Some Explanatory Clues

Several explanatory factors, some of which overlap, come into play to clarify this progressive drop in the population's participation. While cyclical excuses can be cited regularly and with good reason, such as the electoral calendar or the rainy season, others are much more problematic and posed equally serious threats to this process, particular with regard to its long-term prospects.

It is understandable that participation in the debates in the *Gacaca* context can prove difficult. For some, it is the equivalent of reliving the worst moments of their lives through testimony. For others, it proves extremely delicate to admit to their individual share of the responsibility given the penal consequences that are incurred. What is more, individual testimonies are directly dependent upon social and interpersonal stakes, and indeed rivalries. These testimonies are all the more difficult to provide because they involve members of the community who are closest to the witnesses. Consequently, it is not surprising that the latter, out of fear of reprisals, develop feelings of insecurity, whether real or imagined. These feelings are then fed by confrontations that are quite real, during the various information collection sessions.

It is also important to not underestimate the economic sacrifice that the weekly participation in *Gacaca* represents for a large part of the population, especially the poorest, and which adds to the various already existing community obligations:

“One day for the market, one for the national work, another one for the *Gacaca*, and Sunday to Church...we have three days left in the week to support our families...”

In addition, one wonders whether these purely coercive solutions, to which the local authorities have resorted more and more, may have reinforced this disengagement and consequently proved counter-productive. Such measures appear to be completely at odds with the sensitization campaigns that are conducted at the same time. However, the population has regularly reported many cases where “absentees” were fined and even subjected to force. Beyond even the illegal character of such sanctions -as they are by no means enshrined in either “*Gacaca*” laws of 2001 and 2004, nor in any other text- similar displays of authority discredit the process that is supposed to depend upon the voluntary participation of the population. The recourse to force, if it is meant to guarantee a large physical presence, can contribute nothing in terms of effective participation to the debates, and thus nothing to the search for the truth. On the contrary, it tends to paralyze any testimony and thus makes the search for this truth about the genocide and about each individual's participation all the more difficult. One is thus facing policies that are not only ineffective but which directly threaten the way the process works by causing the population's confidence in the entire system to deteriorate.

It seems that such absences, unless they are officially authorized, often occurred as a result of a misunderstanding on the part of some grassroots authorities. This reflects the very essence of the *Gacaca* process, namely its participatory character, which should be understood to be “voluntarily participative.”

The Difficult Mission of Passing Judgment ?

In such a context, the judges' lack of education, and sometimes their lack of motivation as well, created additional obstacles in achieving the large participation that was sought.

In fact, it was noted that this disengagement of a portion of the population was due to the problematic "quality" of the work of moderating debates that was entrusted to the *Inyangamugayo*. But how could it be otherwise if one takes into account the sociological composition of these non-professionals, little educated *Gacaca* judges who are by no means armed for such a mission? For a great majority of them, moderating debates whose objective is to reveal the truth about acts committed during the genocide, to weigh the individual responsibilities for the acts committed, while having to rely only on the testimonies of the accused and accuser, is an exercise of an incontestably more dangerous sort. The position of judge never was and never will be the easiest.

The inherent difficulty in this entrusted mission is due to the judges' lack of basic training which is further reinforced by a lack of confidence, which the population can sometimes sense. Indeed, it has happened on several occasions that the integrity of the judges was questioned either by a defendant or by another member of the cell, and this while the legitimacy of the judges is based on the fact that their election was based directly on a criterion of integrity. The statistics⁴⁸ of the National Service in charge of the *Gacaca* Jurisdictions emphasizes that 9% of functioning *Gacaca* judges at the time of this pilot phase (that is 1,319 out of 14,402) were replaced, and half of them for participation in the genocide. The survivors remain those who express the most distrust in the judges:

"The *Inyangamugayo* are judges of the *Gacaca* courts who should instill positive values in the participants. However, among them one can find some who pass themselves off as *Inyangamugayo* when they are not. It is difficult for us to find a real *Inyangamugayo*. But on the whole, we believe that these judges will make good decisions."

- Gitisi, Ruhango, June 2003 -

Henceforth, taking into account the difficulty of their task and of the obviously central place that they occupy within the process, it is imperative to weigh the deficiencies observed during this pilot phase, which can be compensated only by extraordinary and continuous support in terms of training. A continuous in-depth basic training would not only provide them with knowledge of the legal tools that they are required to apply, but will also give them strong support in fulfilling their very specific task of motivating an audience to engage in debate.

The above point is important insofar as the question of proof is directly related to the quality of the debate in a public hearing. The entire outcome of the trial depends on the capacity to interrogate and cross-examine the defendants and the witnesses, to confront them, to distinguish false testimony from true, and to convince a reticent or apprehensive witness to speak by reassuring him or her. It is primarily through the way these non-professional judges will hold their audience that it can be guaranteed that the truth will be known, established judicially, and that a miscarriage of justice will be avoided.

⁴⁸ National Service in charge of *Gacaca* Jurisdictions/NSGH, *Document sur l'état d'avancement des activités des juridictions Gacaca des cellules opérationnelles et programmes d'activités à venir*, Kigali, 21 January 2004

It is also important to address the question of the penalty and its *quantum*. Limiting the training of the judges to the simple understanding of legal maximums imposed by the law for each category of convict would risk creating enormous distortions between the jurisprudences of thousands of *Gacaca* courts in the judgment phase for similar cases. The risk is just as significant with regard to the setting of the indemnity allocated to the victims of material losses.

One of the other important points brought up during the observation of this pilot phase is the “cost” suffered by the *Inyangamugayo* in the exercise of a function that is neither remunerated nor compensated. This cost appears to be both economic and social.

Indeed, the primary activity of the Rwandan population on the hills is subsistence farming, which means that each day not worked constitutes a loss. For an *Inyangamugayo*, his contribution to the *Gacaca* is not only his behavior during the sessions themselves, but also the time necessary to prepare for and organize them. Uncertainties about the scope of the process and thus its duration must be raised as quickly as possible so as not to leave these citizens, of whom so much is already asked, to worry about a real and legitimate issue. Few Rwandans today are required to give as much when performing a civic duty. It seems that, if this process must last several more years, the people must begin to reflect on this question of rebalancing burdens and contributions of this nature. If it is difficult to establish some kind of financial compensation, given the number of judges, the social revalorization of the *Inyangamugayo* must at least be quickly addressed through the provision of material support. This support should concretely express the country’s appreciation of them and encourage them to continue.

In addition, there is also a social cost which many *Inyangamugayo* must assume in judging their own neighbors in their own communities, which is the risk of having to confront or oppose those who are part of their closest social circles. Any enmity that may have emerged during a *Gacaca* session, remains unresolved even after the session has ended. The *Gacaca* judge must thereafter know how to face the displeasure of the person or people he or she had to confront in his or her search for the truth. In this situation, some form of support, including psychological, could greatly contribute to making this task easier.

It is therefore easy to understand how the economic, social and sometimes psychological costs that their job entails, can lead to a certain loss of motivation. Owing sometimes to the lack of confidence in their abilities, as expressed by certain groups in the population, the judges’ task is difficult and the risks they take are quite real -hence the importance of setting up effective compensations for them. In this respect, the creation of associations for *Inyangamugayo* at the province level seems a worthwhile undertaking. These associations should be used as a “port of entry” to improve their socio-economic conditions and to prevent these judges from becoming more vulnerable as a consequence of performing their immense task.

On this question of participation, the process sometimes left one with the impression that it was locked into a downward spiral. In fact, the population’s lack of participation made it increasingly difficult to hold meetings and caused the process to slow down somewhat. This very slowness was at odds with the expectations of the population, which, in its turn, led to dissatisfaction and thus a large number of people to disengage.

The authorities responded to this observation by intensifying the sensitization campaigns.

Sensitization (Public Awareness Campaigns): A Response?

Seeking to remobilize the population, the choice was made to focus efforts on sensitization. On this subject, however, one question remained: what kind of sensitization would be employed and what impact would it have?

The sensitization of the pilot phase mainly seems to have been carried out first in places where it was not seen to be the primary objective, namely during the presentations of prisoners. It seems that these were also the occasion for both the population and the prisoners to familiarize themselves with what the *Gacaca* was going to be.

Nevertheless, it was only two weeks before the launching of the *Gacaca* process that the population was officially sensitized, specifically through public meetings and interventions from the authorities. The goal on this particular occasion was to introduce the dynamic of *Gacaca* and to answer questions from the public. The purpose of these sessions was to persuade people to arrive on time to the hearings, to not be afraid, to speak the “truth,” etc. These sessions were repeated in each sector, throughout the evolution of the process.

When the disengagement of the population started to become noticeable during the pilot phase, the choice was made to reinforce public awareness by holding more public meetings, but without really adapting the message to any one group in the population. However, the reasons that a woman survivor and rape victim does not take part in the *Gacaca* are certainly not the same for a woman whose husband is accused and in prison. Their possible motivations, their expectations of the *Gacaca*, and also their fears, are different. How can a sensitization campaign which seeks to respond to these divergent expectations and queries not take into account this data, which is both social and psychological? However, on the ground, the sensitization meetings focused far more on summing up the juridical contents of the *Gacaca* Law and the phases of the procedure, recalling the major principles, such as the duty to participate, rather than showing each target group the advantages of participating by taking into consideration the reasons for its own reservations. These meetings that included sensitization were also intended to promote the guilty plea and forgiveness. But overall little effort was made to respond to the questions, and indeed the fears, of each group in a more “personalized” way. This lack of attention resulted in a downturn in their voluntary participation.

Within the framework of these sensitization meetings, it seems that the key point the authorities were emphasizing was the necessity of taking part in *Gacaca* as a community obligation. The increasing role that the authorities had during these meetings -to the detriment of religious or community groups, for example- seems to us to underscore this tendency. Of course, other actors intervened within the framework of this sensitization, including some Rwandan civil society organizations, but much later and in smaller proportions and, especially, with fewer tools...other than the text of the *Gacaca* Law and summaries of it.

Along the same lines, it should also be noted that, surprisingly, the sensitization of elites and intellectuals was not really sought out, but their lack of involvement in the *Gacaca* process was noted by all and this did some damage to its smooth implementation: this missing participation of the elites was taken very badly by most of the population, which saw it as a sort of abandonment and depreciation of the *Gacaca*, which from that point forward would be “the business of the ordinary people.”

2 – The Selective Memory of the Gacaca

A Dangerous Unilateralism

According to the government, the *Gacaca* jurisdictions are only competent to judge genocide crimes and crimes against humanity whose victims were of the Tutsi minority and moderate Hutus. War crimes or “acts of revenge” committed against members of the Hutu community during the period covered by the *Gacaca* would be handled only by the military tribunals or the regular courts. In effect, the *Gacaca* are asked to “forget” the latter crimes.

Yet this selective memory of the *Gacaca* is a recurring source of controversy, frustration and even overt or passive boycotts for many members of the Rwandan Hutu community, who regard this “set aside” as proof of biased justice.

This issue of unilateralism is not unique to Rwanda. This issue is omnipresent in countries emerging from major political crises. In Argentina, the balance of power was such that it led the defenders of the former regime to develop the theory of “the two demons,” a version of history which puts victims and torturers on equal footing.⁴⁹ In South Africa, the ANC had sharply criticized the conclusions of the Truth and Reconciliation Commission’s report with regard to its role in the abuses committed, before finally accepting that its own actions be fully brought to light.

The Rwandan government has indeed recognized that such crimes were committed by some members of its army, but it also maintains that these crimes have already been tried. If it is not actually denied that other crimes are still unpunished, the Rwandan authorities are not giving themselves the means with which to bring these crimes to light and judge them. This permits the authorities to justify their position while appealing to the risk of “confusing” the crimes or promoting the theory of a “double genocide.” President Paul Kagame, in keeping with this position, specified the following during the official launch of the preliminary on June 18, 2002:

“It would be necessary to carefully analyze what happened in our country. To establish the difference between genocide and the other crimes committed during or after the war. One must not confuse one with the other. There are people who were killed in acts of revenge committed by individuals, and when these individuals were identified, they were punished severely. So, let us prove these crimes and prosecute those responsible. There are people - Rwandans as well as foreigners- who do not want Rwandans to move on and let go of these old divisions. They call the genocide crimes of revenge, which is completely untrue. These statements are aimed at denying the genocide. They are aimed at keeping Rwandans divided. And they make [people] forget that it was Rwandans themselves who stopped the genocide while the world did nothing.”

It is important to not deny what is at stake with this issue, and particularly the fact that it may actually play into the genocide deniers’ game. Moreover, as early as 1995, Gerard Prunier evoked this form of revisionism: “*Many Hutu who fled the new regime feel no remorse about this genocide: they deny it and justify it at the same time, in an ambiguous way which reminds one strangely of the revisionist theses of certain ‘historians’ of the genocide of the Jews.*”⁵⁰ Furthermore, these are sometimes expressly echoed by certain defense attorneys before the ICTR.⁵¹ Discourse linked to the notion of a “double

⁴⁹ Cf. Lefranc, Sandrine, *Politiques du pardon*, Paris, PUF, col. Fondements de la Politique, 2002

⁵⁰ G. Prunier, *Rwanda : le génocide*. Milan, Dagorno, 1995, p. 44.

⁵¹ The issue of trying crimes of revenge remains an extremely sensitive one between the Rwandan government and the International Criminal Tribunal for Rwanda.

genocide,” also held notably by prominent French politicians, also generates a dangerous confusion and should be urgently and clearly condemned.

But beyond these political maneuvers, the fact of not being able to prosecute or address these “crimes other than genocide,” generally referred to as those of “revenge” in the context of the *Gacaca* jurisdictions, constitutes a major handicap to the restoring peace within Rwandan society and to the smooth functioning of the *Gacaca* process itself. One part of the Hutu population truly feels that victor’s justice has been put in place: a biased justice system, in which there are “good” and “bad” victims, depending on the group to which they belong.

This feeling is supported by the fact that, with the new *Gacaca* Law of June 16, 2004, and the suppression of all references to [any mention of] the 4th Geneva Convention of August 12, 1949 and its additional protocols, one can, from this point forward, only wonder whether it is legally possible, more than ten years after the events of 1994, to prosecute crimes that now appear to have exceeded any statute of limitations as they are only permitted to be handled within the framework of ordinary criminal law.

Beyond this juridical inquiry, it seems that such a situation implicitly endorses the idea of “two weights, two measures.” Some have great difficulty with what they perceive to be a preservation of division, which is no longer one of Hutu/Tutsi, but one of victims/offenders, and survivors/génocidaires.⁵² This view is sustained by the widespread feeling among the Hutu community that there is a certain prejudice against Hutus in general.

Consequently, it appears that the question of how to handle these crimes of revenge remains a fundamental sticking point that has come to shape the process even as it evolves, but also with regard to the impact it can have on the restoration of peace. Yet, if reconciliation is truly one of the primary goals of the *Gacaca* process, it appears important that all those involved in the process be able to speak about their suffering, especially during the actual *Gacaca* sessions.

Before responding to this situation and to the claims of one component of the Rwandan population, one might take advantage of the information collection stage in order to mention, on separate lists, the names of persons who were killed during the genocide, but for other reasons, such as vengeance. Later, these lists could be turned over to a special commission for further investigation. Such an action might not only foster trust in the justice system, but perhaps also stimulate the people’s participation in the *Gacaca* courts, while combating the idea of a double genocide at the same time.

Forgotten Individual Responsibility ?

In the “game” of selective memory played in the *Gacaca* jurisdictions, the Rwandan population also runs another major risk: that of stigmatizing the entire Hutu population and tacitly reinforcing the idea of collective guilt. This, however, constitutes a major obstacle with regard to the acknowledgment of individual responsibility by the architects and participants in the genocide.

⁵² See also Nigel Eltringham & Saskia Van Hoyweghen: Power and Identity in Post-genocide Rwanda, in Doom, Ruddy & Jan Gorus (eds): “Politics of Identity and Economics of Conflict in the Great Lakes Region,” Brussels: VUB University Press, 2000.

Not only does the idea of collective responsibility among Hutu not correspond with the historical truth and could not be accepted, it might contribute directly to the reinforcement of the sense of abandonment of responsibility already observed in many of those who committed crimes. It cannot be denied that individual choice played its own role in the execution of the genocide, but in no way does this contradict the reality that this genocidal ideology was planned and implemented by an entire hierarchical machine.

Yet, the perpetrators' refusal to assume individual responsibility dangerously threatens the long-term prospects for true reconciliation. This tendency among criminals to distance themselves from any personal responsibility is not surprising, given the gravity of the crimes committed and the penalties incurred. Therefore, instead of facing up to their individual actions, many prefer to cling to collective or cultural motivations -such as submission to authority- which are also excuses.

On the other hand, it is much more astonishing to note that in the solidarity camps, where the government's professed [stated] goal is to reeducate the population through administering courses on the political history of the country and on how the genocide unfolded, the idea of individual responsibility is nowhere to be found in the notes taken during these courses by former detainees who participated in the camps. Equally remarkable during these *Ingando* courses is the absence of any mention of the heroic acts of certain Hutu who refused to participate in the genocide⁵³, in part because of their independent thinking. These Rwandans who behaved differently during the genocide and who opposed the order to kill, could serve as positive alternative models for released prisoners. Their conduct is proof that a choice was possible.⁵⁴

A 1959 repatriate

"I am still worried about what this government says about the killings. Every day it says that the Tutsis were killed and that the Hutus killed, but forgetting to mention the generosity and compassion of certain Hutus who agreed to hide Tutsis. To the point where some Hutus lost their lives because of these acts carried out on behalf of the Tutsis."

The attitude of former detainees after the *Ingando* differs little on this issue from the attitude that many of them held while in prison. It is clear from different interviews conducted with released detainees that they have not taken any personal responsibility whatsoever for the suffering that they caused, and continue to pass this responsibility onto third parties:

Released detainee A

If my child asked me why I was in the *interahamwe* militia, the starting point of everything that happened, I would explain the story to him, and I would tell him that history is at the bottom of it all. In other words, this country had a very bad history and the authorities misled the population. The authorities spread bad seeds among the population. And that had an impact which even touched me.

Released detainee B

If my child asked me this question, I would explain to him that he should avoid being misled by the authorities and pushed to hate his fellow man and his neighbor, since the consequence of this was the genocide.

⁵³ See PRI, *Report III* (the case of the Blacksmith), *Report V* (the case of Augustin), *The Righteous*, as well as the study by African Rights, *Tribute to Courage*, London, 2002

⁵⁴ On this notion of exemplary behavior, cf. PRI's *Report V*, *The Righteous*, and *Tribute to Courage*, African Rights, Kigali, August 2002

Released detainee C

If my child asks me why I was in the *interahamwe* militia, and if I really was in it, I would tell him the truth. I wouldn't lie to him. I would tell him that it was necessary.

Released detainee D

If he asked me why I was in the *interahamwe* militia, I would tell him that I am not a militiaman. I would tell him that I am not like the others, but because of the turbulent history of our country, what happened was because of the colonists who cultivated division among the population. They taught us that our fellow man is bad and that we must hate him. The hatred took seed and spread.

Released detainee E

I would show my child that it seriously caused me harm and that it all happened because of the colonists. I would tell him that it started in 1959, when King Rudahigwa started to banish divisions so that each man could work for himself. But the colonists did not let him do that and they killed him. When Kayibanda took power, he also sowed division.

Released detainee F

If my child asks me this question when I get home, I would first talk to him about our ancient history. I would also tell him that he should not get attached to one particular authority because the time will come when this authority will leave power. If people had not been so attached to Habyarimana whom they thought of as their father, his death would not have caused genocide. Question: Are you not going to think of President Kagame as your father? We are going to do it, but all the while telling ourselves that the time will come when he should leave power peacefully; we are not going to get attached to him.

- Solidarity Camps in Muhura, Byumba, March 13, 2003 -

A released detainee in a bar

What happened in our country surpasses comprehension. In spite of that I would say that ordinary people are innocent, because the planner of this genocide is the government that was in place at the time. Those who killed did it under the orders of that government, and no one had the strength to resist. The government has the strength, the power, it is above everyone.

- Ntongwe, February 2004 -

Thus, it seems that highlighting the behavior of the "Righteous" or heroes along with the notion of individual responsibility would allow for a more accurate portrayal of how the genocide happened, but also, and more importantly, it would compel those who committed crimes to take responsibility for their individual roles in the atrocities. If this strategy were followed, it would greatly reduce the risk of propagating the idea that all Hutu are collectively responsible for the genocide -a situation that, in the long term, would undoubtedly become a real obstacle to both unity and reconciliation.

3 - Beyond Justice : What Kind of Reparation ?

If, beyond “doing justice,” the *Gacaca* is to contribute to reconciliation, the subject of reparations -as a complementary process- must be broached. While this subject is a critical one in the minds of survivors, it seems to have been set aside throughout the pilot phase, in part due to the fact that the majority of Rwandans live in poor economic conditions.

It is in this context that it is necessary to examine the status of two parallel processes which complete and support the *Gacaca* process itself: these are the compensation of victims and the establishment of the Community Service (CS) Program, or “TIG” (*Travail d’Intérêt Général*).

An Elusive Indemnification

Reparations or the indemnification⁵⁵ of victims is one of the key elements of the reconciliation process. Reparations can be of either a financial or non-financial nature, and beneficiaries can be individuals as well as groups or communities. But whatever their form, reparations hold a particular significance in that they represent a form of “symbolic healing” for losses suffered, as well as a form of social acknowledgment for the suffering of survivors. Far from being a separate issue, reparations are part of the body of transitional justice mechanisms, along with truth-seeking and justice.

Despite its importance for the process, no indemnification law has yet been passed in Rwanda that would allow genocide victims to benefit from reparations for the totality of damages suffered. While the question of reparations⁵⁶ has been under consideration since 2000⁵⁷, issues surrounding the form of compensation, how a beneficiary should be defined, the means of payment, etc. have never been resolved. In addition, Article 95 of the June 16, 2004 law provides for the modalities of compensation for material damages and possibly for the restitution of goods destroyed, confiscated or stolen during the genocide. However, this possibility does not extend to bodily or psychological damage and remains the responsibility of the person who committed the crime.

The delay in addressing this issue of compensation and the persistent absence of a clear decision by the authorities could lead one to believe that the issue has no significant impact on the *Gacaca* process. This, however, is not the case. As illustrated by the attitude of some survivors who have lost all hope of being compensated, either by perpetrators (most of whom are insolvent) or by the State, they tend to turn away from the *Gacaca* and seek this compensation elsewhere. This is a search that can compel them to find sometimes unacceptable “alternative” solutions, such as agreements with released detainees where the silence of the survivor-witness is literally bought. From this point forward, compensation and the response it generates are far from irrelevant in

⁵⁵ *Indemnification* refers principally to the various economic damages that result from violations : the broader concept of *reparations* includes restitution of property, compensation for damages or losses suffered, reimbursement for expenses incurred as a result of victimization, provision of services and the restoration of rights, cf. <http://www.unhchr.ch/>

⁵⁶ Cf. the doctoral thesis of Rombouts, Heidy : *Victim Organisations and the Politics of Reparation : A Case Study on Rwanda*, UvA, Antwerp, 2004.

⁵⁷ The National Assembly has still not passed the indemnification law for genocide victims, although a last draft law setting up the Indemnification Fund (Fonds d’Indemnisation, FIND) was already discussed by the Council of Ministers (Conseil des Ministres) in August 2002.

the *Gacaca* process, and can influence its functioning considerably -even to the point of impairing its search for the truth.

Today, the problem of compensation for survivors takes place in a much broader context of compensatory claims. The conclusion of a report from a meeting of the National Unity and Reconciliation Commission, held in December 2003 in the Bwakira area, recommended creating a compensation fund for released persons who are found innocent or for the heirs of innocent persons who died in prison. This proposed fund would be separate from a compensation fund for survivors. Thus, far from being limited to survivors, this question of indemnification proves extremely sensitive and seems to concern numerous members of the population who consider themselves to be victims of either political events or institutions and their dysfunctions.

So many of these claims, even if they sometimes appear exaggerated, are often legitimate and demand a response that, if not provided, could well compromise the reconciliation process.

At present, reconciling the issue of victims' individual interests and that of mitigating the sentences of detainees, the Community Service Program seems to be the only tangible feature of a possible reparation scheme for survivors. Nonetheless, no concrete implementation plan for the CS Program was ever envisaged during the pilot phase of the *Gacaca*, and there is thus no insurance that these alternative penalties will be executed when the first sentences are handed down.

The Community Service Program: A Developing Alternative

Under the law n° 16/2004 of 19 June 2004 establishing the *Gacaca* courts, the CS penalty is an alternative to prison sentences pronounced by the *Gacaca* courts, and detainees in the second category who have confessed⁵⁸ may benefit from it. Under this system, persons found guilty may have their sentences commuted into non-remunerated work to be performed within the community.

If the primary ambition of the CS Program is to address the logistical challenge of the overpopulated prison system and its impact on the State budget, the linking of CS sentences to the guilty plea is also designed to encourage confessions from the most numerous portion of the prison population, i.e. those in the second category. These confessions are meant to help establish, as nearly as possible, the truth about events that took place during the genocide. In so doing, confessions are intended to respond to the legitimate wishes of victims' families, who must sometimes wait until the *Gacaca* trial in order to learn the circumstances surrounding the death of their relatives.

The goal of repairing the social fabric, and thereby promoting reconciliation, also figures among the goals of the CS Program. By having the CS work performed within the sentenced detainee's own community, it is the full social rehabilitation of detainees that plays itself out. This allows the entire population, and all of its diverse groups, to renew little by little, social ties that were severed by the genocide.

⁵⁸ On this topic, Cf. Chapter 4, "Penalties," of the *Gacaca* Law n° 16/2004 of 19 June 2004, JO n° special of 19 June 2004.

While the CS may appear to be an excellent method of reinsertion for detainees in the spirit of repairing the social fabric, it is essential that the extreme fragility of the social fabric of Rwanda, only eleven years after the genocide,⁵⁹ be fully considered.

Failure to take the fears and uncertainties of both detainees and survivors into account could seriously hinder the implementation and the success of the Community Service plan.

While survivors reveal a preoccupation with their security and question the utility of the CS for themselves as individuals...:

It is inconceivable that a person who has killed should benefit from a reduced sentence. It is unthinkable to live with such a person. This runs the risk of provoking another genocide.

Do you think I would be able to sleep peacefully when I constantly see the criminal close at hand? Would I be able to live with my killer? For me, he should stay in detention at the 'cachot' or in prison.

I expect nothing good from this work; these people should be kept in a place where I won't see them, then we will be at peace.

In serving a sentence in this way, who is going to benefit from this community service? The State or the survivor? Will this program benefit orphans or widows of the genocide? It would be better to keep them in prison. CS will create problems for survivors who will see, in their immediate vicinity, the very people who killed their relatives.

The Community Service Program will help to diminish the number of people who eat up the State budget. But is the State going to compensate survivors? What benefits is the survivor going to reap from this program? The state supports them [prisoners], and all they need to do is keep working for it and stay there [in prison].

The survivor will get nothing. (...) Why then shouldn't the prisoner come and work directly for the survivor? This would be a form of compensation.

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

There may be detainees who will be more than 10km from the Community Service work site. In this case, how productive will the work be?

...detainees, for their part, show an interest in the Community Service Program but still wonder how well organized it is:

We have received explanations and it is a good thing. We have appreciated this alternative to imprisonment. The program should continue.

But, there will be people who will not be able to do the work, particularly the elderly, the sick, the women and, in short, all vulnerable people.

Will the Community Service Program take detainees' skills into consideration? What about services (doctors, teachers)... have they also been considered? Proposal: a detained doctor or teacher could work 2 or 3 days as part of his sentence and the rest could be paid so he could help his family...This would be one way of achieving reconciliation.

⁵⁹ This is a situation that makes the Community Service Program in Rwanda a radically different experiment than CS Programs undertaken in other countries, where it essentially applies to minor criminals who are fewer in number.

Hence, even if the CS as an alternative to imprisonment appears very difficult, if not impossible, to sustain economically -along with the *Gacaca*- it is nevertheless wise to be conscious of the organizational challenges⁶⁰ it poses as well as the social context into which it is being introduced. As the above testimonies indicate, neither seems to be favorable to its success.

From this point forward, it seems necessary to set up a system of communication that that will allow the government to respond to people's fears during the establishment of the Community Service Program. A truly organized plan that clearly outlines the work to be carried out will also diminish the number of questions without responses, as well as potential problems.

In March 2005, when the first CS sentences were pronounced, the Presidential Decree⁶¹ that regulates the implementation of the CS had just been adopted. The time for questions was not over yet.

⁶⁰ Cf. PRI, *Report on the Community Service Program in Rwanda*, Kigali/Paris, April 2001.

⁶¹ Presidential Order n°10/01 of 07/03/2005 “determining the modalities of implementation of community service as alternative penalty to imprisonment,” *Official Gazette of the Republic of Rwanda*, n°6, March 15, 2005

- Conclusion - Reform of the Gacaca, or the Challenge of the Sanction

In the beginning, the *Gacaca* process was often presented in a somewhat idealized⁶² way, as a unique judicial system capable of joining tradition to the demand for a justice for mass crimes that was at least fair, and with due concern for expedience. The *Gacaca* was also, and above all, to be the locus of a real social catharsis that would allow Rwandans to move toward reconciliation. Many, both inside and outside Rwanda's borders, still have this vision.

However, the first years of operation have reminded us of something obvious: that the *Gacaca*, like any institution, is situated entirely within a political, social and cultural context, which today gives it features that are vastly different from those initially ascribed to it. Consequently, taking into account the social impact of the process is a permanent requirement which can only support those whose efforts are aimed at making the process a success.

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At a presentation in June 2005 on the progress of the *Gacaca* courts, the National Service put the number of people who could potentially be prosecuted for genocide and crimes against humanity at 761,446. This figure was based on estimates emerging from data collected in the 751 pilot jurisdictions. In September 2005, this same Service declared that these estimates would be largely surpassed.

At this stage, it seems important to recall that if the elevated number of suspects is often presented as an indicator of the effective functioning of the *Gacaca* process, **the fundamental and pervasive problem that it poses now, and more than ever, is the following: Is it feasible to handle all the prosecutions for genocide at the same time within a socially acceptable timeframe and with a minimum respect for due process**, knowing that almost one out of four Rwandan adults might be accused?

This is indeed a fundamental question, given the availability of human and material resources in Rwanda, but also given the problem of trust and sincerity in testimony and confessions -the key elements upon which the entire *Gacaca* judicial system is built.

The immensity of this new challenge could have caused, for various reasons, the population's expectations to fall with respect to the *Gacaca* process. Yet nothing of the sort has happened. Their expectations remain high and are shared by the majority of the people. However, to deny that these expectations differ according to social group would be inaccurate, dangerous to the proper functioning of the process, and dangerous for reconciliation.

⁶² Referring to the same angelic speeches on reconciliation, Claudine Vidal commented: "I don't like this term reconciliation at all, which is now part of the empty jargon that is used whenever there has been a bloody conflict [...] Using this soothing term is all too often an attempt to soften a policy that is not concerned with either genuine truth-seeking or the imperative to bring justice and reparations to victims." (in Amnesty France, "L'instrumentalisation de la mémoire," *La Chronique*, April 2004.)

More than ever, since the launch of the national phase in January 2005, the *Gacaca* is the business of all Rwandans, and each person is required to contribute to it. But this civic duty is much more complicated to carry out than any other because, on one hand, it obligates each citizen to engage in an exercise of truth (which should really be “the whole truth and nothing but the truth”). On the other hand, it obligates the whole community, and first and foremost the “decision makers,” to ask themselves what the social implications of this legal logic will be.

The social implications of judging nearly a million people in such a small country are obviously not the same as they would be were it necessary to judge “only 130,000 accused.” The situation that the *Gacaca* process and Rwandan society face today is no longer the one that preoccupied them early in the pilot phase. This means that the social problems that emerged during the pilot phase should not be ignored; instead, their complexity should be taken into account in order to make room for socially acceptable responses.

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Primarily in its legislation, but also in its practice, the *Gacaca* process remains above all a judicial one, i.e. one that is oriented toward the search for an individualized response with regard to the sanctioning of the perpetrator. A response that is, therefore, essentially retributive.

Yet is the Rwanda of today always capable of guaranteeing the integrity of this logic where prison is the dominant sanction? The obvious answer is no. The current thinking on alternative measures to imprisonment and suspended sentences goes in this direction, as was the case with the decision to exonerate persons convicted of damaging property from any penal sanction.

This thinking must be continued and supported, but not for the exclusive concern and purpose of realistically adapting the process to a situation in which both financial and logistical support is lacking; reflection on this subject must also lead to the discovery, or rediscovery, of a new meaning in the individual decisions rendered by the *Inyangamugayo*.

The question is not so much one of imposing a sanction than it is one of creating a non-retributive judicial response. In any event, this response will have to remain individual.

In its new phase, and for the vast majority of potential convicts (probably not for those in the first category), the *Gacaca* process will clearly have to leave behind the purely retributive realm in order to enter another which should be that of social restoration - where reparation should be an essential component.

The announced reform of the law known as *Gacaca* can still provide an opportunity for collective reflection on the nature of this new response that the *Gacaca* judge will be able to give. This is the only way that the most important social consequences of this process will truly be taken into consideration, and that the fundamental expectations of the population, although sometimes contradictory, will be fulfilled.

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