

**EIGHT YEARS ON ...
A RECORD OF *GACACA*
MONITORING IN RWANDA**

PENAL REFORM INTERNATIONAL

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PREFACE

Penal Reform International (PRI), founded in 1989, is an international non-governmental organisation promoting penal reform worldwide. It has regional programmes in the Great Lakes, the Middle East and North Africa, Central and Eastern Europe, Central Asia and the South Caucasus, and representation in North America. PRI has Consultative Status with the United Nations (UN) Economic and Social Council and the Council of Europe, and Observer Status with the African Commission on Human and Peoples' Rights.

PRI seeks to achieve penal reform by promoting:

- Development and implementation of international human rights instruments in relation to law enforcement and prison conditions
- Reduction of the use of imprisonment throughout the world
- Elimination of unfair and unethical discrimination in all penal measures
- Abolition of the death penalty
- Use of constructive non-custodial sanctions that support the social reintegration of offenders while taking into account the interests of victims

PRI has been undertaking independent monitoring of the *Gacaca* courts in Rwanda since they became operational in 2001 in response to the crimes committed during the 1994 genocide. PRI's monitoring has been formulated around a programme of 'action research', which has been designed to enable a team of local researchers to capture the perceptions and experiences of key stakeholders – namely genocide survivors, witnesses, detainees, civil society organisations and government staff – in the *Gacaca* process.

With Rwanda's *Gacaca* process drawing to a close, the purpose of this volume is to condense the findings of PRI's research into an easily digestible form for use by anyone with an interest in Rwanda and *Gacaca*. The volume's structure is intended to 'flag up' key themes and issues addressed during PRI's research, to outline the key arguments, and to signpost where to go in the PRI literature for greater detail.

Disclaimer

The opinions expressed in this report do not necessarily represent the policy of PRI.

The names of all individuals quoted or referred to in this report have been removed to protect their identities, except where comments or statements made are a matter of public record.

ACKNOWLEDGEMENTS

PRI is indebted to the dedication and hard work of its staff and others who have been involved over the years with the collection, analysis and preparation of its *Gacaca* research. For reasons of confidentiality, the names of individuals are not listed here, but their contributions to the research and its objectives are highly appreciated.

Gratitude is also due to the many hundreds of individuals who agreed to be interviewed and freely gave their opinions during the course of this research.

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- UK (United Kingdom) Government's Department for International Development (DfID)
- Swiss Agency for Development and Cooperation (SDC)
- Belgian Ministry of Foreign Affairs

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GLOSSARY

(Kinyarwanda: Rwandan language)

Cell	second tier administrative area, above the village (Umutugudu) level.
Gacaca (Kinyarwanda):	‘grass’; the name given to a system of community-based courts for prosecuting genocide suspects.
Ibuka (Kinyarwanda):	‘to remember’; the name of the largest organisation for Rwandan genocide survivors.
Ingando (Kinyarwanda):	‘stopping place’; the term used for solidarity camps.
Inkotanyi (Kinyarwanda):	‘tireless fighters’; the name adopted by the members of the Rwandan Patriotic Army.
Interahamwe (Kinyarwanda):	‘those who work together’; name given to genocidal militias.
Intwali (Kinyarwanda):	refers to a hero, a brave person who does not retreat before an obstacle. Shortened from <i>intwali mu butabazi</i> , ‘a heroic rescuer’, also known as ‘the righteous’.
Inyangamugayo (Kinyarwanda):	‘people of integrity’; <i>Gacaca</i> judges.
Nyumbakumi (Kinyarwanda):	most basic Rwandan administrative unit (replaced by Umutugudu (village)). Each group of 10 houses was the administrative responsibility of a locally elected leader, called a Nyumbakumi.
Sector	third tier administrative area, above the village (Umutugudu) and the cell.
Umuganda (Kinyarwanda):	mandatory communal work. Currently takes place on the last Saturday of each month.
Umutugudu (Kinyarwanda):	‘village’; basic Rwandan administrative unit.

CHRONOLOGY OF RELEVANT EVENTS

(Sources: BBC News; PRI reports)

1300s: Tutsis migrate into what is now Rwanda, which was already inhabited by the Twa and Hutu peoples.

Late 1800s: Tutsi King Kigeli Rwabugiri establishes a unified state with a centralised military structure.

1890: Rwanda becomes part of German East Africa.

1916: Belgian forces occupy Rwanda.

1923: Belgium granted League of Nations mandate to govern Ruanda-Urundi, which it ruled indirectly through Tutsi kings.

1946: Ruanda-Urundi becomes UN trust territory governed by Belgium.

1957: Hutus issue manifesto calling for a change in Rwanda's power structure to give them a voice commensurate with their numbers; Hutu political parties formed.

1959: Tutsi King Kigeli V, together with tens of thousands of Tutsis, forced into exile in Uganda following inter-ethnic violence.

1961: Rwanda proclaimed a republic.

1962: Rwanda becomes independent with Grégoire Kayibanda as president.

1973: President Grégoire Kayibanda ousted in military coup led by Juvénal Habyarimana.

1978: New constitution ratified; Habyarimana elected president.

1990: Forces of the rebel, mainly Tutsi, Rwandan Patriotic Front (RPF) invade Rwanda from Uganda.

1991: New multi-party constitution promulgated.

1993: President Habyarimana signs a power-sharing agreement with the Tutsis in the Tanzanian town of Arusha, ostensibly signalling the end of civil war; UN mission sent to monitor the peace agreement.

1994 April: Habyarimana and the Burundian president are killed after their plane is shot down over Kigali; RPF launches a major offensive; extremist Hutu militia and elements of the Rwandan military begin the systematic

massacre of Tutsis; Hutu militias flee to Zaire (now the Democratic Republic of the Congo, DRC), taking with them around two million Hutu refugees.

1995: UN-appointed International Criminal Tribunal for Rwanda (ICTR) begins charging and sentencing a number of people responsible for the Hutu-Tutsi atrocities.

2000 April: Ministers and members of parliament elect Vice-President Paul Kagame as Rwanda's new president.

2001 March: *Gacaca* law 'for the prosecution of offences related to the crime of genocide and crimes against humanity committed between 1 October 1990 and 31 December 1994' (Organic Law no. 40/2000) enters into force.

2001 October: Voting to elect members of traditional '*Gacaca*' courts begins. The courts aim to clear the backlog of 1994 genocide cases.

2002 June: Start of *Gacaca* pilot phase.

2003 January: Presidential Decree provisionally releasing more than 20,000 prisoners.

2003 May: Voters back a draft constitution that bans the incitement of ethnic hatred.

2003 August: Paul Kagame wins the first presidential elections since the 1994 genocide.

2003 October: First multi-party parliamentary elections; President Kagame's RPF wins absolute majority.

2004 June: 2001 *Gacaca* law is revised by Organic Law no. 16/2004, altering the 2001 legislation considerably.

2005 July: Government begins the mass release of 36,000 prisoners. Most of them have confessed to involvement in the 1994 genocide. It is the third phase of releases since 2003.

2006 January: Rwanda's 12 provinces are replaced by a smaller number of regions with the aim of creating ethnically diverse administrative areas.

2006 November: Rwanda breaks off diplomatic ties with France.

2007 February: Some 8,000 prisoners accused of genocide are released. At this point, some 60,000 suspects have been freed since 2003 to ease prison overcrowding.

2007 March: *Gacaca* law is further revised by Organic Law no. 10/2007, amending the categorisation of offences and sentencing guidelines.

2007 November: Rwanda signs peace agreement with DRC. Under the deal DRC will hand over those suspected of involvement in the 1994 genocide to Kigali and to the ICTR.

2008 September: President Paul Kagame's RPF wins large majority in parliamentary elections.

2009 November: Rwanda is admitted to the Commonwealth, as only the second country after Mozambique to become a member without a British colonial past or constitutional ties to the UK; France and Rwanda restore diplomatic relations, three years after they were severed over a disagreement about responsibility for the genocide.

2010 March: End of Gacaca process is announced.

REPORTS ON GACACA: PENAL REFORM INTERNATIONAL

This summary volume is based on information contained in a number of research reports on the Gacaca process produced by PRI since 2001. These reports, listed below, are available to download in English and French from: www.penalreform.org

REPORT TITLE	PUBLICATION DATE
<i>Gacaca Jurisdictions and their Preparations</i>	January 2002
<i>Research on the Gacaca</i>	July 2002
<i>The Guilty Plea Procedure, Cornerstone of the Rwandan Justice System</i>	January 2003
<i>Research on the Gacaca</i>	September 2003
<i>Research Report on the Gacaca (Kibuye case study, Part 1)</i>	November 2003
<i>Research Report on Gacaca Courts: Gacaca and reconciliation (Kibuye case study, Part 2)</i>	May 2004
<i>From Camp to Hill, the Reintegration of Released Prisoners</i>	May 2004
<i>Report on Monitoring and Research on the Gacaca: The Righteous: Between oblivion and reconciliation, example of the province of Kibuye (Kibuye case study, Part 3)</i>	November 2004
<i>Integrated Report on Gacaca: Research and monitoring: Pilot phase</i>	December 2005
<i>Monitoring and Research Report on the Gacaca: Information-gathering during the national phase</i>	June 2006
<i>Monitoring and Research Report on the Gacaca: Community service, areas of reflection</i>	March 2007

*Monitoring and Research Report on the Gacaca:
Trials of offences against property committed during
the genocide – a conflict between the theory of
reparation and the social and economic reality in
Rwanda*

July 2007

*Gacaca Monitoring and Research Report: Testimony
and evidence in the Gacaca Courts*

August 2008

*The settlement of property offence cases committed
during the genocide – update on the execution of
agreements and restoration orders*

August 2009

*The Contribution of the Gacaca Jurisdictions to
Resolving Cases Arising from the Genocide:
Contributions, limitations and expectations of the
post-Gacaca phase*

February 2010

1 INTRODUCTION

In 1994, approximately one million Rwandan citizens were slaughtered during a genocide directed against the Tutsis and moderate Hutus, planned and carried out at the behest of the former Government.¹ A further three million people were forced into exile. The country was devastated. Institutions responsible for justice and law enforcement (courts, police, prisons etc.) ceased to function. By the end of 1994, Rwanda had no more than 20 magistrates for the entire country.²

Initially, around 130,000 people were accused of organising or taking part in the genocide, and were detained under very poor conditions – in prisons built to hold only 18,000. Some seven years later, in 2001, 125,000 of them were still detained, awaiting trial. At the time PRI warned of the terrible prison overcrowding in Rwanda, observing that prison conditions would deteriorate even further in the likely event of a continuing influx of new detainees.³

The option of a general amnesty for the accused was rejected by Rwanda's new government, its people and the international community. Instead, it was decided that there should be accountability for genocide and massacres in order to eradicate the culture of impunity and to reinforce respect for the rule of law and the principle of 'due process'.

Despite assistance from the UN, foreign governments and a number of NGOs (non-governmental organisations) to rebuild judicial infrastructure, the sheer scale of the violence and the numbers of accused led the Rwandan Government to conclude that Rwanda's conventional justice system could not, by itself, be the answer to the justice problems the country was facing.⁴ In 1998 the Government began to look for another way of dispensing justice, given Rwanda's unique circumstances. This resulted the following year in the development of proposals for 'Gacaca jurisdictions' (usually referred to in this report as 'Gacaca courts' or simply *Gacaca*).

'Gacaca', literally meaning 'grass', with its origins in traditional community methods of conflict resolution (see glossary), was conceived as a system of justice in which the whole society would participate. *Gacaca* courts would introduce a unique and innovative character to matters of transitional justice. For the first time, an entire (adult) population would be entrusted with the responsibility for judging persons accused of the crime of genocide and other crimes against humanity.

The localised and accessible nature of the *Gacaca* approach was considered to be in stark contrast to the disconnectedness and slow pace of the UN-appointed International Criminal Tribunal for Rwanda (ICTR).⁵

It was in this context that PRI conceived and developed an ‘action research’ programme specifically geared towards the *Gacaca* courts. The goals of this programme were to provide all participants in the process, and first and foremost the Rwandan authorities, with the data necessary for improving and optimising *Gacaca*, taking into account the challenges and stakes raised by the need for national reconciliation.

1.1 Why *Gacaca*?⁶

For the Rwandan Government the *Gacaca* courts approach was considered to hold several advantages over conventional justice models:⁷

Firstly, *Gacaca* courts would **accelerate trials**. Victims and suspects would have a shorter wait to see justice done than through the regular courts.

Secondly, the courts would **reduce the cost to the Government** of maintaining prisons and make it possible to meet other urgent needs.

Thirdly, that **community participation** would be the most effective method of establishing the truth.

Fourthly, *Gacaca* courts would **uproot the culture of impunity** by ensuring accountability for genocide and other crimes against humanity more rapidly than through conventional courts.

Fifthly, the **introduction of innovative approaches to criminal justice**, such as work-related penalties (community service), would help the reintegration of criminals into society. More pragmatically, the introduction of community service also responded to the urgent need to ease chronic prison overcrowding.

Finally, *Gacaca* courts would help the course of **healing and national reconciliation** in Rwanda, which was considered to be the only ultimate guarantee for peace, stability and the future development of the country and the empowerment of its people.

While most observers at the time agreed with the potential benefits of *Gacaca* courts, there was (and remains) scepticism about the ability of the process to deliver fair justice for all. In particular, there was concern about the enormous bureaucratic and logistical challenges of managing such a system on a national scale. International and local human rights groups also

expressed their unease about the impartiality and independence of *Gacaca*'s thousands of lay judges. There was concern that lawyers would be barred from any official involvement in the process, combined with apprehension that defendants' rights to a fair trial were being eroded.

In 1999, a Government paper was published outlining the concept of '*Gacaca* tribunals'.⁸ National and international debate ensued on the proposals, with successive drafts forming the basis of the '*Gacaca* law', which was finally adopted and published in March 2001.⁹

Conscious of the range of difficulties it would encounter, the Rwandan authorities decided not to launch the process immediately throughout the entire country, but to proceed in stages. The first stage, designated the 'pilot phase,' began in June 2002 in 80 community 'cells' (later increasing to 751) out of a total of 10,000 nationwide. Evaluations were to be made both during and at the end of this pilot phase, leading, if necessary, to changes in the process before the start of the 'national phase.' The first major change came with the adoption of the Organic Law no. 16/2004 of 19 June 2004, which altered the 2001 legislation considerably.

The origins of *Gacaca*

Up until the colonial period, the *Gacaca* was a traditional method of conflict resolution among members of the same lineage. When social norms were violated or conflicts arose, such as land disputes, damage to property, marital problems, and struggles over inheritance, the parties were brought together during informal sessions presided over by *Inyangamugayo* ('people of integrity' in the local community). In addition to ending the breach of shared values, the key objective during these *Gacaca* sessions was to restore social harmony by reintegrating those who had transgressed back into the community. Unlike its current incarnation, the purpose of *Gacaca* in its original form was not to apply State law. Neither did the old *Gacaca* system handle the most severe cases, nor 'blood crimes'.

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

Until the creation of mediation committees in 2004, this brand of *Gacaca* continued to function across Rwanda, and still does in some instances.¹⁰ It would regulate minor conflicts such as those pertaining to ownership of property following a divorce, illegal occupation of a house (in Kigali), compensation for pillaged cows, the division of a plot of land, or the refusal to honour a promise or an unpaid debt.

Inyangamugayo would hear both parties involved in the dispute, ask questions and listen to statements from members of the community. They would submit their verdict to the two parties, who would either accept it – closing the case – or not, resulting in the case being brought before a regular court.

After the genocide, the Rwandan government, in seeking to assist the public prosecutor and courts in handling the large number of detainees accused of genocide, considered the *Gacaca* early on as a possible solution. '*Saturday talks*' led to the creation of a commission mandated to study the possible application of *Gacaca* to genocide trials.

The first organic law establishing the *Gacaca* courts 'for the prosecution of offences related to the crime of genocide and crimes against humanity committed between 1 October 1990 and 31 December 1994' was duly adopted on 26 January 2001 and entered into force on 15 March 2001.

1.2 PRI's *Gacaca* research¹¹

PRI has supported the development of the *Gacaca* process since the inception of its Rwanda programme in 1998. Over the years, PRI's independent advice and training support, in particular to Rwanda's Ministry of Justice, has been widely acknowledged. Its regular independent research reports – which form the basis of this volume (and which are listed at the beginning of this report) – remain an important source of information for the Rwandan government, the international community and scholars alike.

Throughout its research, PRI has monitored *Gacaca* through legal analysis, as well as by gathering and analysing data about the perceptions and behaviour of those with a stake in the process, including genocide survivors, witnesses and detainees, as well as local associations, international NGOs and government officials. In conducting the studies, the research teams identified key challenges in the *Gacaca* process and presented proposed solutions in the form of report recommendations. However, in order to stay objective, PRI has chosen not to participate in the implementation of these recommendations.

Nine major reports were prepared by PRI before and during the crucial pilot phase of *Gacaca* (2001–2004), including case studies, legal analysis and reports on key challenges. Over this period, 562 in-depth interviews were undertaken with genocide survivors and detainees, alongside 806 observation reports of actual *Gacaca* sessions. A further five in-depth reports have been prepared since the national roll-out of *Gacaca*, covering the development and implementation of its key aspects. PRI ceased its *Gacaca* monitoring activities in September 2009, publishing a final report in February 2010 analysing *Gacaca*'s overall contribution to the resolution of genocide cases.

1.3 Data collection methods

PRI's research teams over the years included field investigators and research assistants responsible for processing the initial data obtained. Teams were supervised by a Research and Monitoring Coordinator, whose job it was to determine the issues, as well as to compile, analyse and verify the processed data. Early on in the process, PRI took the decision to recruit Rwandan investigators from the areas they were assigned to survey. This enabled them to attend *Gacaca* sessions while also directly witnessing public reactions in their aftermath. This method proved to be an efficient way of collecting reliable information in a context where people remain generally extremely mistrustful of anyone who questions them about *Gacaca* and the genocide.

While some personnel changed over the course of the research period, data collection methods remained broadly similar since the first report that was published in 2002. Throughout the research process, data collection was principally qualitative and participatory in nature. In addition to direct observation techniques and surveys, in-depth and semi-structured interviews and focus group discussions were found to be the most fruitful and sensitive way of collecting reliable information from sources who were understandably wary of sharing their views on topics relating to the genocide. Since the research began, more than 2,500 individual interviews have been undertaken by PRI's research team.

Researching people's perceptions demanded in-depth local knowledge. The intended purpose was not to collect 'facts', but instead to understand the meaning attached to events, and the attitudes, behaviour and actions that this meaning generated. Thanks to this methodology, PRI's local researchers were able to conduct meaningful interviews and collect primary data that could then be compared to and validated against secondary sources to verify the information given. Once the preliminary results became available, they were reviewed by an independent expert to evaluate their validity.

The key issues, problems and proposed solutions identified in the research have been based on the views, needs and interests of thousands of ordinary Rwandans representing many different perspectives on the *Gacaca* process. Inevitably, the research has also been guided by the research teams' own experiences, as well as through discussions with other local and international organisations and the existing literature about genocide and post-genocide in Rwanda and elsewhere. A list of key non-PRI literature – including books, reports, articles and official Government information – can be found in the Select bibliography at the end of this volume.

Care was taken throughout to ensure that research locations reflected the wider Rwandan experience. For this reason research was undertaken across rural and urban areas, as well as at cell, sector and district levels (see box on 'Rwanda's administrative divisions', section 2.1). However, in some cases locations were chosen precisely because they represented anomalous situations, or raised particular issues relevant to the *Gacaca* process.

In its various reports, PRI explored the evolution of the *Gacaca* courts, examined trial procedures, processes and outcomes, and sought to explain the unique context surrounding the system. In describing and analysing its findings, PRI has strived hard to be impartial. Conclusions were drawn up and recommendations made in good faith – in particular with a view to improving the *Gacaca* process for genocide victims, detainees, their families and Rwanda as a whole.

Although initial study plans during *Gacaca*'s pilot phase did not include data collection by ethnicity, researchers noted the widespread use of regional and ethnic stereotypes by interviewees to describe themselves and their fellow citizens. This observation compelled the research team to take the concept and role of ethnicity into account in understanding attitudes to the *Gacaca* process.

1.4 Research limitations

As with any research, PRI's studies have certain limitations.

The 'action' dimension of this research implies the potential for bias, particularly with regard to questions of distance between the observer and the observed, and in the delicate handling of perceptions. For example, PRI's field researchers, all of whom were Rwandan, also carried the emotional and physical scars from the genocide events that left such a profound mark on Rwanda's population as a whole. The fact that the researchers were rooted in a context characterised by a profound social rupture could not fail to influence their perceptions and, consequently, their comprehension of the social realities that affect their society. This is not to say, however, that they were not qualified to reflect on the *Gacaca* process. On the contrary, their 'insider' knowledge guaranteed the necessary depth of understanding, particularly of cultural contexts and the social stakes. However, in order to avoid bias linked to this 'insider' status, their views were combined with the more distanced views of a Kigali-based research team, which included Rwandan and expatriate research staff.

Also, despite the scientific precautions taken, the semi-structured interviews with open-ended questions do not ensure consistency, making the handling of the information difficult. However, this qualitative method was considered to be the most effective way to deepen and enrich the complex study of perception and behaviour issues.

The risk of bias arising from the translation process was also an issue. However, precautions have been taken to mitigate this risk. Transcripts of the interviews that took place in the Kinyarwanda language were translated into French and then verified by a second translator. The monitoring reports, written in French, were translated into English and also verified subsequently by a second translator. This verification process ensured the identification and improvement of many of the linguistic imperfections that might otherwise have altered comprehension of the issues.

Finally, despite the lengths PRI has gone to in order to validate the data, it should be clear that research of this kind can never be exhaustive. While the findings presented in the PRI studies have highlighted clear and convincing trends, the picture they provide of such highly complex events can only ever be incomplete.

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- 1 In December 2001, the Rwandan Government published the number of genocide victims, from 1 October 1990 until 31 December 2004. According to these statistics, 1,074,017 people were killed, of whom 93.7% were Tutsis.
 - 2 Amnesty International, *Rwanda: The enduring legacy of the genocide and war*, London, AFR 47/008/2004, April 2004.
 - 3 Penal Reform International, *Gacaca Jurisdictions and their Preparations*, January 2002.
 - 4 The Government recognised that under the conventional justice system it could take more than 100 years to bring each of the accused to trial.
 - 5 According to information provided by the ICTR: 49 individual cases have been completed since it began its work in 1995 (with nine cases pending appeal, eight individuals acquitted and one retrial); 24 cases are in progress; and two individuals are awaiting trial. Eleven accused are still at large. Source: www.ictr.org (accessed on 28 February 2010).
 - 6 See in particular *Gacaca Jurisdictions and their Preparations*, January 2002.
 - 7 'Speech of the Vice-President and Minister of Defence on the Occasion of the Opening of the Seminar on Gacaca Tribunals', Kigali, 12 July 1999.
 - 8 'Gacaca tribunals vested with jurisdiction over genocide crimes against humanity and other violations of human rights which took place in Rwanda from 1 October 1990 to 31 December 1994', Kigali, July 1999.
 - 9 'Organic Law establishing "Gacaca Jurisdictions" and organising prosecutions for offences constituting the crime of genocide against humanity committed between October 1, 1990 and December 31, 1994', Official Gazette of the Republic of Rwanda, 15 March 2001, pp. 33–65.
 - 10 The legal change was made in Organic Law no. 17/2004 of 20 June 2004, 'determining the organisation, competence and functioning of the Mediation Committee', Official Gazette of the Republic of Rwanda, 8 July 2004.
 - 11 For more information about PRI's research process, data collection methods and limitations see in particular *Gacaca Jurisdictions and their Preparations*, January 2002.

2 ESTABLISHING THE TRUTH: GACACA IN THEORY AND PRACTICE

Having decided to establish a system of justice specifically designed for the prosecution of genocide, but without any model on which to base it, the Rwandan government made the decision to proceed cautiously with an initial pilot phase. The goal of this phase was to gather experience and evaluate the functioning of the process in order to adjust, if necessary, aspects of the project before launching it nationwide.

The decision to proceed slowly received a guarded welcome from local and international observers alike. Concern was expressed at the time about whether all of the necessary conditions were in place for its success. In particular, there was unease that:

- Most genocide perpetrators were too impoverished to adequately compensate their victims. At the same time, State resources were inadequate to establish a nationwide state-funded compensation scheme – despite compensation being a key factor in encouraging genocide survivors to participate constructively in the process.
- Neither the funds necessary for the start-up of the community service system, nor the infrastructure essential for its execution, existed.
- The training received by *Inyangamugayo* judges was not long enough or of sufficient quality for the complex and sensitive job in hand.
- The '*fiches parquets*' (information sheets on each detainee) that were required by law and necessary for the functioning of the *Gacaca* courts were not yet available. In reality, most had been completed, but not yet distributed.

Despite these concerns and a climate of fear concerning potential reprisals and revenge killings, the pilot phase of the *Gacaca* system was launched on 19 June 2002 in 79 cells across 12 pilot sectors (one sector per province) – with pilot cells selected according to the following criteria:

- Cells containing more than average numbers of confessions (this was the main criterion)
- Availability of infrastructure
- Good results obtained at the end of the training given to the *Inyangamugayo* judges
- In general, a cooperative population

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

It was only in 2004, after two and a half years of information-gathering, that the pilot courts finished their work. Despite the initial trepidation, the pilot phase had passed off peacefully and was generally considered to have gone well. The next challenge was how to synchronise the launch of information-gathering by *Gacaca* courts nationally without losing too much of the momentum gained in the pilot courts. Two options presented themselves:

The first option involved the pilot courts waiting while the rest of the *Gacaca* courts played catch-up, in order that the judgement phase could be undertaken at the same time across the country. The main benefit of this approach was to avoid the duplication of trials – allowing judgement of those accused to take place only in the cell where they had committed the most serious offences.

However, it was the second option that ultimately won the day: the concurrent launch of the national information-gathering phase alongside the judgement phase of the pilot jurisdictions. Thus the choice was made to have the accused appear in each cell where they committed crimes.

The authorities' reasoning behind the decision was three-fold: firstly, it allowed those involved in the pilot phase to maintain momentum in their process and, therefore, to avoid a potentially lengthy wait; secondly, it was considered that having each accused person appear in every cell where the offences took place would facilitate reconciliation – by allowing all victims to face perpetrators; thirdly, it was argued that this approach would ultimately accelerate the process, since more time would be taken in assembling all of the sentences pronounced against the same perpetrator than would his or her appearance in front of multiple *Gacaca* courts.

***Gacaca* old and new**

Can the *Gacaca* system of today, established for the purpose of handling the prosecution of genocide, really lay claim to embody the reconciliatory purpose and participatory principles of the traditional *Gacaca* model? *Gacaca* in its current form can best be described as a hybrid, borrowing both from tradition and the regular judicial system.

The first significant difference between the old and new systems lies in the public nature of the sessions. In the context of the traditional *Gacaca*, the session would take place between the affected parties, would manage the conflicts within the same lineage, and would endeavour not to bring the problem into the public sphere.

Secondly, and crucially, each traditional *Gacaca* operated in a completely spontaneous manner; the idea was above all to arrive at a mutual agreement, the product of a compromise between the interests of the relevant parties and those of the community. Individuals would appear of their own free will to testify out of their desire to remain part of the society whose rules they had infringed. The *Inyangamugayo* functioned as judicial arbiters and were free to make decisions that seemed the most appropriate. On the contrary, the contemporary *Gacaca* courts did not handle local conflicts. Instead, they handled the prosecution for an organised genocide that was first orchestrated by state authorities.¹² The modus operandi of these newer courts was legally defined by the State, rather than by local consensus.

Furthermore, the functioning of these newer courts, as well as the range of penalties they were able to pronounce, was determined by national law. The electoral commission was charged with coordinating and supervising the elections of the *Inyangamugayo* – elections that were themselves called for by a presidential decree.¹³ Supervision and coordination for these recent *Gacaca* courts, which was initially under the control of a Department of the Supreme Court, came to be handled by a State institution specifically created for this purpose, known as the National Service of the *Gacaca* Jurisdictions (NSGJ).

Authorised by the law to carry out investigations, issue summonses, order preventive detentions, and also to impose sentences, the recent *Gacaca* courts combined the powers of the traditional *Gacaca* system with those of regular courts and even those of the State Prosecutor. These were effectively veritable criminal courts, endowed with ample jurisdictional competences. Despite this, the newer courts relied heavily on widespread and voluntary public participation – being unable to function without it.

2.1 *Gacaca* structures and jurisdiction¹⁴

The enormous numbers of accused and the importance placed on community participation in the process led to the establishment of around 11,000 *Gacaca* courts. Based in villages, towns and cities the length and breadth of Rwanda, *Gacaca* courts required the involvement of every adult man and woman in the community (known as the ‘General Assembly’) and, initially at least, 19 local ‘persons of integrity’ (*Inyangamugayo*) to act as judges (five of whom became each court’s ‘Coordinating Committee’).

Rwanda’s administrative divisions

- **Provinces:** prior to 2006 Rwanda was composed of 12 provinces (known as *prefectures* up to 2001) that were abolished in full and redrawn as part of a programme of decentralisation and reorganisation. Rwanda now has five provinces: North, East, South, West, and Kigali.
- **Districts:** before 2006 there were 106; since 2006 this has been reduced to 30.
- **Sectors (*secteurs*):** each sector is composed of several ‘cells’ (see below). There were 1,545 sectors at the start of the *Gacaca* process. Every sector had a *Gacaca* court.
- **Cells (*cellules*):** at the beginning of the *Gacaca* process there were 9,201 cells, each comprising 150 to 300 people (on average). Every cell had its own *Gacaca* court.
- ***Nyumbakumi*:** the most basic level of Rwanda’s administrative structure (replaced by *Umudugudu* (village)). Each group of 10 houses was the administrative responsibility of a locally elected leader, also called a *Nyumbakumi*.

Categorising crimes and sentencing issues

Under the original *Gacaca* law of 2001, those accused of genocide were placed in one of four categories – according to the type of crime committed and their level of participation. The subsequent 2004 *Gacaca* law reduced the categories from four to three in order to streamline the system. Those accused of Category 1 crimes were to be tried through the regular justice system. *Gacaca* courts would hear all other cases.

Category 1: the planners, organisers, and ringleaders of the genocide; those who acted in positions of authority; well-known murderers, as well as those guilty of sexual torture or rape.

The maximum punishment for these crimes was the death penalty, with all those convicted under this category condemned to the permanent and total loss of civil liberties. The 2004 law expanded this category, to which 'acts of tortures' was added (including torture not resulting in death), as well as 'dehumanizing acts on dead bodies'. PRI expressed its concern at the time regarding the extensive 2004 redefinition, which, it was considered, would run the risk of increasing the backlog in the regular courts and the prisons.

Category 2: those who committed or assisted in the commission of murder or attacks against persons that resulted in death; those who, with the intent to kill, inflicted injuries or committed other acts of serious violence that did not result in death.

The maximum punishment incurred in this category was 25 to 30 years' imprisonment, with all of those convicted permanently losing civil liberties such as the right to vote. Offenders were also ineligible to apply for public service, teaching or medical staff positions in either the private or public sector. (Article 76, Organic Law no. 16/2004 of 19 June 2004.)

Category 3: those who committed serious attacks without the intent to cause death of their victims.

In practice, the third category proved difficult to manage; it was thus eliminated under the 2004 law and the defendants associated with this category were placed in Category 2.

Category 4: those who committed offences against property.

Penalties at this level consisted of reparation for damages to property. With the 2004 law and the disappearance of the third category, this category became the de facto Category 3.

Minors convicted of genocide offences who were aged between 14 and 17 (i.e. under 18 years old) at the time of the crime received half the adult penalty for similar crimes. Those less than 14 years of age at the time of the crime could not be legally prosecuted.

Under the 2001 *Gacaca* law, detainees were permitted – if they had confessed and had been accepted – to choose community service as an alternative to a prison sentence. In the 2004 law, convicted persons who had confessed lost their right to refuse community service.

Further significant changes were made to the categorisation of offences and to sentencing guidelines in the Organic Law no. 10/2007 of 1 March 2007. A key amendment of the 2004 *Gacaca* law by the 2007 legislation saw the re-categorisation of a number of Category 1 crimes (such as offences committed by well-known murderers, torturers and people involved in degrading acts on dead bodies) to Category 2, thereby allowing them to fall under the jurisdiction of the *Gacaca* courts. This had the immediate effect of substantially reducing the number of trials pending in the regular courts (which were already again overloaded with a combination of genocide and non-genocide cases), and drastically increasing the workload in the *Gacaca* system. As a further consequence, the move increased the sentencing powers of *Gacaca* courts, which from this point on had the authority to impose life sentences on those found guilty (Rwanda abolished the death penalty in July 2007).

This latest change to *Gacaca* law raised considerable disquiet amongst the legal community. It was of particular concern that their trial by *Gacaca* would mean defendants would have no access to legal representation and would be tried by lay judges without the necessary skills or experience to try such cases.

Structure and scope of *Gacaca* courts

In the 2001 *Gacaca* law, the structure of the courts was designed to reflect Rwanda's administrative system. Each court corresponded to an administrative division: the cell (between 150 and 300 people on average), the sector (encompassing several cells), the district and the province. The 2004 *Gacaca* law simplified the organisation of the courts, with a view to reducing the number of judges by improving their instructions and training and, consequently, their motivation. As a result, district and provincial *Gacaca* courts were eliminated, resulting in sector-level *Gacaca* courts trying the more serious cases, with courts at cell level focusing on property cases.

Each *Gacaca* court had:

- A General Assembly. At the cell level this encompassed the entire adult population (defined as aged 18 or over). General Assemblies at the sector level comprised judges from each cell court under its jurisdiction, as well as sector and appeal court judges.
- *Inyangamugayo* judges. Under the 2001 *Gacaca* law, there were 19 of these elected lay judges for each *Gacaca* court, although their numbers were reduced to nine following the 2004 legal reforms. Out of these 19, five were

designated to become the Coordinating Committee (which was reduced to three under the 2004 reforms).

Each *Gacaca* court was required to follow the same three-phase process, which remained unchanged under the 2004 reforms:

1 Information gathering: The General Assemblies of the cell-level courts were responsible for developing a series of lists, the intention of which was to retrace as closely as possible the genocide events that occurred in that area. These included:

- a list of people residing in the cell before and during the 1994 genocide
- a list of those who died in the cell
- a list of those who were living in the cell at the time, but who died outside it
- a list of goods damaged
- a list of those accused of committing crimes of genocide inside the cell

2 Categorisation: This phase was carried out by the cell court judges, whose task it was to place each of the accused in one of the crime categories set out in law (see *Categorising crimes* section, above). This process determined how the accused would be tried (whether by *Gacaca* or regular court), and the range of applicable penalties should he or she be found guilty.

3 Judgement and sentencing: Sentencing was handed down by the relevant court, according to the category into which the accused has been placed, with cell-level courts handling category 3 (and 4) cases. Category 2 cases were dealt with at the sector level, with category 1 cases heard in the regular courts.

2.2 The quality of evidence and State involvement in its gathering¹⁵

With the entry of the *Gacaca* process into its national information-gathering phase, the authorities were confronted with two basic but complex challenges:

The first concerned the search for the truth. This fundamental goal of *Gacaca*, difficult at the best of times, was complicated by the on-going trauma of genocide survivors, many of who struggled to testify as they re-lived their experiences. Ensuring the veracity of testimony given by people who had not always witnessed the events directly, or provided by

perpetrators with a vested interest in not revealing the truth (or whose confessions were fragmented), was particularly difficult.

The second was how to accelerate the *Gacaca* process nationally, which in its pilot phase had often proceeded more slowly than expected? Speeding up the process became an even greater priority given the rocketing numbers of those accused – from an initial 130,000 at the beginning of the process to a projected 750,000 people, or nearly one in four Rwandan adults.

In order to meet these goals, the national authorities, faithful to an increasingly pragmatic approach in setting this complex process in motion, chose to rely on support from its local authority structures in carrying out the exercise of information-gathering. As a result, at the end of 2004, the National Service of the *Gacaca* Jurisdictions decided to entrust not only the organisation but also the actual execution of the information-gathering to the *Nyumbakumi*. This meant that some of the information-gathering in 2005 took place outside the framework of the *Gacaca* courts, which only resumed their functions to ‘validate’ the data collected by the local authorities.

It is also true to say that the outsourcing of information-gathering in some places rapidly sped-up the process. It also resulted in a marked increase in public participation and in the number of ‘facts’ obtained about the crimes of genocide.

Nevertheless, while solving some problems, the ‘dejudicialisation’ of information-gathering also created new difficulties. In *Gacaca* courts, where testimony has been the only means of revealing the truth, these new methods of collecting data began to pose a serious threat to the rights of defendants to defend themselves from accusations made against them. Several aspects of the speedier information-gathering process sparked particular concern:

Firstly, in order to facilitate the work of gathering information, the new data collection forms being used contained no space to record testimony for the defence. This meant that witnesses were only encouraged to provide information about the crimes committed, as well as the names of the victims and those accused. Any other information that witnesses may have been able to provide was lost. As a result of this and other measures designed to speed up the process, defendants faced an uphill struggle in trying to defend themselves. This was one aspect of the damaging impact of the *Gacaca* system on the right of defendants to a fair trial, and the erosion of the principle of presumption of innocence.

In addition, information-gathering was initially carried out by the *Nyumbakumi* in a small group, supplemented by meetings at the cell and sector levels. During this process, the instructions given to those present indicated that all

information was welcome, including information from people who were not eyewitnesses, providing the evidence was useful to the prosecution. This opened the system to misuse, since accusations could be made without fear of contradiction, and without verification. The absence of any verificatory barriers and without due process created a climate favourable to exaggeration and the potential for false accusations and use of the *Gacaca* process for personal score-settling. This had a direct impact on those who considered themselves vulnerable to false accusations: many lost confidence in the process and there were reports of some people even fleeing the country as a result.

The initial hope was that irresponsible accusations made during the information-gathering phase would be counterbalanced by a true debate during validation meetings in the General Assemblies of the *Gacaca* courts. This, however, was not always the case. In the very large majority of hearings observed by PRI, the work of the *Gacaca* judges was reduced to simply recording the information provided – with no discussion. This reinforced the impression among some that the gathering of information was done ‘under the influence’ of the local authorities. It also resulted in partly dispossessing the *Gacaca* judges of their authority vis-à-vis the public.

As a result, the right to bring testimony for the defence and the defendant’s right to defend himself or herself was further postponed until the judgement phase. Not only was this one-sided evidence to the detriment of defendants but also to the search for the truth. This was considered all the more harmful since it was the collected information alone that served as the basis for categorising the crimes; a key legal moment that was heavy with social consequences. Results from several PRI studies showed that prioritising the goal of speed at the expense of the principle of balanced justice (which is based on the principles of due process and the presumption of innocence) eroded public confidence in *Gacaca*, resulting in a reduction in public cooperation – despite the increasing use of the *Gacaca* appeals process during this time, and the significant numbers of acquittals and offence re-categorisations that resulted.

2.3 *Gacaca* judges and their function¹⁶

Between 4 and 7 October 2001, over 250,000 *Inyangamugayo* judges were elected throughout Rwanda in a public vote to serve the *Gacaca* courts. According to the national election commission, voter turnout topped an unprecedented 87%. The high turnout was all the more surprising given the paucity of public information about *Gacaca* being provided by the authorities

at the time. Yet it seems that this deficiency was overcome by the effective mobilisation of the local authority *Nyumbakumi* – who went house to house to drum up support for the process and to draw up lists of potential judges. However, not everyone considered the *Nyumbakumi* to be a positive force in the process. Some people saw their involvement as an attempt to control the candidates and thus the results of the elections.

Fears began to surface among survivors and detainees alike about the true integrity and impartiality of the *Inyangamugayo*. Extracts from the testimonies of several interviewees captured the concerns of many at the time:

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

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

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

In his speech to the nation, President Paul Kagame called on Rwandans to elect honest, principled and hardworking people, and to do so without discrimination of any kind. Nevertheless, it is undeniable that certain group-based forms of reasoning entered into these elections, each one nurturing particular expectations of the *Gacaca*. Genocide survivors and returning Tutsi refugees campaigned to obtain the greatest possible number of representatives, partly in order to compensate for their situation as members of the minority, but also because they thought of the *Gacaca* as a means of arresting criminals who were still free. On the other side were those who were clearly less interested in being elected as judges, particularly among detainees’ family members, because many feared they would later have to share the responsibility for new mass arrests.

On polling day, the elections of *Inyangamugayo* took place by indirect vote. The candidates selected by the *Nyumbakumi* were publicly presented to adults of voting age in the cell, who were called upon to share their opinions about the candidates. At the time, it was still possible for the public to propose a new candidate. While it is difficult to determine what the criteria for ‘integrity’ actually were, it is possible to cite the reasons why certain candidates were dismissed. These included: alcoholism; ‘immoral’ behaviour, such as adultery or prostitution; failure to pay debts; participation in looting during the genocide; aggressiveness and violence. The actual vote took place by people lining up behind their chosen candidate.

Candidates elected at the cell level were themselves required to elect, this time in writing and in secret, the members of the cell coordination committee and those judges to be sent to serve at the sector level. The same process was repeated at sector, district and provincial levels.

Despite a high level of participation by women in the vote, statistics from the Electoral Commission show that relatively few of them were elected as judges. The highest proportion of female judges was at cell level, comprising just over one-third. The preponderance of male judges in part reflects the difference in literacy rates between men and women (particularly among those over 30 years of age), but also reflects the belief amongst many that the responsibility of a *Gacaca* judge is one reserved for men.

The first training manual for *Gacaca* judges was formulated in October 2001, with the assistance of *Avocats Sans Frontières*. Training based on this manual was organised during the months of April and May 2002, before the courts became active. This training was, however, limited to a maximum of 36 hours, and proved to be insufficient. Judges themselves reported at the time that it was difficult to master the *Gacaca* legislation in such a short time, with their lack of understanding of *Gacaca* law becoming particularly apparent when the courts began operating.

Following these difficulties, and the revision of the law in 2004, a number of additional training sessions were organised over the coming years in order to deepen and update the judges' grasp of the texts. In the same spirit, simplified instruction booklets on the *Gacaca* law, particularly with regard to procedures, were produced by the State institutions in charge of *Gacaca*. Later, '*Gacaca* coordinators' were hired to advise and support *Gacaca* judges around the country in their task of implementing justice.

The impact of judges' actions on the quality and outcome of *Gacaca* trials cannot be underestimated. Fair trials depended on their capacity to interrogate and cross-examine defendants and witnesses, to confront them, to distinguish between direct and hearsay evidence, as well as false testimony from the truth, and to convince a reticent or apprehensive witness to speak. Often, records of previous hearings were inadequately kept or were not available, which meant judges relying only on their memory of what had been said. The judges' ability to motivate and 'hold' their audience over a protracted period also played a vital part in the search for the truth, and in avoiding miscarriages of justice.

With such a challenging task, and their legitimacy as judges based solely on their integrity, it was inevitable that some would face accusations of bias. Indeed, statistics from the National Service in charge of the *Gacaca*

Jurisdictions reported in 2004 (during the pilot phase) that 9% of *Gacaca* judges (1,319 out of a total 14,402) had to be replaced, half of them because they themselves had participated in the genocide.¹⁷ Initially, therefore, it was genocide survivors who tended to express the most distrust in the judges:

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

Genocide survivor, 2003.

Despite the faith placed in them by ordinary Rwandans, PRI's reports revealed that many *Inyangamugayo* remained unsure about a number of significant legal concepts, including that of intent – the understanding of which has been crucial in judging genocide crimes. As a result, PRI has reported that many heavy jail sentences were handed down without any proof of intent, and has argued that this uncertainty has been prejudicial to the fairness of trials.

2.4 Public participation in *Gacaca*¹⁸

The success of *Gacaca* was predicated on the active and voluntary involvement of Rwanda's entire adult population. It was presumed that public participation would not only promote emergence of the truth, but also would reduce the mistrust and suspicion that characterised relations between people in the genocide's aftermath.

Unsurprisingly, therefore, of all the challenges surrounding the *Gacaca* process, PRI found that the main limitations of its implementation resided in the extent and the nature of public participation.

As a participatory system of justice, one of the biggest theoretical advantages of the *Gacaca* approach related to the involvement of the entire community in the process, promoting community debate and personal responsibility. However, it was found that instead of steady numbers throughout the process, there were distinct fluctuations in participation rates as *Gacaca* moved through different phases in its implementation. Broadly speaking, participation peaked at the start of the pilot phase, as the process went national, when judgements began to be handed down and when the most serious cases were tried. However, as the hearings dragged on, participation levels dwindled and absenteeism became a major obstacle to progress. Bucking this trend were genocide survivors, who often waited many hours on

the appointed day each week for the legal quorum for the meeting to be reached. All too often meetings were postponed, or, in some cases, went ahead in breach of the quorum rules – generating further complications.

But beyond the ebb and flow of popular attendance, it was the unwillingness of many to speak up and contribute to establishing the truth of what had happened – in other words, the *quality* of the participation – that created considerable concern.

It was clear from early on in the process that a crucial determinant of *Gacaca*'s success would lie in the ability of the Rwandan authorities to inform the public and key interest groups (genocide survivors and detainees in particular) about what was taking place. PRI reports spanning several years consistently revealed a prevailing lack of accurate knowledge and understanding amongst ordinary Rwandans about key aspects of *Gacaca* law and process. These included: the categorisation of genocide crimes and their associated sentences; the importance given to confessions and guilty pleas; indemnity for genocide survivors; and the planned use of community service as an alternative to prison. This lack of information, particularly in *Gacaca*'s pilot phase, led to widespread confusion, misinformation and disillusionment.

Beyond the more obvious cyclical reasons why participation waned, such as during the rainy season, there were a number of deep-seated issues that potentially posed more serious and longer term threats to the prospects of the process. Giving evidence forced some to relive the most traumatic moments of their lives. For others, admitting their part in the genocide also had an emotional impact, in addition to the punishment that followed.

Tensions between genocide victims and perpetrators, who had to live alongside each other since prisoners began to be freed in 2003, also impacted on public participation. Giving evidence not only came at a personal cost, but also affected relationships within and between families. Witnesses felt insecure, fearing reprisals. In addition, witnesses for the defence were often concerned about speaking up, fearing that they could be accused of maintaining a 'genocidal ideology' (i.e. harbouring ideas that lead to genocide) or of other crimes. Indeed, PRI's reports indicate that confrontations regularly took place during *Gacaca*'s information-collecting sessions.

The substantial economic sacrifice that participation in the *Gacaca* courts represented for large swathes of the population was particularly relevant. The impact of this considerable time commitment (which was often a full day or even two each week) on the population – particularly on the poorest whose

survival depended on farming – was significant, adding as it did to their various existing community obligations:

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

Even heavier time commitments were expected of the *Inyangamugayo*, an enormous burden on them and their families. The heavy expectations placed upon them were also reported to have created obstacles to popular participation in *Gacaca*'s pilot phase and beyond. These lay judges were expected to moderate debates to establish the truth, weigh up the evidence and apportion responsibility for the acts committed, despite having no legal experience, little basic training and limited formal education.

Some localised attempts to force absentees to attend the weekly *Gacaca* sessions – through fines and sometimes physical force – proved counter-productive. PRI's evidence suggests that such coercive practices did a major disservice to the process, not only proving to be ineffective, but also by eroding public confidence in *Gacaca* in the areas where it took place.

When popular disengagement with *Gacaca* started to become noticeable during the pilot phase, the authorities chose to reinforce public awareness by holding more public meetings. Concern was expressed at the time about the messaging, which lacked nuance and mirrored previous awareness raising efforts exhorting people to, for example, turn up on time, speak the truth and not be afraid. By focusing on general procedural issues and obligations, rather than motivating the different interest groups to participate, the net result was a further downturn in voluntary participation.

2.5 The importance of confessing and the implications of the guilty plea¹⁹

Encouraging detainees to confess their crimes has been a cornerstone of Rwanda's *Gacaca* process, as in many countries that have experienced mass crimes. In the Rwandan context, the use of confessions was driven by a desire to find a balance between retributive justice and reconciliation – with the intention of establishing the truth about what happened. It was hoped that this, in turn, would make fact-finding easier and reduce the workload on the *Inyangamugayo*.

Detainees had a powerful incentive for invoking this procedure. A timely confession allowed those accused to have their sentences reduced and the

opportunity to serve half of the remaining sentence in the form of community service. A collection deadline for confessions was initially set for 15 March 2002, but was extended several times. Since 2004, it became possible to make a confession at any time.

For a confession to be valid, and thus to justify a release or a sentence reduction, it had to be 'complete and sincere'. In practice, this meant that it must contain a detailed description of the crimes committed, the names of the victims, accomplices, locations, and, if relevant, the property that was damaged. Sincerity was more difficult to judge, but was broadly taken to be a fulsome apology of the person who was confessing. It was up to the *Inyangamugayo* judges to evaluate, at the time of the judgement, whether a confession conformed to the truth and to accept or reject it.

Confessions in prisons (Prison *Gacaca*)

Early on in the development of the *Gacaca* process, confession played an important role. Detainees, encouraged by the authorities, began their own *Gacaca* in several prisons. Organised as committees that heard the confessions of other prisoners, these *Gacaca* had the advantage of taking place inside prison walls, ironically perhaps giving perpetrators more freedom of speech than when faced by their accusers on the outside. At the same time, it was argued by some that it was much more difficult for perpetrators to lie since they were among the very people who had accompanied them at the time of the crimes. On these occasions, detailed lists of victims, perpetrators and crime locations were drawn up.

The confessions will have been of some use. A neighbour confessed to having killed my two sisters. He identified those responsible for raping them and confessed to having killed them. I went to see him in prison to ask him for information on what had happened because he had written to me to apologise. During our conversation, he told me everything. He was the first of them all to confess and plead guilty, and he told us the names of killers and looters. That was thanks to the confessions and guilty pleas process.

Genocide survivor, 2009.

Many of these lists were extremely detailed, but were not always reliable. The lists were sometimes used to negotiate plea bargains between implicated detainees, who would divide up culpability for their crimes amongst themselves, and try to minimise their own culpability by blaming others. Nevertheless, these lists were used by the *Gacaca* courts – alongside other

sources of information – to categorise the accused. The same lists also served to identify detainees who might benefit from a provisional release.

Weaknesses in the confession procedure

The use of the confession procedure undoubtedly played a part in accelerating the justice process, identifying accomplices and allowing genocide survivors to learn the circumstances surrounding the death of their relatives. However, the authorities' reliance on it as a mechanism for establishing the truth and facilitating reconciliation attracted notable unease.

Of particular concern was that a confession was only accepted if it was accompanied by an accusation against another person, which played its part in distorting the justice process. A refusal to confess and a plea of not guilty would result in a longer sentence, as the system was geared to encourage confessions and a speedy process.

Over the years several PRI reports have questioned the credibility of confessions. A regular concern related to the actions of detainees who frequently made only partial confessions, or who assigned to themselves only minor offences if they knew that only limited evidence of their guilt existed. There were also reports of detainees – and others – altering testimonies in order to spare certain individuals, by instead laying blame on people who had died, who were in exile, or with whom they wished to settle a score.

It is clear that information provided by the accused – especially for crimes as serious as genocide – was always going to be problematic. Ultimately, PRI believed that the only reliable method for dealing with the testimony of the accused was to reject it if it could not be confirmed by other sources of information. However, this testimony continued to be used in Rwanda.

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

Detainee, 2004.

Despite this, the collection of confessions in the Rwandan context (even those 'negotiated' with a view to a sentence reduction or other judicial advantage) undoubtedly served a useful purpose in helping to establish more

details about what took place. What is more at issue for PRI was the reliance placed on these unverified sources in establishing the truth. So long as the *Gacaca* courts, or indeed the regular courts, did not seriously attempt to verify the truthfulness of these confessions, primarily through cross-examination, they could be said to have little probative value.

Early PRI reports suggest that, in encouraging detainees to confess, emphasis was placed more on the sincerity of the apology than the truth of the confession itself. The unrealistic expectations that this emphasis created, and the disappointments that resulted, were a recipe for frustration and remained major obstacles to reconciliation.

As a result, some detainees had a tendency to think that making a partial confession, while asking sincerely for forgiveness, was all that was required. Yet during the judgement phase, the incomplete nature of their confessions emerged and caused them to forfeit their chances of benefiting from community service. Detainees had difficulty accepting this situation, having assumed that sincerely regretting their deeds would be enough to secure their release.

There are three categories of confessors. There are those who confess to benefit from the pardon conferred by the presidential communiqué. When these people were released, they were approached by the *Gacaca* that saw that they had only made a partial confession. These people often went back to prison. There are also some who confessed just to get their sentence reduced. There were also some who were remorseful and decided to come right out and own up sincerely. These were the ones who helped the *Gacaca* to uncover the truth about the genocide.

Genocide survivor, 2009.

At the same time, the greatest expectation of some survivors was placed on the sincerity of the apology they received. As a consequence, those who were dissatisfied with a perpetrator's behaviour during his request for forgiveness often felt duped, even when the accused had admitted all of his or her crimes.

2.6 The role of 'the Righteous'²⁰

'The Righteous', or *Intwali*, was the name coined for those Hutus who chose to protect Tutsis during the genocide period, when the prevailing norm was to kill. Not only were these actions highly dangerous at the time, but also have since resulted in their social marginalisation.

Why examine their situation? There are several reasons:

First and foremost, the *Intwali* are a living example that a choice was possible. PRI has argued that promoting their image and actions forces those who took part in the genocide to confront and take responsibility for their own conduct.

Secondly, the ambiguity of sentiment by some towards the *Intwali* provides an insight into Rwanda's post-genocide society. It seems that it is precisely the independent spirit that they manifested during the genocide that has cast them as 'troublemakers' since then.

Thirdly, in the context of reconciliation, valuing the actions of the *Intwali* makes it possible to humanise the social links between Hutus and Tutsis, and to avoid the trap of collectivising the responsibility of all Hutus for the genocide.

PRI's report on the *Intwali* focused on the former province of Kibuye, involving in-depth interviews with dozens of *Intwali* and others.

The significance of the actions of the *Intwali* is all the more startling given the context in which they took place. The refusal to participate in the genocide meant becoming marginalised, or being labelled a 'traitor'. As fear took hold, the strategy of the genocide killers turned from propaganda to intimidation. As one *Intwali* recounted: 'If the genocide killers found a victim in your house, they either killed you or tortured you, or they took all your possessions, or they forced you to kill the victim yourself.'

The more widespread the genocide grew, the more difficult it became to oppose it. As one *Intwali* put it: 'It is difficult to find a family that did not participate in the massacres. Even the women took part.' According to him: '...among one hundred people, only two or three can be found to have resisted.'

During the genocide, the cauldron of fear, hate and suspicion created made it extremely difficult for persecuted Tutsis to discover who could help them. In some cases, help came from the most unexpected quarters. Indeed, examples exist of killers who helped save Tutsis because of old ties of friendship or because they were close to someone who was trying to help. One *Intwali* was helped by his brother-in-law, who was a genocide killer: 'Among the killers, were my brothers and my usual friends. The fact that I hid victims was kept an absolute secret [...] It was my brother-in-law who helped me. As he also took part in massacres, he would let me know what their programme was so that I could take necessary steps, such as taking them out of the house and guiding them into the bush.'

Indeed, many of the accounts that were gathered revealed that if they had been alone, the *Intwali* would never have managed to rescue anybody. They were usually supported by a network of friends or family. Help took on many different shapes; often, remaining silent was the most crucial element.

At the same time, there were many cases where victims did not find the support they expected. While the alliances and antagonisms of the past between individuals and families came to the fore during the genocide, it proved dangerous to rely on these relationships alone, since those trusted to help could suddenly change their behaviour.

Since past social relations were no guarantee of assistance, what was the profile of those people who dared help others, at great risk to themselves? The PRI study in Kibuye posits that there were two traits common to all of the *Intwali* who were interviewed:

Firstly, their steadfast humanitarian ideals and belief in values that affirmed their affinity with the victims. Whether they were members of the clergy or not, many *Intwali* had very strong humanitarian and humanist ideals, which made them feel a close empathy for the victims. For some, these ideas were incarnated in Christian values. However, what distinguished the *Intwali* was that in their eyes these values prevailed above all else:

I cannot say that it was I who rescued the victims. Rather, it was God who did. Nobody but God would have been able to do it. God gave me courage. It was the simple love of God that helped me not to take part in the massacres at the time when my brothers were doing so. I think that what caused the massacres was not believing in God. Even those we thought were Christians were not real Christians.

Intwali, 2004.

And secondly, their direct experience of positive examples of interethnic coexistence. These strong bonds were particularly evident in their friendships and blood ties:

[I have] a family of which you cannot really say that it is either Hutu or Tutsi because everybody in it has become so mixed.

Intwali, 2004.

It appeared that the qualities that were the basis for the resistance of the *Intwali* during the genocide were the same as those that created problems in their social relations afterwards. PRI has argued that this is why there remains some ambiguity in the relations of the *Intwali* with the rest of the population. On the one hand they are respected and considered to be persons of integrity, given their heroic actions during the genocide. At the same time,

their independence creates a problem. In the aftermath of the genocide, where the 'group mentality' became the norm, these independent thinkers, prepared to subordinate the collective interests of the group to the search for the truth, became unwelcome and were labelled by some as 'troublemakers'.

PRI's view has been that recognising and celebrating the *Intwali*, as well as giving them a more active role in social reconstruction efforts, could play an important part in furthering the aim of reconciliation.

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- 12 Amnesty International, *Rwanda: Gacaca – a question of justice*, London, AFR 47/007/2002, December 2002.
 - 13 Presidential Decree no. 12/01 of 26 June 2001 'establishing modalities for organising elections of members of 'Gacaca Jurisdictions' organs,' Official Gazette of the Republic of Rwanda, no. 14, 15 July 2001.
 - 14 For more information from PRI on this topic, see in particular: *Gacaca Jurisdictions and their Preparations*, January 2002; *Research on the Gacaca*, July 2002; *Research Report on the Gacaca* (Kibuye case study, Part 1), November 2003; *Integrated Report on Gacaca: Research and Monitoring: Pilot phase*, December 2005.
 - 15 For more information from PRI on this topic, see in particular: *Research on the Gacaca*, July 2002; *Research on the Gacaca*, September 2003; *Research Report on the Gacaca* (Kibuye case study, Part 1), November 2003; *Monitoring and Research Report on the Gacaca: Information-gathering during the national phase*, June 2006.
 - 16 For more information from PRI on this topic, see in particular: *Gacaca Jurisdictions and their Preparations*, January 2002; *Research on the Gacaca*, July 2002; *Research on the Gacaca*, September 2003; *Research Report on the Gacaca* (Kibuye case study, Part 1), November 2003.
 - 17 National Service in charge of Gacaca Jurisdictions/NSGJ, *Document sur l'état d'avancement des activités des juridictions Gacaca des cellules opérationnelles et programmes d'activités à venir*, Kigali, 21 January 2004.
 - 18 For more information from PRI on this topic, see in particular: *Gacaca Jurisdictions and their Preparations*, January 2002; *Research on the Gacaca*, September 2003; *Research Report on the Gacaca* (Kibuye case study, Part 1), November 2003; *Integrated Report on Gacaca: Research and Monitoring: Pilot phase*, December 2005.
 - 19 For more information from PRI on this topic, see in particular: *Gacaca Jurisdictions and their Preparations*, January 2002; *Research on the Gacaca*, July 2002; *The Guilty Plea Procedure, Cornerstone of the Rwandan Justice System*, January 2003; *Research on the Gacaca*, September 2003; *Research Report on Gacaca Courts: Gacaca and reconciliation* (Kibuye case study, Part 2), May 2004.
 - 20 For more information from PRI on this topic, see in particular: *Report on Monitoring and Research on the Gacaca: The Righteous: Between oblivion and reconciliation, example of the province of Kibuye* (Kibuye case study, Part 3), November 2004.

3 QUALITY OF JUSTICE FOR ALL

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

Freed prisoner, 2003.

3.1 Dealing with the innocent²¹

Immediately after the genocide, thousands of suspected genocide killers were arrested and imprisoned in waves of sweeping arrests. It became evident, even to the authorities, that some of those locked up had been victims of malevolent accusations and false testimony. It also became clear that the continuing incarceration of innocent people seriously undermined the justice process and needed to be dealt with as quickly as possible.

As a result, one of the first acts linked to the *Gacaca* process from 2001 was the public appearance of the many detainees whose records were incomplete or non-existent, and against whom there were no specific charges. This public presentation of prisoners also responded to the need by the office of the public prosecutor to determine the precise numbers being held in prison.

Collecting the necessary evidence to establish – at least provisionally – the guilt or innocence of prisoners took place in the locations where detainees were presumed to have committed their crimes. The public in these localities were encouraged to share what they knew about each individual, resulting in individuals being discharged from liability or found culpable. Those detainees who were absolved of responsibility by the public were granted a provisional release, and were to appear before the relevant *Gacaca* court at a later date.

Considered at the time to be a preparatory stage before the launch of *Gacaca* courts, these public hearings – in addition to dealing with the innocent – gave the authorities an insight into the challenges with *Gacaca* that lay ahead. These prisoner appearances also provided an initial opportunity for the public to familiarise itself with this new participatory process. A representative from the Public Prosecutor's Office conducted the introductory session that preceded the presentations. This introductory session was often the first time – and, in certain cases the only time – in which the population and prisoners received an explanation of how the *Gacaca* process would work.

In many respects, these presentations to the population were a remarkable step in the development of the *Gacaca* process. For the first time, the accused, victims, witnesses and other members of the public were engaged in public debate. Indeed, the freedom to speak in these sessions, coupled with active public participation and the provisional releases that followed, inspired high hopes about what the actual *Gacaca* process would be like once it was launched.

PRJ reports at the time noted the judicial authorities' genuine willingness to strive for an equal justice for all. However, the reports suggest that this burgeoning freedom of speech and trust of the justice system took place primarily during 2001 and 2002, before the wave of provisional releases of detainees who had confessed to crimes, and therefore in a social context that was less tense.

These early public hearings thus allowed for the provisional release of a large number of accused that the population did not recognise as having participated in the genocide. Indirectly, the presumption of innocence that had been flouted during the first chaotic years after the genocide found meaning again – and it was the population itself that assured that this principle was put into practice. The participatory nature of the process and the publicity generated by the hearings served as the best procedural guarantee for those detainees against whom no evidence for the prosecution had been brought.

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

However, in subsequent reports PRI expressed concern about an apparent ‘inversion of values’ in the justice process since the Presidential Decree of 1 January 2003 that provisionally released thousands of prisoners who had confessed to crimes. These 2003 releases of the guilty (of which more in Section 4) highlighted the on-going issue of the imprisonment of the innocent. Prison time for many perpetrators was much shorter than for those who had never confessed and who, in some cases, were innocent. Indeed, PRI’s interviews with a number of detainees’ families who, convinced that their detained relatives were innocent, openly suggested that it might be expedient for their loved ones to ‘invent confessions’ in order to be released more quickly.

3.2 *Gacaca* and crimes of revenge²²

A dangerous unilateralism

Somebody asked why there was national mourning for some (Tutsis) but not for others (Hutus). After all, they were all killed, although some were killed in the genocide and others out of revenge. [...] Others asked why genocide killings were considered but not murder in revenge or reprisals, and asked if a parent is touched by the death of one of his children, may he not be touched by the death of another child. Why do we cry when a Tutsi dies but not when a Hutu dies, when all are children of Rwanda?

Detainee, 2003.

As time passed it became clear that *Gacaca* courts would only judge genocide crimes and crimes against humanity, whose victims were of the Tutsi minority and moderate Hutus. War crimes or ‘acts of revenge’ committed against members of the Hutu community during the period covered by the *Gacaca* (i.e. from 1 October 1990 to 31 December 1994) would be handled only by military tribunals or the regular courts. In effect, *Gacaca* courts were asked by the Government to ‘forget’ these other crimes.

This selective memory of the *Gacaca* has been a recurring source of controversy and frustration for many Hutu, who regard the setting aside of these crimes as proof of biased justice.

Such unilateralism is not unique to Rwanda. This was common to a number of other countries emerging from major political crises. In Argentina, for example, the balance of power was such that it led the defenders of the former military regime to develop the theory of ‘the two demons,’ a version of history that puts victims and torturers on an equal footing.²³ In South Africa, the African National Congress sharply criticised the conclusions of the Truth

and Reconciliation Commission's report with regard to its role in the abuses committed, before finally accepting that its own actions be fully brought to light.

While the Rwandan government recognised that war crimes were committed by some members of its army, it also maintained that these crimes have been tried and dealt with. The following extract from a 2002 speech by Rwandan President Paul Kagame sums up this position:

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

President Paul Kagame, 18 June 2002.

But beyond these political manoeuvres, PRI's research has shown that being unable to address these 'crimes other than genocide' constitutes a major handicap to reconciliation and, in the shorter term, to the smooth functioning of the *Gacaca* process itself. A significant part of the Hutu population truly felt that victor's justice had been established: a biased justice system, in which there were 'good' and 'bad' victims, depending on the ethnic group to which they belonged.

As a result, the question of how to handle these crimes of revenge remained a fundamental sticking point. If reconciliation was truly one of the primary goals of the *Gacaca* process, it was important for all those involved in the process to be able to speak about their suffering, especially during the actual *Gacaca* sessions.

Encouraging the notion of collective responsibility

Another potential consequence of limiting the scope of *Gacaca* courts was that of stigmatising the entire Hutu population and tacitly reinforcing the idea of collective guilt. This constituted a major obstacle to the acknowledgment

of individual responsibility by the architects of and participants in the genocide.

Not only did the idea of collective responsibility among the Hutu not correspond with the historical truth, there was much concern about the potential for such a view to allow individual Hutus to further abdicate responsibility for their actions. While it is undeniable that individual choice played its own role in the execution of the genocide, this in no way contradicted the reality that a genocidal ideology was planned and implemented by an entire hierarchical machine.

Yet, the perpetrators' refusal to assume individual responsibility threatened the long-term prospects for true reconciliation. The tendency of these criminals to distance themselves from any personal responsibility is not surprising, given the gravity of the crimes committed and the penalties incurred. Therefore, instead of facing up to their individual actions, many preferred to blame others, arguing that their actions were controlled by their superiors.

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

Returning Tutsi exile, 2004.

3.3 Reparations: developing compensation and community service schemes²⁴

PRI's reports on the issue of reparations identified that, for *Gacaca* to contribute to reconciliation, complementary and comprehensive reparations processes were vital. However, while uppermost in the minds of genocide survivors, the development of a compensation scheme for victims and a community service programme were set aside during *Gacaca*'s pilot phase, and failed to fully materialise during *Gacaca*'s later stages.

In many contexts, reparations have been shown to be a key element of the reconciliation process.²⁵ Whatever their form, reparations hold a particular significance, representing a form of 'symbolic healing' for losses suffered, as well as social acknowledgment for the suffering of survivors. Far from being a separate issue, reparations are part and parcel of transitional justice mechanisms, alongside truth-seeking and justice.

Compensation

Despite its importance for the process, no indemnification law has yet been passed in Rwanda that would allow genocide victims to benefit from reparations for the totality of damages suffered. While reparations had been under consideration since 2000, issues surrounding what form compensation should take, how a beneficiary should be defined and how victims should be paid were never resolved.

The delays in addressing the compensation issue and the continued absence of a clear decision by the Rwandan authorities led to the bitter disillusionment of survivors, many of whom lost all hope of being officially compensated. Some survivors turned their backs on the *Gacaca* process as a result, resorting to individual agreements with released detainees, who effectively bought their silence. This has had obvious repercussions on the *Gacaca* process and the search for the truth. However, it was also true that direct compensation from perpetrators to survivors was, in many cases, facilitated by *Inyangamugayo* as part of the *Gacaca* process.

But it was not only the genocide survivors whose legitimate claims for compensation were never realised. A meeting of the National Unity and Reconciliation Commission in December 2003 recommended the creation of a separate compensation fund for those wrongfully imprisoned in the immediate aftermath of the genocide, or for the heirs of innocent persons who died in prison. This compensation fund also failed to materialise.

The community service programme

Conceived under Organic Law no. 40/2000 and further developed in the Organic Law of 19 June 2004, community service became an alternative to the prison sentences handed down by the *Gacaca* courts. This meant that many of those found guilty had their sentences commuted into unpaid work to be performed in the community. Two types of community service were operationalised. In the camp-based system, offenders worked a six-day week in communities but were billeted in camps some distance away. The other type of community service in operation in Rwanda – the ‘neighbourhood’ model – involved offenders living with their families and undertaking three days of community work per week.

In addition to its justice and reconciliation-focused aims, community service was seen by the authorities as a solution to the logistical challenges presented by an overcrowded prison system and its impact on the public coffers. Linking community service sentences to the admission of guilt (through confessions) was predicted to encourage more people to confess,

easing prison overcrowding as a result. Implementation began in September 2005 with the opening of several pilot community service camps. Since then, more than 106,918 people have been sentenced to community service, with more than 23,420 still completing their sentences (as at May 2010).

Initially, offenders' assent was needed to amend their sentence from prison to community service. However, legal changes in 2004 and a presidential order of March 2005 removed offenders' option to opt out of community service, making it compulsory.

While the community service approach was, in principle, an excellent method of reinserting detainees back into their communities, PRI reports noted the extreme fragility of Rwanda's social fabric. Failure to take the continuing fears and uncertainties of both detainees and survivors into account still has the potential to derail the positive impact of community service.

In particular, as *Gacaca* was being rolled out nationwide, many survivors continued to report a real preoccupation with their security, and at the same time questioned the utility of the camp-based community service for themselves as individuals:

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

Genocide survivor, 2005.

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- 21 For more information from PRI on this topic, see in particular: *The Guilty Plea Procedure, Cornerstone of the Rwandan Justice System*, January 2003; *Research Report on Gacaca Courts: Gacaca and reconciliation* (Kibuye case study, Part 2), May 2004; *Monitoring and Research Report on the Gacaca: Information-gathering during the national phase*, June 2006.
- 22 For more information from PRI on this topic, see in particular: *Research on the Gacaca*, September 2003; *Research Report on the Gacaca* (Kibuye case study, Part 1), November 2003; *Research Report on Gacaca Courts: Gacaca and reconciliation* (Kibuye case study, Part 2), May 2004; *Integrated Report on Gacaca: Research and Monitoring: Pilot phase*, December 2005.
- 23 LeFranc, S., *Politiques du pardon*, Paris, PUF, col. Fondements de la Politique, 2002.

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- 24 For more information from PRI on this topic, see in particular: *Gacaca Jurisdictions and their Preparations*, January 2002; *Research on the Gacaca*, July 2002; *Research on the Gacaca*, September 2003; *Research Report on the Gacaca* (Kibuye case study, Part 1), November 2003; *Research Report on Gacaca Courts: Gacaca and reconciliation* (Kibuye case study, Part 2), May 2004; *The settlement of property offence cases committed during the genocide – update on the execution of agreements and restoration orders*, August 2009.
- 25 The term ‘reparations’ is a broad one that encompasses the restitution of property, compensation for damages or losses suffered, reimbursement for expenses incurred as a result of victimisation, provision of services and the restoration of rights (see *Integrated Report on Gacaca: Research and Monitoring: Pilot phase*, December 2005, p. 48).

4 RECONCILIATION AND LIVING TOGETHER AGAIN

Throughout the period of the study, PRI's researchers observed the influence of religion on the reconciliation process within a population that is over 90% Christian, two-thirds of whom are Catholic. While 'forgiveness' is a constant theme of the clergy, it is also central to political discourse regarding the *Gacaca* process. Speaking at the official launch of the preliminary *Gacaca* courts in June 2002, President Paul Kagame signalled the importance he attached to the theme: 'The sins that were committed must be condemned and punished, but also forgiven. I invite the guilty to be courageous and to confess, repent and ask for forgiveness.' This strong appeal to the notion of forgiveness has not waned with time and the advancement of the *Gacaca* process.

After my confession was read out in front of the *Gacaca*, they asked the people if there was anything to add, and they said there was nothing to add. Because I had finished my bit by asking for forgiveness, they asked the people if they agreed to forgive me, and they said they did. To do this, they asked those who agreed to prove it by putting their hands up, and they asked those who had abstained to come to the front to explain the problem so that it wouldn't come out later. They whispered a bit but those in charge of the *Gacaca* said that if they didn't want to come up they would sort everyone out one by one to make their position clear. That's when they said that they forgave me and they clapped. I think therefore that there are no more problems.

Freed prisoner, 2005.

However, ultimately the authenticity of forgiveness, whether requested or granted, would only be known by the individuals involved. For survivors, forgiveness was closely linked to the grieving process; and for the perpetrators, to the acknowledgment of their individual responsibility for their actions. In the end, these processes were highly individual, dependent upon personal experience and imbued with a rhythm specific to each.

Perpetrators' requests for forgiveness

I already asked forgiveness for the things I did. They explained many times that we must ask for forgiveness, and they really emphasised this part. I have already attended two meetings with our *Gacaca* court. In our testimonies, we say what happened and how, and we ask forgiveness

from the people at the meeting. In general, we don't see any problem, because you explain what you did and you apologise. If you committed a murder and someone close to the victim is present, you can approach him and ask him for forgiveness. But in general, we do it during these meetings. Each testimony is required to be accompanied by an apology.

Genocide perpetrator, 2003.

This testimony summed up a number of concerns in perpetrators' requests for forgiveness, notably: the pressure on perpetrators to ask for forgiveness; forgiveness as something owed; and the public nature of the request.

Indeed, intensive campaigns were reported to have been waged in prisons to persuade detainees to plead guilty, confess and ask for forgiveness. The question was, could this pressure be said to have devalued the remorse shown by detainees and the apology given? What credibility could survivors attribute to requests for forgiveness, which often took the form of verbal apologies, extracted under pressure and in the hope of being released from prison?

All of those who asked for forgiveness did so because they had to. They haven't got the choice. They are afraid of living out their lives in prison if they don't ask for forgiveness. They aren't being sincere by doing it that way; they just want to get out of prison. Once they're free, they forget everything and calmly go back to their original place in society. I'll tell you why. I know loads of people who asked for forgiveness, but they won't go to offer to help the victims. They forget that they killed the child they relied on. Once they've asked for forgiveness in front of the *Gacaca*, they think it's all over.

Survivors' representative, 2009.

Granting forgiveness

Requiring a request for forgiveness as part of the confession process was reported to have created confusion in the minds of some perpetrators, who, when released after confessing, believed that the State had forgiven them and thus demanded that survivors do the same. This interpretation was more or less the same one held by some survivors, who, given that the decision to release detainees has come from the authorities, tended to feel a certain obligation to forgive. 'The government has forgiven you and me, I cannot refuse it to you,' said one survivor interviewed in 2003.

I often ask a child of a perpetrator to fetch me some water, to help me carry things. The child does it. What else can we do? If we don't forgive, we risk living in isolation. We can't live with the plants; we can't have the birds for companions.

Genocide survivor, 2009.

Numerous cases emerged of pressure being brought to bear on survivors to forgive – often with the best of intentions. Survivors have explained that they granted forgiveness because 'the State' or 'the Church' had asked them to do so.

People who forgive following a sincere confession don't forget their murdered family members. I forgave him because the State had pardoned him. I wasn't going to do otherwise because my family members aren't going to come back to life!

Genocide survivor, 2005.

This State-sponsored 'requirement' to seek and grant forgiveness might yet come at a price. In the short term, these perceived obligations may have jeopardised more meaningful attempts to give and receive forgiveness. Longer term, such efforts may prove counterproductive by raising unrealistic expectations of receiving a heartfelt request for forgiveness, and of being sincerely forgiven.

4.1 Returning home: learning to live together again

In October 1998, the Rwandan government announced a plan to release 10,000 detainees who had no specific charges against them. However, faced with protests from hard-line government supporters and some groups of genocide survivors, this number was reduced to 3,365 prisoners who were released gradually over a period of ten months.

It came as some surprise, therefore, when President Kagame announced his decision on 1 January 2003 to request the provisional release of more than 20,000 prisoners, amongst who were those who had already confessed, the sick and elderly, and those who were minors at the time of their offences.²⁶ These prisoners were to be sent to solidarity camps (known as *Ingando*, of which more in Section 4.2) as a stepping stone to their provisional community release and judgement by means of their local *Gacaca* court.

Truthfully, I must say that the release of the prisoners surprised us a lot. In our opinion, the law was not respected. We thought that people had been put in prison because of the crimes that they committed. These crimes

are, however, very evident because we lost many people in this sector. And all of a sudden, we learned that the Decree from the Presidency had released the prisoners. That plunged us into total confusion. And we could not ask for explanations anywhere since it is the power [government] who released these people. However, the government should have taken our interests into account, by releasing them only after having judged them.

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

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

Genocide survivor, 2003.

People questioned the impetus for such a move at that time, recalling that elections were soon to take place and speculating that the measure was politically motivated. There was also supposition that donor governments' concerns about the appalling overcrowding in Rwanda's prisons played a part in the move. What is clear was that the Presidential Decree gave a boost to the *Gacaca* process at a crucial moment.

The Decree was largely welcomed by prisoners and their families, even if they were concerned that the text itself was somewhat vague.

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

Detainee, 2003.

News of the releases sparked a considerable number of confessions within the prison population in the weeks that followed. However, some prisoners'

joy turned to discontent when they became aware that the number of releases would be well below their expectations. Nevertheless, for those whose names were on the lists, their departure for the *Ingando* was taken as a true chance, a first step towards life outside.

The Decree's lack of clarity gave rise to a number of interpretations, and the authority tasked with its application was at times unsure of how to proceed. Was it necessary to release all the minors or only those who had confessed and who were not in Category 1? Was an HIV-positive person to be regarded as sick? At what age was a man to be considered elderly? Some, but not all, of this confusion was clarified with the preparation of a circular from the Office of the Public Prosecutor.

It was survivors who greeted the measures with the most trepidation. This apprehension stemmed partly from the strong sense of vulnerability it created. The announcement of the first wave of releases thus caused great fear initially, as a number of survivors voiced their concerns about how the released prisoners might behave. At the time, one interviewee commented that: 'genocide survivors wondered whether these released prisoners, who had "macheted" those who resembled them and eaten their cows, would continue their spite. They had this concern.'

While, survivors' fears were, for the most part, unfounded, there remained an understandable apprehension regarding their safety which never completely went away:

We feel that in the future our safety will be problematic. You understand that someone who killed our close relatives, and who today is given freedom, does not love us at all. I think that it will be difficult for us to delight in their release. I also think that the work of the *Gacaca* courts is going to become more complicated. We thought that we were going to reconcile ourselves after they served their sentences. It would have been easy for me if I had been asked to reconcile with him after he had served his sentence. Then we would have had a basis on which to make our reconciliation. How are we to reconcile ourselves with somebody who does not even know what he has done [whose acts were not formally established by a judgement]? It is really a serious problem. But I must say that up to now, the released prisoners have still not done us any harm. We think that they have been sufficiently reformed or that maybe they are afraid. We do not know which way the situation will evolve. But, up to now they have not attacked anybody.

Genocide survivor, 2003.

Releases and *Gacaca*: the pitfalls

Even if the initial releases went well on the whole, and did not give rise to a sharp increase in insecurity as some believed they would, feelings of mistrust and fear were hard to abandon.

PRI's research established that released prisoners were as conscious of the temporary and precarious nature of their situation as those genocide perpetrators who remained at large. All of them risked going to prison. Faced with such stakes, the approaches they took to their individual situations chiefly depended on the strength of the position they held in their communities.

Those who perceived themselves to be more vulnerable often tried to negotiate with the authorities or the victims' families – forging agreements with survivors to effectively buy their silence. The informality of such arrangements, however, affords released prisoners few guarantees that they would not still be denounced in the local *Gacaca* court.

Conversely, there were reports that some perpetrators in powerful positions tried to avoid arrest or re-arrest, resorting to intimidation or even murder in order to make evidence disappear. While some cases of intimidation or violence against witnesses were substantiated, the many rumours on the subject that had been circulating since the beginning of the *Gacaca* jurisdictions contributed most to creating a climate of insecurity.

Genocide survivors were also found to have adopted different attitudes and behaviour depending on their level of social influence and isolation. Thus, a person who was relatively isolated, and who, in order to survive after the genocide, came to an arrangement with the family of a perpetrator, tended to bypass the justice system by not testifying against the detainee. For these survivors it was a question, above all, of preserving social harmony. Testifying under these circumstances had the potential to rupture social ties that in certain cases were vital to their lives; for example, in situations where elderly people without family were dependent upon others.

4.2 The solidarity camps²⁷

Solidarity camps, locally known as *Ingando*, were established across Rwanda to facilitate the social reintegration of prisoners held for genocide-related crimes. They began in earnest with those released as a result of the January 2003 Presidential Decree.

In establishing these camps, the declared aim of the government was to 're-educate the released detainees.' A training programme was developed for former prisoners, all of whom were required to take three months of classes and work activities.

Classes addressed a variety of academic and practical subjects, including the history of Rwanda and the Rwandan genocide, trauma and its social consequences, and reintegration after prison. But beyond the goal of re-education for social reintegration, the authorities also hoped that the solidarity camps would enable them to obtain more data regarding genocide events. Meetings were organised at the camps where released prisoners and members of the cells they had lived in (including survivors and others) were brought together. At these meetings, ex-detainees were encouraged to explain how the genocide unfolded in their area, part of the purpose of which was to corroborate previous information and to root out false statements and incomplete confessions.

Released prisoners' perspectives on *Ingando* life²⁸

The following accounts, from the first wave of prisoners released to *Ingando* following the 2003 Presidential communiqué, were based on interviews that took place in 2003. They reflect the views and experiences of many other (but not all) interviewees:

The 1,200 persons or so present, glad not to have to wear the pink uniform of Rwandan prisoners any more, worked with determination. The first week was used to elect the camp leaders and to build a large classroom.

The internal regulations of the camp were agreed by common accord, knowing that any person who disobeyed would be strictly punished: the punishment in case of bad behaviour (such as smoking hemp for instance) was to return to prison.

Shortly afterwards the courses started, given by some high authority figures. These courses, including abundant debates, covered a variety of theoretical and practical topics, including: unity and reconciliation; the culture of peace; participatory *Gacaca* courts; principles of democracy and good governance; civic education about elections; the legislative, executive and judiciary powers; justice and human rights; development strategies for Rwanda; the role of the population in maintaining security; combating paedophilia; AIDS and malaria. In general, the courses were considered beneficial and were favourably received by participants.

...

Meetings with the local population were organised to try to begin social reintegration. Together they played football and volleyball, and built houses for the survivors. The *Umuganda* (mandatory communal work) was carried out jointly, and finally this conviviality ended in a party where we danced and drank the local beer.

[But] we had a very hard life there. The living conditions in the *Ingando* were worse than those in prison. It was deliberate. It is the same in all the camps.

Everybody was subject to the same conditions, without exception, and ready to respond positively to everything that was asked. That is, we had to stay there, be punctual, and do what was required, within the group that had been assigned to us. We had to be ready for any call. If we were asked to dance, we would all dance. If a classroom had to be built, we would all go and build it. If we had to cook, the same applied. If water needed to be fetched, ditto. You have to eat what has been prepared by all, without waiting for your family to bring you food.

What was really difficult was that the date of our release was changed and postponed every day. All these delays made us believe that we might be sent back to prison. There were rumours to that effect.

At the beginning of the training, there were also rumours saying that we were going to be killed. And when the date of release came and went more than once, we started to be afraid. There are people like us, who lived in the camps like we did, but who did not leave them like we did. It was painful. These people were not informed of why they had to return to prison.

Despite the harsh conditions, interviews conducted with released prisoners reveal that most had positive experiences in the camps. This extract from the testimony of a freed prisoner in 2003 typifies the general attitude:

The solidarity camps to which we were taken before going back home were very important. We were told at great length what the *Gacaca* courts were. They explained to us where the idea to create these courts came from and the aims they hoped to achieve. We obviously tried to understand their philosophy. We were also taught how we should behave towards the survivors of the genocide, in our families and in our villages.

The people in charge of the solidarity camps and the various grassroots authorities also spoke to us about community service. Some defendants will serve part of their sentences at liberty. In short, we are looking forward impatiently to beginning this work, although we do not know what kind of

work we will be doing. We were only told that we would be doing work in the interests of the community. We were also told that we would have to do work to help develop our community, such as building schools.

Leaving the camps: new starts and fresh fears

On the whole, even if there was apprehension about what awaited them upon leaving the *Ingando*, the majority of the ex-prisoners were thrilled to be going home, and their families delighted to be able to count on their presence again:

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

Freed prisoner, 2003.

However, while enthusiasm prevailed, leaving prison and the solidarity camp was far from easy for everyone:

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

Returning Tutsi exile, 2003.

Indeed, fear was sometimes so great that some people, because of their crimes and the details of their confessions, gave up on going back home, fleeing instead. Many more, while deciding to return, undoubtedly sensed the precariousness of their situation. Many expressed concern about the possibility of new accusations being brought against them – whether false or true – from survivors. Released prisoners were also fearful of those whom

they had named in their confessions as accomplices, and who were still at liberty. Their families too often ran into trouble after their impending return became known. PRI documented several reports of *Ingando* inmates requesting police protection for themselves and their families.

There were around 20 people in our camp who had received messages from their wives or their children, saying that things were not looking at all well for them on the outside.

Acquitted former detainee, 2003.

Quite apart from their security fears, another source of considerable anxiety for released prisoners was simply facing normal life again after years of being out of touch and part of a prison regime. For many, much had moved on since their incarceration: new relationships had been formed, babies born and loved ones had died; there were improvements in communications (such as the widespread use of mobile phones); the job market had changed; even dress styles were different.

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

Former detainee, 2003.

4.3 Settling property offences²⁹

From the outset, decisions by the *Gacaca* courts relating to property offences during the genocide, including looting, damage to homes and personal property, proved problematic – giving rise to numerous disputes.

Firstly, apportioning responsibility for the large-scale organised looting that took place during the genocide was more complex than originally envisaged. While many people took part, the extent of each individual's responsibility varied widely. On the one hand, some members of the *attaques* (mobile armed squads who killed and plundered during the genocide) stole and

destroyed not only in order to enrich themselves, but also to obliterate all traces of their victims as part of the extermination plan. Other individuals took advantage of the chaos to improve their standard of living, or simply to survive by appropriating abandoned property.

The picture was further complicated by the second round of looting that took place whilst the owners were in exile. Many returnees were unable to recover their property, and in some cases were ordered to make repayments to the very people who were implicated in that second round of looting.

A third problem was that upon their return from exile, some survivors received payment in respect of their appropriated property either through a procedure known as the *entente* (the ‘friendly settlement’), or as a result of pressure by the authorities. Many received less at the time than the sums being offered to others at the outcome of later *Gacaca* hearings, and so seek to reopen their claims. The authorities contended that the *Gacaca* proceedings were only to be used where parties had failed to reach a friendly settlement. However, the absence of written evidence of the *ententes* made it difficult to prove that they ever took place.

Two further issues created complications at *Gacaca* hearings. Firstly, the law provided that absent looters (missing because they were dead, in exile or in prison) could still be tried – with their heirs, or those who have taken over the business, required to make the repayments. This led to numerous disputes where the value of the property left by the looter was less than the sum ordered to be repaid, or when the property had already been divided between members of the family.

Secondly, the use of the *in absentia* procedure meant that defendants were unable to defend themselves. Furthermore, in cases where there was successive looting, it was difficult to establish who took what. The net result is that a person who stole a great number of personal belongings could end up having to repay the same amount of money as a person who arrived last on the scene and took a bowl or some wood from the debris so as to be able to cook a meal.

Once an order was made, its enforcement also ran into problems. Decisions relating to property offences were usually expressed in monetary terms. Given that many Rwandans live in extreme poverty and that the sums ordered by way of compensation for loss of valuable property – such as houses and livestock – were often quite considerable, large numbers of those ordered to make repayments were unable to comply. In such cases, courts had two options: to confiscate property such as land or livestock, plunging people into even greater poverty; or order that repayment be made in the

form of unpaid labour for the victim, which is contrary to international law and which at times has posed a serious social threat.

4.4 The impact of community service on survivors and perpetrators³⁰

Can community service support genocide survivors' and perpetrators' peaceful cohabitation?

At its inception, community service was believed to offer enormous potential for post-genocide reconciliation, and made some important strides towards this goal. Those entering the programme received professional training and the realistic hope of work. Evidence also suggested that community service has minimised the social alienation caused by incarceration.

Many of those who were sentenced to community service (as at February 2010, many thousands were still in the community service programme), initially reluctant and even frightened by the concept (which was a previously unknown penalty in Rwanda), came to view it as a very positive step. Some survivors also professed to be satisfied with the work provided in the camps, some of which has been of direct benefit to them. This is the case in the Nyanza camp, for example, where houses were built for impoverished people, including survivors, or in Rwamagana, where a similar project for widows of the genocide was carried out.

That said, community service as a punishment remains in its infancy in Rwanda, and the form it takes remains crucial. In the Presidential Orders of December 2001 and March 2005 the favoured system was Neighbourhood Community Service, where work by offenders was to be carried out close to home – and at the very least in their own District. However, faced with logistical complications, most notably the unequal distribution of offenders across sectors, authorities chose to group offenders into work camps in the initial stages.

Despite being subject to very harsh conditions at times, work camps have been favoured by offenders because they have allowed them to cut the overall length of their sentence in half – as they work six days a week, rather than three days envisaged in the neighbourhood model. Also, the proximity of Neighbourhood Community Service to the locations of crimes has frightened some survivors who feared for their physical safety, as well as some offenders, who dreaded possible tensions. But the distance of many work camps from offenders' homes and families risks the perception of the work camp as a second prison. Moreover, the work camp is poorly adapted

to people sentenced to many years of service, nor to the additional hardships faced by elderly, or sick offenders.

Despite the advantages of work camps, PRI's view has been that the Neighbourhood Community Service model is better suited to the goal of peaceful cohabitation, and ultimately of reconciliation. The supervised and gradual contact of offenders with the community has the potential to reassure survivors, who are also better able to benefit from the work being done. Furthermore, the neighbourhood model of part-time community service allows offenders to fulfil their economic and social duties towards their families, at least in part.

However, significant problems exist with both models, neither of which will resolve prison overcrowding – since community service is not the main penalty. A recurring theme amongst survivors has been the need for community service to directly benefit their situation, rather than focusing on community benefit as a whole. This is all the more pressing given the lack of effective compensation measures, the result of which continues to condemn many survivors to a life of extreme poverty.

26 For more information from PRI on this topic, see in particular: *The Guilty Plea Procedure, Cornerstone of the Rwandan Justice System*, January 2003, and *From Camp to Hill, the Reintegration of Released Prisoners*, May 2004.

27 For more information from PRI on this topic, see in particular: *From Camp to Hill, the Reintegration of Released Prisoners*, May 2004; *Integrated Report on Gacaca: Research and Monitoring: Pilot phase*, December 2005.

28 Accounts extracted from: *From Camp to Hill, the Reintegration of Released Prisoners*, May 2004.

29 For more information from PRI on this topic, see in particular: *Monitoring and Research Report on the Gacaca: Trials of offences against property committed during the genocide – a conflict between the theory of reparation and the social and economic reality in Rwanda*, July 2007; *The settlement of property offence cases committed during the genocide – update on the execution of agreements and restoration orders*, August 2009.

30 For more information from PRI on this topic, see in particular: *Research on the Gacaca*, September 2003; *Monitoring and Research Report on the Gacaca: Community service, areas of reflection*, March 2007.

Eight years on ... a record of *Gacaca* monitoring in Rwanda

5 CONCLUSION: BALANCING JUSTICE AND RECONCILIATION³¹

In truth if the *Gacaca* process hadn't been there, people wouldn't even have asked for water from their fellow Rwandans. We feel that the *Gacaca* allowed the truth about the genocide to come out. It allowed us to exhume and find our killed loved ones who had been left in the hills so that we could bury them in the memorial sites for genocide victims in our sector.

Genocide survivor, 2009.

As a home-grown response to the daunting legal, social and economic challenges created by the genocide, the *Gacaca* process has had an enormous impact. *Gacaca* has succeeded like no other in involving a whole adult population in establishing the truth of what happened, and in so doing broke the cycle of impunity which could otherwise have threatened to undermine the truth-seeking process. Innovative truth-seeking and punishment mechanisms such as the confessions procedure and community service were developed and adapted, with tens of thousands of lay judges trying all but the most heinous of crimes. Crucially, adopting *Gacaca* over more conventional justice models enabled the handling of cases and processing of trials at an astonishingly rapid rate. But at what price was this speed and innovation gained? PRI has been concerned that by moving too quickly the *Gacaca* process has overlooked a number of key principles of justice, endangering the emergence of the truth and the delivery of fair justice for all.

Speed at the expense of quality?

The speed with which the genocide caseload was processed became a recurring theme in the operation of *Gacaca*. Several legal amendments were made over the years to speed up the process, including changes to Organic Law no. 16/2004 to allow a doubling in the number of sector-level courts (in Organic Law no. 10/2007). In another amendment to the 2004 law, the remit of *Gacaca* courts was widened to include jurisdiction over some Category 1 offences.

The authorities' wish to speed up the process only increased the difficulties of ensuring balanced justice. As a result, judges were put under pressure and were unable to examine cases in detail. Rulings were hastily handed down and defendants were not always given time to defend themselves.

Sometimes witnesses were absent simply because the multiple sector-level courts often met at the same time and they couldn't be in two places at once.

The right of defendants to a fair trial suffered in particular under *Gacaca*. PRI has reported that defendants regularly appeared at their trials unaware of the evidence against them and with no time to prepare their defence. These failings not only revealed problems in the operation of *Gacaca* courts, but also demonstrate the limitations of the *Gacaca* process itself. In hindsight, an alternative and fairer option may have been to limit the role of *Gacaca* to information-gathering, while transferring the trial phase to mainstream courts, or for *Gacaca* to have operated a hybrid system that included professional judges.

Seeking the truth: the role of confessions

Truth is relative and I got what I wanted from the *Gacaca* process. I even gave a sheep to the man who owned up to having killed my father because I felt that he was telling the truth about my father's death. I was criticised for that but I don't give a damn because now I know everything I wanted to know about the genocide that took my loved ones.

Genocide survivor, 2009.

Despite significant shortcomings, confessions have played a positive role in encouraging the truth to emerge, however partial and distorted this might have been.

The *Gacaca* jurisdictions didn't reveal the whole truth but did contribute to it. They didn't really plumb the depths of things but they did play an important part in the search for truth.

Genocide survivor, 2009.

PRI's research also found that accused individuals and their families appreciated the confessions procedure for its ability to exonerate the innocent and expose the guilty. For many, the process contributed to relieving the enormous tensions created in the genocide's aftermath. Crucially, the widespread take up of confessions broke the silence for many of those still fearful of speaking up.

The confessions have been very useful in the *Gacaca* process. They encouraged those who had opted for *Ceceka* (to stay silent) to own up. *Gacaca* have worked well because of those who were in prison: their confessions influenced those still on the outside.

Genocide survivor, 2009,

However, while confessions and other truth-seeking measures have helped individuals to understand what happened to their loved ones, and have made inroads into the search for the truth, the *Gacaca* process has not resolved tension and suspicion within the population. According to a National Unity and Reconciliation Commission report entitled *Social Cohesion 2005–2008*, levels of personal mistrust within Rwandan society are still very high. Some 46% of the population and 71% of genocide survivors believe that the families of genocide crime perpetrators will always feel animosity towards survivors who accused them or testified against them.

State involvement in the administration of justice

At times, State involvement in the *Gacaca* process threatened its impartiality. Indeed, PRI's research has shown that local authorities were very heavily involved – especially at the sector level – and at times influenced the running of the trials. The National Service of *Gacaca* Jurisdictions, the government's monitoring and coordination body for *Gacaca*, is considered to have overstepped its remit in relation to *Gacaca*, not least in its instructions to *Gacaca* courts. PRI's research has found that such State involvement often led to manipulation of the process, in particular by reducing judges' room for manoeuvre.

Corruption was also noted as a significant cause of manipulation – created by survivors' poverty, the defendants' desire to regain their place in society, the difficult financial situation of the unpaid *Inyangamugayo*, who were forced to neglect their usual work in order to carry out their role in the *Gacaca*, and as a result of the more recent inclusion of performance contracts into the activities of the *Gacaca*.

Justice and reconciliation: *Gacaca*'s legacy

Conceptually, the limitations of *Gacaca* have been essentially two-fold. Firstly, its twin-track attempt to punish perpetrators and reconcile society has been difficult to realise in practice. The horrifying nature and extent of the crimes committed is still relatively fresh, and the climate of suspicion and mutual mistrust they caused is still evident. The harsh social and economic realities faced by most of Rwanda's population have made forgiveness between people even harder: the precarious financial situation of those convicted, who as a result are unable to compensate their financially desperate victims, remains a major obstacle.

It is becoming clear that, while justice can contribute to restoring social peace, reconciliation is a concept that is far broader than can be dealt with in

a court of law. Therefore, while it is still too early to comprehensively assess the effects of the *Gacaca* and its impact on social groups, it is unsurprising that popular expectation of *Gacaca*'s capacity to reconcile the nation has only been partially realised.

You can't really say that *Gacaca* cleared up all the causes of the genocide. *Gacaca* isn't a solution for disputes, it's just a court. Clearing up cases is a permanent solution. *Gacaca* dispenses justice but doesn't end the conflict once and for all.

Minister of religion, 2009.

With the ending of the *Gacaca* chapter, Rwandans are turning their attention to how to continue the work that it started in reconciling a nation.

There should be a place in which Rwandans could become reconciled. But there should also be a place where unresolved problems from the *Gacaca* could be resolved. There should also be educated *Inyangamugayo* who could resolve these problems with wisdom.

Freed prisoner, 2009.

One important legacy of *Gacaca* has been the emergence of a forum where information and viewpoints could be exchanged between genocide victims and perpetrators. For PRI, a judicious way of filling the vacuum left by *Gacaca* would be to strengthen and make permanent such forums, in order to ensure continuing dialogue towards reconciliation.

There should be something after *Gacaca* that could play a role in bringing reconciliation to the parties, so that they can sit down together and say that what kept them apart is now over, no need to punish, just to tell each other the truth and overcome what happened, it's not a job for a judge, but just them and a conciliator who isn't there as a judge but as a mediator.

Gacaca as a tribunal only judged the perpetrators of the genocide, but it can't end the conflicts that keep people apart. It can't expurgate the crimes that were committed because not everyone is happy with the decision taken in the *Gacaca*. Persons who were convicted say that justice wasn't carried out, whilst the victims say that the *Gacaca* is just a chance to grant a pardon to the criminals.

Genocide survivor, 2009.

Giving the *Intwali* a central role to play in the reconciliation process is also likely to bring substantial benefits. Enhancing the role of the *Intwali* could also play a vital part in social reconstruction efforts by combating the belief

that *all* Hutus were responsible for the genocide and by promoting social cohesion.

Particular homage must be paid to those men and women who displayed enormous courage by risking their lives to save their neighbours and friends. You displayed the highest degree of humanity, by risking your life to save another. You could have chosen not to do that, yet you did it anyway. For this reason you carry within you our hopes. There are people still alive today in Rwanda, people in this very stadium, who without your courage and bravery would have died ten years ago.

Address by Rwandan President Paul Kagame on the 10th anniversary of the genocide, 7 April 2004.

Gacaca brought people together, be they perpetrators or victims. Before, sorrow stopped us from having contact with them. Now, thanks to *Gacaca* we have come closer together. We are closer to the wives of those who wronged us. We went together to the *Gacaca* court sessions. We ask them to help us with work in the fields, and they are always willing to do that. I don't think there's a problem anymore: unity and reconciliation have really happened. They've helped us to sort out our differences. [But] as always there are those who are happy and those who are unhappy.

Genocide survivor, 2009.

31 The conclusion in this report is based on PRI's final *Gacaca* research report, entitled *The Contribution of the Gacaca Jurisdictions to Resolving Cases Arising from the Genocide: Contributions, limitations and expectations of the post-Gacaca phase*, February 2010.

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