Monitoring and Research Report on the *Gacaca*

Information-Gathering during the National Phase

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Executive Summary

With the entry of the *Gacaca* process into its national information-gathering phase, the national authorities were confronted with several challenges that were far from easy to meet:

- The first of these is the search for the truth: in the Rwandan context, this first goal of the judicial process appeared to be rather delicate, not only because the Rwandan population had suffered significant trauma for over ten years -which often made testifying very difficult- but also because of the characteristics specific to each party to these trials. On one hand, the survivors have access to information about events that they have not always witnessed personally, and on the other hand, the very individuals who possess information, i.e. the perpetrators, do not necessarily have an interest in revealing it or do so within the framework of confessions which sometimes have a fragmented quality.

- The second concerns the duration of the process: given what had been a relatively slow and difficult task for some judges to lead the debates during the pilot phase, it was all the more legitimate that the government wanted to make the acceleration of the process one of its goals in launching the national phase. This became an even more necessary preoccupation in view of the projected number of accused, which is expected to exceed 750,000 -or nearly one out of four Rwandan adults.

In order to meet these goals, the national authorities, faithful to an increasingly pragmatic approach in setting this complex process in motion, made the choice to rely on support from the administrative structure of the "local authorities" in carrying out this phase of information-gathering, which was not provided for whatsoever under the very recent Gacaca Law of June 19, 2004. Thus, at the end of 2004, the National Service of the Gacaca Courts decided to entrust not only the organization but the actual execution of the information-gathering to the *nyumbakumi*, as well as to the cell and sector coordinators. Most of the information-gathering thus took place throughout 2005, outside the actual framework of the *Gacaca* courts, which really only resumed their functions for a new "validation" phase of the first data collected by the local authorities.

Beyond the objective of speeding up the process -which was clearly reached- the recourse to these new non-legal "actors" for the gathering of information doubtless allowed, by creating a new dynamic, a real quantitative increase in the participation of the population and in the number of facts obtained about the crimes of genocide.

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Nevertheless, this new information-gathering process, which was initially completely "dejudicialized," raises a certain number of basic problems in a prosecution where the issue of testimonies is essential, since they are the only means of revealing the facts, the only method of proof by which the individual liability of a defendant can be established. Yet, within the framework of this new method of gathering information, PRI is of the view that several elements, initially put in place to facilitate the collection of accusations,

combined to ultimately pose a serious threat to the basic right to defend oneself during the information-gathering phase of the *Gacaca* process. However it is more than necessary to assess this situation at a time when the process must enter a new phase of judging the defendants.

- In order to facilitate the work of gathering information, the forms were drafted using the seven lists originally found in the law, and supplemented with seventeen other lists. However, the forms used by the local authorities contained no specific place where they could mention testimony for the defense if necessary: The population was therefore not able to say anything other than the nature of the crimes themselves, and cite the names of people who were victims and the names of those they were accusing.

- The information-gathering was initially carried out by the *nyumbakumi* in a small group, in order to allow people to testify in relative calm, thus facilitating the confession and testimony for the prosecution without fear of being threatened. This first task was then supplemented by information-gathering meetings at the cell and sector levels, during which the instructions indicated that all information was welcome, including information provided by people who were not eyewitnesses, but only if it pertained to evidence for the prosecution. The idea behind this practice is that in a context where it is so difficult to uncover the truth, all information is useful. However, insofar as accusations could be made without contradiction or counter-argument, and without verification, this could generate a feeling of complete irresponsibility among some accusers and especially could create a climate favorable to deviant practices such as false accusations and the instrumentalization of the information-gathering process by the population. This misuse of the *Gacaca* process for personal ends, in the absence of any prohibitive barriers and without due process, had a direct impact on the perception of the process by a portion of the population. This translates into a lack of confidence in the process, to the point that some people fled the country out of fear of what it represents.

  One might think that the ease with which an accusation can be made within the framework of the information-gathering by the local authorities would be counterbalanced by a true debate during validation meetings in the General Assemblies of the *Gacaca* courts. This, however, was not the case. In the very large majority of cases observed, the work of the *Gacaca* judges was reduced to a simple role of recording information, while the absence of discussion about the accusations brought prevailed. This validation/recording, while reinforcing the impression among some that the gathering of information was done "under the influence" of the local authorities, also resulted in partly dispossessing the *Gacaca* judges of their authority vis-à-vis the population.

- In addition, the right to bring testimony for the defense and the defendant's right to defend himself did not find a place to be exercised during this phase of investigation, the presentation of arguments being postponed until the time of judgment. These instructions were aimed at avoiding a defense of accused persons, which would at least considerably slow down, if not block, the collection of testimonies for the prosecution. Nevertheless, this was done to the detriment of the rights of each citizen, as well as the search for the truth which cannot emerge, in a legal debate, unless all the evidence from both sides is presented. This fact is all the more harmful since this collected information alone serves as

the basis for categorization, a key moment which is strictly legal, but which is also heavy with social consequences.

- Lastly, if this mode of information-gathering at the lowest administrative level has made it possible to collect, within a relatively short period, large lists of defendants, the quality of the collected information still merits examination. Not only was it nearly impossible for the population to bring defense testimony, but its participation was also partly guaranteed through the recourse to coercive measures (such as fines and certificates of good conduct), as well as a disingenuous use of the legislation on the refusal to testify -all measures which lead one to question their necessity. And although it remains very difficult to respond to this issue, it seems that the sensitization campaigns carried out often gave rise to a certain number of questions from the population which were left without response, thus favoring the emergence of a climate of fear, which was simultaneously both the consequence of rumors and their cause. Factors such as these are likely to seriously damage the confidence of part of the population in this process.

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Given the number of potential defendants, the concern over the duration of these genocide prosecutions, more than ten years after the crimes were committed, is fully justified. Prioritizing the goal of speed at the expense of the principle of balanced justice, which is based on the principles of due process and the presumption of innocence, carries a genuine risk of failing to elicit either the cooperation of the population, or, in the longer term, reconciliation itself.

Henceforth, given the research conducted by PRI throughout 2005, it seems important to consider the following points, starting today:

- In strictly judicial terms, if the gathering of information were to stop here, the fear is that the *Gacaca* courts will have only accusations on which to base their judgments. Yet there is an abiding feature in all criminal justice processes that the passage of time causes proof to disappear, and as this happens, defense testimony becomes more difficult to produce tomorrow than it would have been yesterday. Therefore, **our first recommendation is that from now on the *Gacaca* courts should encourage the presentation of testimony for the defense as soon as possible, in order to have the maximum of information at their disposal, by reintroducing, for example, a public debate with arguments and counter-arguments, starting at the categorization stage**.

- With the intention of making the principle of the presumption of innocence effective in the field, in order not only to thwart those who misuse the process for personal ends, but most of all to reassure the population that the system is not principally designed to accuse, **PRI's second recommendation is that it would be advisable to give an official order to local authorities and *Gacaca* judges to cease certain practices which are prejudicial to civil liberties (the disingenuous use of Article 29 in the information-gathering phase; resorting to fines for non-participation and certificates of good conduct).**

- Far from guaranteeing the active participation of the population, preventive detention, particularly under conditions not provided for by law and thus discriminatory, only reinforces the fear and consequently the mistrust of the population with respect to the process. **Thus, our third recommendation is to provide a more precise legal framework than is outlined in the June 2004 Law of the conditions under which the *Gacaca* courts can detain either a defendant or a witness.**

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- Given the "extra-judicial" way in which the 2005 information gathering was organized (substitution of the judges by the local authorities which encouraged attempts to interfere by the latter; the collection of every piece of information, including that which was false, and initially, information-gathering which took place outside the *Gacaca* courts), PRI considers it to be of paramount importance to remind everyone of the eminently legal character of this *Gacaca* process which leads to the pronouncement of individual penal sanctions. **Our fourth recommendation is that all useful measures be taken so that the continuation of the process is completely and fully entrusted to the *Gacaca* judges and that they be given all the authority necessary to impede, where required, attempts by the administrative authorities to interfere. This could entail reinforcing the training of the court presidents in the techniques of leading a debate where arguments and counter-arguments are presented, and in the interrogation of witnesses and defendants. At the same time, this could also mean developing the already existing initiatives that support and recognize the essential role entrusted to these judges.**

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Methodological Clarification

The goal of the research program conducted by PRI on the *Gacaca* jurisdictions in Rwanda since April of 2001 has been to provide objective qualitative data to the national authorities in charge of the process -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 deliberately oriented toward action. This "action" is that of accompanying the *Gacaca* process. 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.

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 opinion, 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 stem from interviews with involved stakeholders, observation reports, discussions with partner organizations, and from 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 data***

The present report is based on a collection of observation reports from information-gathering meetings and sessions of *Gacaca* courts that have taken place since March 2005. The collection of observations was made up from interviews conducted throughout 2005 with different groups of the population.

Overview of data sources:

- **85 interviews**:
  - 10 with survivors,
  - 18 with *nyumbakumi*[1]
  - 19 with other local authorities and *Gacaca* coordinators,
  - 25 with *Gacaca* judges (*inyangamugayo)*,
  - 11 with members of the general population,
  - 2 with members of the religious community

[1] Term which refers both to the administrative entity composed of ten houses and to the person in charge of it.

- And **73 observation reports from information-gathering meetings and *Gacaca* sessions.**

This collection of interviews and reports is the subject of a progressive release of information within the framework of a program on the "documentation of the *gacaca* process" conducted simultaneously by PRI. The purpose of this program is to periodically disseminate compilations of this field data electronically. A CD-ROM containing the data specifically cited in this report is to be produced during the course of the year.

➢ *Geographical selection of samples*

In seeking to observe certain *Gacaca* courts that were in close proximity to and further away from those already followed in the pilot phase, PRI chose the following geographical sample. The following table summarizes the areas most closely observed by PRI during the course of 2005, based on the selection criteria detailed above, in correlation with other criteria more specific to each sector and cell.

Provinces and districts	Sectors	Permanent Investigators
Butare **District of Nyamure**	**Nyamiyaga**	**1**
Byumba **District of Kisaro**	**Kavumu**	**1**
Cyangugu **City of Cyangugu**	**Kamembe**	**1**
Gisenyi **District of Kayove**	**Musasa**	**1**
Kibuye **District City of Kibuye**	**Bwishyura**	**1**
Kibuye **District of Budaha**	**Murundi**	**1**
Umutara **District of Murambi**	**Murambi**	**1**
City of Kigali **District of Kacyiru**	**Kimihurura**	**1**

The choice was made to include a table of the geographic locations represented in the sample (which also serves as a point of reference for the interviews and reports cited) which contains the place names prior to the administrative reform, as this reform did not affect the *Gacaca* courts which continue to function in conformity with the former administrative divisions.[2]

It should be noted that because the recruitment of PRI's observers was staggered throughout 2005, and because the authorization to observe the *Gacaca* was not obtained before June 2005 -in addition to the fact that activities in two sectors of Kigali and Kibuye were suspended for various reasons- PRI was not present in these eight areas continuously throughout the year.

[2] However, in order to facilitate the reading of current country maps, a table containing old names and their corresponding new names can be found in Appendix 6 of the present report.

➢ *References cited*

Excerpts from interviews or observation reports are cited in the body text or in the footnotes of this report. These excerpts refer to documents in which information about the situation, as related by our observer or through comments made by the person interviewed, stood out quite sharply. The turn of phrase "PRI's observations reveal" refers to instances where the issues mentioned have featured very clearly in the vast majority of data collected.

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

Further, the abbreviation "ORGC" refers to Observation Reports on the *Gacaca* Courts completed by our investigators, and is followed by specifics about where the research was conducted: Province/District/Sector/Cell. On the other hand, when anonymity has been guaranteed to our interviewees, an interview excerpt is followed only by an indicator of the status of the person interviewed (a *nyumbakumi*, *Gacaca* judge, cell coordinator, inhabitant, survivor) and not his or her location.

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.

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 directly witnessing the reaction of the population both in the aftermath of the sessions as well as on a daily basis. Beyond the issue of language (the vast majority of the population speaks only Kinyarwanda), this seems to be one of the most efficient methods for assembling reliable information in a context where people are generally extremely mistrustful of anyone who comes to question them about the G*acaca* courts and the genocide.

PRI's research on the *Gacaca* program is essentially qualitative and participative, as it is based primarily on direct observation of the program and on interviews with those directly and indirectly involved in it. The research combines two complementary methods of data collection: (1) monitoring the functioning of the *Gacaca* courts observed, and (2), conducting surveys of and interviews with the population, in all its diversity.

The surveys and interviews are based on a set of themes that have been identified, discussed and adopted by PRI's entire research team. The vast majority of interviews were semi-structured and conducted on a one-to-one basis. In fact, researching the perceptions of the population demands a particular depth of understanding that can only be achieved by asking open-ended questions on 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 which are then compared to secondary data (namely bibliographical references) to which the team has access.

The focus of data processing is that of interpretation and analysis of the content. This qualitative method seems most relevant and appropriate when researching complex questions, such as those which touch on the emotions of the persons surveyed.

Once the preliminary results are available, they are reviewed and corrected by PRI's researchers. Then the draft report, based on these data, is reviewed by experts who are both recognized in this field and external to the team.

Research limitations

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

First and foremost, 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, PRI researchers, 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 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 of what is at stake socially. 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.

Furthermore, with regard to data collection, despite the precautions taken, the semi-structured interviews with open-ended questions allows for only minimal consistency, which can make the handling of the information difficult at the analysis stage. However, this qualitative method appears to be the only appropriate way for PRI 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 validation phase is undertaken in order to identify linguistic disparities that might alter our comprehension of the subject under discussion.

Given the diverse ways in which the instructions were implemented, and given the actual unfolding of this information-gathering phase itself, PRI has identified and presented in this report a general overview of this phase, though a discussion of its predominant organizational aspects. We have also mentioned its predominant organizational aspects. When an attitude or a method employed by a local authority, arose only once, PRI made the determination that this issue or method was a peculiarity and we have thus mentioned it only when it appeared to reveal a certain frame of mind or to present a problem.

It is also important to specify that, given the climate of fear[3] which enveloped the first semester of information-gathering (flights and rumors), some of our investigators were occasionally the subject of suspicion, and thus encountered a number of difficulties in completing their interviews.

Finally, this study does not claim to be exhaustive or to make generalizations on its observations and main conclusions. The findings from this research should, of course, be supplemented by and compared with those of other studies. Despite this caveat, it is certain that the findings presented in this report reveal strong and convincing trends that were observed among different social groups of Rwandan society.

[3] Cf. p. 47 of the present report: "*Searching to regain trust.*"

Introduction

At the beginning of 2005, and even before the end of the pilot phase, the *Gacaca* process entered a new phase with its extension to the national level.

Collecting information at this level is a challenge that is far from easy to meet. In effect, those who were willing to speak, namely survivors, had information about "*the beginning of the genocide and what happened before they went into hiding.*"[4] In the word of a representative from Ibuka, "*they don't know any better than those who committed the genocide.*"[5] Consequently, the revelation of the truth depends mainly on the words of people who either (1) had no interest in testifying because they realized that what they did (or what those close to them did), would be brought to light, or (2) were afraid that by denouncing certain people, they themselves might also be denounced[6] and thus imprisoned.[7]

With regard to the procedure that was followed, one might expect the process observed during 2005 to reflect the pure and simple implementation of the recent June 2004 law.[8] Yet, this was not the case, because during the information-gathering phase by jurisdiction (which corresponds to the inquiry or pre-trial investigation in a regular criminal trial[9]), the process was marked by the appearance of a new actor: the administrative authority and more specifically the *nyumbakumi.*[10]

Given the participatory nature of the *Gacaca* process, the question of how administrative authorities are involved in the process is essential. Starting in the pilot phase, most observers, and later the national authorities in charge of its implementation, gradually admitted that the involvement of grassroots administrative authorities was very often lacking and that this deficit

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[4] PRI Interview with a survivor, April 2, 2005, n°794.

[5] PRI Interview with a representative from Ibuka, March 18, 2005, n°763.

[6] "The *population shows no interest in testifying. […] people are afraid of being imprisoned, and at the same time, they do not want to denounce their colleagues who are not in prison and with whom they share everything. […] In fact, some people are afraid of testifying to acts that their neighbors have perpetrated, thinking that if ever they denounce these neighbors, they will also, in their turn, be denounced by others.*" (PRI Interview with a former prisoner, April 9, 2005, n°848).

[7] "*The problem was that everyone believed they would be imprisoned.*" (PRI Interview with a cell-level *Gacaca* court president, August 3, 2005, n°886).

[8] *Organic Law n°16/2004 of June 19, 2004, establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994,* Official Gazette of the Republic of Rwanda, June 19, 2004, pp 59-86.

[9] On this point, it is interesting to note that it is not unusual to hear people, including our own investigators, refer to the "preparatory *Gacaca* Court activities" to characterize the activities of collection and validation. This in itself is quite interesting, as it illustrates rather well the fact that the work of gathering information was, at a certain point, somehow forgotten as a normal function of the *Gacaca* courts, and that it corresponds to the "pre-trial investigation," which is a fundamental phase of the criminal trial.

[10] Administrative structures in Rwanda are organized as follows: the province encompasses several districts, which contain a certain number of sectors, which are themselves composed of several cells. The latter encompass several *Nyumbakumi*. The *Nyumbakumi*, composed of ten houses, is thus the administrative entity at the grassroots level in Rwanda. The term "*nyumbakumi*" is used to designate the entity itself [spelled with a capital 'N'] as well as its leader [spelled with a lower-case 'n'].

served to slow down, if not obstruct, the smooth functioning of the process.[11] Moreover, PRI has emphasized many times in its previous reports that the involvement of local authorities in the process needs to be encouraged so that they can set an example and demonstrate that the process pertains not only to certain categories of people, particularly the "ordinary people", but to the entire Rwandan community without any distinction. More robust participation in the process by these administrative authorities was necessary on two levels: first, as Rwandan citizens (the fact of being an authority was not meant to release them from the responsibility of bearing this burden with the rest of their fellow-citizens), and secondly, in their authoritative roles through which they could explain the *Gacaca* process and sensitize the public. The idea was to encourage the participation of the entire population through the presence of the administrative authorities, a presence that would help to reinforce the importance of the process.

However, the goal was the full participation of all citizens. Yet, PRI's observations revealed that in addition to sensitizing the population (with the intention of convincing people to participate, tell the truth, confess, etc.), the grassroots authorities, and in particular the *nyumbakumi,* were asked, at the end of 2004, to participate actively in the gathering of information. Legally, however -as a jurisdictional phase- this activity was the sole responsibility of the *Gacaca* judges.

If we take into account the magnitude of the task of organizing the *Gacaca*, the solicitation of the authorities is completely understandable (for example, for the transmission of summonses, ledgers, etc).[12] On the other hand, however, their involvement in the gathering of information in itself raised a certain number of questions: Was involving the authorities in a task which was originally reserved only for the *Gacaca* judges going to change completely or partly the nature of the process? Was it going to imbue the process with a more administrative than jurisdictional character? Was it going to diminish or decrease the authority of the judges in this judicial process? Such questions led PRI to devote the majority of its field observations -starting in March 2005- to the unfolding of this new phase of information-gathering.

From PRI's observations it appears that, beyond the goal of speeding up the process, recourse to the administrative authorities made it possible, in part, to achieve quantitative results in terms of both the participation of the population and the collection of information. However, this new "administratization"[13] and implementation of the process raise questions about the quality of information collected. It thus seemed important, within the framework of this report and starting with the most specific description possible, to revisit the issues which this new reality raises about the process, and to discuss the two key elements on which its success depends: the presumption of innocence and voluntary participation.

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[11] Cf. especially on this point, Penal Reform International, *Report V. Report on Gacaca Research*, PRI, Kigali/Paris, September 2003, pp. 40-42 and p.66

[12] Similarly, right from the start of the *Gacaca* process, the *nyumbakumi* were solicited to prepare for the elections of the *Gacaca* judges. On this point, cf. Penal Reform International, *Report on Gacaca research. The Gacaca courts and their preparation. July - December 2001*, PRI, Kigali/Paris, January 2002, pp.39-40.

[13] In the sense of an increasing portion of responsibilities granted to administrative authorities in a judicial process.

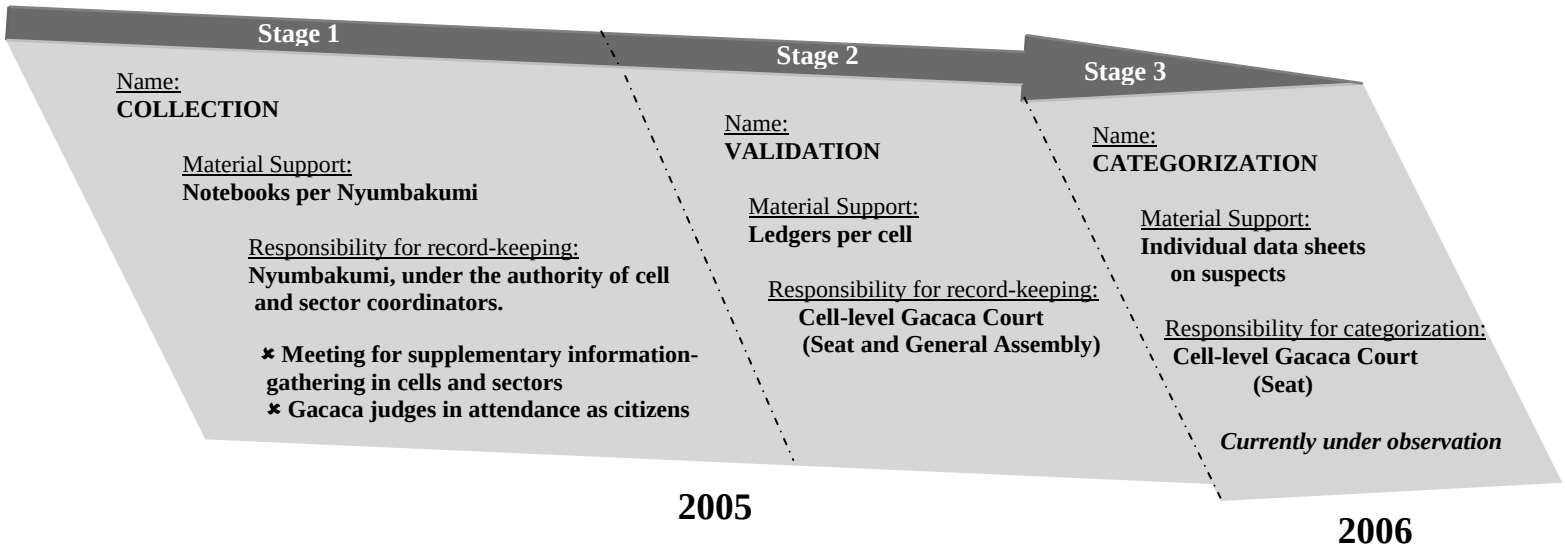
Part 1
Recourse to the local administrative authorities in the national information-gathering phase

Through the adjustments made to the information-gathering procedure, the NSGC's stated goals were to not exclude any piece of information, to encourage the maximum number of people to participate, and for all stakeholders to respond to the goal of speeding up the process.

> "The old method of information collection differs from the one today. In the pilot phase, it is the *Gacaca* judges who were doing the information collection. For this national phase, information-gathering is done by the authorities."[14]
> - NSGC Representative/*Gacaca* broadcast on Radio Rwanda -

The information-gathering phase observed in the field by PRI's investigators, mostly from May 2005 onwards, generally corresponds to the new plan established by the NSGC at the end of 2004. Variations were apparent in some geographical areas and as a consequence of the fact that the authorities were allowed a certain degree of freedom when it came to the concrete organization of information-gathering in the field.

This new way of organizing the information-gathering process can be summarized in three stages starting from the collection of information under the authority of the *nyumbakumi* (as well as under cell and sector coordinators), to validation by the *Gacaca* court while in configuration as Seat and General Assembly, and ending with the categorization by the Seat of the court. It should be noted that with this new arrangement, only categorization still conforms to what was initially set out in the 2004 law.



[14] *Gacaca* broadcast, Radio Rwanda, discussion with M. Denis Rukesha, *NSGC* representative, August 19, 2005, n°913 [translated by PRI]. These programs are broadcast throughout the country and have the following format: two *NSGC* representatives come to explain one or more articles of the 2004 *Gacaca* Law. During the broadcast, individuals are permitted to call in on toll-free numbers to ask questions of the representatives directly.

I
Seeking a legal basis for the recourse to the administrative authority in information-gathering

While there is no provision in the law for active resort to administrative authority in any operation of the judicial process, the National Service of Gacaca Courts expressly transferred the information-gathering responsibility to the local administrative authorities, and more specifically to the *Nyumbakumi*.[15]

A. The incompatibility of the legal functions of *Gacaca* judges with administrative or political functions

At no time did the Rwandan legislator intend for the jurisdictional *Gacaca* functions of information-gathering to be entrusted to an authority other than the one legally vested with these functions, namely the *Gacaca* court.

Both the 2001 law[16] and the June 2004 reform[17] entrust this responsibility to the *Gacaca* courts, which are composed of a General Assembly and a Seat (bench) of *Gacaca* judges elected by the population. The June 19, 2004 law, which is currently in force, remains true to this principle and in no way calls for authorities other than that of the judiciary[18] to intervene in the gathering of information.

Moreover, Article 49 of the law entrusts only the infrastructure and necessary materials to the "*leaders of administrative organs*" who are responsible for motivating the population to participate actively in the *Gacaca* courts, and for the "*close follow-up*"* of the courts' functioning.

Article 15 of the 2004 law states that the following persons "*cannot be elected member[s] of the Seat [of] a Gacaca Court : 1° the person engaging in a political activity ; 2° the person belonging to the government of the State* […]". Thus it is clear that it is not possible to engage in a *Gacaca* court function while one holds an administrative or political post. This reflects a legal incompatibility that exists in order to guarantee the independence of the *Gacaca* judge.

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[15] It should be mentioned that henceforth, while the *nyumbakumi* and the Zone chiefs are not explicitly referred to as "administrative authorities" in the law (as are the cell and sector coordinators), in fact the functions that they assume and the authoritative link that exists between them and the higher-level coordinators inserts them completely as the last link in what is known as the chain of "local authorities".

[16] Organic Law N°40/2000 of 26/01/2001 "*creating 'Gacaca Courts' and organising 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*, n°6 of March 15, 2001.

[17] Organic Law n°16/2004 of 19/06/2004 "*establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994," Official Gazette of the Republic of Rwanda*, special n° of June 19, 2004.

[18] In effect, the "*relationship between administrative organs and Gacaca courts*" is expressly governed by the law in chapter III (Section 2) and only a collaboration between the Public Prosecutor's office and the *Gacaca* courts is envisaged; the law makes particular note of the Public Prosecution's "*duties of investigation*" (Article 46).

However, at the end of 2004, when the NSGC was redesigning the information-gathering procedures for the national phase which was to begin in 2005, it appeared to have dispensed with this principle of legal incompatibility.

B. The November 2004 Manual: "Information-gathering procedure in the *Gacaca* Courts"

According to PRI's observations and information that was transmitted to PRI, the first time that explicit reference was made to the decision to involve the administrative authorities in the information-gathering phase -other than in article 49 of the June 19, 2004 law- was in the document entitled *Procedure for the Collection of Information in the Gacaca Courts. Truth-Justice-Reconciliation*[19], created by the National of Gacaca Courts in November 2004.

From the outset, this manual entrusts the authorities -as stated in the foreword: "*starting with the nyumbakumi all the way to the highest authorities in the country*"- with the function of supporting the process through a greater investment in sensitization. The idea here was to motivate the population to provide information and testify, and to motivate those implicated in the genocide to confess. In this way, the NSGC tried to respond legitimately to what had been a very large obstacle to participation during the pilot phase.

However, the second and more explicit description of the procedure articulated by the NSGC for creating lists reveals an involvement of the local authorities in the process that is of a completely different nature. It is no longer solely a question of organizing meetings to sensitize the public or to communicate the *Gacaca* courts' program to them, but also "***to complete these lists in collaboration with the population under their authority***."

The procedure for collecting data described in the manual entrusts the bulk of the work to the *nyumbakumi* trained by the cell coordinators. For certain lists[20], a variant was introduced which involved cell-level authorities directly in information-gathering. However, even in these cases, it is mentioned that these authorities are "*assisted by the nyumbakumi.*" In the end, the latter were thus entrusted with the bulk of filling out the notebooks, while the cell- and sector-level authorities intervened principally in the context of organizing and moderating the information-gathering meetings at their respective administrative levels. This document specifies moreover that the *nyumbakumi* should undertake the information-gathering and transcribe the information in the appropriate notebook which should then be submitted to the president of the cell-level *Gacaca* court. The later procedure described is the meeting of the court's Seat members, for the confirmation of the contents of the notebooks, and then the validation of information in the General Assembly.

It is thus made quite clear in this document from November 2004 that the grassroots authorities, and primarily the *nyumbakumi*, should participate directly in the gathering of information -a task that is first and foremost entrusted to them.

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[19] National Service of Gacaca Courts, *Procedure for the gathering of information in the Gacaca Courts. Truth-Justice-Reconciliation*, *NSGC*, Kigali, November 2004 [PRI translation of the document entitled *Gahunda yo gukusanya amakuru akenewe mu nkiko Gacaca*]

[20] Refers to lists relating to "planners," "genocide preparation meetings," "persons to be killed in the cell," as well as those pertaining to the "distribution of weapons," "militias" and "roadblocks."

However legitimate this decision to involve the grassroots authorities, it is important to emphasize that the choice was made to not modify accordingly the law that had been adopted less than five months earlier. This decision to involve local authorities therefore does not carry any legal legitimacy instead it is more of an administrative decision. Nor was the choice made to put this decision (of involving local authorities) in the form of a decree or order, as the NSGC has done on occasion.[21]

II
The appearance of a new actor: the *nyumbakumi*

A. Bringing the *nyumbakumi* into the information-gathering process

1. Sensitizing the local authorities and the *nyumbakumi* to their new role

Once the decision was made to entrust the local authorities with information-gathering responsibilities, those in charge of the *Gacaca* at the national level were faced with the necessity of informing all *Gacaca* coordinators and grassroots authorities, among whom were the *nyumbakumi*[22], of their new role.

According to accounts from *nyumbakumi* collected by PRI during the course of the year (2005), several explanatory meetings, initiated and led by district-level *Gacaca* coordinators, were held. These meetings brought together cell- and sector-level coordinators. During these meetings, the forms (that were designed by the NSGC with the establishment of the lists in mind, as prescribed by the law[23]), were introduced and explained to the administrative authorities. The local authorities were instructed to have the *nyumbakumi* fill out the forms, "*and this [was done] under the supervision of the Zone chiefs who were coordinated by the cell coordinator.*"[24] It should be noted that where there was no Zone, the *nyumbakumi* worked directly under the supervision of the cell coordinators.

With regard to the lists, it is important to specify that Articles 33 and 34 of the June 19, 2004 law mention seven lists which must be drawn up by the cell-level *Gacaca* court that sits during the General Assembly. The manual produced by the NSGC discusses these lists, but adds to them

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[21] This was in fact the case with the question of the "Resignation of Judges, the dissolution of the seat of the Gacaca Court and the replacement of Judges" which was the subject of a directive N°06/2005 of July 20, 2005 by the Executive Secretary of the *NSGC*. [PRI translation of the directive entitled *Y'umunyamabanga nshingwabikorwa w'urwego rw'igihugu rushinzwe inkiko gacaca arebana n'ikuwa mu nteko ry'inyangamugayo, iseswa ry'inteko y'urukiko gacaca n'isimburwa ry'inynagamugayo*]

[22] To PRI's knowledge, there are no figures available that would allow us to indicate precisely how many *nyumbakumi* there are throughout the country. However, one can approximate the number knowing that there are currently 9,165 cells in Rwanda, and that each cell contains somewhere between ten and sixteen *nyumbakumi*.

[23] When there are numerous *nyumbakumi* in the same cell, which happens particularly in the city, they are regrouped into "*Zones.*" It is these different Zones which make up the cell. [*In this report, the term "Zone" will be capitalized when it refers specifically to the Rwandan administrative entity.*]

[24] Account of a *nyumbakumi* to PRI in March 2005, City of Kigali/Gisozi/Gisozi/Ruhango.

specific lists corresponding to the details of different criminal acts such as the distribution of weapons, the militias, the roadblocks, etc.

It is also during the course of these meetings that the cell-level coordinators were given the NSGC manual which contains guidelines relating to the organization, discipline and procedure to follow during information-gathering. These coordinators also received an explanation of the different forms on information to be collected and instructions on how the information should be presented.[25]

After having received this new information and instructions, the cell-level coordinators had to bring the Zone chiefs and especially the *nyumbakumi* together to explain to them how they would have to go about the information-gathering.[26] The mission of the *nyumbakumi*, as well as every person (if need be) who knew how to write correctly, was to transcribe into the notebooks the examples of the information forms to be completed. It was during these meetings that the *nyumbakumi* were informed that they were responsible for filling in these notebooks during the information-gathering operations. Once these notebooks were completed, they would be submitted to the Zone chiefs or cell supervisors, "*to verify that they had been correctly filled out.*"[27]

It is thus through these administrative meetings at different levels that the local administrative authorities, from the district to the *Nyumbakumi*, were involved -in a very specific way- in the information-gathering operation.

> "The sector authorities received these directives from the city [district] authorities, and this is how, in their turn, they came to give us instructions as cell coordinators, so that we could put these instructions into practice with the *nyumbakumi*, by asking them to do the information-gathering.[…] Also, given the range of authorities from bottom to top and from top to bottom, I think therefore that the decision came from the highest authorities and the directives were given all the way down to the lowest level." [28]
> - A cell coordinator -

However, among these authorities, it is principally the *nyumbakumi* who were entrusted with the execution of this information-gathering among the population.

2. Description of the new role of the *nyumbakumi*[29]

Starting with the March 2005 launch of the national information-gathering phase, all the *nyumbakumi* were required to have been not only informed, but also prepared for the information-gathering task that each of them was supposed to carry out at their respective level. Accounts reveal that, for the most part, this preparation consisted of the explanatory information meeting

[25] For details about these lists, cf. Appendix 1[PRI translation]

[26] It should be noted that in certain places, such as Kayove, the *nyumbakumi* were present starting with the district-level meeting.

[27] Account of a *nyumbakumi* to PRI in March 2005, City of Kigali/Gisozi/Gisozi/Ruhango.

[28] PRI Interview with a cell coordinator, July 19, 2005, n°851.

[29] Cf. Stage 1 of the scheme presented on page 3 of this report.

mentioned above. However, "*these were only meetings[…], not training sessions for cell coordinators or nyumbakumi.*" [30]

The procedure outlined in the NSGC manual expects each *nyumbakumi* to gather information on the genocide by questioning those who live in his ten-house cluster, and then to fill in one or more notebooks that include the 24 lists depicted as forms by the NSGC in the *Procedure for the Collection of Information in the Gacaca Courts. Truth-Justice-Reconciliation.* [31]

Insofar as the information-gathering process itself was concerned, it was observed that each *nyumbakumi* could use whatever method suited him the best: while the majority organized common meetings with residents of their *Nyumbakumi*, some preferred to go from house to house.

> "This is the way I do it: equipped with the notebook I told you about, I make the rounds in my *Nyumbakumi*, approaching everyone who lived in the place before the war to talk to me about how events unfolded in 1994. When I do this, I limit myself to the information that is required in the notebook."[32]
> - A *nyumbakumi* -

> "The *nyumbakumi* invited the people in his ten-house cluster for the meeting twice, but they didn't come. Given this lack of people for the meeting, while other *nyumbakumi* were making progress with this [information-gathering] activity, he decided to go into each house to get the information."[33]
> - A *nyumbakumi* and *Gacaca* judge -

In the latter case, the *nyumbakumi* collected the information without assembling the population at the same time and in the same place, for a debate that would have been collective, but above all, potentially highly confrontational.

B. The fundamental difficulties encountered by the *nyumbakumi*

Due in part to the undisputed acceptance of the decision to modify the information-gathering phase and in part to the absence of any real training provided to the *nyumbakumi*, the latter were very quickly, and understandably, faced with significant difficulties.

While some of these difficulties, mainly material, were gradually remedied (lack of manuals, notebooks and pencils), others seem to reveal much more serious deficiencies, given the impact that they will have on the core of the process and particularly with regard to determining the individual culpability of suspects. The difficulty that is the most symptomatic of these deficiencies seems to be the *nyumbakumis'* difficulties in grappling with the vagueness of the terms that appear on certain forms.

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[30] PRI Interview with a cell coordinator, July 19, 2005, n°851.

[31] For samples of some of these forms, cf. Appendices 2, 3 and 4.

[32] PRI Interview with a *nyumbakumi*, July 27, 2005, n°870.

[33] PRI Interview with a *nyumbakumi* and *Gacaca* judge, July 7, 2005, n°846.

1. Forms with terms that are not specific enough

According to PRI's observations, all available evidence indicates that many *nyumbakumi* were faced with the difficulty of defining vague terms. Among the terms that seemed to cause the most problems are "*promoters"* of or "*inciters"* to genocide, as well as "*participation in genocide preparation meetings in the cell*" and the term "*presence at the roadblock.*"

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The term "*nyirabayazana,*" otherwise indicated as genocide "*inciters*" or "*promoters*"[34] has, according to PRI's observations, often been used very extensively, to the point where one really wonders if persons who evidently did not play this role [of "*nyirabayazana*"] were already being accused at this stage. It has thus been observed in certain cell-level *Gacaca* courts, in Kibuye province (Murundi and Cyamatare sectors), that during validation, the *nyumbakumi* indicated persons on the lists of genocide inciters who, during the information-gathering meeting, were said to have only stolen or destroyed property, or only eaten meat. In these cases, those suspected of having only committed crimes involving the destruction of property were considered inciters by the *nyumbakumi* and it was observed that the validation session did not change anything in this regard.[35]

Along the same lines, the form pertaining to "*Genocide preparation meetings in the cell*"[36] led to similar difficulties. This form actually makes a very clear distinction between those who led these meetings and the participants (those who attended). Yet, certain *nyumbakumi* obviously seem not to have differentiated between simple attendees at these planning meetings and the people who led and actively hosted them, since they turned in only one list that included everyone -leaders and attendees alike- without indicating what their respective levels of responsibility were. This problem might be due to the fact that certain *nyumbakumi* did not have manuals at one point, and were thus without a definitive model to follow.[37]

Another form that provoked a large debate and brought up quite a few problems at the time of completion was the "*Bariyeri zashyizweho mu kagari,*" i.e. the form pertaining to "*Roadblocks constructed in the cell.*"[38] The sample form drafted by the NSGC distinguishes between those who gave the order to construct a roadblock, those who constructed it, those who were in charge of it, and those who went to "w*ork*" (*gukora*) at it. The difficulty arises in giving substance to the expression "*work*": one can see that the form does not distinguish between those who actually killed at these roadblocks and those who were simply present and did not play an active role in the least.

We also know that in the early 1990s, presence at these roadblocks was considered obligatory. With the war of liberation in 1990, orders coming from the commune required that every 18-year-old man stand guard at the roadblock in order to insure his cell's security. And "*there was no choice. It was the law that you had to obey.*"[39]

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[34] For a sample of this form, cf. Appendix 2 [PRI translation].

[35] ORGC Kibuye/Budaha/Murundi/Murundi, November 7, 2005.

[36] For a sample of this form, cf. Appendix 3 [PRI translation].

[37] An example of this occurred in the cell of Gakenke, in the province of Umutara, where the judges had to lend their own manuals to the *nyumbakumi* (PRI Interview with three judges of one cell-level *Gacaca* court, July 25, 2005, n°375). Again in the city of Kigali, a Zone chief was forced to photocopy the NSGC manual at his own expense so that all of his *nyumbakumi* could have a copy (PRI Interview with a zone chief and judge, July 30, 2005, n°876).

[38] For a sample of this form, cf. Appendix 4 [PRI translation].

[39] ORGC Umutara/Murambi/Murambi, the meeting was held in Mataba, March 23, 2005.

> "In the Ryampunga cell, in Murambi sector, a 45-year-old man got up and complained that in 1990 he was imprisoned and even beaten because he had not spent the night at the roadblock. "And now you say that being at the roadblock was a sin. If I obeyed the authorities, what sin did I commit?, asked this man. If I had willfully refused to spend the night at the roadblock I would have been put to death."[40]
> - PRI Investigator / Observation Report -

Under these conditions, and faced with an imprecise definition of the term "*work,*" PRI understands that not all the *nyumbakumi* might have filled out this table in the same way, and some might have relied on a broad understanding of the term "*work*" in completing it. In the same vein, in certain sectors in Umutara,[41] several *nyumbakumi* completed this table by listing all men older than 18 years who lived in the *Nyumbakumi* at the time of the genocide -a choice that stirred fears considerably:

> "That means that everyone was at the roadblocks. We are worried about the fact that having been [present] at the roadblocks is a crime. With this, when they start drawing up the lists of suspects, every Rwandan will be accused, because everyone in this country was at the roadblocks."[42]
> - A female cell coordinator -

On the other hand, others narrowed the field of application according to a more precise interpretation by focusing on the "*genocidal intent*" which then appeared to be the criteria used to determine who should be mentioned as having "*worked.*"

> "We only took note of people who committed crimes at these roadblocks. As for the others, who were present but who did nothing bad, we did not note their names."[43]
> - A *nyumbakumi* -

This restricted perspective adopted by certain *nyumbakumi* seemed to come closest to the concept of "génocidaire," i.e. a person who revealed a genuine intent to participate in the destruction of the Tutsi. Yet, in the Rwandan context at the time, simply being present at a roadblock -in the absence of other acts- would not prove this criminal intent.

2. Causes of these difficulties

One of the primary reasons for the difficulties many *nyumbakumi* had in filling out these forms was due to the difficulties they had in comprehending certain terms in a specific and uniform way. It is quite probable that the fact of not necessarily having a copy of all of the forms they were supposed to use -due to material deficiencies- prevented them from understanding all the terms used in them.

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[40] ORGC Kibuye/Budaha/Murundi/Murundi, November 7, 2005.

[41] Cf. in particular ORGC Umutara/Murambi/Murambi/Ryampunga, March 23, 2005.

[42] Interview with a female cell coordinator and a *Gacaca* court president, March 27, 2005, n°773.

[43] Interview with a *nyumbakumi*, July 26, 2005, n°867.

However, this problem of comprehension was not solely due to material lack. It was of course reinforced by the low educational level of a large number of these grassroots authorities. Illiteracy and low standards of literacy among a significant number of *nyumbakumi* also spurred many of them to seek technical support from more literate citizens. In one such case, the choice of a third person was made through a collective agreement between all members of the *Nyumbakumi*. In the very sensitive context of this search for information that is aimed at identifying genocide participants within the *Nyumbakumi*, it is understandable that these grassroots authorities, many of whom have weak technical skills, might have been more vulnerable to the influence of certain members of the community.

Aside from the issue of ability to transcribe information, is should be noted that the national authorities gave the *nyumbakumi* a very clear message to seek help from literate people[44] in their *Nyumbakumi,* as well as from higher authorities or *Gacaca* judges,[45] when they had problems related to understanding the work to be done and the type of information to collect.

> "We told them […] when problems come up to go to the Zone chief or to another *Gacaca* judge nearby for clarifications."[46]
> - A Zone chief and *Gacaca* judge -

Simultaneously, at various meetings, both sector and cell-level authorities and *Gacaca* judges were strongly encouraged to provide the *nyumbakumi* with the assistance they needed:

> "The district authorities brought us together in a meeting and told us that we should know that the heads of ten households are going to carry out an information-gathering activity and that we are supposed to approach them and help them, especially since we have received more regular training […]."[47]
> - A *Gacaca* judge -

However, when a *Gacaca* judge provided such assistance, it was on an individual and voluntary basis as a Rwandan citizen. Indeed some -although certainly very few- actually refused:

> "In filling out the ledgers they gave us, it was our Zone chief who led the activities and no judge wanted to get involved in this activity."[48]
> - A *nyumbakumi* -

It is striking to note that beyond the explanatory and preparatory meetings[49] at this information-gathering phase, the *nyumbakumi* received no training[50] on the various aspects of the information-gathering task that was entrusted to them. This is vastly different from what was set

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[44] PRI Interview with a cell-level *Gacaca* court president, March 15, 2005, n°777; PRI Interview with a coordinator from the Sanza sector, August 18, 2005, n°910.

[45] In this regard, cf. especially PRI Interview with a *nyumbakumi* and an inhabitant, July 26, 2005, n°867.

[46] PRI Interview with a Zone chief and *Gacaca* judge, July 30, 2005, n°876.

[47] PRI Interview with a cell-level *Gacaca* court president, July 20, 2005, n°853.

[48] Interview with a *nyumbakumi*, July 18, 2005, n°850.

[49] What is more, it is sometimes only one *nyumbakumi* per cell who has attended these meetings, as we were able to observe in the Gakenke sector in Umutara province (PRI Interview with a *nyumbakumi*, August 5, 2005, n°897).

[50] PRI Interview with a cell coordinator, July 20, 2005, n°853; PRI Interview with a *nyumbakumi* and a cell coordinator, July 27, 2005, n°869.

up for the *Gacaca* judges.[51] Meanwhile, the *nyumbakumi* often expressed a need for training: *"If they were to ask us to do the information-gathering again, it would be better if they gave us training like they did for the judges."*[52]

It seems that in this new system the information-gathering was presented and explained first and foremost as a "mechanical" operation, and decidedly quite simple to execute. While the emphasis was placed on purely organizational issues, (holding of meetings and their frequency, preparation of notebooks, description of the submission of notebooks to the higher authorities, etc.), available evidence suggests that the *nyumbakumi* were insufficiently prepared for what was in fact a search for information in a judicial process intended to establish individual criminal responsibility.

C. Support of the *nyumbakumi* from higher-level administrative authorities

Beyond the specific task of filling out the notebooks assigned to the *nyumbakumi*, and that of sensitization/mobilization that was assigned more broadly to the local authorities, the cell and sector coordinators were also, and more specifically, called on to organize and moderate the information-gathering meetings at their respective administrative levels.

This recourse to higher-level administrative authorities in support of the work of the *nyumbakumi* can be seen as the result of a NSGC approach that continually strives to be more pragmatic when it comes to the implementation of this stage in the *Gacaca* process. While trying to circumscribe a complex process and closely support this information-gathering phase, the national authorities made the choice to rely on an administrative structure which has already proved reliable in terms of efficiency and the communication of information. Nevertheless, this "administratization" of the information-gathering phase, by increasing the role and thus the presence of local authorities in the pre-trial investigation phase, could have led certain authorities to involve themselves in a process that is above all a judicial one.

1. The involvement of cell and sector coordinators in information-gathering

It appeared that in cells where the history of the genocide had unfolded in a particular way[53], and in cells from which a large part of the population had migrated, the operation of collecting information was sometimes too complicated to be carried out by the *nyumbakumi* alone,

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[51] From August to September 2004, all of the cell-level *inyangamugayos* went through a training in which themes such as "*the organic Gacaca Law,*" "*Security during Gacaca meetings*" and "*Reconciliatory justice,*" were addressed. "*Information-gathering*" and more particularly the completion of forms were also addressed in the training. The trainers (chosen from among the "intellectuals in the area", especially teachers) employed a technique in which they simulated a certain number of scenarios that might occur during the information-gathering in the *nyumbakumi,* and asked the judges to fill out test forms based on the simulations. In general, one out of four days of training was devoted to the information-gathering issue. (RO, Kibuye/Rusenyi/Gihombo, August 6, 2004 ; RO Kibuye/Budaha, August 13, 2004).

[52] PRI Interview with a *nyumbakumi* and an inhabitant, July 26, 2005, n°867.

[53] As was the case in the City of Kibuye. On this point, cf. in particular Penal Reform International, *Research Report on the Gacaca. Kibuye*, PRI, Kigali/Paris, November 2003, pp. 6-10.

and ended up leaving gaps in information.[54] At the time, supporting the *nyumbakumi* proved necessary. As part of the new logic adopted by the NSGC in November 2004, this support was to be provided by a higher administrative authority.

How the meetings unfolded[55]

For cells that contained a large number of *nyumbakumi,* information-gathering meetings took place first at the Zone level and then at the cell and sector level.

> "[...] the information-gathering was going slow, so we decided to get together in the Zones to exchange ideas."[56]
> - Information-gathering meeting in the Zone -

> "After having collected the information at the level of the *nyumbakumi*, there was a meeting that brought together all the *nyumbakumi* of the cell. n this meeting, they read [aloud] the information collected in each *nyumbakumi* and in this way each *nyumbakumi* could fill in gaps in the information that he had gathered."[57]
> - Information-gathering meeting at the cell-level

> "[…] they ordered that the collection be done at the sector level, so that each week all the cells of the sector would meet at the sector office to fill in the information […]"[58]
> - Information-gathering meeting at the sector level -

Starting at mid-morning so as to finish by mid-afternoon, the meetings were moderated - according to administrative level- by the Zone chief, or the cell or sector coordinator. For the most part, they were structured in the following way:

Period 1

With the population gathered in the general assembly of the cell or sector, the coordinator would begin with a period of sensitization. In general, the sensitization session would open with an explanation of Article 29 of the *Gacaca* Law so as to urge the population to participate and remind people that participation is obligatory. It was often mentioned at this time that the information gathered was insufficient, as a way of pointing to the "proof" that certain people were keeping quiet. Then the coordinator would come back to the importance of the *Gacaca* process from the reconciliation perspective, reminding everyone that its goal is to reconcile all social and other relationships of Rwandan society that were destroyed by the genocide. Following

[54] For example, in the City of Kibuye, because the *nyumbakumi* encountered considerable difficulties during the information-gathering, from March 2005, the information-gathering meetings were organized by the sector and district authorities.

[55] In order to communicate the structure and content of the information-gathering meetings at the cell and sector level more clearly in the context of this report, PRI has divided these meetings into chronological "periods."

[56] PRI Interview with a *nyumbakumi* and first vice-president of a cell-level *Gacaca* court, July 19, 2005, n°852.

[57] PRI Interview with a cell coordinator, July 20, 2005, n°853.

[58] PRI Interview with a Zone chief and *Gacaca* judge, July 30, 2005, n°876.

on this was a general reminder about the schedule set for the information-gathering task, as well as encouragement to those who had committed crimes of genocide to plead guilty. In encouraging admission of guilt, emphasis was placed on how worthwhile a confession was in light of the reduced sentence and the benefits of a Community Service (CS) sentence. [59]

If a higher-level authority was visiting on the day of the collection meeting, it is this person who would then conduct the sensitization session, the idea being that the more important or charismatic the authority, the greater the impact of the message on the population. Thus for example, in the City of Kibuye, given the difficulties encountered by the *nyumbakumi* during the collection, the sector meetings were often moderated by the district Mayor himself.[60]

> "After arriving, the mayor and the sector coordinator come to greet the population and remind them, briefly, what the goals of the *Gacaca* are. Afterward they ask the people to group themselves cell by cell in order to start the information-gathering work."[61]
> - Cell coordinator -

Period 2

The Zone chief or the coordinator would then move on to the instructions of filling out the notebooks. Following this, each *nyumbakumi* leader went to sit down with his/her respective community to carry out the collection. When the cell included Zones, people sat down geographically *Nyumbakumi* by *Nyumbakumi*, with everyone divided up according to a Zone by Zone spatial arrangement. For collection meetings at the sector level, the people gathered cell by cell, then *Nyumbakumi* by *Nyumbakumi.*

The *Nyumbakumi* leaders were then asked to resume the collection work immediately in order to fill in missing information. It was also on this occasion that people outside the particular cell or sector -but who resided in them at the time of the genocide- were called on to give testimony. Each *nyumbakumi* would note down the information pertaining to his *Nyumbakumi*.

> "The *nyumbakumi* worked with the population on this task and after that, we had to bring all these *nyumbakumi* together to see whether the collection had been done in a satisfactory way or not. The authorities at the district, and even the province level, come to visit us to see how this activity is carried out in each *Nyumbakumi*. At the moment the *Gacaca* meeting was going to begin, they assembled us at the stadium for at least 30 or 25 minutes in order to give us the instructions for these activities. And afterwards, each cell had to move off to the side to continue the activities."[62]
> - A cell coordinator. Information-gathering meeting in the City of Kibuye -

[59] Cf. in particular: PRI Interview with a cell-level *Gacaca* court president, October 13, 2005, n°1012; PRI Interview with a former president of a cell-level *Gacaca* court, August 27, 2005, n°928.

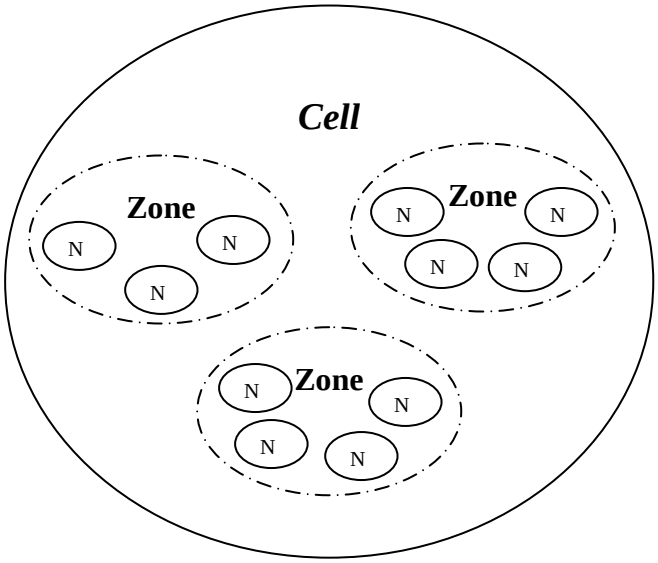
[60] ORGC Kibuye/City of Kibuye/Bwishyura, June 2, 2005.

[61] PRI Interview with a cell coordinator, July 19, 2005, n°851.

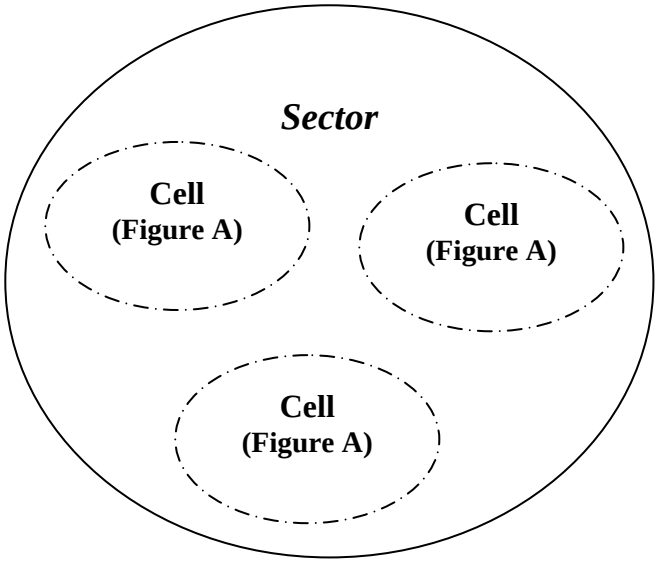
[62] Id.

Spatial organization chart of the meetings

Meetings in the cell (Figure A)
N= *Nyumbakumi*



Meetings in the sector



Period 3

After some time passed, certain *nyumbakumi* were asked to state the additional information which they had just added in their notebooks. These *nyumbakumis'* work was then refined by the moderator of the meeting. Furthermore, it was not rare on these occasions for certain *nyumbakumi*, who seemed to the authorities not to be pursuing their information-gathering tasks actively, to be publicly reprimanded. As the meeting drew to a close, the *nyumbakumi* were reminded that they had to fulfill this task, and the moderator would then assign the cell supervisor the task of verifying that the work had been done well.

In some of these meetings, time was also allotted to the population to ask questions that concerned them the most about the *Gacaca*. The meetings generally closed with a certain number of related announcements about the *umuganda*[63], health insurance plans, etc.

It should be noted that although these meetings were not provided for under the law, attendance for the population was obligatory, as it was at these meetings that the first fines for non-attendance were assessed.[64]

[63] Community work carried out throughout the country and organized by each cell.

[64] Cf. p. 43 of the present report.

Goals of these meetings

These cell and sector meetings seemed to have been organized to meet two objectives. The first, which grew out of an understandable concern to standardize the information-gathering process, was to assemble information from persons who no longer lived in the information-gathering cell or sector, but whose testimony was nevertheless necessary for several *Nyumbakumi* at the same time. These persons came only once and gave everyone all the information they had.

The second objective was to create a dynamic favorable to the revelation of crimes of participation in the genocide, particularly in areas where the authorities thought that silence prevailed. Their view was that gathering all the inhabitants of the cell and sector together at the same time and in the same place would lead the latter to talk more and to reveal either facts that remained hidden, or, especially, to accuse persons who had not been accused before. It seems that the presence of political and administrative authorities had a significant impact, not only because they successfully encouraged the population to speak, but especially because they organized these meetings and moderated during the debates. Moreover, interviews conducted with local authorities reveal that, in order to spur the population to speak, they were assigned a mobilizing role. In effect, they had been asked to reveal what they knew, in order to motivate participants to reveal information. In doing so, the message communicated was that no one could deem themselves to be above this phase of investigation or exempt from this civic duty.

> "…] when the population is quiet, we ask the *nyumbakumi* to set the example by giving the truth about what happened […] and the *nyumbakumi*, the coordinator, the *Gacaca* court judge or any other supervisor of the population steps up to say something about what happened in the cell."[65]
> - A cell coordinator -

> "So I thought it was a good idea to confess and plead guilty before the public. And besides, it served as an example to them to go ahead and confess. So I was a model for them because they saw that I was not above them. At this point, in public, some made the decision to confess and plead guilty." [66]
> - A former president of a cell-level *Gacaca* court -

> "When they [the Zone chief and *nyumbakumi*] denounced those who participated in the killings and the pillaging, the population began to give information." [67]
> - A Zone chief -

In terms of meeting these two objectives, the involvement of the administrative authorities has generally been positive: the number of facts revealed increased in significant proportions and over a very brief period. However, was this new way of doing things really capable of guaranteeing the impartiality of these new actors and ultimately, the legitimacy of the information collected?

[65] PRI Interview with a cell coordinator, July 19, 2005, n°851.

[66] PRI Interview with a former president of a cell-level *Gacaca* court, August 27, 2005, n°928.

[67] PRI Interview with a Zone chief and a *Gacaca* judge, July 30, 2005, n°876.

2. The implications of administrative involvement in the information-gathering stage

From support to interference

While local authorities have always been sought out, including during the pilot phase, to support the local coordinators sent by the NSGC, they took a big step with the role assigned to them during the information-gathering phase in 2005. Moreover, the demands placed on these authorities in certain places, which went so far as to hold them responsible for poor execution of the *Gacaca* (if necessary), seems symptomatic of this evolution.

> "At the beginning of this phase [*information-gathering phase*], all five cells of the Musasa sector were inactive. The authorities in the Kayove sector thus intensified the meetings by warning the authorities at various levels that they would be responsible for the poor execution of the *Gacaca*. Since then, the grassroots-level authorities in Musasa sensitized their members to take the *Gacaca* courts' work seriously and the decision was made to meet one day per week." [68]
> - PRI Investigator / Observation Report -

It should be noted that in the follow up to the work carried out by these authorities, each one was required to submit a report on his own follow-up activities on the information-gathering process and on the *Gacaca* court for which he was responsible:

> "Every Monday, there is *Gacaca* in each cell, and the district-level authorities come down to each cell for the follow-up. Afterward, they take the reports to the district-level *Gacaca* coordinator to integrate them. Those who bring the reports also receive instructions about [how to make] the *Gacaca* run well." [69]
> - Report from an interview with a district council member -

Meanwhile, there is no doubt that the extensive involvement of the local authorities in the process has allowed some of them -and to an even greater extent than in the pilot phase- to abuse their positions to try to exert influence on the core activities of the information-gathering phase thereby bringing the legitimacy of the entire process into question. This illegitimate interference was observed during this judgment phase[70], but it was also quite prevalent during the information-gathering phase. While the nature of this interference took different forms, it consisted primarily in preventing certain testimonies from being heard in order to protect the relatives of the authorities in question, as well as the members of the administrative units (*nyumbakumi*, cell, sector, etc.) under their authority, if not the authorities themselves. The national authorities themselves recognized that such interference and selective censorship had taken place, and had on occasion denounced it.

> "What I want to add is that these authorities, who often make this commitment to each other saying that they won't receive [accept] information that comes after the deadline they've set, often say this for a reason. They don't say it because they don't know it, they say it because they know that no one will have been able to denounce their brothers-in-law, their fathers or their brothers. When we arrive in

[68] ORGC Gisenyi/Kayove/Musasa, March 11, 2005.

[69] Report from an interview with a UNFPA agent and a district council member, April 6, 2005 (AR [Analysis Report] Umutara/Murambi, April 13, 2004). Cf. also AR Kibuye/Budaha, December 2005.

[70] Cf. particularly ORGC Kibuye/Budaha/Nyange, November 25, 2005. In this case, the local authorities had people imprisoned by the *Gacaca* courts released. The balance of power that resulted between the local authorities and the Seat led to the resignation of the judges.

> the field, the population says that it is such and such an authority who told them that information would not be received [accepted] any more [beyond the deadline]." [71]
> - NSGC Representative/*Gacaca* broadcast on Radio Rwanda -

PRI observers were informed, on several occasions, of a whole series of blockages that these local authorities created in order to prevent the revelation of the truth, by using their social status and power to compel the population not to say anything.

> "We try to tell our *Nyumbakumi* chief the whole truth about what happened. But since he always wants to hide what he knows on this subject […] it prevents the population from speaking. Because when someone starts to give information, he cuts him off and accuses him of preventing the meeting from advancing. So in this case, information is blocked, because he does not even take it." [72]
> - A female survivor -

> "What is astonishing is that the meeting was made up of authorities who were in charge even during the genocide, but who pretend to be deaf, even when some [of them] are on the list of suspects. […]People hide behind these authorities and believe they are protected by them." [73]
> - PRI Investigator / Observation Report -

> Cell coordinator (female) : "We found that it was indeed him [*a current cell supervisor who was supposedly implicated in the genocide*] who was to some extent blocking the population from telling the truth." […] President of the GC: "When he does not say something to denounce other people, those [people] also cover it up and thus the truth is not known." [74]

The ambiguous support of the judges during the new information-gathering period

It is important to emphasize that at this stage of the collection, the *inyangamugayo* did not assume any particular responsibility as *Gacaca* judges. When they took part in the information-gathering meetings, they did so as ordinary Rwandan citizens. However, as emphasized earlier, the *inyangamugayo* have been relied upon many times to support the local authorities in this first collection work, whether for the information-gathering itself or for sensitization. But these interventions were often marked by ambiguity, with the *inyangamugayo* bringing their support as ordinary citizens, but with the full weight conferred upon them by their authority as elected *Gacaca* judges.

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[71] *Gacaca* broadcast, Radio Rwanda, discussion by M. Patrick Rwinkoko, NSGC representative, September 9, 2005, N°944 [PRI translation].

[72] Interview with a female survivor, May 13, 2005, n°814. In a similar vein, regarding the refusal to note information or the disappearance of some notebooks' pages, cf. also the OR of the Kibuye/Nyabonombe meeting, June 22, 2005.

[73] ORGC Gisenyi/Kayove/Musasa, March 15, 2005, see also ORGC Gisenyi/Kayove/Musasa, March 11, 2005.

[74] PRI Interview with a female cell coordinator cellule and a *Gacaca* court president, March 27, 2005, n°773.

In certain cases, this support could take a more official form, notably through calling people to testify in the information-gathering meetings.[75] Or, as in the district of Murambi, in Umutara province, where, the judges in the cell of Kagenge, after a first data collection in a meeting of the general assembly in that cell, met amongst themselves in order to "*analyze the information as judges,*"[76] before affixing their signature to the information and sending it to the sector for the information-gathering meetings in the sector's general assembly. However, we have not found this procedure in any of our other areas of observation. Conversely, in the cell of Kinombe (Gisenyi/Kayove/Gihinga) the *Gacaca* judges verified, as they went along, the forms filled out by the *nyumbakumi*, but they did so without being "*in official attire*" and "*in order to prevent errors*"[77], in other words, not in their official capacity as *Gacaca* judges.

This lack of clarity about the role of the judges might have, to a certain extent, given the impression that too great a proximity existed between the local authorities and the *Gacaca* judges, simultaneously raising the question of the latter's independence vis-à-vis the authorities. Because if the judge, although he is "*a neighbor,"* can be independent -considering the distance that his function implies- the local authority is the person *par excellence* who is completely plunged into individual local conflicts, and even more so if he is one of the *nyumbakumi*. Yet, this collusion between the judges and the local authorities in this initial collection period could, in divesting the judges of a portion of their authority, also give the impression of a collection of information "*under influence"*[78]: An impression that the actual validation process, which sounded the return of the judge in the information-gathering phase, mitigated only very weakly.

III
Validation, or the return of the judge in the information-gathering phase

This "administratization" of the *Gacaca* process seems to signify that the national authorities might have become conscious -during the pilot phase- of the shortcomings of the *Gacaca* judges (with regard to the speed of the collection, as well as the quantity and accuracy of the information collected) such that the latter would be replaced in these functions by the administrative authorities, who were deemed to be more competent. Indeed, it seems that the choice was not made to reinforce the capacity of the *inyangamugayo* for the collection of information, by continuing to assign this entire task to them, but, conversely, to partially deprive them of this task in order to delegate it to others. This dispossession, however, only corresponds to the initial collection period, because with this new plan, the judge continues to play a certain role at a new stage, called "validation."

[75] The summoning of people no longer living in the cell was done by the local authorities (PRI Interview with a *nyumbakumi* and a first vice-president of a cell-level *Gacaca* court, July 19, 2005, n°852 ; PRI Interview with a female judge and a *nyumbakumi*, July 17, 2005, n°850), as well as by the cell- and sector-level *Gacaca* courts (PRI Interview with a zone chief and a *Gacaca* judge, July 30, 2005, n°876) depending on the location of the information-gathering meetings.

[76] PRI Interview with three cell-level *Gacaca* court judges, July 26, 2005, n°375.

[77] PRI Interview with a sector coordinator, August 3, 2005, n°888.

[78] Rumors and the fact that many people fled the country during the initial period of this information-gathering in 2005 serve in part as a testament to the fear associated with the perception that the information-gathering system does not sufficiently guarantee the independence of the judicial investigation conducted. (Cf. pp. 49 and following of this report.)

A. The return of the judge in the information-gathering phase

In the new procedural diagram conceived at the end of 2004 by the NSGC, after the period of collection by the *nyumbakumi*, the validation period, "*kwemeza amakuru,*" is initiated. It is during this period that the *Gacaca* court is to resume its competence in order to finish the stage which precedes categorization. The term "validation" appeared in the NSGC's Procedure Manual for the Gathering of Information, which describes the new function assigned to the *Gacaca* judges thus: "*When the Gacaca judges have just examined and confirmed this information* [collected by the nyumbakumi]*, the president of the Gacaca court convenes a meeting of the General Assembly for the validation.*"[79] Consequently, the information-gathering that the *Gacaca* court should have directed in its entirety according to the law -as it did during the pilot phase- initially escaped its oversight at the national phase. It was entrusted again to the *Gacaca* court in a second period of collection. An observer of the *Gacaca* courts in the district of Budaha summarizes the situation as follows:

> "He [the NSGC representative] gave the definition of "validation" as the fact of verifying, seeing if what was said was written, or completing the information collected in the *Nyumbakumi* and comparing it with information collected in the prisons. He added that the validation is directed by the judges (the Seat) in the presence of the General Assembly of the cell. May the place where the validation is done become the court! It is different from the one where the collection of information was directed by the *nyumbakumi* and the cell coordinators (supervisors)."[80]
> - PRI Investigator / Observation Report -

After seven months of functioning in the collection phase, all the cells that PRI observed in the national phase had almost completely finished the validation of the information gathered by the *nyumbakumi*. The NSGC had given the instruction that all ledgers containing validated information be submitted to the district-level *Gacaca* coordinator by the end of November at the latest, so that the judgments at the national phase could begin in January 2006.[81] All the cells then began to work very seriously on this task. In the district of Kayove, some *Gacaca* judges even went so far as to work every afternoon, several days in a row.[82]

It should be noted that an intermediate "confirmation" phase, between collection and validation, is outlined in the Procedure Manual for the Gathering of Information in the *Gacaca* courts: "*When the president of the cell-level Gacaca court has just received the notebooks from all the nyumbakumi in the cell, he calls a meeting with all the Gacaca judges, members of the Seat of the Gacaca court and their substitutes, in order to confirm the contents of these notebooks.*"[83] Because this stage took place *in camera*, it was rather difficult for PRI to obtain precise information about it. Nevertheless, it appears that this task for the *Gacaca* judges consisted essentially in comparing their own knowledge about the genocide with the information collected within the *Nyumbakumi*. In so

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[79] National Service of Gacaca Courts, *Procedure for the gathering of information in the Gacaca Courts. Truth-Justice-Reconciliation*, NSGC, Kigali, November 2004 [PRI translation].

[80] OR of a sensitization meeting on the validation of information, Kibuye/Budaha/Nyange, August 26, 2005.

[81] Date initially set by the National Service of Gacaca Courts. On this day, the only judgments which resumed in mid-May 2006 were those from the pilot phase *Gacaca* courts. Judgments from the national phase are still pending.

[82] Even though these *Gacaca* judges assume their *Gacaca* duties without remuneration. Cf. OR Gisenyi/Kayove/Musasa/Muhororo and Kanyamende, November 14, 2005.

[83] National Service of Gacaca Courts, *Procedure for the gathering of information in the Gacaca Courts. Truth-Justice-Reconciliation*, NSGC, Kigali, November 2004 [PRI translation].

doing, they would be able to identify unclear information with a view to obtaining more precise details from the population during the validation meetings.

B. How the sessions unfolded

Once all the *nyumbakumi* had completed the information-gathering, the cell-level *Gacaca* courts' validation sessions could begin. The goal of these sessions, which were placed under the authority of the Seat of *Gacaca* judges, was to have the information collected at the *Nyumbakumi* level validated by the General Assembly of the cell.

Following a number of interviews conducted during the summer of 2005, it seemed that instructions had initially been given, namely by district authorities (as in Kayove [Gisenyi])[84], so that "*only reliable information [would] be noted*"[85] and that "*the errors be corrected.*"[86] However, PRI's observations ultimately revealed that in the large majority of cases, the meetings proceeded in the following way: the *Nyumbakumi*s' notebooks were first read aloud in their entirety and without interruption, and generally by the *nyumbakumi* themselves. In the event that the latter could not read, a *Gacaca* judge or someone who was an inhabitant of that *Nyumbakumi* took on the responsibility for reading the notebook. Then the seat would ask the population if anyone had something to add in order to complete these notebooks.

To this observation it is essential to add that the judges refused to let the population dispute, if necessary, what was written in the books that were read to them, particularly to release from responsibility a person whose name figured on a list. On these occasions, the population was told that it was not the moment to do so [dispute what was written], and that this moment would arrive with the judgments.

> "A participant :
> You speak of the validation of information. It is read and passed on without discussion. Is what you sign correct?
> The GC president:
> We do not discuss information that was spoken and noted. We do not have the right to say whether the information given is true or false. That will come during the judgments. In the collection, there are those who say what they heard without this information being true.
> […]
> A participant :
> They told us [at the time of the completion with the *nyumbakumi*] that during the validation we should correct what is not true.
> The president :
> It was said that it was necessary to add what was said without changing anything.
> […]
> The president :
> We are not in judgment."[87]
> - PRI Investigator / Observation Report -

[84] PRI Interview with a cell coordinator, July 20, 2005, n°853, and also an interview with a district-level *Gacaca* coordinator from August 12, 2005, n°901.

[85] PRI Interview with a female *Gacaca* court judge at the cell-level, August 3, 2005, n° 884.

[86] PRI Interview with a sector-level coordinator, August 3, 2005, n°888.

[87] ORGC Kibuye/Budaha/Murundi/Murundi, November 7, 2005.

Any additions to the information in the notebooks were indicated in a different color by the Secretaries of the *Gacaca* court Seat. After this, the notebook was considered validated.

Thus, PRI's observations reveal that this validation process indeed corresponds to the definition given by an NSGC representative at a meeting in Budaha, "*to see whether what was said, was written*"[88], and not to see whether what was said conformed to the truth. It seems that the majority of the *Gacaca* judges limited their control to that. Of all the observation missions PRI conducted, only in one interview, concerning the Kamutwa cell in the City of Kigali, was it alleged that information was screened by the judges at the time of the validation.

> "Each *nyumbakumi* introduces himself at the meeting and reads all the information he has collected. Information that is confirmed is kept, and that which is not confirmed remains in the files of the *nyumbakumi*."[89]
> - A female *nyumbakumi* -

C. The inscription of information in the ledger

Once the notebooks were approved, the lists were integrated for each person mentioned in them. These lists were then transcribed into another document, the ledger. The contents of the ledger are generally the same as that of the *nyumbakumis'* notebooks, apart from the fact that the lists are drawn up at the cell level and no longer at the *nyumbakumi* level, and that the testimonies of people outside the cell are added to the lists during the cell- or sector-level information-gathering meetings, or at the validation sessions.

In reality, this work of filling in the ledgers fell to the secretary of the *Gacaca* court. However, in many places, because some secretaries did not know how to write well, or sometimes because of their lack of availability, or even to avoid mobilizing the population without reason for several hours (as was the case in one cell of the Gakenke[90] sector), the courts resorted to finding people external to the *Gacaca* court to fill out the ledgers. It was even planned that the latter would be remunerated.

> "In order to facilitate the task of transcribing, we have asked the judges to find people who have good handwriting to fill out these ledgers."[91]
> - NSGC Representative / *Gacaca* broadcast on Radio Rwanda -

But resorting to these third parties sometimes caused other difficulties, as the following observation, made in the Nyamure district of Butare, attests:

> "Validated information must be transcribed into the activities notebooks or ledgers. All the sectors of the district of Nyamure received the order from the district *Gacaca* coordinator to hire one person per cell who has completed at least

[88] Cf. extract *supra*, OR (Observation Report) from a sensitization meeting on the validation of information, Kibuye/Budaha/Nyange, August 26, 2005.

[89] PRI Interview with a *nyumbakumi*, July 27, 2005, n°870.

[90] "The Seat of judges spends more than five hours completing the ledgers and the General Assembly stays crouched there, without saying anything." (PRI Interview with an *ad interim* district-level *Gacaca* coordinator, July 27, 2005, n°872). However, out of all our observations, this case is an exception.

[91] *Gacaca* broadcast, Radio Rwanda, discussion with M. Denis Rukesha, NSGC representative, August 19, 2005, n°913 [PRI translation].

> secondary school to take care of this task. On this point, since the individuals work on promise of payment, several individuals affirm that they work slowly to prolong the time of employment." [92]
> - PRI Investigator / Observation Report -

One of the population's grievances was that the recruitment of these third parties to the court was not done in total transparency, which in turn, naturally casts doubt on the quality and integrity of the work being executed.

> "In addition to that, some judges from the Nyamiyaga sector affirm that these scribes were not hired in a transparent way. Indeed, the hiring of these individuals was done by the sector's executive secretary and the sector coordinator. The executive secretary in Nyamiyaga sector is even one of these individuals." [93]
> - PRI Investigator / Observation Report -

What seems important to us to emphasize at this stage is that this work of filling in the ledgers, which in fact entails integrating the different notebooks, is not completed during the *Gacaca* sessions (i.e. in the presence of the population), but outside these sessions. The secretary of the Seat or the person externally recruited for this purpose does this work alone while trying to accurately reproduce the contents of the notebooks. However it is quite obvious that given the breadth of responsibility involved in this task, there is a great risk that certain elements might be forgotten. The difficulty that this court secretary can encounter in a cell composed of three Zones, themselves representing ten *Nyumbakumi*, can be measured: the secretary must read and integrate sometimes more than 90 notebooks from the *Nyumbakumi* on average, to be able to fill in the ledger.

To conclude the observation of this validation phase, some of the problems encountered which are common to several observation sites, and which, for the most part, are comparable to the problems encountered in the pilot phase are listed as follows:

- The general assemblies were often held at uncovered sites, and the sessions would thus take place either under the burning sun, or in the rain.

- In many places, the sessions would begin no less than two hours late, especially during the harvesting season.

- Although a specific day of the week was defined -in all locations- as the day of the *Gacaca* courts' activities, it also happened that the administrative authorities would schedule other meetings (on the same day) at which the presence of the population was also required.

- Some meetings were postponed in the absence of the quorum required by law.[94]

While some problems were unforeseen and thus difficult to solve with limited material and financial means (e.g. weather conditions), others could certainly be avoided as they were due more to lack of coordination (holding administrative or political meetings at the same time as the *Gacaca* hearing).

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[92] OR Butare/Nyamure, November 30, 2005.

[93] Ibid.

[94] The organic *Gacaca* Law n°16/2004 of June 19, 2004 stipulates in Article 18 that "The General Assembly of the *Gacaca* Court of the cell only meets legitimately if at least one hundred (100) members are present."

Categorization

According to the law, this fundamental stage for accused persons -but also for the victims and the entire remainder of the process- is a matter for the Seats of the *Gacaca* courts alone. However, categorization was suspended throughout the country at the end of 2005 while waiting for all of the cell-level *Gacacas* to finish the validation phase.[95] It is also possible to think that the adoption of a new legal reform announced in the fall of 2005, and which could amend the previous provisions[96] relating in particular to the first category, justifies this delay.

It is obvious that, of all the challenges that the process must face, the duration of the prosecution is one of the first. In order to meet this challenge, resorting to the local authority appeared to the NSGC to be the best solution. By entrusting the responsibility for gathering information to the *nyumbakumi* and then by organizing the synthesis of this information through validation in the *Gacaca* General Assembly, the hope was that the process would be significantly accelerated. This objective indeed seems to have been achieved.

However, this new organization for the gathering of information, which was completely and initially "dejudicialized," has in fact transformed the face of the *Gacaca* process by supporting the perception held by part of the population that it is a system principally designed to accuse, namely because it is impossible to bring testimony for the defense. In this sense, it is as if the search for the truth necessarily entails relinquishing the fundamental balance, in any criminal proceeding, between the prosecution and the defense.

[95] Report from a PRI Interview with the NSGC manager of documentation, January 11, 2006.

[96] Cf. *supra*, the *Gacaca* Law of June 19, 2004.

Part 2
The undeniable deterioration of the right to defend oneself

Any criminal procedure tends toward a balance between the search for the truth about the crime and its perpetrator, which often involves recourse to coercive measures that are prejudicial to freedoms, and the necessary safeguarding of individual guarantees.

Within the very specific framework of the prosecution of the 1994 Rwandan genocide, the choice was made in 2001 to delegate it to popular courts called *Gacaca*, made up of a Seat of judges (the *inyangamugayo*) originating from and elected by the population, and of a General Assembly composed of this same population. The idea underlying this judicial system is that the balance between the interests of society and those of each citizen can, in theory, be preserved thanks to a large and voluntary participation of the population in the process. Indeed, the bulk of the information about the genocide and the culpability for it can -in addition to confessions- come solely from testimonies of a population which informs the judge, while accusing or discharging. Without these testimonies, which should be complete and truthful, it is not possible for the cell or sector *Gacaca* court to know the history of the genocide in the area under its authority, and especially to then determine, without error, what the real perpetrators are guilty of having done. Consequently, everything depends on the active and voluntary participation of the population, which it alone can allow.

Moreover, within the framework of a legal process responsible for handling accusations as serious as that of genocide, it is also imperative that each Rwandan citizen, if he is innocent, be protected from unfounded accusations. Similarly, if he committed a crime of genocide, he must be able to explain freely and completely the reasons that pushed him to commit it.

What is more, the possibility to bring defense testimony and the right to defend oneself -which should not be solely seen as an individual right- are also conditions necessary for the judge to be able, in his search for the truth, to come closer to it: it is only by comparing impartially all the elements that could either incriminate a person or exonerate her that the judge will be able to make a determination about the actions and responsibilities of the defendant that he must judge.

That is the challenge at stake in a defense that one must be able to organize, even if the process provides no recourse whatsoever to assistance by defense counsel. PRI is of the view that within the framework of this participatory process, it is neither necessary[97], nor desirable, for the defense be entrusted to a specialist, namely a lawyer. Indeed, within this framework, the right to defend oneself guaranteed by the active and voluntary participation of the population and here rests on two fundamental pillars, which are (1) the right to procedural due process in a public debate, and (2), the opportunity to bring testimony for one's defense at any time during the *Gacaca* procedure.

[97] With regard to the fact that no suspect falling under the jurisdiction of the *Gacaca* courts, i.e. the second and third categories, incurs the death penalty.

In the Rwandan context, the investigation of cases proves more than delicate, not only because of the significant trauma that the Rwandan population suffered during the recent period -which makes testifying difficult- but also because of the fact that survivors often have information that they did not obtain as eyewitnesses.[98] Even those who possess information, i.e. the perpetrators, do not necessarily have a stake in revealing what they know or do so within the framework of the confession, which has a sometimes fragmented[99] character. PRI is of the view, therefore, that the two pillars mentioned above should be reinforced from the first accusation to the final judgment. However, an observation made in 2005 established that in the first phase of the *Gacaca* process, which is the collection of information, the right to defend oneself had very little opportunity to be exercised. And instead of being reinforced, it was undermined, along with the rights of each citizen, as well as the search for the truth. An even more worrying observation is that it is on the basis of the information collected that categorization, a key stage of the process, will take place.

I
The right of the defendant to procedural due process under threat

Within the framework of the new procedure employed for the collection of information, PRI is of the view that three elements, initially put in place to facilitate the collection of accusations, have combined in such a way that they may ultimately pose a serious threat to the possibility to present arguments and counter-arguments during the pre-trial investigation phase of the *Gacaca* process. Indeed, added to the collection of information in small groups -which was done by the *nyumbakumi* and which initially did not guarantee that an accusation would be made public- was the failure to collect testimony for the defense in this pre-trial investigation phase and a disingenuous use of the legislation on the refusal to testify.

A. The gathering of information in small groups and the question of "false accusations"

1. Gathering information in limited groups

The *Gacaca* process, and its criminal procedure drafted by the lawmakers of 2001 and 2004, actually sanctions the principle of presenting public arguments and counter-arguments since every phase is required to take place in the presence of the population gathered in the General Assembly. In fact, the law of June 19, 2004 stipulates that one of the competencies of the General Assembly of the cell-level *Gacaca* court is "*to assist the Seat of the Gacaca court with the establishment of the list* [seven lists are enumerated]" and to "*present the evidence and testimonies for the prosecution or for the defense of persons suspected of the crime of genocide or other crimes against humanity*" (Article 33).

[98] "*I gave information that I had heard when I returned from exile. […] I would give information that I had gotten from others.*" (PRI Interview with a survivor, August 11, 2005, n°899).

[99] Cf. Penal Reform International, *Report IV. Report on Gacaca Research: The guilty plea procedure, cornerstone of the Rwandan justice system*, PRI, Kigali/Paris, January 2003.

It was in this way that the collection of information was organized during the three-year pilot phase[100] up until the categorization stage which in itself is not public, but which is only possible because the court had access to all of the information beforehand, for the prosecution and for the defense. Indeed, the entire information-gathering process rests on the idea that categorization can reflect the truth of the crimes more closely, if the judge were able to simultaneously hear those who accuse and those who defend, as well as the freely spoken words of the defendant.

For this reason, PRI regretted that during the pilot phase it was unfortunately not always possible to hear all of the defendants, in particular because many were prisoners and the authorities encountered significant practical difficulties organizing their appearance before the *Gacaca* court and transporting them. However, at the launch of the national phase, it would have been desirable to be equipped with additional ways to make the right of any defendant to be heard by the *Gacaca* court more tangible, prior to being categorized.

Yet, with this new process that entrusts the gathering of information to the *nyumbakumi*, the defendant's right, whether he is detained or free, to know the accusation against him and to discuss it, is challenged even further. It is therefore no longer a question of one simple practical difficulty in extracting a prisoner who is far away, but of a choice that one could describe as penal policy and which concerns everyone.

This new orientation is particularly visible with the new method of gathering information, which means that we have gone from collecting testimonies in the General Assembly of the cell to a collection in limited groups, in the *Nyumbakumi*. It is in this way, in fact, that most of the *nyumbakumi* proceeded, some having gone even further by questioning their fellow-citizens without bringing them together, but by going from house to house.[101]

Requiring the *nyumbakumi* to gather information from among its cluster of ten houses was intended to meet a dual goal set by the NSGC, and which in itself appears legitimate:

1. To accelerate the collection of data, as the small gathering is even more likely to encourage people to talk, contrary to the large group of the General Assembly and where pressures (verbal threats, stigmatizing laughs, threatening looks/glances, etc.) could prevent people from talking;

2. To protect people, and particularly the victims who testify, since the source of the information is not known, or at least not immediately known.

Even while a second round of collection meetings were organized in the General Assembly at the cell- and sector-level, the purpose of these meetings was above all to supplement the initial accusations collected[102] and not to permit suspects or witnesses for the defense to bring additional elements to the investigation.

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[100] Cf. Penal Reform International, *Integrated report on Gacaca research and monitoring. Pilot phase. January 2002 - December 2004*, PRI, Kigali/Paris, December 2005.

[101] Cf. p. 8 of the present report

[102] Cf. p. 12 supra, the section on "*Support of the nyumbakumi from higher-level administrative authorities*"

Furthermore, during the sensitization meetings, out of an interest in encouraging people to speak in order to collect a maximum of information, the message conveyed was that any information was welcome, including information from people who were not actually eyewitnesses.

> "The representative of the NSGC gave the difference which is between testimonies and information. He said that: 1) Information is what one heard or what one saw and 2) Testimony is saying what one saw. Thus during testimony one takes an oath. If somebody gave false evidence, one applies Article twenty-nine of the organic law. Whereas he who has given false information is not pursued (because one can be badly informed without having the intention to give false information)." [103]
> - PRI Investigator / Observation Report -

In addition, it seems that the term "gathering [or collection] of information" is in itself revelatory of the mindset that engendered the entire 2005 collection, as if one might have lost sight of the fact of operating within the framework of a pre-trial investigation phase of a judicial process, and that this collected "information" was going to serve as the basis for the establishment of criminal responsibility.

One might think that the idea that underlies this practice is that all information is useful, especially in a context where it is so difficult to uncover the truth. The more information the judge obtains, the more likely that will have the means to discover the truth. But perhaps it is better to be more nuanced on this point, and not to confuse the quantitative with the qualitative. It is not because one has a lot of information, that one has the truth. This strategy could even prove counter-productive in the long run, and end up complicating the task of the judges', who must sort through a great deal of information, not all of which will necessarily be true. As this *nyumbakumi* emphasizes, "*information is given, but some of it is false.*"[104]

2. The question of "false accusations"

In practice, this method of collecting information has undeniably given expected results (in terms of speed and quantity) and the initial idea could be commended for allowing "*people to plead guilty in relative calm since they regroup in their cluster of ten houses where they are not afraid of anything*"[105], thus facilitating the confession or the testimony for the prosecution without fear of being threatened. However, the initial absence of actual publicity of the accusations, which could instill a sense of complete irresponsibility[106] in the accusers, may have created a climate favorable to deviant practices and notably, false accusations.

It is useful at this point to specify that PRI's use of the term "false accusations" refers to cases where, while some persons were accused during the information-gathering process, from PRI's observations and interviews it emerged that the vast majority of the population considered them to be innocent. But obviously, PRI's observers were not in a position to judge whether a piece of information or an accusation was well-founded and thus qualify it as truthful or fallacious. Furthermore, as long as the judgments have not taken place, and since therefore the judicial

[103] OR from a sensitization meeting on the validation of information, Kibuye/Budaha/Nyange, August 26, 2005.

[104] PRI Interview with a *nyumbakumi*, June 26, 2005, n°836.

[105] OR Gisenyi/Kayove/Musasa, March 11, 2005.

[106] Cf. the excerpt *infra* (OR from a sensitization meeting on the validation of information, Kibuye/Budaha/Nyange, August 26, 2005, footnote 130).

reality of responsibilities has not been established, it remains difficult to quantify these cases and to give a specific opinion on the extent of this phenomenon.

PRI therefore ascertained during interviews with the population as well as with the local authorities, that there was a tendency, among the population itself, to "instrumentalize" the information-gathering process. Insofar as an accusation can be made without objection and since false testimony is neither contradicted nor, moreover, punished, some people were able to take advantage of this and falsely accuse their neighbors in order to settle personal conflicts, particularly pertaining to property.[107]

> "We notice that certain persons are accused unjustly. […] Settling of scores in these situations cannot be avoided because it is an opportunity granted to the population […]" [108]
> - An inhabitant -

> "There are times when people who have problems among themselves, either quarrels in cabarets [bars] or in other circumstances, instead of settling the problem, these people prefer to retaliate during the *Gacaca* by bringing problems to it which have nothing to do with it."[109]
> - A former president of a cell-level *Gacaca* court -

> "Except, there are people who deliver false information about their neighbors, because of the conflicts between them."[110]
> - A cell coordinator -

> "Interviewee : […] I wanted to speak and deplore the fact that there are people who have a bad habit of making false denunciations about others […] They can even do so by going before the *Gacaca* courts and deciding amongst themselves about the person they will falsely accuse […]
> PRI Investigator : What proposal can you recommend in this state of affairs?
> Interviewee : The solution is very difficult to find because when ten or so people have conspired against someone and the population cannot give the true version, it is difficult for the truth to be known. […] If we had been aware of this phenomenon, it is because some people bemoaned it, showing that this or that person is innocent of what they are trying to accuse him of."[111]
> - A sector coordinator -

[107] It should be noted that such practices had already been observed in the months following the genocide and they explain in part the significant number of innocent people who were immediately arrested and imprisoned. Cf. Des Forges, Alison, *Leave None To Tell The Story: Genocide in Rwanda.* Human Rights Watch/Karthala (Paris), 1999.

[108] PRI Interview with an inhabitant, November 25, 2005, n°1087.

[109] PRI Interview with an ex-president of a cell-level *Gacaca* court, August 27, 2005, n°928.

[110] PRI Interview with a cell coordinator, November 2, 2005, n°1053.

[111] PRI Interview with a sector coordinator, August 3, 2005, n°888.

"God alone knows the truth, but what I can tell you is that there are people who lie a lot in our *Gacacas*."[112]
- A (female) *nyumbakumi* -

This misuse of the process for personal ends -because due process was lacking and therefore could not prevent it- obviously had a direct impact on that part of the population that had become aware of it and was horrified by the process to the point of sometimes running away from it, or in any event, of no longer trusting this form of justice.

At this point, one might have thought that the ease with which accusations could be made during the information-gathering by the *nyumbakumi*, would be counterbalanced by a truly open debate, with arguments and counter-arguments, during the information-gathering meetings or during the validation process. However this was not the case, or at least very rarely so.

B. The failure to collect defense testimony

Directly linked to the issue of procedural due process is the right of any accused person to contest the accusation and to try and bring to the competent judge the types of elements that might possibly discharge him[113]. There again, the General Assembly of the *Gacaca* courts, which according to the law is where the information-gathering should take place and which should be the usual setting, not only for the prosecution, but also for the defense. It is in this setting that the accused should be able to explain himself and present his own proof which, given the nature of these genocide trials, consists mostly of testimony.

It is important to recall that, everywhere and at all times, the principle of the presumption of innocence has always been an extremely difficult one to put into practice and the tendency appears generally to function in the opposite way. One of the major consequences of the failure to respect this presumption of innocence is that on a social level it creates a penal system in which the population has little trust. Yet while this is serious in all systems, it is all the more so in one which in its essence requires the participation of the entire population, and which is going to judge a quarter of this very population.

Affirming the supremacy of this principle is indeed fundamental[114], but it would also be useful to put some protective barriers in place, in order to control this natural reflex which wants it to be easier to accuse than to defend. Beyond a reminder from the constitution[115], guaranteeing this principle is done by giving those responsible for its legal implementation the means to assure its effectiveness in practice.

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112 PRI Interview with a *nyumbakumi*, November 27, 2005, n°870.

113 Article 18 Paragraph 3 of the Constitution of the Republic of Rwanda provides that: *"The right to be informed of the nature and cause of charges and the right to defense are absolute at all levels and degrees of proceedings before administrative, judicial and all other decision making organs.* (*Official Gazette of the Republic of Rwanda,* 42nd year, special issue, June 4, 2003).

114 Cf. also the transmission of the Agence de Presse Hirondelle, "the party in power commends the presumption of innocence," Kigali, January 11, 2005.

115 Article 19 of the Constitution of the Republic of Rwanda mentions that "*every person accused of a crime shall be presumed innocent until his or her guilt has been conclusively proved in accordance with the law in a public and fair hearing in which all the necessary guarantees for defense have been made available.*" (*Official Gazette of the Republic of Rwanda*, 42nd year, special issue, June 4, 2003).

However, PRI's observations in the information-gathering phase reveal that the effectiveness of this principle in practice is very far from being guaranteed, mainly because of the intentional absence of testimonies for the defense.

1. The failure of local authorities to collect defense testimony

The observation of this first phase of information-gathering in 2005 has shown that it is nearly impossible for a person accused before a *nyumbakumi,* or later during information-gathering meetings in the cell and sector, to bring the least element of defense.

The forms drafted by the NSGC for use by the *nyumbakumi* do not allot any specific space for defense testimonies to be recorded. These forms, which aim to "*gather information about the unfolding of the events of the genocide*"[116], are conceived in such a way that they do not allow space for anything to be said other than the crimes and the names of the perpetrators. In fact, all of these forms aim to establish the nature of the criminal acts (distribution of weapons, participation in militia or roadblocks, etc.) and the identity of their perpetrators, hence accused persons, as well as the identity of the victims or survivors.[117] As such, this method of information-gathering differs considerably from what was practiced in the pilot phase, where the secretary of the court took into account all the debates and therefore also the testimonies for the prosecution and for the defense.

With regard to the accused, only their marital status, their profession, and, for those who have already been in prison, the date of their release, are mentioned. It is important to remember at this stage that, in the great majority of cases, accused individuals were not allowed to defend themselves during the information-gathering meetings:

> "[…] the cell coordinator asked the population to let everyone speak freely, although when one person makes false testimonies against another, the latter is to keep silent and wait until the trial to defend himself."[118]
> - A cell-level *Gacaca* court judge -

> "[…] we explain to them that we are in the phase of information-gathering and that the time to justify themselves will come. And we point out that even if the whole notebook is filled with information on an innocent person, it does not necessarily mean that [person] is officially guilty."[119]
> - A *nyumbakumi* and vice-president of a cell-level *Gacaca* court -

[116] PRI Interview with a survivor, August 11, 2005, n°899.

[117] Exception is made for the form on "*people who brought help to those who were pursued in the cell."* Even if this form holds no legal consequence for these "heroes" and thus has no immediate use for the *Gacaca* as a legal process, its existence is a new official recognition of the positive role that these people played during the genocide. One can think and wish that this initiative will be extended by others through the reconciliation of all the Rwandan people. (cf on this point Penal Reform International, *Report on monitoring and research on the Gacaca process. The Righteous: between oblivion and reconciliation? Example of the province of Kibuye*, PRI, Kigali/Paris, November 2004).

[118] PRI Interview with a female cell-level *Gacaca* court judge, August 3, 2005, n°868.

[119] PRI Interview with a *nyumbakumi* and cell-level first vice-president of the *Gacaca* courts, July 19, 2005, n°852.

During all of PRI's observations and interviews in 2005, only two cases were found where the individuals had been authorized to react to the accusations brought against them.[120]

> "There was no problem […] when we agreed on a person who was on the list of the accused, there should be no discussion about it, because we explained to them that this was about information that we must give such as we know it and not about judgments. Even so, when we gave the opportunity to someone of explaining themselves, we calmly wrote down his/her explanations, so that there were no discussions for the two sides."[121]
> P.City of Kigali, D.Nyamirambo, S.Nyakabanda, C.Munanira

> "Fortunately when the population had been called together [in the General Assembly of the cell], the information that was false was refuted and the truthful versions were offered by the population. This new information was written down in the ledgers."[122]
> P.Gisenyi, D.Kayove, S.Gaseke, C. Kimironko I

As a result, when the notebooks filled in by the *nyumbakumi* and completed in information-gathering meetings were transmitted to the *Gacaca* courts' presidents for confirmation and validation in the General Assembly, they did not contain any information about the possible denial by the person accused or the existence of witnesses for the defense. These notebooks were therefore exclusively composed of lists of persons who were suspects, victims, or survivors.

That exclusive consideration is given to the word of the accuser is confirmed by statements made by NSGC authorities during local meetings. In fact, the local authorities and the population were told several times that they should not "sort through" the accusations provided to them. PRI considers it justifiable that, on the subject of accusations, the NSGC offered the reminder that "*in the gathering of information, everything must be written down, even when there are false accusations.*"[123] This should not be interpreted as promoting false accusations, but as a reminder to the local administrative authorities that it is not up to them to make determinations about the legitimacy -or lack thereof- of an accusation. This role belongs to the *Gacaca* courts alone.

On the other hand, it is unfortunate that no instructions of the same type had been given to these same local authorities to not reject the explanations or elements for the defense which the population wanted to communicate to them.

> "During the information-gathering, the population has always been worried about explaining the accusations brought against them or about witnesses giving defense testimonies, but [the population] is not authorized by the authorities who say that it is not the time of judgment."[124]
> - PRI Investigator / Observation Report -

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[120] This was also the case for some high-profile public figures, whose reactions could be broadcast on the radio or rebroadcast on television.

[121] PRI Interview with a Zone chief and *Gacaca* judge, July 30, 2005, n°876.

[122] Interview with a *nyumbakumi*, July 20, 2005, n°853.

[123] OR Sensitization meeting on information-gathering, Kibuye/Budaha/Nyange, August 26, 2005.

[124] ORGC Kibuye/Muhororo, June 10, 2005.

It is not well understood why all accusations, even those that might seem to be unfounded, should be withheld right from the information-gathering stage, and that the production of witnesses for the defense should be postponed "*until the time of judgment.*"

Such a position introduces an obvious imbalance in the search for truth, and certainly can only generate a profound anxiety among those who are accused, who feel it is wrong, who would like to discuss it and who end up being dismissed. This anxiety is fed by the fact that this population does not know exactly when the judgments will take place and people therefore have no guarantee whatsoever about whether they will be able to introduce defense testimonies. Indeed, there is a very significant risk inherent in postponing the right of an accused person to mount an effective defense until the judgment phase, since during this delay, potential witnesses for the defense could be pressured or intimidated, or these defense testimonies could simply disappear.

One might have thought, as did this representative of released prisoners sentenced to community service, that "*since the authorities do not know the truth, they accept the information given by the population*"[125] and that "*maybe there will be a change in the validation phase.*" Unfortunately, this failure to take defense testimonies into account and the fact that accused persons are not offered the possibility to defend themselves, was maintained during the validation of information by the General Assemblies of the cell-level *Gacaca* courts.

2. Validation as a simple record of accusations

The validation phase is part of the new stages in the process, as designed by the NSGC in November 2004. It is at this stage that the *Gacaca* process truly begins, if it is understood as a judicial process entrusted to judges whose authority has been vested in them by law. The document established by the NSGC, *Program of information-gathering in the Gacaca courts*, points out that "*all the information and testimony collected are validated by the General Assembly of the cell-level Gacaca court.*"[126] The procedure is similar to that prescribed by the 2001 and 2004 laws for these same General Assemblies of the *Gacaca* courts.

This NSGC document stipulates that after receiving the notebook, the president of the *Gacaca* court is to gather together the cell-level judges -those who actually take the seat and their substitutes- to "*confirm the information contained in it.*" As these meetings took place in secret, PRI could not make any observations with regard to this issue. It seems nevertheless that their primary goal was to take note of information lacking clarity, in order to have it completed in the General Assembly.

Once all the information is confirmed, the cell-level *Gacaca* court convenes in a General Assembly for a hearing which is no longer that of the information-gathering prescribed by the Law of 2004, but solely the validation of information gathered at an initial stage by local authorities.

PRI's observations reveal that these validation hearings have not acknowledged the existence of the principle of due process any better. This was only very rarely the case, since most often the accused were also opposed to the fact that it was not yet time to defend themselves and that they could introduce their defense testimony at the judgment hearing.

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[125] PRI Interview with a representative of the released prisoners sentenced to CS, August 3, 2005, n° 886.

[126] Cf. National Service of Gacaca Courts, *Procedure of information-gathering in the Gacaca Courts. Truth-Justice-Reconciliation.* NSGC, Kigali, November 2004 [PRI translation].

> "When this [person] began to explain herself by saying that what we had just said about her was not true, the president [of the *Gacaca* court] stopped the discussions, saying that it was not yet time to justify oneself with regard to the accusations."[127]
> - A *nyumbakumi* -

This postponement of the ability to exercise the right to confront witnesses until the judgment stage was confirmed by a NSGC representative during a broadcast on the *Gacaca* process:

> "Concerning the Habimana question, my response is that the person who was falsely accused before the *Gacaca* court doesn't have to go and explain himself since the time to explain [defend] oneself will come when accused persons defend themselves before the General Assembly [during the trial]."[128]
> - NSGC Representative / *Gacaca* broadcast on Radio Rwanda -

This prohibition of the right to defend oneself at the validation stage is imposed on all accused persons, to the point where in certain cases, even the local authorities were unable to use their status to reverse this principle. The following example, observed in the Murambi sector of Umutara province, describes the situation of an accused cell coordinator who was withdrawn from the General Assembly while trying to defend himself:

> "In this cell, the *Gacaca* judges despaired that the cell coordinator found himself above the law and the instructions on the *Gacaca* process […] These judges asked the supervising authorities (the president of the court of appeal, the executive secretary of the Murambi sector, a representative of the Niyonzima district) what they could do. […] After the opening of the session, the first secretary read the report form the previous meeting. […] The problem that emerged in this meeting was that X and Y […] came to accuse the cell coordinator, his brother, his cousins. […] After this information, there were arguments from the coordinator who struggled to get out of this crime. He spoke without authorization from the judges and this [created] mayhem in the *Gacaca* [court]. Because of this the judges were obliged to make the coordinator stand aside from the Assembly to show that he was punished."[129]
> - PRI Investigator / Observation Report -

All such things were noticed during the information-gathering carried out by the *nyumbakumi* and the local authorities, and it appeared that an order had been given to the *Gacaca* to not "sort" through the information submitted to them during the validation sessions.

> "The NSGC representative gave the definition of information-gathering as a mixture of grains and straw. That it is different from judgments where one has to separate the grains from the straw!"[130]
> - PRI Investigator / Observation Report -

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[127] PRI Interview with a *nyumbakumi*, August 23, 2005, n°914.

[128] *Gacaca* broadcast, Radio Rwanda, presentation by Mr. Janvier Karinda, NSGC representative, July 22, 2005, N°860 [PRI translation].

[129] ORGC Umutara/Murambi/Murambi/Ryampunga, November 21, 2005.

[130] OR from a sensitization meeting on information-gathering, Kibuye/Budaha/Nyange, August 26, 2005.

> "After certain information [came out] and given the feelings and family relationships between the inhabitants, the latter began to utter cries saying that such and such a person was innocent! But according to our instructions, we were supposed to gather all the information that came our way. Although we had recorded such cases in the beginning of this phase, we told the Judges to note all the information that reached them and that when the moment of judgment arrived every person would have enough time to explain themselves on what is said about them. This is how the witnesses in the trial will prove that such a person is innocent. […] It is for this reason that I would say we did not record the debates between people who wanted to question some pieces of information and those who confirmed that information."[131]
> - A sector-level executive secretary -

Insofar as the right to defend oneself is not granted at the validation stage, one could legitimately ask what it really means to "validate information" and whether, during this stage of validation, the General Assembly of the cell-level *Gacaca* courts is no more than a "recording room."

Indeed, giving the judge the responsibility of validating information should imply that he has the capacity to invalidate it if necessary. This capacity to invalidate testimony for the prosecution is all the more fundamental, as the collection of testimony for the defense was dismissed from the information-gathering carried out by the local authorities. However, PRI's observations do not show that the *Gacaca* courts really had this capacity.

It is difficult in the Rwandan sociopolitical context for ordinary citizens to dispute what is said by an authority, whatever that may be.[132] Given this, what to think of the capacity of the *inyangamugayo* of calling into question the lists produced under the auspices of local authorities going all the way to the sector coordinator? Of course the *inyangamugayo* is not an ordinary citizen, but does he today have all the legitimacy -and thus the social status- to question the information collected by a local authority when necessary?

If one postulates that the legitimacy of the judge comes essentially from the law, in addition to the fact that he is supposed to have been elected for his integrity, then one may wonder whether the decision of entrusting the information to the local authorities has not actually -technically and socially- stripped the *Gacaca* judges of a very important part of their authority. Thus it seems that in this new system, the judge will certainly have a very difficult time asserting his power. This impression is shared by all, including the NSGC:

> "On this I would say that the Judges who receive this information should not show fear when they are in front of an authority, who, furthermore, comes from the City of Kigali, and I think that is where the problem is [...] Another speaker from the NSGC: I would add that this so-called fear comes from the feeling of inferiority which these Judges witness sense."[133]
> - NSGC Representatives /*Gacaca* broadcast on Radio Rwanda -

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[131] PRI Interview with a sector-level executive secretary, July 6, 2005, n°843.

[132] On this question of submission to authority cf. Penal Reform International, *Report on monitoring and research on the Gacaca process. The Righteous: between oblivion and reconciliation? Example of the province of Kibuye,* PRI, Kigali/Paris, November 2004, pp. 36-37.

[133] Gacaca Broadcast, Radio Rwanda, respective presentations by Mrs. Thérèse Uwizeye and Mr. Albert Ndayisaba, NSGC representatives, August 8, 2005, N°894 [PRI translation].

This conforms to PRI's observations in the field:

> "In the campaigns, not to see it would be pure ignorance in sociology, there are influential people. These are the rich, the intellectuals, those who used to be authorities, especially those at the time [of the genocide] and those in place [today]." [134]
> - A priest in charge of the Justice and Peace Commission -

> "The *Gacaca* is normally a justice [process], but it's easy to see and from the moment I was in the Seat, you really notice that the cell-level *Gacaca* court Seat is composed of members who don't have enough power. [I say this] because at times a leader can order a Seat member to do this or that, and this member can do it without drawing attention [...]."[135]
> - A former president of a cell-level *Gacaca* court -

Limiting the judge to a role of recording is all the more surprising than one might have thought since by entrusting the collection initially to the *nyumbakumi*, the intended aim was to provide the judges with maximum information, precisely so they would be in a position to lead a truly open debate.

But beyond the affront to the initial function of the judge, this situation also caused a diminishment in the role of the General Assembly, with the consequence of largely demotivating some of the population who did not see how its participation could be useful, except to add to the charges.

> "Even if this is spoken of away from the authorities, lately, in these two sectors [Murundi and Cyamatara] the population refuses to show up at the meetings that were planned, and adds that [people] had to listen to information gathered (validation) and were prevented from correcting any of it. They are still being asked to come to hear what was written in the records, and for them it is only a waste of time." [136]
> - PRI Investigator / Observation Report -

If to a certain extent this instruction to postpone the introduction of defense testimonies until the judgment phase can be explained by the desire "to move faster" and thus accelerate the information-gathering phase, it is undeniable that this considerably undermines the search for the truth and serves to benefit only the accusation, when there is nothing that says it corresponds to the truth, or to the whole truth. This step implicitly gives extraordinary weight to any accusation. This is an observation that gives cause for concern when it is placed alongside the weaknesses of the judges noted during the pilot judgment phase[137], and the goal of speeding up the *Gacaca* process which was clearly announced by the NSGC. Indeed, this order to speed up the process

[134] Interview with a priest in charge of the "Justice and Peace" Commission, May 4, 2005, n°810.

[135] PRI Interview with a former cell-level *Gacaca* court president, August 27, 2005, n°928.

[136] OR Kibuye/Budaha, December 2005.

[137] Cf. on this point: Avocats Sans Frontières (Lawyers Without Borders), *Monitoring of the Gacaca courts. Judgment Phase. Analytical Report. March-September 2005*, ASF, December 2005. The day the report was submitted, February 2, 2005, alongside the emphasis placed on the exceptional work achieved by these nonprofessional judges, weaknesses were also underlined like: the judges' difficulties in organizing an open debate, and in challenging the testimony of an authority, but also their tendency to simply acknowledge or invalidate confessions, or the witnesses' difficulties in testifying within the trial setting.

was already given by the NSGC during the collection phase and its reception -by the authorities as well as by the *Gacaca* courts, and which gave it precedence over any other consideration- leaves many questions about how the judgment phase will turn out and how the *Gacaca* judges will manage the enormous pressure in their efforts to meet the goal of speed.

> "In the Gihama and Mugali cells the population forms membership groups according
> to the *Nyumbakumi* where one carries out the straightforward reading of collected information. They took this choice in order to go more quickly, because these cells are
> late compared to others." [138]
> - PRI Investigator / Observation Report

> "The acceleration of the validation process in the Nyamure district has meant that the cell-level Judges work incessantly and under pressure. The result is that in the second fortnight of November in the Nyamiyaga sector, the open debate session was replaced by a simple reading of the information by the *nyumbakumi*."[139]
> - PRI Investigator / Observation Report

Thus today one of the most legitimate questions is about the probative value of all information available to the *Gacaca* courts -initially, for categorizing and, later, for judging. Supporting the defendants so that they will have the possibility of introducing defense testimonies and thus really defending themselves during the judgment phase would for them mean, as it would for the entire population, that categorization has only one formal importance, namely to determine the court where the judgment will take place. This, however, is only partly true, since the legal consequences -and of course the individual ones- of categorization are fundamental: by law it constitutes the judges' first analysis of individual responsibilities and therefore, to a certain extent, a predetermination of the sanctions incurred. However, it appears that this categorization will, for the most part, only be done on the basis of the elements for the prosecution.

The question of whether the court of judgment will be able to correct this in time, by distinguishing between the good and bad accusations and by taking into account the defense elements, constitutes a very significant risk of judicial error and slowing down of the process.

C. The gathering of information and the obligation to testify ?

The issue of seeking testimony is obviously essential in this type of prosecution where the revelation of criminal acts and the sole proof of guilt of the perpetrators are unable to emerge in almost all cases, except through testimony. It is therefore for the purpose of this search for testimony -and the obtaining of it- that the collection of data by local authorities has been undertaken, and that the choice was made to not leave room in the pre-trial investigation phase for defending the accused, as would risk blocking or at least considerably slowing down the collection of testimony for the prosecution. But it is certainly with the recourse to Article 29 in the

[138] ORGC Butare/Nyamure/Nyamiyaga, November 24, 2005.

[139] OR Butare/Nyamure, November 30, 2005.

information-gathering phase that they went furthest in this kind of effort to "obtain an accusation at all costs."

The provisions in Article 29 authorize the prosecution of those who omit [information] or refuse to testify, as well as those who make false accusations.[140] Upon reading the Article, one sees that this provision does not only pursue the false witness, but also assigns the obligation to reveal everything that one *"has seen"* or about which one *"has knowledge."* As a result, it appears to be illegal to refuse to testify.

The issue of the use of this provision is essential, and numerous observations have emerged which indicate that this article has not always been correctly applied[141], due to what seems to be a lack of understanding of its reason for existence. Article 29 of the June 19, 2004 Law intended to repress false witnesses and those who do not wish to testify. But it is not because this provision, like all penal provisions, has a dissuasive function that this means it can be used to put pressure on witnesses who are interrogated during the information-gathering phase.

However, in practice, PRI has observed that recourse to this clause was taken in order to arrest and place in detention people who were considered as false witnesses or who refused to testify. According to their statistics produced on December 31, 2005, for the information-gathering alone, the NSGC reported that "*808 people [were] imprisoned on the basis of Articles 29 and 30 of the Gacaca Law.*"[142]

Yet how is it possible to know, before even the judgment phase -which brings together all the elements brought by the prosecution and the defense- has taken place, that a witness is lying or giving incomplete testimony? The conclusion that testimony is false or incomplete cannot be reached until the matter is judged on the merits. This is the reason that Article 29 should be considered as applicable only during the judgment phase and not during the information-gathering phase. Only "*the Gacaca court that reports it*[143]" can judge the false witness during a trial in which he would then be accused and should also be able to defend himself. In any event, Article 29 authorizes the *Gacaca* court alone to prosecute the false witness and it cannot do so when a pre-trial investigation is still in process.

As a result, any proceedings brought on this basis and which do not fulfill these conditions, is considered to be legally abusive, and is above all perceived as a pressure exerted on the population from which we await testimonies.

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[140] Article 29 of the *Gacaca* Law n° 16/2004 of 19/6/2004 stipulates in Paragraphs 2 and 3 that :
"*Any person who omits or refuses to testify to what he or she has seen or on what he or she knows, as well the one who makes a false slanderous denunciation, shall be prosecuted by the Gacaca Court which makes the statement of it. He or she incurs a prison sentence for three (3) months to six (6) months. In case of repeat offence, the defendant may incur a prison sentence from six months (6) to one (1) year.*"
"*Is considered as refusing to testify on what he or she has seen or known, any person who apparently knew something on a given matter denounced by others in his or her presence, without expressing his or her own opinion*"

[141] Cf. "A Seriously Handicapped Gacaca," *Amani*, n°65, August 2005, pp. 6-7.

[142] National Service of Gacaca Courts, "Summary Chart on information-gathering," *Semesters Activities Reports: January - June2005 and July - December 2005*, Kigali, January 2006, Appendices. Figures correspond to those set out by Human Rights Watch, who in their World Report mention that *"hundreds of persons [were jailed] in preventive detention or for false or incomplete testimony.*" It should be noted that this figure, which refers to the operations of the "courts" during 2005, seems to encompass the information-gathering (during the national phase) as well as the judgments (in the pilot phase). (Human Rights Watch, "Rwanda", *World Report*, January 18, 2006).

[143] Cf. Article 29 *supra*, of the Organic *Gacaca* Law n° 16/2004 of 19/6/2004.

"In most cases, people come to complain saying they have suffered injustice, for example they've been imprisoned [under the pretext] that they have terrified witnesses or else that they lied, and while we conduct investigations on this, the *Gacaca* judges reply that they've imprisoned them according to Articles 29 and 30."[144]
- NSGC Representative / *Gacaca* broadcast on Radio Rwanda -

"In addition, one finds that in most locations, they quickly fill out the arrest form without following these procedures: it is for this reason that I think such broadcasts serve to improve methods so that the *Gacaca* judges observe such procedures from then on!" [145]
- NSGC Representatives / *Gacaca* broadcast on Radio Rwanda -

Beyond the illegality, the question of the prejudicial impact that this practice might have on the population's perceptions toward the process arises: would it not risk being perceived as a system of biased justice? Indeed, this unfortunate practice suggests that the truth would be known and the guilt of certain people would be established even before all the witnesses have been able to speak, and before the *Gacaca* court has categorized and judged the matter on the merits. In the absence of investigations establishing the reality of the facts, resorting to this practice and furthermore saying that following *"a verification one realizes there is information that was withheld"*[146] is a standpoint that reinforces the idea that there would be a presumption of guilt. The remarks of this *Gacaca* judge from a Court of Appeal, who explained that " *[…]acts of genocide are generally attributed to deceased or incarcerated people while there are others who are free who are, however, presumed guilty"*[147], reflect this perception. In any event, recourse to this practice creates such pressure (every witness questioned risks being imprisoned) that it cannot be part of an impartial search for the truth.

[144] *Gacaca* Broadcast, Radio Rwanda, presentation by Mrs Thérèse Uwizeye, NSGC representative, August 8, 2005, N°894 [PRI translation].

[145] Id.

[146] *Gacaca* Broadcast, Radio Rwanda, presentation by Mrs Thérèse Uwizeye, NSGC representative, July 22, 2005, N°860 [PRI translation].

[147] PRI report from an interview with an appeals court *Gacaca* judge, April 22, 2005 (OR Umtara/Murambi, April 2005).

II
Participation, the last damaged rampart

The functioning of the *Gacaca* process depends on an active and voluntary participation by the population, which is also the essential gauge of its success. Indeed, a meaningful participation of the population is the only way to know the truth about the genocide intimately and also to give full meaning to a process where the final objective is to lead to the reconciliation of Rwandans.

Just as in the pilot phase, the question of this participation of all the population was once again brought up in the course of 2005, despite the direct implication of the local authorities in the information-gathering operations.

> "I went to the administration office of Gakenke sector and there I found the sector coordinator […] and his executive secretary […]. They told me that the problems most often encountered are tardiness and absenteeism of the participants in the meetings. […]" [148]
> - PRI Investigator/ Observation Report -

Bringing this collection stage to the lowest administrative level has allowed the grass-roots authorities, in a relatively short time, to gather large lists of accused.[149] However, the question of the quality of this collection of information should be posed not only, as we have seen, in light of the quasi impossibility of bringing witnesses for the defense, but also with regard to the implementation of coercive measures (fines and certificates of good conduct) with regard to participation. These are measures which, while they succeed in explaining the progressive increase in the level of participation of the population,[150] nevertheless lead us to wonder about the impact they could have had with regard to the meaning given to the process by participants who are not always willing. Is the use of coercion to guarantee participation compatible with the necessary trust which the population must have in the process from the point of view of reconciliation?

A. Resorting to coercion

Despite recourse to the *nyumbakumi* which thus displaced the gathering of information outside of the General Assembly of the *Gacaca* courts, PRI observers established that the population did not always participate directly in the meeting.

> "When these meeting took place at the cell level, the entire population was present, while at the level of entities of ten households, this was not the case. […]

[148] OR Umutara/Murambi, March 23, 2005.

[149] During a meeting for a presentation of the summary of *Gacaca* activities, held at the National Service of the Gacaca Courts on September 15, 2005, the Executive Secretary confirmed that the number of persons accused - estimated at 761,446 after the pilot phase - had been "*largely surpassed*." On the other hand, there was no official information on the number of victims and survivors counted during this same phase.

[150] The National Human Rights Commission mentions a "*level of participation which has steadily increased," Annual Report on monitoring results for the Gacaca courts*, CNDP/NHRC, Kigali, December 2005, p. 5.

> The population did not actively participate."[151]
> - A president of a sector-level *Gacaca* court -

One of the likely reasons for this is that this new procedure in the information-gathering phase, and throughout 2005, has meant a significant increase in the number of meetings, first in limited groups at the *Nyumbakumi* level, then in large General Assemblies at the cell and sector level. This has not exempted the population from later having to attend General Assemblies of the *Gacaca* courts for validation. In the end, this new organization of the information-gathering phase has thus required the population to be extremely available. So much so that in certain areas, to avoid the "shame"[152] of appearing to be the village that was unable to keep the deadlines set by NSGC, the local authorities have multiplied meetings, sometimes up to several per week, as in the Kibuye province, in the district of Budaha where "*all the cells of the district meet once every Friday of the week, except for the cells of the Nyabiranga sector which currently meet four times a week, as they are considered the last in this information gathering.*" [153]

This has not failed, in certain cases, to cause some disengagement of the population, who are tired of having to sacrifice their personal time for community activities, such as in the Budaha district, in the same province, where our interviewer states that "*what is starting to be visible in Murundi and Cyamatara is that the population complains about doing nothing in their daily activities due to the repeated Gacaca meetings.*" [154] This weariness is mainly shown by late arrivals and little active participation during the information-gathering meetings, and then during the verification sessions of the courts.

This has been noted even after intense sensitization campaigns, as planned by the NSGC Manual [155], were carried out by all the authorities throughout the territory, and all throughout 2005. With all authorities involved "*and even the military and police intervened, so that there is not a single organ which was spared in this contribution.*"[156], this intense campaign of mobilizing the population to participate in the *Gacaca* meetings was not limited to the introduction of information-gathering meetings, but also took place at every other community meeting, as does, for example, the *umuganda.*

> "When the sector or cell coordinator organizes a meeting with the population, he cannot do without encouraging the population to actively participate in the sessions of the *Gacaca* courts. Likewise, there are meetings organized after the *umuganda* work during which they talk about the *Gacaca* process. This meeting is

[151] PRI Interview with a president of sector-level *Gacaca* court, August 18, 2005, n°910. Moreover, we have seen that it was following this report about the lack of participation that some *nyumbakumi* decided to meet people individually in their homes. (Cf. page 8 of the present report, PRI Interview with a *nyumbakumi* and *Gacaca* judge, July 7, 2005, N°846).

[152] Excerpt from a PRI Interview with a *Gacaca* court president, September 15, 2005, n°966 : " *[…] this lateness, as inhabitants of the cell of the town of Cyangugu, caused us shame.*"

[153] ORGC Kibuye/ Budaha/Cyamatare/Muhororo, June 10, 2005.

[154] OR Kibuye/Budaha, December 2005.

[155] Cf. in particular the foreword of the manual, where the Executive Secretary of the NSGC states that: "*In order for information to be revealed, this also requires that all the authorities, from the nyumbakumi to the higher authorities of the country, invest themselves more by sensitizing the population to provide information and testimony.*" National Service of Gacaca Courts, *Procedure of information-gathering in the Gacaca Courts. Truth-Justice-Reconciliation*, NSGC, Kigali, November 2004 [PRI translation].

[156] PRI Interview with a cell coordinator, July 19, 2005, n°851.

> very important because it brings together many people. But we too, wherever we go, we are authorized to speak as judges to give a message about *Gacaca*." [157]
> - A president of a cell-level *Gacaca* court -

Nevertheless, even if this sensitization campaign has led people to "*realize that the Gacaca courts have a reconciliatory mission and has persuaded [them] to give up this information"* [158]*,* the national authorities, faced with the persistent disengagement of some people, then created and emphasized the recourse to coercive measures.

1. The absence of a legal framework for these measures

It is important to recall that participation in the *Gacaca* courts is a civic duty, inscribed as such in the law. The first line of Article 29 of the June 19, 2004 law states that *"Every Rwandan citizen has the duty to participate in the Gacaca courts activities.*" Meanwhile one may note that if this law provides for the deliberate punishment of behaviors like the refusal to testify or the commission of acts of intimidation, it does not provide for the punishment of absences -in and of themselves- from the *Gacaca* sessions.

This situation leads to an absence of guarantee for the Rwandan citizens who are subject to these measures. Moreover, the implementation of these practices outside of any legal framework has produced disparity, as well as case-by-case management of problems encountered with all the limitations that this approach implies in terms of an absence of equality in the treatment of people.

Two types of coercive measures have been noted during 2005: the assessment of fines, which was already in place during the pilot phase, and the recent one of delivering certificates of good conduct.

2. The practice of imposing fines

It had already been remarked in the pilot phase that in order to respond to an already deficient population participation, certain local authorities had taken the initiative to impose fees on their citizens who did not show up at the *Gacaca* court hearings.[159] This practice, criticized by many in light of its illegal nature, actually seems today to have been truly institutionalized as a "good practice" to guarantee significant participation. [160] This point of view was confirmed by the intervention of a NSGC representative who, during the course of a *Gacaca* broadcast aired on August 8, 2005, expressed himself in these words:

> "It is understandable that participation in meetings of the *Gacaca* courts is mandatory for every Rwandan as we mentioned earlier. Nevertheless, some

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[157] PRI Interview with a female president of a cell-level *Gacaca* court, October 13, 2005, n°1012.

[158] PRI Interview with a president of a *Gacaca* court of appeal, November 16, 2005, n°1079.

[159] Cf. Penal Reform International, *Integrated Report on Gacaca Research and Monitoring, Pilot Phase, January 2002 - December 2004*, PRI, Kigali/Paris, December 2005, p. 41.

[160] Cf. presentation by the Executive Secretary of CLADHO, at the restitution of monitoring meeting of the National Human Rights Commission (NHRC), dated December 16, 2005, which showed this recourse to fines to be a positive step as demonstrated by their own monitoring in 2005. (PRI, *Account of the restitution day of the NHRC*, December 16, 2005).

> people think that since there is no punishment for this, they can afford to not participate. I think you know on this point that grassroots-level courts have ways of punishing those who do not participate in these meetings. […] Besides, in most villages we impose cash fines on them depending on their category. We impose five hundred [franc] fines on regular residents and 1000 francs for the leaders: these are the ways we punish them in order to show them that participation - whether in ordinary meetings or cell meetings of the *Gacaca* courts- is mandatory!" [161]
>
> - Female NSGC Representative / *Gacaca* broadcast on Radio Rwanda -

According to PRI's observations, the practice of imposing fines for non-participation was not carried out by the *nyumbakumi* during the information-gathering phase in limited groups, but much more by the higher local authorities during information-gathering meetings at the cell or sector level, or even during validation sessions. PRI has also observed at times the intervention of military authorities, such as during this meeting of the Nyamiyaga sector, in the province of Butare :

> "At 3:00 pm, all the cells of the Nyamiyaga sector were gathered and there was a meeting with the Commander of the military detachment of Nyamure, Lieutenant James Maliyamungu, who reminded the population in attendance that participation in the *Gacaca* court sessions, in the district of Nyamure in general and in Nyamiyaga in particular, is very weak. He warned them that a fine of 2000 francs would be imposed on anyone abstaining from the sessions without reason."[162]
>
> - PRI Investigator/ Observation Report -

It is not only the case that "*the nyumbakumi must introduce their members*"[163], but "*if a nyumbakumi is absent it's a problem for him, since there is a moment [reserved] for taking attendance in order to begin the meeting. When the nyumbakumi isn't there, it becomes serious, as he risks [incurring] penalties.*" [164] It is important to note that the counting of absent people occurs outside of all written procedures: "*They don't sign anywhere, but the nyumbakumi is informed of those who did not present themselves in the meeting. The nyumbakumi should also inform the Zone chief about it, and this chief, in turn, should inform the coordinator. This last person [the coordinator] is the one who has to make the report for the sector office on these people who did not show up to the Gacaca meeting.*" [165]

The assessment of fines generally occurs in the following manner: the authority (often the cell or sector coordinators) confers the attending *nyumbakumi* the responsibility for warning the person whose absence was noted that he/she is "assessed a fine" and that it must be paid at the sector or sometimes cell level. The amount of the fines differs according to area, and in each area the fines assessed depend on the social level of the penalized absentees, with a higher amount for "*civil*

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[161] *Gacaca* broadcast, Radio Rwanda, presentation with Mrs Thérèse Uwizeye, NSGC representative, August 8, 2005, N°894 [PRI translation].

[162] ORGC Butare/Nyamure/Nyamiyaga, November 24, 2005.

[163] PRI Interview with a cell-level *Gacaca* court judge, March 17, 2005, n°762.

[164] PRI Interview with a *nyumbakumi* and cell-level first vice-president of a *Gacaca* court, July 19, 2005, n°852. Cf. also in this sense a PRI Interview with a cell coordinator who mentions that "*the nyumbakumi and the cell coordinators are there. If not, there are penalties foreseen for these authorities"* (July 19, 2005, n°851).

[165] PRI Interview with a cell coordinator, July 19, 2005, n°851.

servants, NGO employees, and shopkeepers." [166] On average, it seems that the amounts range from 200 Frw to 1000 Frw, but sometimes more. Hence in Umutara, ORINFOR[167] had informed the authorities that they must follow-up with the *Gacaca* courts, and that those who did not come to the meetings or sessions would be fined from 2,000 to 10,000 Frw, depending on whether they are ordinary farmers, grassroots authorities or civil servants. It should be noted that since many farmers earn an average of 200 Frw per day, the amount of the fine here is equivalent to 10 days of work. Other average amounts were cited in other regions (Rwamagana: 100 Frw; Budaha: 500 Frw; Byumba: 200 Frw). According to the population surveyed by PRI, it seems that no receipt is given to the fined person, who is simply asked to initial a list.

PRI's fieldwork reveals that many people in the population complain of not really knowing where this money goes, even if some authorities say it goes into the "district treasury" [168], and especially since this practice is applied arbitrarily, as not all absent people are held to this fine. In the end one might fear that the practice of fines is more likely to generate increased tensions and jealousies between members of the cell, than to motivate this same population to be more actively involved in the process of information-gathering.

In brief, if one can note an effectiveness of these measures in terms of physical presence, since it seems that once people "*learned that penalties had been reserved for the absentees, they began to show up*"[169], essentially because "*people are afraid of paying fines given [that they are living in] times of difficult poverty*" [170], one wonders what the real impact of such a measure might be on the active participation of the population. Furthermore, the coercive nature of these measures has led some people to take dangerous "short-cuts": "*They [the population] participate to study the dramas that happened. If they do not participate, they could be taxed for revisionism, due to failure to respect the administration's instructions.*" [171]

3. The practice of issuing "certificates of good conduct"

According to PRI's observations, recourse to certificates, "*icyemezo,*" is a practice which appeared in the *Gacaca* setting only in 2005 and falls within the scope as mobilization of the population through instruments of restraint.

As a *sui generis* practice, originating from local authorities and, to PRI's knowledge, without legal basis, it has been difficult to understand the exact nature and procedure for issuing this document. This *icyemezo* was sometimes required at information-gathering meetings from certain inhabitants who today no longer live in the cell they lived in during the genocide.

The generic term *icyemezo* is used in Kinyarwanda for diverse administrative procedures, and generally the content of the certificate reflects its purpose. The *Gacaca* certificates are modeled after a certificate that is usually requested of a person by his new cell of residence (upon moving

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[166] Id.

[167] Rwandan Office of INFORmation.

[168] Cf. on this point the speech of a cell supervisor during a meeting where he explains that the fee will be put into the "district treasury." (OR Umutara/Murambi/Murambi/Mataba, July 25, 2005).

[169] PRI Interview with a cell-level *Gacaca* court judge, August 3, 2005, n°884.

[170] PRI Interview with a released prisoner, April 9, 2005, n°848.

[171] PRI Interview with a *nyumbakumi*, March 17, 2005, n°766.

from one cell to another), and which "*certifies that he has not been reproached for anything*" [172] in his old cell.

The French expression used by respondents to refer to these *Gacaca* certificates was "*certificate of good conduct.*" This was because the content referred both to the proof of "t*heir behavior at the time of the genocide,*" [173] and therefore of the fact that they were not objects of any suspicion in their cell of origin, as well as proof of "*their good behavior in the Gacaca courts*" [174] -in other words that they cooperated well in the information-gathering, having provided a complete testimony.

In any event, it seems that these certificates were created with the aim of increasing the population's participation in the *Gacaca* meetings, by obliging those who had moved since the genocide to reestablish contact with their former cell of residence. Therefore, this practice was about making sure that these people participated in the *Gacaca* process in the cell where they used to live, and therefore in the place where they could either be accused or brought to testify.

For the most part, two types of procedures have been used, depending on the village, for the delivery of these certificates, one going through local authorities, the other through the judges.

Procedure 1

This procurement procedure was very clearly explained to PRI by a district mayor[175], which corroborated some of PRI's observations. [176] It is identical to the one followed for obtaining all other official papers for an individual (passport or other form of identification card). The claimant goes to the *nyumbakumi* of place where he resided at the time of the genocide so that he can write and sign a letter requesting this certificate. This letter of request should then be signed by the 12 people from the cell Committee as well as by the 12 members of the sector Committee. Then the president of the *Gacaca* Court Seat should place his signature on this document, before it is sent to the district mayor, who, in return for the sum of 2,000 Frw, establishes the certificate.

In such a case, the certificate is written in this way[177] :

CERTIFICATE

I ……, Mayor of……. district, certify with this document that the named person …… is a resident of our district, …… sector, …….. cell, and that nothing is known on him/her.

Mayor of ……..…… district
Signature

[172] PRI Interview with a sector coordinator, August 3, 2005, n°888.

[173] PRI Interview with a survivor and a *nyumbakumi*, August 18, 2005, n°912.

[174] PRI Interview with three judges of a cell-level *Gacaca* court, July 26, 2005, n°375.

[175] Report on a PRI Interview with a district mayor, August 3, 2005.

[176] For a similar procedure in the Kibuye area, cf. especially PRI Interview with a survivor and *nyumbakumi*, August 18, 2005, n°912.

[177] Sample provided by the Kayove district, Gisenyi province, August 2005 [PRI Translation].

Procedure 2

For this procedure, it was much more difficult to define exactly who was responsible for creating and signing the certificate, as this varied from the Seat in its entirety to some judges only, depending on the cases:

> "For these people who come only to ask for the paper on good conduct, we were told that the members of the Seat were meeting, were deciding, and that the president of the *Gacaca* court, the vice-president and the secretary or their alternate puts their signatures et we place the stamp."[178]
> - A second secretary of a cell-level Gacaca court -

> "The entire Seat and the president of the *Gacaca* court sign the paper certifying that [the person] has given information and seals it with the seal of the Seat. Then the person leaves with it."[179]
> - A *nyumbakumi* and a sector coordinator -

When the certificate was delivered by one of the *Gacaca* courts, it is generally written in this way[180] :

CERTIFICATE

We, members of the Seat of *Gacaca* court of ……cell, certify that ……..……., son/daughter of…… and of ……..…., born in the ……..cell, in ……., lived in this cell from……until…….and that until this day, has not been penalized for any infraction by the *Gacaca* Court of this cell.

Members of the *Gacaca* Court
(Names and signatures)

The models presented here may nonetheless have some variations, in that the design of these certificates was left entirely to the discretion of the local authorities and the judges, who each then set his or her own conditions for procuring the certificates and their sample certificates.

From PRI's observations it is apparent that the demand for these certificates began when the information-gathering meetings started at the cell and sector levels. Although during these meetings the judges did not preside, the demand for these certificates generally came from a president of the *Gacaca* court who was present, often at the request of the local authority who led the meeting.

This was not made clear and explicit by the local authorities or the judges, but these certificates were not systematically requested by all the new cell occupants. The overriding interpretation among the population was that these papers seemed only to be requested for those who were

[178] PRI Interview with a second secretary of a cell-level *Gacaca* court, August 23, 2005, n°914.

[179] PRI Interview with a *nyumbakumi* and a sector coordinator, July 27, 2005, n°869. Other interviews take into account the same procedure such as the one carried out with three judges from a Gacaca court of the cell of the sector Rwimiteri, province of Umutara, July 26, 2005, n°868.

[180] Model supplied by the judges of a cell-level *Gacaca* court of a Nyamiyaga sector, in the district of Nyamure.

suspected of wrongdoing. With all the subjectivity that this implies, it leads to the question of what indicators or information would serve as the basis for which the authorities of a cell could consider that a resident ought thus to justify his "good conduct?"

The absence of a formal framework, legal or administrative, has from the outset created significant problems during the implementation of this instrument of verification. If a standardization has been observed in the procedure to be followed, the practice still leaves a number of problematic questions: which citizen should be obligated to produce these certificates? For what objective reasons? What if one cannot pay the sum of 2,000 Frw established by the district? And especially, what are the immediate and future consequences if the mayor of the district refuses to issue them?

In these conditions, the arbitrary risk is quite real. In fact, it is not unforeseeable that the resident of a cell for purely personal reasons encounters difficulties in obtaining the number of signatures required in his request for a certificate. Recourse to these certificates seems to present a number of inconveniences and could create a significant risk of violation of individual rights.

Some people are of the opinion that this "administrative hassle" was such that it could have reinforced an already existing feeling of stigmatization. On the other hand, although these certificates serve as an instrument of supplementary verification, nothing shows that they achieved the result for which they were designed, namely the reinforcement of active participation in one part of the population.

The issue of resorting to these new forms of coercion to guarantee a certain level of participation from the population, leads to this question of why. Why has the population not participated spontaneously in this process of information-gathering? Setting aside the fact that some people have no interest whatsoever in having the truth established in order to avoid being accused, and as difficult as it is to answer this question, there is a strong link between recourse to these practices and the very tense social climate when this national phase was first launched, as seemingly evidenced by the proliferation of rumors and the wave of escapes in the beginning of 2005.

B. Searching to regain trust

We could put forth the hypothesis that the sensitization campaigns carried out with the population have not, unfortunately, lifted all doubts and answered all questions, and thus have favored the emergence of a climate of fear. This climate of fear was simultaneously both the consequence and the cause of the wildest rumors about the process. At the moment that the process entered its national phase, there were so many elements which could severely undermine the trust of one part of the population toward it, which in turn risked jeopardizing its chances of success in the justice system, and especially in terms of reconciliation.

1. An adapted sensitization?

With the recourse to local authorities in charge of the information-gathering, and the institutionalization of coercion[181], the problem of the population's physical presence in the *Gacaca*

[181] Sometimes even going as far as resorting to force: "*Of course, they used force to make them [members of the population] come to these meetings, given that before, they had refused to participate in these meetings! After we brought in force, by using members of the Local Defense units, now they have experienced fear and they have begun to participate in these meetings*" (PRI Interview with a president of a sector-level *Gacaca* court, August 18, 2005, n°910).

process has no doubt been largely resolved. Yet the problem of active participation in the debates remains.

> "I would conclude that, in general, one notices that the population keeps silent during this phase. […] I would say this isn't particular to this cell !"[182]
> - An executive secretary of a sector -

The new responses given by the authorities have in fact eluded the real problem: how to bring the population to genuinely support and participate in the *Gacaca* process, knowing that the revelation of the truth of the genocide depends greatly on this?

With regard to this issue, it seems that the space given to coercion is in some way an implicit recognition that the sensitization campaign carried out throughout 2005 did not produce all the expected results. [183]

Despite the intensification of sensitization campaigns organized as much by the NSGC national authorities, who regularly visit the provinces, as by the local authorities[184], these difficulties of participation, similar overall to those observed in the pilot phase, still remain. [185] Observation on these meetings of awareness has shown that very often their content referred almost exclusively to an explanation of clauses in the *Gacaca* law (popularization) and on a reminder of the civic obligation for all Rwandans to participate in the process. But it was only very rarely that this lack of understanding and these real fears about the unfolding of the process itself and its outcome were addressed or given a reassuring answer. It should be emphasized that the weekly *Gacaca* broadcasts on Radio Rwanda certainly represented one of the rare occasions where not only explanations of the law were offered and sensitization occurred, but also where some questions from listeners were answered.

Yet it is unfortunate that other channels, such as associations of civil society or religious movements, were not made use of more compellingly in order to address -through a very targeted sensitization- the specific fears of each group in the population. While some civil society actors were certainly involved in the sensitization work, and the NSGC expressed a willingness in this regard at the beginning of 2005 [186], some coordination and genuinely appropriate responses still seemed to be lacking. Whatever the intention of the organizers, it seems that these sensitization interventions did not respond to the core of what was blocking at a time when the *Gacaca*, in the national phase, became a reality for everyone: fear -a fear which was often fed by rumors.

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[182] PRI Interview with a sector executive secretary, July 6, 2005, n°843.

[183] On this issue, cf. particularly the ORGC summary, Cyangugu/Ville de Cyangugu/Muhari, August 18 - September 1, 2005.

[184] Since beyond the support they brought to the information-gathering, these authorities also greatly contributed to bringing awareness to their population in the *Gacaca* courts.

[185] Cf. Penal Reform International, *Integrated Report on Gacaca Research and Monitoring, Pilot Phase, January 2002 - December 2004,* PRI, Kigali/Paris, December 2005, pp. 40-45.

[186] A coordination meeting of the awareness campaign founders was organized by the NSGC at the beginning of the year 2005.

2. Rising fear

With the development of information-gathering in the national phase, the *Gacaca* became a reality for almost all Rwandans, whereas during the pilot phase, for most of them, it was still something far away, and only concerned people in the neighboring district and the some 100,000 detainees. Since then, from the beginning of 2005, for all those (except for survivors and post-war returnees[187]) who so far remained free and not accused, the *Gacaca* has become a real threat.

It was therefore normal and foreseeable that the fear of being accused began to instill itself among those who had actually participated in the genocide and who were now going to have to answer to it. Meanwhile, this same phenomenon of fear had also been felt beyond this single group of participants in the genocide. Indeed, after the "false accusations," the problematic interpretation of some forms (such as those having to do with participation at the roadblocks), and the absence of gathering witnesses for the defense, some adult members of the Hutu community, present on Rwandan territory in 1994 and claiming they did not participate in the genocide, thought that, despite everything, they might be implicated in the context of this gathering of information.[188]

Even though it is difficult to evaluate the extent of false accusations brought during the information-gathering, it is important to be aware of the fact that the number of cases in which people with personal or property conflicts used the *Gacaca* courts to "settle their accounts," is far from negligible.[189] This instrumentalization of the process by some people for personal ends has also been an important factor in establishing this climate of fear in the first semester of 2005.

Moreover, this heightened vigilance came about during a period in which the first judgments on the merits were pronounced by the sector-level *Gacaca* courts, and with them, the return to prison of some accused persons. These incarcerations, whose legitimacy is uncontested and which are pronounced with finality by the courts, made the risk run by all these people a reality.

A final note is that at the request of the NSGC, the information-gathering had to resume in most of the cells where the population had thought it was finished, including in certain pilot sectors[190], for the reason that the information given was not complete.[191] However, this resumption of the information-gathering has not always been well understood, and has ended up

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[187] Reference to the people who had fled the country since 1959 and had been in exile.

[188] Cf. also on this point Human Rights Watch, "Rwanda", *World Report*, January 18, 2006 : "*A the time when the courts began the preliminary investigations of the trial on all the territory, some 10,000 Rwandans had found refuge in bordering countries, emphasizing that they feared false accusations and unjust trials.*"

[189] Cf. notably Communiqué Hirondelle, "*A difficult year in sight for the Gacaca courts,*" February 23, 2006: "*According to one particular opinion, some individuals or interest groups make it an instrument to unjustly incriminate innocent people or exaggerate the crimes of others.*"

[190] "*Normally this phase was finished in our cell, it was among the pilot cells, maybe we were asked to come back to this phase to see if there was some information that had been omitted.*" - Kigali-town/Kacyiru/Kacyiru/Kibaza - (PRI Interview with a *nyumbakumi*, March 24, 2005, n°768). Our observations also make note of this resumption [of information-gathering] in some pilot sectors in the districts of Budaha (Kibuye), Kayove (Gisenyi), Mutete (Byumba) and Murambi (Umutara).

[191] Cf. the remarks of the NSGC representative, Mrs Thérèse Uwizeye, during a *Gacaca* court broadcast, on Radio Rwanda dated August 8, 2005 : "[…] we sometimes say that the information-gathering phase is over but when we do a check and verification, we realize there is information that has not been given." (N°894, PRI translation).

confirming for certain people the idea that it was less about searching for the truth than about obtaining the greatest number of accusations.

From this point forward, it seems essential to consider and not minimize all these elements (beginning of the national phase; false accusations; beginning of the pilot trials and consecutive incarcerations, and finally the resumption of information-gathering, including in the pilot Zones) which have played a cumulative role in the creation of a climate of fear in relation to the *Gacaca* process, at the very moment when, as we have seen, the right to defend oneself was suffering a serious set-back.

3. The rumors

It is in this heavy climate of fear and mistrust that the first rumors appeared, in part, to be the cause of flight of hundreds of families outside the country. [192] If even today it is still very difficult -given that these movements reoccurred at the end of 2005- to fully determine the causes of these departures, no doubt the lack of trust and the rumors about the *Gacaca* process played an integral part.

These rumors were observed by everyone, and first by the NSGC representatives: "*Another hindrance which caused us a problem these past days […] we were talking with the population and it is there that they appeared, even if some were already known, these rumors. They are too numerous in this phase of information-gathering.*"[193]

The construction of a rumor is always something relatively difficult to understand.[194] One can attempt to define[195] it as a message which has the capacity to spread rapidly within a given social group and whose source is impossible to determine. This is because rumor is most often a spontaneous social production, whose source could be merely a pure projection of a typical scenario, drawn from the collective imagination and calling upon the fears and fantasies of each individual. As a result, it is especially important to try to explain why a rumor is able to garner such support and succeeds in mobilizing a given social group to the point where rumors which developed at the beginning of 2005 could cause people to flee abroad.

Understanding these points requires a simultaneous awareness of the content and the psychosocial and historical context of the rumor. If we posit that the content of the rumor shows "*exercise of a social thought, the rumor becomes a sort of projection screen onto which a social-affective dynamic is*

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192 The number of people who had escaped during the first wave has been evaluated at about 10,000 by humanitarian organizations. [Communiqué Hirondelle, *HCR denounces the grouping of Rwandan refugees in one single site*, Arusha, June 1, 2005; Communiqué Hirondelle, *Alison Des Forges is concerned about the Rwandan refugees in Burundi*, Arusha, June 2, 2005]. On this question of escapes, cf. the two investigation reports carried out by the LDGL which cite the importance of the Gacaca courts as a reason for the escape of a number of people: LDGL, *A movement of Rwandan and Burundian refugees*, Kigali, April 28, 2005; LDGL, *Report on the repatriation of Rwandan refugees,* Kigali, June 2005; LDGL, *Investigation Report on the Rwandans requesting exile in the province of Ngozi in Burundi*, Kigali, October 26, 2005.

193 Remark made by NSGC representative during a *Gacaca* broadcast on Radio Rwanda, dated June 22, 2005, N°833 [PRI translation].

194 Nevertheless, in taking a sociological reading of the social climate that enveloped the *Gacaca* courts throughout 2005, it seems fundamental to make note of these "rumors" insofar as they are social facts which largely influence the attitudes and behaviors of the members of various social groups.

195 Concerning the rumor, it should be pointed out that no real conceptual consensus exists which would allow a definition that all specialists would agree on.

decoded."[196] From that moment onward, we understand quite well, given the history of Rwanda and the weight of the "lists" in the collective imagination [197], that the myth [198] about the destruction of a group served as a strong catalyst for individual fears :

> "In his discourse on the point about the *Gacaca* process, the Prefect of the Kibuye province returned to [the subject of] the rumors which provoked the flight of the population without the grassroots authorities knowing about it. He gave the example of the population in some districts of Butare, who had taken flight to Burundi after rumors that the Hutu were going to be killed, ground up to make canned food out of their flesh for the military, he said." [199]
> - PRI Investigator / Observation Report -

Depending on the context, a rumor will tend to develop while an important event occurs, in this case at the beginning of the *Gacaca* process on a national scale, and when there is a scarcity or absence of information. [200] However, it was observed that those who were most receptive to these rumors began first by asking themselves a series of questions to which no real response was given, as the sensitization remained for the most part focused on the popularization of the law. One could therefore suggest that it is the combination of these questions and these non-answers which gave some legitimacy to the rumors and/or fed them. Questions such as: Why resume the information-gathering, including in the pilot cells, if it was finished? Why at the same time refuse testimonies from witnesses for the defense? All these questions led to the perception in one part of the population that collective guilt was perhaps being sought, without their being able to understand the reason for it. What meaning can be given to this process which must lead to hundreds of thousands of prison sentences, when we see that at the same time there are too few current prisons and no new ones being built?

Furthermore, one of the characteristics of the rumor which contributed to maintaining a climate of fear is that because it is based in anxiety, it has a tendency to feed on any new element. We have especially noted this in one of our observation areas, in the province of Kibuye, where rumors had the tendency to multiply by drawing on the fear that the *Gacaca* process had generated in one part of the population. And this phenomenon has most definitely been reinforced in this province by the very tense atmosphere at the time of the information-gathering, notably because of the history of genocide in this area. [201]

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196 Adeline Michel, A.C. Sordet and E. Moraillon, *Les rumeurs en tant que phénomène d'influence sociale. Dossier de Psychologie sociale* (*Rumors as a phenomenon of social influence. Social Psychology Record).* Ecole des Psychologues Praticiens de Lyon, May 2004, p. 8.

197 As previously mentioned, all the information was gathered from the establishment of lists.

198 Understood as "*mental construct which does not have any basis in reality*" in the Petit Larousse/HER, 1999.

199 OR Meeting Kibuye/Budaha/Nyakinombe, June 22, 2005.

200 Cf. M.L Rouquette, *Les Rumeurs* (*Rumors)*, Presses Universitaires de France, 1975. Cf. a development on rumor in an article from the *Encyclopædia Britannica* on "Collective Behaviour" [http://www.britannica.com:80/eb/article?eu=109126]

201 On this point cf. Penal Reform International, *Research Report on the Gacaca. Kibuye*, PRI, Kigali/Paris, November 2003, pp. 6-10.

The following examples[202] illustrate how an event or a statement, of a legal or social nature, could, in this context, lead to interpretations that were devoid of any connection to reality, and which tended to reflect the rumor that the will to destroy a group might exist.
On imprisonment: "*That the male sex is put in prison to be detained for a long time and, end of all ends, to die in prison. The female sex (Hutu) will be married to Tutsis and the Hutu race will no longer be spoken of in days to come.*"

Following a meeting on June 22, 2005 during which Prefect of Kibuye province raised the issue of the considerable increase in births and of the need to control them: "*This increase in births, always according to rumor, it is a race against time, the population thinks they can have male births who will replace their fathers who are disappearing [due to imprisonment]. These younger children will be able to survive since they will be considered innocent.*"

Also, after a remark made at one point by the *Gacaca* authorities on the absence of intellectuals on their lists and the need to continue to complete them: "*For the intellectual population, wanting every intellectual to figure on the list of the accused, the goal is to no longer find a Hutu among any political authorities since they will all be thought of as having stains (imiziro). May the monopoly of power be attained and let us return to the pre-colonial era.*"

These illustrations demonstrate the gravity of this rumor phenomenon which struck all the observers of the *Gacaca* process, and first of all the national authorities. Even if the fears and rumors are in part based on some irrationality, it would be best to not minimize or underestimate them.

As this is a complex social phenomenon and one that is very difficult to circumscribe, it is not easy to offer a simple response. And the fact remains that these rumors have found fertile ground in the fears experienced by a part of the population. This is where -surely at the level of these fears- it would be most useful to do further work in order to provide, with clearer explanations and more precise answers, more meaning to the *Gacaca* process. From what has been observed in 2005, it seems that some Rwandans no longer see this process as "an accusation machine": "*They have an idea that the courts are put in place to accuse them, to go against their interests.*"[203], "*Many Rwandans take the Gacaca process as an opportunity to seek revenge, for partial justice to the detriment of the Hutus.*"[204] In such a context, how is one to think that the *Gacaca* process can still fully contribute to repairing social bonds?

With the end of the information-gathering phase and the beginning of judgments at the national level, it is imperative to comprehend that these fears must be taken into account. Giving back a vital space to the right to defend oneself, which implies the possibility of bringing testimony for the defense, and in responding to questions about the sanction, will allow trust to be restored in this population, and by the same token will make these fears disappear in a wide sweep and quell these rumors.

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[202] The examples of rumors cited were reported by our investigator who was present in this Zone from the moment that these rumors were echoed in the population. (RO Kibuye/Budaha/Cyamatare/Mubaga, June 24, 2005).

[203] PRI Interview with a sector-level executive secretary, April 6, 2005, n°785.

[204] PRI Interview with a *nyumbakumi*, June 26, 2005, n°836.

Conclusion

Now that the information-gathering phase -such as PRI has described and analyzed it- is almost finished, it is essential to carefully evaluate all the significant violations of the principle of due process, as well as those on public debate and on the right to defend oneself, in order to try to correct them as quickly as possible.

The process that unfolded during this year 2005 defined itself around the notion that it was imperative to find ways to accelerate it, as the pilot phase of information-gathering had lasted three full years. Maintaining the same rhythm for the national phase would therefore be inconceivable, given that the number of potential defendants could be six or seven times higher. The concern over the duration of these genocide prosecutions, more than ten years after the crimes were committed, is fully justified. The main reason is that the process entails the participation of the entire population, not just a few judges and professional legal aides. Consequently, it is very costly in terms of both personal investment and collective involvement. Taking the social cost of the process into consideration implies that the effect of its duration should not be minimized.

Prioritizing the goal of speed at the expense of the principle of balanced justice, which is based on the principles of due process and the presumption of innocence, carries a genuine risk of failing to elicit either the cooperation of the population, or, in the longer term, reconciliation itself. The direct involvement of local authorities in the fundamental phase of information-gathering was also motivated by the desire to accelerate the process, but unfortunately, given the way it has worked in practice, it is more than likely that it has generated considerable frustrations and grudges, if not fears.

While categorization is now underway, and will soon be followed by the national-level judgment phase, one of the main concerns should be that of giving the population tangible reasons to trust the *Gacaca* process again. Yet, PRI is of the opinion that this trust could be very widely regained if the judicial debate returned to the practice of presenting all the evidence with arguments and counter-arguments, and if the *inyangamugayo* regained their full authority, which could guarantee the fairness of their judgments.

From PRI's observations of the information gathering carried out under the local authorities throughout 2005, it seems clear that although this stage unfolded relatively quickly, it was nevertheless only half completed: no room was left for testimony (the only element of proof in this context) for the defense.

If the gathering of information were to stop here, the fear is that the *Gacaca* courts will have only accusations on which to base their judgments, and while the great majority of these accusations certainly represent the truth about the genocide, some of them may be errors or lies. If we apply the acquittal rate seen in the 2005 judgment phase to the national judgment phase, then more than 98,000 people[205] who today stand accused could be found innocent, if the courts have all the elements of proof -both for prosecution and for defense- at their disposal.

[205] According to the NSGC's recent statistics of October 31, 2005, out of 3,846 judgments pronounced, 496 people were acquitted, which represents a 12.89% acquittal rate [(496/3846)x100]. If we apply this percentage to the

It is extremely risky to think that there will be time to gather defense testimony only at the judgment phase, and then to weigh its probative value by comparing it to incriminating elements. There is no guarantee that, in order to expedite their work, the *Gacaca* judges will not be subjected to the same pressure during the judgment phase that many *Gacaca* courts suffered during validation. Besides, there is an abiding feature in all criminal justice processes: the passage of time causes proof to disappear, and as this happens, defense testimony becomes more difficult to produce tomorrow than it would have been yesterday. This is all the more so since no information has been collected on these witnesses, raising the question of how feasible it is to summon them to appear, as announcing the judgment in public does not seem to offer enough guarantees. **Thus, the first recommendation PRI can make is that from now on the *Gacaca* courts should encourage the production of evidence for the defense in order to have the maximum of information at their disposal.**

If the law of 2004 envisaged that this categorization would take place behind closed doors and therefore without the accused -let alone witnesses or victims- this was because it was conceived as the first deliberation of the *Gacaca* courts based on a maximum of information gathered earlier. However, today we know that the great majority of cell-level *Gacaca* courts will have only incriminating elements by which to categorize suspects. While admitting that not a single consequence in terms of truth or rights is produced by categorization, **it would be desirable to reintroduce a preliminary public debate with arguments and counter-arguments at this phase of categorization, which would avoid a later slowdown of the process that might result from errors in categorization.**

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Moreover, the failure to consider defense testimony during the information-gathering phase, as well as the "dejudicialization" of this stage by entrusting it to the administrative authorities, has certainly accelerated the process, but it has also led to behaviors and practices which constitute undeniable infringements on the presumption of innocence. Here is clearly another key to the problem of diminished trust in the *Gacaca* process among a portion of the population. This presumption of innocence should be more firmly grounded in reality for the overall population. Not only by thwarting those who misuse the process for personal ends -by falsely accusing their neighbors because they think that this accusation alone will cause them immediate harm- but especially by bringing all the work done this year by local authorities back into balance, thereby giving the judge all the information necessary for fair justice. Most of all, this is a matter of making the principle of the presumption of innocence effective in the field in order to reassure the population.

For this issue, PRI's second recommendation is that it would be advisable to give an official order to local authorities and *Gacaca* judges to cease certain practices which are prejudicial to individual rights. This mainly concerns resorting to fines for non-participation and issuing certificates of good conduct. These two practices are not only illegal, but their use is truly discriminatory.

Finally, the conditions in which detention is sometimes used by the administrative authorities or the *Gacaca* judges remains very problematic. Even if in absolute value the instances in which individuals were placed in preventive detention or sentenced on the basis of Article 29 of the June 19, 2004 Law are probably few -compared to the huge number of participants in the

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NSGC's official projection of the number of people who could be prosecuted for genocide crimes which rises to 761,446, we then reach the figure of 98,150 people [(761.446 x 12.89) /100] who could potentially be acquitted.

process- the impact of these Article 29 detentions on the population is counter-productive. Far from guaranteeing active participation, these detentions (which are mostly ordered under conditions not prescribed by law and therefore discriminatory) only reinforce the fear, and thus the mistrust, of the process. **PRI's third recommendation would thus be to call for a more precise legal framework than is outlined in the June 2004 Law of the conditions under which the *Gacaca* courts can detain either a defendant or a witness.**[206]

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To the extent that this 2005 information-gathering phase was marked by an "administratization" of the process through the role assigned to the *nyumbakumi* and other local authorities, and given the deviations observed, it is essential to reinforce the role and authority of the *Gacaca* judge in the process. All processes of justice involve creating distance between a population and its judges, which is the only way to give the institution the symbolic weight necessary for its legitimacy. This establishment of distance (the judge should be feared, but also respected so that his judgment is accepted[207]) comes from the solemnity which is given to the process and which ritualizes it. Clearly in entrusting the information-gathering to administrative authorities, this gravity and ritual have mostly disappeared. **It is therefore of paramount importance that the continuation of the process be completely and thoroughly entrusted to the *Gacaca* judges and that all necessary authority be granted them in order to prevent, if necessary, attempts to interfere by the administrative authorities**.

The authority of the *Gacaca* judges would be all the greater as their capacity in this judging function would be reinforced. Much has already been done to train the judges in judicial practices, primarily in the understanding of the *Gacaca* law and its procedure. But judging is known to be one of the most difficult arts and is mainly learned by practice. Nevertheless, the acquisition of skills through practice always benefits from additional training. If it is unrealistic to expect to have readily available all the financial and logistical means to complete the training of all the *inyangamugayo* -who number more than 170.000[208]- PRI is of the view that the priority should be to target the sector and appeal-level *Gacaca* court presidents since they are responsible for the greatest number of judgments, and since the risks incurred by Category 2 defendants are particularly heavy. Considering the deficiencies observed on the issue of due process during the information-gathering phase of 2005, **PRI's fourth recommendation is to reinforce the training of these *Gacaca* court presidents by providing them with techniques for leading debates in which arguments and counterarguments are presented, and for interrogating witnesses and defendants.**

Lastly, the enormity of the burden entrusted to all of these judges can never be emphasized enough: they are all volunteers who bear the responsibility for the prosecution of the genocide, and they pay the consequences for that responsibility through their personal involvement, to the detriment of their professional or family responsibilities. The initiative undertaken by the NSGC with the support of the Belgian Technical Cooperation will measure the individual and social cost

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206 Four international NGOs (Avocats Sans Frontières (Lawyers Without Borders) / le Centre Danois des Droits de L'Homme (the Danish Centre for Human Rights)/ Penal Reform International and RCN - Justice et Démocratie), communicated their concerns about this issue of the proposed reform of the *Gacaca* Law at the National Service of Gacaca Courts, in a position paper of October 17, 2005, cf. Appendix 5.

207 Cf. on this point, Antoine Garapon, *Bien juger. Essai sur le rituel judiciaire* (*To judge well. Essay on the Judiciary Ritual)*, Paris, Odile Jacob, 1997.

208 With 9,080 cell, 1,545 sector and 1,545 appeal courts, and 14 judges per court (substitutes included), we come to a total of 170,380 *inyangamugayo* judges [(9,080+1,545+1,545)x14].

that weighs on these judges in order to better support them in their roles.[209] **Reinforcing these initiatives is also a priority.**

Today the duration of this *Gacaca* process is unknown, but it is unlikely that it can be fully completed in the next two years. The quality of the legal work to be accomplished during the next months depends first and foremost on the recognition that it is through immense daily efforts that this justice is rendered, by men and women from a population marked by the genocide. The quality of this work also depends on a greater respect for fundamental legal principles, and on the search for a balance between the prosecution and the defense. It is only in this way that the truth about the genocide can be revealed and the rights of Rwandans can be respected.

[209] Cf. National Service of Gacaca Courts and the Belgian Technical Cooperation, *Report on Improving the Living Conditions for the Inyangamugayo*, Kigali, November 2005.

Appendix 1
Lists from the Procedure Manual for Information-gathering

A manual was produced in November 2004 by the NSGC grouping all the lists/tables to be filled out under "the procedure of information-gathering in the *Gacaca* courts"[210], as well as a number of samples for the documents used by the courts in their daily activities: the defendant's case file, the form communicating the information, the summons, the warrant for arrest, the order for provisional release, etc.

The lists to be filled out (in tables are the following):

1. List of persons residing in the cell in September 1990[211]

2. List of persons residing in the cell in March 1994

3. List of persons arrested as RPF accomplices

4. List of promoters of the genocide in the cell

5. List of genocide-preparation meetings in the cell
   - Those who prepared and led them
   - Those who participated in these meetings

6. List of persons who should be killed
   - Persons on these lists
   - Those who drew up these lists

7. Distribution of weapons in the cell
   - Those who distributed the weapons
   - Those who received the weapons, with the date of receipt and description of weapons received

8. List of armed militia present in the cell
   - Those who created these militia
   - Those who joined later

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[210] National Service of Gacaca Courts, *Procedure of information-gathering in the Gacaca courts.Truth-Justice-Reconciliation*, NSGC, Kigali, November 2004 [PRI Translation of document entitled *Gahunda yo gukusanya amakuru akenewe mu nkiko Gacaca*]

[211] On every list, mention of a person's name is automatically followed by identification. By identification we mean filling out the following columns for each person:

- Names (family name, first name and surname)
- Sex
- Names of father and mother

And depending on the list, a further addition of :

- Profession
- Place of current residence

9. Lists of roadblocks constructed in the cell
    - Date and place of their creation
    - Those who gave the order to construct them
    - Those who were in charge of these roadblocks
    - Those who were present at these roadblocks to "work"
    - Those who were killed at these roadblocks

10. List of genocide victims who were originally from the cell and who were killed in this same cell[212]

11. List of genocide victims killed in the cell, but originating from another cell

12. List of genocide victims originally from the cell, but killed in another cell (with mention of the place where they died)

13. List of people originally from another cell, but who were killed in the cell for refusing to participate in the genocide

14. List of people from the cell killed in the cell for refusing to participate in the genocide

15. Place where the remains were thrown
    - Place
    - People whose bodies were thrown out
    - Those who chose the place

16. List of damaged or stolen goods from each household

17. List of families attacked in the cell

18. Location of the cells where hunted people found refuge

19. List of survivors of the genocide

20. List of people who helped the victims who were hunted
    - The one who helped
    - Mention of an accusation or not for refusal of participation in the genocide
    - People saved with exact location of place of rescue

21. List of attacks carried out in the cell
    - Those who organized these attacks
    - Those who participated in these attacks identification
    - Victims of these attacks with mention of crimes committed against them

22. List of attacks led by the residents of the cell, outside of the cell
    Cf. previous list

23. List of killers of renown in the cell, with mention of acts for which they are reproached

[212] For all the lists of victims, the place where the remains were located should also be mentioned, in addition to the victim's identification.

24. For each victim of genocide
    - Identification and condition of their death
    - Inhuman acts or torture committed on his corpse
    - Perpetrators of his death

Appendix 2
Form on "The Promoters in the Cell"

Source : NSGC Manual, Form 104

PROVINCE/TOWN OF KIGALI	DISTRICT/TOWN	SECTOR	CELL	NYUMBAKUMI

All names Beginning with family name, first name, and surname	**Sex**	**Date of birth**	**Names of father**	**Names of mother**	**Act committed based on which person considered a promoter**	**Presently living (yes or no)**	**Place of current residence**

Names and signatures of members of the Seat

1.	2.	3.	4.	5.
5.	7.	8.	9.	…../……/….. Seal

Appendix 3
Form on the "Genocide Preparation Meetings in the Cell"

Source : NSGC Manual, Form 105

PROVINCE/TOWN OF KIGALI	DISTRICT/TOWN	SECTOR	CELL	NYUMBAKUMI

N° …….. Conclusions : …… Date and place of meeting : ……

A. Those who led the meetings

All names Beginning with family name, first name, and surname	**Sex**	**Date of birth**	**Names of father**	**Names of mother**	**Profession**	**Date of release**

B. The participants

All names Beginning with family name, first name, and surname	**Sex**	**Date of birth**	**Names of father**	**Names of mother**	**Profession**	**Date of release**

Names and signatures of Members of the Seat

1.	2.	3.	4.	5.
5.	7.	8.	9.	…../……/….. Seal

Appendix 4
Form on "Roadblocks Constructed in the Cell"

Source : NSGC Manual, Form 109

PROVINCE/TOWN OF KIGALI	DISTRICT/TOWN	SECTOR	CELL	NYUMBAKUMI

1. Place where roadblock was constructed :	2. Date constructed :……..

3. Those who ordered a roadblock to be constructed

All names Beginning with family name, first name, and surname	Sex	Date of birth	Names of father	Names of mother	Current Residence	Profession

4. Those who constructed it

All names Beginning with family name, first name, and surname	Sex	Date of birth	Names of father	Names of mother	Current Residence	Profession

5. Those responsible for this roadblock

All names Beginning with family name, first name, and surname	**Sex**	**Date of birth**	**Names of father**	**Names of mother**	**Current Residence**	**Profession**

6. Those who went there to "work"

All names Beginning with family name, first name, and surname	**Sex**	**Date of birth**	**Names of father**	**Names of mother**	**Current Residence**	**Profession**

7. Those who were killed there

All names Beginning with family name, first name, and surname	**Sex**	**Date of birth**	**Names of father**	**Names of mother**	**Commune of residence**	**Profession**	**Weapons used**	**Place of burial**

Names and signatures of Members of the Seat

1.	2.	3.	4.	5.
5.	7.	8.	9.	…../……/….. Seal

Appendix 5
Position Paper from Justice sector NGOs
On the proposed amendment of the Organic Law n°16/2004 of June 19, 2004

THE DANISH CENTRE FOR HUMAN RIGHTS
CENTRE DANOIS DES DROITS DE L'HOMME

From : -Avocats Sans Frontières (ASF)
-Centre Danois des Droits de l'Homme
-Penal Reform International (PRI)
-RCN Justice & Démocratie

To : The Executive Secretary
National Service of Gacaca Courts (NSGC),

RE : Proposal to amend the Organic Law n°16/2004 of June 19, 2004

Madame Executive Secretary,

During an information meeting that you organized on 09/15/2005, the contents of the proposal to amend the Organic Law n°16/2004 was brought to our attention. We appreciated your willingness to open the debate on the points of this proposal, in order to gather the opinions and thoughts of various people.

Having followed and accompanied the entire process of genocide prosecution from the beginning, we would like to share with you the difficulties linked to the modification of the law, in particular (I) the fixing of a termination date for the completion of the work of the *Gacaca* courts, (II) the creation of a national *Gacaca* court mandated to try first category suspects, (III) the indemnification law for genocide victims, (iv) the detention of genocide suspects before trial and (v) the death penalty for first category suspects.

1. June 2007, termination date announced for the end of the work of the Gacaca courts

Our organizations are conscious of the weight and the sacrifices that the Gacaca process represents for the Inyangamugayo as well as for the population. We also understand the desire to bring the genocide litigation to a close as quickly as possible and to turn efforts toward the country's other preoccupations.

However, in order to avoid weakening the process, it seems essential that the *Gacaca* courts be able to conduct their activities with complete independence, without the pressure of a deadline imposed in advance, and at their own pace, that of memory, the struggle against impunity and reconciliation.

We believe that the goal of accelerating the process of genocide prosecution should not be pursued to the detriment of the fairness of the process and its participatory character (with regard to the respect for the accused's right to defense).

2. The organization of prosecution relating to suspects in the first category

You informed us of National Service of Gacaca Courts' willingness to redefine the first category by limiting it solely to the planners and organizers at the national level, and those who committed rape and sexual torture.

One of the consequences would be a significant reduction in the number of defendants which, according to your estimates, would not exceed 10.000 people. These defendants will be judged, according to what was announced at the meeting, by a national *Gacaca* court.

Persons tried who incur penalties as heavy as the death penalty and life sentences must benefit from all fair trial guarantees, in accordance with national and international texts.

The experiment of the specialized chambers which, between 1997 and 2003, returned up to 1000 judgments per year, shows that the regular courts are perfectly able to judge first category defendants, whose number would be brought back to less than 10,000 people and within a reasonable time.

Therefore, we recommend that the material competence for judging crimes relating to the first category remain with the regular courts. We consider, in fact, that a *Gacaca* court working with the collaboration of the Public Prosecution in charge of investigating first category files, would lead to a rupture of equality.

3. The indemnification law for victims

The right to reparation for victims is a crucial element of the fair trial and the fight against impunity.

We noted with interest your statement, which indicated that an indemnification law was in the process of being finalized. It would indeed be desirable for its publication to occur before the further expansion of the judgment phase. There is no doubt that this would be a sign of acknowledgment to the victims and survivors of the genocide, who would feel encouraged to take part in the trials.

4. The recognized pre-trial detention power of the cell-level *Gacaca* Court

According to observations made by some of the organizations who are signatories to this letter, the reality in the field shows that more and more abuses are committed in this domain. We are thus taking this occasion to point out the worrisome nature of the absence of control of power which the law places at the disposal of the *Gacaca* judge, as regards the taking of measures to deprive a person of his liberty.

Arrest warrants are issued against people who do not yet appear on the list of accused persons, and many sentences for refusal to testify or false testimony are pronounced during the information-gathering phase. Quite often, these two measures [warrants and sentences] merge, without being able to identify the legal basis for the deprivation of liberty.

The sentences for giving false testimony or the refusal to testify are pronounced very frequently without the person in question having been notified of the charge, without arguments and counterarguments and without a real trial, in violation of Article 32 of the Organic Law n°16/2004. Sometimes, such a procedure is also applied to persons whose prosecution file is under investigation, for refusal to testify against himself.

In the majority of cases, the remedies envisaged by the law are inoperative. Except for the sector-level *Gacacas* in the pilot phase, the other sector-level *Gacacas* entitled to know these remedies are not yet sitting and appeals written by persons put in detention by the cell-level *Gacaca* court often remain dead letter.

The situation is such that fear and feelings of vulnerability are more and more detectable among the population.

We propose therefore : (i) that the conditions for the application of Article 39, 8), of the Organic Law n°16/2004, in particular those prohibiting all arrests during the information-gathering phase be framed in a restrictive way; (ii) that the conditions for the application of Articles 29 and 30 of the Organic Law n°16/2004 also be framed in a restrictive way; (iii) that the *Gacaca* judges be reminded that there can be no sentencing on the basis of Articles 29 and 30 of the Organic Law n°16/2004 unless a judgment has been properly rendered, in respect of the conditions provided for in Article 32 of the same law; (iv) that a maximum time limit be set for the *Gacaca* court of appeals to review appeals submitted against placement in preventive detention, or against decisions bearing on the pronouncement of sentences for false testimony, refusal to testify or pressure exerted on witnesses or judges, failing which the detained person must necessarily be released; (v) that a firm reminder be imparted that a person cannot be sentenced for false testimony or for refusal to testify based on the fact that the person would refuse to testify against himself; (vi) that a regular monitoring of preventive detention be organized.

5. The death penalty for defendants in the first category

In the points of the reform of the law that you have communicated to us, it seems that the death penalty would be maintained for the defendants in the “new” first category who would not have confessed.

Our organizations are in agreement with the terms of the preamble of the Second Optional Protocol of the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty and adopted by the General Assembly of the United Nations on December 15, 1989, which states:

"(...) *Article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable, (…) all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life."*

Insofar as the Rwandan State would renounce its application of the death penalty to suspects transferred by the ICTR, we suggest that the same renunciation be applied to the first category.

We reaffirm our availability to participate in the working sessions that you will organize in order to share our thoughts and to contribute to a just resolution for the prosecution of genocide.

Please accept, Madame Executive Secretary, our distinguished regards.

Kigali, October 17, 2005

-Avocats Sans Frontières (ASF)

-Centre Danois des Droits de l'Homme

-Penal Reform International (PRI)

-RCN Justice & Démocratie

Informational copies provided to :

- Ministry of Justice
- Supreme Court
- Office of the Public Prosecution
- Diplomatic entities
- Organizations within the United Nations
- International NGOs
- Local NGOs working in the field of law and justice
- International Criminal Tribunal for Rwanda (ICTR)

Appendix 6
Geographic Sample
(new names)

New names appear in the shaded boxes.

Provinces and districts		Sectors		Permanent Investigators
Butare **District of Nyamure**	**South** **District of Nyanza**	**Nyamiyaga**	**Muyira**	**1**
Byumba **District of Kisaro**	**North** **District of Gicumbi**	**Kavumu**	**Kavumu**	**1**
Cyangugu **City of Cyangugu**	**West** **District of Rusizi**	**Kamembe**	**Kamembe**	**1**
Gisenyi **District of Kayove**	**West** **District of Rutsiro**	**Musasa**	**Musasa**	**1**
Kibuye **District City of Kibuye**	**West** **District of Karongi**	**Bwishyura**	**Bwishyura**	**1**
Kibuye **District of Budaha**	**West** **District of Ngororero**	**Murundi**	**Murundi**	**1**
Umutara **District of Murambi**	**East** **District of Gatsibo**	**Murambi**	**Murambi**	**1**
City of Kigali **District of Kacyiru**	**City of Kigali** **District of Gasabo**	**Kimihurura**	**Kimihurura**	**1**