



**Research on the *Gacaca* – PRI**  
**Report V**

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## Introduction

This document is the fifth in a series of reports<sup>1</sup> on the work carried out by the research team of Penal Reform International - PRI, in Rwanda, over the period from July 2002 to beginning 2003. This period was devoted to preparing for the *Gacaca* tribunals at cell level. It covers the first two stages of this process which will end with the third stage – that of trials – forecast for end 2003 or in 2004. The previous report also covered a small portion of the same period, but focused on the procedure of confessions and the communiqué of 1 January 2003 from the Presidency of the Republic, on the provisional release of detainees.

The present report gives a brief overview of the development of some programmes that are important for the *Gacaca*:

- Compensation and community service, which however do not seem to be moving forward,
- Monitoring by various actors,
- Some observations on the *Gacaca* tribunals in general,
- And above all the participation of the population in the *Gacaca* process.

This general part is followed by three case studies: Umutara, Butare and Gisenyi. These cases show that the local situation, the local history of the genocide and the role of the local authorities are important factors to be taken into consideration in order to understand the differences between zones.

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1. For previous PRI reports, see Klaas de Jonge :

- Report I : “Interim Report – Research on the *Gacaca* tribunals and their preparation, July-December 2001” PRI, Kigali/Paris, January 2002

- Report II/confidential : “Activities PRI research team report, January-March 2002” PRI, Kigali/Paris, April 2002

- Report III : “Research on the *Gacaca*, April-June 2002”, PRI, Kigali/Paris, July 2002

- Report IV : “Report on the *Gacaca* Research: The procedures of confessions, cornerstone of Rwandan justice”, PRI, Kigali/Paris, January 2003

Reports I, III and IV are also available on PRI’s website: <http://www.penalreform.org>

## Report Summary

Three major problems have emerged from the observations made, which are hampering the functioning of the *Gacaca* and could therefore eventually jeopardize its chances of success to achieve real reconciliation.

**The first problem**, which is fundamental in a participative justice system such as the *Gacaca*, **is proving to be the lack of participation of the population in the sessions.** The low level of participation is felt both in terms of physical presence (delayed sessions, most of the population not showing up) and contributing towards difficulty in establishing the truth (with the exception of the Murama section). People are afraid of testifying or assuming their responsibilities; the rumours and confrontations during the sessions create a strong feeling of insecurity (real or imaginary). Only the prisoners have no hesitation in confessing. However, the latter, who are often perceived to be arrogant for many reasons, only increase the feelings of unease and mistrust that the population may have in relation to the *Gacaca*. In these circumstances, the lack of training and sometimes of motivation of the judges is felt even more strongly.

**What is also problematic is the delay in two programmes connected to the *Gacaca* – compensation and community service.** Admittedly, in the case of compensation, the current draft law is pragmatic in trying to find a solution to the prickly question of how to assess losses, and the problem of solvency for sentenced convicts, by defining a fixed compensation amount that can take the shape of services. This ends up blocking the second programme, that of community service, which is highly damaging. With the *Gacaca* in operation and the imprisonment of new detainees, this alternative to imprisonment must increasingly be reckoned with. Although the population needs to be sensitised on this subject in order to allay the fears of both victims and detainees, spending should not be cut back on community service, as it is an indispensable tool for the *Gacaca* to function properly and eventually for reconciliation.

**Finally, we will raise the issue of the temporary suspension of the *Gacaca* tribunals in the pilot sectors and the question of how this is perceived by the populations concerned.** Such interruptions are essential in order that all the sectors may reach the same level of progress before the last stage of trials (mainly because the real responsibility of those who have committed offences in several different places must be established).

## **Summary of the case studies presented:**

### **Pilot sector of Gahini (Rukara, Umutara)**

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The main problem that emerges from the observations of the Kabeza and Ibiza cells is the lack of participation of the population in the *Gacaca* sessions. This disengagement is apparent both at the level of formal participation (small number of persons present, delays in starting sessions) and real participation: people are very reluctant to take part in discussions, to testify or make confessions (with the exception, however, of the prisoners, the Hutu women who had Tutsi husbands, and the “1959 repatriates”). Several factors could explain this, such as a strong feeling of insecurity (real or imaginary), the fear of testifying and suffering the consequences, or even the atmosphere of suspicion and tensions within the sessions, where conflicts reappear with intensity between persons and/or social groups, relating to the genocide, land disputes or religion. This silence weighs heavily on the *Gacaca* process at a time when the sector is entering the phase when individual records and categorisation of the accused will be made.

### **Pilot sector of Gishamvu (Nyakizu, Butare)**

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After observation, it seems that we should not be deceived by the apparent success of the Gishamvu cell. In fact, the consistently good level of participation cannot hide the fact that the majority of the population remain absent. Although sessions are held regularly, the passivity of the judges, the strong personality of the president and problems of transcription make it difficult to record the stories of the witnesses. At the same time, confrontations within the sessions create dissatisfaction (as the persons who are denounced are not necessarily arrested) and there is fear of retaliation. The consequence is that people who should testify are increasingly reluctant to do so; there is a gulf between the survivors and non-survivors (which was inexistent to begin with), as well as a fresh upsurge of rumours (about poisoning or survivors getting together to denounce all the Hutus, without taking into account their actual participation in the genocide).

### **Pilot sector of Murama (Kayove, Gisenyi)**

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This sector remains an exception inasmuch as two of its cells have completed the 6<sup>th</sup> and 7<sup>th</sup> sessions. Their achievement may be explained by the positive commitment of some Hutus before and during the genocide, as well as by the active role of the current local leaders. Thus, in contrast to other tribunals, the judges have been able to collect testimonies both to charge and clear people, as well as confessions (including from persons who committed murders but are not in prison), without creating misunderstanding or conflicts between the survivors and the rest of the population. However, there are still some problems, such as the lack of competence and diligence of the judges, some corruption, and even an impingement of the *Gacaca* on the daily lives of the population (given that three days of the week are already spent on communal work, praying and going to market). A fundamental problem is also felt acutely in this sector, that of crimes of revenge committed by the FPR (the Rwandan army) or the survivors.

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## I. Context

### A. PRI's presence in the field

As was seen in Report III, from the beginning, PRI has had at least one observer per sector (ref. table 1 below), who whenever possible followed certain tribunals which appeared to be functioning well and others that functioned less ably within the sector covered by him.

Table 1: The 12 pilot sectors in which PRI accompanied some *Gacaca* tribunals

No.	Province	District	Sector	No. of cells per sector
1	<i>Kigali-Ville</i>	<i>Kanombe</i>	<i>Nyarugunga</i>	5
2	<i>Kigali-Ngari/Rural</i>	<i>Ngenda</i>	<i>Kindama</i>	10
3	<i>Gitarama</i>	<i>Kabagari</i>	<i>Nkomero</i>	11
4	<i>Butare</i>	<i>Nyakizu</i>	<i>Gishamvu</i>	3
5	<i>Gikongoro</i>	<i>Mudasomwa</i>	<i>Nkumbure</i>	9
6	<i>Cyangugu</i>	<i>Bugarama</i>	<i>Nzahaba</i>	6
7	<i>Kibuye</i>	<i>Budaba</i>	<i>Nyange</i>	8
8	<i>Gisenyi</i>	<i>Kayove</i>	<i>Murama</i>	6
9	<i>Ruhengeri</i>	<i>Bukonya</i>	<i>Mataba</i>	5
10	<i>Byumba</i>	<i>Kisaro</i>	<i>Mutete</i>	5
11	<i>Kibungo</i>	<i>Kigarama</i>	<i>Birenga</i>	5
12	<i>Umutara</i>	<i>Rukara</i>	<i>Gabini</i>	7
1-12	-	-	-	80 cells

Since extending the *Gacaca* tribunals to one sector per district in November 2002, there are now 118 sectors – 12 pilot sectors and 106 new sectors – where the *Gacaca* tribunals function, i.e., a total of 821 tribunals. This is less than 10% of all the cells or sectors in the country. At least 90% of the cell tribunals throughout the country are still expected to start functioning, as well as all the *Gacaca* tribunals – more than 1600 – at the sector, district and provincial levels.

The local observers/researchers have, as often as possible, observed some *Gacaca* tribunals in the new sector cells when they were close to the cells already under observation. Furthermore, PRI has started working in other zones, such as Gitarama town, Ntongwe (Gitarama), Murambi (Umutara) and Nyamata (rural Kigali). But in this 5<sup>th</sup> report, we will be dealing mainly with the pilot sectors mentioned.

## **B. General comments about the objectives of the *Gacaca* tribunals in view of the advancement of the process**

We would like to point out that for the government<sup>2</sup>, the *Gacaca* tribunals have been conceived as a system of participatory justice that allows:

1. the truth to be known about what happened during the genocide,
2. the genocide trials to be accelerated,
3. eradication of the culture of impunity,
4. reconciliation among Rwandans and the strengthening of their unity.

### 1. Allowing the truth to be known about the genocide:

This first aim is undoubtedly the most delicate and crucial for the success of the *Gacaca*. The search for the truth is long and difficult. It requires the involvement of all the actors concerned.

### **Low level of participation of the population in the *Gacaca***

Our report No. III has sometimes been criticized by certain government officials – particularly verbally – because we had found that there was not much participation of the population in the *Gacaca*.

“In short, a growing lack of interest has been observed on the part of the population (with the notable exception of many survivors) in this stage of the process; this has also been demonstrated by the fact that many participants no longer speak out during the meetings.” PRI report No. III “Research on the *Gacaca* – April-June 2002”, PRI, Kigali/Paris, July 2002.

We will therefore present more concrete figures here in order to back up this conclusion with more details. Given that, according to the government, the *Gacaca* tribunals are a participatory justice system, participation or non-participation of the population in the cell *Gacaca* in the cells appears, in fact, to be the main factor in evaluating the efficacy of these tribunals and thus to know whether the aim of the search for truth is being achieved or not.

Based on some statistics covering a period of only three months, we have found that there is very little participation of the population. This is not shown so much in terms of physical presence – in spite of the sometimes strong pressure exerted by the local authorities to encourage people to come – but above all in terms of real participation: confessions and testimonies, either to accuse or to clear people, which are very important in order to know the truth. Above all in the towns or around the churches where many people were killed, it is often difficult to identify the culprits and to know exactly what happened.

Experience has shown us that this situation usually does not improve with time. Particularly during the 6<sup>th</sup> session, which established the lists of accused persons. If this lasts for more than 10 meetings, the participation of the population and members of the tribunals tends to diminish

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<sup>2</sup> Department of the *Gacaca* tribunals – Supreme Court/DJG-CS : “Strategic Plan for the *Gacaca* Process 2003-2005”, Kigali, March 2003

markedly and the pressures of the local authorities (threats, fines, intervention of the “Local Defence Force”) tend to increase.

Table 2: Participation (presence and testimonies/confessions) of the population in the *Gacaca* tribunals of the cells during the research period of July-September 2002 (ref. annexes 1 and 2)

<b>Indexes of participation</b>	<b>ASF (July), N=15 sessions</b>	<b>PRI (September), N=50 sessions</b>	<b>Observations</b>
Sessions that took place	87% (13/15)	82% (41/50)	Small reduction in the number of meetings taking place according to the rules. However, the percentage of meetings planned and held remains quite high.
- in which the quorum was not reached	8% (1/13)	10% (4/41)	
Adjourned sessions	13% (2/15)	18% (9/50)	
Use of pressure	15% (2/13)	10% (4/41)	Low level of force used.
Starting at 11 am or later	69% (9/13)	69% (20/29)	Sessions are still beginning very late.
Active participation of the population <sup>3</sup> during sessions (discussions, etc.)	40% (6/15)	18% (9/50)	Less active participation as time goes by (particularly during the stage of accusations and confessions). It is mainly the survivors who testify. Non-survivors hesitate and when they speak of killings, these usually concern the ones carried out by people who are either in prison or dead, or who have disappeared or fled.
Confessions (not only for petty crimes)	20% (1/5)	11% (4/37)	The population makes few confessions. Very few non-survivors who are free plead guilty, and when they do, they admit to lesser offences (theft, looting).

In order to encourage confessions – as a sort of awareness-raising exercise – the *Gacaca* tribunals have started to invite prisoners who have confessed to testify before the population. Although this has often aroused the population and reassured some survivors that it was possible to establish the truth, it has also created misunderstandings between groups within the local population and prisoners, as well as between survivors and the population.

<sup>3</sup> We have the impression that in many panels of judges, only the Presidents participate actively, sometimes helped by one or two of their colleagues, but in general, most of the judges do not participate at all in the public *Gacaca* meetings.

## **The difficulty of searching for the truth**

As has already been mentioned in previous reports (PRI Reports Nos. III and IV), most of the people present, and the survivors in particular, are often shocked to hear this kind of confession and to hear them expressed in this manner – that is, without the slightest sign of emotion and even with a lot of aggressiveness. The survivors question, and with reason, if these confessions are “sincere”, inasmuch as the prisoners often do not express the slightest remorse. Other members of the public also appear to be shocked by the accusations and the naming of accomplices.

Furthermore, prisoners and other accused persons tend to present the genocide as being the result of a bad policy of the former government and of the Belgian colonial regime, which put them in a difficult situation. This is also the view of the present government. They do not seem to accept responsibility for their acts, even when they confess and ask for pardon. During the *Gacaca* sessions and the interviews of detainees in prison, those presumed guilty hardly ever spoke of the individual motivation that led them to participate in the genocide. The issue of “why” is never asked by any of the *Gacaca* judges during the sessions we took part in. In our view, this restricts understanding the truth of the genocide at the local level.

As we have already mentioned earlier, the prisoners’ confessions, whether partial or complete, have up to now been the main source of information to establish the truth about the genocide. This kind of session should therefore continue. However, it would be preferable if the detainees were better prepared before the presentations so that they are aware of the need to present their cases with less arrogance.

## **Sensitisation**

PRI has observed (ref. the following case studies) that there is often widespread fear among the population of daring to speak, and that there is increased tension within some communities as well as a feeling of insecurity. This is explained by the cases of intimidation suffered by survivors and witnesses for the accusation, and following the arrest of some persons accused of having participated in the genocide.

We have also observed cases of corruption and of people fleeing the country. Several rumours show that the 6<sup>th</sup> session, which is held for the purpose of drawing up lists of the accused, and the 7<sup>th</sup> session, which held to create individual records of the accused and their categorisation, are difficult and complicated.

We believe that more intensive sensitisation is crucial, particularly among the local population. This could be done either directly or through the detainees who have confessed. However, sensitisation alone is not sufficient; it cannot solve all the problems of mistrust or dissatisfaction of the population either. We believe that it is essential that action be taken to stop arbitrary arrests and intimidation, and to enable a dialogue between the population and the authorities.

PRI and DiDé’s reports, and even those of the 6<sup>th</sup> Chamber, note that sensitisation concerning the *Gacaca* and Community Service – which is the responsibility of the Ministry of Justice – is insufficient and does not always reach the local population. This has been found although, according to the study of the CNUR (January 2003, p. 20), 85% of the persons questioned have the impression that they were appropriately informed about the purposes and the procedures of the *Gacaca*. Reality, however, is very different.

Radio is generally considered, and justly so, as one of the most important media for sensitising the Rwandan population. It is therefore surprising to note that, according to the study of the CNUR, “radio does not appear to have been a privileged media for the transmission of information, given that those who own a radio do not claim that they are better informed than the others [for all that]”. In our opinion, this observation is the result of insufficient research rather than lack of effectiveness of radio broadcasts as a source of information. What is more, the same research noted that, for the *Gacaca* judges, the radio played a crucial role.

Given that the sensitisation about the *Gacaca* and Reconciliation is part of the government’s programme, it is likely that the answers to the questions concerning this kind of issue will be complaisant. The opinions expressed can therefore be much more positive than reality. Unfortunately, the opinion survey of the CNUR did not include questions to test the real level of knowledge of the population about the aims and procedures of the *Gacaca* tribunals. Given the problems of sensitisation, we are strongly in favour of recruiting an expert at the Ministry of Justice in order to improve the most important parts of the *Gacaca* programme and its corollaries – the compensation programme and Community Service.

Apart from State institutions, other institutions and organisations involved with sensitisation are civil society organisations and churches.

### **What is the role of the churches?**

Already in the first report, we wrote of the role of the churches in mobilising the population to participate in the *Gacaca* tribunals, to make confessions and to request and/or grant pardon in order to promote reconciliation. This may be surprising when we recall the role of some churches during the genocide. Some of the heads of churches have even been convicted. Nevertheless, according to our observations, the churches are now contributing to the process of reconciliation, although at a lower level.<sup>4</sup> They tend to reinforce the work of the State in this area.

In this context, it is important to mention the evangelical churches’ “Project of the *Umuwumu* tree”<sup>5</sup>. They organised a series of meetings in many prisons to encourage detainees to confess and actively participate in the *Gacaca* tribunals. PRI participated in one of these meetings in Nyanza prison. Indeed, evangelisation in the prisons appears to have helped to increase the number of confessions and requests for pardon. The prospect of release offered by the confession system is probably still the main motivation for prisoners to admit their partial or total guilt. In fact, it remains a more important factor than a real heartfelt conversion or awareness. The rapid growth in the number of confessions after the communiqué of the Presidency (ref. PRI Report No. IV, January 2003) and the manner in which the confessions were often made (ref. PRI report No. III, July 2002) lead us to believe that remorse has little effect and that many guilty persons do not really feel responsible for the crimes they have committed.

The meetings organised by the Catholic Church of Rwanda within the project “Justice and Peace” regarding the *Gacaca* tribunals are often based on the message of the Catholic bishops

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<sup>4</sup> A study made by the Johns Hopkins University at the end of 2000 found that at the time, the Church was not an important source of information, either in the rural zones or in the urban zones. But this seems to have changed since then, especially in the prisons.

<sup>5</sup> Refer to Prison Fellowship Rwanda “The Umuwumu Tree Project: Planting Deep and True Reconciliation in Rwanda”

“For a Reconciling Justice”<sup>6</sup>. PRI participated in the meetings in the city of Kigali and in a rural district of Cyangugu. During these meetings or religious services, which were attended by many people, Rwandans were invited to make the *Gacaca* tribunals a tool for “reconciliatory justice”. During these services, the hopes and fears aroused by the *Gacaca* tribunals were also discussed.

Some survivors of the genocide forgave those who killed their families, often for religious reasons and after the guilty begged for forgiveness in a way that was felt to be really sincere. There were also some survivors, although not many, who asked for pardon for their actions after the genocide, such as acts of revenge, appropriating other people’s property, helping to incarcerate some persons arbitrarily or for having considered all Hutus as killers. Their confessions were often badly received by their survivor companions.

Some civil society organisations also help the government with their programmes of sensitisation. However, their main task is often of a different nature: monitoring or researching the *Gacaca* process.

### **Training of judges**

It would appear that better training of judges is needed. This is not only essential for those who have recently joined in replacement of others, who had never received any training, but also for veteran judges. The selection of new judges for the *Gacaca* tribunals should take better account of the capabilities of this group, as the judges have many difficult tasks. Furthermore, some payment would appear to be a preliminary requirement in order to obtain more active participation from the part of the *Gacaca* judges. Payment has been promised, but the judges have so far not received any recompense for their efforts and their time off work. In the eyes of the majority of local authorities, they have no more social prestige than the rest of the population.

### **Involvement of the authorities**

The correct functioning of the *Gacaca* would doubtless also be enhanced if more members of the elite or “intellectuals” participated and if the local authorities showed more commitment and interest. In fact, the latter appear to have a strong impact on the population and on the judges: negative in the case of Umutara, positive as in the case of certain Gisenyi tribunals (ref. case studies presented in this report).

### **Credibility of the justice of the genocide**

We are obliged to acknowledge that certain events, such as:

- the release decided by the Prosecution or by the Court of First Instance of people seen by the population (and above all by the survivors) as real killers (ref. case of Cyangugu, Byumba),
- recent arrests considered by the local population to be arbitrary (ref. Umutara),
- or non-release of persons who have been in prison for a long time, but who the population consider to be innocent (ref. Gisenyi),

have very negative effects on people’s motivation to participate in the *Gacaca*.

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<sup>6</sup> *Pour une Justice qui Réconcilie* (For Reconciliatory Justice), Message from the Catholic bishops of Rwanda for the period of the *Gacaca* tribunals Kigali, 13 June 2002. Ref. also: Archdiocese of Kigali, *Célébrons le SYNODE* (Let us celebrate the SYNOD), 29/12/2001, Kigali, 2002

To limit this kind of problem, it would be good to continue programmes such as that of the Prosecution/RCN in order to fill in empty or incomplete records and release the persons concerned if nothing is found.

As was seen before and as highlighted by the case studies below, the fact that discussions about cases of victims of war or revenge are not permitted also plays an important role in the lack of participation of the population (ref. the case of Umutara). In some tribunals, the population, as in Gisenyi, tried to find their own solution to the problem. This was found to be acceptable for both sides.

## 2. Accelerate the genocide trials: Empty the prisons?

With the scheduled acceleration of genocide trials thanks to the establishment of the *Gacaca*, neither the victims nor the suspects should wait for years for justice to be served. It was intended that with the *Gacaca* a large number of prisoners would leave the prisons in a short time.

However, reality has not entirely matched expectations. A report on Justice in Rwanda<sup>7</sup> has concluded that the main problem of the Rwandan justice system is its sluggishness. True, to date the vast majority of prisoners have not yet been released by the ordinary courts: around 7,000 detainees on remand were put on trial, of whom 25% were acquitted, i.e., only around 2,000 persons were released. The *Gacaca* tribunals managed to release a few dozen persons where no proof of offence was found. The mass releases which took place were made in response to the communiqué from the Presidency of 1 January 2003. It was therefore a decision of the executive power and not the judiciary (ref. PRI report No. IV).

The communiqué announced the provisional release of detainees of different categories. In May, more than 20,000 persons, the great majority of whom were prisoners accused of genocide who had confessed, left prison after having spent three months in solidarity camps – Ingando. This will probably be followed by many other releases after the elections held at the end of 2003.

It is not sure that all this will actually lead to a considerable and durable reduction of the prison population. In fact, the prisoners who confessed – around 32,000 at the end of 2002 – incriminated approximately 250,000 other persons (ref. PRI report No. IV). Even if this figure is greatly exaggerated or if the “accomplices” who were denounced are not all arrested, the most serious cases undoubtedly will be pursued in the justice system in order to eradicate the culture of impunity.

We are thus confronted not only with the purely logistical aspect of availability of prison space, but also with the need to allow the incarceration of these persons newly accused by the *Gacaca* tribunals. This represents a difficult task for this new institution which is not yet fully functioning. It also affects political, social and even economic aspects, given the impact of any new arrests on a large scale. It will probably generate increased fear, mistrust and movements of panic among some sectors of the population. It could lead to a global result that is contrary to the objective of the *Gacaca* in terms of reconciliation among Rwandans and strengthening of their unity. The economic impact of the arrests could also be very negative.

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<sup>7</sup> CAGEP-Consult : “Assessment of the Judicial Sector in Rwanda” Kigali, USAID, November 2002, p. 22

## Alternatives to imprisonment

In this report, PRI reiterates a recommendation made previously, which is to “reflect about the problem of *new genocide prisoners*” – particularly those of the 2<sup>nd</sup> category who want to confess and those of the 3<sup>rd</sup> category – and consider alternatives to imprisonment that could be proposed before incarceration. For example, community service could now be applied for the entirety of the sentence instead of half of the sentence. Conditional releases<sup>8</sup> could be envisaged and/or a Rwandan version of the South African Truth and Reconciliation Committee, eventually making a sort of general amnesty possible, (...)” (PRI report No. I, p. 36). However, the latter solution of a general amnesty would be perceived, above all by many of the survivors, as the opposite of the objective of eradication of the culture of impunity.

### 3. Reconciliation<sup>9</sup> and national unity?

The two programmes that should accompany the *Gacaca* and that also aim to reconcile the Rwandans and strengthen their unity are:

- compensation for the victims of genocide,
- and the Community Service programme – CS.

The development of these two programmes appears to be at a standstill at the moment. We hope that this is not a sign of lack of willingness on the part of the government to set them up. However, reconciliation is a long-term process, and that could explain the fact that these programmes are not yet up and running. Furthermore, both programmes require considerable investment in terms of financial resources and that is doubtless also an obstacle to their implementation.

## Compensation

The genocide victim compensation law has still not been put to a vote by the National Assembly, in spite of the fact that a new draft bill instituting the *Fonds d'Indemnisation* (FIND) (Compensation Fund) has already been debated by the Council of Ministers in August 2002.

According to Heidy Rombouts<sup>10</sup>, the new draft bill is more pragmatic than the old version. On the one hand, the group of beneficiaries, whose exact number is not yet known, is much more restricted – that of the survivors<sup>11</sup> and not the victims. On the other hand, adopting the idea of

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<sup>8</sup> It is obvious that if this solution is to be considered, it would require an amendment of the law on the *Gacaca*, as well as explaining it and raising awareness among the population.

<sup>9</sup> In our opinion, reconciliation is a process that can continue over several generations. It is often summarised by academics who work in this field as “closure, healing and rehabilitation” (Galtung) or as a process through which the parties involved in a destructive conflict try to re-establish a relationship which is felt to be the minimum acceptable (Kriesberg). This notion is often expressed by our Rwandan contacts as ‘living together without fear’.

<sup>10</sup> See “Draft law on the creation, organisation and functioning of the compensation fund for victims of offences that constitute the crime of genocide or crimes against humanity committed between 1 October 1990 and 31 December 1994” and the debate of this “draft project” – on which this paragraph is based by Heidy Rombouts: “Reparation for the victims of Rwanda. Observations regarding the draft bill of the compensation fund (FIND) in Rwanda, Preliminary research results”, Kigali, August 2002, Heidy.Rombouts@ua.ac.be.

<sup>11</sup> Rombouts repeats that the definition of survivor (mainly “any person who was persecuted because of their ethnic group or because their ideas were contrary to the genocide and the massacres”) in itself does not exclude one or the other ethnic group. There are Hutus who are survivors and Tutsis who are not. Nevertheless, she gives examples

giving each survivor a fixed amount<sup>12</sup> also limits the total amount to be considered. However, this new draft bill stipulates that compensation may also be paid in the form of services, particularly in the field of education, health and housing. The State is considering using 8% of internal revenue to feed this fund, which is a bit more than the current 5% paid to the FARG – *Fonds d'Assistance aux Rescapés du Génocide* (Fund for the Assistance of the Survivors of Genocide), which was insufficient to provide for the needs of the survivors. In any case, the State was unable to pay this.

The relation between the FARG and the FIND is not yet very clear and one wonders if it has only been a name change. The IBUKA association has expressed its concern in relation to this draft bill. It views it as a sign that the government is not willing to make an extra effort for the survivors. However, at its 2<sup>nd</sup> Congress<sup>13</sup> which has just taken place in Kigali, the outgoing President emphasised that there was no conflict between the IBUKA and the State.

A critical study on Justice<sup>14</sup> in general, carried out by a team of consultants for USAID/Rwanda, mentions the following fact as the principal limitation and the main challenge to achieve the rule of law in Rwanda: “Recognise the victims and validate their rights, although reparation will be purely theoretical at this stage, given that most of those who have to pay are insolvent and the means to recover compensation by force are after all inexistent. Set up a Compensation Fund for survivors of genocide and a system of payment during and after trials”.

### **Compensation within the framework of the *Gacaca***

It is not easy to calculate the losses suffered in 1994 and determine the value of damages and interest. This is part of the Assembly General's tasks and of the Panel of Judges of the *Gacaca* tribunals, who must fill in detailed and complicated forms for the victims and all their damages by household – Civil Party Forms. The damages suffered may be the loss of family members, sustaining wounds or loss of property<sup>15</sup>.

The debates taking place during the 5<sup>th</sup> sessions of the *Gacaca* tribunals to establish a correct version of the facts concerning damages suffered are often very lively<sup>16</sup>. It is complicated to make a fair evaluation of damaged, destroyed or looted property (especially for houses and cattle) more than eight years after the genocide.

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which show that this definition of beneficiary ‘tends to be linked to ethnicity’. Furthermore, according to Rambouts, the notion of “survivor” is more restricted than that of ‘victim’.

<sup>12</sup> A fixed amount of FRW 11,500,000 per survivor or around US\$23,500 was decided on. This amount is close to that proposed by Ibuka. It is nevertheless very high given the means of the State. In a previous version of the draft bill in 2001, detailed scales had been proposed to compensate the beneficiaries. That should have been the difficult task of the *inyangamugayo* to calculate the losses and determine the value of damages and interest.

<sup>13</sup> Radio messages translated from Kinyarwanda into French by the GTZ: “2<sup>nd</sup> Congress of the IBUKA Association”, Kigali GTZ, Monday 21 October 2002

<sup>14</sup> CAGEP-Consult, 2002, p. 22

<sup>15</sup> Ref. Department of the *Gacaca tribunals* – Supreme Court/DJG-CS: *Manuel explicatif sur la loi organique portant création des juridictions Gacaca* (Explanatory manual on the organic law creating the *Gacaca* tribunals), Kigali, October 2001, p. 64 to 72

<sup>16</sup> See Béatrice Mukamurenzi : *Problématique d'indemnisation des victimes du génocide*, (Problems of compensation for the victims of genocide), *Le Verdict* No. 41, August 2002, p. 6 and 7

Frequently damages have already been paid by the offenders and thus there is some confusion when trying to ascertain if these damages should be entered in the records or not: risk of double indemnity.

Some participants also contest the value of the goods that have been lost, alleging that they are being overestimated. The population involved does not always appear to be aware of the fact that their participation, whether active or not, can influence the amount of compensation<sup>17</sup> that will eventually be paid. In Byumba, a survivor in one session pointed this out to the public. This does in fact appear to be a very important point within a context of generalised poverty<sup>18</sup>. The result is that many guilty persons probably do not have the means to pay, even if compensation is agreed upon amicably.

An example in Byumba:

In general, the inventory of goods and property of the survivors has given rise to discussions everywhere after some persons exaggerated the value of their losses. A certain N. of Kimisugi tried to have the assets of M, his paternal uncle, inventoried twice. The population refused and he told the truth.

In Muhororo, there were discussions about the metal sheets of the survivors' homes, which were later recovered by their owners.

There was the case of a cow belonging to a Hutu woman who was married to a Tutsi who was killed during the genocide: The cow was killed together with her father and his cows. When she complained, the Hutus reacted, saying that the cow should be considered the same as other cows belonging to Hutus.

The new bill may have consequences for the *Gacaca* tribunals. According to Rombouts, it could simplify filling in the civil party forms<sup>19</sup>. However, this has not been confirmed, as the type of detailed data to be included may also be used to claim damages and interest against persons already condemned by the criminal justice system.

There is in any case much anxiety in this domain as, according to Liprodhor<sup>20</sup>, judgements by the ordinary courts have passed sentences to compensate both material and moral damages, but to this day, no decision has been enforced. The risk of sentenced persons becoming bankrupt remains a great problem, not only for the ordinary courts, but also for the *Gacaca* tribunals.

The fact that the law instituting the compensation fund has not yet been passed, while the *Gacaca* tribunals have already started long ago is, in our opinion, not only an indication of the problems

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<sup>17</sup> It should be noted that people who have committed offences against property should come to an amicable solution either with the victims, the public authority or through arbitration, and that they can no longer be sued for the same offences: ref. Manuel DJG, 2001, p. 26

<sup>18</sup> In 2001, the percentage of the population living below the poverty line was 60%. Ref. National Poverty Reduction Programme : "The Government of Rwanda Poverty Reduction Strategy Paper", Ministry of Finance and Economic Planning, Kigali, June 2002

<sup>19</sup> Ref. note 10: fixed amount

<sup>20</sup> Ref. note 16: article in Le Verdict

inherent to the compensation process (lack of means, lack of support from the international community, lack of data about the number of beneficiaries, etc.), but perhaps also an indication of insufficient political will to set up this compensation fund. The same argument could be applied to the programme to set up Community Service. Yet it would be best if the compensation fund were in place before the *Gacaca* tribunals started sentencing people to the alternative CS.

### **Community Service (CS) and *Gacaca***

The study on Justice referred to above<sup>21</sup> also mentions as the main challenge the establishment and management of a system of Community Service (CS) as an alternative to imprisonment for those who have confessed their crimes. According to this study, 73% of those surveyed are interested in CS. Yet the Community Service programme is progressing very slowly. The magistrates think that planning and organising CS is taking too long.

According to the research of CNUR<sup>22</sup>, 90% of the prisoners and of the population in general, and 75% of the survivors think that CS will be carried out in their communities and that it will favour reconciliation. Even if the 90% figure seems too high, such results should encourage the government to accelerate the process of setting it up.

Although the action plan for setting up CS<sup>23</sup> has been approved by the Ministry of Justice<sup>24</sup> for more than a year now, in August 2002, financing for the execution of this programme was not yet available.

Recent developments, such as the presidential communiqué of 1 January 2003 and the preparations for the elections, may have delayed the establishment of CS. However, some highly qualified persons<sup>25</sup> were appointed as members of the Executive Secretariat of the National Committee of CS and their office has been opened. The provincial CS committees are in place, as well as those of the pilot districts and sectors. The Ministry of Justice has even begun training members of these CS committees.

On the other hand, sensitisation about CS is still very poor. A CS manual has not yet been produced, nor have CS agents been recruited. Therefore it has been impossible to start training. The fact that the establishment of CS has suffered alarming delays is sometimes interpreted, as in the case of compensation, to be the result of a lack of political will on the part of the government.

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<sup>21</sup> CAGEP-Consult, 2002, p. 22

<sup>22</sup> CNUR : « *Sondage d'opinion sur la participation à la Gacaca et la Réconciliation Nationale* » CNUR, (Public opinion survey on participation in the *Gacaca* and National Reconciliation), Kigali, January 2003, p. 24

<sup>23</sup> Serge Rumin, PRI consultant: « *Plan National Stratégique pour la mise en oeuvre du Travail d'Intérêt Général comme peine alternative à l'emprisonnement au Rwanda* » (National Strategic Plan to set up Community Service as an alternative non-custodial sentence in Rwanda), PRI, Kigali, July 2002

<sup>24</sup> Correspondence from the Ministry of Justice and Institutional Relations, Mr Jean de Dieu Mucyo, addressed to PRI in August 2002

<sup>25</sup> The ex-Prosecutor General of Nyabisundu and one of the key persons in pre-*Gacaca* sessions, Mr Jean Marie Mbarushimana, has become the executive secretary of this Committee. His assistants are Mr Anastase Nabahire (ex executive secretary of IBUKA) and Colonel Charles Musitu.

Apart from PRI<sup>26</sup>, only one other organisation (Dignité en Détention/DiDé) [Dignity in Detention] has worked on CS. DiDé, a non-governmental Swiss organisation started a feasibility study on CS in mid-December 2002 in the province of Gitarama<sup>27</sup>.

This study concluded, as did PRI, that the success of the *Gacaca* tribunals depended on the success of CS. The major, unanimously expressed concern is that the poor level of sensitisation of the population, which is the responsibility of the Ministry of Justice, could lead to a negative perception of CS by part of the population. Representatives of genocide victims fear that the non-custodial alternative sentence may become a sort of tourism for the convicted offenders, while detainees fear that CS may be transformed into forced labour. These divergent opinions appear to fade rapidly when clear explanations are given – i.e., when sensitisation is carried out properly.

If the Ministry of Justice responds effectively to the concern about sensitisation, DiDé believes that the main actors involved in CS are optimistic about the feasibility of CS in Gitarama province.

### **C. Monitoring of the *Gacaca* programme and research by the Rwandan government, and Rwandan and international organisations**

Rwandan civil society has already started independent monitoring of the *Gacaca* process. From the start, IBUKA and Liprodhor<sup>28</sup> have been present at many meetings of the *Gacaca* tribunals and in the beginning of 2003, the PAPG (*Projet d'Appui de la société civile au Processus Gacaca*) [Civil Society Project to Support the *Gacaca* Process] was set up within the framework of a project of five Rwandan Human Rights collectives<sup>29</sup>. These associations have already taken part in monitoring the elections of *Inyangamugayo* judges in October 2001<sup>30</sup>. The PAPG prepared some very useful work instruments such as a guide for monitoring agents and a training manual. With

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<sup>26</sup> Klaas de Jonge, PRI consultant: "Co-ordination Mission on Community Service in Rwanda" PRI, Kigali, February 2001 and Serge Rumin, PRI consultant: « *Plan National Stratégique pour la mise en oeuvre du Travail d'Intérêt Général comme peine alternative à l'emprisonnement au Rwanda* » (Strategic National Plan for setting up Community Service as a non-custodial alternative in Rwanda), PRI, Kigali, July 2002

<sup>27</sup> Dignité en Détention/DiDé: « *Etude sur les conditions de faisabilité des Travaux d'Intérêt Général dans la Province de Gitarama, réalisée entre mi-décembre 2002 et mi-mars 2003* » (Feasibility study for Community Service Work in Gitarama Province, carried out between mid-December 2002 and mid-March 2003), DiDé, Kigali, 2003, p. 8

<sup>28</sup> Ref. their monthly «Le Verdict» dedicated to the genocide trials in Rwanda and their report « *Rapport d'observations sur les activités des assemblées des juridictions Gacaca de cellule* » (Observation report on the activities of the assemblies of cell *Gacaca* tribunals), Liprodhor, June-July 2002

<sup>29</sup> CLADHO: *Collectif des Ligues et Associations de Défense des Droits de l'Homme* (Collective of Human Rights Defence Leagues and Associations),  
LDGL: *Ligue des Droits de la personne dans la région des Grands Lacs* (League of the Rights of the Individual in the Great Lakes Region),  
CCOAIB: *Conseil de Concertation des Organisations d'Appui aux Initiatives de Base* (Coordinating Council of the Support Organisations for Grassroots Initiatives),  
IBUKA: Association of Survivors of the Genocide,  
PRO-FEMMES/Twese Hamwe: A Collective of Women's Associations.

<sup>30</sup> *Rapport sur l'observation des élections des membres des organes des juridictions Gacaca au Rwanda, octobre 2001* (Report on the observation of the elections of members of the *Gacaca* tribunals in Rwanda, October 2001), CLADHO, CCOAIB, IBUKA, LDGL, PRO-FEMMES TWESE HAMWE, Kigali, December 2001

more than 150 monitoring agents, this is the largest organisation following the work of the *Gacaca* tribunals.

The National Commission of Human Rights (*Commission Nationale des Droits de l'Homme/CNDH*), whose mission it is to coordinate monitoring by different bodies, also has observers in the field who regularly follow the sessions of the *Gacaca* tribunals. The CNDH has not yet made any reports on the *Gacaca*.

On the other hand, the Department of *Gacaca* tribunals/DJG, or the 6<sup>th</sup> Chamber, has undertaken an internal evaluation of the training of *Gacaca* judges and the functioning of *Gacaca* tribunals<sup>31</sup>. The results have been published. After this phase of observation in the 12 pilot sectors of the country, as from November the *Gacaca* Department extended its activities to one sector per district (i.e., 106 sectors). According to the most recent information, some competent *Gacaca* tribunals will probably be starting trials themselves, by choosing cases of 4<sup>th</sup> category detainees who have confessed. This should take place after the October 2003 elections.

After the 2<sup>nd</sup> phase – making individual records of the accused and categorising them – the activities of the *Gacaca* tribunals were provisionally stopped in the 12 pilot sectors. This was due to the fact that before starting up the 3<sup>rd</sup> and last phase of the trials, all the country's sectors should have reached the same level of activity. This would appear to be more prudent because many of the accused committed their crimes in different places, all of which must be studied. The first two phases of the *Gacaca* should therefore be completed by all the sectors before the trials can start at national level.

However, if this is not well explained and prepared, there could be negative consequences. The demotivation of judges and members of the General Assembly in the pilot sectors, who would have to wait for months or even a whole year before the courts start up again in order to begin the phase of trials, could result in failure. It would result in a loss of effectiveness which would be difficult to recover.

Other Rwandan actors in the field of the *Gacaca*, such as the Ministry of Health, which employs trauma counsellors, or the officials of the *Direction de la mémoire du génocide* (Genocide Memory Directorate) of the Ministry of Youth, Sports and Culture, which is in charge of coordinating the research and documentation of the genocide, are much less present in the field. We believe that the *Direction de la mémoire du génocide* will not manage to organise and carry out its coordination work.

As reconciliation is one of the *Gacaca*'s objectives, it is not surprising that the National Commission for Unity and Reconciliation/CNUR should be interested in the *Gacaca*. Although it is not very visible in the field, this Commission has published a report<sup>32</sup> consisting of a survey of

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<sup>31</sup> Department of *Gacaca* tribunals – Supreme Court/DJG-CS: *Rapport sur la formation des personnes intègres des juridictions Gacaca* (Report on training of persons of integrity of the *Gacaca* tribunals) Kigali; DJG-CS: *Rapport d'activités des Juridictions Gacaca, octobre, novembre, décembre 2002* (Activity Report of the *Gacaca* tribunals, October, November, December 2002) Kigali, February 2003

<sup>32</sup> CNUR : *Sondage d'opinion sur la participation à la Gacaca et la Réconciliation Nationale* (Public opinion survey on participation in the *Gacaca* and National Reconciliation), CNUR, Kigali, January 2003

the population's opinions on their participation in the *Gacaca* and on national reconciliation. The results of this survey are interesting and useful<sup>33</sup>.

The study shows that more than half of the population (54%) do not wish to participate actively in the sessions of the *Gacaca* tribunals. If we add to this percentage that of the judges who practically cannot testify (23%) according to CNUR, that only leaves a quarter of the population willing to actively engage in the *Gacaca*. The survivors are more willing to testify than the average person, but it is above all the prisoners who intend to testify.

These studies and research reports related to participation in the *Gacaca* generally comport with our observations in the field regarding the behaviour of the population in the *Gacaca* tribunals. Regarding the reconciliatory effect of the *Gacaca* (CNUR, 2003, p. 22 to 29), the opinions of survivors and prisoners are somewhat conflicting. According to this study, the prisoners appear to minimise the negative factors (aggravation of tensions, etc.) and the survivors appear to amplify them. The latter think, for instance, that cohabitation with the families of the guilty and survivors will be difficult, whereas for the prisoners, family reconciliation between the guilty and the victims after the *Gacaca* is possible.

As well as Penal Reform International/PRI, at least four other international organisations are accompanying the *Gacaca* tribunals. They are Lawyers without Borders (*Avocats sans Frontières*/ASF), Human Rights Watch/HRW, Amnesty International/AI and African Rights. They have all published reports or are about to do so in the case of HRW<sup>34</sup>.

Many students in higher education from various universities worldwide (particularly the UK, Belgium, the USA, France, Japan and the Netherlands) are also studying the *Gacaca* tribunals. They often do so in cooperation with the University of Butare or one of the aforementioned international organisations, but few of these studies are currently available<sup>35</sup>.

## **II. Case Study: The *Gacaca* tribunal of the Ibiza, Umwiga and Kabeza cells (Gahini, Rukara and Umutara sectors)**

The Gahini cell is part of the district of Rukara in the province of Umutara. The province of Umutara is a new province created in 1996. It is situated in the northeast of the country and covers around 75% of the former national park of Akagera. It is made up of eight districts which

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<sup>33</sup> Although the replies to the questions relating to the *Gacaca* and reconciliation appear to be more positive than reality (ref. above), it is actually a pity that this research is limited to attitudes without trying to test the real knowledge of the population about these issues.

<sup>34</sup> ASF is following the *Gacaca* tribunals in some sectors and have published their monitoring reports about the *Gacaca* tribunals on their website <http://www.asf.be>;  
Amnesty International: "Rwanda. *Gacaca*: A question of justice" Amnesty International, December 2002  
Various reports of African Rights, among others about "The History of the Genocide" in different sectors where the *Gacaca* tribunals have started.

<sup>35</sup> One exception is the report of a Harvard University student: "*Gacaca* tribunals. Interim Report of Observations, June 10-August 8, 2002", by Catherine Honeyman, 30/08/2002

were part of Kibungo province or Byumba province. The district of Rukara used to belong to Kibungo province; it is therefore situated to the south of Umutara province.

Around half the population of these provinces are “1959 repatriates”. A first wave of refugees who fled the country in 1959 came back from exile in Uganda and Tanzania just after the end of the genocide and did in fact settle in this province. Most of the refugees did not reclaim their former properties. They settled, as herders for the most part, on land belonging to the old national park. The others shared land with the population already in place before the genocide.

The other half of the population, the “old-timers” as they are often called, consists of a small group of survivors, and the rest of the local population is mostly Hutu<sup>36</sup>. Of this part of the population, many had fled in 1994 to Tanzania because of the war and because they were afraid of the FPR taking revenge. Most of the second wave of refugees who returned in 1997 thus frequently found “1959 repatriates” installed on their land. Some shared their fields without trying to recover them. The survivors live mainly in the districts of Rukara and Murambi, and in the town of Umutara.

This province also has a growing number of internal migrants coming from several other provinces in the country: Ruhengeri, Gitarama, Byumba, Gisenyi, Gikongoro, Kigali Ngali, etc. They have occupied the national park where they live alongside the “1959 repatriates”.

The occupation of land, in particular the new lands available in the national park, has often taken place according to the ethnic composition of the population. Frequently, the *imidugudu*, villages created by the government, are occupied by people of the same ethnic group. The houses of the survivors and “1959 repatriates” are often built separately from the rest of the population, who have frequently abandoned their old homes to move into the *imidugudu*<sup>37</sup>. Nevertheless, the replacement of the population and redistribution of land have occurred and have sometimes led to conflicts and tensions between different groups of the population as well as between the citizens and the authorities.

The number of genocide victims in the province of Umutara is estimated at 20,000<sup>38</sup> and the number of detainees presumed to be killers is around 4,000, divided among the prisons of Byumba and Nsinda. The genocide was particularly devastating in the communities of Murambi and Rukara where many Tutsis lived. Thanks to the fact that the FPR arrived quickly in this region, many of them managed to escape<sup>39</sup>. Many Hutus were also killed.

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<sup>36</sup> The fact that ethnicity is a taboo subject in Rwanda: “*in Rwanda there are no Hutus, or Tutsis, or Twas, only Rwandans*”, often makes it necessary to substitute these ethnic terms by other expressions such as “genocide survivors”, “1959 repatriates”, “local population”, “non-survivors”, “genocide killers”, or “Rwandan natives”. These terms are not similar to ethnic categories, but partly cover them. The combined use of these terms would often be more exact, as for example “Tutsi or Hutu survivors”, “local Hutu or Tutsi population”, etc.

<sup>37</sup> Although the government claims that ethnicity does not play a role in contemporary Rwanda, this is not verified in the manner the population has resettled. Ref. Villagisation in Rwanda, Wageningen Disaster Studies, No. 2, Hilhorst, Dorothea and Mathijs Van Leeuwen, Rural Development Sociology Group, University of Wageningen, Netherlands, 1999 and Uprooting the rural poor in Rwanda, Human Rights Watch, New York, May 2001

<sup>38</sup> MINALOC *Dénombrement des victimes du génocide. Rwanda : Rapport Final* (Tally of the victims of genocide. Rwanda: Final Report), Rwandan Republic, Kigali, November 2002, p. 19

<sup>39</sup> For instance, Alison Des Forges *Aucun témoin ne doit survivre. Génocide au Rwanda* (No witness may survive. Genocide in Rwanda), Human Rights Watch, New York, 1999, p. 210: “*Les Tutsi de Rukara ont été sauvés quand les coups de feu des troupes du FPR arrivant ont fait fuir les assaillants qui assiégeaient l’église.*” (“The Tutsis of Rukara were saved when the shooting of the FPR troops frightened away the assailants who were laying siege to the church.”).

As was seen earlier, Gahini is an example of a sector which existed before the genocide, where the population today is composed of a large number of “repatriates”, “old-timers”, survivors and local residents. The number of genocide victims is estimated at 300 persons, i.e., around 57% of the total of about 525 Tutsis<sup>40</sup>, among whom many were assassinated in the hospital of Gahini belonging to the Protestant mission of the Episcopal Church. According to the Prosecution service, 234 detainees originated from Gahini.

Gahini was chosen as a pilot sector for the *Gacaca* programme because a considerable number of detainees there have confessed – in July 2002, 50 persons, i.e., 21% of the detainees – and because the judges’ training had been successful in terms of participation and understanding compared to other sectors in the province.

PRI followed the activities of the *Gacaca* tribunals in the whole sector, and in particular the cells of Ibiza, Umwiga and Kabeza.

From the beginning, it was clear that the population in general was not sufficiently prepared and sensitised (ref. PRI Report No. III). Although this was often denied by the authorities, even the reports of the 6<sup>th</sup> Chamber mention the limitations of sensitisation campaigns which were the Ministry of Justice’s responsibility:

“Although the sensitisation campaign began long before the effective start-up of the *Gacaca* tribunals, it would appear that in some cells, the population had very little knowledge of how they functioned, and this applies just as much to the persons of integrity (*Gacaca* judges, ndlr) themselves, as to the population who were being asked to play an essential role in the operation of these tribunals”<sup>41</sup>.

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<sup>40</sup> Estimate based on the following data of the *Gacaca* tribunals: before 6 April 1994, Gahini sector had a population of 5,601 persons, distributed among 1,088 families, that is, about 5.1 persons per family. One-hundred and three families have made claims of damages and interest. By applying the average of 5.1 persons per household, we estimate that the Tutsi population was 525 persons. Three hundred were allegedly assassinated (140 in the cell where they lived and 160 outside it), and 225 have survived. This corresponds to the estimates made by the local authorities (the Sector’s Councillor) who thought that the number of survivors (mostly widows and children) was around 200 persons. The population of “non-survivors” in April 1994 would therefore be around 5,076 persons (5,601 – 525). It can be assumed that the male population over 15 years of age represented a quarter of this number, which would come to 1,269 men. The genocide killers, who are now in prison and accused of genocide, come from this group. Some of them did not participate at all, and they may be dead, in exile or free. In spite of this, at the end of last year, the *Gacaca* tribunals of this pilot sector included 665 persons, mostly men, in the list of accused. This means that they estimate that most of the adult men actively participated in the genocide (665 of 1,269, or around 52%). Ref. *Rapport d’activités des Juridictions Gacaca : Octobre, Novembre, Décembre 2002* (Activity Report of the *Gacaca* tribunals: October, November, December 2002), Supreme Court – Department of *Gacaca* tribunals/CS-DJG, Kigali, February 2003, p. 5

<sup>41</sup> CS-DJG: « *Rapport d’activités des Juridictions Gacaca* » (Activity Report of the *Gacaca* Tribunals), Supreme Court – Department of *Gacaca* Tribunals/CS-DJG, Kigali, October 2002, p. 24 and 25

## A. Ibiza Cell:

The *Gacaca* activities of the Ibiza cell seemed to be functioning better in the beginning than in the other cells of the sector in terms of formal participation: fewer delays, presence of the population and the judges. However, the population hardly took part during the first sessions and the number of participants diminished in relation to the number of survivors or repatriates. The latter take part very actively and want to know what happened during the genocide as well as who is innocent and among whom they can live without fear.

Most of the participants are women:

- there are 10 women out of 19 on the panel of judges,
- and 80% of the participants in the General Assembly are women, both among the local population (who often have husbands in prison) and among the survivors.

The first meetings – sessions 1 to 5 – were successful in spite of the fact that a group of around 20 survivors were unhappy with the presiding judge, who is a member of the local population. The President is nearly the only one on the panel of judges who speaks and shows a certain amount of confidence.

Just before the genocide, Ibiza had 172 families and 420 inhabitants. From the lists of victims, it was possible to establish that with 77 victims who were killed – 37 in the cell itself and 40 from outside – this cell was one of the most affected by the genocide in this sector.

During the 5<sup>th</sup> session – when the “civil party forms” were filled in by each family (28 cases) – the panel of judges faced some problems:

- some people forgot or exaggerated facts;
- some families were nearly wholly exterminated, therefore there are no close relatives of these victims who could claim damages;
- some relatives do not want to come because they cannot afford to travel to Gahini. They consider it a waste of time and think no damages will be granted. They no longer believe that any compensation will be made after so many promises. Others do not want to face the genocide period and the death of family members;
- the case of an old woman from Kawagire, who now lives in Karangazi, who was disabled after she lost her right arm, shows the importance of financial and moral assistance in order to testify. She had in fact declared that she knew all that had happened at the hospital of Gahini and the parish of Karubamba where many people were killed. She was in the hospital at the time of these tragic events. She left Gahini on board the truck of the former burgomaster on the afternoon of the 10<sup>th</sup> of April 1994 and saw everything that went on there. Without any support, she was unable to come and testify before the *Gacaca* tribunals.

The following case of M., a girl, shows that the task of the *Gacaca* tribunals is not easy:

She was an adoptive child in the house of K., her guardian. In 1994, she had reached majority – more than 20 years of age. After having made a list of her guardian’s losses, who died along with most of his family except for two children, this adoptive girl claimed that she had had her own belongings among those of the family, in particular a few cows, two suitcases full of clothes and some money, as she said she worked.

Her case was put to the General Assembly but her claim was rejected by most of the population for the following reasons:

- the fact of being an adoptive child: the act of adoption itself was not legitimate,
- nobody, neither the neighbours nor members of the family, could confirm what property was hers (particularly the cows),
- the people explained that she did not have a job as such, but that she had on two occasions worked as supply teacher.

### ***The 6<sup>th</sup> session, the appearance of latent problems in the Ibiza cell***

At the end of July 2003, the 6<sup>th</sup> session began, to establish the list of the accused.

#### *Participation:*

The meetings always started with some delay and most of the population present was made up of survivors and “1959 repatriates”. Before each meeting, the person in charge visited the families to force people to take part in the meetings. They came against their will.

#### *Situation of the judges:*

The panel of judges showed some lack of capability in terms of law and procedure. The judges had some difficulty in obtaining the necessary information and recording testimony in an orderly fashion. Often, the President obliged people to speak – a pressure that is not authorised by law – but at the same time, the judges frequently gave up questioning the few people who made confessions or who testified at any great length. This made it very difficult to fill in the records of the accused and to establish the truth about what happened during the genocide.

Many times, the tribunal of the cell – especially the President who was the main actor – tended to confuse the quest for information with the judgements, particularly when there were confessions and denunciations during the 6<sup>th</sup> session. Some presidents had in fact a tendency to handle the 6<sup>th</sup> sessions like real trials.

As elsewhere, the *inyangamugayo* (*Gacaca* judges, *ndlr*) said that they worked for everybody’s good but were not paid for it – Gahini, 12 December 2002.

According to the judges, they should at least receive a bonus as an incentive. They said that health insurance and school fees for the children of the *inyangamugayo* had already been discussed, but that their children were sent back from school when they were unable to pay the fees.

They suggested that they should have dispensations or some written exemption from the fees with a copy for each *inyangamugayo* concerned. They found it difficult to understand why the State said it did not have any money to pay the *inyangamugayo* while payments for top cyclists, athletes, singers and poets were exorbitant. On this subject, all of them became agitated: “One would think that the State does have the means but does not want to pay them anything”. They even said that if the State wanted these tribunals to be important, it should really make a gesture of encouragement, especially as ordinary justice officials, who are well paid, have not been able to accelerate the trials of the alleged genocide killers.

#### *Testimonies:*

Only the survivors gave information. Among them, there were also some Hutu widows who had Tutsi husbands. It was frequently individuals from this group who made clear and accurate testimonies, much more frequently than the Tutsi women who had Hutu husbands.

It was common to find a lot of tension among the survivors. They gave information, but it was not always reliable because their knowledge was often hearsay and they felt frustrated by the silence of the rest of the population. Even their neighbours, who had told them what happened in April 1994 after the genocide, frequently refused to testify before the *Gacaca* tribunals.

There seemed to be generalised fear among the local population:

- One woman survivor noted: “People often fear the consequences they might suffer if they denounced the killers, especially the more murderous ones”;
- there are others who said that all the Hutus should be sent to prison: “the *Gacaca* is a tempest that should sweep away everybody who was in Rwanda during the genocide”;
- the local population accused the “1959 repatriates” of influencing the survivors to denounce them.

The following case shows how difficult it was to testify in this community:

During one of the meetings, an old Hutu woman was asked to give some information about the death of a man who was not well known because he did not come from Gahini. She refused, saying that she did not know anything. However, at the next meeting, she got up to ask for pardon from the audience because she had lied and she then proceeded to testify together with her son, citing five persons who allegedly killed the man. However, she expressed her concern about her security because of this testimony.

Suspicion among the local population, above all with relation to the “1959 repatriates”, is directly linked to the experience and perception of different social groups in the local history of the genocide<sup>42</sup>. It also relates to latent problems existing between different groups and/or persons in the community, such as land disputes<sup>43</sup> and religious disputes<sup>44</sup>. These disputes have been transposed to the *Gacaca* tribunals.

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<sup>42</sup> For instance, in terms of experience, there are enormous problems between the women who have lost their husbands during the genocide and those whose husbands are in prison. In terms of perception, it is easy to understand that the insistence of the Tutsis on the genocide sets the tone for the survivors and the “1959 repatriates”. But some Human Rights violations (executions of non-combatant civilians) committed by the FPR soldiers still trouble the local population. The fact that these Human Rights violations are hardly discussed allow some Hutu extremists to present the two types of crimes as being equivalent and to interpret the history of 1994 as a double genocide (Ref. PRI Report No. I). Both survivors and non-survivors testify that there were deaths after the war (of soldiers and civilians) and that there were also some cases of revenge.

<sup>43</sup> Frequently some people among the local population remember the “land” conflicts between them and the “1959 repatriates”, a problem that was felt to be very prickly (Ref. introduction regarding the Umutara province.)

<sup>44</sup> When referring to Gahini, many people think of the Protestant mission (Episcopal Church), which is one of the oldest in Rwanda. During the genocide, according to testimonies, many people were killed in this mission, and more specifically, in the hospital of Gahini and its surroundings. Some pastors were accused of participating in the genocide, especially those who in the past had chosen the Bishop N. This had caused a split within the Church and had an impact on the genocide. Today, there is still a problem between the bishop of the diocese of Gahini and a repatriated pastor, with negative repercussions on the functioning of the *Gacaca*. The disagreement between the repatriated Pastor and the President of the Ibiza tribunal of the *Gacaca* (a catechist) is linked to the same conflict.

According to some survivors, since the *Gacaca* tribunals started, the population has become divided. It was found that the survivors and the local population did not go to the same nightclubs.

*Involvement of the authorities:*

In general, the intellectuals – there are not many in this cell – do not come to this type of session. Furthermore, participation of the local authorities is unsatisfactory. Since the official opening of the *Gacaca tribunals*, the District authorities have never come to the meetings of this cell and have never shown any interest in the activities of the *Gacaca*. It would seem that these groups perceive the *Gacaca* as something for peasants, in spite of the official discourse that stipulates that the *Gacaca tribunals* concern all Rwandans.

*Confessions:*

In the Ibiza cell, nobody among the population had confessed or pleaded guilty and their participation was nearly nil. On the other hand, many of the detainees had confessed, having been encouraged by the direct advantages of confessing – provisional release.

*Security:*

Many people did not feel safe and were afraid. On page 21 of the research report of the National Commission of Unity and Reconciliation, (*Commission Nationale pour l'Unité et la Réconciliation - CNUR*), this was confirmed. According to this study, 50% of the population assumed that the survivors would be afraid during the *Gacaca* and that more than 60% of the prisoners would also be afraid.

This feeling of insecurity was also demonstrated by rumours of poisoning within the context of *Gacaca* activities. Although security in general in all the cells of the sector appeared to be assured, some people were afraid. This means that the authorities must do everything possible to ensure public security, but that they must also take into account the feelings of insecurity – real or imaginary – felt by both survivors and detainees.

This could be done, for example, by showing – after enquiries and eventually hospital examinations – that cases of poisoning are rare and are usually due to jealousy or family conflicts, and not *Gacaca* activities, and that they do not affect a particular social group. At one point, in this sector all deaths were being attributed to poisoning and there was a rumour<sup>45</sup> in circulation that survivors were the main targets. Very soon it became evident that there was an epidemic of meningitis that had first caused the death of a survivor and then of several children among the local population.

In the beginning of August – during the third meeting to establish records for the accused – a conflict arose between a “1959repatriate”, a pastor of the Episcopal Church, and the President of

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<sup>45</sup> Although some people think that rumours should be considered only as such and that only facts are important, for a sociologist, “rumours” are social facts that can influence attitudes and the behaviour of members of a social group. Even more so in a situation where the relations between two groups that are potentially in conflict are changing, as for example between the groups of survivors and repatriates on the one hand and the local population on the other, during the *Gacaca* activities.

the *Gacaca* tribunal, who was himself a member of the local population as well as a catechist in the Episcopal Church.

On the evening of 7 August 2002, in the Ibiza cell, as the hearing was coming to a close, T., a pastor of the Episcopal Church requested to speak. The President gave him leave to speak. In a rather aggressive way he then began to criticise the way the hearing had been held: “people remain standing, the others are behind the panel of judges, and you, the President, don’t do anything”. He continued, asking the President why some information was still lacking while the wives of the persons who had committed the crimes were present. In his opinion, they should be forced to testify.

He did not stop there; he proceeded to quote a parable about “a caterpillar that did not want to leave the corn field to go to the kitchen when he had been asked to leave in time; the end was death ...” and the Pastor finished by saying aggressively “that will be your fate”. These words produced panic among part of the audience (which was comprised of the local population) while the other part, that of the survivors and “1959 repatriates”, applauded. The President, also irate, then said “Everything the Pastor has just said is false and does not help us in any way”.

These words from the President reignited the argument. The Coordinator of the *Gacaca* activities in the District of Rukara then tried to calm down the situation, but it was difficult. He promised the audience to consult the two parties (Pastor and President) in order to calm down the affair. But since that day, tensions have been on the increase even more.

At the next meeting, nobody came on time at 8:30 am. At 9:30 am, the judges were in place but not the population. At 10:00 am people started to appear one by one, most of them survivors, and at 10:30 am, there were still only around 20 persons. By 12:15 pm, there were no more than 60 people. It was the first time in this cell that such a thing had happened.

Some survivors said that the President himself must have influenced the population not to come, and he was also accused of having influenced the local population not to confess, as had been suggested by the “1959 repatriates” for some time.

The local population, of which there was still only a very small minority, said that people had categorically refused to come back to the meetings only to be insulted. They wanted the Pastor to come back to the hearing to explain what he meant, and to ask the population for pardon, because in their view, the Pastor had divulged government secrets about the “fate of the Hutus”. At 12:30 pm, the President officially suspended the meeting because the quorum for the General Assembly had not been met. He explained – in the same way as above – why the population had not come and that the Pastor should ask for pardon and explain himself.

The altercation between the survivors and the President was such that it was doubtful there would be any understanding in the future. Once more the Coordinator, who had not played the role of mediator in time, tried to do so then with the aid of Biblical language, but it was too late.

Thus the meeting was brought to a close with an atmosphere of bad feelings.

Although two of the judges were to be replaced for irregular participation in the meetings and although a meeting of the 6<sup>th</sup> session could not take place for a second time because a quorum had not been met, the sessions continued without too many complications. This does not mean to say that the participation of the population improved or that the mistrust between different groups diminished, quite the contrary. In some cases, people from the local population were seen

to be fleeing, above all intellectuals, who were going to Uganda, Kenya or elsewhere. This was probably the result of the progress of the *Gacaca* tribunals and fear about the result of these sessions. Although this tribunal was approaching the end of the 6<sup>th</sup> session in August 2002, it had not yet discussed the list of detainees established by the Prosecution<sup>46</sup>.

At the end of 2002 – six-and-a-half months after the beginning of the *Gacaca* tribunals – the Ibiza cell had not yet finished the 7<sup>th</sup> session devoted to preparing individual records of the accused and their categorisation. At the end of December 2002, out of 12 meetings for the 6<sup>th</sup> and 7<sup>th</sup> sessions, four had to be postponed due to incomplete quorums (Department of *Gacaca* tribunals, Report 10-2002, 11 and 02-2003, p. 59).

The case of Ibiza demonstrates the existence of a degree of mistrust, and that some divisions and problems already existed within this community. These divisions became more visible during the *Gacaca* activities, and could have a negative impact on the development of the *Gacaca* trials if they are not recognised, discussed and dealt with in time, and in concert with all the parties concerned.

### **B. The *Gacaca* tribunal of the Kabeza cell<sup>47</sup>, an unrecognized failure**

The participation of the Kabeza population diminished over time more quickly and markedly in terms of presence and punctuality than elsewhere, as shown in the table below. Apart from these formal characteristics, it was found that the participation of the local population, to supply information about what happened during the genocide, remained extremely poor. One exception should be noted, as in the case of Ibiza, for the small group of Hutu widows whose husbands had been Tutsi, who usually provided a lot of information.

Furthermore, the statistical data regarding the participation of the Kabeza cell are slightly exaggerated. In reality, the population of this cell, the Assembly General, did often not reach 100 persons – for instance, on 1 August 2002 – but the President of the panel of judges nonetheless from time to time decided that the session could take place. Frequently, the judges did not verify who really was or not a member of that cell in the Assembly General, or if there were enough members of the coordinating committee on the panel of judges (the quorum was 3 out of 5, but quite often only two participated). This was never a sufficient reason to suspend a meeting. Over the period of June-December 2002, our own statistics even showed that the quorum was not reached at least eight times. In conclusion, the population did not come at all or they arrived late. And when they did come, they did not speak.

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<sup>46</sup> Only the Umwiga cell had already dealt with the lists sent by the Prosecution. This tribunal had even accused the detainees on the Prosecution's list that were not already on the list of accused drawn up by the *Gacaca* tribunals of the cell, which is not in accordance with the law.

<sup>47</sup> Kabeza is a cell that did not exist before the genocide.

Kabeza: Number of persons present and times at which sessions started

1 <sup>st</sup> Session Opening		2 <sup>nd</sup> Session Census 06/04/1994		3 <sup>rd</sup> Session List of persons killed in the cell		4 <sup>th</sup> Session List of persons killed from outside their cell		5 <sup>th</sup> Session List of victims and destroyed property		6 <sup>th</sup> Session List of accused		7 <sup>th</sup> Session Individual record of each accused and categorisation	
GA	Panel	GA	Panel	GA	Panel	GA	Panel	GA	Panel	GA	Panel	GA	Panel
135	19	105	19	103	17	102	19	101	16	113	15	(44)	14*
19/06/02		27/06/02		04/07/02		11/07/02		18/07/02		25/07/02		31/10/02	
T: 10:30		T: 10:30		T: 10:45		T: 11:15		T: 12:05		T: 12:15		T: 13:25	
Notes :										100	15	100	7*
1. GA: General Assembly (quorum: >100 persons) Panel: 19 <i>Gacaca</i> judges (quorum: >15 judges)										01/08/02		07/11/02	
										T: 12:15		T: ---	
2. Unfortunately, it is not easy to make comparisons between our data and those of the 6 <sup>th</sup> Chamber (See DJG: Report 10-2002 and 02-2003), as this Department has not published any data in its 60 or more pages of statistics. On the other hand, a comparison between PRI's and ASF's data is possible (see ASF's observation reports of the <i>Gacaca</i> tribunals on the Internet: <a href="http://www.asf.be">http://www.asf.be</a> ).										100	15	?	?
3. After 7 November 2002, PRI no longer attended the meetings of the <i>Gacaca</i> tribunals of this cell after problems arose with the <i>Gacaca</i> coordinator who accused PRI's observer/researcher of having behaved badly with the population, without any further explanation. He was forbidden to interview anybody among the population or record anything, in spite of the fact that PRI has authorisation to do so. Data for 2003 have been taken from the ASF reports.										08/08/02		14/11/02	
										T: 13:15		No data	
										<b>Census</b>		?	
										15/08/02		21/11/02	
										T: ---		See note 3	
4. The 7 <sup>th</sup> session no longer requires the presence of 100 persons or more, but the number of judges required is still 15 or more.										70*	15	?	?
5. The quorums of the GA and/or Panels of Judges marked with an asterisk (*) were incomplete. This is a minimum, as in reality the number of people in this cell (the GA) often did not reach 100 persons as registered. But even based on the data of the 6 <sup>th</sup> Chamber, it can be seen that up to the end of December 2002, out of a total of 12 meetings for the 6 <sup>th</sup> and 7 <sup>th</sup> sessions, eight were postponed due to incomplete quorums (DJG: Report 10-2002: 11 and 02-2003: 59)										12/09/02		28/11/02	
										T: 14:15		Training of judges	
										N=		90*	
										19/09/02		05/12/02	
										T: 13:40		Holiday	
										32*	18	(20)	5*
										03/10/02		12/12/02	
										T: 12:00		T: ---	
										60*	14*	?	?
										10/10/02		From	
										T:12:00		19/12/02-	
												23/01/03 no	
												data	
										60*	16	(1)	10*
										17/10/02		30/01/03	
										T:---		T:---	
										?	?	---	---
										24/10/02		06/02/03,	
										Closure of the 6 <sup>th</sup> Session		no meetings	
												because of a	
												meeting with	
												the President	
												of the 6 <sup>th</sup>	
												Chamber the	
												day before.	

Although 08:00 am had been the time “chosen” to start, the meetings in Kabeza never respected this timetable, as the population hardly ever came or they arrived late. Among the population, there were some who from time to time suggested that the meetings should officially start later, but this was always refused.

Before closing the session, the President asked the assembly if it was necessary to tell them to return the following week at 08:00 am. The President told them that he had noticed that this was practically impossible, as for the last three weeks the population had not respected the time at which the meetings were supposed to start, as agreed. One of the inhabitants proposed that the meetings should start at 10:00 am. The head of the cell disagreed with this proposal, as he said that the population simply wanted to boycott the work, and that even if the meetings were set to start at 10:00 am, people would not respect this timetable. He suggested that the work should still be set to start at 08:00 am (ref. ASF report of 10/09/02, p. 2).

During the following meeting, on 19 September 2002, the President gave the last warnings: “It is inconceivable that we should wait for you from 8:00 am to 2:00 pm. Next time, if you continue like this, after two hours we will leave immediately”. The President said this in an angry tone, in the presence of the Provincial and District *Gacaca* Coordinators, and the local authorities (sector coordinators and heads).

According to the President, the chosen starting time could be changed. He asked the local authorities what their opinion was: in the first place, the head of cell (a woman survivor). She did not support the President’s proposal and repeated the same thing as the time before: she was against it because in her opinion the delays are due to the population’s unwillingness and she proposed to take serious measures in this respect.

After that, the President asked the Councillor to give his opinion. He too made clear that he was concerned with the population’s laxity. He proposed that there should be sanctions against any one who voluntarily neglected the meetings. He gave the example of the bars (Kabeza Centre) that open while the sessions are under way, and other people who go about their business without thinking of these meetings. “We will inflict punishments on all these persons. I believe such cases will never be repeated”, said the Coordinator of the Gahini Sector.

These words show that the authorities do not really trust the inhabitants, who are perceived as people who only want to boycott their work. Their only solution they will consider is coercion. This attitude does not help to discuss and solve problems that have appeared within the tribunal of this cell and contradicts the directives of the 6<sup>th</sup> Chamber regarding the functioning of the tribunals.

As in the cell of Ibiza, the population of Kabeza is often difficult to find and those who come remain silent. The survivors of Kabeza – around 35 persons – regularly attend and participate actively, as do the “1959 repatriates” of whom there are many in this cell.

Out of the current adult population of 300, around 100, but often fewer, participate regularly. Among these, the percentage of members of the local population is diminishing in relation to those of the group of survivors and “1959 repatriates”.

***The results of the first five sessions show that:***

In this cell there were a lot of civil servants. Between 1994 and the beginning of the *Gacaca*, a large number of them moved away. Just before the genocide, Kabeza had 101 families and 393 inhabitants. The list of victims shows that this cell has been less affected by the genocide than, for instance, Ibiza. Kabeza has 27 victims who were killed, of whom 18 from the cell itself and nine from outside the cell.

As elsewhere, the 5<sup>th</sup> session – seven meetings – provoked many discussions and the Assembly General often thinks that the victims tend to exaggerate their complaints, which are sometimes unfounded.

For example:

N, an elderly widow of this cell claimed 15 cows, twelve houses and equipment: Two cupboards, five tables, living room furniture, kitchen utensils, etc.

However, the population confirmed that the cowherd had taken the 15 cows and had gone to Tanzania with them. The population believes this was justified, as the husband and wife were absent. The husband, a pastor, had been killed in Kigali, while the woman had been in Kinshasa, in the former Zaire.

The cowherd was entitled to leave just as the others had done when the region was being torn apart by the war. The old lady had even testified that the cowherd had come to look for her twice but they had not seen each other.

As for the houses, the population declared that she was exaggerating: she had a few maisonettes, stables and kitchens. Some of her neighbours said that the houses had been destroyed by the old lady herself, that no *Interahamwe* had demolished them.

### ***The 6<sup>th</sup> session of the Kabeza cell***

The problem of the lack of participation on the part of the local population had begun to be felt, particularly from the 6<sup>th</sup> session on, when the lists of accused were to be drawn up. This is explained more or less for the same reasons as in the case of Ibiza.

#### *Security*

Many people among the local population are afraid – “even those who participate come under pressure and not willingly”, according to one judge. Some arrests by the *Gacaca* tribunals, which were considered abusive by the population, and examples of intimidation during some *Gacaca* meetings, particularly from “1959 repatriates”, did not help to rebuild trust within the community. Some of the accused intimidated people, discouraging them from participating in the *Gacaca* meetings. This helped to create an atmosphere of insecurity and suspicion.

The difficulties in getting the local population to participate in turn discouraged the survivors, who doubted that there would be any reconciliation. All this has led to strong tensions between different groups and palpable ethnically-based segregation.

Nevertheless, in Kabeza, some people have confessed to their crimes before the *Gacaca* tribunals (three, of whom two in writing). The three cases involved looting, a category 4 crime, though one confession was rejected because it was considered incomplete.

But testimonies from the local population are rare. They believe that if they give any information, they will be implicated and prosecuted. Nobody wants to create a problem with their neighbours, not even the judges.

In effect, in Kabeza it was seen that the *Gacaca* tribunal of 8 August 2002 tended to suggest that two pastors, who were called to testify about the death of a man, had themselves been involved in the genocide. After this, people from the cell began pointing fingers at them.

The local population has a generally negative perception of the *Gacaca*, as is shown by some widespread ideas which we have noted:

- We have lost our fields, we are not considered citizens and our participation is not needed;
- the *Gacaca* activities are in the hands of a single ethnic group at all levels and it is difficult to trust these tribunals;
- the *Gacaca* is not a solution for reconciliation because only one party is taken into account, while all the groups have lost family members<sup>48</sup>.

A survivor who is a widow and is also one of the judges of the *Gacaca tribunal* of Kabeza noted that there were other factors that restricted participation:

- the fact that most of the judges were workers with little free time,
- the fact that some judges were discouraged because their names were on the lists sent by the Prosecution, whereas they had not been accused by the population.

But according to our observations, the President of this tribunal automatically transfers the names of persons who are on the list of the Prosecution to the list of accused established by the tribunal without any further consultation.

In fact, it was also verified that among the judges there were around eight out of 19 persons who appeared not to be in the least interested. These judges are nearly all salaried workers (professors, civil servants, etc.) who sometimes refuse to come and who have to be fetched from work or home to make up the panel of judges.

Some farmer judges are also frequently absent. According to the information we have received, four judges were replaced between June and September 2002, but none of them because they had taken part in the genocide. The bad example given by these judges must certainly have influenced the general population's lack of interest in participating.

The lack of participation and possible solutions to remedy this situation concern those in charge of the *Gacaca* and the grassroots authorities. They try to sensitise people – particularly those who already come to the meetings – and to draw up lists of those present for the authorities so they can take the necessary steps.

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<sup>48</sup> A survivor from Umwuga cell – a Hutu widow – who always actively participates in the meetings and who has placed her hopes in the *Gacaca* tribunals of Gahini, said in an interview (PRI internal report on Gahini, June-August 2002, p.46 and 47) : “Sometimes, I speak to people who have lost their loved ones (...). I try to explain to them why the *Gacaca* tribunals are handling cases of genocide and not cases of victims of war. (...). I agree that the fact that cases of victims of war are not introduced in the *Gacaca* tribunals plays a major role in discouraging the participation of the population. But we say (...) that they have every right to complain before the competent courts, as stipulated by the law”.

Solutions such as fines for nonparticipants and the use of force have been used, but they have not always been successful. For example, the councillor of the Gahini sector said that (ASF, 10/09/02: 2):

“The last time, I went to exhort some people who were in the shopping centre of Kabeza to come and they hid. Today I went there again and they did the same thing. In fact, they nearly beat up the ‘local security guard’ who was with me, (...)”.

The results of the meetings of the 7<sup>th</sup> session which started at the end of October 2002 were not much better. The objective was to make individual records of the accused and to categorise them. The aim is that these sessions should allow the panel of judges, with the aid of the population, to bring to light the truth about each of the accused. The participation of witnesses, victims and all those concerned is therefore essential<sup>49</sup>.

Unfortunately, the statistics show that there are not many “interested persons” and it is therefore feared that the truth will not be brought to light, although this is one of the main objectives of the *Gacaca*.

When one speaks to the local authorities and those in charge of the *Gacaca* in this pilot sector and district, it is amazing to see that they often persist in stating that the participation of the population is very good. Yet, in some cells such as Kabeza, it is not:

- Only a small number of people come. At most, a third of the population attends the *Gacaca* meetings’
- formal participation (presence/punctuality) tends to diminish markedly over time;
- real participation (in terms of participation in discussions, confessions or testimonies) of the population (with the exception of survivors and repatriates) is nearly inexistent;
- the truth about what happened during the genocide often seems more difficult to establish than foreseen, and instead of a better dialogue between the various social groups, the tensions and mistrust – at least in the short term – appear to be increasing.

People’s reluctance to learn or discuss how things really stand hinders progress toward a solution to the participation problem.

The results of an opinion survey about the *Gacaca* made by the CNUR<sup>50</sup> show that only a quarter of the Rwandan population (23%) want to become actively involved in the *Gacaca*. Among the survivors, 50% want to participate; among the group of prisoners who have confessed, all of them (100%) want to testify and 80% of the other detainees are also prepared to testify. According to this study, this would make the prisoners the most important direct players in the *Gacaca* if people do not testify in larger numbers.

Reserve and abstention are especially strong in the city of Kigali and in the province of Umutara where only 9% of the population want to become actively involved. This study explains the reserve and abstention of the population of Umutara as a result of this new province having a massive number of new residents and therefore a low proportion of eyewitnesses.

Although this may be the explanation for some other sectors and districts of the province, it does not seem to us to be an important reason for the pilot sector of Gahini.

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<sup>49</sup> Supreme Court, Department of *Gacaca* tribunals: “Explanatory manual on the organic law creating the *Gacaca* tribunals”, CS/DPG, 2001: Chapter 6, p. 81

<sup>50</sup> National Commission of Unity and Reconciliation (CNUR): “Opinion Survey about Participation in the *Gacaca* and National Reconciliation”, CNUR, Rwanda, January 2003, p. 10 and 11

As we saw, Gahini is an example of a sector which already existed before the genocide, where more or less half the population is made up of “former” residents – survivors and other local residents. The other half of the population is made up of “1959 repatriates”, who are mostly new residents. They are the ones who participate most actively, as has been noted by one of our local observers:

In all the cells in Gahini where there are “1959 repatriates”, these attend in large numbers. Their participation can be evaluated at 90%. They are to be found mostly in the cells of Kabeza, Ibiza, Umwiga, Rugarama, Rwankuba and a very few in Mucanzigo and Buyanja. They participate very actively and seem to want to know what happened during the genocide and to get to know their neighbours better, above all to be reassured of their innocence. Among them, some appear to be partial. This is noticeable when they speak out, as in the case of the Protestant pastor in the cell of Ibiza (ref. above).

It is true that the “1959 repatriates” cannot testify in the same way as the group of survivors can, but they are very actively involved during the hearings of the *Gacaca* tribunals.

Thus, it is the rest of the local population (the non-survivors) who abstain. According to the 6<sup>th</sup> Chamber in Gahini, in 2002, only five persons confessed their crimes before the *Gacaca* tribunal<sup>51</sup>. A certain degree of fear and mistrust between the different groups because of the genocide and land conflicts, particularly among the local population and the repatriates, already existed, but this has increased during the *Gacaca* process.

Furthermore, many people among the local population do not trust the government’s intentions and fear that “all Hutus will be imprisoned”. They perceive the *Gacaca* as a “tempest that will carry in its wake every one of the local population who was in Rwanda during the genocide”. The fact that the *Gacaca* tribunals of the pilot sector of Gahini have included 665 persons on the list of accused<sup>52</sup> does not help to ease tensions between this population and the group of survivors and repatriates. The 665 number corresponds to about half of the local male population at the time of the events. The further arrest of 22 persons by the *Gacaca* tribunals has not helped to establish trust and reassure the population enough so that they will testify.

Most of this group does not feel comfortable because nearly everybody at the local level was at least a spectator at the time of the genocide and may not necessarily have helped the Tutsis escape. As a result, many people think that they could be denounced as “accomplices”. They fear the information of the witnesses (particularly the survivors or detainees) or false testimonies<sup>53</sup>.

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<sup>51</sup> DJG Report, February 2003, p. 5

<sup>52</sup> Ref. note 40 p. 21

<sup>53</sup> According to the CNUR survey (p. 13) most of the population – 60% – expects false testimonies, both to charge and to clear people, from both survivors and prisoners.

### III. Case Study: The *Gacaca* tribunal of the Gishamvu cell (Gishamvu, Nyakizu and Butare sectors)

#### A. Local situation

This cell is in the Gishamvu sector, within the district of Nyakizu in the province of Butare, situated in the south of the country. The cell is a rural zone about 20 km from the city of Butare.

The *Gacaca* tribunal of the Gishamvu cell was chosen because it is considered as being the “best” of three cells in the pilot sector of Gishamvu (Gishamvu, Busoro and Muboni). One often hears say that “If all the cells of the Gishamvu sector were like the Gishamvu cell, things would be fine”. The pilot sector of Gishamvu started Phase I in June 2002. The first session took place on 19 June 2002. Meetings are held weekly as a rule.

Currently, the Gishamvu cell has 523 adult inhabitants – 305 women and 218 men. There are three families of “1959 repatriates”, with 13 persons, of whom seven are children, and 17 survivors – nine men and eight women (including little children).

The panel of judges of the *Gacaca* tribunal has eight women and 11 men. There is no survivor or repatriate among them. Apart from a few persons of the coordination committee who have studied for seven years, the majority have only primary school education. Only one person, the 1<sup>st</sup> vice-president of the tribunal, was replaced because he had been included on a list of the accused.

Table of *Gacaca* Tribunal data for the Gishamvu cell in 2002:

1 <sup>st</sup> Session Opening		2 <sup>nd</sup> Session Census of the population just before the Genocide, situation on 6/4/1994		3 <sup>rd</sup> Session List of * persons killed in the cell		4 <sup>th</sup> Session List of* persons killed outside their cell		5 <sup>th</sup> Session List of victims and destroyed property		6 <sup>th</sup> Session List of accused		7 <sup>th</sup> Session Individual record of each of the accused and categorisation		
GA	Panel	GA	Panel	GA	Panel	GA	Panel	GA	Panel	GA	Panel	GA	Panel	
>150	19	192	18	150	16	200	17	227	17	--	--	210	15	
19/06/02 H:11:30		27/06/02 H: 10:23		05/07/02 H:		15/07/02 H:		25/07/02 H: 10:40		06/09/02 sensitisation session		07/11/02 H:11:20	07/11/02 H:11H	
GA = General Assembly (minimum quorum = 100) <sup>54</sup> Panel = 19 Inyangamugayo / judges (minimum quorum = 15) Coordination committee = 5 judges out of 19 (quorum =3)									134	15+	146	19	198	16
During the 2 <sup>nd</sup> session, a census was taken showing that 287 families and 1,416 persons were living in the Gishamvu cell at the time of the genocide.									13/08/02 H:11:00		12/09/02 H:10:00		14/11/02 H:11:00	
During the 3 <sup>rd</sup> and 4 <sup>th</sup> sessions, it was established that 1,130 persons were killed in this cell, of whom 175 were inhabitants. Thirty-four inhabitants of Gishamvu were killed outside their cell. Many people from other sectors were killed in the Gishamvu cell, particularly in the Catholic parish of									--	--	--	--	192	16
									26/09/02 sensitisation session		21/11/02 H:11:00			
									186	15	180	16		
									03/10/02 H:11:00		28/11/02 H:12:00			

<sup>54</sup> Ref. Annexe *Gacaca*

Nyumba, which is in this cell. The killers were mostly inhabitants of Gishamvu and Nyakibanda.	181	15	122	13
	10/10/02 H:10:49		05/12/02 H :--	
The two sessions (with*) were combined and during the 5 <sup>th</sup> session, the population continued to give the names of persons who had been killed, whereas this had been the subject of the preceding sessions.	216	15	166	14-15
	17/10/02 H:		12/12/02 H:12:32	
During the 5 <sup>th</sup> session, 58 claims for damages and interest were recorded.	232	16	106	16
	24/10/02 H:10:20		19/12/02 H:12:30	
During the 6 <sup>th</sup> session, 180 persons were added to the list of accused. Individual dossiers for their categorisation are being constituted. It is estimated that there are 137 persons on remand originating from the Gishamvu cell who are being held in the Gishamvu centre of detention or in the prison of Butare.	242	16	123	18
	31/10/02 H: 10:50		26/12/02 H:12:00	
			130	18
			09/01/03 H:11:40	

It was possible to complete the first five sessions of the *Gacaca* tribunal of the Gishamvu cell in six meetings held between 19 June and 15 August. A quorum was always present, with never fewer than 15 *Inyangamugayo* judges, and a General Assembly averaging 175 persons. Although the meetings usually started a little late, all began between 10 and 11:00 am.

Following the initial successes, the process slowed considerably, and the meetings of the 6<sup>th</sup> and 7<sup>th</sup> sessions continued until the beginning of 2003. The population and the judges did however still participate. There were only two cases of cancellations: on 5 December 2002, because there were only 13 judges, and on 12 December 2002, the meeting was only able to start when the minimum number of 15 judges was reached. The meetings also had the tendency to start later and later. However, even during the meetings of the 7<sup>th</sup> session, the General Assembly was always complete, with an average of 160 persons, although this was no longer required by the *Gacaca* department of the 6<sup>th</sup> Chamber.

The Gishamvu cell is characterised by the fact that since the *Gacaca* started, there have always been people present who remained calm. But these positive figures can be deceptive, as we will see, as they hide the fact that the real participation of the population was somewhat less<sup>55</sup> for several reasons.

## **B. The panel and participation of judges**

### *The President*

The President, the Hutu wife of a Tutsi, is very dynamic, but she is the only one who is really active. She appears to know the *Gacaca* law and procedures well. It is she who starts the meetings and who talks throughout the session. She also presides over the meetings, controlling all the judges' movements and that of the General Assembly, etc.

Nevertheless, from time to time, her authority is not so well received; this may sometimes prevent the spontaneous participation of the population.

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<sup>55</sup> Ref. Annexe *Gacaca*

For instance, during the meeting of 28 November 2002:

A woman non-survivor started to speak without asking for permission to do so (which is against the regulations) to ask why the President had requested information about a man called H, who was her husband and was in prison:

- “Why does the President insist on H? Does she know something about him, or are there other problems with him?”
- The President: “I have not given you permission to speak.”
- Woman: “I have the right to speak.”
- The President: “If you had at least requested permission to speak, but you didn’t do so. It is I who am presiding, so shut up!”
- Woman: “I don’t need that kind of remark!”

After that, the President decided to close the meeting and everybody went home without knowing what was happening.

A group of women who were accompanying the lady who had spoken to the President said: “That woman (the President) only said that because she married a Tutsi; if she were like us who have husbands in prison, she would not have said all that”.

#### *The secretary*

The secretary of the coordinating committee appears to work well, but now and then she has difficulty in recording the testimonies, in particular when the witnesses speak too fast. This is evident when she reads out loud what has been said; many transcription errors are found.

#### *Participation of the other judges*

Our observer is worried about the participation of the other judges who seem to be totally passive: “They sit in their places from beginning to end of the meeting without saying a word”. Even if the main actor is the president of the tribunal, the other judges should be more active.

### **C. Participation of the population**

The adult population of this cell currently numbers around 500 persons. Between one-third and half of them attended the sessions (175 people on average). The majority of the population of the cell was therefore absent. This is a cause for concern for those in charge.

Most of the persons present were women. In general, there were three times more women than men<sup>56</sup>. This cannot very well be interpreted as a sign of emancipation because they did not really participate. Men and women sit separately according to custom.

At the outset of the *Gacaca* sessions, the survivors and non-survivors used to mix, but since the meetings of the 6<sup>th</sup> and 7<sup>th</sup> sessions, their segregation is more and more noticeable, especially before and after the meetings. The moment accusations are made, tensions arise between the two groups.

Young adults and intellectuals in the cell rarely take part in the *Gacaca* sessions. There are no more than five or six of them at each session. Most of the participants are therefore the elderly.

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<sup>56</sup> Even though there are more women than men in this community (three women for every two men: the victims of genocide were mainly men and there are many men in prison), the men’s participation is very small.

As everywhere else, the survivors are the most active among the population present. It is usually they who testify. Some survivors weep when they do so. Others are reluctant to accuse anybody for fear of being threatened afterwards.

Apart from the survivors, including the Hutu women who had Tutsi husbands, people say very little. Neither the non-survivors in general, nor the families of the prisoners dare to say a word except when provoked by an accusation. When this happens, they usually deny the accusations. Even when the non-survivors do denounce someone, they usually mention the names of those who have already been denounced and imprisoned or those who have died or are in exile. When they speak, they are mostly superficial and do not go into detail to clarify their answers. However, the specificity of answers also depends of course on the capacity of the judges, and particularly of the President who presides the sessions.

Thus, in spite of the fact that the Gishamvu tribunal functions correctly, the *Gacaca* also encounter difficulties in operating smoothly here.

## **The search for truth and its complexities**

### *Difficulty of confessions*

A rather typical case, the 7<sup>th</sup> session of the Gishamvu cell on 26 December 2002, shows how difficult it is to discover the truth about what happened in 1994:

Espérance, a Hutu woman who had a Tutsi husband, denounced many non-survivors who were free. Among others, she accused:

- Boniface of having killed Tutsis in Nyumba (the parish)<sup>57</sup>,
- Primitive of having killed Lambert,
- Agnès A because her two sons were responsible for killing Kayitesi and her baby. She had heard them say “We have just killed Kayitesi and the child she carried on her back”,
- Espérance also accused Emma of having taken part in the genocide.

All those who were called said they hadn't done anything:

- Boniface said that it was a lie and that he had never been to Nyumba.
- Primitive said that it was not she who killed, but rather Vianney because he was dressed in the shirt that Lambert was using before: “you should ask Vianney how Lambert was killed and by whom”. Vianney was imprisoned in 1998 but has since been released after being acquitted. When he was called to explain what Espérance and Primitive had said, he stood up trembling and said “Both women are not telling the truth. My wife had recently given birth and we had not gone out with the child for some days; I couldn't go anywhere”.
- Agnès A was angry, saying that everything Espérance said was false: “She is deceiving you”, to which Espérance replied “I never said that I saw Agnès but only her two sons who were talking of what they had done”. To which Agnès replied “It's your business if you give false testimony, it has nothing to do with me, but don't ever speak to me again!”
- Emma “In 1994, I had a baby that prevented me from going anywhere. What has been said about me during the genocide is a lie; I was at home with my neighbours. I would like you to ask them what my behaviour was during the genocide. If somebody says that I

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<sup>57</sup> Many people (district inhabitants and refugees from other places) were killed in the church of Nyumba and within the great Seminary of Nyakibanda where they thought they were safe, protected by the priests.

killed, I will accept it, but I cannot accept Espérance's testimony. She was in the association of survivors who denounced people who hadn't done anything by force."

From this case, it can be inferred that none of the persons mentioned, who are currently free, seems to be willing to confess<sup>58</sup> or ask for pardon voluntarily, without first being denounced. If someone confesses, it is only to having looted, but never to having killed.

This is illustrated by the following case, during the session of 28 November 2002, in Gishamvu: Innocent accused B, who was free, of having killed his father:

B.: "What he is saying is a lie. I never killed anybody. I swear in the name of God Almighty, but if anybody else accuses me, I shall agree". However, B. accepted that he had stolen some sheep. "I took Innocent's sheep", adding that he had already returned them.

"If someone among the local population testifies, it is often to clear the accused or reduce the importance of his crime", sighed one of the authorities.

As a result of this type of confrontation, those who are denounced, as well as the local population, are angry and afraid. They believe that the survivors want those who are denounced to go to prison to stop terrorising them. These are added to the list, however they are not arrested unless they create trouble within the community or risk fleeing.

#### *Fear of the witnesses*

One inhabitant, A., said "We are afraid of telling the truth because those who tell it are imprisoned", and he gave the example of a certain T. who was in prison because he allegedly terrorised people in a bar.

On their side, the survivors fear that the people who have been denounced will harm them. For instance, Constance, a survivor, told us that she can no longer sleep because she fears the people she has denounced.

The name of Emmanuel Bizimungu was on the Prosecution's lists, but nobody knew anybody with that name. The president asked Emmanuel B. if it was he, that there may have been a mistake (...), but Emmanuel denied it categorically. Finally, the President asked the witness Constance, who stated that he was one and the same person, but she added that "maybe it is a typing mistake", which made everybody laugh. She testified, however, before the meeting of 9 January 2003, that it was Emmanuel B. who had killed her family.

- Emmanuel B. replied that everything that Constance said was a lie, that he had never taken part in the attacks which she mentioned, and that all the population present at the hearing were there during the genocide. "If someone else accuses me, I shall accept it, but I shall not accept what Constance is saying".
- The president then said "Has there been a clash between you and Constance?"
- Emmanuel: "No, but she is simply telling lies."
- President: "Constance, have you any other testimony to add about Emmanuel?"
- Constance: "No, but I am worried because when I was going back to my place, after having signed my testimony, I passed in front of him and he took off his hat, scratched his head and ground his teeth, saying "that old woman is telling lies about me; we shall meet again".
- Emmanuel: "She is deceiving you".

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<sup>58</sup> This is confirmed by the 6<sup>th</sup> Chamber (Report February 2003 : 5), which ascertained that in the whole pilot sector not a single crime had been confessed to in 2002 before the *Gacaca* tribunal.

Since that day, Constance has been very afraid. She feels insecure and is traumatised. She never wants to testify again.

During these sessions, the survivors and non-survivors no longer mix as they did to begin with, but remain separate. It is usually the survivors who separate from the non-survivors. When a survivor gets up to testify, the non-survivors look at him with suspicion.

### **Suspicion, rumours and ethnicity:**

#### *Association of survivors?*

In this context of suspicion, insecurity, fear, frustration and lack of information, there are rumours circulating again about an association of survivors which denounces nearly all the Hutus without taking into account what they really did during the genocide.

This rumour became more widespread after Vénérande, a survivor, told her story about a person formerly in charge of the Gishamvu cell (Jean Baptiste, a survivor who died in 1998) who had forced her, even beaten her, to make her denounce certain persons. Since that event, Vénérande and another woman, M., have recanted their accusations. Vénérande had accused Boniface (ref. above) and another man, Gabriel (ref. below) of having taken part in the killings in 1994. Now she says she did not see the people who killed.

#### *Corruption?*

Some people think that there is a problem of corruption, as Gabriel, a Hutu, and Vénérande, a survivor, appear to have become close friends, while they never got on together before. Others believe that Vénérande was effectively forced to testify as she said before.

During the *Gacaca* session of 12 December 2002 in Gishamvu, Gabriel (who is free) explained why, in his opinion, he is on the list of accused of the Prosecution:

- “I was never in the company of the genocide killers, but I can explain why we have been included in the list of the accused. After we came back from exile (they left when the FPR had just won in July 1994), the authorities in power mistreated us. M (a survivor who was a soldier in 1995) and Jean Baptiste (the former head of cell mentioned above) told us to go to the Prosecution, but it was a trick to kill us. We went to the village all together. When we arrived at the military camp of Nyumba, a soldier called JP asked where he was taking us, to which he replied “These men are the ones who helped us these last few days, let them go home”. M. told us, “This is not the end of the affair. We will create an association of survivors, we will enter your names and we will look for people who will accuse you”. That is the reason (...); it is this association that has put our names on the list.”
- President: “You had responsibilities in 1995. When you were taken away to be killed, as you said, did you tell anybody?”
- Gabriel: “The person in charge was Jean Baptiste and it was he who led us. We told the councillor, who is still the same person nowadays by the way, but he did not react.”
- Councillor: “I heard about it, but those involved said nothing to me”. (The whole population then shouted loudly saying that the councillor was lying.)
- President: “After Jean Baptiste had done these strange things, did the councillor try to put you at rest? “
- N (non-survivor): “In 1995, even if a Hutu was a soldier, he could not say anything. Even a Tutsi child could spit in your eyes and you couldn’t do anything.”

- Councillor: “All those who stand accused today, including Gabriel, could you tell us who the members of this association were in 1995, to avoid that all those who will be accused hereafter are confronted with the same problem?”

Gabriel gave a few names, such as Constance, Espérance and Jean-Baptiste (ex-leader of the cell) whom we are already acquainted with (above), and a few others, but did not mention the name of Vénérande.

#### *Poisoning of survivors?*

There is another rumour that there is an association of Hutus, assisted by the same survivor, Vénérande, whose aim is to poison all the survivors to stop them from denouncing the killers.

This issue was already discussed during the meeting of 7 December 2002, in which the councillor of the Gishamvu sector met with the inhabitants. He asked everybody to tell the truth about Vénérande’s witchcraft. Her neighbour Annonciate, also a survivor, accused Vénérande of having poisoned the servant and her cousin<sup>59</sup>. The latter is already dead and, according to this neighbour, Vénérande allegedly said “all my children must die”. Vénérande was asked to explain and said: “It’s a lie. I don’t know what’s happening between Annonciate and me; she hates me and has done so for a long time”. But everybody (apart from those who are suspected and who are helping Vénérande) says the same as Annonciate.

The councillor invited the others to participate. People spoke and it appeared that there might be trouble. Fortunately, there was a policeman who said “I have heard all you said, but it is totally false. You cannot prove to us in what way Vénérande has practised witchcraft. Just say that you hate her”. The councillor ended the meeting saying that Vénérande would be followed closely.

According to Vénérande, she does not feel safe for the time being: “wherever I go, everybody says that I poisoned Annonciate’s cousin, but it’s a lie. I also have a problem, as nobody wants to buy my milk or beans. Everybody is afraid of me. I have not poisoned anybody and the group that I allegedly belong to does not exist in Gishamvu.”

From the data that we have collected throughout the country, we have found that even in December 2002, more than six months after the beginning of the *Gacaca* tribunals, some people say that they do not really understand the usefulness and the functioning of the *Gacaca*. Some families linked to the prisoners say that the *Gacaca* is a procedure invented by the survivors so that the Hutus should reveal their secrets, in order to be killed thereafter. On the other hand, some survivors frequently believe that the aim of the *Gacaca* is to free those accused of genocide. This shows that mistrust between members of these two groups is still very great and appears to be reactivated by the confrontations that take place during the *Gacaca* sessions.

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<sup>59</sup> At the time, there was an epidemic of meningitis in Rwanda and particularly in the provinces of Butare, Kibungo, Umutara and Kibuye with hundreds of confirmed cases and around 80 deaths in September 2002 (IRIN dispatch of 11/09/2002).

## **D. Participation of the authorities**

### *Participation of the authorities in the sessions*

People often complain that the local authorities do not attend the *Gacaca* sessions, or only rarely do so. However, we noticed that the councillor of the pilot sector of Gishamvu is often present, as are those in charge of the 6<sup>th</sup> Chamber.

### *Gacaca Observers*

The local authorities appear to consider the observers (Lawyers Without Borders, Liprodhor, Human Rights Watch, etc.) to be troublemakers. During certain periods, at the beginning of August 2002, they forbade any contact between the population and the observers under pain of sanction. The situation reached a point where if anyone was approached by an observer they would nearly flee<sup>60</sup>. PRI was less affected by this measure because the organisation not only has an authorisation from the 6<sup>th</sup> Chamber to observe the *Gacaca* tribunals, but also permission from the Ministry of the Local Administration to carry out its research within the communities.

### *Arrests for perjury*

In Gishamvu, the authorities have never arrested people for perjury or refusal to testify, as has occurred elsewhere, nor have they detained persons who were still free but have been accused by the *Gacaca* tribunals of crimes of genocide.

### *Gacaca Coordinator*

While as a rule the *Gacaca* tribunals are independent, the *Gacaca* meetings in Gishamvu sector cannot start without the presence of the coordinator of the *Gacaca* tribunals. From time to time, she is late. On 17 October 2002, for example, the General Assembly and the judges were present, but the coordinator arrived 30 minutes later. As soon as she arrived, the President gathered together the people.

Although it is a good sign that this official of the 6<sup>th</sup> Chamber of Butare province is interested in the activities of the *Gacaca* tribunals, it seems unusual that she should wield such influence on the functioning of this tribunal.

## **Use of force, sanctions**

The session of 24 October 2002, like that of 17 October, started with a census of the population living in the Gishamvu cell. According to those in charge, the population of the Gishamvu sector always arrive late or hardly come at all (as in the other cell of the same sector, Busoro). The authorities announced to the population that if anyone was absent without a valid reason he or she would be punished. This proposal is in accordance with the practice of sanctions applied to those who do not take part in the *Umuganda*.

The *Umuganda* is mandatory community work of all sorts, i.e., cutting grass, building bridges or helping poor people build their houses or tend their fields. This work is organised at all administrative levels, from the cell up to the national level. The announcement of the day of *Umuganda* is made by an appointed person who must rise very early, beat a drum and cry out “Tomorrow, there is *Umuganda*” indicating the place of work. The day of *Umuganda* in the Gishamvu cell is always a Saturday. Any person absent on that day without a valid reason is punished by a fine or is recalled to redo the same work as the others.

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<sup>60</sup> ASF, Observation Report Gishamvu, 19/09/2002, p. 5

In order to encourage people to take part more actively in the *Gacaca* tribunals, on 26 September 2002, a special meeting was called gathering together all the inhabitants of the Gishamvu sector. Testimony of an inhabitant of the centre of Gishamvu:

“The meeting was set to start at 09:00 am but began at 11:00 am after the intervention of the district police force. I saw the Local Defence chasing the inhabitants. There were many people. They were inhabitants of the Gishamvu Sector.”

As we noted in a former report, in the case of the *Gacaca* tribunals, the use of force does not seem to be a good solution. Furthermore, according to those in charge of the 6<sup>th</sup> Chamber, this Department is also against the use of coercion with the population. However, they requested the local authorities to do all they could to make the *Gacaca* work.

### **E. Pre-Gacaca**

An example of good practice which appears to be very effective is the organisation of pre-*Gacaca* sessions. We shall therefore end with the example of a pre-*Gacaca* session in Butare province, the Cyahinda session on 3 November 2002:

Within the pre-*Gacaca* context, the Prosecution Service of the Nyabisindu Court of Appeal organised presentations of prisoners whose records were empty, so that before the people who knew them, they could be released provisionally prior to the *Gacaca* trial. This would however only occur if the population had no more to say on the matter.

A group of prisoners who had confessed, called “Inoge stars” or “The truth group” (Les affinis stars) were the first cases seen over those days, singing for unity and reconciliation, confessions and the promise never to start again.

A Prosecution official, Richard, introduced the session, saying “We are here for the fourth time in order to continue the activities that were started on 17 October of last year, but were suspended. They involve setting up records for the prisoners. We shall let everybody speak to charge or clear those we will present to you”.

The Prosecutor General at the Court of Appeal of Nyabisindu (Jean-Marie, ref. PRI Report No. I) said: “We have brought very few prisoners, but this will not deter us from expecting to hear the truth about the disappeared. We have drawn up a list that addresses your concerns with information concerning the circumstances in which your loved ones died. The head of the detainees of the Nyakizu centre of detention will also give me a list that they have drawn up in this respect and I believe that little by little we will find the truth that we are searching for.”

He then started to reply to those who had asked for information about their family members.

Concerns:

The representative of Ibuka, from Nyakizu district, expressed his concern about this procedure to set up records for the prisoners and his hope to discover the truth and sufficient information about the genocide.

He said “After the end of the war, the people (the criminals) spread out everywhere, but ended

up returning. However, it was noted that the arrests were chaotic. The government, which is always mindful of the situation, wanted to solve the overcrowding of prisons and sent a committee to all the prisons and centres of detention to find and free those without records. This was done here and 80 persons were released. Those who remained did so because they were sure they had records or at least reasons for being detained. However, we were surprised later to find that some detainees were released, so to speak, because they did not have records.”

Furthermore, when we look at the prisoners who did confess, we see that they are only teachers, small-time farmers and persons without any money. Yet we know that they did not plan the genocide. The planners categorically deny their part in the genocide. Thus, we question if the missing records have not been diverted to benefit the planners who take advantage of the confessions of others to get hold of a “lighter” record.

In reply, Jean-Marie, the Prosecutor, invoking professional secrecy said that he could not reveal how offences were investigated, but he assured him that nobody would be allowed to escape. He also mentioned the possibility of there being a few faults, as erring is human.

“It can be said that a record is really empty if, for example, it contains only one accusation for 1994. The survivors habitually deride the confessions of the prisoners. Do not be deceived. People are not so stupid that they will invent lies when they know what the consequences would be if the truth were discovered.

“Why do you spend your time worrying about mistakes as if we were against you? Up till now, our investigations have found that out of the 486 detainees in Nyakizu detention centre, 300 had no records and only 27 records remain empty. It is these records that we will present to you so that you may help us to fill them in. If this is not possible, we shall release the detainees provisionally, because the law is clear that there is no reason to keep them in prison. We are not speaking of feelings, but of concrete facts.”

A man who was released two years ago came to testify. For him too, this way of acquitting people (that is the term he used) is no good because people lie and the others are frustrated. This man was imprisoned for six years, accused of genocide.

For an example of how confessions are valued, he asked why, up till then, nobody among those in his cell who had confessed had mentioned the death of his mother. Yet she had been killed in broad daylight.

#### Presentation of the prisoners:

An old blind man: The Prosecutor handed over his decisional powers to the judgement of the population of Gishamvu in the affair of a 76-year-old man, detained in Nyakizu detention centre. He became blind two years ago. He has just completed four years in this prison.

Recounting his criminal history, the old man told how he had been forced by family members to kill his own wife. Some of the people who had forced him were there and spoke out. They admitted some of the facts, but only one of the four persons who spoke admitted everything the old man said. This dying man was the first to be provisionally released that day.

The Prosecutor was categorical with regard to the release of sick people or those who present no danger to the security of society:

“If you see that a plague is spreading in a prison and you find that 1,000 detainees are infected, are you going to release them only because they are ill?” a survivor asked.

“Yes, for as long as the State does not have the means to take care of them, we shall release them and will decide later on what is to be done. We cannot let them die, because we would be responsible and besides, you can see that the international community is watching, we now even have foreigners in our sessions, and we must respect Human Rights.”

Then eight prisoners were presented, of whom five were released.

Mur. was arrested, being accused of having killed seven persons. Nobody accused him; six even testified in his favour. He was provisionally released.

Mun. was arrested, accused of having assassinated children. Nobody accused him; nobody charged him. Some charges were dismissed and four prisoners also cleared him. He was provisionally released.

K was retained, as some people confirmed the accusations against him.

Muh was cleared by three people in respect to participation in the assassinations of which he was accused. He was provisionally released.

Pastor M was accused of having taken part in the attacks, of bearing a gun and of having used drums and whistles to gather together the killers who then proceeded with the massacres. Three people testified in his favour. He was provisionally released. He was the first person who showed his joy at being free, even though provisionally. He jumped for joy, trembled, thanked heaven, Earth and everybody and went to fill in his record before the deputy Public Prosecutor. His wife came to greet him, hugging him tight.

N was accused of having killed three persons. He was charged by four women, but six others cleared him, although only two were able to speak. M. Richard interrupted their testimonies, because tensions were mounting. The two sides were confronting each other and entering into conflict, exchanging remarks such as “what they are doing will be dangerous for them, they are no more than associations of informers ...” Behind us, the population decried such behaviour, approving of either one side or the other. The detainee was sent back to prison.

M. was cleared by five persons. He was provisionally released.

H. was accused of having conspired in the death of three persons. There were some exchanges of witnesses in favour and against him. The accused settled the dispute by giving a more exact version of the events, showing why these discrepancies existed. Everybody applauded, recognising the truth of what he was saying, but the Prosecution officials gave him another week in order to clarify everything. Once more, behind us people showed their displeasure. They said that since he had revealed the truth, why make him waste more time in prison?

Out of nine prisoners who were presented, six were thus released.

The population had come hoping that they would know some of the prisoners who were to be presented. They were ready to testify for or against if this had been necessary. They did not tire of waiting in spite of the hours spent under the sun, or even the rain that followed.

A group of survivors had taken up position on the same bench, and came one after the other to testify. A survivor amazed everybody when he testified in favour of a prisoner. He said he regretted having returned a little late from his refuge, otherwise he would have preferred going to prison in place of the prisoner.

This kind of presentation always attracts a lot of people. These presentations have an important function, in that they sensitise the population in general and lend hope that justice will be done. Some survivors remain very sceptical about this method that clears the “guilty”, although their questions and concerns are also treated seriously.

### Visits of prisoners who had confessed, 24 October 2002

When the lists of accused were being drawn up, the prisoners who had already confessed were invited from time to time to the *Gacaca* sessions. That day, the meeting started at 10:00 am in the presence of many people interested in hearing the declarations of some prisoners who were originally from that cell. However, the prisoners did not arrive until 11:55 am.

Sometimes, these meetings are very difficult and traumatic. However, they provide new insight for the families into what happened to the victims who disappeared, although the public, in particular the survivors, does not as a rule consider these confessions to be complete.

The President<sup>61</sup> welcomed the prisoners and the first detainee who told his story with a few benevolent words. He was called Emile, but a survivor, Emmanuel, first started to speak:

#### *The case of Emmanuel and Emile*

- Emmanuel: Emile, do you know me?
- Emile: No, I do not know you
- Emmanuel: You do not know me, but I know you. You shot at me in 1994 in Nyumba (the parish) and your bullet killed my son.
- Emmanuel cried and returned to his place. Nobody consoled him.

Emile, a former policeman at the time of the genocide, started to tell his story:

“I was in the village; it was 4:00 pm. ... Somebody came to me and said “Do you not know what has happened? Sindikubwabo (ex-President of the deposed government) has arrived at the office of the sub-prefect with some soldiers.” On arriving at the Sub-Prefecture I found him surrounded by soldiers. Kambanda (the ex-mayor) asked me where the police on look-out duty were. He then said that ‘the work’ (the genocide) had begun. ...

“On Monday, they gave me fifteen bullets and I killed Rusanganmwa by shooting him. On Tuesday, there were several deaths, but I don’t remember their names, whether they were Masabo, Gakire and Rurinda. On Wednesday, I did not find out who was killed, but it was Cyuma, Sudi, Aphrodis, and Musongati who killed everywhere.”

All those he named as having participated in the massacres are either dead, in prison or in exile. When Emile said that he did not intend to kill and that he had not been incited to do so, nobody seemed to believe him:

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<sup>61</sup> The President was absent and it was the first Vice-President who presided at the meeting.

- Innocent, a survivor: “You told us you had 15 bullets on the first day and that you only killed one person. What did you do with the remaining bullets?”
- Francine, a survivor: “You told us that you only killed one person on the first day, but you have not named all those you killed. I was there myself at the place of the killings in Nyumba. There were for instance Gratien, Charles, and Emmanuel, whom you have not mentioned.”

#### *The case of Simon*

Another detainee, Simon, known to be a prolific killer, confessed: “I killed two girls and I threw them into the pit at M’s house (a well-known and rich Tutsi). They were with Tabaro who I also killed. That was on the first day. On the second day I killed Josepha.”

“How did you do it?”

Simon: “I went to Nyumba every day to kill. I only rested at the end of the persecution.”

“Who was with you?”

Simon: “Pierre, Grégoire, Gervais, Kankindi, Nyirabukara (now in prison), and Mukasine (now in prison), but the women did not kill. The councillor requested only that they should come to the gate.”

He gave some details about the death of Tabaro because nobody knew how Tabaro had been killed until that day. Vénérande (the same survivor as mentioned earlier), who was Tabaro’s sister, got up and started to weep when Simon spoke of the death of her brother.

Simon also confessed that together with M, he killed Théophile and Séraphine. He added that it was Joséphine (who was free and present at the meeting) who had shown him where these two persons were.

Joséphine said that Simon was not telling the truth: “I was at the end of my pregnancy, I could hardly move, and besides Séraphine was one of ours, so I couldn’t betray her. Also, I had just lost my husband and two of my children, so my state of mind was not normal. My neighbours will be able to say something about it.”

- Emeryth: “Simon has lied. On the contrary, she took food to those who were hidden in the sorghum.”
- Véronique: “In view of the misfortune that had just befallen Joséphine, and given her weak state, she could not have harboured someone in her house or conspired against them either.”

#### **IV. Case Study: The *Gacaca* tribunal of the Gabiro and Rukaragata cells (Murama, Kayove, and Gisenyi sectors)**

##### **A. Local situation**

This sector, in Kayove district, which is part of Gisenyi province, is located in the West of Rwanda, at the edge of Lake Kivu. It is made up of six cells.

Our research is particularly concerned with the two cells of Gabiro and Rukaragata. These cells are in fact among the first ones to have finished the 6<sup>th</sup> and 7<sup>th</sup> sessions of the *Gacaca*, the sessions that established the lists of accused and prepared individual records of them for their categorisation.

Murama is a landlocked sector, which is rather underdeveloped. Few people there have finished primary schooling and the population lives mainly off farming and cattle-raising. Food is grown there, such as bananas, especially for banana beer, soy, beans, sorghum, potatoes, etc., as well as coffee. Although the population is rather poor, there is enough to eat for everyone.

Before the genocide, the three Rwandan ethnic groups were present in the sector: Hutu, Tutsi and a few Twa. According to our information, there were many “mixed” marriages between these different groups.

Table 1: Data collected by the *Gacaca* tribunals in the six cells of Murama sector

Name of the <i>Gacaca</i> tribunal and cell	Census of the population just before the genocide, situation on 6/4/1994	Persons killed within or outside the cell			Number of victims claiming damages	Number of accused  Categories 1 and 2 : number in brackets
		Inside	Outside	Total		
Rukaragata	503	106	124	230	39	95 (85)
Gabiro	634	59	69	128	33	73 (66)
Other cells (4)	2,543	392	283	675	130	257
Total 780 families	3,680	557	476	1,033	202	424

From the data collected by the *Gacaca* tribunals in the Murama sector, it has been established that before the genocide, this sector had around 3,680 persons, of whom 1,033 were killed. It is clear that the genocide wreaked havoc here: 28% of the population of this sector was exterminated or, according to our calculation, 84% of the Tutsi population who lived here at the time of these events.

The harassment of Tutsis in Murama started at the moment the FPR launched its attack from Uganda, on the 1<sup>st</sup> of October 1990. The Tutsis were obliged to hand over enormous sums of money (*umusingiro*) to be allowed to continue living among the Hutus. This payment was justified as compensation because their sons, the Tutsi children, were members of the FPR and had invaded Rwanda.

Sometimes, Tutsi homes were burned down or destroyed to “make them listen”, as they said. Anybody who did not pay up would have to ask for credit or seek out a Hutu friend to protect him in case of an attack.

When a Tutsi sold a goat or a cow, he was obliged to give part of the proceeds to the *Interahamwe* militia and the young people of the MRND and CDR political parties proportionate to the value

of the sale. The same applied if he sold any beer. Anybody who did not pay would be beaten or the *Interahamwe* would rape his wife.

In 1993, the wife of G, from the Rukaragata cell, was killed. She was cut up into so many pieces that it was necessary to use shovels to collect the body bits when she was buried. In the same year, young people destroyed many houses belonging to Tutsis.

After the attack on Habyarimana's airplane, the *Interahamwe* from other neighbouring sectors started to attack the Tutsis of Murama. Initially, many Hutus and Tutsis tried to defend themselves together against these attacks. But, after two or three days, they were forced to abandon this resistance (ref. below).

On 26 April 1994, the burgomaster of Kayove, Isidore Maburakindi, organised a meeting for the local authorities in his community during which he gave the order to kill all the Tutsis. On 27 April, the head of the Rukaragata cell gathered together the population and transmitted the orders he had received the day before. That same night, 14 people were executed by 18 inhabitants of this cell. These people were thrown into Lake Kivu. Young people started to attack and kill all the Tutsi cattle breeders (called Hima). There were no survivors. The hills in which they lived have become pastures. To this day, the story is told of the cruel death of Athanase, who was cut up bit by bit, at intervals between each torture: left foot, then right foot, left leg, then right leg, forearms, arms, until his penis was cut off and stuffed into his mouth while he was still alive, leaving him to die on the spot.

The materials used to "sweep away" all the Tutsis were swords, machetes, cudgels and worn out hoes. People were thrown down latrines and into Lake Kivu, with their feet tied, while still alive ... Babies' heads were crushed against walls. There were women who were killed by thrusting sharpened bamboo sticks into their vaginas up to their hearts. They screamed horribly before dying. Some were pierced through the stomach with lances and left to die. For example, an old lady of 74 had all her thigh muscles cut through and was left like that for more than a week before she died, while her flesh had already started to decompose, and she was covered with flies and ants.

Three men of Gabiro – all sons of the same father, but with different mothers – told how they killed their own mothers who were Tutsis. One of them not only killed his mother, but also his Tutsi wife and their child.

This kind of story makes it difficult to believe that Hutus and Tutsis lived together in harmony before the genocide<sup>62</sup>. One could question whether this is not a myth and whether behind this appearance of solidarity and harmony there did not already exist a profound and mutual incomprehension and mistrust between the two groups. Of course this was strongly maintained by the regime at the time, but must already have been present and felt by the population. The argument of existing mixed marriages is not convincing as they can be explained in part by other motives such as the search for "protection" and/or "social mobility". What is more, the fact that

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<sup>62</sup> Even if this were true, it is no longer so nowadays. This is consistent with the analysis of Newbury & Baldwin (2001: 113) "An important consequence of the war and the genocide is that ethnicity has become more important in Rwanda, in spite of the announced intentions of the government to abolish ethnic distinctions. Few Rwandans speak openly of ethnicity (at least to foreigners). In the current Rwandan political context, the (presumed) ethnic past is important, where a person has lived in Rwanda and where this person came from if he or she was in exile and returned to the country after the genocide." Newbury, Catharine & Baldwin, Hannah: "Confronting the Aftermath of Conflict: Women's Organisations in Postgenocide Rwanda" in Kumar, Krishna, ed. *Women & Civil War*; Lynne Rienner Publishers, Boulder/London, 2001 pages 97 to 128

some men killed their own wives and sometimes even their own mothers or children shows that the links of marriage and family could become less important than fear and/or ethnic affiliation.

## **B. Complexity of the genocide**

The complexity of the genocide and the difficulty of speaking of it in a Manichean way are illustrated by the following case:

Old Musagara, who is the only survivor elected as a judge in the *Gacaca* tribunal of Gabiro, accused S of having exterminated all his family and of having thrown five of them into Lake Kivu. He had 12 children and all were assassinated, as well as his wife. He was saved by Vuguziga, a notorious killer, who confessed to killing many people together with his companions. Yet Vuguziga saved this old man and took him to the house of Augustin Usabyemungo (ref. below).

In parallel with these appalling stories there were also, as in many similar dramatic situations, “miracle” stories. For example, in Rukaragata, Claudine, who was then a little girl of around four years of age, was saved by a large fierce dog who protected her against the assassins and who remained by her side over a period of 27 days. The dog brought her ripe avocados, bones and fresh meat and stayed by her side in a banana plantation. There was a stream in this plantation so the little girl could drink water, accompanied by the dog. Today, this child is in the third year of primary school.

In the Gabiro cell, there were few Tutsis compared to Rukaragata. Many inhabitants of this cell tried first of all to protect them, aided by some of the authorities of the sector and the shopkeeper Augustin Usabyemungo, who paid off the *Interabamwe* with his own money in order to save Tutsis. Finally, the local council authorities also arrived to give the order to kill Tutsis. For example, on 27 April 1994, the President of the MNRD of the Murama sector, Assiel Kanyabashi, held a meeting similar to the one which was held in Rukaragata, with the agenda “Sensitisation of the Hutus to the extermination of the Tutsis”. That same night, 28 persons were assassinated and thrown into Lake Kivu. The massacres were well planned and it became difficult to flee or hide. This is why only four survivors were saved, two by Augustin, who locked them up in his own house and fed them until the end of the genocide.

According to the survivors and other persons who were interviewed, those who killed the Tutsis were mostly young adults. It was also they who went out in groups, stealing, looting and destroying, followed by other members of the population who took advantage of the situation for their own material benefit: they destroyed and plundered the Tutsi homes, ate their cattle and divided up everything they could lay their hands on.

The systematic destruction of all the property of the group of victims most certainly played a role in the genocidal policy of the old government<sup>63</sup> which aimed not only to physically exterminate all the Tutsis, but also to wipe out every reminder of them (including houses and other property), while at the same time encouraging and compensating the genocidal actors.

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<sup>63</sup> While admitting this, it is also deplorable that the people who only took advantage of the situation to plunder, classified under category four for offences against property, should be considered as having committed “crimes of genocide”.

From the data collected by the *Gacaca*<sup>64</sup> tribunals of the Gabiro and Rukaragata cells (ref. tables 1 and 2), it would be fair to question whether the genocide killers were only a group of young people and adults.

Table 2 : Lists of the accused drawn up by the *Gacaca* tribunals of Gabiro (Gab) and Rukaragata (Ruk)

Accused by cell	Detained	Free	Deceased	In exile	Total	Accused by Category			
						1	2	3	4
Accused from cells or sectors adjacent to Gab	10	11	9	6	36				
Accused from Gab	18	12	6	1	37				
Sub-total Gabiro	28	23	15	7	73	3	63	3	4
Accused from cells or sectors adjacent to Ruk	20	22	15	1	58				
Accused from Ruk	10	20	5	2	37				
Sub-total Rukaragata	30	42	20	3	95	4	81	7	3
<b>Total Gab and Ruk</b>	<b>58</b>	<b>65</b>	<b>35</b>	<b>10</b>	<b>168</b>	<b>7</b>	<b>144</b>	<b>10</b>	<b>7</b>
<b>% (N=168)</b>	<b>34</b>	<b>39</b>	<b>21</b>	<b>6</b>	<b>100%</b>	<b>4</b>	<b>86</b>	<b>6</b>	<b>4</b>
<b>Women and minors Accused (N=7)</b>	1 woman 3 minors	3 wom. -	- -	- -	<b>4 wo</b> <b>3 min</b>	- ?min	3 wo ?min	1 wo -	- -

Assuming that the victims were nearly all Tutsis from the sector concerned, and that they were killed by the accused who lived in the same village<sup>65</sup>, and also assuming that those who claimed damages were all survivors coming from the same zone, 202, it can be estimated that there were around 1,235 Tutsis in Murama and 2,445 Hutus in this cell (ref. table 1 on p. 46).

If the “potential genocide killers” belonged mainly to the group of adult non-Tutsi men<sup>66</sup> and if it is assumed as a practical rule that this adult male population represents more or less one quarter of the total Hutu population, the figure could be around 611 men.

The number of accused recorded by the *Gacaca* tribunals of this sector is, however, 424 persons. From the data of these two cells of the Murama sector (Rukaragata and Gabiro), it can be ascertained that 90% of the accused in these cells have been classified in the first or second

<sup>64</sup> The data collected by the *Gacaca* tribunals at national level will make it possible to estimate, for all of Rwanda, the number of victims killed during the genocide, the number of perpetrators of these crimes, the number of victims of war and even the number of persons killed after the genocide in acts of revenge committed by the members of the FPR and/or by some survivors.

<sup>65</sup> This is not certain, because there were Tutsis who took refuge elsewhere and there were also many cases of cross-sector-border attacks. For instance, in the Gabiro cell, 37 of the presumed genocide killers came from this cell, while 36 others come from other cells or other adjacent sectors. For the Rukaragata cell, these figures were 37 and 58, respectively. We are therefore assuming here that the number of attackers between sectors cancel each other out mutually.

<sup>66</sup> From the data of the two Murama cells, we find that there are relatively few minors (at the time of these events three boys out of 168 persons) and a few women (four out of 168) among the accused. This represents only 4% of the killers. The typical killer was therefore a young adult man.

category<sup>67</sup>. This would mean, by extension to the whole sector, that 62% of the adult men probably participated actively in the genocide. They killed or organised the killing of 1,033 persons, on average two or three victims per person (2.7).

According to one detainee, “Some people killed because they were carried along with the tide of the killers and they could not do otherwise. Others, because they wanted to appropriate property. But others killed here and there, and leaving the sector of Murama, some even went as far as Kibuye. In our sector, there were three.”

If we add to the 62% of adult men, the “followers” (men and women) who only looted, and all the “spectators” who were there, but who may not have wanted to intervene because they were afraid, feeling impotent before such an event, or because they passively supported the killers of their community or their families, there was a very high percentage of the population who could have participated actively in the genocide or who did nothing to stop it.

Such findings gave rise to the notion, particularly among some survivors, of collective responsibility of the Hutus for the genocide and profound mistrust towards all the members of this group.

Fortunately, the history of Murama also shows that there were persons who acted differently.

### **C. The case of Augustin Usabiyemungu: the complexities of the genocide and its consequences**

Some Hutus of Murama who helped the Tutsis during the genocide:

“At the beginning of the war, I am speaking of 1994, we, Hutus and Tutsis, started by fighting together against the attacks. There was a very high level of solidarity between these two ethnic groups. There were gifts of cows and marriages between us. At the outset of the genocidal war, everybody showed their solidarity towards each other, although the criminals got the upper hand after a long period of resistance.

“It was Saturday. We had driven back the attacks from different sectors, especially those of the

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<sup>67</sup> The crimes in categories 3 and 4 (in total 17/168, or 10%) are considered crimes of genocide, but few people in Murama are classified in these categories. The reasons why there are so few people in the 4th category are as follows:

- a person cannot be classified in several categories at the same time, therefore if someone stole (Cat. 4) but also killed (Cat. 2), he is classified in the higher category (Cat. 2),
- this kind of offence against property has as a rule already been settled before the beginning of the *Gacaca* tribunals, within the community itself, by the families involved. Thus, the *Gacaca* tribunals of Murama did not receive many records of the 4<sup>th</sup> category because these persons have already restored the objects they looted in 1994. This was facilitated by the local authorities and other persons of integrity.

There are also very few people in the 3<sup>rd</sup> category for grievous bodily harm without intent to kill. If testimonies such as “Nobody wished for the death of others, we do not know where this idea came from and people behaved wrongly” or “I was ordered to pursue the Tutsis and I beat up people because I was afraid, but without intent to kill” were accepted literally, the 3<sup>rd</sup> category would probably be larger than the second one.

We are therefore forced to recognise a certain inconsistency between the official position of the government that most of the farmers committed criminal acts out of fear and ignorance, manipulated by the former government – which implies that they did not really have intent to kill – and the fact that this does not really transpire at the time of the categorisation of the accused.

high mountains close to the office of the Kayove district, such as Gihinga and Kamarabuye, because the people there had been sensitised (to be active in the genocide). We had taken their lances and machetes and they retreated full of wrath. But on Sunday they returned stronger than us. They were armed with lances and machetes, they had rifles and bludgeons, and on that day we buried our first dead. We ended up being overpowered; they came in large numbers and we were unable to do anything. Some of us started to hide friends and many people among them managed to escape the war. We hid some persons under our beds; for others we made holes in which to hide; for yet others, we hid them in the brush but sometimes the attackers found them and killed them .... [Some names of victims and survivors were mentioned].

“In my home there was also a man called Elie M, who lived temporarily in my house. At some times he would hide with other families. For example, the family that took him in last was the family of Augustin. It was there that it can be said that Elie escaped death for the last time. The *Interahamwe* caught him, Augustin asked them to spare him, which they did and to this day he is still alive. It may be that Augustin paid them ...

“With regard to that man Augustin, what hurts us is that he saved people and yet he is now being held in Gisenyi prison. Elie is not the only one he saved. There are also those for whom he sought and paid for canoes which he sent to Zaire, to the island of Ijwi on Lake Kivu. They escaped thanks to him and are alive.

“Some more names of survivors were mentioned, among them one, Simeon S., who was hidden in Augustin’s house among the boxes of beer, and when the attacks took place, nobody saw him. If Augustin had not been in this sector, we could not have done it ourselves because it was he who helped us in many ways.”

Most of the survivors have the same ideas about Augustin:

“Usabyemungu always helped us. Since before the war, in 1990, when we were asked for contributions and were unable to pay, we would go to see him and he often lent us money or even gave us freely the money demanded by the other Hutus. During the war also, he spent a lot to save us.

“Even if you were found, for instance, in the house of another person who may have hidden you, that person could resort to Usabyemungu and tell him that you were going to be killed. Many times he paid to save people.

“The typical example that I can give is my own story. After I had just been wounded by a group from Kayove, I found refuge in his home and it was there that I was cared for. When he could no longer afford it because it was costing him a fortune, he tried to find a means of sending us to Zaire in canoes by paying for it himself. According to my knowledge, there are many people whose lives he helped to save. I am one of them.

“He did not stop there. When we returned from exile, he welcomed us as a real neighbour, particularly as many of us had to start all over again from scratch. Once more he spent money to help us get back on our feet. He gave us hoes, machetes, and seeds. We visited each other like real friends. He even helped us to bury the remains of our dead.

“In short, this is what he did and there are many of us who are grateful to him. We do not understand why he is in prison. He never killed anybody!”

The fact that someone like the young shopkeeper Augustin, who was helped in the beginning by the burgomaster before the latter was replaced, is in our opinion an important factor to understand the development of relations between Tutsis and Hutus in this community during and after the genocide.

He and some other persons were unable to stop the genocide, but they tried and managed to save a few persons. It was clear to many Tutsis of Murama that not all the Hutus were genocide killers. For many Hutus, they knew that there was a choice between killing and not killing; that for some of them, the order to kill all the Tutsis was incompatible with their consciences and that one could and should oppose it. The burgomaster was very soon replaced, but because Augustin was a “powerful person” within his sector, according to the Prosecution, and also quite well off, he was able to intervene in several cases which marked the difference.

This shows that the role of formal or informal leaders can be very important. This was also demonstrated during the genocide by the prefect of Butare, by the burgomaster Higiroy of the village of Musebeya (Gikongoro province) and the burgomaster Sebushumbe of the village of Giti (Byumba province), who dismissed the idea of a difference between Hutus and Tutsis<sup>68</sup>. They therefore refused to demonize the Tutsis and to participate in their elimination.

In spite of the fact that Augustin was also, at one time, a head of the MNRD party at cell level, he started to have serious misgivings when people from the MNRD attacked their Tutsi colleagues within the MNRD. They went to steal the cows of the Tutsis, because they were the cows of Inyenzi or accomplices of the Inkotanyi. Augustin asked the former burgomaster to come and when he arrived with a few policemen, they stopped the criminals who had killed some cows belonging to Tutsis and had cut the hocks of other cows. In all, 38 cows were killed or wounded. They took the people who had committed this crime to the communal prison cells and some were even taken to Gisenyi. Augustin and the former burgomaster wanted to enforce the law and they really believed that these criminals would be punished in exemplary fashion. After about three weeks however, they had already all been released. Immediately after this, Augustin publicly resigned from his position in the MNRD.

After the death of Habyarimana, the same criminals again started to attack the Tutsis. As we have already seen, Augustin thought it would be possible to do the same thing, as the first time when the former burgomaster had helped them, but this time Augustin and others with him decided to take care of their security personally.

Initially, Augustin and another person in charge went to see the new burgomaster to demand an explanation to know why the people from Musasa were attacking our sector. They had a long discussion, but the burgomaster could only bring out a forced laugh. The inhabitants of Gabira went on rounds (Hutus and Tutsis together) and in fact managed to rebuff the first *Interahamwe* attacks coming from other sectors. When this was no longer possible, they did everything they could to help the Tutsis hide or flee to Zaire.

Yet some survivors (11/09/2002) remember: “one had to pay for anything and everything. When the attacks started, the Hutus of Murama asked the Tutsis to come and help them thwart the attacks. During three days, we opposed them. Any Tutsi who did not go had to pay a fine and with this they bought drink which they shared. Then, some young people from our region started to kill us. But not everybody took part in the killing.”

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<sup>68</sup> Ref. John M. Janzen: “Historical consciousness and a ‘prise de conscience’ in genocidal Rwanda”, *Journal of African Cultural Studies*, Vol.13, N°1, June 2000, pages 153 to 168

They question whether there might not have been other motives, less noble than “becoming conscious” or having “a very well-developed feeling of solidarity between the two ethnic groups” mentioned above, which were allegedly reasons why some Hutus of Murama had decided to protect the Tutsis in the beginning. For instance, they allege that the Hutus were opposed to the *Interahamwe* from outside their sector because they wanted to keep the “riches” of the Tutsis for themselves. The idea is “Do not touch our Tutsis, we will take care of them ourselves”. This could perhaps explain why some Hutus from the Murama cell, when the attacks became more widespread and it was clear that they could not win, turned against their Tutsi neighbours and also started to kill them.

Some Hutus who aided the Tutsis:

“The war continued in such a way that at one point it was difficult to find a place to hide a friend. Gradually, things changed and as the days went by more people adhered to the ideology (genocidal). Bit by bit, people came to try to convert us as well. They took people by force and made them take part in massacres. Obviously some refused to do so. Others however did join to save their own lives.”<sup>69</sup>

### **After the genocide**

The FPR put an end to the genocide by taking Kigali on 4 July 1994. Public and private infrastructure had been destroyed and the judicial system no longer functioned. There was an exodus of more than a million refugees to Zaire, among whom many *Interahamwe* and soldiers of the old regime.

Mass arrests took place beginning in July 1994 in order to hold anybody suspected of having participated in one way or another in the genocide. According to a Hutu woman of Murama who had not taken part in the genocide – interview 23 August 2002 – “At that time, anybody could come and accuse another person of having done anything. Anybody else who tried to clear them was considered in the same class as the accused, as an *Interahamwe*, and would have to suffer the same fate.”

This does not mean to say that the accusations were consciously false. Frequently, the survivors themselves did not see much and would rely on information from their neighbours and other members of their community who did not necessarily want to tell the truth. They also based their accusations on knowledge of prior events during the genocide.

According to Human Rights Watch<sup>70</sup>, between April and August 1994, a considerable number of civilians – often taken to be *Interahamwe* – were killed by the forces of the FPR in the north of the country.

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<sup>69</sup> Yet, according to the genocide killer Gabriel, who came from the same sector and who confessed to killing 40 persons, some of whom were Tutsis from his own family, “nobody was killed in his cell for hiding people; all those who were killed were because they were Tutsis.”

<sup>70</sup> “No witness may survive: the genocide in Rwanda”, Alison Des Forges, Human Rights Watch, Karthala, Paris, 1999, p. 23

## Revenge<sup>71</sup> in Murama

Violations of Human Rights by the FPR or by survivors are often used by some Hutus to speak of a double genocide.

Some detainees in Gisenyi prison – interview of 22 August 2002 – said, “the *Gacaca* could not work in Murama with the survivors who massacred the Hutus when the refugees returned en masse in 1997-1998. When we returned from our refuge, we were manhandled, arrested, and some of us were killed. There were 12 assassins and nine victims. They were killed by other civilians, they were not even soldiers. The murderers were arrested and released a month later and are, at the moment, living quietly at home. Furthermore, thieves are arrested, hemp smokers are arrested and imprisoned, and yet those who have killed others are free, living peacefully at home.”

However, even if many detainees admit that the crimes of revenge committed against nine persons in Murama who were suspected of having taken part in the genocide were not in the same league as the extermination of more than 1,000 innocent civilians from this sector, it does not mean to say that one should not speak of this kind of violation of Human Rights and not bring them to trial. To show that Rwandan justice is impartial, and particularly to end for once and all this idea of double genocide, it is important to prosecute these acts.

Man in Murama: “On this subject of revenge, it is true that it is spoken of everywhere. It happened in this sector and it was carried out by soldiers.”

A woman survivor: “It is a problem that comes up again and again when we speak of the *Gacaca*. They say that we will speak of the dead without however considering the disappeared. They are encouraged to approach the ordinary tribunals, because these people died of natural causes after the war. As for this problem of nine persons, the figure nine is often mentioned, but there were only six. I myself live in the Rukaragata cell. Two people died there. We are here with the councillor of the Kitazigurwa sector; he has a single dead person. The councillor of Matereza is also here; I think that in his sector there were two deaths. In Nyantange, there was one person. That adds up to six persons. The survivors who blindly followed the soldiers are here. They can speak to you personally and tell you how they were released. It was the military authorities of Gisenyi who authorised the release saying that they would pursue the affair themselves.”

One of the survivors who accompanied the soldiers of Kibuye who allegedly killed these six persons: “With regard to the people who were killed, I would like to say that I was close to those

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<sup>71</sup> According to Ntampaka, Charles, “The concept of relations between the living and the dead in ancient Rwanda”, Dialogue No. 225, November-December 2001, pages 3 to 17). In ancient Rwanda, “the family is (...) obliged to take revenge for any member who is a victim of someone outside the family. Revenge should be understood (...) as a religious duty destined to appease the spirit of the deceased. A dead person who is not revenged will in his turn take vengeance on the members of his own family who were unable to revenge him. This is a religious belief, that a dead person who remains unrevenged is a danger for the survivors. Vengeance is exacted indistinctly on all the male members of the group. Responsibility is collective including penal responsibility. Any member, even if legitimate, may suffer revenge and should take revenge to the other families (...). Only the King could decree an end to the cycle of revenge and demand reconciliation.”

According to the author, “In the Rwandan conflict, the revenge of the survivors of the genocide after 1994 is mentioned”, as in the Murama case, but these acts of revenge have, according to him, gone beyond the framework of the family. “They cannot even be included in the tradition of socio-religious vengeance of families” (p. 12). But Ntampaka does not exclude the possible influence of this kind of belief on the current situation, as “even if people no longer adhere to these popular beliefs, they are afraid of them.” The genocide and crimes committed in Rwanda, according to Ntampaka, consolidate the fear of the spirits of the dead” (p. 16 and 17).

who died. In fact, these people were returning from Tingi-Tingi [one of the camps in the Democratic Republic of Congo, the former Zaire], and we had just spent some time together, but we hadn't done anything to them. When the soldiers came, because of the grief of their families, their physical force and moral support, when they asked us where they were, we showed them and they killed them. The consequence was that we were arrested, as well as the soldiers. Not long after, there was an outcry that civilians had been arrested. We were innocent and were released without any further charges. My big question is to know how I, who you see here before you, who had a large family, am alone. I have nobody to bring me a drink, to bring me fire so that I can light my pipe, I have no one to talk to, I am alone, really alone [his voice expresses the bitterness and difficulty of the situation he is experiencing], solitary at my age, while one makes such an outcry for a person who has been killed. While his family is still there, he is only in prison, so he passes his time shouting that there have been killings!"

The detainees from Murama also spoke of the massacres at Matereza, one of the cells of this sector:

A woman survivor: "With regard to the 70 persons who were allegedly killed in Matereza, these survivors had not yet returned home. They were killed around the 20<sup>th</sup> of July, just after the country was taken. The soldiers found their Hutu brothers and it is they who pointed them out, accusing them of having killed many people. They even insisted. Then the soldiers executed all of them. Those soldiers, nobody knows them, they were new and all of them left after that."

A survivor added, "... This is an affair that cannot be imputed to us. It was like that after the war."

We spoke of this case for a long time, not only to try and understand the dramatic and complex situation during and after the genocide, but also because a woman said "This is a problem that often comes up when we speak of the *Gacaca*". Furthermore, taking into account the explanation given by Ntampaka: "the obligation to revenge the dead", we believe it is absolutely essential, given that reconciliation is one of the aims of the *Gacaca*, that we should also debate and settle the acts of revenge committed by the FPR military force or by the survivors, even if they are understandable, in order to break the spiral of violence and fight impunity.

In Murama, they appear to have found a solution for this problem by going beyond the simple advice of "approaching ordinary tribunals". The local authorities have played an important role as facilitators:

Woman survivor, in charge of the sector: "We told the survivors that revenge only meant more harm, as it does not bring our dead back to life. The families of the six persons who were killed were asked to contain their anger. Since 1997, the year these events occurred, things have gradually returned to normal. The proof of this is that of late, when elderly people have been released, nobody was outraged. The population said that it was not serious because the time would come when they would have to answer for their acts, even if they were free for the moment.

"We also have some minors who were released, from Gitagata [a camp for minors]. It was explained to the population that these children should not be imprisoned because of their age, and that they should be asked to be the first to tell who had pushed them to commit genocide. Everybody understood; there were no problems with this. This shows that unity and reconciliation are under way."

With respect to those who were killed, their families do not have a major problem. If you listen to the wife of one of the persons killed, she says “My husband was killed alone. He had killed 31 people. If I should ever complain and I were asked where these other persons were, what could I say? The authorities are making an effort to reunite the two groups and get them talking to each other. We therefore take the time to listen to both sides to see how they may be reunited, to put an end to the cycle of revenge during the *Gacaca*.”

Coordinator (also a survivor): “Among those who participated in these killings and the families who lost loved ones, there are no major problems. I myself tried to talk with three of them and really, there are no problems. Only, one sees that the families who have lost loved ones cannot ask for anything from the survivors other than to meet, talk and ask for forgiveness. On both sides you would need people to really overcome their feelings, but there are actually no problems. Only one person one day brought up the idea of moral damages, but we thought that this was unworkable and I explained this to her. She understood and said that in practice, what she wanted was that everything should go well, and that she would like to be able to speak to the others, because if her husband had not been killed, he would now be in prison or dead.”

Because the *Gacaca* tribunals cannot function as a public place, those in charge of the sector have encouraged meetings between the groups concerned in parallel with the tribunals to talk about these acts of vengeance. It resembles a *Gacaca* outside the official *Gacaca*.

#### Augustin's arrest:

As is possible in a confusing, post-genocide situation, Augustin was arrested. The fact that before the genocide he was a powerful man and even, for a time (1990-1992), in charge of the cell and the MNRD party, were points against him:

In reply to the question of when and why Augustin was imprisoned, some of his friends who also helped the Tutsis during the genocide said “In January 1996, there were some survivors – who were not even natives of this region – who accused him of genocide, even though others defended him by showing how many people he had saved.”

Another one: “I believe it was due to jealousy and hate because, as far as I could see, he was a good person.” [Conversation with a group of seven persons – two women and five men – from Murata on 23 August 2002, who helped the Tutsis during the genocide.]

Augustin's wife: “My husband became the victim of his wealth. People were jealous and wanted to get hold of this fortune. It is a pity they were Tutsis for whom he had done everything possible to save them. Many Tutsis supported him, even FPR soldiers.”

Augustin's brother: “The people who charged Augustin wanted to take everything from him. We managed to protect his car, but they took some houses which they occupied until Mrs Augustin returned from exile. Therefore I believe that they wanted to put everybody in prison or exile the others in order to get hold of everything. They had told me not to come back, not even to the banana plantation.”

Augustin's wife: “Among those who charged Augustin, there was a certain Eugénie N who accused him of having killed the family of Kageruka and their adoptive child. There is also a

Juvénal H.”

Man: “With regard to the Kageruka affair, his wife and one child who was in their care, I know they committed suicide by jumping into Lake Kivu. It was during the daytime, around 2 pm. They left their hideout to avoid being cut up in bits and committed suicide. The person who hid them is also here.”

“After Augustin was arrested, some of his friends – among them the survivor Simeon – twice tried to intervene in his favour. The first time, at the Gisenyi infantry unit where they (three or four persons) were beaten up. They were asked how they dared come to clear an *Interahamwe*.”

Augustin’s wife: “I went with them. When we arrived at the Gisenyi infantry unit, I was not allowed to enter with them. Inside, the three men were seriously beaten up and emerged in a dreadful state.”

The second time that they tried to help Augustin, there were some soldiers from Murama who had learned that there were some people who wanted to speak about the Augustin affair. They put them in prison and beat them. For a long time, nobody else wanted to intervene, but over the last few years, there have been no more problems and those who wished to could go to the Prosecution Service to testify and clear him.

Augustin learned to read and write in prison, where he spent nearly seven years, surrounded among others by people from his sector who, during the genocide, tried to kill him and saw him as responsible for their misfortune.

After some years, his dossier was conveyed to the specialist chamber of the Court of First Instance of Gisenyi. The first audience was set for 22 January 2001 and everybody in the Murama sector was very curious to know what the result of the proceedings would be. But his case was adjourned ten times in succession and finally ended well when on 13 December 2002 Usabyemungu was acquitted without any other form of trial. Those who had accused him had in fact no tangible proof<sup>72</sup> (Ref. annexe with details of his trial). On the same day, five other prisoners were also acquitted.

Augustin returned home on 16 December 2002, from where he had been taken on 24 January 1996. When the news was heard, a crowd (whose size it was impossible to estimate accurately) of people of the Murama sector and its surrounding area came to welcome him home with incessant cries of “Welcome! God be praised! Long live justice!” The people brought cans of banana wine and boxes of beer. Everybody seemed to be mad with joy. The local authorities and among them, survivors such as the sector coordinator and some councillors, were all present and the Mayor telephoned him.

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<sup>72</sup> For a long time, many of Augustin’s friends were not sure that he would be released as, each time, a woman who had accused him presented new facts when the magistrates considered her accusations to be unfounded (such as having killed a family who drowned themselves in broad daylight, etc.). For example, at the beginning of December 2002, she said that Augustin had arrested her brothers who were leaving for the *Inkotanyi* and that he took all their dollars. The magistrates told her that this accusation did not appear in the Prosecution’s accusations. The woman then became angry and spoke on the radio, specifying that there were certain survivors who had become corrupt and that at Kayove, some detainees were being released who were not innocent. This was during a radio broadcast of an interview about justice. The President of the 6th Chamber, the Minister of Justice and others were in the studio to reply to various questions and give their observations.

Eugénie, the woman who had accused him and had him imprisoned came to see him that same evening and shared with the others. Eugénie and Augustin embraced and, according to the visitors, these words of welcome appeared to come from the bottom of her heart.

Speaking of Augustin's release, the coordinator of the Sector remarked: "I am also a survivor of the genocide. In meetings we often find that we have put many people in prison, some of whom are innocent. But in the past, we did not question the information, particularly because we thought all the Hutus were criminals, given the material and human damages and cases of traumatism that we had suffered. We have also found that the *Gacaca* tribunals sometimes refute us. Therefore, we say that we must admit any errors that we may have committed and avoid persisting in lies, recognising the credibility of men of integrity."

Augustin is now beginning a new life with very heavy debts. A bank had given him a credit of FRW 800,000 just before the genocide. He never managed to pay back this debt because of the genocide and his arrest and the bank is now demanding payment with interest.

#### **D. Assessment of the *Gacaca* tribunals of Murama:**

Initially, the *Gacaca* tribunals of these two cells (Gabirol and Rukaragata) functioned quite well. In our opinion, this is directly linked to the history of the genocide in this zone and the role that some Hutus played in trying to help Tutsis. The positive commitment of some important people such as Augustin, before and during the genocide, the enthusiasm of its current local authorities, particularly some survivors, greatly helped to improve relations between Tutsis and Hutus in this community. This has had a positive influence on the functioning of the *Gacaca* tribunals in these cells. With speed never before seen elsewhere, each phase was settled one after the other.

Initially, there were free people who voluntarily pleaded guilty (nine persons in five of the six cells). They did not only confess to petty crimes, but even murders (ref. PRI Report No. IV), which is rare in the other pilot sectors.

But as elsewhere, many problems were also encountered, such as the incompetence of judges (particularly in the Matereza cell), who did not prepare the meetings of the General Assembly or who, like the population, were absent at the meetings or arrived very late. Many judges remained passive during the sessions because they were not well trained, and above all those who were illiterate seemed to feel uncomfortable. Some turned out to be corrupt. Most of the judges appeared to have little motivation. The same problem exists for some authorities at the grassroots level. At the time when the other cells reached their fifth session, Matereza had only reached its third meeting.

In the Koko cell, the population was showing some nonchalance. For example, on 16 July 2002, at 12:00 pm, there were only 89 persons and the meeting had to be adjourned. The authorities at grassroots level, as well as the *Nyumbakuni* (chiefs of ten houses) went back to the field in order to sensitise the population and decided to punish the absentees. Some *Gacaca* judges never put in an appearance because of accusations by the population that they were involved in the genocide. Nobody in this cell has confessed or pleaded guilty.

However, even in Gabirol, things did not work as well as in the beginning. For instance, the meeting of 16 July 2002 had to be adjourned until 11:40 am because there were only 13 judges

out of the 15 required. And when Rukaragata started to draw up lists of victims killed outside its borders, one could see the suspicion on the faces of many witnesses.

In order to discuss and resolve this kind of problem, which slows down the functioning of the *Gacaca* tribunals, the “Committee of the Consultative Council of Kayove District”<sup>73</sup> met on 21 July 2002. The following findings were made:

- Some leaders at grassroots level, presumed to be genocide killers, appeared to be taking advantage of their authority to intimidate the population and to prevent people from giving information on the disappeared, so that their names would not be implicated.
- There was a negative atmosphere in the *Gacaca* meetings because the population knew that some “honest” judges committed vile acts during the genocide.
- Some survivors tried to camouflage the truth, saying that they had already cut deals (through corruption) with the criminals who had allegedly killed their own people.
- There were also cases of perjury because of hate or personal interest.
- There were found to be small groups who met during the night to disconcert the judges by not giving them any information because they were implicated in the genocide.
- The committee found that there were people who went to Gisenyi to bribe prisoners in order not to be betrayed during the *Gacaca* tribunals.
- The committee also found that the population did not attend more frequently and did not arrive on time at the meetings of the *Gacaca* tribunals because they said they did not have enough time to do their housework, as there is too much to do every week:
  - there is one day for the *Gacaca* tribunals,
  - one day for community work (*Umuganda*),
  - one day of prayers (Mass),
  - one market day.

To solve these problems, the committee proposed the following measures:

- The committee condemned the secret nocturnal meetings and warned all the sector coordinators that there would be heavy penalties if such meetings were held in their constituencies.
- The committee advised the ex-authorities of the genocidal regime to testify the exact truth of what happened during the genocide (meetings, killings, etc.) in order to help the *Gacaca* succeed, and to split from the ideology of the former regime.
- The committee strongly condemned any person who in any way infringed the functioning of the *Gacaca* tribunals, and also those who did not wish to supply information about the things that they had witnessed.
- The committee decided to take serious measures against anyone who promoted discord and ill-feeling in the *Gacaca* tribunals for their personal interest.
- The committee would continue to sensitise the population of Kayove and invited it to the process of confessing and pleading guilty, given the advantages of so doing.
- Because of the interest that these tribunals were expected to raise, the committee reduced the number of days per week when people were not allowed to attend to their own business by, for instance, setting the *Umuganda* for the first Thursday of the month and another day proposed by the State towards the end of the month.

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<sup>73</sup> Said Kayove committee is made up of persons in charge of the Economic Affairs of the District, of Youth, Sports and Culture, of Social Affairs and of the Promotion of Women, two councillors, the President of the Political and Legal Commission, the coordinator of the Murama sector, the Representative of the Rwandan Army in Murama, and the Secretary of the meeting. The meeting was presided by the Mayor of Kayove district.

In spite of all the problems mentioned above, the *Gacaca* tribunals in Kayove functioned reasonably well.

On 26 July 2002, the General Assembly of the Tribunal of Rukaragata held its 5<sup>th</sup> session, devoted to damages and interest. There were some problems in filling in the records. There was no column for crops that were destroyed or stolen during the genocide (coffee, beans, bananas, etc.) and, initially, the panel of judges did not know that an estimate of the value of these crops could be entered in the column for “personal property”. The survivors also wanted to claim compensation for the payments they had had to make for each event, since 1990, because they were Tutsis or because they had children in the FPR-*Inkotanyi*. There was a lot of anxiety among the population because most of them had taken part in looting these crops and they were afraid that they would be asked to pay compensation. Therefore, filling in these records required a lot of attention and was time-consuming.

The measures discussed and taken during the meeting of the Committee appeared to have made a positive impact. Even for the 6<sup>th</sup> sessions – establishing the lists of accused – the General Assembly and the Panel of Judges of the Kitazigurwa cell were already complete by 10:30 am (17 September 2002, AG: 127, Panel: 15). There were several persons who had written letters in which they pleaded guilty, for example, to having killed a child with the help of some members of the family, or in which they cleared another person accused of a specific crime and mentioned the real culprit. These letters were read out loud in public. A young man, Emmanuel, the one who had publicly pleaded guilty to having killed the child, explained: “First we were sensitised to confess. The fact that I am Christian, with Jesus in my heart, led me to tell the truth in these tribunals. I therefore decided to testify about things to which I was an eyewitness, even if they involved my own father, as in this case. That is the truth.”

The coordinator of this cell of Kitazigurwa was happy to see that the population appeared to be testifying without restraint, and this gave him hope that the *Gacaca* would doubtless be successful.

The same thing happened in September in Rukaragata, where François, who had already confessed by letter before the beginning of the *Gacaca*, spoke and confessed to having killed 14 persons together with 18 other people. He said they drowned them in Lake Kivu during the night of 27 April 1994 because they were Tutsis. He gave the name of these 18 accomplices and confirmed that he had committed the act under the orders of the person in charge of his cell at the time, M Kayabanda. He finished his testimony by humbly asking for forgiveness from Rwandan society, from the families who had lost their loved ones through his fault, and from his own family whose reputation and dignity he had tarnished.

The reaction of a survivor whose entire family was killed: “I shall forgive those who have had the courage to confess their guilt and ask for pardon. For me the most important thing is that they should admit that they have carried out vile acts because nobody has the power to resuscitate those who have disappeared. The only thing that remains is to live in perfect harmony and consolidate the atmosphere of mutual understanding, searching to develop our country. This will lead us to unity and reconciliation.”

The population is not even afraid of giving the names of the authorities who took part in the genocide, some of whom still occupy important positions, such as M Kanyabashi, the Secretary of the Murama sector. He was accused of inciting the population to exterminate the Tutsis during a meeting he presided on 27 April 1994. The direct consequence of that meeting was the death of 72 persons the following night. Kanyabashi was at the time President of the MNRD in the sector.

After this kind of testimony, these authorities were relieved of their duties, as in the case of the Secretary of the *Gacaca* tribunal of the Rukaragata cell and three other judges of the same tribunal. They were replaced by other men of integrity who were in reserve.

While in the Gabiro cell most of those who testified were survivors, in Rukaragata, the population of non-survivors testified en masse (especially the women), assisted by the survivors of course. Guilty pleas were often made after the persons were included on the list of presumed accused. The various authorities of the Murama sector encourage the population to participate actively in the meetings of the General Assemblies and levied a fine of FRW 500 on those who did not come.

Contrary to what was seen in many other tribunals, the population of Murama appeared to testify in large numbers without such confessions and testimonies causing misunderstandings or conflicts between survivors and the rest of the population.

It was particularly in the meetings of the 6<sup>th</sup> session, when the lists of accused were established, that one heard the most terrible stories about what had happened during the genocide (ref. above) and from time to time, the atmosphere became emotional. This was the case when Aloys, a 78-year-old man from Koko cell testified. He pleaded guilty to having killed his three grandchildren, including one who was only 10 days old, by throwing them into the water, because his daughter was married to a Tutsi. After a while he stopped testifying and started sobbing, and it was only later that he continued his testimony.

As a rule, there were very few manifestations of trauma, either from the survivors, the perpetrators of crimes, or other groups. But even if there had been, no one present was trained or qualified to take care of such cases professionally during the *Gacaca* tribunals.

It was towards the end of the 6<sup>th</sup> session that the Prosecution sent out their lists of suspects of having taken part in the genocide. According to many members of the population, data from the Prosecution was too “thin”. A woman judge: “Here the population does not speak the same language as the Prosecution, which receives very few accusations”. For example, on the Prosecution’s list, Severin of Gabiro appears as somebody who pleaded guilty to having killed only two persons, Charles and Geneviève. The *Gacaca* tribunals had however accused him of taking part in the assassination of 28 persons and many other killings. He was also accused of raping Anastasie, aided by five other *Interahamwe*. The victim herself had testified and presented eyewitnesses.

Beginning in October 2002, all tribunals in the Murama sector commenced meetings for the 7<sup>th</sup> sessions, which established individual records of the accused and their categorisation. During this phase, in many other pilot sectors, very few people took part; but in Murama, the members of the General Assemblies and Panels of Judges continued to come in large numbers. These meetings continued until beginning 2003 and supplied the data found in tables 1 and 2 (ref. above). The judges collected confessions, testimonies both charging and clearing people, accusations, etc. The Panel of Judges had a lot of work during this stage. Sometimes, the Panel of Judges invited some detainees who had confessed to testify in public in the hills where they had committed the crimes, in order to reconstruct some incomplete records. It was not always easy to identify the accused, their current names, if they were dead or alive, and in this case, if they were in prison or free, and where they were, particularly if the killers came from other cells or sectors.

This stage of establishing the records and categorising the accused, presumed genocide killers, takes time. The Rukaragata tribunal was the first to close its proceedings and is now waiting the last phase of the *Gacaca*: the verdicts.

## V. Recommendations

### A. Sensitisation

In spite of the fact that the tribunals of the pilot sectors have been functioning for several months, there is a crucial need for sensitisation and explanations, both for the judges and for the population in general. We therefore agree with the 6<sup>th</sup> Chamber that campaigns of sensitisation should be improved regarding the *Gacaca* tribunals. We would add that this should also be done in conjunction with the Community Service programmes, the release of prisoners and compensation for the victims of genocide.

Optimal understanding of the *Gacaca* for everybody, as well as related programmes – Community Service, release of detainees and compensation – appear to guarantee their success. This will have an important impact on the level of participation of all and the smooth functioning of the *Gacaca*. Finally, this would help contain rumours that are developing around the *Gacaca*, regarding possible corruption, suspicion between different communities, etc.

*Thus, we request donors help with funding in order to improve the sensitisation campaigns.*

*Furthermore, we recommend that these sensitisation campaigns should be more interactive and involve the population, taking into account their ideas, proposals and questions.*

### B. Support for the work of the *Inyangamugayo*

In order to optimise the functioning of the *Gacaca* tribunals, we believe it is crucial to look at the work conditions of the judges, their motivation and their mode of participation during the sessions.

#### - Training:

In the three cases described above, the problem of training for judges has frequently arisen. Professional training for the *Inyangamugayo* appears to be an essential element for the continuing smooth operation of the *Gacaca* tribunals. Training is even more crucial for the new judges who will replace those who have left for various reasons.

This would contribute to maintaining the judges' motivation, valuing their role, which is of such vital importance for reconciliation in Rwanda, improving competency in the management of sessions, and balancing the roles of the coordination committee and the other judges by reinforcing their individual capacities.

Furthermore, the rules for speakers sometimes appear to be too strict and prevent the participation of the population. It is important that the judges, particularly the presidents of tribunals, be flexible in applying these rules in order to encourage the population to speak out. Insofar as possible, this should be part of their training.

Finally, it should be possible for the population to address local *Gacaca* problems freely with the judges concerned and/or with the decentralised officials of the department of *Gacaca* tribunals. This would make it possible to find appropriate solutions for each situation and optimise the functioning of the *Gacaca*.

For this purpose, the judges and decentralised officials should receive specific training on group management, debate control and communications in a complex situation. This should in our opinion be part of their professional training.

- Compensation :

As was promised many times by the government, we recommend that a system of compensation be offered to the *Gacaca* judges. Such compensation can include: exemption from school fees, free medical care, various advantages, monetary compensation, etc. Promises relating to compensation have been made by the authorities, but nothing has been implemented so far. Yet, this would have a noticeable impact on the judges' motivation.

- Work conditions:

We also suggest, inasmuch as possible, to consider the work conditions of the judges. It is very important to settle the problem of support staff. Judges should be provided with the means to record the sessions. This would have the double advantage of improving the quality of the minutes and enriching the memory of this unique justice system.

Other things could also be improved: boxes to transport records, plastic sheets to protect people from the rain or the sun, etc.

***In order to optimise the work of the judges and, as a direct consequence, the functioning of the Gacaca, we recommend that the following should be emphasised:***

- ***training of judges,***
- ***providing means to encourage their motivation (compensation, various advantages, etc.),***
- ***and improvement of their work conditions.***

***This would make it possible to hold judges accountable and to make them assume their responsibilities to the greatest extent possible.***

### **C. Participation of the population**

We are forced to acknowledge, from the study of the three cases of Umutara, Gisenyi and Butare, that the participation of the population in the *Gacaca* is a problem. As we noted at the beginning of this report, the participation of the population is a key element for the success of the *Gacaca*. Their involvement in the process is in fact essential. Sensitisation is a method proposed that could be efficient if it were improved as we suggested in our first recommendation.

Furthermore, other measures have been taken by the authorities to force the population to participate. Resorting to force does not seem an effective means and risks jeopardising the

credibility of the *Gacaca*. Arbitrary arrests have a very negative impact on the trust inspired by the *Gacaca*. On the other hand, less coercive measures have very positive impacts. We believe it is important to mention and encourage them.

- Problems of resorting to force:

In spite of everybody's efforts, we have been notified of several cases of resorting to force to oblige people to participate in the *Gacaca*. We believe this is dangerous and ineffective.

It should be possible to avoid the use of force. The use of force has a detrimental effect on popular participation. In this case the population participates in the *Gacaca* sessions under duress. Their sincerity is thus questionable, and the search for truth suffers directly. The credibility of the *Gacaca* can, in turn, be questioned. By explaining the purpose of the *Gacaca* to all, sensitisation should be able to spur the participation of the population, thus avoiding the resort to force.

***We recommend that the population should be better sensitised in order to invite them to take part in the Gacaca, avoiding any resort to force.***

- The problem of arbitrary arrests:

Even if the Gishamvu sector does not encounter the problem of arbitrary arrest, it is a subject which is often mentioned by the population. Apart from the fact that it is a clear violation of Human Rights, it terrorises the population, preventing witnesses from testifying and thereby rendering the search for truth more difficult. The pursuit of arbitrary arrests therefore risks jeopardising the success of the *Gacaca*.

***We recommend that measures are taken to avoid any arbitrary arrest in order to preserve the population's trust in the justice system.***

- Presentations, releases, visits of prisoners who have confessed:

Many initiatives are encouraged to continue improving the functioning of the *Gacaca*:

- Presenting the prisoners to the population has very positive impacts. This confrontation between prisoners and the population enables the truth to come to light.
- The release of detainees whose innocence is approved by the population is also very positive. It reinforces the atmosphere of justice and equity within the tribunals. We believe that it is a concrete example of the importance of the *Gacaca* for the Rwandan people.
- Finally, the visits of detainees who have confessed, organised by the local authorities in the hills, is also appreciated. This recognition encourages co-detainees to confess as well and invites the survivors to testify.

All these actions help to enrich the *Gacaca* sessions and improve their quality, thus contributing to the search for the truth and allowing the population to advance on the road to reconciliation. These initiatives are therefore useful to encourage the active participation of the population and to discover the truth about the genocide, such as, for example, the “pre-*Gacaca*” meetings and the organisation of meetings between the population and the prisoners who have confessed<sup>74</sup>.

***We recommend that the following actions be encouraged and multiplied throughout the country:***

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<sup>74</sup> The two methods have been discussed in former PRI reports: PRI Report No. I on the pre-*Gacaca* and PRI Report No. III on the presentation of detainees who have confessed.

- *presentations of detainees to the population,*
- *releases of detainees who the population recognise as being innocent,*
- *visits to the hills by detainees who have confessed.*

- Adapting the timetables of the sessions:

In some cells, it would perhaps be opportune to change the official timetable of the *Gacaca* tribunal meetings to start in the afternoon. This would undoubtedly allow greater participation of the population, who would thus have time to attend to their business in the morning.

***We recommend that there be some flexibility in choosing a timetable for the Gacaca sessions.***

#### **D. Reconciliation**

In order to optimise reconciliation, we recommend the organisation of presentations to the Rwandan population of positive examples of men and women who acted heroically during the genocide. These examples should, in our view, be publicly promoted and honoured. It would help to bring the whole truth about the genocide to light. We have already dealt with this topic in one of our former reports – PRI report No. III. African Rights, in its publication of August 2002, *Tribute to Courage*<sup>75</sup>, also deals with reconciliation.

***We recommend that certain persons who behaved commendably during the genocide, by refusing to participate or by saving persons under threat, should be presented and promoted to the Rwandan population.***

#### **E. Mobilisation of the local authorities**

In some cases, the limited involvement of local authorities and intellectuals discourages the population from participating in the *Gacaca*. We believe however that it is crucial that the authorities and intellectuals should participate and set an example to the rest of the population. We were in fact very surprised to find that the Ministry of Local Affairs' role did not appear in the outline of the strategic plan for the Department of *Gacaca* Tribunals 2003-2004. Yet we believe that this Ministry bears a crucial responsibility to mobilise local authorities.

***We recommend that the Ministry of Local Affairs intervene to encourage intellectuals and local authorities to participate in the Gacaca in order to show their interest in becoming involved in this process.***

#### **F. Compensation**

The problem of compensation of the genocide victims would seem to be a crucial issue in the *Gacaca* process. We therefore strongly urge the authorities to finalise the signing of the new law

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<sup>75</sup> *Tribute to Courage*, African Rights, Kigali, August 2002

and implementation of the FIND. This would lend credibility to the *Gacaca* process and would encourage the population to get involved.

***We recommend that a compensation fund for the victims of genocide be established as soon as possible.***

### **G. Transport**

Logistical problems have often dogged the *Gacaca*. Witnesses cannot afford to travel to the *Gacaca*. Because the crimes were often committed between various cells or sectors, some witnesses live far away from the place where the *Gacaca* tribunals are held. Yet the presence of these witnesses is crucial for the search for truth.

***We recommend that solutions be found to facilitate travel for the witnesses so that they may attend the Gacaca sessions.***

## **Conclusion**

This report is a synthesis of all our research, interviews and observations and shows that if the *Gacaca* tribunals continue to function as they are currently doing, they may not achieve their aims, mainly because the participation of the population is not optimal.

The *Gacaca* process is progressing very slowly and some secondary effects may have negative consequences both on the eradication of the culture of impunity and on reconciliation.

If the problems mentioned in this report are not dealt with urgently, there appears to be a real risk of failure of the *Gacaca*. The *Gacaca* could not then be the hoped-for instrument of alternative justice. The funds invested would be lost instead of being used for other purposes such as compensation for survivors of the genocide.

Apart from the problems mentioned above, the question of financing is also crucial. In fact, the funding available for all the activities of the various actors (Department of the *Gacaca* Tribunals – DJG, Ministry of Justice, Sports and Culture – Mijespoc and the Ministry of the Interior – Mininter) in the *Gacaca* process over a period of three years (2003-2005) appears insufficient. According to the “summary budget” of the DJG-CS<sup>76</sup>, the government is still looking for 65% of the budget, i.e., an amount of FRW 27,151,287,370 out of a total budget estimated at FRW 41,542,809,721. The latter amount comes to approximately US\$ 75.5 million for the whole of the *Gacaca* process. This is a very small amount compared to the budget of the Arusha tribunal, but is still extremely high for Rwanda.

Because the *Gacaca* is an essential tool for justice for the genocide and reconciliation of the Rwandan people, we believe it is vital that everything should be done by all the actors involved to find the means to make this challenge a success.

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<sup>76</sup> Ref. note 2, report of the DJG-CS, p. 22

## ANNEXES

Annex 1: Lawyers Without Borders Statistics

Annex 2: PRI Statistics

Annex 3: *Gacaca* Coordination Structure

Annex 4: *Gacaca*

Annex 5: Augustin Usabyemungu's Story at Gisenyi

## Annex 1: Lawyers Without Borders (LWB) Statistics

Summarised analysis of the observations made by LWB<sup>77</sup> at the beginning of the period in question (July – September 2002)

Province District Sector Cell	Activities (22/7/02 to 3/8/02) (lists)	Attendance (in numbers) S: Start of hearing GA: Attendance at General Assembly W/M (gender)	Participation (evaluation)	Remarks
<b>Kigali City</b> Kanombe Nyarugunga <u>Kamashashi</u>	List of victims killed in and outside of the cell 31/07	S: 11:20am GA: well above the quorum of 100 Bench: 17	Very active GA, Many people speaking (high participation and real debate)	- This cell had many problems; - 1,000 RFW (Rwandan francs) fine levied for each absence without a valid reason
<b>Ruhengeri</b> Bokonya Mataba  Bugari	List of accused, 29/7	S: 11:15 am GA: 221 Bench: 15 Majority W	Residents summoned, public accusations, no confessions	- Calm, disciplined; - strong presence of Security Forces (rumours of an <i>Interahamwe</i> infiltration); - some tension (accusations); - public Prosecutor's files not received
<b>Gisenyi</b>	000			
<b>Gitarama</b> Kabagari Nkomero  Nyakabungo	List of people deceased outside of the cell, (a) 23/7  Plaintiff information cards, (b) 30/7	(a) S: 1:00pm <100 Bench: 15 Majority W: 80%  (b) S: 1:00pm GA: 50 <100 Majority W: 80% The hearing was adjourned;	(a+b) Required quorum not present ;  (a) Bench was passive, GA calm, more passive than cooperative ;	- (a+b) Cell known for its tardiness; - several demands for absences to be punished; - the chairwoman: "If this continues, we will have to send the Local Defence to gather up the people"

<sup>77</sup> Observation data for 9 of the 12 pilot sectors (Gisenyi, Gikongoro and Cyangugu are not included). "This data is based on observations carried out by LWB – but analysed by PRI – covering the period from July 23 to August 3, 2002. They coincide with the data collected by PRI (see Report Nbr. III). See LWB "Reports on Monitoring of Gacaca Courts", covering the period June 19 to August 3, 2002; Kigali, 2002.

<p><b>Kibungo</b> Kigarama Birenga</p> <p>Kazo (a/b)</p> <p>Rwankogoto (c)</p>	<p>Plaintiff information cards, (a) 23/7</p> <p>List of accused, (b) 30/7</p> <p>(c) 23/7</p>	<p>(a) S: 10:55am GA: 152 Bench: 16</p> <p>(b) S: 10:30am GA: 152 Bench: 16</p> <p>(c) S: 10:30am (a bit late) GA: 220 &gt;300+ Bench: 16</p>	<p>(b) Few confessions</p> <p>(c) Many confessions</p>	<p>- (a+b) Almost complete indifference on the part of the community residents</p> <p>- (c) High attendance of the population, (“contrary to what I have seen elsewhere”)</p>
<p><b>Byumba</b> Kisaro Kavamu</p> <p>Mutete-Kavamu</p>	<p>List of people deceased outside the cell, (a) 24/7</p> <p>Plaintiff information cards, (b) 31/7</p>	<p>(a) S: 11:00am GA: 100+ Bench: 18</p> <p>(b) S: 12:00 noon (2 hours late) GA: 100+ Majority W: 2/3</p>	<p>(a) Many people spoke (especially the men); a true debate was carried on</p> <p>(b) Only 3 men, all survivors, spoke; no women spoke</p>	<p>(a) Attendance only slightly above quorum</p>
<p><b>Umutara</b> Rukara Gahini</p> <p>Kabeza</p>	<p>List of accused, (a) 25/7 &amp;</p> <p>(b) 1/8</p>	<p>(a) S: 1:00 p.m. GA: 100+ Bench: 14&lt;15</p> <p>(b) S: 12:37pm GA: 100+ Bench: 15</p>	<p>(a) Confessions (few) and accusations</p> <p>(b) People do not want to disclose anything; few confessions</p>	<p>- prejudgements, - law not rigorously enforced;</p> <p>(b) – Delay due to anti-meningitis vaccinations; - court’s list presented; - witness intimidation (according to the District Gacaca Court Coordinator)</p>
<p><b>Butare</b> Nyakizu Gishamvu</p> <p>Gishamvu</p>	<p>Plaintiff information cards, (a) 25/7</p> <p>and (b) 1/8</p>	<p>(a) S: 10:40am GA: 120+ Bench: 16</p> <p>(b) S: 11:00am GA: 100+</p>	<p>(a) Disputes regarding the houses listed in the damages</p> <p>b) Somewhat agitated atmosphere</p>	<p>(a) A decentralized agent publicly and openly contradicted the Bench</p> <p>(b) Disarray</p>

<b>Kibuye</b> Budaha Nyange  Kanyinya	Plaintiff information cards, 22/7	S: 11:00am, 2 hours late; GA: 102 Majority W: 65%	Lot of women in attendance, The residents were mobilised but more could be if they arrived earlier or in higher numbers	- Some people got up and left the assembly (...); - the Chairman asked the Local Defence Forces to stop the people from leaving
<b>KigaliNgenda</b> Kindama -Gikundamvura  -Kanombe  -Rukuraza	Public awareness meeting regarding confessions (3 cells), 26/7	S: 11:25am, high attendance	At first reserved, the people later asked many questions;	Continuation of filling out Plaintiff information cards did not take place (Gikundamvura)
<b>Gikongoro</b>	000			
<b>Cyangugu</b>	000			

## Annex 2: PRI Statistics

Summary of observation reports prepared by PRI in the 12 pilot secteurs during the month of September (July - September 2002)

Province District Sector Cell	Activity September (lists)	Participation (numbers) -S (Start of hearing) - GA (Attendance at General Assembly) -W/M (gender)	Participation (evaluation)	Observations
<b>Kigali Ville</b> Kanombe Nyarugunga Kamashashi	(a) Plaintiff information cards, 4/09	(a) S: 10:25am GA: 150 Bench: 15 Equal number M/W	(a) Question and answer period: intense discussion	- Local Defence sent to bring people; - fine to be paid
Nonko	(a) List of accused and confessions, 11/9 &  (b) 18/09  (c) 25/09	(a) GA: 130 Bench: 12<15 At 11:45am, people already started to go home*;  (b) S: 10:40am; GA: 140 Bench: 15  (c) S: 11:00am GA: 180 Bench: 17	(a) People were afraid to speak  (b) Many testimonies, people interested  (c) Testimonies, but few confessions	(a) *The Chairman made them return; - survivors gave testimony, but the victims only spoke of those in prison or dead;  (b) Some survivors cried as they spoke  (c) Accusation of rape made by a young boy
Rwimbogo	(a) List of victims and plaintiff information cards, 14/9  b) 21/09	(a) S: 10:00am GA: 170 Bench: 12>15  b) No Gacaca held	(a) Not very lively atmosphere, it was raining	(a) Raising awareness and some questions; Woman: she forced herself to come, interested in a Gacaca for slain Hutus  b) Umuganda in the cell
Gihanga	List of accused and confessions, 20/09	S: 11:50am GA: 110 Bench 14<15	Fear of making accusations	Accused genocide perpetrators were either in prison or dead

<b>Ruhengeri</b> Bokonya <u>Mataba</u>  Gikombe	List of accused and confessions	High attendance; (prisoners present)	Residents mobilized but the “Hutus and Tutsis exchanged hateful looks during the hearings, they are quite infuriated”; women spoke more than men. Due to corruption, some people no longer speak during the hearings	- Prisoners’ confessions have sparked the enthusiasm of this cell’s residents; - one prisoner accused the present coordinator of this cellule of being a genocide perpetrator; - 85% of the survivors have refused to accuse the killers (problem of corruption and intimidation by influential genocide perpetrators); - some survivors no longer wanted to hear the prisoners’ testimonies due to their exaggerations (speaking of the killings), arrogance and infuriated behaviour
Bwanzo	List of accused and confessions	High attendance; (No prisoners)	As above	- The people rejected the appearance of prisoners at the hearings; - example of corruption: a survivor received 80,000 FRW from a notorious killer to say nothing
<b>Gisenyi</b> Kayove <u>Murama</u>  Kitazigurwa	List of accused and confessions, 17/9	Start: 10:30am GA: 127 Bench: 15	Residents participate actively: unrestrained confessions and testimonies (especially from the women)	Work progressed well, positive results; the <i>Gacaca</i> will succeed; public awareness campaign
Rukaragata	List of accused and confessions, 20/9	Start: 11:00am GA: 131 Benches: 16	Many had the courage to plead guilty; people testified	Hope; the people pleaded guilty and testified in total safety and without restraint; no misunderstandings between the survivors and the local residents

Nyantange	List of accused and confessions, 23/9	Start: 11:00am GA: 121 Bench: 16	Residents are still afraid and hesitate to testify publicly	Only those imprisoned or dead are accused; genocide perpetrators not detained are judges, members of the local authority, etc. People are afraid to name them; a small group of people encourage the others to not plead guilty, telling them that they would be killed if they did; one sole family comprises the entire population of this cell
<b>Gitarama</b> Kabagari <u>Nkomero</u>  Kabalima	(a) List of accused and confessions, 5/09  (b) 12/09  (c) <i>Gacaca</i> film: “Ukuri kurakiza” (for the entire sector)  (d) List of accused and confessions, 19/09  (e) 26/09	(a+b+d) Very few people  (c) 1h 45min delay; population: majority very young  (d) 12:00 noon: 68 people, including 16 judges, Start: 2:00pm GA: 87<100 Prisoners present  (e) Start: 2:30pm GA: 100 including 15 judges Large majority W	(a+b+d) Required quorum not reached; sessions (a+b) postponed;  (d) The hearing took place: - None of the local residents wanted to speak; - 3 prisoners* testified, which gave rise to confessions from women;  (e) Very few testimonies	- Kabalima was an active cellule before the hearings on the lists of accused; - the survivors think that the State should force the local residents to participate  *Prisoner: “the men killed or burned, but they weren’t the ones who stole a lot of women and children. Some who are here now did that. If the women don’t want to speak, I will speak about them.”  (e) – Chairman & 1st Vice-chairman absent; - lack of training, lack of coordination

Nyakabungo (+ Ruhosha after 17/10)	List of accused and confessions: (a) 10/09  (b) 24/09	(a) Required quorum not reached, hearing adjourned;  (b) Two cells together: Start: 11:30am, GA: 120 out of 276 Bench: 17 W: 103, M: 17	(b) People were very quiet; very few testimonies (only survivors)	- The population of this cell is very small (about 100); Plan to combine 2 cells (with Ruhosha: 17/10); - Ethnic problem observed (relative of a prisoner): “We are all survivors”; - lack of awareness
<b>Kibungo</b> Kigarama Birenga	Confess and ask forvgriveness (in the presence of 8 PC prisoners from Kibungo who confessed and are from this cell) (a) 17/09	(a) S: 10:20am Each prisoner stated his case;	(a) People shouted when a prisoner confessed; - some women survivors cried; - the local people did not show up despite being summoned	- No more reservations between survivors and the general population; - some people from the pilot sector have fled the country since the start of the <i>Gacaca</i>
Rwankogoto	(b) 24/09	(b) Quorum not reached, hearing postponed		
?	A new committee voted in and confessions, 24/09	S: 12:40pm GA: 124 Bench: 16	- Confessions registered for the first time; - fear of being accused keeps the attendance very low	

<p><b>Byumba</b> Kisaro <u>Kavumu</u></p> <p>Kimisugu</p>	<p>List of accused and confessions, (a) 9/09</p> <p>(b) 23/09</p>	<p>(a) Many people present on time</p> <p>(b) Everyone present</p>	<p>(a) Many testimonies from both sides (survivors/victims)</p> <p>(b) Dissatisfaction and reduced confidence in the law; few testimonies</p>	<p>(b) Enthusiasm waned after by the Byumba Court of First Instance acquits (13/09) an accused from Mutete-Kavumu cellule (as well as his accomplices), considered by the survivors as someone who planned the genocide in Mutete &amp; Zoko (problem was partially resolved after a strong reaction from the survivors)</p>
<p>Mutete-Kavumu</p>	<p>List of accused and confessions</p>	<p>Everyone present</p>	<p>When the survivors gave their testimony, Gacaca Court Chairman asks for too many details, witnesses and evidence</p>	<p>- See above; - no survivor on the Bench; - Chairman and judges have a tendency to prejudge (according to one informant survivor)</p>
<p><b>Umutara</b> Rukara Gahini</p> <p>Umwiga</p>	<p>List of accused, 2/9</p>	<p>GA: &lt;100 Bench: &lt;15 The 2/9 hearing did not take place; Average attendance: 103 Opened: 11:55am</p>	<p>- Lack of motivation; - local residents hardly show up</p>	<p>- Generalized fear among the local people about telling the truth to strangers; - many of the men on the list of accused; - conflict between the prisoners who confess and local residents; rumours of prisoners who were manipulated so that all Hutus would be accused</p>

Kabeza	<p>List of accused, 5 – 19/9</p> <p>Hearing 26/9 adjourned</p>	<p>S: 1:30pm on average Bench present from 8:30am GA: 100 out of 300</p>	<ul style="list-style-type: none"> <li>- Complete silence of local residents (no testimony), except in defence;</li> <li>- the survivors spoke and there was testimony from prisoners who confessed, (5/9)</li> </ul>	<ul style="list-style-type: none"> <li>- The judges declared that they were tired of the people’s tardiness and they will no longer wait more than 2 hours. The local authorities objected to that decision (have promised to apply penalties to increase attendance);</li> <li>- many men on the list of accused (90% of the men who lived in this cell in ’94);</li> <li>- few judges have a good grasp of the law;</li> <li>- use of force to bring in the people;</li> <li>- tension mounted due to the arrests that the locals consider to be arbitrary. They demand that these arrests be justified in public.</li> <li>- Survivors more confident after these arrests</li> </ul>
<p><b>Butare</b> Nyakizu <u>Gishamvu</u></p> <p>Muboni</p>	<p>List of accused and confessions (a) 2/09</p> <p>(b) 9/9</p> <p>(c) 15/09</p>	<p>(a) S: 11:30am GA: 100 W: 72 M: 38</p> <p>(b) S: 10:35am GA: 135 Bench: 16</p> <p>(c) S: 11:00am GA: 102 Bench: 12 +3 substitutes</p>	<p>(a) People don’t or won’t attend the hearings; - only after 10 minutes did a survivor start to accuse someone who was no longer in the village</p> <p>(b) Very few people testify or confess</p> <p>(c) Survivors cry while giving testimony Some people (especially survivors) are afraid of accusing the genocide perpetrators</p>	<p>(a) The Bench did not show up; judges were late; - local authorities never show up</p> <p>(b) Will we get the truth about what happened?</p> <p>(c) Raising awareness about confessions and testimonies; - lists presented by the <i>Gacaca</i> secretary (compiled by the Butare PC prisoners) but they do not coincide with the ones compiled by Muboni residents</p>

Gishamvu	<p>List of accused and confessions, (a) 12/09</p> <p>(b) Public-awareness meeting on the subject of Gacacas, 26/09</p>	<p>(a) S: 10:30am GA: 146 Bench: 19</p> <p>(b) Start: 11:00am (2 hours later than planned)</p>	<p>(a) Residents interested, but few accusations made</p> <p>(b) The people are afraid to say what they have seen.</p>	<p>(b) The meeting started thanks to the police: the Local Defence Forces who rounded up Gishamvu sector residents</p>
Busoro	<p>(a) 4/09</p> <p>(b) Public-awareness meeting (<u>secteur</u>), 6/09</p> <p>(c) List of accused and confessions, 11/09</p> <p>(d) Continuation list of accused, 25/09</p>	<p>(a) Start: 11:05am GA: 75 (out of 187) W: 43, M: 32 Hearing ajourned (4th time)</p> <p>(b) 900 people (W: 520)</p> <p>(c) S: 10:20am, GA: 129 (80 W, 49 M); Bench: 15</p> <p>(d) S: 10:45am GA: 106 (W: 80, M: 26); Bench: 15</p>	<p>a) Lack of motivation - Discussion about “which solution will increase attendance”</p> <p>(b) Residents encouraged to participate</p> <p>(c) The people say nothing, except when provoked, and when they do speak, it’s superficial</p> <p>(d) No one dares to come and testify; - Prosecutor/CS lists read: some testimony and reactions</p>	<p>a) Survivors: the Chairwoman and others are slighting the people ... they are always absent; - another public awareness campaign is necessary - men and women are always separated</p> <p>(c) Many people (62) left to go to the market before the end. This shows that people are not interested or do not know why they came. They do not participate.</p>

<p><b>Kibuye</b> Budaha Nuange</p> <p>Cyambogo</p>	<p>List of accused and confessions, (a) 11/09</p> <p>(b) 25/09</p> <p>(c) 27/09</p>	<p>(a) The population was not advised, they arrived late; 5 prisoners present</p> <p>b) GA: 75&lt;100 Bench: 13&lt;15 canceled meeting</p> <p>(c) D: 11:45am GA: 126 Bench: 16</p>	<p>(a) The prisoners confessed and accused some local authorities who have not been detained; - people kept quiet or accused those who were either dead, refugees or prisoners</p> <p>(c) Many disputes, accusations and defenses; - the truth is beginning to come out: survivors and Hutus accused others</p>	<p>(a) Many perpetrators present: awareness raised; - problem of safety of Prosecution witnesses (poisonings): rumour of 5 deaths, a list of people who must be killed, leaflets, etc; - instead of raising awareness among residents to confess, intimidated the people: survivors are shocked and traumatised</p> <p>(c) According to some survivors the JG should judge and reconcile; - according to some Hutus, there are false testimonies being given; - problem of ethnicity: there is no confidence between the survivors and the Hutus; - among the judges, only the Chairman and the Vice-Chairman are working; - one judge was arrested for rape during the genocide</p>
<p>Vungu &amp; Zegebya</p>	<p>List of accused and confessions (prisoners present), 13/09</p>	<p>2 cells combined; very few people came, and they came late</p>	<p>Public awareness, prisoner confessions and discussions; no testimony or confessions from the residents</p>	<p>- The prisoners spoke angrily and intimidated the people; - they said that it was bad politics that incited them to commit genocide</p>
<p>Vungu</p>	<p>List of accused and confessions, 18/09</p>	<p>Started late GA: 124 Bench: 16</p>	<p>Active participation of the residents</p>	<p>- This cell is known for its good work; - survivors and Hutus wanted to tell the truth about what happened and often gave identical testimony ... but no one confessed</p>

<b>Kigali Rural</b> Ngenda <u>Kindama</u>  Gikundam- vura	List of accused and confessions, (a) 13/9  (b) 20/9	Start: ? GA: on average: 170 Bench: 17	(a+b) Some testimony for and against from both sides	According to one observer: 3 categories of people: - Those who killed and did not want to confess; - Those who knew the killers and do not want to denounce them; - Survivors' word carried little weight
<b>Gikongoro</b> Mudasomwa Nkumbure  Gatovu	List of accused*  Elections for the position of chairperson	Punctuality is not what it should be, some hearings start at noon	Fear of accusing; a smaller scope of activity; declarations from prisoners which inflated the lists	- *Lists compiled accusations made on the spot; - residents generally against the prisoners who "reveal their secrets"; - hope: <i>Gacaca</i> Court seemed to be competent, independent and impartial
Vumwe	List of accused*,  Elections for the position of chairperson	Punctuality is not what it should be; some hearings start at noon	Discussion about changes; declarations from prisoners which inflated the lists	- *List preestablished by the Inyangamugayo - Local population generally against the prisoners who "reveal their secrets"; - hope: <i>J.Gacaca</i> seems to be competent, independent and impartial
<b>Cyangugu</b> Bugarama <u>Nzahaha</u>  <u>Rebero</u>	3/09	S: 11:00am, GA: 100+ Bench: (12:00 noon) <15	Quorum not reached, hearing postponed	- Those who testify for the defence are often threatened; - safety problems; - three people arrested after being accused by prisoners

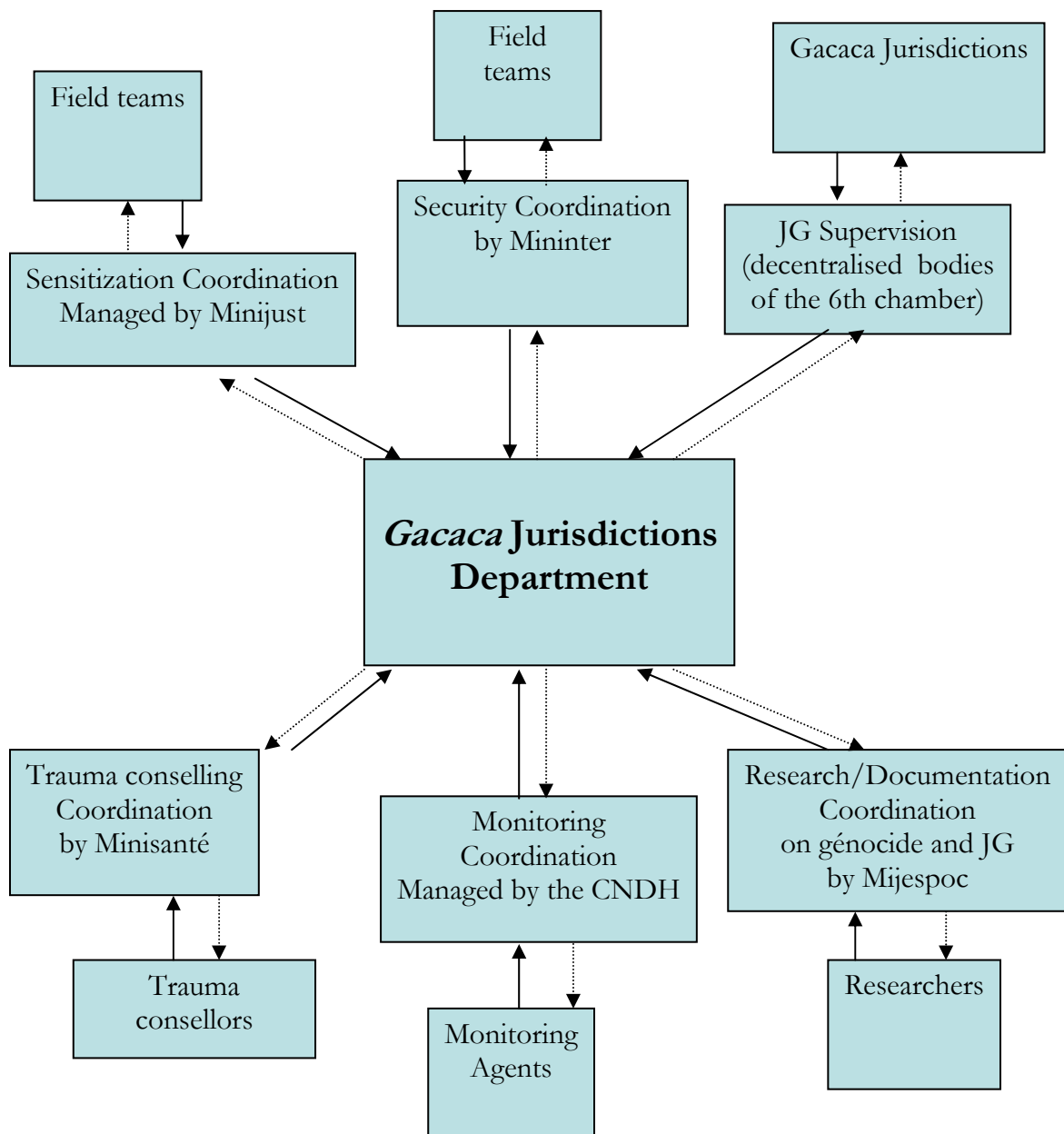
Kigenge	List of accused, (a) 3/09  (b) 10/09 and presentation of 3 prisoners	(a) GA: 100+ large number Bench: all judges present  (b) S: 10:15am GA: 178 Bench: 15	Confessions but only for looting; accusations also  (b) 2 prisoners gave interesting information	Prisoners were planned to be brought in but it was not done  (b) Chairman: “the prisoners have already finished the <i>Gacaca</i> and you don’t even want to speak. The prisoners are going to reveal the truth that you are hiding. We should be facilitating the work of the <i>Gacaca</i> ”; - <i>Gacaca</i> authority: “In almost all of the cells the list of accused was badly compiled
Giti	13/09	GA: 100+ Bench: all judges not present (13)	Hearing adjourned	
Kabuyange	List of accused, confessions and presentation of prisoners, 14-09	Start: 10:30am GA: 138 Bench: all judges present	2 prisoners, who did not confess, said nothing; one prisoner spoke and made accusations.	2 of the 3 people accused were arrested the day of the hearing

### Annex 3: *Gacaca* Co-ordination Structure

#### Legend

Réaction  →

Circulation of information  →



## **Annex 4: *Gacaca***

### **The *Gacaca* Courts**

In 1994, about one million Rwandan citizens were killed during a genocide planned and perpetrated by the previous government. The victims were Tutsis and the Hutu political opposition. Approximately three million people were exiled. The country was devastated. The institutions responsible for enforcing the law and to execute judicial decisions (courts, police, prisons, etc.) ceased to function.

After the genocide, nearly 130,000 people accused of having organised or taken part in it were imprisoned under very difficult conditions. Nine years later, approximately 100,000 of them are still detained awaiting trial.

The Rwandan government came to the conclusion that the conventional – European style – court system could not be the only solution to the problem faced by the country. For this reason the search for another solution started in 1998. It led to the purely Rwandan alternative in 1999, the *Gacaca* courts, a new system of participative justice (a revived version of a traditional community system of conflict resolution), in which all of society could take part. In July 1999, the government published a proposed bill concerning the “*Gacaca* courts” which was followed by a series of discussions with several groups of representatives of the Rwandan population, and the international community.

After several changes to the initial bill, the “*Gacaca* Law” was enacted and published in March 2001.

### **Objectives and organisation of the *Gacaca* courts**

The principle of the *Gacaca* court is to bring together all of the actors of the tragedy: survivors, witnesses, alleged criminals, in the same place where the crimes and/or massacres were committed. They all must debate what happened, in order to establish the truth, to compile a list of victims and to name the guilty. The debates are facilitated by non-professional “judges”, the *Inyangamugayo*, elected from among the respectable men of the community, who must determine sentences for the guilty. According to the government, the advantages of the new *Gacaca* courts are the following:

- Neither victims nor suspects should wait years for justice to be carried out: speeding up the trials.
- The costs to taxpayers for prison upkeep will be reduced and in so doing other urgent needs could be covered.
- The participation of each member of the community in bringing the facts to light will be the best means of establishing the truth.
- In the *Gacaca* courts, genocide and other crimes against humanity would be dealt with more quickly than in conventional courts, putting an end to the culture of impunity.
- The new courts would implement innovative approaches to criminal justice in Rwanda, in particular sentences of community service which will assist in the reintegration of criminals into society.
- Enforcement of the law will help the national healing and reconciliation process, considered the only guarantee of peace, stability and future development in Rwanda. Furthermore, it will ensure that the people take full political responsibility.

### **How the *Gacaca* Function**

People accused of genocide are classified into four categories:

- Category 1: Planners, organisers, and leaders of the genocide; those who acted in a position of authority, notorious murderers as well as those who are guilty of sexual torture and rape.
- Category 2: Perpetrators, conspirators or accomplices of intentional homicide or of serious assault against the person, causing death.
- Category 3: Persons who committed serious criminal acts without the intention to cause the death of the victim.
- Category 4: Persons who committed offences against property.

Those accused under Category 1 are judged by conventional courts: the “Courts of the First Instance”/“Magistrates Courts”. For all other cases, the government has set up about 11,000 *Gacaca* courts, each comprised of 19 elected judges, known in the community for their integrity. These civil judges have been trained prior to the start-up of the courts. Their election took place October 4-7, 2001, when more than 254,000 people were elected. Training was carried out in 2002.

There are four levels of courts corresponding to the different categories of crime. Categories 2, 3 and 4 are judged by the *Gacaca* courts. These levels follow the administrative structure of the country. Only categories 2 and 3 can appeal. The judgements are then examined at a higher level of the administration, the district and province respectively.

At the cell level, 9,201 *Gacaca* courts investigate the facts, classify the accused and try the category 4 cases (without appeal).

At the sector level, 1545 *Gacaca* courts handle category 3 cases.

At the district level, 106 *Gacaca* courts hear category 2 cases and appeals of category 3 cases.

The 12 *Gacaca* courts of the provinces or Kigali City hear appeals of category 2 cases.

There are three structures at each level of the courts:

- The General Assembly (at the cellule level, all residents of 18 years and older, and at each of the other levels, a group of about 50 to 60 elected “respectable citizens”).
- The Bench: 19 judges in each court.
- The Co-ordination Committee: 5 members chosen from among the 19 judges.

The *Gacaca* courts do not have the authority to pronounce death sentences. People who were 14 to 18 years old at the time of the offences receive half the sentence imposed on adults. Children who were under 14 are not judged and are set free.

It was decided that half of the prison sentence received by all category 2 or 3 detainees, except for category 2 detainees who refuse to confess or plead guilty, could be replaced by a sentence of community service. The sentence will be reduced by time already served while remanded in custody.

Category 4 accused will not be sentenced. If an accord cannot be reached for the return of property stolen or destroyed, the cell’s *Gacaca* judges will determine the amount for reparations. This new *Gacaca* system is based on participative justice and on its inherent virtues of reconciliation. According to the Ministry of Justice, the people who were in the hills during the genocide will be “witness, judge and defendant”.

Implementation of the *Gacaca* throughout the country will be conducted in three stages, as was chosen for the implementation of Community Service.

The first stage started in June 2002 with the launch of the *Gacaca* courts in 12 pilot sectors, 1 sector per province.

The second stage started in November 2002 when the courts were launched in 106 new sectors, in addition to the existing 12, 1 sector per district.

The third stage is presently planned for the beginning of 2004, when all of the country's courts will be functioning.

### **Kinyerwanda Glossary**

Inyangamugayo: *Gacaca* judges, also called “the respectable ones”, elected at the end of 2001

Imidugudu: village built after the events of 1994 to house the repatriated

Interhamwe: Hutu soldiers who committed the genocide

Local Defence: civil security officers in the districts, managed by local authorities

Umuganda: mandatory community service

Nyumbakumi: responsible for 10 houses, the lowest level in the administrative divisions

Ingando: solidarity camps where the detainees released in January 2003, stayed several months prior to being released into the communities

Inyenzi: “cockroach”, insult leveled at Tutsis during the genocide

Inkotanyi: “fierce combatant”, Ugandan FPR combatant

### **Abbreviations used in this report**

PRI Penal Reform International

Minijust Ministry of Justice

Minisanté Ministry of Health

Mijespoc Ministry of Youth, Sport and Culture

Mininter Ministry of Domestic Security

DJG Département des Juridictions Gacaca (Department of Gacaca Courts)

DJG – CS Département des Juridictions Gacaca – Cour Suprême (Department of Gacaca Courts – Supreme Court)

CS Community Service

ASF Avocats Sans Frontières (Lawyers Without Borders)

RCN Réseau des Citoyens (Citizens' Network)

DCHR Danish Centre for Human Rights

Liprodhor Ligue pour les droits de l'Homme au Rwanda (Human Rights League of Rwanda)

CNUR Commission Nationale de l'Unité et de la Réconciliation (National Commission for Unity and Reconciliation)

CNDH Commission Nationale des Droits de l'Homme (National Commission for Human Rights)

6<sup>ème</sup> chambre de la Cour Suprême = Département des Juridictions Gacaca (6<sup>th</sup> Chamber of the Supreme Court = Department of Gacaca Courts)

## Annex 5: The Story of Augustin Usabyemungu at Gisenyi

I was born in 1965. When I became an adult, I went to live in the Gabiro cell (Murama sector).

The genocide period was preceded by a time of a multiparty system. That is when the genocide started. At that time, I had joined the MRND (National Revolutionary Movement for Development) party. It was the councillor of our sector who submitted my name during a meeting in the local council hall. They said that they were looking for a wise person and they chose me. I went to the local council hall to see the mayor, and I told him: "I am a shopkeeper, how can I mix my business with politics?" I also told him that I didn't know how to read or write. He answered that I would be given a secretary who could write. He told me that they chose me so that I would motivate people to join the MRND party. I accepted and I stayed.

About 5 months later, we had some problems. That was in 1992, the war was going on and people wanted to attack. To my great surprise, I saw people from the MRND attack the Tutsi colleagues of our party; they went and took their cows. To justify their actions, they said that those cows belonged to the *Inyenzi* or accomplices of the *Inkotanyi*. I told them: "Look, these people spent the night here with us, some are our brothers-in-law, the others our fathers-in-law. How could that be possible?"

I couldn't believe it. I sent someone to get the mayor to come and help us. He arrived and found that some of the cows were killed, some had their hocks cut. It was a real disaster. Thirty-eight cows were affected, and I asked myself if that was the multiparty system.

The mayor arrived with police officers. We arrested the people who committed these acts and took them to the community jail. We believed that they would be punished as an example, but after three weeks, we saw that they were released, even those who we took to Gisenyi ... Afterwards, I went to find out why, and I was told that I could go to Gisenyi to ask. I quickly understood that with the parties, no one could take responsibility for their misdeeds. I gathered together all of the residents, both Hutu and Tutsi. I asked their forgiveness. I told them that I didn't know I had joined the party and that now, I was resigning because I couldn't take any more. The Hutus asked me to change my decision, the Tutsis too, but I refused and I told them I would no longer belong to a party.

After the death of Habyarimana in 1994, the same people who we had put in jail got another opportunity to start again. They decided to attack the Tutsis again. Since the first mayor helped us before he was replaced, we believed that it would be the same this time around. We decided to look after our own security.

So, we each got a weapon: machetes, spears, clubs and who knows what else. We set up a guard. It didn't take long; we saw a big group descend towards us to attack us. Then, we told ourselves, it didn't really matter, since from then on, we were all considered accomplices. We said to ourselves, if we let this attack go through, of course it was directed at first towards the Tutsis, but after them, it would inevitably hit us as well. Those who thought that it would only be Tutsis who would be attacked were deluding themselves, we decided. And so we resisted their attack. They came armed with machetes, spears and clubs. They didn't have guns. They tried to terrorise us, but there were more of us. The entire sector came together, both Hutus and Tutsis. We chased them far away, but unfortunately, one of us was seriously injured and later, I believe he died from his wounds.

What especially drove me to confront them is that I had never seen a man killed. So when I saw people run after a man on the hill to kill him, when I saw someone was going to be speared to death, it had a great effect on me. Or even, to find out that a neighbour, who didn't know how to read or write, who had never even been here to Gisenyi, should be an accomplice of the Ugandan *Inyenzi*, then you felt that you had to do whatever was possible to save this innocent person. It was clearly unjust. It was as if they were making a mistake about someone in your presence, you can't help but say that it was wrong.

To say that I had money and I shouldn't have worried, that was not possible; because my father had two Tutsi wives, my two younger brothers married Tutsi women, and these women loved me a lot. I looked after the cows of several Tutsis. We traded cows. That would have meant that although they were being treated unjustly then, my turn was coming right after. Also when there were no more Tutsis, some killed and the others taken to Zaïre, they made a list of those who had a Tutsi mother or father. They would necessarily have to be killed. So you see, my turn was near – especially because I searched for people and saved them.

After the first attacks, our attackers went back for reinforcements, saying that the people from Murama had joined forces with Tutsis and that it was serious. They first went to the local council hall and stated their problems. We saw houses burning in other places and people running towards our homes and we thought that we could resist like that until the end.

It was Sunday, we saw a big attack coming, twice as big as the first one. In the meantime however, there was a man who started massacres in our area. He left us on the rounds and went off in another direction. He went to my in-laws home and he found my mother-in-law there and killed her. Her daughter came and told us.

We took care to hide the Tutsis who were with us, some at my father-in-law's place, and the others elsewhere. Those who came to join us told me that the attackers were going to take my car. Since I thought that these attackers didn't know that I was involved in the counterattack the night before, I went home. When I arrived at my banana grove I heard someone shout: "There he is". They came, one held me by the waist, the other by my left hip, the other by my arm. My legs were no longer touching the ground, they took me to the centre of the entire troop. There were so many of them that I couldn't even count them. They laid me down on the ground and emptied all my pockets saying that I had grenades in them. They told the people that I was going to blow them up with the grenades that the *Inkotanyi* gave me. After they took all the money I had on me, one of them gave the order to finish me off.

Old M (his son is here in prison with me) intervened just at the moment when someone was going to thrust his spear into me. He told them: "My children, why do you want to spill blood here? This child is one of us, why don't you listen to him?"

One of them tried again with his spear, but all the residents cried out against my execution saying: "This man is really one of us, he has never been bad". They asked who led the counter attack the night before, and said that they were told it was *Usabyemungu*, but everyone denied it and me also.

That is how the attacks started. Every day it was like that. But meanwhile, we met a young man from my cell named N. They arrested him saying that he was Tutsi. I told them that he wasn't. I added that it was said that his grandmother was Tutsi, but he wasn't. They told me to kill him with the machete, but the voice of the residents prevailed, they finally left him alone and left. But the next day, they came back, and the day after that as well, and that continued for a long time. We told ourselves that they would end up exterminating all the Tutsis. So we decided to no

longer keep them in our house, especially during the day. Anywhere we found one, we hid him in the bush during the day. At night we took him to sleep in the house and at 3:00 or 4:00 AM, we took him to hide outside. We only gave him food.

I also gave a lot of money to dissuade people. However, I couldn't satisfy everyone. Some people went to report me at the local council hall. They are also here in prison with me. They said I hid people ... Later they came to threaten me saying that if I don't give them money, they were going to tell at council hall, and I would then be shot or they would call an attack.

In fact, it was at that time that we decided to get people to escape to Zaïre by boat. We paid 25,000 FRW for each person. I organised it with my two neighbours.

One day we didn't pay enough attention, we had sent some people (Léopold and Sosthène) who fell into an ambush. Happily, the Tutsis who went with them were not killed, because my neighbours were trapped on the return trip. The *Interahamwe* told them that they would leave them alone only if they told them where the Tutsis were who we were protecting. They were still eight at my house. Keeping the secret cost them their lives; they said they had never collaborated with me. The attackers insisted but my friends never told. They then asked them what punishment they deserved. My friends asked to be forgiven, telling them that they would give them money. They negotiated up to 100,000 FRW. After they received the money, they said that it was impossible to forgive someone who hid Tutsis, and that they would be saved only if they said that they were working with me, since in that case they would leave them alone and come looking for me. My friends denied it and the attackers killed them immediately. When I found out about their death, I didn't know what to do any more; I pretended to be sick and stayed in bed ...

Several attackers wanted to come to my house no matter what, but the others were against it; they said it wasn't worth it since the ones who just died denied my involvement in anything. They only came to tell me there was a report saying that I participated in sending Tutsis to Zaïre. They said they were going to find them in Zaïre, because the good neighbourly relations with that country allowed them to go there with no problem. They said that if they were able to prove that was true there would be no more discussions ...

I was afraid for the Tutsis who were staying at my place. If they were found, the link would be established with those who went to Zaïre. The next step was then certain: my head. Only one question was asked the survivors who were discovered: who was giving you food? That person must perish the same as the person he was protecting. Then, I went to find out how to get them across somewhere else. However I cannot boast because I was not the only one who contributed to the success of this venture. Even though I had the most money, everyone really contributed what they could. Whether it was 2,000, 3,000, 5,000 FRW, they gave it to me and we succeeded in getting them across.

It was just after this action, around July, that they decided to come and kill us all, because they said that the *Inkotanyi* will be victorious, and they believed that we were going to report them to the authorities, that we were going to tell how everything happened. It was at precisely that time that people fleeing the war in Gitarama started to arrive. There were also soldiers among them. They told them that they had lost, and that to save themselves they had to escape. They suggested that I go with them, which I accepted to protect myself. They asked why I didn't put my things in the car, I replied that I sent someone to get gas in Gisenyi and soldiers were going to bring it back. They left without me. They hadn't got very far when we learned that the *Inkotanyi* were in Rutshiro.

When I found out, I sent my younger brother, who has recently died, to tell them that there were

still soldiers here! The *Inkotanyi* sent us about three hundred soldiers and the *Interahamwe* and ex-FAR (Rwandan Armed Forces) who had stayed behind all left. They went to Zaïre.

Those FPR (Rwandan Patriotic Front) soldiers who came to help us were all aware of the situation, because they came to see me and asked me: “Are you so-and-so?” “So it’s you who sent the people to such-and-such a place?” And I answered yes each time because it was correct. I was even afraid at one time, because I said to myself that one never knows with the *Inyenzi*. They took me with them, we left together. I stayed with them all night and the next morning they brought me back. I had a gun; they asked me how I got it. I told them that I had asked the FAR soldiers who left for it, that I had brought them drinks and they gave it to me. In front of everyone in the village, they asked me to give it to them, so the people wouldn’t think that they had taken anything else from me.

Three weeks later, the Tutsi refugees returned, everyone came to thank me. Even those who were at Gisenyi, who became soldiers, asked their friends to take care of me. Everyone came by to thank me. They gave me cows almost every day.

Towards the end of 1995, some plots hatched by my neighbours surfaced; they started to raise the problem of my father-in-law who was in prison. The authorities summoned people to come forward and testify for or against this old man. I also went since I was called among the survivors. We were asked what we knew about the old man. Everyone said that it was a mistake to have put him in prison, that it was true that he had hidden a child, but the *Interahamwe* took the child from him afterwards. They asked my opinion about that. I gave my version of the facts, saying that the child was killed when we, including the old man, were attending the burial of another person at the cemetery – unless he committed other crimes that I don’t know about. I know that he didn’t kill the child. And so, the old man was released. But those who had him arrested were not happy at all. It was a woman named M and a certain Juvénal Hitabatuma. They said that it was me who had him released. They even said that I paid for his release.

They then started to stir up plots against me. It was hard, because they couldn’t accuse me of having killed anyone, they said that I had people killed. They also said that I was the president of the CDR (Coalition for the Defence of the Republic). However I didn’t know that at the time. I only found out when I read my case file to see what I was accused of.

Then, I was arrested. I was in front of the store where I do my shopping when a soldier came towards me and said that there was someone who wanted to ask me something. I went with him and a little further, I saw this old man and his daughter, and we went with them to the brigade. When we arrived there, he told the soldiers that he was accusing me of killing his son Kageruka and his wife. He said that – truly without any shame at all. He was asked who could provide testimony to back up what he was saying. He gave the name of a woman named Véronique B as a witness. In fact, she was his daughter-in-law. When she came, she confirmed that it was me who killed Kageruka and his wife and she said that I had found them at her place. In fact, Kageruka had thrown himself in Lake Kivu.

When I went to court, I was asked if I was ever head of the CDR party. I answered that I wasn’t aware of it. I was shown that I was accused of directing this party as vice-president; that it was I who searched everywhere for Tutsis, that I had even killed some of them and that I had delivered others to the *Interahamwe* who killed them; that I looted their property and that I also was a great killer in my sector; that I spent my days shooting people. And so, they told me that I had killed people, including my neighbour Kageruka who had given me a cow.

I answered them that I was not at all worried about that, and that I didn't even owe any explanations because their families were there. They were amazed.

They then asked me how and why I was elected vice-president of the CDR. In response, I told them that it was impossible to keep the presidency of the CDR a secret, because all of the party leaders' names are at the local council hall and every one in the town knows that.

They told me that they were going to investigate and summon the people to appear ... But then, the survivors who came to testify in my favour were taken and beaten – beaten badly, again and again, even worse than ever.

Afterwards, I understood that all this was due to an old man who was a nurse at Gisenyi and his daughter. This old man has since died. Him – he came to the brigade. And when my witnesses arrived, he approached the soldier named C. I don't know what he told him. I only saw him bring some concrete iron and my friends were beaten to the point where I had to shout to them that they could say that I had killed instead of continuing to suffer in such a way. They continued to say that I hadn't killed anyone. I begged them to change for their own good, but they resisted. They beat them, rolling in the mud to such an extent that the ones who wanted to testify in my favour decided not to.

Everyone was terrorised. There was even someone who came to testify in my defence and they didn't even write down what he said. His name is R, and he was a councillor. He was pointed to me. I told them to call him back for him to testify again; I told them that here, nothing is done in secret, that there are survivors who know very well the facts. And anyway G is the older brother of the one that they accuse me of killing. There is also their younger brother whose testimony I have here. I learned that G returned when the substitute was here but I don't know what he said.

And so, since 1996, I have been here. I started out by being a survivor in 1994; then I was a member of the CDR; now I am an *Interahamwe* or other who exterminated people. But it was all done by this woman and Juvénal. Recently, this man was asked what he was going to do. He was shown that there would be no one to back up his lies, especially since all the people who supported him up to now are dead. He answered: "Me, I paid 200,000 francs against Usabyemungu. If he has this money, he only has to give it to me. If not, he could rot in prison, I don't give a damn". That is what he paid to have me put in prison. He said that he gave all the money from the coffee he had sold. He vowed that he could not lose his 200,000 francs. That is my case.

Regarding the fact that he has to start his life over again from zero, Augustin says:

At the end of the war, there were many displaced people, refugees ... Among them, many were men of good standing. Whether they were criminals or unemployed men, everyone lost their property in Zaïre. In truth, the promoter of this situation is the most at fault. One person could commit a bad act, but the consequences are spread over many people. For example, after hearing about my arrest, my younger brothers all fled. They said to themselves that they weren't any more saintly than me, and felt that they were also threatened. When they arrived in Zaïre, they all got dysentery and died. Who can I say is responsible for these deaths? The consequences, I should know, are the results of evil. Did those who were killed in 1994 not have property? And the survivors, what have they got back? You have to go along with the times.

## Report on the hearing of Augustin Usabyemungu's case

Gisenyi Court, November 8 and December 13, 2002

*Question:* Were you informed of the accusations against you?

*Response:* Yes

- What procedure have you followed?

- None, because I did not kill anyone.

- Do you acknowledge the charges against you?

- No!

- What do you not acknowledge?

- None of them

*Public Ministry:*

- (Directed to Usabyemungu) You are accused of genocide!

- (Directed to the Bench): Usabyemungu was a powerful person, a shop-owner, he was even at the head of the MRND party, he has killed and looted.

On paragraphs 34 and 35 of his file, the death of a certain Nyambwana, who was killed by Usabyemungu is mentioned. They were friends, but Usabyemungu asked people to kill him along with his wife and to throw them into Lake Kivu.

Usabyemungu carried a gun and a grenade in his car.

A certain Nyinawabega accuses him of having his employee Kageruka do the killing.

Apart from having killed people, Usabyemungu killed a young man named Loto who had stayed a long time at his house.

On the subject of looting: A certain Nyirambabazi vows that Usabyemungu used his car to loot in Ubwinyana.

A certain Niwedusa says that Usabyemungu had destroyed the home of Kageruka. A certain Damascène also confirms that.

The latter affirms that when the *Interahamwe* came to steal cows, they came to share them out at Usabyemungu place

A certain Ntawukenashaka says that Usabyemungu was the strongman at Gabiro.

*Bench:*

- What did you do before the war?

- I was a shop-owner.

- Where did you carry out your business?

- I sold drinks and beans!

- Did you own a car?
- My area was very poor, I asked for a credit of 800,000 francs, I added 300,000 and bought a small van to distribute food in my area.
  
- Why were you chosen?
- I was not the only one to receive this credit; it wasn't the first time that I was granted a credit.
  
- You were powerful!
- It was only credit; it wasn't free money!
  
- Where were you at the beginning of the war?
- In my home sector, Murama!
  
- What were you doing?
- In 1990, when the *Inkotanyi* attacked, the political parties started up, it was then that those who were to represent the parties in the cells, sectors, etc. were chosen. It was at that time that I was chosen to represent the MRND. I told them that I couldn't write and they got a secretary for me.
  
- Why were you chosen when you didn't even know how to write, did you not have any doubts about their confidence in you?
- They really knew me.
  
- Can you tell us about those who died in Murama?
- There were many of them. Nzamukunda was my neighbour, he is dead. Uzamukunda, Gatari, Mimi, Nsanzinka, an old woman who hid in the sector office. I was there for some deaths. I am charged with the death of Gatari and Loto.
  
- Did you know Kageruka?
- Yes!
  
- Where were you when he drowned himself in the lake?
- We were fighting against the attacks. But one day, the Captain of the region [Ex-FAR] came to see us, accompanied by the Prefect M. They made sarcastic comments telling us that in all of Rwanda, we were the only ones 'working' [killing Tutsis]. They told the councillor that he had to change his behaviour. The next day, another group came by, they found us burying an old woman who was killed. They took me and beat me and threw me down on the ground, ready to kill me, but the villagers begged them to pardon me. They left me alone but they stole the cows.
  
- Do you know Kageruka? Where is he?
- He committed suicide. He left to go to Kibuye, but he came back and went to hide at Maniraguha's place and he told me. I took food to him. A meeting was organised in May by Kanyabashi and Habiyambere. During that meeting, it was said that no Tutsi should be left alive. It was at that time that Kageruka, his wife and their child killed themselves in Lake Kivu.
  
- Do you know Gasarabwe?
- I don't know him. I don't even know where he comes from.
  
- Do you know Rutazigwa?
- I know him. He is a big liar, everything he says was dictated to him, especially that he was terrorised. As evidence I present the survivors who were beaten and terrorised: Musagara Enias –

Nayigiziki – Mutazigwa. There were many others who were terrorised.

- And what if he managed to verify that no threats were made?
- I would present more proof. For example, witnesses who can attest that Rutazigwa is lying.

*Here, someone whose title was not given starts speaking:* When the attacks were strengthened, or let's say intensified, Usabyemungu started to have people leave to hide on Ijwi island.

- Why were there not many people taken there?
- He did his best! Even the child who died, it was from dysentery. But also, there were some important people. He gave money to buy their lives.

- *Question:* Did he kill anyone when he was still in the MRND?
- No!

*The Bench returns to Usabyemungu:*

- Do you know Nyiramahenga?
- Yes, but what she says is of no value, she says that I gave Kageruka and his wife up, as well as Uwamariya and Baziki.

- Do you know Dan?
- Yes

- Do you know the people he has killed?
- No.

- It is said that you looted everywhere.
- How could that be possible when there are no roads that go through the entire sector!

- Who destroyed Kageruka's house?
- What I do know, is that I bought the sheet metal from his house, that I left it at my place and that it was there for a long time. The owners came later to get it. However, I accepted to payment for it.

- Someone says that all looted goods were shared among you!
- The councillor's cows, I was given them to look after. When he arrived, I told him how I was overwhelmed and who stole them.

- Do you know Ntawukenashaka?
- Yes, I know him. He reported all the murderers, but he has not mentioned my name anywhere, he has never said that I had given any orders.

*As if to answer a question, he said:* Yes Nyakabwana. I know him – he is full of lies. He is full of tricks. He lived in Gisenyi, where he was for five years, and not at Murama.

- Is there is misunderstanding between you and the public Prosecutor?
- Yes, it's paragraph 216 of the judicial file.
- How did you know that some survivors were beaten because of their testimonies?
- When I was in Gisenyi, I found out.

The gun that I am accused of owning, I got it from a soldier to whom I had given money.

- How were you replaced by Kanyabashi and how were you elected to the head of the MRND?

- In 1992, there was disagreement among the people.

- The ones who looted the cows, which ethnic group do they belong to?

- Hutu. I sent a message to the mayor, Anselme, telling him that the Hutus had started to loot cows. These Hutus were arrested and put in prison for two weeks.

- Was your car used for looting?

- No, it was used to bring a machine belonging to the Captain. I provided the witnesses.

- Others killed their own, but you, you were hiding people. How did you manage to do all of this?

- It was God who helped me, but also other people in my sector worked along with me.

In closing, it was decided that the cows and the sheet metal must be paid for.

The hearing adjourned at 2:30 pm

On December 13, 2002, at 2:30 pm, in the courthouse at Gisenyi, the judge decided – after having examined the case – to acquit Augustin Usabyemungu without any further trial. Those who had accused him could not provide any tangible evidence against him. Thus from this day on he is declared innocent of the charges against him and must return to his home.

Notes collected by the PRI research group.

Gisenyi, 2002