



# **SURVIVORS AND POST-GENOCIDE JUSTICE IN RWANDA**

## **Their Experiences, Perspectives and Hopes**

**Published by African Rights and REDRESS**

**November 2008**

### **REDRESS**

87 Vauxhall Walk  
London, SE11 5HJ  
United Kingdom  
Tel: +44 (0)20 7793 1777  
Fax +44(0)20 7793 1719  
[www.redress.org](http://www.redress.org)

### **African Rights**

**P.O. Box 3836**  
Kigali, Rwanda  
Tel: +250 503679  
[rights@rwandatell.com](mailto:rights@rwandatell.com)  
[www.afrights.org](http://www.afrights.org)

*“Justice was a political initiative born out of a concern to put an end to the culture of impunity. But the struggle against impunity was not going to bring back our loved ones who had died. It is a principle that determines the future without changing anything about the past.”*

Etienne, a lawyer in Kigali.

*“We will always strive to have the courage to testify, despite the serious consequences that entails.”*

Prudence, a hospital worker in Butare.

*“The survivors who continue to fight for justice do so for our loved ones who are not with us anymore, to honour their memory and to show them that we have not abandoned them.”*

Agnès, a farmer in Ruhengeri.

# TABLE OF CONTENTS

<b>MAP OF RWANDA .....</b>	<b>iv</b>
<b>ACRONYMS AND GLOSSARY .....</b>	<b>v</b>
<b>PREFACE.....</b>	<b>vii</b>
<b>INTRODUCTION.....</b>	<b>1</b>
<b>SUMMARY OF FINDINGS .....</b>	<b>4</b>
<b>1. THE COURAGE IT TAKES TO TESTIFY : The Killing and Harassment of Survivors and Witnesses.....</b>	<b>6</b>
<b>2. FORMAL JUSTICE.....</b>	<b>20</b>
<b>3. GACACA.....</b>	<b>26</b>
<b>4. THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA.....</b>	<b>55</b>
<b>5. INVESTIGATIONS AND PROSECUTIONS ABROAD.....</b>	<b>72</b>
<b>6. A LACK OF ATTENTION : Rape And Sexual Violence .....</b>	<b>86</b>
<b>7. CIVIL REPARATIONS AND COMMUNITY SERVICE.....</b>	<b>100</b>
<b>8. THE ROLE OF THE CHURCHES IN DOMESTIC AND INTERNATIONAL JUSTICE.....</b>	<b>109</b>
<b>9. REMORSE, FORGIVENESS &amp; RECONCILIATION What is the Relationship with Justice? .....</b>	<b>118</b>
<b>RECOMMENDATIONS.....</b>	<b>129</b>
<b>To the Government of Rwanda .....</b>	<b>129</b>
<b>To Rwandan Police and Prosecution Authorities .....</b>	<b>130</b>
<b>To the International Criminal Tribunal for Rwanda.....</b>	<b>131</b>
<b>To Governments and Authorities of Third Countries Where Suspects are Residing .....</b>	<b>131</b>



## ACRONYMS AND GLOSSARY

AVEGA	Association of the Widows of the Genocide of April 1994
CDR	Committee for the Defence of the Republic
DRC	Democratic Republic of the Congo
FAR	Rwandese Armed Forces
FARG	Fund to Assist Survivors of the Genocide
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IPJ	Judicial Police Inspector
MDR	Democratic Republican Movement
MRND	National Republican Movement for Development (1975-1991) and National Republican Movement for Democracy and Development (1991-1994)
PL	Liberal Party
PSD	Social Democratic Party
RPA	Rwandese Patriotic Army
RPF	Rwandese Patriotic Front
PSD	Social Democratic Party
TIG	Community Service
Parquet	Office of the Prosecutor
<i>Inyangamugayo</i>	A judge of the gacaca jurisdiction
<i>Intègre</i>	Another term for a gacaca judge

### Terms for Administrative Units and Their Corresponding Administrators

Rwanda's local administrative structure was changed between 2001-2006. However, in this book we have used the geographical locations, the names of administrative units and their corresponding administrators as they existed in 1994.

Préfet (Governor), the head of a préfecture;  
Deputy-préfet (Sous-préfet). A deputy-préfet was either in charge of certain responsibilities within the office of the préfecture, or was the head of a group of communes grouped together in a sous-préfecture;  
Bourgmestre (Mayor), the head of a commune;  
Councillor, the head of a sector;  
*Responsable*, in charge of a cellule.

“Refugee”: The term is used in the testimonies for people who fled their homes because of fear or violence, though they had not crossed an international border according to the standard definition under international law.

*Inkotanyi* is used to refer to the RPF by both its allies and opponents. The term means “fierce fighter” in Kinyarwanda.

*Inyenzi* means “cockroach” in Kinyarwanda. After the killings and expulsions of Tutsis in 1959-1963, a group of exiles called *inyenzi* tried to stage a comeback and were defeated. The term was used to refer to the RPF during the Government of President Juvénal Habyarimana, but during the genocide it was shorthand for all Tutsis.

## PREFACE

For the past year, *African Rights* and REDRESS have collaborated on an initiative that examines, from many different angles, justice in the aftermath of the genocide in Rwanda. Our work has primarily focused on encouraging investigators and prosecutors to respond effectively to the numerous genocide suspects that remain at large in Europe, and engaging survivors located in Rwanda and abroad in these foreign trials by analysing crime patterns, collating evidence and helping to put survivors in contact with investigators. We have also sought to provide a safe space in which survivors' concerns about justice can be articulated, heard and taken into consideration by justice officials and policy makers.

In November 2007, about 50 genocide survivors in rural villages in Gitarama and in Kigali participated in three workshops. All were individuals affected either by criminal cases that are ongoing in Europe, or situations where the individuals they hold responsible for the massacres in which their relatives died, or for attacking them personally, are currently residing in Europe. The workshops were designed to help them learn about some of the current efforts taking place overseas to bring genocide suspects to justice and to enable them to understand the possibilities for genocide justice abroad and the constraints on foreign investigators and prosecutors. In addition, the workshops sought to create opportunities to discuss how their concerns about justice in Rwanda and internationally could be better known and taken into account.

*Survivors and Genocide Justice in Rwanda: Their Experiences, Perspectives and Hopes* emerged out of these workshops, for what they revealed, or rather confirmed, was that “justice” for most survivors is of paramount importance in their lives. Indeed, the yearning and search for justice, in so many ways, defines what a survivor is. Their experiences and perceptions of justice are complex, and depend on a variety of factors both directly related and extraneous to their justice experiences. Their encounters with foreign investigators and courts could not be divorced from their views on justice more broadly, nor could they be separated from their engagement, or disengagement, from conventional and gacaca courts in Rwanda, nor their views on the work of the International Criminal Tribunal for Rwanda (ICTR).

Over the following eight months, a team of researchers based in Rwanda carried out individual interviews with survivors throughout the country. Approximately 97 survivors from a variety of backgrounds in all the provinces of Rwanda were interviewed, and these interviews were complemented by further meetings with survivors based in Belgium, France, The Netherlands and Norway, as well as discussions with Rwandan government officials, civil society groups and other stakeholders. Interviews with the majority of survivors were conducted in Kinyarwanda, and to a lesser degree in French, and the testimonies were later translated into English.

The interviews sought to obtain first hand accounts of how survivors actually interacted with justice, what these interactions meant to them and how, and to what extent, their lives were affected by the justice process. The research was based on objective indicators as well as the subjective views of survivors. Researchers sought information on the different challenges survivors faced vis-à-vis justice processes as well as their general sentiments and concerns regarding justice more broadly in the post-genocide context. They were encouraged to speak openly by offering them anonymity, and as a result, pseudonyms have been used throughout the report to protect identities.

Neither the research nor this report purports to be an exhaustive catalogue of survivors' views about post-genocide justice processes, which would in any case be an impossible undertaking. Though the experiences, opinions and hopes which have been highlighted by the survivors we interviewed are not necessarily shared by *all* survivors, the richness and breadth of the material reflects a very broad range of views and serves to underline a number of key trends. The survivors who were interviewed were remarkably consistent in highlighting experiences and challenges. While their reactions are influenced by the nature of their particular experiences before, during and after the genocide, survivors speak as one about justice. Whether an impoverished peasant in a rural village or a highly educated professional in Kigali, male or female, whether they were young or adults during the genocide or whether they live in Rwanda or abroad, every person emphasised the need for those who participated in the genocide to be punished. None felt that nearly enough had been done in this regard. Some of the challenges have been documented by others writing generally on post-genocide justice, though the survivor's perspective, as a key stakeholder in justice processes, has been decidedly absent. The purpose of this report is to give due attention to survivors' voices.

This report was researched and written by Rakiya Omaar, Théodore Nyilinkwaya, Carla Ferstman and Jürgen Schurr. Dévota Gacendeli, Gustave Mukarurinda and Evariste Dusabimana carried out the field research. We would also like to thank Sally Spilhaus, Colette Malo, Laura Collins, Joe Savage and Sylvia Karenzi for translation of testimonies. We are especially indebted to the many survivors who shared their often painful histories and provided insights on what justice means to them and on their vision for the future. We also thank all officials, civil society representatives and others who agreed to speak with us about the state of post-genocide justice and who made an important contribution in pointing out areas for improvement.

We also want to express our appreciation to the Oak Foundation for its critical support to this initiative and for their continuous interest and encouragement.

## INTRODUCTION

*Survivors and Post-Genocide Justice in Rwanda: Their Experiences, Perspectives and Hopes* was written to give voice to survivors' perceptions of justice in the aftermath of the genocide in Rwanda. Their views, varied as they are, have important implications for the success of justice, whether in gacaca courts, domestic trials or international prosecutions, for reconciliation and for society at large.

Almost fifteen years have passed since the genocide of 1994 in which up to one million mainly Tutsi men, women and children were massacred and which left behind countless orphans, widows and severely handicapped and traumatised individuals. Immense personal losses are compounded by the virtual destruction of their wider community. The human, economic and social consequences of the genocide continue to affect them all, and it is impossible for them to look at justice in isolation from the reasons they have come to be known as survivors. With time, the breadth and depth of their losses and bereavement has become more apparent, particularly with regard to those who were young at the time. Unlike other victims of state-orchestrated genocidal violence, survivors in Rwanda live in unique circumstances in that they must mingle with, and live next door to, the people who sought to exterminate them so recently. This reality introduces layers of complexity and sensitivity that are difficult to comprehend, let alone disentangle, and makes justice in Rwanda a daunting task. The genocide casts a long and profound shadow over all aspects of life in Rwanda, and this necessarily helps to shape if and how people engage with justice.

In many ways, post genocide Rwanda has become a laboratory for multiple justice "experiments" both national and international. To some extent this is laudable; a crime against humanity, on the scale and in the particular circumstances of Rwanda in 1994 was unprecedented and it was essential to develop appropriate judicial responses in the national and international spheres. Justice was necessary to acknowledge the massive atrocities that had been committed; to restore a sense of security within the country; and to establish the rule of law after the decades of impunity which had greatly facilitated the massacres. It was vital to curb the persistent genocidal ambitions of perpetrators who continued to target Tutsis from their bases in exile, and to deny their crimes. Equally, innovative approaches to the delivery of justice were required to deal appropriately with the massive numbers of arrests which started at the end of the genocide in July 1994. Justice was also necessary to restore dignity to survivors and to honour the memories of the dead.

The degree to which it can be said that these "experiments" were successful or not depends largely on the parameters used to define success and who is defining and evaluating them. The goals of the various justice initiatives employed in the context of post-genocide Rwanda have differed significantly. The United Nations Security Council and the international community sought to reassert the legitimacy of the international legal order. They had an obligation to uphold the principles embodied in the 1948

Genocide Convention with regard to punishment, having failed in their duty to act to prevent the atrocities. In a general sense the International Criminal Tribunal for Rwanda was also set up to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region and also to counter negative sentiments about the international community's inaction in the face of the genocide. More recently, the few countries like Belgium, Switzerland, Canada, the UK, the US, Finland, The Netherlands, Germany and New Zealand which have sought to investigate and prosecute genocide suspects found on their territories were concerned about the political implications of being seen as providing a safe haven for genocide suspects.

International priorities diverged from those of the Rwandan Government, which faced unique challenges in the post genocide context. Within a few years, there were more than 100,000 genocide suspects detained in overcrowded prison cells, and others in exile in neighbouring countries or living side by side with survivors of the genocide. The Government pursued sometimes incompatible goals with limited resources. Its attempt to deliver accountability, re-establish security, and elicit confessions through the Organic Law on genocide prosecutions of 1996 proved unworkable. In introducing gacaca it sought to expedite justice in order to decongest the prisons, promote social harmony and reconciliation, and move the country *beyond* the genocide.

Some of the limitations of these parallel, sometimes competing, domestic and international tribunals, have already been identified from the perspective of international law or human rights. Flaws in the administration of justice are not surprising, given the limited time and resources the international community was, and continues to be, willing to expend and the legal, institutional and structural weaknesses within Rwanda. Yet rarely, either in the development of these projects or in evaluations of them, have the views of survivors been directly called upon. This report offers new insights which bring into question the meaning of justice after genocide. The research looks at the various objectives of the policy makers from the viewpoint of the survivors of the genocide. It asks them what they think justice is, or should be? It considers whether they regard "justice" as an appropriate or central objective? Does it resonate with their daily experiences, and if so how? What does it mean for survivors to be asked to move *beyond* the genocide? Is this indeed possible? The views and perspectives of survivors were not given adequate consideration by governments and international policy makers to premise their justice experiments. In the Rwandan context, justice has never been an area over which victims have felt ownership or real engagement; if anything they have been and continue to be the silent and largely passive observers of this abstract notion called *justice*, despite the direct impact its decisions have on their daily lives, their peace of mind, their ability to conceive of plans for the future, and their sense of responsibility to the people they loved and lost in the genocide.

*Survivors and Post-Genocide Justice in Rwanda* starts by looking at the numerous risks that survivors take when deciding to actively participate in justice processes – when revealing what they know to investigators, testifying in court and before their communities. There are strong incentives for survivors to remain silent. These incentives are explored as well as the rationales of those who took the decision to speak out and the

consequences which resulted. It then considers survivors' experiences with the different justice processes – the ordinary court system in Rwanda, the gacaca courts, the Arusha Tribunal as well as the limited experiences that survivors have had with trials taking place in foreign countries.

The survey considers survivors' hopes and aspirations about justice and the justice process which are often far removed from the goals identified above that characterised the establishment of the various justice systems in place today. It analyses the physical threats survivors have endured in their communities from suspects and their families as well as the responses to such threats. It outlines the trauma and despair that is intertwined with survivors' experiences of justice as well as the hope and sense of satisfaction that has very occasionally resulted. It catalogues the variety of misuses and abuses that have frequently framed the justice experience, including corruption and abuse of power by some officials. The report explores the changes that have occurred in survivors' perspectives of justice as a result of their direct experiences and the implications these changing views have on longer term prospects for reconciliation and social harmony. *Survivors and Post-Genocide Justice in Rwanda* concludes by offering a number of recommendations to the various national and international actors involved in the different justice processes.

## SUMMARY OF FINDINGS

*Survivors and Post-Genocide Justice in Rwanda* is difficult to read. It is not easy to absorb 140 pages of harrowing testimonies of survivors of the genocide, no matter how close or distant the reader is to the subject matter. Survivors echo each other, in talking of their experiences of violence both during and since the genocide, of their encounters with justice processes, of challenges and compromises. One's immediate reaction is to turn the page, to skip ahead. It is a natural reaction to pain and atrocity of shocking proportions to shut off. Yael Danieli has likened this phenomenon to a "conspiracy of silence". She has written, in relation to her study of the experiences of Holocaust survivors that:

To my profound anguish and outrage, *all* of those [survivors] interviewed asserted that no one, including mental health professionals, listened to them or believed them when they attempted to share their Holocaust experiences and their continuing suffering. They, and later their children, concluded that people who had not gone through the same experiences could not understand and/or did not care.<sup>1</sup>

And she notes that this imposed silence proved particularly painful to those who were determined to bear witness, linking impunity as a societal instance of the conspiracy of silence.<sup>2</sup>

Both in Rwanda and outside, individuals, policy makers, donors and governments are tired of hearing about victims, and about the atrocities of the genocide. Everyone wants to put this to rest, to move forward *beyond* genocide. People want to close this ugly chapter.

For the survivors, what this report reveals, is that in addition to their daily struggles to merely exist, and to live, they continue to struggle, mostly in vain, for some measure of justice that is meaningful to them. Certainly, justice for the crimes of the genocide can never be fully realisable and all those who were interviewed for this report recognised that justice could only ever be a partial response to the crimes. There are no adequate or appropriate remedies for crimes of this nature. Nonetheless, the multiple justice solutions that have been applied in the context of Rwanda have left many victims feeling vulnerable rather than acknowledged and supported, alienated rather than reconciled, angry and fearful instead of positive with hopes for the future. Not only is this sad and unfortunate in itself after their devastating experiences, it also has long-term implications for Rwandan society, as is revealed most strongly in the chapter entitled *Remorse, Forgiveness & Reconciliation*. Survivors are angered by the current discourse on reconciliation. They regard remorse and acknowledgement as fundamental preconditions

---

<sup>1</sup> Y. Danieli, "Massive Trauma and the Healing Role of Reparative Justice", in C. Ferstman, M. Goetz and A. Stephens (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making*, Martinus Nijhoff, forthcoming 2009.

<sup>2</sup> Id.

to reconciliation and believe that neither have materialised, or even been emphasised, at either the individual or societal levels.

Another central finding of the report is the prevalence of rumours, suspicion and innuendo in all matters relating to justice. Survivors' experiences commingle with what they hear from their neighbours and friends, what they surmise and what they fear. This underscores the lack of sufficient objective information that is accessible and easy to understand about what is happening, and most importantly, why particular decisions are taken. This comes across most strongly in respect of survivors' reactions to releases at the Tribunal in Arusha, and not guilty verdicts issued by ordinary and gacaca courts.

A related point is survivors' frustrations at their lack of agency. They feel tormented by their experiences testifying before domestic and international courts, and at the same time often feel outside of decision-making processes, particularly in respect of what they perceive to be the lack of consultation in respect of issues that clearly affect their interests. Survivors believe that more could have been done to safeguard their interests, particularly in domestic proceedings, and are especially critical of the fact that 14 years on, a workable compensation scheme has yet to be put in place.

Whilst some survivors were initially hopeful about the gacaca process and were heartened by the information it enabled them to discover about how their loved ones died and where they were buried, these positives were overwhelmed by sentiments of anger and despair at the progressive reductions in, and commutation of, sentences and the confession and guilty plea system. Many also spoke of their experiences of corruption.

The most common response of survivors of sexual violence was their sense of being somehow duped by the justice system. Whilst many were intent on pursuing justice, all had, in one way or another, explained how the process, whether domestically or internationally, left them feeling more vulnerable physically and psychologically. They found no solace in the Government's decision to extend the competence of gacaca to cases of rape and sexual torture, despite measures put in place to improve confidentiality which they didn't trust.

Survivors had difficulty in expressing directly their continued trauma, though this comes across clearly in their testimonies. What makes matters worse is the lack of understanding and support at the grassroots level for victims suffering from trauma, leading many survivors to feel isolated. The continued threats, taunts and reprisals faced by many survivors, particularly in rural areas compounds their existing trauma.

Justice is meant to have a transformative effect but this report seriously questions whether this has been achieved.

The perspectives of survivors documented in this report should not be taken as a barometer of endurance. What these individuals require of us who read their stories is not horror, but understanding and compassion and, above all, action.

## **THE COURAGE IT TAKES TO TESTIFY : The Killing and Harassment of Survivors and Witnesses**

It is not obvious for survivors to become involved in justice processes, at the national or international level. Testifying to the traumatic effects of the genocide is difficult, painful and dangerous. It brings back the horror the victims experienced and the losses—most importantly of their loved ones—which they must endure for the rest of their lives. These memories will have been pushed aside by survivors, intent on getting on with their day-to-day lives. But the pursuit of justice necessarily forces them to revisit, and in many ways to relive, what happened to them, their families, friends and neighbours in 1994. However, it is not only the trauma of the past that casts a shadow over the lives of survivors: it is the constant fear about the present that is all too real in their lives. Genocide justice is often about fear. Much of the Hutu population is afraid they, or someone they are close to, will be accused of participating in the genocide. The level of popular participation in the genocide, directly or indirectly, was unprecedented in the world. Those who did not kill revealed the hideouts of victims and survivors, the identity of friends and relatives who had sheltered them, or the history of Tutsis who had sought to protect themselves with Hutu ID cards. A far greater number of Hutus stole their belongings, took their livestock and dismantled their houses, taking away windows, doors and the metal sheets used for roofs. Because survivors “are always asking for justice”, in the words of Simon<sup>3</sup>, a gacaca judge in Kibungo, “genocide suspects look upon them negatively and see them as the source of their misfortunes.”<sup>4</sup>

However, despite the sorrow and anger their testimonies and their encounters with perpetrators evoke, and in spite of the enormous risks involved, thousands of survivors have lined up, day after day, to accuse and challenge perpetrators, or to lodge complaints against them in the conventional courts. As this chapter illustrates, many who have given evidence at gacaca proceedings, domestic trials before the specialised chambers, proceedings before the ICTR, or prosecutions in foreign courts have been intimidated and threatened. Some survivors and Hutu witnesses have been killed, others have been assaulted. Fearful they will suffer similar exactions, many are now reluctant to come forward, so as not to “rock the boat,” despite their overwhelming need for justice. Some do suffer the consequences, especially in the countryside, where insecurity for survivors and witnesses has been a constant in gacaca. Stones are thrown at their roofs at night, houses have been burnt down, their livestock killed and their crops destroyed. Others have received leaflets warning them that they will be massacred. Neighbours isolate the survivors, refusing to speak to them when they pass each other, the audiences in gacaca sessions whisper, hiss or laugh whilst survivors give their evidence. The fear of going to

---

<sup>3</sup> Interviewed in Kibungo, 6 May 2008.

<sup>4</sup> References to the place and date of the interview are recorded the first time an interviewee’s name appears in the report.

tend their fields reinforces the economic fragility of the many who are already impoverished.

Speaking in March 2008, Louis, who has worked with Ibuka in Butare for a long time, says the situation, at least in that region, is getting worse, not better.

The insecurity of genocide survivors and witnesses continues to grow from today to tomorrow. Some are murdered, others have had their livestock killed or their houses burned. They receive leaflets warning them that they will be massacred. There are many other forms of threats and intimidation, and so many examples.<sup>5</sup>

He mentioned three survivors who have been killed in the district of Huye in Butare; Costasie Mukamana and Hope Uwantege from Gisagara, and Paul Rutayisire, a gacaca judge in Karama sector. The assassination of Paul Rutayisire, who was chopped to pieces on a path near his house, is discussed below.

### **The Ultimate Price: Murder and Attempted Murder**

Like most survivors, Simon, the gacaca judge cited earlier, looked to gacaca to know who had killed his relatives and to ensure they would be punished. Simon lives in Sake, Kibungo. A prisoner named Innocent Habinshuti, who had steadfastly refused to acknowledge his crimes, confessed in front of gacaca. Impressed, and convinced that he was sincere and regretted what he had done, Simon sought him out and urged him to encourage others to do likewise. Innocent did not disappoint Simon; released from prison, he made a point of telling suspects among his neighbours to plead guilty. Simon even worked hard to have him appointed as the head of a group responsible for promoting unity and reconciliation through songs Innocent had composed. He had also, added Simon, become a close friend of his and of his brother, precisely because he had made it possible for them to know how and where their relatives died. When one their cows fell into a ditch and had to be slaughtered, they asked Innocent to recover the money.

The relationship changed a few months later when Simon learned about crimes Innocent had not mentioned in his confession to the prosecutor's office. He was summoned to appear before gacaca for an explanation.

Innocent came to see me and told me, in very strong terms, that our gacaca had no right to contradict the decision taken by the conventional courts. He spoke about the misfortunes I would have if I did not cancel the convocation. He left my house warning me that I would die if I continued to pursue him.

But the person who died was Simon's nephew, Frédéric.

Innocent immediately stopped his nephew from taking our cattle out to graze. He wanted my brother and I to take the cows out so that he would have an opportunity to set a trap for us since the area where our cows grazed was close to his home. But we were not in

---

<sup>5</sup> Interviewed in Butare, 6 March 2008.

the region that day, so Innocent's plan didn't work. Still hoping to delay the day that he would have to appear, he killed our nephew who was passing the area where Innocent had set a trap for us. Frédéric [Murasira] was killed instead of Pascal and I.

Even though the Government has, in his view, "done everything it can to lighten their punishment", nothing, said Simon, will stop perpetrators from "eliminating all potential witnesses so they can avoid going back to prison."

The source of all these difficulties is the stubbornness of the génocidaires who give incomplete confessions.

The assassination of Paul Rutayisire in Butare, mentioned by Louis, sent shock waves throughout Butare and beyond in 2007. His widow, Mathilde described the events that led to his death which, she said, "is connected to the poor functioning of gacaca." Both Mathilde and Paul were gacaca judges. Early on in gacaca, a man by the name of Nzabalinda, warned Paul that a certain Nyirakiromba had told him and others: "We killed the Tutsis, but we spared the educated ones like Straton Munyankindi, Paul Rutayisire and Frédéric Rutayisire." Nyirakiromba learned about Nzabalinda's intervention and started to threaten him, eventually leading Nzabalinda to file a formal complain to gacaca which then restrained the harassment of witnesses by sentencing Nyirakiromba to four months and fifteen days of prison.

Nyirakiromba was again accused in gacaca, this time of complicity in the murder of a woman. Paul Rutayisire was among the judges who sentenced him to 19 years in prison, and Nyirakiromba appealed the verdict. Shortly afterwards, according to Mathilde, her husband went to visit the president of the appellate court, and found Nyirakiromba in attendance. She remembered what her husband told her about the encounter.

He said they were surprised and it was clear they had been talking about something that they didn't want my husband to know. The president of this jurisdiction is the wife of the coordinator of our cellule, Kaburemera.

Rutayisire then found out that the appeal court had acquitted Nyirakiromba.

My husband was outraged and tried to have the decision reviewed. He said he had participated in the first hearings and he was certain that the testimonies were sufficient to prove his guilt. He got the go-ahead for a review.

But Rutayisire was killed before a trial could even be organized. Mathilde got worried when her husband did not come home for a whole night. When she questioned their domestic worker in the morning, he told her that he had seen Paul on his way home in the evening "on the path that comes from Nyirakiromba's house towards ours." She rushed out of the house to look for herself.

I found him in the middle of the road, cut up and so disfigured that it was difficult to recognise him. He had been struck with an axe.

During the subsequent trial, four of the accused, including Nyirakiromba, were given a life sentence.<sup>6</sup>

Because she was protected by her Hutu husband, Espérance Mukabatsinda, who lived in Nyakarenzo in Cyanguu, knew a great deal about the genocide; even more importantly, she was prepared to speak about what she knew. She accused many suspects, and for that, she was killed on 1 October 2007. Her naked body was discovered by a passer-by. “Since then”, commented her friend Justine, “we’ve all been too afraid to testify at gacaca.”<sup>7</sup> said one friend.

These and other murders have instilled fear in survivors and other witnesses. Even those who have not been directly targeted or intimidated are reluctant to speak at gacaca for fear of provoking reprisals.

## **Violence, Intimidation and Harassment**

### ***The Case Against Senator Anastase Nzirasanaho***

On 5 January 2008, the gacaca jurisdiction of Amahoro cellule in Muhima, Kigali, found Senator Anastase Nzirasanaho guilty of involvement in the genocide and classified him as a category one suspect. For survivors like Xavérine and Jean-Claude, it was a moment of triumph, the fruit of a long and tough battle to hold the senator accountable. In 1994, Nzirasanaho was the director of the para-statal responsible for the coffee industry, OCIR-CAFÉ. Xavérine, who was his neighbour in sector Muhima, Kigali, before and during the genocide, also describes him as “the leader of the interahamwe.”

The interahamwe parked their vehicles at his house and reported to him every morning and every evening. I saw all this because I lived very close to his house. I personally saw the senator holding grenades which he gave to the interahamwe after pointing them to Dr Gafaranga’s<sup>8</sup> house. I also heard his wife calling after the interahamwe, saying they had forgotten to take the doctor’s domestic worker who was hiding in their home. The interahamwe took him and killed him together with the doctor.

In 1997, Xavérine and two men gave written testimonies to the court detailing allegations against him. One of the two men was, she added, “Nzirasanaho’s bodyguard during the genocide”, and other man, Ezéchiel Ntahondi, had also worked for him. Nzirasanaho found out about the accusations.

Almost immediately, I started receiving threats. The senator’s wife publicly insulted me, saying our actions had not stopped him from becoming a senator. But the intimidation got them nowhere.

---

<sup>6</sup>Interviewed in Butare, 29 February 2008.

<sup>7</sup> Interviewed in Cyanguu, 30 January 2008.

<sup>8</sup> Dr Gafaranga was a member of the opposition political party, the Social Democratic Party (PSD).

As a result, said Xavérine, Nzirasanaho befriended her husband, Ezéchiel Ntahondi's older brother, in an attempt to persuade Ezéchiel to "change his testimony." She later found out that Ezéchiel had been given jobs by Nzirasanaho, and that he had also been persuaded to write a letter to the effect that Xavérine planned to have him killed. In the meantime, her own husband had given a copy of her testimony to the senator. Soon afterwards, Ntahondi was gunned down as he returned home from work at the senator's house. Xavérine became a prime suspect because of the letter written by Ezéchiel. While she was being questioned by the prosecutor's office, she said she could "see the senator's car driving in circles around the court, trying to keep tabs on the whole process since he had filed the charges against me." A second summons led to her arrest, but she was released that same evening after interventions on her behalf, "pointing out that the conflict between the senator and I was common knowledge."

These people also asked how it was possible that the senator, and not the mother or older brother of the victim, had brought charges against me.

But her ordeal was far from over.

Other people came to insult and taunt me, saying that the senator's wife gave them money for food and clothes, and asking me what I got from Gafaranga's widow. I'm not testifying so I can be paid; in fact I'm not even friends with Honourable Stéria, the doctor's widow. But my conscience can not let me hide the truth.

Xavérine said she then received visitor, including a survivor and a local official, with offers of money and advice to "stop involving myself in something that could cost me my life." But she refused to budge. She was, however, shaken when she ran into the senator himself.

He stopped his car and said to me: "You refused to make a deal with me, but in two weeks you will regret it."

Afraid, she moved in with her sister. But her husband, she said, resorted to beating her to "make me stop pursuing the case." She reported him to the police and he was detained for a few days. She was then called to the gacaca jurisdiction of cellule Amahoro in sector Muhima, of which the president was the senator's wife, Christine Mukakarangwa, to give explanations about her written testimony.

But they asked me all sorts of bizarre questions so I would lose my composure. The public, seeing the conduct of the judges, refused to return to the court unless a new committee was voted in. So this is what happened; a new committee, presided over by JMV Ngendahimana, was installed, and my testimony was considered.

The next stage in this extraordinary saga was particularly distressing for Xavérine for it involved her daughter, and ended up with Xavérine in prison. She accuses two women, a member of the previous gacaca and one of the newly elected members, of offering her daughter, who had been raped, enormous material benefits if she would blame her mother and her step-father of sexual abuse so that the young man in prison for the rape could be released. Tempted by the offer, the young girl, who had also been given a job by the

senator and his wife, agreed. However, she was surprised when her testimony was used to release a genocide suspect by the name of Bonaventure Twagiryaremye instead of the alleged rapist. She was even more upset to hear that her actions had led to her mother's detention.

She came crying to the court house, saying she didn't know they intended to put her mother in jail.

Xavérine was released after her daughter gave a written account of what had taken place to the appropriate officials, but Xavérine's life has been shattered by the experience. She separated from her husband who, she says, turned her children against her, "telling them I'm a prostitute, that I would not stop testifying because I love to fight with my neighbours and that I'm the cause of all his misery."

I now live alone. My husband lives alone. The children live alone. My husband even befriended some of my new neighbours whose attitude towards me has changed. People started throwing stones at my house during the night again.

Xavérine feels she has finally been vindicated.

I appreciate the verdict passed by the new gacaca committee of Amahoro cellule in January of this year. By finding the senator guilty of the crimes he was accused of, the judges gave value to our testimonies.

She cannot, however, understand why he has been allowed to continue his duties as a senator after gacaca classified him as a first category suspect and who should therefore be tried by the conventional courts.<sup>9</sup>

If he remains a free man, I doubt that any witness will survive.

Xavérine ran into the senator after his conviction.

He asked me if I was happy since he had been found guilty, and when I planned on accusing all the others. I just kept on walking. He also came to the area where I stay, apparently to warn the authorities that I might kill him. Luckily, my neighbours know the story and told the same officials that if I died, they should question him. I'm trying to find a way to leave Kigali altogether and move far away from the senator so that I might be safer.<sup>10</sup>

Léonidas works for the district office of Nyarugenge of which Muhima is a part. Long familiar with the case of the senator, he catalogued the pressures that witnesses have endured and the misfortunes that befell those who insisted on bringing him to justice.

Régine Nyirabananira and Ignace Nsabimana, the two main prosecution witnesses, received so many threats that they had to move out of their cellules. Unknown people threw rocks at their houses at night and vowed to kill them if they continued testifying.

---

<sup>9</sup> This was prior to the recent reform which allows category one suspects to be tried by gacaca.

<sup>10</sup> Interviewed in Kigali, 27 March 2008.

Vincent Habimana has disappeared mysteriously and Ntahondi was shot by armed men. Eric Uwayisaba also came under fire. The senator had requested Eric to use his influence, as cellule co-ordinator, with the gacaca judges, but he had refused. The senator also asked me to fire Régine, without being given a good reason, and I said no. So I too was included on the list of the senator's enemies. Jean-Marie Vianney Ngendahimana, the president of gacaca, was not spared either. We had people throw stones at our houses in the dark, and I have even seen armed men patrolling my house. Released prisoners come to court to insult witnesses and to implicate some of them falsely in the genocide. I was once asked by a former soldier who is in his camp, Niyibiroye, aka, Cyabingo: "When do you people attend that useless gacaca?" Some witnesses were bribed and later returned to retract their testimonies and defend him instead.

He asked a pertinent question.

How can Nzirasanaho still be a member of the senate when he has been found guilty of genocide? From there, he continues to harass people. Two of the first people to accuse him have been killed. Is it any wonder that we fear for our lives?

Nzirasanaho's wife, he added, also sought to demoralize them.

His wife, Mukakarangwa, says publicly that accusing her husband of genocide has achieved nothing, and will not change the fact that he is still an important person in the Government. And here she's right. How can he still be a senator?<sup>11</sup>

Like Xavérine, Jean-Claude has proved a stubborn witness, and a difficult one because he has provided an eyewitness account that strongly implicates the senator in the death of Dr. Gafaranga. He was summoned by gacaca when it was presided over by Nzirasanaho's wife. His testimony, he said, "disappeared."

The witnesses for the defence seemed to reading out their statements, which made me think that they had been told what to say.

He spoke a second time after the new gacaca committee had been established. "From that on", he said, "I was constantly under threat."

I bumped into Nzirasanaho's former driver and he told me: "If you persist, you will go down the same road as Ezéchiel." And Ezéchiel had been shot dead.

Jean-Claude's life began to unravel.

Every evening when I came home, people I didn't know would hit me, calling me an imbecile for speaking against the senator. I couldn't sleep at night because of the stones that pounded my roof. I finally decided to move, so that I would not die as Ezéchiel had done. I changed homes twice to make it more difficult for him to find me.

---

<sup>11</sup> Interviewed in Kigali, 2 April 2008.

He returned to Muhima after he learned that the president of their cellule gacaca and officials in the sector had warned the senator about his actions. Still, he does not feel at ease.

As long as he is a senator, he is a menace to our security because he can find ways to have us killed without showing his hand directly. What his wife says also makes us scared. They have corrupted so many people that we are seen as the enemies of society. During his trial, he used prisoners who had confessed their crimes to argue that some of the prosecution witnesses were also genocide suspects, including my brother. Even now, he continues to meet with these people; I see them coming and going to his house.

Jean-Claude is particularly disturbed by the ties between the senator and an ex-FAR soldier, Niyibiroye, known as Cyabingo.

During the trial, Cyabingo had a small tape recorder that he used to take to the bars where people involved in the trial usually met for beer. This came to light when he got Eric Uwayisaba's voice on tape; Eric was the cellule co-ordinator. He was asked in gacaca what he was doing with the recorder. He replied that the senator had asked him to use it.

He does not think that it is feasible for the Government to offer effective protection to gacaca judges and prosecution witnesses who live in close proximity to the defendants.

Nevertheless, when there are significant trials, like the senator's, security can be improved, for example by placing the accused in preventive detention so that he cannot intimidate witnesses and influence the court.

- ***Patricie and Prudence in Butare***

Survivors have also reported threats from members of the ex-FAR who have been re-integrated into the army and who are accused of participating in the killings. Patricie and Prudence, who had spent considerable time at Butare university hospital during the genocide, were surprised when they recognized a certain Placide Mbarushimana as an employee of the Military Medical Insurance. They, along with several other women, identified him as a soldier, in 1994, at the Junior Military Academy (ESO)<sup>12</sup>, who had, they said, played an active role in the genocide. They informed gacaca, and he was eventually tried and sentenced to 19 years in prison. His colleagues were furious; some of them started visiting the hospital, where both Prudence and Patricie work, to express their anger and to prevent any further disclosures about ESO soldiers. Patricie gave this account of their difficulties.

When his trial was underway, certain soldiers came to intimidate us at the hospital. They insisted we tell them the nature of the charges that we had brought against Placide. The

---

<sup>12</sup> ESO soldiers were critical to the success of the genocide in Butare town, including the University Hospital. The commander of ESO in 1994, Lt.Col. Tharcisse Muvunyi, has been convicted and sentenced by the ICTR, and his deputy, Captain Ildephonse Nizeyimana, now a colonel with the FDLR, is on the ICTR's wanted list. For details about the role of ESO soldiers at the hospital, see African Rights, *Lt.Col. Tharcisse Muvunyi: A Rwandese Genocide Commander in Britain*, Witness to Genocide, Issue 12, April 2000.

one I picked out is called Tom; the other was a captain but I don't know his name. Because one of the women said that Placide had raped her, Tom told us that he would kill this witness and suffer the consequences since Placide was his colleague. The captain also asked me to give him the names of the prosecution witnesses against Placide, saying they were all mentally ill. Tom came several times and I informed the gacaca judges. He was arrested. Soldiers also attacked Drocella's house and broke the door to her house, but they didn't hurt her. [Drocella is a pseudonym for a witness whose testimony is included in this report]. Tom came three times during Placide's trial.

Things took a turn for the worse after Placide Mbarushimana was sentenced.

Tom returned to the hospital. He told us: "You reported me to my boss. One person will now lose his life! Placide was imprisoned and I will follow him. I can't tolerate this." He left, saying he would find another soldier to help him end this problem.

After the hospital intervened, the police eventually established that Tom had indeed been an ESO soldier in 1994. He was imprisoned in January 2008. But Patricie and her co-plaintiffs could not afford to let their guard down.

After Tom was arrested, another soldier came, dressed in civilian clothes. We recognised his face. He said he wanted to talk to us. We refused and directed him towards the hospital administration to ask for permission, and he just walked away. However, he returned just today. We locked the door and he stayed outside, waiting for us to open the door. We had to let in one of our co-workers, and when he was leaving, the soldier managed to enter and told us that he would be back. He asked to see Prudence who told him she had nothing to say to him. He responded: "Today, something will happen. I was told that you are responsible for getting my colleague arrested."

The reactions of some of their colleagues at the hospital is another source of anxiety.

Since the Placide case began, certain workers at the hospital are always insulting us. They include people who worked there in 1994 and who, as we have told gacaca, played a role in the killings. Others are related to genocide suspects. Placide's older brother often comes to see them.<sup>13</sup>

Because she has testified not only in gacaca but also in Arusha and Canada, Prudence has reason to be nervous.

We don't feel safe simply because we talked about what we saw with our own eyes. Things have become worse these days, with a lot more abuse. We know the reason, to undermine our morale so that we stop accusing génocidaires. We are terrified of the génocidaires who are in Arusha and in Rwanda, and we have to take a lot of precautions that are often beyond our capacities.

But Prudence is determined to keep speaking out, despite the risks.

---

<sup>13</sup> Interviewed in Butare, 5 February 2008.

We will not fall into their trap. I hope our security will be guaranteed because those who want to silence us want to eliminate the evidence. For our part, we will strive to always have the courage to testify, despite the serious consequences this entails.<sup>14</sup>

All over Rwanda, survivors are finding the strength to testify, though they are well aware of the risks.

### ***A Common Problem in Every Region***

- ***Ruhengeri***

Philomène in Ruhengeri was intent on bringing the man she believes killed her father to justice.

On 1 March 2007, at about 10.40 a.m., I was attacked as I arrived at the business centre of Kararama, not far from where our gacaca sat. Four men came towards me and took me by force. Without saying a word three of them beat me, kicked me and left me naked. The fourth man didn't touch me, but he's one of those who often shouts out threats at me. They ran away after my screams alerted a woman.

I told the police and wrote to the authorities in Gakenke district, and to the prosecutor, but nothing was done. In January 2008, a group of prisoners passed in front of my house. One of them used to live next to my sister who died in the genocide. Calling me by name, he spoke to me: "We killed a lot of people. We could have done the same thing to you. All we'd need is one minute. Do you want that? If you keep getting all the Hutus arrested, you're going to regret it."

I immediately went to speak with the head of the prison. He said all he could do is to deny them visits outside the prison, which he has. But for how long? I'm scared of what could happen to me at any moment.

Philomène has contemplated abandoning justice for the sake of her security.

But my conscience won't let me turn my back on those who killed my family and in such a brutal manner. I've got to get justice for one of the men who murdered my relatives and only spent only eight years in prison before getting bail. This is usually only allowed if someone pleads guilty, but he didn't. He mocks me by telling me that "the State has abandoned you." Given the aggression, it's a wonder I'm alive.<sup>15</sup>

Martine also lives in Ruhengeri and is the victim of multiple attacks

I was once taken out of a car, at 4:00 p.m., and beaten up by unknown assailants. My crops have been destroyed and the wall of a house I had begun building was demolished and I had to start from scratch.<sup>16</sup>

---

<sup>14</sup> Interviewed in Butare, 14 February 2008.

<sup>15</sup> Interviewed in Ruhengeri, 13 February 2008.

<sup>16</sup> Interviewed in Ruhengeri, 13 February 2008.

- ***Kibungo***

In Kibungo, in the Ngoma district of the eastern province of Rwanda, Nathaniel and his family came to a decision to put justice behind them.

In September 2007, a grenade was thrown at my house. The person responsible was a certain Niyigena and he escaped. This incident was linked to information I had given to gacaca about the father and brothers of Niyigena regarding their involvement in the murder of my paternal cousin. The day after I spoke, Niyigena came to my house and told me to never think about accusing his relatives. He told me: “*Kubaho kw imbeba biterwa n’injangwe*”, meaning the life of a rat depends on the will of a cat. He later gave me an ultimatum, saying he was going to put me right in a few days. I decided never to return to gacaca. I don’t want to expose the lives of my parents and brothers to danger. It was a consensus by the whole family; we even agreed not to make any claims about what was stolen from us.<sup>17</sup>

- ***Gitarama***

Albert grew up in a mixed family. His Tutsi father died when he was young and in 1994 he was protected by his Hutu uncles in Kigoma, Gitarama. This security, he said, gave him the freedom to witness “some of the terrible things that the interahamwe in my sector did to Tutsis.” He testified against 15 suspects and encouraged his mother to speak out.

Our friends and relatives were not at all pleased. We lived in an atmosphere of physical and moral harassment. Rocks were thrown at our houses. My mother was threatened by members of her family who accused her of working with an accomplice in the family. They meant me. My mother knew a lot about what happened in our area during the genocide. So people around us started to discredit her, poisoning the minds of those in gacaca.

After my mother died, the same people doubled their efforts to keep me quiet. Rocks were constantly thrown at my roof. I asked the authorities to intervene and they sent soldiers to guard my home at night. They tried to calm things down by holding security gatherings. None of these efforts achieved anything. My children were turned away by our neighbours. My family had to stay inside our house. I had no contact with our neighbours. Meanwhile, the authorities made me responsible for security in our estate. This was a way of ensuring my safety as I’d have a team right in front of me doing patrols at night. But when my children started to feel isolated, I became more and more uncomfortable. I was also scared of being poisoned.<sup>18</sup>

- ***Byumba***

Jean Marie-Vianney is a 64 year-old farmer who lives in commune Buyoga in Byumba.

---

<sup>17</sup> Interviewed in Kibungo, 6 May 2008.

<sup>18</sup> Interviewed in Gikongoro, 29 February 2008.

Since trials started, and especially since gacaca began, our neighbours have turned on us and treat us as if we are criminals. We don't have a life because we don't feel secure. Recently, early one morning I found one of my cows had died, though she was absolutely fine when I went to sleep. I am convinced that she was poisoned by my neighbours. And if things continue as they are, we too could be poisoned and killed at any time.<sup>19</sup>

- ***Umutara***

Catherine and her children live in sector Kiramuruzi in Umutara.

Gacaca got off to a good start, but was soon confronted with the intimidation of witnesses. There are so many examples. My younger sister had her kitchen burned down, and I myself was beaten more than five times. A man I know well nearly struck my children with a machete, but they were saved by neighbours. Another time, on our way back from a trial, a woman, whose husband we had accused of stealing our roof tiles, lashed out at us together with her daughter. My house has been attacked on several occasions and my children have been hit and frightened. We have complained and complained, but to no avail. We believe in justice, and yet we are the ones who have been forced to leave their homes as if we are criminals simply because we spoke about what we had seen. In short, we are not wanted by most of our neighbours. We are treated as if we are crazy, people who are just interested in throwing about accusations. I am Hutu and my own family has rejected me because I've testified against my brother and his family. My children are traumatised and are not doing as well as they should be at school because of the constant threats.<sup>20</sup>

- ***Gikongoro***

Claudette was pursued by the family of the man she had prosecuted. She was living in Gikongoro in the southern province when the attacks occurred.

When I came out of the trial, his children, his wife and his brothers threw stones at me, saying I was responsible for his imprisonment. A few days later, I went into my field, and his children and his wife chased me away. They even had a machete. They said they were going to kill me and there would then be a trial between them and my corpse.<sup>21</sup>

Monique is another resident from Gikongoro.

My cow shed and the enclosure of my house were burnt down. Fortunately, the cow was not harmed. They came at around 11:00 p.m. The previous day, they had poisoned my dog. They also slipped a note under my door which said that I will be killed because of my testimony. I gave the note to the police, but they didn't find the culprits. I found my goat, which I had left out to graze, dead. So much has happened that I can't list all the incidents. Each time, the police arrest suspects and then release them, saying they are not the ones.<sup>22</sup>

---

<sup>19</sup> Interviewed in Byumba, 18 April 2008.

<sup>20</sup> Interviewed in Umutara, 22 May 2008.

<sup>21</sup> Interviewed in Gikongoro, 27 February 2008.

<sup>22</sup> Interviewed in Gikongoro, 28 February 2008.

Widows who live alone are particularly vulnerable. They often live alone, and must rely on the help of neighbours to survive because certain tasks and hard labour are commonly performed by men. When a widow is one of the few Tutsis in the neighbourhood, help is often hard to find.

- *Kigali*

Jeanne lives in Gikondo, Kigali. Her problems began after she had exhumed her husband's body.

Tracts were left under my door. One featured a coffin with skeletal remains in it and the words "these bones are for your husband, but you should also prepare your own." Other messages suggested that I was not stronger than my late husband and that I would be forced to follow him. It became routine; the children would gather up the messages every morning.<sup>23</sup>

Alphonsine, also from Gikondo, miscarried from the fright she got when her house was broken into. Worried for her safety after the trial of two men she accused began, because of the hostility from her neighbours, she alerted the police.

During the trial, in December 2007, a group of people entered my house through the windows. These stole my television, radio and took a number of other things. Luckily, I had seen them coming in and called for help. On hearing peoples' voices, they fled before we could identify even one of them. I was shaken up so badly that I miscarried that very morning.<sup>24</sup>

Some of the threats have also led to economic problems for survivors, who have stopped cultivating their fields because they feel insecure.

In some locations, Hutu neighbours have successfully resisted intimidation campaigns, and have helped to quell the attacks.

The police have usually responded to the attacks, and in some cases, protection has been assured by soldiers. In other instances, community meetings were called which led to arrests. Elsewhere, groups of survivors have taken the private initiative to conduct night patrols. Threats and attacks have forced some survivors to give up their homes and move to city centres, causing enormous economic hardship. Gacaca is more difficult to access for those who have left; many are afraid to return to the site of the crimes and remain afraid of their former neighbours.

Mathilde, whose husband Paul was cut up into pieces near their home as described above, said she was told by the local administration in Butare "to return home as a condition for receiving assistance."

---

<sup>23</sup> Interviewed in Kigali, 10 April 2008.

<sup>24</sup> Interviewed in Kigali, 21 May 2008.

But how can I go back to a place that makes me afraid, where my children will not know how to protect themselves from being poisoned by neighbours, where they will be taught by the relatives of Nyirakiromba [convicted of Paul's murder]? These are questions that I don't know how to respond to.

Even when aggressors have been caught, the short sentences set out in the law for witness intimidation meant that usually they were quickly released back in the communities. Threats and pressure directed against witnesses or the seat of the gacaca court are punishable under the Gacaca legislation.<sup>25</sup> Article 30 provides that any person who exerts pressure, or attempts to exert pressure on witnesses or on members of the Seat of the Gacaca Jurisdiction, including blackmail, is liable to punishment by imprisonment of between three months and one year. If the offence is a repeat offence, the defendant may incur a prison sentence of between six months and two years. In practice, the sentences have been lower.

The Rwandan National Police are the primary government body responsible for witness and victim protection. As the testimonies show, the support the police have provided has been largely reactionary as opposed to preventative, and somewhat ad hoc. The loose protection structures that exist are insufficient and not well known. What is well known to the victims is the reprisals they hear about all too often, provoking a strong fear that they will be next.

Another factor which is closely tied to the increase in violence since gacaca began is the fact that most of the prominent architects of the genocide, the men and women who led, organized and incited the massacres, who armed and mobilised the militia and who rewarded them for their participation, live outside Rwanda.

---

<sup>25</sup> Rwandan Organic Law No 16/2004 of 19/6/2004, Art. 30

## FORMAL JUSTICE

After the genocide, the new Rwandan Government was faced with the enormous task of bringing to account the thousands of individuals accused of participating in the genocide. The numbers of suspects were unprecedented in terms of what the Rwandan justice system had ever had to deal with previously. In addition, the genocide had left the justice system in tatters; it lacked personnel, equipment and finance and it lacked credibility. The majority of lawyers and judges had either been killed, had gone into exile or had been imprisoned. By the end of 1994, only 40 jurists were said to remain in the entire country.<sup>26</sup> Court buildings had been damaged and they lacked the most basic infrastructure as the former government stripped all its offices on its way into exile. The immense practical difficulties of reconstructing the judiciary from the ashes had to be attempted in the context of a broader economic and social crisis. Finally, and most importantly, the killings in Rwanda were distinguished by unprecedented civilian participation. No justice system in any country has ever dealt with a comparable situation. Moreover, as one legal expert notes: “No judicial system, anywhere in the world, has been designed to cope with the requirements of prosecuting genocide. Criminal justice systems exist to deal with crime on an individual level.”<sup>27</sup>

Alphonse, a gacaca judge in Butare and a survivor of the genocide, described the judicial reality survivors faced in the immediate aftermath of the genocide.

All the survivors had a profound need of justice, but a justice that was effective. But there was no law about genocide in Rwanda’s justice system, so all we could do at the beginning was to take a genocide suspect who had been captured to the nearest police station or commune office, and to look for witnesses to reinforce the prosecution’s dossier. But we, the survivors, were the only people interested in testifying against them, even though the information we had was incomplete. Those who had the necessary information did not want to testify because they were related to the génocidaires. The other people who could have helped us are those who came back from exile. Unfortunately, they had no idea what had happened here during the genocide, and they had not mastered the justice system in Rwanda. So because of all this, the génocidaires themselves, or their relatives, were working in the institutions of justice. And they took advantage of their presence there to make files disappear, and to get rid of evidence.

---

<sup>26</sup> United States Institute for Peace, Special Report, *Rwanda: Accountability for War Crimes and Genocide*, January 1995, p3.

<sup>27</sup> Professor William A. Schabas, *Justice, Democracy and Impunity in Post-Genocide Rwanda: Searching for Solutions to Impossible Problems*, cited in Robert F. Van Lierop, *Rwanda Evaluation Mission Report and Recommendations*, The Association of the Bar of the City of New York, Committee on African Affairs, March 1997, p8.

Afterwards, a law on genocide was put in place and the Rwandese Government was anxious for trials to begin because the prisons were full.<sup>28</sup>

Thousands of suspects were arrested in 1994 on suspicion of having taken part in the mass killings and thrown into what were already severely overcrowded prisons, where they languished. Most had not been formally charged and had no case files at the time of their arrest. The enormous caseload and inadequate human and material resources meant that it would take many years for their legal status to be considered and regularised in accordance with the law. Inexperienced, though mostly well-intentioned investigators tried, but were buried under the work.

## **The Organic Law on Genocide Prosecutions**

In 1996, the Rwandan Government promulgated a new law which criminalised genocide and crimes against humanity, that had been committed between 1 October 1990 and 31 December 1994.<sup>29</sup> The law gave the authorities until the end of 1997 to regularise the arrest records of the growing number of detainees, though this deadline was later extended. The Organic Law also classified suspects into four broad categories according to the degree of their culpability, with the planners, organisers, inciters, supervisors of genocide or crime against humanity, as well as persons who acted in a position of authority, falling within the first category. A punishment scale for each category of perpetrator was formulated, with the death penalty reserved for category 1 offenders, categories 2 and 3 to receive lesser penal sanctions and category 4 offenders to receive no penal sanction but only the payment of restitution to the value of the damaged or looted property. The Organic Law also introduced a confession and guilty plea procedure, which invited accused persons in categories 2 and 3 to confess to their crimes in exchange for greatly reduced sentences. Under reforms introduced in 2004 (see discussion of the 2004 Gacaca Law, below), category 1 offenders who confessed could also have their sentences reduced.<sup>30</sup>

Many survivors had high expectations of the Organic Law as conceived. Jeanne in Kigali was largely pleased with both the process and the outcome.

When a survivor was called to testify, he was proud to do so and we all supported each other. The investigators from the public prosecutor's office also carried out their own inquiries in the field to find out what had happened. It is true that the trials were very slow, but in many cases the final decisions satisfied the victims.

---

<sup>28</sup> Interviewed in Butare 20 February 2008.

<sup>29</sup> Organic Law No. 08/96 of 30 August 1996 on the Organisation of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since 1 October 1990.

<sup>30</sup> Organic Law N°16/2004 of 19/6/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed Between October 1, 1990 and December 31, 1994, *Official Gazette of the Republic of Rwanda*, June 19, 2004 [2004 Gacaca Law], arts. 55 and 72.

Many victims felt encouraged and protected by the lawyers and the public prosecutor. Also, for the most part, the judges did not have a strong relationship with the accused or the civil party, and as such, there was less opportunity for corruption. Louis, an Ibuka paralegal, noted the strengths of the conventional courts in contrast with gacaca.

The civil party had confidence in this system, contrary to what is happening today where the accused and the judge are blood relatives or friends, or the Gacaca judges suffer from an inferiority complex as they have a lower standard of living than that of the accused. I can give an example of a servant who was responsible for judging his former boss. In the conventional courts, the judges were in a position of strength vis-à-vis the accused.

## **Challenges with the Organic Law**

Given the enormity of the problems and of the expectations, “to think of rendering justice in such a context”, as Etienne, a lawyer based in Kigali put it, “was a huge challenge.” He spelt out some of the obstacles.

Re-launching the judicial system was difficult for many reasons, especially because of the large number of detainees. It was here that you could see the first success of those who had conceived of the genocide, the masterminds of the genocide: “Implicate the maximum number of people possible in the killings to make any judicial prosecution impossible.” Right from the very start, we noticed that the classical system was overwhelmed because there were not enough magistrates and not enough places of detention. Prisons and detention centres had not been built to accommodate this number of people. Some people started to say that there were too many detainees, but I argued that there were actually too few, given what had happened. I personally know suspects who have never been pursued and have therefore never been to prison.

Given the extent of the crisis, people “inevitably groped in the dark”, added Etienne.

Various measures were taken in order to move things along, but as we saw, there were shortcomings in all of them. It was trial and error, which showed the extent to which everyone was overwhelmed, the legal practitioners as much as the politicians. And where would a lawyer fit in such a situation? What could a lawyer do? The lawyer generally found himself with files that lacked substance, and was forced to argue the absence of proof. Some lawyers found such a situation more difficult than others. Take me for example: I didn’t see how I could argue the lack of incriminating evidence when there was a risk that this would work in favour of a potential suspect who had been left at liberty, when I myself was a victim! Furthermore, I thought the problem was not necessarily so much the lack of proof, but rather the lack of investigators (both in terms of number and of quality). So the lawyer, who was also a survivor, found himself in an impossible situation.<sup>31</sup>

Specialised chambers were established within the ordinary courts to try these crimes and the trials got underway in early 1996. However, it quickly became clear that it would be impossible to try all genocide suspects in accordance with the Organic Law without

---

<sup>31</sup> Interviewed in Kigali, 21 May 2008.

severe delays. There were also significant difficulties to collect sufficient evidence to prove what happened as Alphonse, a survivor who has also served as a gacaca judge in Butare, explains.

When you consider how the genocide unfolded, it was difficult for someone who was being hunted to closely follow the scenes of killing so that he can testify in a conventional tribunal where you are expected to speak only about what you saw and what happened in your physical presence. You can't say that you witnessed the incident if you were hiding in a bush or in a house close to where the crime took place, because you were not actually there. The survivors who wanted to testify were forced to be on the move because they were being hunted. And because of this, they could not at the same time be present at the scene of the crime. Here in Rwanda, if you look at the geography of the hills, especially in the rural areas, you will realize that people live on neighbouring hills, that they know each other very well and sometimes share things like water. And when you are on one hill, you can see what is happening on the other hill. You can even call out to someone on the other hill and speak with him without having to go there. I am saying all this to show you that someone could be hiding on one hill and see what is going on the other hill. However, a conventional court will not accept this kind of testimony. The result is that the only testimonies which are valid are those given by people who were physically present at the time of the crime. And these people are the militiamen who committed the crime, or others who were not hiding. But these are the very people who don't want to testify because they are related to the génocidaires. The difficulty of finding enough eyewitnesses willing to talk was the first impediment to justice.

The other obstacle was the demand for a large number of witnesses. You sometimes find places where there are no survivors, or maybe one or two. This is especially the case in places where there were large-scale massacres. There, you sometimes find only one or two survivors and it is only this one person, or two people, who can speak about what happened. However, their testimonies were not taken into consideration unless there were at least five eyewitnesses. But how were you going to find five survivors of a crime if five people did not survive this crime, or you can't find five people who are directly related to the victim?

And then there was also the issue of age. Someone below 18 did not have the right to testify. This was really bizarre given the reality of the Rwandese genocide. There are some places where it is very difficult to find a survivor who is older than 20. But Tutsis of different ages had similar experiences during the genocide. I think anyone above 15 could easily follow everything, and they know very well their former neighbours who became interahamwe. So these young people are more than capable of giving good information. This insistence on 18 was also another factor which reduced the chances of having enough witnesses to provide the necessary evidence.

By the end of 1996, when the first domestic trials pursuant to the Organic Law got underway, about 87,000 suspects were in custody,<sup>32</sup> though at its height, detention levels neared 125,000. By the end of 2002, about 7,000 individuals had been tried.<sup>33</sup>

---

<sup>32</sup> William A. Schabas. "Justice, Democracy, and Impunity in Post-genocide Rwanda: Searching for Solutions to Impossible Problems," *Criminal Law Forum* Vol. 7 No. 3 (1996) at: p. 526.

The initial trials revealed a number of fair trial concerns relating principally to the independence, impartiality and competence of the judiciary, poorly evidenced case files, inadequate defence and continued arbitrary arrests and detentions.<sup>34</sup> Survivors also raised concerns about the proceedings. They noted the long distances they had to travel to attend court hearings, which were often suspended or delayed, adding to the costs they had to bear. Appeals were rendered even further from their homes as there were only four appellate courts in the whole country. Victims were not always made aware of the hearings and verdicts were delivered in their absence. In this respect, they would see the killers in circulation without knowing how the decision to release them was taken. They also complained about acquittals because of uncorroborated testimony, the slow reaction of the prosecutor's office in appealing acquittals enabling certain suspects to flee the country. Others criticised corrupt officials and the endless wait for courts to try the suspects, which did little to satisfy their needs for justice. Gilbert summed up conventional justice "as more of a failure than a success" and gave these reasons for his conclusion.

Certain people suspected of having a role in the death of my relatives were in preventive detention in a commune detention centre, others were able to corrupt the judges or police to escape abroad. It is true that the suspects were not free, but that gave me no satisfaction because I was looking for a meaningful judgement that would have allowed me to know the real truth. Also, long term preventive detention fosters rancour in the killer and his family which should be avoided.<sup>35</sup>

Coming so soon after the genocide, testifying in the early years inevitably provoked considerable trauma, but there were, as Louis of Ibuka pointed out, very few specialists on hand to help.

We would encounter cases of trauma, but and at that time, trauma counsellors were not present during the proceedings. Nobody was thinking about victims' trauma and even the prosecutor's office considered it to be a very simple thing to which he gave no importance.

In addition, genocide survivors were targeted which discouraged them from testifying. Those who lived in the préfectures which border the DRC were especially afraid because of the proximity of the camps which housed close to two million refugees, including the former army and interahamwe militia who were re-arming and retraining to seize power back. They sent infiltrators, in a clandestine manner, to kill survivors and to leave behind intimidating pamphlets warning them of dire consequences if survivors persisted in bringing Hutus to justice.

---

<sup>33</sup> These figures are from the organisation LIPRODHOR, reproduced in Amnesty International: Gacaca: A Question of Justice, AFR 47/007/2002, 17/12/2002, at section III(2).

<sup>34</sup> See generally, Amnesty International. Rwanda Unfair Trials: Justice Denied, April 1997 (AI Index AFR 47/008/1997).

<sup>35</sup> Interviewed in Kigali, 20 May 2008.

But the worst problem, which virtually every interviewee commented on, continued to be the delays,<sup>36</sup> owing to the enormous caseload and nascent legal infrastructure. The pace led Alphonse to despair of ever seeing justice.

One trial could drag on for more than a year which meant that genocide trials were never going to finish. I don't believe that this system was in the interest of survivors. I didn't see how it could deliver justice to us.

## Detainee Releases

As a result of the continued concerns with delays and prison overcrowding, the Rwandan Government instituted a plan of phased releases of genocide suspects. A first 25,000 detainees were released in 2003; these were mainly non-category 1 detainees who confessed to crimes, detainees who were minors at the time of the genocide, those who were seventy years old or older, or those who were gravely ill and, additionally, had served more than half the sentences applicable to the crimes in question.<sup>37</sup> More than 5,500 of these were subsequently re-arrested when the authorities were presented with evidence of other crimes to which they had not confessed. Tens of thousands of further detainees have subsequently been released in accordance with the confession schemes. Survivors expressed concern about these releases; they feared corruption, and also were afraid that their personal security would deteriorate. Bosco in Gikongoro commented on the releases and the consequences as he saw them

At that time, the elderly, the sick and minors were released, but many others tried to take advantage of these conditions in order to be released and escaped. These prisoners did not even confess their roles in the genocide and once they got out, they began to encourage others not to tell the truth. After the first mass release, we began to note many assassinations, as well as intimidation and threats against various witnesses and survivors. The perpetrators had begun to notice a certain weakness in the justice system and the policies of the Government with respect to the genocide. They therefore thought of erasing the evidence by killing or intimidating potential witnesses.<sup>38</sup>

Violence and intimidation, physical as well as psychological, overt and indirect, have been a central and recurrent theme of genocide justice for survivors, whether they take their cases to the established courts, to gacaca, Arusha or to foreign jurisdictions. The price of justice is discussed in some length in the next two chapters.

---

<sup>36</sup> See, Generally, William A. Schabas. "Justice, Democracy, and Impunity in Post-genocide Rwanda: Searching for Solutions to Impossible Problems, *Criminal Law Forum* Vol. 7 No. 3 (1996); Chiseche Mibenge. "Enforcing International Humanitarian Law at The National Level: The Gacaca Jurisdictions Of Rwanda," *Yearbook Of International Humanitarian Law*, Volume 7 - 2004 - Pp. 410-424.

<sup>37</sup> Office of the Prosecutor, Supreme Court of Rwanda, *Instruction concernant l'exécution du communiqué présidentiel du 01 janvier 2003 venant de la présidence de la république qui concerne la libération provisoire des détenus des différentes catégories* [*Directive Concerning Implementation of the Presidential Statement of 1 January 2003 on the Provisional Release of Different Categories of Prisoners*], January 9, 2003

<sup>38</sup> Interviewed in Gikongoro, 29 February 2008.

## GACACA

### Background

The case backlog of the specialised chambers was so extensive that it prompted the Government to adopt a system of community courts (the gacaca system). Gacaca was adapted from a customary dispute resolution system for mainly minor crimes that had been in operation in Rwanda for centuries and used primarily to restore social harmony.<sup>39</sup> The 1996 Organic Law on genocide prosecutions was replaced by a new Gacaca Law - the Organic Law of 26 January 2001 Setting Up Gacaca Jurisdictions and Organising Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed between 1 October 1990 and 31 December 1994. Under the gacaca system, witnesses describe their experiences in front of a panel of lay judges (*inyangamugayo*), and the local community. The process was designed to encourage reconciliation, but also to try and punish perpetrators more expeditiously than the ordinary courts had previously managed to do. After an initial pilot phase in 12 sectors in different parts of the country<sup>40</sup>, the system became fully functional throughout Rwanda in March 2005 and there are now 14,013 gacaca courts at different administrative levels—the cellule, sector, district, and province levels—in operation.

Since the promulgation of gacaca in 2001, the system has undergone a series of revisions which are referred to throughout this chapter, and these related mainly to the progressive reduction of sentences, broadening the jurisdiction of gacaca and the speeding up of trials.

With respect to the progressive reduction of sentences, gacaca relies on the system of plea agreements established under the Organic Law of 1996. However, an important modification to this procedure is that reduced sentences are also applicable to category 1 offenders who take part in the guilty plea process, whereas previously this category of suspects could not benefit from a reduction in sentence. In the most recent version of the Gacaca law, adults in the highest category who confess are liable to a prison term that ranges from 20-30 years, though all categories of offenders may have their sentences commuted.<sup>41</sup> The possibilities for suspension of a portion of the sentence and

---

<sup>39</sup> National University of Rwanda, “Les Juridictions Gacaca et les Processus de Réconciliation Nationale”, *Cahiers du Centre de Gestion des Conflits No 3*, Kigali 2001, p. 31.

<sup>40</sup> See African Rights’ reports on how gacaca unfolded in some of the pilot areas, for example Gishamvu in Butare, Gahini in Kibungo, Kindama in Kigali rural and amongst other areas, Nyange in Kibuye.

<sup>41</sup> Organic Law N° 13/2008 of 19/05/2007 modifying and complementing Organic Law n°16/2004 of 19/6/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with

commutation to community service are so extensive for Category 2 perpetrators that few spend more than the time they have already served in prison prior to the commutation of their sentence. According to Article 21 of the most recent gacaca legislation, a person sentenced to both a custodial sentence and to serve community service shall first serve community service and if it is proved that the work was exemplarily executed, then the custodial sentence shall be commuted into community service.

The initial gacaca legislation made it clear that those who fell within the first category of suspects (e.g., leaders, planners, persons of authority who committed acts or encouraged others, notorious murderers, those accused of rape or sexual torture) would not be tried by gacaca courts. Their trials would take place before the ordinary courts, the specialised chambers that had been set up pursuant to the law of 1996, in recognition of the seriousness of such crimes. However, with the new reforms which have extended the jurisdiction of gacaca, these suspects will, in future, be dealt with by gacaca.

Even so, the investigations and categorisation of all case files was always the responsibility of gacaca. Only after sufficient facts and evidence had been established by the gacaca general assembly, and a case was classified as category 1 by the seat of the gacaca tribunals, was it to be transferred to the ordinary courts for trial. This has given an inordinate power to gacaca judges over the fate of category 1 offenders. Further, it meant in effect that victims and witnesses of sexual violence, torture and other class 1 offences had to testify at the gacaca level during the first and second phase of gacaca in order that the allegations could be recorded, investigated and then categorised before transfer up to the ordinary courts for trial. The revised gacaca law adopted in June 2004 enhanced protections for victims of sexual violence in order to facilitate reporting and testimony. It allowed victims of rape or sexual torture to either testify before a single gacaca judge of her choosing or to testify in writing; or to testify to an officer of the police or prosecutor's office, followed by the processing of the case by the prosecutor's office, though as is explained later in this chapter, victims of sexual violence did not feel protected.

The most recent changes to the gacaca legislation have severely restricted the types of suspects to be tried by ordinary courts. The new law only includes in this category the planners of the genocide at the national or provincial level and the cases that will be transferred from foreign countries or the ICTR, as well as any new cases that could come to light after the end of the mandate of the gacaca courts. The range of other suspects initially classified in category 1, including those charged with rape, are now to be tried by the gacaca courts.

With respect to the progressive speeding up of trials, the 2004 revisions reduced the number of judges per cellule from 19 to 14, and it removed the district and provincial level gacaca courts that had existed previously. In July 2007 additional courts were created to further expedite gacaca trials. This accelerated pace of activity has led some survivors to worry about the capacity of gacaca to provide any meaningful justice.

---

prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994, Art. 11.

Laurent of the head office of Ibuka, the national survivors' organisation, put these developments in context.

Where there had been only one court, two or more were added. The courts sat on the same day and at the same time even though the same witnesses were required for every one of these trials. For example witnesses could be convened by four different courts, on the same day, at the same hour. No institution in the country could control these courts, not even the National Service which has overall responsibility for gacaca courts. The lowest ranked employee of this Service was supposed to attend 40 or more trials, which was impossible. Nor could our paralegals attend all these trials at the same time. In some trials where survivors were not able to participate, the judges used the opportunity to acquit the defendants.<sup>42</sup>

Tharcisse Karugarama, Rwanda's Minister of Justice, was interviewed for this report. He gave this explanation for the decision to allow gacaca to judge category suspects.

To better understand the reasons for the transfer of certain members of the first category to gacaca courts, we have to consider the long-term objectives of gacaca, for example speedy trials, in order to go beyond this phase of post-genocide justice and embark on the second phase, that of developing the country. It therefore goes without saying that since gacaca has just completed the 2<sup>nd</sup> and 3<sup>rd</sup> categories, it should not stop there, while the first category is still waiting. Otherwise, the goal of speed would make no sense. That is the first reason.

The second is also based on another gacaca objective: reconciliation. It would be wrong to speak of reconciliation between the executioner, the victims and Rwandan society in general, when some suspects have been tried and others not.

The third reason which motivated the transfer to gacaca concerns the crime of rape. At least 90% of the cases transferred from the first category to gacaca are rape cases. In common law, rape is often committed in secret. But during the genocide, it was often committed in broad day light and in public as a weapon of humiliation. It is therefore proper for public tribunals such as gacaca, which do not need any other proof, other than testimonies from the people who caught them in the act. In addition, rape victims, who are often HIV positive, asked for this form of justice themselves before they die, which is understandable.<sup>43</sup>

It is true, as the chapter on rape and sexual crimes reveals, that rape victims are indeed anxious for justice. At the same time, as their own words highlight, they have serious reservations about the transfer of rape cases to gacaca. The debate on reconciliation is also addressed in a later chapter.

---

<sup>42</sup> Interviewed in Kigali, 21 May 2008.

<sup>43</sup> Interviewed in Kigali, 22 July 2008.

## Survivors' Initial Views When the System Was Conceived

The great majority of survivors were apprehensive when the system was first conceived, worried that it would enable perpetrators to elude appropriate punishment. Luc, who was a senior official in Ibuka when gacaca was under consideration, said that the “survivors were against it.” Ibuka officials organized a retreat to debate what role survivors should play in gacaca. The consensus, Luc said, was a decision “to participate vigorously because we had no other choice.”

We had to do our part so that we would not be seen as the reason why justice failed. The survivors got involved actively and it was in fact the perpetrators who dragged their feet. Some survivors thought about the advantages of being able to access information about who did what. They even campaigned to be elected on to the panel of judges in different jurisdictions, but were refused votes in certain areas.

Survivors approached gacaca with caution when it was initially established, as discussed at length in *African Rights'* report, *Gacaca: A Shared Responsibility*, published in January 2003. With time, many came to appreciate certain aspects of gacaca, especially as it enabled them to learn much more about the fate of their families, friends and neighbours who were killed in 1994. Assessments of gacaca vary, but for the most part gacaca has not met survivors' expectations. Their fears, particularly about the leniency of the sentences for crimes of the utmost gravity, have been borne out by the process, as is described further below. Some survivors, like Etienne, a lawyer who said he was “heartbroken” at the decision to allow gacaca to sit in judgement over genocide crimes, feel they have been vindicated in their refusal to engage with gacaca.<sup>44</sup> At the other extreme, Alphonse, the gacaca judge whose criticisms of the conventional system are cited above, though aware of its many shortcomings, is “convinced that for survivors, gacaca remains the only system of justice in which we can have confidence, so much so that I would even like to see gacaca extended to genocide suspects in the first category.”<sup>45</sup>

Yet for others who are sharply critical of the way gacaca functions in practice, there is no workable alternative. François, a farmer in Cyangugu, spoke for many of them when he commented:

I don't see any other way out of the crisis which was created by the insufficient number of ordinary courts, and the impossibility of meting out justice within a short time frame.<sup>46</sup>

Illuminée, a farmer in Gikongoro, agreed, mentioning the importance of the information that is revealed through gacaca.

Not everything went 100% wrong in gacaca courts since some killers were punished, even though these were not the leaders of the killings and did not have financial resources. But even if the powerful perpetrators have not been punished, we at least had the opportunity to bring them to justice. They are now aware that someone knows what

---

<sup>44</sup> Interviewed in Kigali, 21 May 2008.

<sup>45</sup> Indeed, revisions in the gacaca laws did eventually extend gacaca to the first category.

<sup>46</sup> Interviewed in Cyangugu, 30 January 2008.

they did and is ready to testify against them. They may even have been cleared by judges, but their conscience will continue to remind them of the wrong they did.<sup>47</sup>

For Luc, what matters is that “some form of justice was delivered”, even though “the quality of that justice remains to be seen.”

The survivor’s take on what transpired in these courts will be that they had some information on how the genocide took place in certain areas. At least it has gone down in history that some génocidaires were punished. What is important to me is that there was some semblance of justice to show the killers that they would not enjoy impunity. Such a significant part of the population participated in the genocide, which made trying them almost impossible.

Beyond the personal gains he has drawn from gacaca and his concerns about its shortcomings, Anicet, a farmer from Kinyamakara in Gikongoro, believes that gacaca will make an important contribution to Rwanda’s long-term future.

Compared to the past, I see gacaca as a step towards helping Rwanda end the culture of impunity.<sup>48</sup>

Laurent praised survivors for their perseverance.

Although survivors were often discouraged by the Government’s decisions, they accomplished something remarkable in the little success they did have in gacaca. They persisted and forced themselves to testify about everything they had seen and heard even though many courts did not take their testimony into consideration.

## **The Successes of Gacaca**

### ***Out in the Open: Learning a Painful But Necessary Truth***

Many positively acknowledged that the gacaca jurisdictions had given them the opportunity to clarify the truth and to determine how their loved ones perished during the genocide. The gacaca trials helped to gather information of which a major part had hitherto been unknown. This was a key concern of most, who were particularly interested in the information-gathering phase of the gacaca proceedings. Alphonse in Butare called the collection of information “very effective.”

Everyone had to say what they knew about the events that had taken place. People had to respond to questions, and this made it possible to know the truth, more or less. For example, it was possible to identify, in each cellule, the exact number of people who had been killed, because the enquiries were carried out house by house. We were able to establish who had died, and who had killed them.

---

<sup>47</sup> Interviewed in Gikongoro, 27 February 2008.

<sup>48</sup> Interviewed in Gikongoro, 28 February 2008.

A large number of people confessed in gacaca. And when they give a full confession, they lay everything out, saying who they killed, who they buried. Sometimes they even gave the names of witnesses who saw them. That's why I believe that it is difficult to escape the truth in gacaca because, sooner or later, someone will cite your name amongst the people they saw committing a crime.

A related benefit of the system was the possibility of learning where certain corpses were buried, in order to rebury them in dignity.

After fleeing the killings in Kigali, via Butare and the DRC, Languida returned to her husband's native region of sector Muko, commune Rutare in Byumba. She lost a daughter in the killings. When they returned, they discovered that the only members of her husband's family who were still alive were her mother-in-law and her sister-in-law, who was beaten so badly on her head that she had become mentally unstable. Her husband's efforts to find out what happened to his relatives, and who had destroyed their homes, was met with a wall of silence.

We were able to find out, from the single testimony of an honest older man, the names of those who had murdered our family. He gave us a list of more than 40 people.<sup>49</sup>

Martine in Ruhengeri described the start of gacaca as "great."

We discovered the identity of génocidaires and of those who had looted our belongings, and of course the places where the bodies of the victims had been dumped.

For Amiel in Cyangugu, gacaca brought closure.

I found out about some of the people who had been involved in the death of my father. I would never have suspected them. Plus, I learned a lot about the death of Gatera, who had been my neighbour and friend. Survivors discovered a lot, horrible things needless to say, but things that were useful to know and relevant to the deaths of their friends and relatives.

"If the gacaca system had not been introduced," commented François, "I would have never known what happened to my father."

Other survivors also got to know what happened to their relatives. This was possible because of the many confessions given by prisoners from our sector here in Cyangugu.

Nathaniel, who was only 15 during the genocide and lived in Sake, Kibungo, was "surprised" by gacaca, afraid that its intention was to "give lighter sentences to perpetrators." It was only after gacaca had been in operation for a year that Nathaniel changed his mind.

Because of sensitisation by the media, especially programmes on Radio Rwanda and other outlets, in which different people spoke, I began to understand the importance of

---

<sup>49</sup> Interviewed in Byumba, 2 April 2008.

gacaca. I realized that I couldn't afford to under-estimate an institution which was going to help me know how my relatives died, and where they were buried. I'm satisfied with what I learned because I found out who had killed all my relatives, and I know thanks to gacaca.

Closely related to the information that survivors learned was the participatory nature of the proceedings, another aspect of gacaca that many survivors spoke positively about, though as others comment in this same chapter, the openness brought other dangers in its wake.

### ***“Bringing Justice to the Doorstep”: The Participatory Nature of Gacaca***

Gacaca does not limit discussions to the parties of the criminal case; it allows everyone who is there to speak and voice his or her opinion. According to Alphonse, the fact that testimonies are not only given by survivors but by everyone, is one of its major strengths. It is especially important, he added, that prisoners are involved.

And of course people are speaking in front of the entire community, men and women who know exactly what happened.

The fact of speaking before such an audience is precisely why, he believes, gacaca has been able to expose the role of prominent individuals who had, until then, been shielded from scrutiny by their political positions, social standing or wealth.

Personally, I really appreciated gacaca because gacaca shed light on the role of some people in the genocide which otherwise no one could have imagined. I'm talking about people like Ministers, members of parliament and other prominent people in the country.

The public nature of the hearings is what Landrada in Butare appreciates most about gacaca.

I appreciate the way information and testimonies are given because it is in public, so it's not very easy to anyone from the gacaca committee to make the information disappear. So the problems in gacaca can come out at the time of the trial because it is where the judges can take their own decisions.<sup>50</sup>

### ***Other Advantages***

Some survivors who had previously participated in the trials when they were held in the specialised chambers of the ordinary courts saw certain advantages in the gacaca system. Unlike the ordinary courts, there was no insistence on a particular number of witnesses and there was no limit on age, and witnesses were easily able to get to the place of the hearings.

---

<sup>50</sup> Interviewed in Butare, 11 January 2008.

Others went into the process with hope. They were optimistic that gacaca would help reconcile the population. It was why Simon in Kibungo stood as an *inyangamugayo* candidate.

When gacaca began, I saw it as a solution which would console the survivors. I wanted to become a judge so that I could contribute to justice, and to the unity and reconciliation which it was hoped gacaca would bring about.

Alphonse was moved “to see instances where children testified against their fathers, and then asked for forgiveness from all the orphans whose parents had been killed by their father.”

## Key Concerns

As mentioned earlier, from the outset many survivors had misgivings about the potential for a gacaca system to afford veritable justice for the most serious crimes. Some, like Etienne, objected to the system of gacaca as a matter of principle, calling gacaca an “aberration.”

I have never understood, and I will never understand, how anyone can think that a crime of this nature can be handled by the principle of gacaca, as it was practised by previous generations.

Many in Rwanda and beyond were concerned by the lack of legal representation and other fair trial guarantees. Survivors had other reasons for their disquiet: they doubted the capability of the system to work effectively and impartially on the ground, given the continued tensions in local communities, the paucity of survivors in much of the countryside, and fears for their personal safety.

The nature of the system had certain built-in problems, which were perceived as particularly aggravated for survivors. Gacaca is led by judges from the local community. This was seen as especially important for promoting reconciliation in local communities by those who conceived of the system. However, survivors sometimes felt excluded by the process, according to Laurent of Ibuka.

In some regions, survivors of genocide were forbidden from presenting themselves as candidates for judges on the pretext that they could not be plaintiffs and judges at the same time. And yet there was no law against this. It was simply a way of keeping the survivors out of the sentencing process out of fear about their decisions at the trials.

Furthermore, there is a perception that, with few exceptions, individuals of a certain ethnic group will align themselves with others of that same group and families will align with their relatives, resulting in the obvious danger that the “truth” and any notion of “justice” will be sacrificed to maintain ethnic and social ties, and above all else, family unity. Consequently, when considering the number of Tutsis who were killed during the genocide and the displacement which followed, in most rural communities Tutsi survivors are greatly outnumbered and marginalised. Because she was living in Gisenyi

with her husband in 1994, Philomène, a farmer, does not know how her parents, brothers and siblings died in Ruhengeri. She looked to gacaca for the answers.

All the *intègres* [gacaca judges] in gacaca in sector Muzo are Hutu. There are only two Tutsis where I live, showing the success of the genocide in this region over a long period of time. So while I think gacaca is a good idea, the reality I've seen is rather that gacaca represents the absence of justice.

In spite of his strong endorsement of gacaca, Alphonse is aware of the pitfalls.

In some sectors not more than 10 people survived the genocide, and they no longer live there. And all the judges, and everyone else in the region, is Hutu. So they can easily plot together and turn gacaca to their advantage.

In such a context, how, many asked, can justice be impartial? For Bellancille, such expectations are misplaced.

You can't convince me that gacaca led by judges made up of the relatives of genocide perpetrators will succeed 100%. Nor would I think that of a court composed of the relatives of survivors. The flaws were predictable because every person has his limits.<sup>51</sup>

Others questioned the capacity of the judges to conduct the hearings, and their ability to appropriately consider the evidence presented to them. According to several survivors, judges tended to base their decisions on the fact that the defence witnesses outnumbered the prosecution witnesses.

Illuminée in Gikongoro has waged a lonely battle against a pastor that she accuses of complicity in the large-scale massacre in Murambi where she lost her husband and two children. Because the pastor has the resources and influence to mobilize supporters, she finds herself outnumbered in court.

When there are many defence witnesses face to face with maybe one or two prosecution witnesses, the court considers the number as more important and gives priority to the information provided by the largest group. Yet, everybody knows that in our region, defence witnesses always outnumber prosecution witnesses. I don't know why many people are now coming forward to clear defendants when they didn't provide these facts during the information-gathering phase.<sup>52</sup>

According to others, judges inappropriately restricted the right to appeal against judgments, preventing even siblings from appealing against rulings that related to the death of their brothers or sisters. This was particularly problematic in cases of mixed marriages, where the relatives of the spouse were accused of killing the Tutsi husband or wife of their sister, brother or aunt. Sometimes, the surviving widow would refuse to become involved in the gacaca proceedings in order to protect her relatives implicated in the murder of her husband.

---

<sup>51</sup> Interviewed in Cyangugu, 31 January 2008.

<sup>52</sup> Interviewed in Gikongoro, 27 February 2008.

Monique blames the nephews of her sister-in-law for the murder of her brother. She first brought charges against them in 1995. They were acquitted by gacaca in Gikongoro, unfairly in her opinion. Their aunt refused to appeal, so Monique herself lodged the appeal, but it was thrown out on the basis that it was only his wife who had the right to appeal, leaving Monique bitter and confused about her options.

Imagine, it's my own brother. I had papers showing that the victim was indeed my brother and authorising me to bring the perpetrators to justice. Until now, I am running in circles to see if I can get a solution to this problem, but I do not have the means.

The public nature of the proceedings, a feature that was used to garner support for gacaca, was also one of their greatest shortcomings. "We were exposed to our executioners unlike the traditional courts which kept the names of witnesses secret", complained Jeanne in Kigali.

And it made threats against witnesses and survivors in general possible. Gacaca served the interests of the génocidaires because it increased the pain and insecurity felt by survivors.

Drocella, who has withstood many attempts to prevent her from speaking out in gacaca in Butare, said survivors "should not have to tell everything in front of everyone as little is done to safeguard witnesses."

It allows our tormentors to know who knows what and who said this or that. We are hated by many people who have ties of kinship with the killers or who are themselves génocidaires. Our lives are in danger. When we are attacked, nobody comes to our rescue.<sup>53</sup>

One of the consequences, particularly for women in rural settings, is the sense of isolation gacaca engenders. Martine likened the situation as "psychologically close to what we experienced during the genocide." The intimacy of life in rural Rwanda, where land is scarce and homes and fields are close to each other, and where social life revolves around local churches, markets and small commercial centres, makes it difficult, if not impossible, to separate justice and relations with others. In Martine's corner of Ruhengeri, as elsewhere, survivors pay a heavy price for insisting on truth and justice.

We are known by everyone as accusers. Those against whom we are testifying are often released. Neighbours gradually isolate us. We see less and less involvement of our neighbours in our lives, whether the event is a sad or a joyful occasion.

The embarrassment and humiliation of being jeered and laughed at was echoed by witness after witness. Unable to contain her emotions, Monique said she regularly broke down at gacaca.

---

<sup>53</sup> Interviewed in Butare, 14 February 2008.

I didn't know how to hide my feelings. I passed my time crying in front of the assembly. The participants just laughed at me. Almost everyone who was accused in our neighbourhood has been regularly cleared, so I wonder who killed the Tutsis in this region who were so numerous before the genocide. I don't want to die with the grief of not seeing the people who killed my family brought to justice.

The complexities of the genocide are particularly apparent, and painful, for Hutu women like Claudette, whose Tutsi husbands and children were murdered by their relatives and neighbours. Thinking they would be safer with her parents, she left three of her four children at their home, but they were killed by her first cousins and her neighbours. Her four siblings, she said in despair, had been "poisoned to prevent them from helping me accuse the people who had killed my family."

I cannot even put a foot in my paternal uncle's house since I've pointed the finger at his children.

Such is the rage and bitterness she feels towards her father and one of her brothers that Daphrose who, like Claudette lives in Gikongoro, regrets they died before she could prosecute them for their involvement in the murder of her husband and her children.

But if I had, I would have been even more threatened than I am now, and by my own family. My own brothers no longer want to see me; all my neighbours know this.

Illuminée attends the same church as the pastor she is determined to bring to justice for the massacre on 21 April 1994 at a school under construction in Murambi, Gikongoro, which is now a national genocide memorial site. But other parishioners treat her like a pariah.

Almost all the churchgoers verbally threaten me by saying that I am a liar, that I am accusing "a man of God." But the current head of our church consoled me and told me that I must absolutely say what I saw, that the problem would be more in not testifying.

For the many victims of rape and sexual torture, the gacaca legislation prescribes a secret reporting procedure.<sup>54</sup> Victims or witnesses can confide in a trusted gacaca judge or go directly to the police or the prosecutor, instead of testifying in public. However, in practice, these matters were difficult to keep private. The majority of these women live in small communities where everybody knows each other. Even if the survivor does not speak out in public, there is a great risk that the accused will do so, even though it is forbidden by law. Many of the female rape survivors who were interviewed as part of this survey did not appear to know of these confidential procedures and feared the gacaca proceedings as a result. Laurent of Ibuka spoke of why, in part, the confusion has come about.

Some judges gave themselves powers that the law had not intended, for example the right to judge the crime of rape.

---

<sup>54</sup> Rwandan Organic Law No 16/2004 of 19/6/2004, Art. 38.

Drocella is one of the many women who did not know of the special procedures that have been put in place to hear rape evidence.

I heard that rape cases will be dealt with by the gacaca courts, but this issue is so delicate. We are not prepared to attend and be involved in these proceedings, especially because there are so many defendants. Personally, I have information about those who raped me and the men I saw rape others and who then killed their victims afterwards. They didn't prepare us for this. We have been presented with a fait accompli without even asking us our opinion. They think it is a simple matter to go in front of the perpetrator to remind him what he did. But it's very difficult.

Yolande, also living in Butare, was also in the dark.

It is really hard for me to testify in public because it concerns my innermost life, but I'll try to do it because I can't allow them to be released after everything they did. Holding hearings closed to the public would help us to speak in comfort, and if necessary, the judges could call additional witnesses.<sup>55</sup>

### *The Leniency of Sentences*

Many survivors have been disillusioned by the extent to which the sentences imposed on perpetrators found guilty by the gacaca courts have been gradually reduced. It is virtually impossible to conceive of any sentence that is fitting to the scale of the crimes committed, but even so, survivors expect appropriate sentences. The failure to pass sentences which reflect the seriousness of the crimes has an impact on the administration of justice as a whole and the capacity of the system to effectively end impunity. It is also inextricably connected to survivors' perceptions of how the State views their suffering. Pauline, a young woman who was repeatedly raped in Butare, spoke for many of them.

We know well that nothing can bring back the lives that were lost. But there are ways to make the perpetrators pay for what they did, and to show them that life is sacred.<sup>56</sup>

This gradual diminution of sentences is reflected, to a large extent, in the amendments to the gacaca laws<sup>57</sup> which extended the confessions scheme, and also relate to the decision of the Government to institute an extensive community service programme (TIG) (*Travaux d'Intérêt Général*) which was afforded to countless perpetrators in lieu (in whole or in part) of a prison sentence. TIG is discussed at greater length in a later chapter. From the outset, the gacaca legislation allowed for a reduction in sentences for persons who confess, however with time, the amendments seriously limited prison terms for most offenders. For example, in the latest gacaca amendments, Category 2 offenders who confessed could spend 1/6 of their term in prison, 1/3 of the sentence suspended and

---

<sup>55</sup> Interviewed in Butare, 29 January 2008.

<sup>56</sup> Interviewed in Butare, 29 January 2008.

<sup>57</sup> The 2001 Gacaca Law was revised in 2004 and several times subsequently.

½ commuted to community work.<sup>58</sup> This, coupled with the revision of the law that stipulated that community service could be served first, and if it is proved that the work was exemplary executed, then, the custodial sentence shall be commuted into community service, made many survivors feel that their suffering was being mocked.

Amiel explained the change in legislation that caused reduced sentences.

At the start of gacaca, the judges tended to pronounce the maximum penalty possible, whereas a professional judge might have chosen somewhere between the maximum and the minimum penalty. When the State became aware of what was happening, it changed the legalisation and proposed a second version of the gacaca law, which is still in force today. It governs an important part of the gacaca process, and the survivors condemn this second version in its entirety.

To many survivors, it seemed that the most important aim of gacaca was to empty the prisons, a view held, amongst others by Dr. Marc in Kigali.

The aim of gacaca seemed to be to clear out the prisons through a policy that awarded lighter punishments to the killers and heavier ones for those who planned the genocide. As a result, the sentences imposed by gacaca courts pale in comparison to the crimes committed. And even the light sentences were only partially served and only after the other part of the sentence had been spent doing community work.

But from the perspective of those who lost their parents, husbands and children because of the actions of local people, it is impossible, he said, to comprehend this reasoning.

It is true that without the planners and inciters, the genocide would not have been possible. But the survivor from Nyarubuye, or from Muhima here in town, has possibly never seen Théoneste Bagosora or Joseph Nzirorera, and others kill his family. He saw the people who call themselves his neighbours killing his parents and his friends. Even though Bagosora and his colleagues may have planned and incited the genocide, the parents of this survivor would nevertheless still be alive if his neighbour had not taken up a machete or a club. So he wants the man who assassinated his family, who made him an orphan, widow or widower, to be punished in the most exemplary way.

Dr. Marc does not underestimate the ultimate responsibility of the architects of the genocide, but argues that this does not explain or justify why those who carried out their orders should be treated leniently by gacaca.

It is significant and necessary for the State to punish the planners in a severe manner. However, it was also essential not to disregard the genuine demands of the survivors, and these two needs are in no way incompatible. Did the people who thought up gacaca live through the genocide as it really happened? Had they taken the trouble to put themselves in the shoes of the survivor who has no one left, not because of Bagosora who was in his

---

<sup>58</sup> See, Art. 14 of the Organic Law N° 10/2007 of 01/03/2007 modifying and complementing Organic Law n°16/2004 of 19/6/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994.

office in Kigali, but rather because of the neighbour whom he had known for a long time? The role of the killer is, at worse, equal to the role of the planner, and at best, it is even greater.<sup>59</sup>

In an interview for this report, Domitilla Mukantaganzwa<sup>60</sup>, the National Executive Secretary of gacaca, confirmed the Government's rationale for clearing out the prisons. She indicated that the most recent revisions were due to the results of the information collection phase published in 2006, which showed that there were about 800,000 people who needed to be tried, with about 400,000 in Category 2. It was clear to the policy makers that the system needed to be sped up, considering as well that the *inyangamugayo* were working without pay.

For their part, survivors say they feel they are always the ones who must subordinate their needs for justice and accountability for broader goals or national imperative.

Have we not, asked Prudence in Butare, already sacrificed enough?

I often ask myself if the survivors committed some other wrong that we are unaware of, because I just can't understand why we, the victims, are still the ones to bear all the burdens in resolving the problems of justice. Why don't these killers bear the consequences of what they have done?

She paid tribute to the judges, but criticized the law which she says is hampering the judges.

They can't go beyond the law. The sentences given to some of the perpetrators do not correspond to what they did. And with TIG, everything has come to a standstill.

### ***“A Genocide Without Anyone to Blame”: Solidarity Amongst Perpetrators and Their Families***

A major obstacle for survivors is the solidarity among some genocide suspects. Brigitte in Ruhengeri is “still waiting for justice.”

I am waiting for a justice system that allows me to know the truth, not one that promotes negative solidarity. That's why I can't tell you whether gacaca has been good or bad, whether it has had its successes or failures, because criminal justice simply does not exist here in practice.<sup>61</sup>

The decision to close ranks was also noted by Jean-Paul in Bugesera, especially in the absence of survivors.

---

<sup>59</sup> Interviewed in Kigali, 2 June 2008.

<sup>60</sup> Interviewed in Kigali, 4 August 2008.

<sup>61</sup> Interviewed in Ruhengeri, 13 February 2008.

You could tell that members of a given family, or a group of people, had decided to remain silent about what happened in their locality in order to hide their role in the genocide. This happened when there were no survivors to contradict the testimonies.<sup>62</sup>

An Ibuka para-legal, Louis, highlighted what has come to be known as *kugura umusozi*, a transfer of guilt.

*Kugura umusozi* means to sacrifice for the whole of the “hill.” In some places, an old man would take on all the crimes of his children so they could avoid imprisonment and continue to work to support the family. There were also cases where illiterate persons would protect educated people so they would help their families while they were in prison and afterwards.

In areas hosting Burundian refugees, or those bordering Burundi, the responsibility for genocide-related crimes was placed on Burundians whose names and addresses were not known. For the Tutsis exterminated in churches, commune offices, schools and other places where they had assembled, the massacres were blamed on unknown soldiers or gendarmes, even though the local population had also participated.

Dr. Marc was not in Rwanda in 1994, but he has invested considerable time and effort in following up the death of his parents and his eight siblings who were killed in the genocide. One of the difficulties he has encountered is agreements between perpetrators about who would shoulder the blame.

I deplore the obvious collusion between killers from the same village who agree, among themselves, that the one who was known to be a murderer will admit to the murders he committed, and also to those committed by others, if they ask him to and if they reward him financially or socially. If you look into this, you will see that it is a well-known phenomenon.

It was also a phenomenon that cut short his own search for justice.

My father and twenty other people were fleeing when they came across a band of killers who murdered them on the spot. The leader of the band admitted to lesser crimes, but not that one. In the first gacaca trial, he received a twenty-year prison sentence. On appeal, which he himself lodged, his guilt was upheld and he got thirty years. Astonishingly, he asked that the trial be reviewed. And there he was sentenced to a few years in jail, and he is already free because he had spent the equivalent time in jail. When we wanted to know why such a decision was taken when it went against the two former trial decisions, we were told: “another man admitted having killed your father and did not mention the accused among his accomplices.” By asking more questions among the public I learned that this kind of bargaining is common: admit to having committed my crime and I will give you something and take care of your family.

In some locations, survivors believe that perpetrators had falsely attributed crimes to the few well-known perpetrators already prosecuted by the ICTR or to others still outside of

---

<sup>62</sup> Interviewed in Nyamata, 14 March 2008.

the country. When Gilbert, the parliamentarian who spoke earlier, went to his home area to learn how his relatives met their deaths, he was confronted with silence.

What shocked and surprised me was the fact that all our neighbours, even those who had been very well treated by my family, refused to tell me who had done what. They acted as though they had not been present when my relatives had been killed. They made vague statements, saying they had been murdered by the “interahamwe from Kigali.”

The experience made him reflect on how the genocide was conceived and implemented.

I quickly realised that by involving nearly everyone in the massacres, the planners envisaged not only complete success, but also a kind of destructive solidarity among Hutus, a genocide without anyone to blame. From that moment onwards, I understood that if the interim government had not been militarily disbanded, we would not even be here to speak about the genocide and there would have been no justice, whatever its shortcomings.

Brigitte herself fled to Kigali at the beginning of the killings. She later visited commune Mukingo in Ruhengeri and tried to discover how her family perished.

All crimes committed during the genocide were attributed either to a few well-known prominent killers, with Kajelijeli [the bourgmestre] at the top, or to those who had already died. In this context, every time I took the floor to ask who had killed someone in my family, I only ever got one response: “It was Kajelijeli.” And when they told me about a murderer other than Kajelijeli it was a certain Théogène who, as luck would have it, was already dead. I noticed a sort of tacit agreement between them to place the blame for all the Tutsis who died either on Kajelijeli on his own, or the militia of Kajelijeli, or on refugees from other préfectures and communes, or on someone from Mukingo who had already died. As a result, you find that there are no perpetrators, co-perpetrators or accomplices on the spot. And as the judges are no different from the public, no one asks the pertinent questions that could turn these truncated statements on their head. It’s very surprising and, above all, disgusting. And yes, everyone knows that Kajelijeli was certainly capable of uttering words to incite killings, organizing preparatory meetings etc... but he was not the one who killed with a machete or a club. That was done by militiamen and some of our neighbours.

The day came when she refused to accept the evasive answers.

I was furious and I asked the public: “As you don’t want to say who killed the Tutsis in Mukingo, do you think that perhaps one day they were swallowed up by the earth? Is that your opinion?” They didn’t say anything.

And again, there is silence when we ask who was dumped or buried where? We have been able to find mass graves where there are many bodies. But as for an individual Tutsi who was killed here, or dumped there, they won’t tell us where.

For Bellancille in Cyangugu, as for so many others, the conscious decision to withhold information that is so vital to their emotional recovery and peace of mind is a source of anger and frustration.

We had hoped to learn a lot about the genocide through gacaca. But those who had all the details don't want to talk. When we try to recount what we saw, they band together to contradict our testimony.

By refusing to speak about what they know, said Valentine, a weaver in Butare, perpetrators and witnesses are intent on downplaying the gravity and importance of the genocide.

We attend gacaca to learn from those who know. But they don't tell us the truth. Instead, they transferred all the terrible crimes to the people who are still in exile, or those who have died. As survivors, we find this shocking. Even if we were in hiding during the genocide, we witnessed terrifying killings which claimed the lives of our children, neighbours and relatives. When those who are accused, by people who saw them participate in the killings, are stubborn in their denials, then to me they are making fun of the genocide because they are refusing to acknowledge the weight of the crimes they committed.

Suzanne, a master weaver in Butare who has trained many former genocide prisoners, has also failed in her efforts to reach out to her co-workers when it comes to the genocide.

When we are weaving, we don't talk about the genocide. But this doesn't mean that I'm not hurting inside. The genocide perpetrators learn a lot from me, but they won't even show me where they buried my children and who killed them. One man told me that he dumped 12 dead bodies in our toilet, but he doesn't mention who they were and who killed them. I suspect though that one of them is my son.

Several survivors spoke of their frustrations with biased gacaca judges who are siding with their relatives or friends. Though she was spared because she is Hutu, the baby Daphrose was carrying on her back was killed in front of her, and her husband's corpse was hung from a tree. When she saw a woman friend of one of the men on trial for these deeds among the judges in Gikongoro, Daphrose requested that she should not sit judgement on her case.

The woman refused [to recuse herself] and the other judges agreed with her. The trial took place, the accused was acquitted and members of his family made fun of me by saying that I had achieved nothing.

The husband of this woman is accused of genocide. It goes without saying that she will protect other genocide suspects and cannot render impartial justice.

A close relative of the accused, who shares the same outlook, is absolutely on his side. The genocide proceedings go well in places where there are honest judges worthy of their name, but I have never heard of real integrity in the region of Gikongoro, meaning I have nothing good to say about gacaca justice in our region.

Instead of being afforded an opportunity to tell her side of the story, Daphrose said she was treated as if she was mentally unfit.

I saw the person who took my child from my back. I was not blind and this is not someone that I didn't know and about whom I could be wrong. But the judges did not give any value to what I said. They treated me as someone who was mentally ill. They did not even take the time to talk to the prosecution witnesses. They just gave the floor to two people from his family who said they had nothing bad to say about him. The judgement was made based on these comments.

Some perpetrators were threatened and harassed when they named accomplices in gacaca proceedings, including Eugène.

From my first appearance in public to give information about what happened in 1994, I was booed when I cited the names of accomplices, of co-authors or of principal perpetrators. Even before I left prison, people from my area were already aware of the fact that I had given justice officials the names of the people who had played a role in the killings in Byangabo, commune Mukingo. So whenever I pointed out who had killed a specific Tutsi, I heard behind me people booing and saying: "He's the one who killed them." When that happened more than a couple of times, I understood that there was a plot against me. Besides, sometimes some people were quite open about it, and not only among the crowds during gacaca hearings. Thérèse, married to a certain Garanti, told my wife: "Your husband really has it in for my husband. What will you get out of it?" ... Another example is that of Sebutuyenge who I had accused of taking a cow which belonged to a Tutsi by the name of Bukumba. Each time I met him, he hassled me, saying: "Why do you want to get me imprisoned? It's people like you who expose us to danger."<sup>63</sup>

### ***Undermining Gacaca: The Absence of the "Big Fish"***

One of the rare points on which most prisoners and survivors are in complete agreement concerns genocide suspects abroad, and the consequence their absence has on justice in Rwanda. As noted in an earlier chapter, most of the leaders of the genocide left Rwanda in July 1994. This section includes comments, from both survivors and prisoners, on the implications for justice when the men and women who were at the forefront of the killings are not present to be tried before ordinary courts.

Like all survivors in Kigoma, Gitarama, Petronille holds Vincent Nzigiyumfura, a businessman now living in Malawi, responsible for orchestrating the massacres in which her husband and many of her relatives lost their lives.

I'm not happy with the fact that Nzigiyimfura is outside the country. Justice needs to be done. He needs to say what he did and be punished.<sup>64</sup>

Stanislas blames Nzigiyumfura for death of his mother and sisters. They died in a massacre on 7 May in Kavumu, Kigoma, which Nzigiyumfura helped to unleash, and they were buried close to Nzigiyimfura's house.

---

<sup>63</sup> Interviewed in Ruhengeri, 15 February 2008.

<sup>64</sup> Interviewed in Gitarama, 13 April 2007.

Since he was the leader of the militia, the one who was directing everything, I want him to come and explain what happened here during the genocide. His presence here for me would represent justice. During gacaca, we don't discuss people who aren't here, and yet they are the ones who planned it all, even if they didn't take up arms themselves. They are the ones who should compensate us because they are wealthy. In the centre of Nyanza, 80% of the homes belong to those who have fled the country.<sup>65</sup>

Placide, who spent several years in prison for his contribution to the killings in Kigoma and Nyanza, echoed Stanislas and Petronille.

The fact is that the leaders, who were educated people and businessmen, are not here. This is important for gacaca because the peasants here don't feel as if they are responsible for what happened. They argue that the fault should not be placed on their shoulders, and that they are innocent because none of those who incited them have been punished.<sup>66</sup>

Tharcisse, another prisoner who has confessed, asked the question that is on the minds of many survivors in Kigoma.

Can the results of gacaca in Kavumu be satisfactory without Nzigiymfura and his associates?

Kilinda in Kibuye, the birthplace of the Presbyterian Church in Rwanda, was the scene of co-ordinated massacres of Tutsis on the evening of 14 April 1994 at a nursing school and a hospital run by the Presbyterians. In 2007, *African Rights* carried out an extensive investigation in Kilinda where the plans for the genocide were drawn up and implemented by clergymen, local government officials, professionals and businessmen. André is one of the few militiamen who have acknowledged their responsibility. He named 72 fellow-perpetrators in his testimony to gacaca. He gave this reason as to why “many prisoners are not pleading guilty.”

They have already suffered a greater punishment than the leaders of the Kilinda massacres who, like Michel Twagirayesu and Antoine Kamanzi, are outside the country. I am someone who participated actively in the massacres in Kilinda—at the hospital, at ESI [the nursing school] and at the Nyabarongo River. I killed, yes, but I was also used as an instrument to get rid of people. I was not the machine who was controlling and leading the massacres. They were, and they are not here. In the testimonies that I submitted, I cited the names of Twagirayesu, Antoine Kamanzi, Amani, Kabasha<sup>67</sup> and many others. I accuse them of genocide.<sup>68</sup>

Rosette, a survivor, has little hope that she will ever know what she needs to know.

---

<sup>65</sup> Interviewed in Gitarama, 13 April 2007.

<sup>66</sup> Interviewed in Nyanza town, 14 April 2007.

<sup>67</sup> Michel Twagirayesu was the president of the Presbyterian Church in Rwanda; Dr. Antoine Kamanzi was in charge of Kilinda hospital; Amani Nyiringabo was a businessman in Kilinda; Tharcisse Kabasha was the bourgmestre of commune Bwakira where Kilinda is located.

<sup>68</sup> Interviewed in Gitarama, 1 February 2007.

For the survivors and other people who want to know the truth, it's very discouraging that all the organizers of the genocide in Kilinda are outside the country. Because of this, the people on trial in gacaca believe they can escape justice by trying to make us believe that everyone who participated in the killings is living abroad. In an attempt to conceal the truth, the accused rarely blame each other.

She posed a question that many in Kilinda have asked.

Why isn't gacaca here discussing Twagirayesu, Kamanzi and Marcellin Nsengiyumva, when witnesses say they saw them take part in the killings? If their roles don't come under scrutiny, it means that the gacaca trials will have little importance.

Dancille believes they are not talking due to the influence of the planners abroad.

The way the accused defend themselves shows that there has been contact between the planners abroad and the killers here who don't want to charge those who organized them.

In addition to the fact that they themselves have evaded justice, they have an interest in ensuring that the facts, and most important of all, the details about their own alleged crimes, remain obscure. There is substantial evidence that they are actively discouraging people from testifying by using local informants who resort to intimidation and bribery. An additional concern is the extent to which some of them have helped relatives escape from prison or to leave the country before they are sentenced by gacaca. Fourteen years on, many of them have obtained citizenship in their country of residence, and have the necessary resources, knowledge and connections to help others similarly to evade judgement. After spending years gathering the necessary information and identifying witnesses, investing time and effort in bringing cases to the attention of justice officials and monitoring trials, survivors often learn that the suspect has "disappeared." They are said either to be hiding elsewhere in Rwanda, or more often they discover the person is no longer in the country. With gacaca, this often happens just before suspects are due to be sentenced.

### ***Counter Accusations Made Against Witnesses***

Often in response to allegations, those who have been accused of participating in the genocide, or their relatives, have tried to turn the tables around by accusing their accusers, who are usually lower level perpetrators. This has worked as another form of intimidation. It has also served to lessen the legitimacy and seriousness of the gacaca process as a whole, which in some areas has quickly disintegrated into a series of farcical allegations that have nothing to do with truth or justice. In such circumstances, even the most well-intentioned gacaca lay judges have had difficulty in differentiating between truth and lies.

In one case relating to witness intimidation, Martine in Ruhengeri spoke of her great concern when the gacaca jurisdiction arrested the accusers instead of the culprits.

Instead of condemning Calfani, gacaca sentenced two young Hutus who dared to accuse him. They are now in custody. All the survivors were surprised and shocked by the reaction of gacaca which condemned the youngsters as “liars.”

The National Executive Secretary of Gacaca said, in response to this case, that she personally reviewed the case and found no proof of wrongdoing on the part of the judges. She explained the matter as a personal conflict between one of the accusers and Calfani’s mother which was unrelated to the genocide. Even after the judge had left the jurisdiction, the case was reviewed and again, Calfani was found not guilty. This case underscores the need for the gacaca jurisdictions to fully explain the rationale for their decisions so that the parties can have a better understanding of rulings.

Bosco, who works in gacaca in Gikongoro, spoke about a certain Pilote Nteziryayo who accused 64 people of burning alive seven relatives of a man named Sirikare, a crime in which he himself had taken part. The court, however, ignored the information, sentenced Nteziryayo to 30 years imprisonment and cleared the others he had named. As a result of subsequent pressure put on him, he appealed and contradicted his earlier testimony, saying that he had listed the wrong people. Still, his confession was accepted as being “sincere” and his sentence was reduced to 12 years in prison.

Bosco drew attention to yet another anomaly.

Normally, when a suspect lies in his confession, the confession is not taken into account in the verdict.

Ibuka, he said, requested that the case be retried in another location because of the reach and influence of some of the people Nteziryayo had included in his original list.

One of the defendants was a rich man from Gikongoro, Martin Hategekimana, alias Majyambere, as well as Sylvère Kabanda and many others who have money.

David, who used to be a representative of survivors in his region in Gikongoro, spoke about what he qualified as attempts to punish Hutus who are seen as “traitors.”

A certain Fidèle Senturo accused, who did not take any part in the genocide, had accused a number of génocidaires. The gacaca of Kiyaga sentenced him to six months of imprisonment for giving false information. Personally, I saw this as a tactic to put him off talking about genocide suspects. We told officials about it, but nothing was done. There is also a woman who denounced her husband, and the judges made sure they blamed her, instead, for his crimes.

He also mentioned the fate of a survivor who was briefly detained.

The gacaca of Karama sent Genefer Mukantwali to prison, on the basis that she was making up stories. We immediately alerted the police and she was released.

The aim is obvious, to make life difficult for witnesses so they shut up, or, at the very least, to disturb them as much as possible so they cannot testify in a calm and confident manner.<sup>69</sup>

Josephine, a judge in Gisenyi, and her colleagues had to visit the prison to learn the truth for themselves.

There were five survivors known for their active participation in bringing charges against suspects. Once, the prisoners organised themselves and made up counter charges, accusing them also of taking part in the genocide. We *intègres* went into the prison and there some of the prisoners admitted that they had wanted to exact revenge.

### ***Corruption***

The National Executive Secretary of Gacaca, Domitilla Mukantaganzwa acknowledges that corruption is indeed a problem in gacaca, but added that her office has taken action.

We've dismissed a lot of employees when we had proof that they were involved in corruption.

When there is proof, there is at least a basis for action. When, for example, Patricie reported the offer of a bribe by the gacaca co-ordinator of a district in Butare, he was removed from his post. However, given the essentially private nature of financial transactions, and the use of intermediaries, obtaining hard evidence about payoffs to witnesses or judges is far from straightforward. Of course offers of financial inducements are not limited to gacaca officials; people from all walks of life and every strata of society have relatives, friends and colleagues they want to protect. Patricie spoke of a visit from members of a human rights organization.

Two staff members from the Human Rights Commission said they would build me a house if I stopped testifying against Pascal<sup>70</sup> and added that Ibuka has done nothing for me.

The Minister of Justice, Tharcisse Karugarama, also addressed the issue of corruption which, he argued, is not unique to gacaca and should not be used to tarnish the system as a whole.

We know that our new judicial system of gacaca is not perfect, but this does not mean that it is not appropriate. Gacaca is not the only judicial system that is not perfect; all judicial systems have their limitations. The classic courts are also accused of corruption, and even the developed countries are not immune. In addition, statistics show that corruption in gacaca is not as rampant as it is made out to be. Finally, corruption concerns certain individuals, which is not reason enough to blame the whole system.

---

<sup>69</sup> Interviewed in Gikongoro, 28 February 2008.

<sup>70</sup> Pascal Habarugira was a doctor at Butare University Hospital.

The fact that gacaca judges are not paid a salary is not a reason, the Minister insisted, why corruption should be expected to be a feature of gacaca.

No, the absence of a salary for judges cannot justify corruption among some of them. I think corruption is an attitude that is inherent to a person, and is not a result of poverty. Why didn't the State pay them a salary? One reason is that it would be difficult to find the funds to pay all these people. But most importantly, it is out of respect for tradition since in the traditional gacaca, there was no compensation for judges. Nevertheless, because the Government is aware of the time and energy they invest in gacaca, judges benefit from certain advantages, like free health care etc...

Corruption continues to be a major concern of survivors, and permeates their attitude towards justice. At the outset, when the gacaca jurisdictions first began to function, people were afraid to lie. They gave substantial information in the belief that if they refused to do so, they would be punished. According to many survivors, the fact that there were 19 judges for each case helped to forestall corruption. This changed when the panels were reduced to 7 judges, and a sense of impunity was reinforced when there was little reaction by judges to people who failed to provide information or who lied outright. A contributing factor to the spread of corruption, argued Louis of Ibuka, was "insufficient monitoring by the State."

Survivors' perceptions that gacaca is for poor inconsequential perpetrators, not for the rich or the influential who are regularly able to evade justice, reinforces suspicions about corruption. People who are financially powerful and those who have large families are accused of genocide but through their influence, they are acquitted without conditions.

For Claudette, the disparities in Gikongoro are glaring.

When a poor person is accused, the charges are heard and the defendant is punished, but when it comes to a wealthy person, the person is acquitted.

Anicet in Gikongoro said that corruption is so rife at the appeals stage that there is even a special name for it.

Corruption is particularly evident in gacaca when it comes to appeals; there it's called *igisubizo* which means "solution." All perpetrators punished at the first stage are confident that they will be released on appeal. At that point, their only concern is finding the money with which to bribe judges.

Survivors themselves have regularly been approached with bribes to absolve the accused or to take back accusations which they had made earlier against the suspect. Some have succumbed, creating tensions and divisions between survivors. Drocella, Prudence, Patricie and Louise, working in Butare, all spent time either at the University Hospital or the office of the préfecture in Butare town, and have been consistent and steadfast in their denunciations of genocide suspects, testifying in Rwanda and abroad. As illustrated above, they have faced the wrath of the men they put behind bars, as well as harassment from the prisoner's friends. . However, what they did not expect was to be undermined by another survivor.

Just before leaving for Canada for the trial of Désiré Munyaneza, Gisèle was approached by a female survivor to prevent her departure in exchange for money.

I was angry. Though we have no tangible proof, this is such a cowardly thing to do that no one would do it except for money. She speaks on behalf of the killers and takes the floor in gacaca to contradict us. She uses the excuse that we have been accusing the génocidaires for a long time without seeing any results. When I look at her, I grieve and I wonder how she can forget the painful life we went through together at the office of the préfecture during the genocide.

Janvière in Gitarama is equally at a loss to comprehend how a member of their association has become a public defender of genocide suspects.

We have tried to understand this phenomenon, but we can't. Ibuka has asked them what drives them to do such things, but they don't give any response. The paradox is that these people gave genuine evidence during the information-gathering phase of gacaca about the very people they now want to whitewash.

Some survivors, says Josephine, dejected by the absence of justice, see the opportunity to gain a financial reward as their only solace.

“If I refuse his money, and he will be freed anyway, what will I have gained?” That's what some of the witnesses say after they've given testimony in the lower court, which they will then retract on appeal.

Gilbert cited the case of a woman in Gitarama who, instead of accepting a bribe, used her money “to get some of her neighbours, against whom she had no evidence”, imprisoned.

She is very embittered as a result of being raped during the genocide, which is entirely comprehensible. But I have tried to reason with her, telling her that we will not solve our problems by imprisoning people as a matter of revenge.

## **Giving Up on Gacaca**

Given the vast range of problems they have experienced with gacaca, some of which are detailed above and later in this report, it is little wonder that the overwhelming majority of the 97 who were interviewed have given up on gacaca. Some, especially the very poor living in remote rural areas, have rejected the process to such an extent that they refused to be interviewed. In May 2008, two researchers visited Kibeho in Gikongoro and approached more than six survivors, most of them well-known to our organizations. They were interviewed separately. While they were still willing to speak about their own personal experiences in 1994, and about perpetrators who live abroad in the hope that they will be prosecuted, except for one comment about material reparations, they categorically refused to comment on gacaca. Their anger and bitterness was raw and palpable.

It is not only the impoverished peasants in Gikongoro who have turned their backs on gacaca. Bosco, an educated resident of Gikongoro town, said: “I can’t tell you what improvements I would like to see in gacaca because the damage is irreparable.”

In this region, we see that the defence testimonies have been prepared in advance, and we know who should be, and who should not be, convicted.

The disappointment, however, is not limited to Gikongoro. When Servilien, who had been a gacaca judge for several years, was asked his opinion of gacaca, he spoke at length and with fury.

When people now ask me to speak about gacaca in my capacity as a judge, I feel that I run the risk of being traumatised, because I don’t appreciate it at all. If I were asked to evaluate my opinion, in terms of percentages, I wouldn’t go beyond 20%.

At the moment in our region, the survivors are in total despair. Their grief and distress has become worse since the death of Murasira [see above], but a huge number of them had already abandoned gacaca because they don’t want to continue seeing judges, related to genocide suspects, whitewash, to an extraordinary degree, the crimes of the génocidaires. And it is these judges who make up the overwhelming majority of gacaca jurisdictions.

He wants people to look beyond statistics.

A lot of people see gacaca as an effective medicine which has resolved the problem of genocide. They point to statistics and speak about a large number of trials that have been concluded and the substantial number of detainees who have been freed. I agree with them, if we speak only about the economic burden on the Government.

But from the point of view of survivors, Servilien added, the assessment is radically different.

As far as they are concerned, gacaca is far from being an effective solution. So many are still mired in the confusion of wanting to know where their relatives were buried. Worse still, they are living among the executioners of their loved ones without even being aware of it. Even those who have been freed don’t want to go and ask the survivors for pardon. They say they have already been pardoned by the Government and don’t need forgiveness from the survivors.

Servilien no longer takes part in gacaca.

I have been an *intègre* since gacaca began, but I no longer go there. I felt betrayed by the other judges who plot together to see how to free the suspects who are their relatives and friends. I can give several examples of suspects who have been freed on appeal without the slightest consideration given to the charges against them in the lower tribunal. In our sector, it is very well known that the president of our gacaca jurisdiction works for the welfare of genocide suspects. He tells all Hutus not to testify against their brothers.

In common with all other interviewees, he is particularly despondent about the impact of the progressive gacaca reforms.

Each time there is a modification in the law governing gacaca, the reform is leading towards an all out release. This arrangement has now been capped by the decision to try first category suspects. The survivor is almost forgotten in these decisions. I don't see anything which is done for the sake of survivors. And even the trials in relation to material reparations seem to me a theatrical performance. No one wants to give back what they looted. And when a survivor puts pressure on the concerned person to give him back his belongings, he is considered an enemy of the génocidaire's family, as someone who wants to impoverish Hutus. That's why so many survivors prefer not to try and reclaim material possessions through the legal system.

Luc is also convinced that the multiple reforms, in a short space of time, which he believes were implemented without adequate explanations, go a long way in explaining why so many survivors feel alienated from the gacaca process.

The speed with which the reforms were carried out at the last minute, in order to finalise the entire process, and the way in which the law was modified numerous times, were not clear to the survivors and made them lose heart.

Ibuka finds itself caught in an impossible situation, between the expectations of survivors, the perception among prisoners and genocide suspects that it has undue influence on the Government and its own seeming sense of powerlessness to effect meaningful changes. Taking up Servilien's arguments about various gacaca reforms, Laurent of Ibuka's head office in Kigali had this to say.

The many amendments since 2003 have shortened sentences and increased opportunities for the accused. At the beginning of 2007, another law transferred many suspects from the first category into the second category. This law also stipulated that community work should be completed *before* incarceration, and it also provided deferment. It was the first time that this latter sentence was included in the penal code; usually it was applied in civil cases for very simple lawsuits. This law made survivors' chances of finding justice even worse. Many people think we don't react to such situations. We always do what we can, even when our arguments fall on deaf ears.

With time, he said, Ibuka began to see its struggle for justice as "hopeless."

A number of administrative circulars made it even more difficult to enforce the law. Thanks to the circulars, the *inyangamugayo* freed some of the prisoners who were supposed to do community work after their incarceration, those who were accused of having created insecurity in the courts etc... During the same year, 19,000 people guilty of genocide were set free. This time, even Ibuka lost heart since these decisions were made with full knowledge of the facts. The judges were even following orders that were only given orally.

Asked when gacaca will come to an end, the National Secretary of Gacaca, Domitilla Mukantaganzwa, replied:

Ideally, trials should finish towards the end of 2009. All that is left is office work (archives etc...), which, if everything goes according to how we've planned it, should be completed in 2010.

But this timetable, argues Laurent, is a rush to finish at the expense of justice.

The Government spent a long time thinking about speeding up the trials, but not about their quality. In July of 2007 additional courts were created to further speed up the trials. Where there had been only one court, two or more were added. The courts sat on the same day and at the same time even though the same witnesses were required for every one of these trials. For example witnesses could be convened by four different courts, on the same day, at the same hour. No institution in the country could control these courts, not even the National Service responsible for gacaca courts. For example, the lowest ranked employee of this Service was supposed to attend 40 or more trials, which was impossible. Nor could our paralegals attend all these trials at the same time. In some trials where survivors were not able to participate, the judges used the opportunity to acquit the defendants.

He ended with a bleak assessment.

The fight for genocide justice has been left to the survivors, as if they are the only ones it concerned. It has become a burden to get rid of, one way or another, no matter what the consequences.

Dr Marc, who has reached a similar conclusion, was therefore reluctant to put forward suggestions for improvements.

At the rate things are going, I have the impression that no one will be talking about post-genocide justice in a few years.

This may help to explain why Sister Pélagie in Butare believes that “survivors don't count” in decisions that affect justice, leaving her with a sense of “not feeling at home.”

“The survivors”, says Rebecca, “have had it.”

The killers who have been freed terrify the survivors and keep them in a never-ending state of fear and humiliation. There should be a law to punish these killers when they jeer at their victims. In my view, the survivors should be made aware of the futility of participating in gacaca jurisdictions.

She sees no easy answers.

The survivors cannot contemplate any future without justice. They don't know what to do anymore. They are overwhelmed by the situation.

According to Louis, also of Ibuka, performance contracts from local authorities are another source of pressure on gacaca courts which they must respond to, but at the expense of their work.

These contracts make the courts eager to finish the trials without taking the time to know the whole truth. Quite a few genocide suspects have taken advantage of this haste.

For those whose relatives and friends have died because they insisted on speaking out, there are additional reasons for their withdrawal. Justine, whose friend, Espérance Mukabatsinda, was murdered in Cyangugu, said she has one “simple wish.”

I want to be left in peace, and to be able to sleep soundly. I don't want to have anything to do with justice which merely exposes us to danger. I've seen how the supposed *gacaca intègres* work, and I think that for a widow like me, living in an area where there are very few survivors, it's better for me to keep quiet.

## **Suggestions for the Future: A Combination of Gacaca and Conventional Courts**

A significant number of survivors are not willing to abandon gacaca altogether, but called for new thinking that would put in place a judicial structure that would combine the best of gacaca and of the conventional courts. Gilbert, in parliament, had clearly given thought to this idea.

Within a few months or years, we will have to deal with cases extradited from Arusha or elsewhere. We are expected to provide high standards for them, both in terms of judgement and detention. We are in danger of having two levels of justice: a good one for the educated people arrested abroad and an inferior one, or even a bad one, for those at home. We can prevent this from happening by doing the following: establish conventional courts, with trained jurists as judges, at the district level throughout Rwanda, one court per district. And then where the numbers justify it, create complementary chambers in the same district. Make them function on the gacaca model, basing them on the information already gathered. In this way, suspects arrested in Rwanda will have access a system of justice almost identical to those coming from abroad, and we will avoid the shortcomings of gacaca, that is more emotion and less rule of law, inadequate training for judges, lack of remuneration and susceptibility to corruption etc... We are not lacking judges; there are even some who are unemployed.

Amiel, who strongly opposes the prosecution of category 1 suspects by gacaca as it is currently set up, put forward his own ideas.

First category defendants should be judged by professional judges. Yes, I think gacaca has advantages. It brings justice to the doorstep, allows survivors to know more about the details of each case, and gives each participant the opportunity to take part. But the *intègres* who have been used so far must absolutely be changed. I'm not only saying this because of corruption but also, and indeed mainly, because most of them can't stand up to the educated genocide suspects who make up category 1. Most of the leaders of the genocide were well educated people. Yet most of the *intègres* involved at the moment only went as far as primary school. They are volunteers, and they will not be able to get out of the traps which these educated *génocidaires* will set for them. Other *intègres* must be found. They should all be required to have a minimum level of education, and preferably an interest in law. Why not?

Or, as another option, why not try the Belgian model, for example, where a public jury receives advice from professional judges during the decision making process?

Jean-Paul in Bugesera agrees with Amiel.

If the first category, who consist mainly of educated people, are to be tried properly, then we must have the active participation of professional judges and of civil society. The gacaca courts must be re-organised before their trials begin, after which the judges will have to be trained. It is these same judges who should re-examine all the cases which had previously been badly judged.

## THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

The International Criminal Tribunal for Rwanda (ICTR) was established in 1994 by the United Nations Security Council to prosecute individuals responsible for genocide, crimes against humanity and serious violations of international humanitarian law committed in Rwanda during 1994.<sup>71</sup> The establishment of the ICTR was an important recognition of the gravity and scale of the atrocities that had been committed, including genocide and other systematic, widespread and flagrant violations of international humanitarian law. Unfortunately, the Tribunal got off to a poor start. Cooperation from the Government of Rwanda was far from assured. There were numerous complaints of deficient management, incompetence and corruption in the Tribunal's early years.<sup>72</sup> Relations with the Government were marred by tensions and public quarrels; the ICTR complained about lack of cooperation while the Government accused the Tribunal over a host of issues. The process at the ICTR was far from the victims and others it was meant to serve, both in terms of the physical distance, based as it is in Arusha, Tanzania, and the failure to make its proceedings and decisions relevant to the daily lives of Rwandans.

Victims' perceptions of justice, as they relate to the ICTR, have been complicated from the outset. Many harboured suspicions about a United Nations court from the very beginning, given that the United Nations had abandoned them in their most urgent time of need by failing to act to prevent or stop the genocide.<sup>73</sup> They saw it then as an institution set up, in the wake of the genocide, by an international community that was more interested in symbolic responses rather than in meaningful justice. However, precisely because they continue to yearn for both justice and acknowledgment, many have withstood the ordeal and repercussions of testifying in Arusha. What most found, however, is that the ICTR, by and large, failed to specifically address and take into account their needs, broadly speaking, and that it has only minimally satisfied their hopes and expectations.

---

<sup>71</sup> S/RES/955 (1994) of 8<sup>th</sup> November 1994.

<sup>72</sup> See Office of Internal Oversight Services, Report on the Audit and Investigation of the International Criminal Tribunal for Rwanda, UN Doc. A/51/789, annex (Feb. 6, 1997), <<http://www.un.org/Depts/oios/reports/a51789/icttrit.htm>>; Office of Internal Oversight Services, Report on the Follow-up to the 1997 Audit and Investigation of the International Criminal Tribunal for Rwanda, UN Doc. A/52/784, annex (Feb. 6, 1998), <[http://www.un.org/Depts/oios/reports/a52\\_784.htm](http://www.un.org/Depts/oios/reports/a52_784.htm)>

<sup>73</sup> See *Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda*, S/1999/1257 available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=S/1999/1257>; *Rwanda: The Preventable Genocide* : International panel of eminent personalities, African Union, available at: [http://www.africa-union.org/Official\\_documents/reports/Report\\_rowanda\\_genocide.pdf](http://www.africa-union.org/Official_documents/reports/Report_rowanda_genocide.pdf);

The ICTR has made a number of key rulings, setting precedents in international law - including in particular the recognition that rape and other forms of sexual violence were used as instruments of genocide, and also that such crimes formed part of a widespread and systematic attack directed against civilians, constituting crimes against humanity.<sup>74</sup> It has also indicted and prosecuted some of the key architects and leaders of the genocide. However, the numbers of successful prosecutions are exceedingly low when compared to the vast numbers of suspects who remain unpunished<sup>75</sup>. Survivors have also been deeply affected by the release of well-known genocide leaders and what have often been regarded as derisory sentences. Insufficient protection for witnesses both in Arusha and in Rwanda has also widened the gulf. But perhaps no issue has been as emotive and controversial as the failure, discussed in a later chapter, to adequately take into account the prevalence of rape and other crimes affecting women.<sup>76</sup>

Beyond criticisms of specific issues, survivors' views of the ICTR are permeated by a profound feeling that the ICTR, and particularly its judges, do not "understand" the genocide, as many put it, and have therefore concluded that it is not capable of rendering the quality of justice they had expected.

The ICTR stopped issuing new indictments at the end of 2004, with trials set to be completed at the end of 2008 and appeals in 2010. Citing the fact that its own judges had refused to allow the transfer of detainees to Rwanda to stand trial, and that it had not found other countries willing and able to prosecute them, it requested an extension. In August 2008, the Security Council extended the mandate of ICTR judges for another year.

Fourteen years after it was set up, the enormity of what remains to be done, even within the confines of the limited tasks it had set itself, helps to explain why most people interviewed for this report did not want to engage in a discussion about the ICTR.

Louis has worked with IBUKA for many years in one of its regional offices. He summed up the many factors, positive and negative, which often come up when survivors debate the ICTR's contributions to justice.

Its merits include the fact that it arrested and prosecuted some of the major perpetrators who had fled the country. But then the sentences have been very slight, despite the fact that these are the people who planned the genocide and led the killings. This Tribunal has hired genocide suspects to undertake investigations of other genocide suspects, which could easily skew the results, for example Joseph Nzabirinda [see below]. I consider this to be a form of mercenary justice, of people wanting to earn a lot of money without worrying about the grief and poor living conditions of survivors. This Tribunal doesn't

---

<sup>74</sup> Prosecutor v. Akayesu, Judgement, ICTR-96-4-T, 2 Sept. 1998

<sup>75</sup> As of August 2008, the ICTR had concluded 36 first instance trials. See, Thirteenth Annual Report of the ICTR to the General Assembly, A/63/209 dated 4 August 2008.

<sup>76</sup> *Broken Bodies, Torn Spirits: Living With Genocide, Rape and HIV/AIDS*, African Rights, 2004. See also Binaifer Nowrowjee, "Your Justice is Too Slow" - *Will the ICTR Fail Rwanda's Rape Victims?*, United Nations Research Institute for Social Development, Occasional Paper #10, November 2005.

envision anything in relation to compensation for victims, but is very interested in assuring that genocide suspects have good living conditions.

The huge resources which the international community has invested in the ICTR is invariably, and inevitably, seen as a critical factor in evaluations about the ICTR. Laurent, a senior staff member of Ibuka at the national office in Kigali, does not believe that survivors have drawn benefits commensurate with the money that has been granted to the tribunal.

The ICTR spends the equivalent of US\$500,000 each year, but we do not see any corresponding gains for the survivors who are seeking justice. Even though resources are available, the trials are very slow. Some of the Rwandese who work there are themselves génocidaires, or have relatives who are, especially among defence investigators. The court looks after the defendants as opposed to the victims who suffer from the consequences of the crimes committed by the accused. And yet it is the accused who are better treated than the victims. Their situations are extremely uneven.

What he regards as its most important contribution is the jurisprudence which helped to define and codify the killings between April and July as a genocide.

The only positive thing I can point to has to do with the legal system. As a result [of the ICTR's work], the accused will not be able to defend themselves by saying, as they did at the beginning, that genocide did not take place.

Saying "there is no place for the victims at the ICTR", Théophile, a lawyer with extensive experience of genocide justice in Rwanda, and who has represented many survivors, concluded that "their role has been confined to that of a witness."

And not all witnesses are invited to Arusha, obviously because of budget constraints.

He reserved his strongest criticism for the failure to address the issue of compensation.

Worse still, nothing is being done about compensation. And yet, reparations are essential in this type of forward-looking process which seeks to address so many wounds.<sup>77</sup>

### **"The Judges Do Not Understand the Genocide"**

Victims appearing before the ICTR felt battered by the experiences they faced at the Tribunal. At the same time they felt diminished by the fact that there was very little formal acknowledgment or recognition by this institution of the real and present challenges victims confronted and continue to confront, with respect to their physical security, the psychological scars they bear, their emotional vulnerability and their economic weaknesses, so they can move forward with their lives in full dignity. This combination of factors has left victims reticent about the ICTR.

---

<sup>77</sup> Interviewed in Kigali, 14 June 2008.

Amiel in Cyangugu, a witness at the trial of Emmanuel Bagambiki, the préfet of Cyangugu, tackled a range of topics with regard to the ICTR, but began with what he regards as the principal chasm between the ICTR and the survivor community.

My experience of this tribunal, in both Rwanda and Arusha, comes down to one point: the judges do not understand the genocide that engulfed Rwanda in 1994. I know this for a fact. It would have been better if the judges had spent sufficient time in Rwanda, and among the Rwandese, before they began their work. This would have given them a better understanding of what actually happened, and how events unfolded.

Alphonse, a gacaca judge in Butare, had little that was positive to say about the ICTR, and explained why he prefers domestic justice.

To start with, I don't believe they understand the depth and breadth of the genocide. I try to follow what they are doing there, but I don't think that we, the survivors, can really expect justice from them.

I think they want to do something quickly, and in the short term, about the Rwanda genocide so people can stop talking about it. I don't believe they fundamentally care about justice for the survivors, and what we see happening there often has so little to do with the reality of the crimes that were committed. Maybe they can handle ordinary crimes, or crimes against humanity, but certainly not crimes as grave as genocide. And it's not because they don't have the qualifications. I think it's because the international community has other interests. And we can't, of course, forget that the international community is itself implicated in the genocide.

A lecturer at Butare University, Landrada, is also convinced that the ICTR does not comprehend either the gravity or the implications of the genocide.

I don't even want to hear about international justice. When you see the way they try genocide suspects, it seems to me they don't know exactly what the genocide entailed. They consider it like other simple crimes.

The behaviour of two ICTR staff members who came to interview her in Cyangugu during the period of mourning in April so upset Caritas that she and other survivors were compelled to express their displeasure.

We were preparing to bury our loved ones, and they were taking photographs without showing any respect for the dead. We finally showed them how furious we were.

Amiel spoke at length about his other observations.

I think they see this as a job, just like any other and seem to have set a rhythm that I would describe as deliberately slow.

Also, they don't treat the victims the same as they treat witnesses from Europe or America. When I got to Arusha, other witnesses from Rwanda and I were put together in one house, in a dormitory. We had a bed and that was it. The witnesses from Europe were put up in hotels.

They also don't allow us Rwandese witnesses much freedom. They came here to take me to Kigali and then to Arusha. When we got to Gisakura I needed to go to the toilet. But the security guard didn't want to let me. I was going to Arusha of my own free will, so I didn't understand why they had to watch over me in such an exaggerated manner, as if I was some sort of criminal.

Then, when we were called to testify, the guards led us in a manner that I found bizarre and which left a lasting impression on me. In addition, the room was so sophisticated that it would intimidate a victim of genocide. And when you are psychologically destabilised, it has a really negative impact on the way that witnesses testify. One of the women who had left with me was left so disturbed that she stammered and wasn't able to talk about things she knew in the way she wanted to.

Another weakness is the number of investigators involved in each case. For the Bagambiki case, one day you would be questioned by someone, but then someone else would come back the next time. Why don't they keep the same investigators from the beginning to the end? Otherwise, the risk with having different people is that they would not master the dossier.

He also raised questions about the interpreters and the quality of interpretation.

These people are foreigners who don't speak Kinyarwanda. Our testimonies are interpreted during investigations, and surely also during the stage of pulling the case together, but also during the trial. You can imagine the effect of all of this on the original information! And who are the interpreters? I recognised people from Cyangugu amongst them. Maybe they hadn't done anything during the genocide, but we survivors have the right to doubt the accuracy of their translations.

## **An Intimidating Factor: The Presence of Genocide Suspects Among Employees of the ICTR**

For victims of the genocide, travelling to Arusha to testify in an international court in a foreign country is a daunting prospect. Preparations for the journey, and the journey itself, are a source of anxiety, as many have never left Rwanda or travelled in an aeroplane. Confronting the men and women they regard as their tormentors, and withstanding harsh questioning in an adversarial context, is difficult enough, but it was to be expected. What they did not, however, anticipate, and they found inconceivable and upsetting, is the presence of a substantial number of genocide suspects as employees of the ICTR, principally as defence investigators, sometimes in the case of a relative. For survivors, meeting genocide suspects as staff members in the court set up to sit in judgement on the genocide is not only troubling in itself, but heightens their fears about their security in a new environment in a foreign country.

Over the years, survivors' organizations have consistently challenged the ICTR about its hiring practices which have allowed genocide suspects to count among its staff.<sup>78</sup> A number of them had their contracts terminated after their true identity came to light, or they left of their own accord for fear of being arrested. Two have been arrested by the ICTR itself and one has already been tried and convicted.

On 6 March 2002, shortly after they had decided to formally suspend collaboration with the ICTR, survivor organizations Ibuka and Avega wrote to Mr Adama Dieng, the Registrar of the ICTR, to spell out their concerns about the presence of alleged génocidaires at the ICTR. They gave details of about 14 defence investigators who, they argued, had themselves made a significant contribution to the genocide. The men they named are:

- *Joseph Nzabarinda*, known as Biroto, working in the defence team of Sylvain Nsabimana, the préfet of Butare. Nzabarinda, accused in his native commune of Ngoma of numerous crimes, including rape (see below) was arrested and sentenced in 2001 by the ICTR;
- *Damas Birekeraho*, an investigator in the defence of his mother-in-law, Pauline Nyiramasuhuko, Minister of Women and the Family in the interim government, was a lecturer at Butare University;
- *Joseph Mushyandi*, an investigator in the defence of Laurent Semanza, bourgmestre of commune Bicumbi until 1993.
- *Alain Munyangabe*, a member of the team defending Mikaeli Muhimana who was a councillor for Gishyita in Kibuye;
- *Edison Ndayisaba*, another investigator in the Muhimana team;
- *Christophe Mukeza*, an investigator in the defence of Jérôme Bicamumpaka, Minister of Foreign Affairs in the interim government;
- *Jean-Paul Temahagari*, also in the Bicamumpaka team;
- *Augustin Basebya*, an investigator for Juvénal Kajerijeri, the bourgmestre of commune Mukingo in Ruhengeri;
- *Thaddée Kwitonda*, an investigator for Pauline Nyiramusuhuko to whom he is related by marriage;

---

<sup>78</sup> For a further discussion about the controversy over the presence of genocide suspects at the ICTR, which ignited in 2001, see article by Thierry Cruvellier and Lars Waldorf, "L'ère de soupçon", *Judicial Diplomacy*, 23 July 2001.

- *Innocent Biruka*, an investigator in the defence of Joseph Kanyabashi, bourgmestre of commune Ngoma in Butare.

Evariste Munyantore, Ignace Munyemanzi and Aimable Sungual were also listed, though no mention was made of which defence teams they served. In addition to those mentioned by IBUKA and AVEGA in March 2002, survivors interviewed for this report mentioned the names of three other former investigators whose names have been linked to the genocide. They are:

- *Major Pierre-Claver Karangwa*, an investigator for Augustin Ndindiliyimana, Chief of Staff of the National Gendarmerie in 1994;
- *Siméon Nshamihigo*, who had been working under a false name on the case of Samuel Imanishimwe, military commander of Cyangugu. He was sentenced to life imprisonment on 24 September 2008 by the ICTR.
- *François Ndayisenga*<sup>79</sup> was part of the defence team of Alphonse Nteziryayo, the commander of the military police and director of civil defence for the Butare prefecture before he was appointed préfet of Butare in June 1994.

In explaining their intervention, Ibuka and Avega pointed in particular to the security of witnesses.

It has become standard for people working at the ICTR, who are not neutral or who are genocide suspects, to leak information normally covered by professional secrecy and to transmit it to the detainees and to their relatives, which in many cases undermines the security of witnesses. The testimonies of witnesses for the prosecution are taken out of the ICTR and are disseminated, particularly amongst the families of the accused.

They gave the example of survivors from Ruhengeri who had testified against Juvénal Kajerijeri, saying they had been forced to leave their homes.

They were obliged to seek refuge in Kigali after they were openly subjected to threats following their return from Arusha.

It takes determination, 14 years on, and against a backdrop of violence and threats of violence, to travel abroad to give testimonies about the genocide, which are in themselves often harrowing for the witnesses. Judge Navanathem Pillay, formerly of the ICTR, noted that:

We are dealing here with witnesses who have usually never left their little square inch of territory in Rwanda... But after they testify, they say they're afraid to go back to their villages... Some witnesses have reported that their homes have been destroyed. At least one has been reported killed. Yet several have said in court

---

<sup>79</sup> There is substantial evidence concerning François Ndayisenga's participation in the genocide. See *A Welcome Move to Build Upon: France Arrests Two Prominent Rwandese Genocide Suspects*, African Rights, 24 July 2007.

that though they risk death, they want the world to know what happened in Rwanda.<sup>80</sup>

The issue of witness protection, both in Arusha and after they have testified, has long been a thorny issue. There are no easy answers, since it is impossible to offer comprehensive and permanent protection to every witness. Nevertheless, the fact that witnesses have been killed as a result of their testimony before the ICTR and the reality that key witnesses continue to prepare their departure for Arusha amidst real and present uncertainties and anxieties about their safety is serious cause for concern.

*African Rights* has a longstanding preoccupation with witness insecurity and intimidation.<sup>81</sup> Most recently it drew to the attention of the ICTR in May 2007 allegations of intimidation of prosecution witnesses in the matter of Fr. Hormisdas Nsengimana, charged by the ICTR with genocide, conspiracy to commit genocide, and crimes against humanity for murder and extermination. This is a case in which *African Rights* has been involved for many years,<sup>82</sup> and is in touch with many witnesses. The trouble witnesses faced is detailed in a later chapter on the role of the Church in domestic and international justice. What is of relevance here is the fact that one of Fr. Nsengimana's supporters, Fr. Dénys Sekamana, has used the presence of an ICTR employee, Ephrem Gasasira, to put them off going to Arusha. Eric, who had long denounced Fr. Nsengimana, said he refused offers of money from Fr. Sekamana.

Sekamana then said: 'If you go on resisting, I swear to you that you will die before you even get to Arusha. You, you are ignorant. You don't know how the system really works. Hormisdas has friends everywhere who might kill you. You have no interest in going to Arusha. But if you accept my proposal, you will become very rich!' I told him that I wasn't afraid to go and tell the truth. He replied: 'You think that Hormisdas doesn't have friends who work in Arusha? There is a certain Ephrem Gasasira who is there. I hear that he was in Nyanza during the genocide and that he is suspected of being implicated in the genocide. You should be scared of him.'

Eric is only too aware of exactly who Gasasira is, and why he might have an interest in siding with Fr. Nsengimana.

I know Ephrem, and I know very well that he was an extremely good friend of Fr. Hormisdas' before the genocide, and that they collaborated in the preparation and execution of the genocide in Nyanza.

---

<sup>80</sup> Judge Pillay cited in Jan Goodwin, "Rwanda: Justice Denied", On the Issues, <http://www.ontheissuesmagazine.com/f97rwanda.html> Fall 1997.

<sup>81</sup> African Rights. Rwanda - Killing the Evidence: Murder, Attacks, Arrests and Intimidation of Survivors and Witnesses (1996).

<sup>82</sup> African Rights first reported on the allegations against Fr. Nsengimana in *Rwanda : Death, Despair and Defiance*, November 1994 and in November 2001, devoted an issue of its *Witness to Genocide* series to the case, a 43-page report entitled *Father Hormisdas Nsengimana: Accused of Genocide, Sheltered by the Church*.

On 13 January 2008, a few days before embarking on a journey to Arusha, Gertrude, who blames Gasasira for her husband's death, said she was "scared for her life."

What frightens me the most is knowing that Ephrem Gasasira is in Arusha as an ICTR employee. I know Gasasira very well. Once I found out that he works for the ICTR, I tried to tell them about his role during the genocide, even giving them the example of his role in the death of my husband. I also went to the office of the prosecutor in Butare and I told them it was a very dangerous situation for us, the witnesses. But little, or nothing, seems to have been done by the ICTR or the office of the prosecutor.

The only reason I'm going to Arusha is because of my determination to always fight against the genocide and everything related to the genocide. But this time, I don't feel safe doing so. I'm disappointed with the ICTR. I have not seen any effort on their part to try and find out anything about Ephrem, even when witnesses have told them about his conduct in 1994 and about his complicity with Hormisdas. This is going to be a real impediment to justice with respect to this trial.

Michel considers Gasasira's presence at the ICTR in Arusha as an obstacle to justice.

I'm one of the people who is supposed to go to the ICTR in Arusha to testify against Hormisdas. But I became tense when I discovered that Ephrem Gasasira is with the ICTR. Ephrem was a very close friend of Hormisdas' ever since the outbreak of war in 1990. He was fully aware of the ethnic division which Hormisdas preached at the school. And in 1994, the two of them collaborated in planning the genocide which took place in the town of Nyanza. Given this situation, where is the guarantee that Gasasira is not aware of everything we said in our testimonies against Hormisdas?

I am ready to go to Arusha. I must hold out to the very end so that justice can be done. But how can I have confidence, and be at peace, when I know that I will find Ephrem in Arusha?

Also related to the Hormisdas case, Safari Serugendo, from Nyanza, is said to have approached a number of witnesses, indicating to them that he worked for the ICTR and showing falsified ICTR documents. The Tribunal was advised of this abuse and confirmed that Serugendo was not its employee. According to Eric, they had also given him an undertaking, six months earlier, "that they would do something about this."

When I returned from Arusha [in June 2007], they told me that Safari had been imprisoned. But I later became doubtful about this because I spoke to other people who had seen Safari. So I asked the ICTR people for details about Safari's arrest. I really wanted to be sure that he had been arrested. They kept saying that they would let me know. But until now, I'm still waiting. This reinforces my hesitations about testifying. It shows me that the ICTR doesn't do what it says it will do, even in a case like this one where someone's life might be at risk.

## **Incomprehensible Verdicts**

Like any tribunal in the world, the judges at the ICTR could only reach a decision after they had weighed the evidence from both the prosecution and the defence, leading either to convictions or acquittals. But the ICTR, which has acquitted five people altogether, has had great difficulty in explaining and justifying some of these acquittals, partly because of the presence of known genocide suspects in its midst, but principally because of the overwhelming evidence which raised questions about the seriousness and working methods of some of its investigators, coupled by poor outreach. The justifications given for lenient sentences, which sometimes appeared to be lacking in seriousness, compounded the problem, and has left countless survivors baffled and bitter.

### ***“An Unforgivable Act”: The Acquittal of Emmanuel Bagambiki***

Of all the verdicts delivered by the ICTR, none was more unexpected, and inexplicable, than the decision which absolved Emmanuel Bagambiki<sup>83</sup>, the préfet of Cyangugu, of all the crimes with which he was charged. The Trial Chamber acquitted him on 25 February 2004. The reaction of survivors to his acquittal was one of shock, disbelief and extreme bitterness. The only consolation was the fact that it was not a unanimous decision. Judge Williams, president of the Chamber, issued a dissenting opinion where he argued that Bagambiki was indeed guilty of the charges that related to the events at Kamarampaks stadium in the town of Cyangugu, and at a football stadium in Gashirabwoba. The Appeals Chamber, however, confirmed the acquittal on 8 February 2006. In this section, we discuss the case in light of the concerns of survivors, and mindful of the dissenting opinion of Judge Williams.

In June 2004, *African Rights* interviewed a number of the survivors, prisoners and other witnesses who had spoken with ICTR investigators. Most of them had a poor impression of the ICTR investigators, who they said were not energetic in seeking out eye-witnesses or other substantial evidence and, they added, evidence which emerged during the inquiry was not included in the indictment.

After interacting with ICTR staff working on the case, Alexia, who had witnessed and survived the massacres at the Parish of Mibilizi in commune Cyimbogo, lowered her expectations.

I condemn the way the investigators went about collecting information. The attitude of the guides they worked with struck me as that of people who intended to camouflage the evidence about genocide.

But she never imagined that he would be declared “innocent.”

I simply could not believe that Bagambiki had been freed. The genocide in Cyangugu took place under the noses of government officials. Bagambiki did nothing to stop the

---

<sup>83</sup> For further background on the case of Bagambiki see also African Rights, Charge Sheet No. 4 *Emmanuel Bagambiki: In the Custody of the ICTR*, 13 June 2000

violence against Tutsis. The fact that there was no interest in reigning in the militia shows Bagambiki's complicity, and all those charged with security. And the responsibility falls squarely on Bagambiki's shoulders because he was head of the council of security at the level of the préfecture. Wherever the interahamwe invaded, Tutsis tried to seek help from the office of the préfecture.

As a survivor of the genocide, I regard the release of Bagambiki as an expression of denial. It is to deny, in its totality, the genocide that took place throughout the préfecture. It also reinforces impunity. It seems to me that the ICTR exists to turn the knife in the wounds of survivors.

Some of the prisoners who worked alongside Bagambiki in implementing the killings in Cyangugu are just as perplexed as survivors. Aloys Kamana was the bourgmestre of commune Kagano where a series of devastating massacres, in which Bagambiki has been directly implicated, took place at the Catholic Parish of Nyamasheke. As someone who had given detailed incriminating information, he asked a pertinent question

Why did ICTR investigators come and ask us for testimonies which were subsequently not used? I am one of the people they promised to take to Arusha to testify, but they did not keep their promise.

Théodore Munyagabe, Bagambiki's deputy in charge of economic and technical affairs, complained that he had "fallen into a trap set by the ICTR."

Their lawyers took me to Arusha to explain what had happened in Cyangugu. I wanted to speak in detail about everything I had lived through and to let justice draw its own conclusion. However, they would not give me the opportunity to express myself. The judges asked me brief questions about the innocence of Bagambiki, and put me forward as a defence witness for Bagambiki. The way they work doesn't make it possible to shed light on things.

The people who dropped the ball are the Prosecutor's investigators. If the judgement was based on the evidence they put forward, then the Prosecutor's office must review the capacity of its staff.

Since 2004, survivors have continued to speak out about Bagambiki's case. Caritas, interviewed in 2008, spoke of the impact of the acquittal on her attitude to justice. Caritas' husband was one of the men whose names were read out in Bagambiki's presence and then taken out of Kamarampaka stadium in Cyangugu town, never to be seen again.

I found out that Bagambiki had been found innocent from Radio Rwanda. I don't know how to describe to you my immediate reaction. I had a real shock. I felt as if my heart was ripped in two. Seeing how I felt, I'm certain that many others were similarly affected. I don't know on what basis the tribunal reached this shameful decision.

Like many others who had been to Arusha, I decided I would no longer go to testify against anyone else. One of my children, who was subsequently approached in connection with another case, refused categorically to have anything more to do with this

tribunal. How could we go to talk about others who had committed genocide in Cyangugu when the man who had the ultimate responsibility for the security of people and of property in the whole préfecture, the man who gave the green light for the murder of our husbands, and who did not hesitate to show up where the crimes took place, has been declared innocent?

Caritas, who was not aware before the interview that Bagambiki lived in Belgium, said she wanted to send a message to the people of Belgium.

This man, who made me a widow, and who made so many children in Cyangugu orphans, should be sent back to Rwanda, and preferably to Cyangugu, to answer for what he did. Here in Cyangugu, the prison is full of people who acted either under his order, his incitement or his approval without which the genocide in Cyangugu would have failed. But he himself is in Belgium. How can that be? All I can say is that the world is unjust.

Assumpta, 52, was gang-raped in Kadasomwa, commune Gisuma, along with her daughter by the interahamwe who surrounded a large group of Tutsis who were on their way to Bagambiki's office in Kamembe town to seek his protection. Bagambiki arrived on the scene and told the militiamen to do as they pleased. They took their pleasure, and as a result both Assumpta and her daughter are living with HIV/AIDS.

I will never know the identity of the man who infected me, but I will always remember that my life has been ruined because of the complicity of Bagambiki. He is, without any doubt, the person who is responsible for all the misfortunes which mark my life today.

Although the survivors of Kadasomwa, myself included, don't know the names of the executioners, or of their families, they will never forget that the préfet, Emmanuel Bagambiki, is the man who must, in the first instance, answer for this massacre. That's why I've never wanted to prosecute my neighbours for looting as long as those with the blood of the victims on their hands had not been brought to justice. The first on the list is Emmanuel Bagambiki.

She recalled her response when she learned of Bagambiki's arrest.

My heart felt a bit lighter, as I thought that international justice was going to hold him responsible for orchestrating the massacres of Tutsis in Cyangugu. My dream looked like it was going to become reality when people from the ICTR contacted me, asking me to come to Arusha.

The outcome of the trial left Assumpta with many regrets.

I was flabbergasted to hear that he had been found not guilty. I regretted that I had gone to Arusha. To deny the responsibility of Bagambiki in the genocide in Cyangugu is like saying that there was no genocide of Tutsis in the area. Since then, I question the sense of keeping genocide suspects in prison in Cyangugu, people who committed crimes under the command of Bagambiki, declared innocent by an international tribunal.

She hopes that justice may be served elsewhere.

I'm still hopeful that Bagambiki will be tried by a tribunal which is more serious than the ICTR. If that happens, I will willingly collaborate. But as long as Bagambiki is not considered as the overall leader of the genocide of Tutsis in Cyangugu, I will never have the strength to run after other génocidaires that I consider as his assistants. As I accused Bagambiki of rape, I have since kept quiet. I got some of my moral strength back, and gave my testimony again when someone who works in the Justice Ministry told me that they wanted to pursue the case.<sup>84</sup>

The lesson Joseph drew from the verdict is that the tribunal should have been established in Rwanda, to be closer to the reality of the genocide.

The decision shows that it's always preferable for the accused to be brought to the scene of the crime, in front of the survivors, to explain each fact and gesture relevant to what happened at the time. I would have loved to see Bagambiki brought in front of us, to Kamarampaka stadium, so that he can justify what he did on 16 April 1994.

What it also shows, he said, is certain weaknesses in the prosecutor's office, mentioning in particular what he considered insufficient knowledge of Rwanda, its culture, people and language.

Survivors like Amiel considered the investigations carried out by the ICTR's investigators as faulty.

From what I know of how the investigators worked, it's not surprising. When they came here to Cyangugu, they only wanted to speak to the person or people whose name(s) had been given to them in Kigali. They didn't bother to look for any others. You couldn't really say that they were determined.

Even those who have no direct connection to Cyangugu say that their appreciation of the ICTR has been coloured by the Bagambiki affair, reinforced by the decision not to transfer men detainees like Yusufu, another well-known genocide suspect from Cyangugu. A doctor in Kigali summed up the justice meted out by the ICTR as a "failure."

What can I say when it delivers a verdict of not guilty to someone like Bagambiki? A system which works slowly and haemorrhages money also refuses to send killers like Yusufu to courts that have agreed and are willing to try him.

### ***"An Unbelievable Decision": The Judgement on Jean Mpambara***

When the Trial Chamber of the ICTR acquitted Jean Mpambara, the bourgmestre of commune Rukara in Kibungo on 12 September 2006, it gave the following reasons.

---

<sup>84</sup> Because the ICTR indictment against Bagambiki did not include sexual crimes, Rwanda has announced its intention to bring the relevant charges against him.

The Chamber found that the evidence did not prove beyond a reasonable doubt that Mpambara ever instigated or positively assisted the attackers.

Because Mpambara was the bourgmestre of a commune, and not the governor of an entire prefecture, the decision did not have the same resonance on a national level as that of Bagambiki. But it was no less of a shock for the survivors of Rukara whose anger remains raw.

Patrice was 14 years old in 1994 and was living with his family in sector Rukara. Even at that age, he said he knew Mpambara and “the authority he had in the community.” Despite his stated preference for a trial in Rwanda, he welcomed news of his arrest and forthcoming trial in Arusha.

At last, the man who was responsible for the deaths of members of my family, and who tried to wipe out the Tutsis in Rukara, was going to face justice. We knew the people that had given their testimonies to the ICTR investigators, we knew what they had said and what their accusations against Mpambara were. We never ever considered for one minute that he would be freed, that he would be cleared of the charges.

Patrice responded to news of the verdict by trying to organize a protest against the ICTR, along with others. They initially received permission from the district office, which was overturned by the governor’s office without explanation.

I felt that I was living in a bad dream. I couldn’t believe how this could happen, I truly never thought that it was possible. We all thought that there was overwhelming evidence, and couldn’t understand how the court could come to this decision. What we don’t understand is how the word of the witnesses was not believed. We don’t know what happened in that court.

Even though Azelle was only eight during the genocide, she said she knew Mpambara because her father was his colleague in the commune office.

My father worked for this man. And during the genocide, he had my father hunted down and killed. When we were at the parish, Mpambara came there and assured us that we were all going to be okay. He returned later with a truckload of gendarmes and interahamwe, who attacked the church with hand grenades, killing many people. So I was very pleased when I learned about his detention.

Azelle still finds it impossible to understand what grounds could have convinced the ICTR judges to acquit Mpambara.

When I heard that he had been found not guilty, I couldn’t believe it, I still can’t. I knew some of the witnesses who went to Arusha to give evidence, I knew what they were accusing Mpambara of, and I still can’t fathom that he was found not guilty. They must have been given false information, or the information was given wrongly. There has never been an explanation to us as a community, or to me personally, as to how that verdict came to pass. I am very hurt, and especially very sad. This man, Mpambara, committed many crimes. And yet they say he is innocent.

At the very least, she said, representatives of the tribunal should visit Rukara and speak directly to the survivors.

Someone should come from the ICTR to explain to the community the process of the trial and how the trial came to that decision. People in Rukara were traumatised by this decision. It was a shocking and unbelievable decision. We felt the injustice so strongly that we decided we had to mount a protest. But we were not allowed to, but we don't know why.

The outcome hardened Azelle's opposition to trials of Rwandese genocide suspects in foreign countries.

I don't agree with trials outside Rwanda for people accused of involvement in the genocide. They should all be brought back to Rwanda. When a trial is held in another country, the community most affected by the person on trial, feels helpless. They have no control over what is taking place, no say in the proceedings. If Mpambara had been put on trial in the highest court of Rwanda, in Kigali, then the whole community would have gone to Kigali. We would want to be there to face him. More than anything we want him to see his accusers, to look at the people he tried to destroy. If I could meet Mpambara in a court room—the man I hold responsible for the death of my father—and witness him being made to account for his crimes, it would bring calmness to my heart. I could at last be at peace with what happened in 1994.

Epimaque, who has testified against Mpambara at gacaca, lays the death of his father and his older sister, who died at the Parish of Rukara, at Mpambara's feet.

My father and older sister were killed at the parish, by men following instructions given by the bourgmestre. When I heard about his arrest I was overjoyed. This was the man that could have stopped the genocide, could have saved so many lives, including those of my father and sister, instead of being responsible for taking lives. I was very happy that he was being put on trial for what he did in Rukara. It never entered my thoughts that Mpambara would be found not guilty. I couldn't believe that the man responsible for what had happened in our community had been set free, and yet the men who had carried out his orders, who had followed his instructions to eliminate the Tutsi in Rukara, were still in prison.

How do we recover from the decision to release the man who planned, then tried to wipe us all out? Why did it happen? I can only think that the investigators from ICTR didn't do their jobs properly. They got it wrong, or maybe they didn't get the right information. What if all the others are set free, what then?

Admitting that he found it difficult to articulate his feelings, Epimaque thinks that he would have found a similar verdict from gacaca easier to live with.

If Mpambara had been sent before gacaca and had been found not guilty, I would accept the outcome because he was tried before the people who are accusing him and they saw justice being done. I would not have agreed with it, but I would have accepted it. I am suspicious of the decision in Arusha. We had no say and he didn't have to face us, the people who suffered most by what he did in Rukara.

As a 21-year old who had lived in the sector where the commune office was located, Hyacinthe knew Mpambara. In early April 1994, she and her family accompanied their Tutsi neighbours to the parish.

Mpambara cut off the water and the electricity, and when we were eventually attacked, thousands were killed including my mother, two sisters, younger brother and uncle. Mpambara was responsible for their deaths and for many other deaths.

She was interviewed by ICTR investigators, but does not know if they worked for the prosecution or the defence.

In 2002 or 2003 I gave a statement to ICTR investigators, and I accused Mpambara of many things. The investigators were a mixture of international and Rwandese, and at the time they appeared to be writing down what I was telling them. I was never given the opportunity to read what they had written and it was never read to me. I was just asked to sign it which I did. I have no idea if these people were prosecution or defence investigators. What I do know is that many people from the community gave their testimony to these investigators, all of them condemning Mpambara.

She was not called as a witness, but she said she followed the trial on the radio.

When we found out that he had been set free, we were very hurt. We are still hurting today. I have no idea whatsoever, how the court came to that decision. How can a man who committed crimes in the presence of thousands of people, and who let die more than 10,000 people he was responsible for protecting, be innocent?

For Hyacinthe, such is the primordial role played by Mpambara in the killings in Rukara that she equates his acquittal with denial of the genocide in her commune of origin.

Does Arusha realize what they have done to us? By finding this man not guilty they are telling us that the genocide didn't happen in Rukara. There is no other explanation, Mpambara, was the instigator, the planner and the executioner of the genocide, but Arusha says not. So are they telling us that it didn't happen?

Mpambara tried, but failed to get rid of us all. We thought we were eventually going to get justice when he went on trial. But Arusha has continued where he stopped; they have stabbed the community in the heart.

Odette, who was then 15, barely escaped the massacre at the Catholic Parish of Karubamba in Rukara. Because the killing started late, at 6:00 p.m., the militia were about to leave and passed by. But just at that moment, she said, a baby cried out and alerted them to the presence of refugees who were still alive. She had managed to crawl out before the building was set on fire.

At about two in the morning, Mpambara, the bourgmestre, arrived in a car. He told the militia to continue in the morning when they were not so tired. I could not see him because it was pitch dark, but I recognized his voice. I was outside because I had told them I was a Hutu and they had believed me.

She questioned the basis on which he was acquitted in Arusha.

For the survivors of Rukara, who know the role he played in the genocide of Tutsis in this commune, what Arusha did is incomprehensible. He did nothing to stop the massacre of Tutsis in the commune, and yet he was the bourgmestre. Instead of dissuading those intent on the massacres, he facilitated them. I don't know why the international community undermines the genocide. From what we have seen of their justice, I think they don't appreciate the scale of the crimes even though they have the information.<sup>85</sup>

In addition to the release of men like Bagambiki and Mpambara, it is the treatment of the victims of sexual violence that has most damaged relations between the ICTR and survivors, as detailed in a later chapter.

---

<sup>85</sup> Interviewed in Rukara, 12 September 2008.

## INVESTIGATIONS AND PROSECUTIONS ABROAD

Staring at military and political defeat in early July 1994, the men and women who had led the killings prepared their own exodus from the country, and resolved to leave Rwanda “empty.” To this end, they urged their foot soldiers, and the Hutu population at large, to congregate in refugee settlements in the neighbouring countries of the DRC, Tanzania and Burundi. Within months, thousands of genocide suspects had gone further afield to Zambia, Kenya, South Africa, Cameroon, Togo and amongst other countries, Benin. Senior officers and civil servants who had studied or trained in France and Belgium, where they had established connections, made their way to these European countries. Over time, genocide suspects have established themselves in dozens of other countries in Africa and Europe, as well as the US, Canada, and even in New Zealand. In Europe, they are known to be living in The Netherlands, Norway, the UK, Denmark, Italy, Germany, Austria, Sweden, Finland and Switzerland. In Africa, there are also significant concentrations in Malawi and Mozambique.

While many of those prosecuted or awaiting prosecution at the ICTR were transferred from African countries, there have been no independent investigations or prosecutions in any African country. Suspects have been arrested, transferred to the ICTR, detained, tried or deported.<sup>86</sup> Some suspects are still awaiting a decision on extradition to Rwanda or may face a domestic trial. Others are the subjects of ongoing investigations in Canada, the US, New Zealand, Sweden, France, Belgium, Finland, the UK, The Netherlands, Denmark, Norway, Germany and Switzerland. The great majority, however, are living with complete impunity in their foreign locales.

### Initiating Investigations Against Genocide Suspects Residing Abroad

Thousands of people scattered throughout the world have invested their time and their resources in trying to promote justice for the victims of the 1994 genocide. Tutsis residing abroad, and their families, who watched the genocide of their families unfold on their television screens and broadcast on the radios in Africa, Europe, North America and elsewhere, saw it as their responsibility to bring the perpetrators to book. It was, as many

---

<sup>86</sup> On 22 April 2005, Enos Kagaba was deported from the United States to Rwanda as a result of his said involvement in the genocide. He is the first person who was found to be inadmissible to the US based on genocide. Kagaba, accused of participation in the killings in Kibuye, was initially arrested because he lacked valid entry documents and for misrepresenting his identity, but a later investigation also established evidence of his role in the genocide.

put it, “the least they could do.” A large number of educated Tutsis had left the country after the reprisals that began in October 1990, with the RPF invasion from Uganda and the ensuing war, and also to study overseas. As a result, there were significant numbers living particularly in Europe, most of all in Belgium, and others in the US and Canada. Others were living abroad with their husbands and wives from foreign countries.

During the initial 100 days of the killings, the telephone was their lifeline. Alain Gauthier, President of the *Collectif des Parties Civiles pour le Rwanda* (CPCR) in France, and his wife, Daphrosa, watched over it, like so many others.

We did not leave the telephone in order to hear news about this person or that person. Who had died? Who was still hiding? One could not breathe anymore; it was like being dead among the living.

But the lines were soon cut, and the foreigners and the trickle of Rwandese who were evacuated could not relay much information, as either they had been in hiding, or they could only talk about what had unfolded in their immediate location. This meant that families living abroad did not learn about the fate of their relatives and friends for weeks and sometimes only by chance. Marie in Belgium kept in touch with her family in Kibungo for the first week, after which they took refuge at the Bishopric of Kibungo. They were killed on 14-15 April, but she did not know at the time.

The news of the massacre was confirmed in an article which appeared in the magazine, *Humanity*, in May 1994.<sup>87</sup>

Ibuka, the principal association of genocide survivors, was first set up in August 1994 in Belgium, as was the *Collectif des Parties Civiles* in Belgium (CPCB). The impetus was the desolation which Valens, one of the founders of Ibuka, felt, along with many others.

In the wake of the genocide, I felt lost here in Belgium. I was obviously not alone, and that’s why we began to work together to see what we could do. Without knowing in advance the specific objective, we established Ibuka in August 1994, long before the one set up in Rwanda. As founding members, we gave the new organization the twin objectives of memory and the fight for justice.<sup>88</sup>

Getting organized around the issues of justice was one aspect of dealing with the immediate consequences of the genocide, and was a preliminary step in their own recovery. The CPCB began when some members of the Committee for the Respect of Human Rights and Democracy, established in Belgium, and their lawyer, Maître Eric Gillet, lodged complaints in connection with the killings. The group broadened and the CPCB was registered formally as an association. Designed specifically to file private complaints against genocide suspects living in Belgium, and to raise awareness, the CPCB has been instrumental in the trials that have taken place in Belgium.

---

<sup>87</sup> Interviewed in Brussels, 30 March 2008.

<sup>88</sup> Interviewed in Brussels, 24 March 2008.

Established later in 1995, the Collectif in France set itself the following tasks: “To support morally and financially all those who, in the context of the genocide perpetrated in Rwanda in 1994, lodge complaints against genocide suspects and principally those who are refugees on French soil, to submit complaints itself against genocide suspects, and to contribute to everything that seeks to preserve the memory of the victims.”<sup>89</sup>

As soon as the genocide was brought to an end in July 1994, many Rwandans living abroad returned home to learn about the fate of their families, including Dominique who was living in Norway.

I rushed back to see if anyone had survived. I went to Rwanda in 1994 and returned in 1995. In 1996, I spent nearly all my holiday time in Rwanda trying to find out who died and where, and who had killed them. I collected a lot of essential facts. What I learned from the *gacaca* courts later only provided missing details.

Valens made his way to Rwanda in 1995.

I went to find out about each member of my family. I gathered some information, particularly about the suspects, but this needed to be verified. It was also said that one of my sisters was still alive, which later proved to be false.<sup>90</sup>

Before he turned his attention to suspects in Belgium, Valens first tried to bring prosecutions in Rwanda. He said he visited Rwanda five times, and entrusted the task to a relative, who eventually gave up, saying he was “sick of trying to arrest suspects who, a few days later, were released for some obscure reason.”

With time, “survivors by destination”, as those who were living abroad in 1994 are often referred to, were joined by those who had escaped the killings, who sometimes ended up living near perpetrators they recognized. It was their intimate knowledge of the genocide, combined with the determination, contacts and “know how” of those who had been resident abroad for many years, which helped to expose the identity and whereabouts of genocide suspects living abroad, and which laid the groundwork for transfers to the ICTR, arrests and prosecutions in foreign countries. They joined forces to alert the police, prosecution services, international human rights organizations, the media, justice officials in Rwanda and Rwandan embassies, and provided critical information about their whereabouts, status in the foreign country, false identities, photos, potential evidence and contacts for witnesses.

It was her brother in Rwanda who helped Marie, a member of the CPCB, put the pieces together about how, and at whose hands, her family died in Kibungo. Two of the men he pointed a finger at had moved to Belgium. Marie’s brother himself subsequently re-located to Belgium. A chance encounter in a Brussels grocery store between one of the men, Etienne Nzabonimana, and Marie’s brother, was the first step in the 2005 trial of Nzabonimana and his brother, Samuel Ndashyikirwa.

---

<sup>89</sup> See the website of the Collectif at <http://www.collectifpartiescivilesrwanda.fr/Statuts.html> (last accessed September 2008).

<sup>90</sup> Interviewed in Brussels, 24 March 2008.

We immediately informed the police, because we had named him as one of the killers in the statement we had given to them.<sup>91</sup>

Another meeting in another grocery store, this time in the American town of Bolingbrook, Illinois, unleashed a chain of events which led to the arrest of Jean Marie-Vianney Mudahinyuka<sup>92</sup>, known as Zuzu, one of the best-known militiamen who ravaged Kigali in 1994. A journalist with the *Chicago Tribune* wrote about how US justice caught up with Zuzu.

One day, a countryman recognizes you. He sounds the alarm: Zuzu is alive and he is here. The ghosts of the past begin to close in.

When Zuzu vanished from the streets of Kigali in 1994, many assumed that some vengeful father or husband had hunted him down and hacked him to pieces. So the reports that Zuzu had been spotted had to be a mistake.

Yet the rumours would not die. They swept through the Tutsi immigrant community by telephone and e-mail from South Bend, Ind., to suburban Chicago to Washington, D.C., to Canada. Zuzu is here. He is alive and well. Go see for yourself.

That is what Gerard Sefuku finally did. Sefuku has lived in and around South Bend, Ind., since coming to America in 1989 to go to college. When the genocide began, he was safely in the States, but his mother and father and the rest of his family were in Rwanda. His father was killed; his mother narrowly escaped. All told, he lost 20 members of his family.

He had never seen Zuzu before, but his friends knew him well. One of them had done business with him back home; the other had played on the soccer team Zuzu sponsored in Rwanda. Since that night more than two summers ago, Sefuku has led the fight to have Zuzu arrested and deported to stand trial in Rwanda.<sup>93</sup>

In Belgium, it was people like Lambert, who had experienced the genocide first-hand, who fuelled the quest for justice. When he arrived there in 1995, he was still trying to comprehend the loss of his parents and seven of his eight siblings. His remaining brother had been living in Europe in 1994.

There was not much else I could do except to struggle for justice as best I could. Being in a foreign country, however, put me at a disadvantage. I joined Ibuka to sensitize Europeans to the fact that we had indeed been victims of a real genocide, and to fight against the denials and revisionist statements that were beginning to appear.

---

<sup>91</sup> Interviewed in Brussels, 30 March 2008.

<sup>92</sup> Zuzu is currently detained in the US on immigration fraud charges and for assaulting a federal officer.

<sup>93</sup> *Suburban America : Hiding Place for Thousands of War Criminals ?*, Don Terry, *Chicago Tribune*, 5 July 2005.

He became a plaintiff in the first trial in Belgium which focused on Butare, and was pleased with the verdict of guilty against the four defendants.<sup>94</sup>

The presence of Lt. Col. Tharcisse Muvunyi in London became public knowledge in 1999 because of the hard work that Gasana Ndoba had put into tracing his whereabouts. Ndoba of the Committee for Human Rights and Democracy in Belgium, had traced the death of his brother, a professor at the University of Butare, and his nieces and nephews, to the soldiers under the command of Muvunyi, in charge of the Junior Military Academy (ESO) in Butare. Muvunyi was subsequently arrested and transferred to the ICTR.<sup>95</sup>

However, not everyone living abroad feels safe in reporting the presence of their tormentors, or those who killed their families, to the police. Hélène in the Netherlands heard rumours that the man who had killed her sister was living nearby in Utrecht, and she began to make enquiries. Fearful for her security and that of her children, she quickly gave up after the man in question approached her angrily, demanding to know why she was asking questions about him.

In addition to fear, most are simply too overwhelmed by the demands of their day to day lives—learning a foreign language, securing an income, gaining an education and obtaining refugee status or citizenship—to consider justice as their most pressing need. But for those who do, there have been obstacles and disappointments, but also moments of triumph, especially the first trial in Belgium, in terms of both the process and the verdict.

### **“Confident and Proud to Finally Tell the Truth to the Whole World”**

It took the CPCB seven years to see the fruits of their labour, with the start in 2001 of what became known as the trial of the Butare Four. Two Benedictine nuns of a monastery in Sovu, Sr. Gertrude Mukangango, the Mother Superior, and Sr. Julienne Kizito; Alphonse Higaniro, the director of SORWAL, a match factory and Vincent Ntezimana, a lecturer at the university, stood in the dock.<sup>96</sup> For all those whose lives had been shattered in 1994, and especially for the witnesses who had travelled from Rwanda, it was a momentous event. Perhaps none felt the weight of history as much as the nuns who had come from Sovu to give evidence. Few people have braved the concerted and consistent

---

<sup>94</sup> The ‘Butare Four’ case in 2001: *La Cour d’Assises de Bruxelles*, verdict of 8 June 2001; see ‘Genocide Survivors Welcome Belgian Verdict, at [www.hirondelle.org/hirondelle.nsf/caefd9edd48f5826c12564cf004f793d/655dbe9da551e5fec1256a69004272e7?OpenDocument](http://www.hirondelle.org/hirondelle.nsf/caefd9edd48f5826c12564cf004f793d/655dbe9da551e5fec1256a69004272e7?OpenDocument)

<sup>95</sup> During the genocide, Lt.Col. Tharcisse Muvunyi was in charge of operations in the préfectures of Butare and Gikongoro and was also responsible for the Junior Military Academy (ESO) in Butare town. He was arrested in London on 5 February 2000 at the request of the ICTR and transferred to Arusha on 30 October 2000. On 12 September 2006, he was sentenced to 25 years of imprisonment. The case is currently on appeal.

<sup>96</sup> The ‘Butare Four’ case in 2001: *La Cour d’Assises de Bruxelles*, verdict of 8 June 2001; see ‘Genocide survivors welcome Belgian verdict, at [www.hirondelle.org/hirondelle.nsf/caefd9edd48f5826c12564cf004f793d/655dbe9da551e5fec1256a69004272e7?OpenDocument](http://www.hirondelle.org/hirondelle.nsf/caefd9edd48f5826c12564cf004f793d/655dbe9da551e5fec1256a69004272e7?OpenDocument)

hostility that they had endured since they first began to accuse their two fellow-nuns in 1994. This made the witnesses the targets of an extraordinary campaign of intimidation and ridicule, which included an attempt to expel them from the order, as detailed in *African Rights'* report, *Obstruction of Justice: The Nuns of Sovu in Belgium*.<sup>97</sup> It was hardly surprising, in this context, that they did not initially expect to be believed, as one of them commented.

I was very happy that I was able to go and testify and to see that my testimony was useful. The first time we went to court, we didn't have confidence because the defendants had the strong support of our fellow nuns, European and Rwandese. If we had not given our testimonies to African Rights<sup>98</sup> to include in its report, we would not have been asked to come and speak in front of the court.

The reception they got from the court was an affirmation of their truth, and of their dignity.

We were welcomed with open arms and attention was paid to what we said during our deposition. What delighted me, above all else, is that the people we accused were not found innocent. Even if the sentence is not proportional to what they did, still, they were sentenced. I was very happy because our truth had triumphed. What I wanted, to put it simply, is that they would be found guilty. I was not so interested in the sentence. This justice brought me untold joy. Even up to today, the morale I drew from it is what keeps me going.<sup>99</sup>

Her colleague had also been sceptical.

We thought that we would be disparaged when we spoke to the court. And so we had doubts about the tribunal's decisions before we made our deposition. Many men, and women, in religious communities discouraged us from testifying against Kizito and Gertrude by saying that we had to protect the Church's honour. In religious communities, accusing another member is seen as scandalous and the accuser is considered more guilty than the criminal. In our community, the white nuns thought we were jealous of our fellow nuns, that we were trying to become the Superior of our community and that we had made up stories to push out the Hutu Sisters.

The process, as well as the outcome, left her feeling "relieved."

We were not disappointed. Our testimonies were accepted at their true worth. We were well received and our statements were taken into consideration. Even if the sentences are not proportionate to the crimes committed, at least we now know that these two Sisters were found guilty.

---

<sup>97</sup> *Obstruction of Justice : The Nuns of Sovu*, African Rights, *Witness to Genocide* Issue 11, February 2000, 62 pages.

<sup>98</sup> *African Rights* had first written about the allegations against the nuns of Sovu in a book published in August 1995, *Rwanda: Not So Innocent, When Women Become Killers*.

<sup>99</sup> Interviewed in Sovu, Butare, 22 April 2008.

The Butare trial is widely regarded as an important precedent, and not only within Belgium itself. Saying it “triggered a chain of events”, Valens was particularly impressed by the tenacity of the instructing magistrate.

One could not have imagined that a country, which is so Catholic, would be able to try members of the clergy. The instructing magistrate, Damien Vandermersch in this case, was a professor at the Catholic University of Louvain, and he investigated the charges against Ntezimana, a fellow at the same university. He was said to have come under pressure from some of his hierarchical superiors, but he faced the challenges, proving the independence of the judiciary.<sup>100</sup>

Saying an independent judiciary was not sufficient in itself, Valens also paid tribute to Belgium for showing “real political will.”

Justice should be independent. But if the Ministry of Justice does not release the funds for rogatory commissions, pay for the witnesses to come from Rwanda and does not provide the necessary human resources, for example putting in place a team of policemen focused on these cases, such trials would not have taken place.<sup>101</sup>

## **Challenges and Obstacles for Victims Living Abroad**

The burden of getting a case off the ground lies primarily with the victims, since it is normally they that initiate the complaints, provide the authorities with the essential information, including the location of the suspect, the nature of the accusations and the names of potential witnesses living in Rwanda or overseas. At the same time, they are often faced with non-transparent investigative procedures and they typically have little access to information about the progress of their complaints. It is their persistence which has helped to keep cases on track. But the lack of responses from national authorities is inevitably frustrating, and can lead to a loss of faith in justice and a reluctance to engage with officials, making investigations and prosecutions even more complicated.

### ***Insufficient Resources, Delays and Lack of Cooperation***

The human and financial resources of national authorities to investigate and prosecute suspects who have committed genocide in a distant country against “non nationals” are often scarce. Policies concerned with terrorism and drug trafficking, for instance, take priority. The obstacles encountered by victims of the Rwanda genocide in France were described by Alain Gauthier as a struggle of David against Goliath.

Two judges are in charge of all Rwanda dossiers, two judges who do not yet know Rwanda and may have little knowledge about the genocide, who don't have the financial means and who cannot rely on a unit of specialized investigators. French

---

<sup>100</sup> Interviewed in Brussels, 24 March 2008.

<sup>101</sup> Interviewed in Brussels, 30 March 2008.

justice for the moment does not provide the means to properly investigate the dossiers.<sup>102</sup>

Victims in France started to file complaints against genocide suspects in July 1995, with the assistance of the CPR and other organizations. To date, the Collectif and the other groups have filed up to 13 lawsuits against suspects. But until very recently, they have yet to see anyone brought before French courts.<sup>103</sup> The European Court of Human Rights in 2004 condemned France for the inexcusable delays in proceedings against Father Wenceslas Munyeshyaka, a case in which victims filed complaints with French authorities in 1995.<sup>104</sup>

For 13 years, Thérèse, a plaintiff against Fr Munyeshyaka, has battled and waited for her case in France to proceed. It is little wonder that she cautions survivors from looking to France for justice. She does not question the professionalism of the French judiciary, but sees them handicapped by larger political questions.

France has gone to great lengths to ensure that those suspected of participation in the genocide of the Tutsi are not brought to trial in France. The reasons for this are entirely unrelated to the Rwandan genocide suspects themselves, but rather with the media attention the genocide of the Tutsi has received. Some political officials in France wish the Rwanda issue would just go away.

This is a classic example of the slow pace of the judicial system. The turnover of investigating judges in the Munyeshyaka case is such that you could form an entire volley-ball team! As expected, this has caused excessive delays. In fact, on 8 June 2004, European Court of Human Rights rebuked France for failing to deal swiftly with cases against Wenceslas Munyeshyaka.

Many of these judges are highly qualified and motivated, but they cannot do their work unless a specialized court is put in place. How can France expect its investigating judges to handle cases ranging from financial fraud, conjugal violence to genocide??<sup>105</sup>

The situation is beginning to improve slowly, mainly due to the relentless activities of the French Collectif, individual parties civiles and lawyers acting for victims pro bono. Since June 2007, six suspects have been arrested by French authorities with the assistance of Interpol: three on the basis of an international arrest warrant issued by Kigali<sup>106</sup> who are

---

<sup>102</sup> Correspondence with Alain Gauthier, 8 April 2008.

<sup>103</sup> See the website of the Collectif des Parties Civiles pour le Rwanda, <http://www.collectifpartiescivilesrwanda.fr/> (last accessed June 2008).

<sup>104</sup> Ibid.

<sup>105</sup> Correspondence, 30 May 2008.

<sup>106</sup> Isaac Kamali was arrested in France on 23 June 2007, see: Interpol media release 23 June 2007, 'Interpol co- ordination on three continents leads to capture of Rwandan genocide fugitive', available at <http://www.interpol.int/Public/ICPO/PressReleases/PR2007/PR200726.asp> (last accessed August 2008). Marcel Bivugabagabo was arrested in Toulouse, France, on 8 January 2008, see Interpol Media Release, 9 January 2008, 'Close Co-operation between Rwanda, Interpol and French police leads to arrest of yet another Rwandan genocide fugitive, at

currently awaiting extradition to Rwanda and three suspects wanted by the ICTR, two of whom will be tried by French courts<sup>107</sup>, with the third transferred to the ICTR on 5 June 2008.<sup>108</sup>

Similarly, there have been improvements in Germany, where the arrest of three suspects over the past year has brought relief and raised expectations amongst survivors, including Peter.

The arrests have let us hope that the genocide in Rwanda will not be forgotten, and that there will be investigations and prosecutions in Germany with all the necessary resources.<sup>109</sup>

The long procedural delays create enormous difficulties for plaintiffs and their legal representatives, especially with regard to money and time.

We have to shoulder a lot of financial burdens and we need to travel a lot on our own costs. Good will is not always sufficient, even though we use a lot of energy because we believe that it is necessary to lead this struggle.<sup>110</sup>

Plaintiffs are, for the most part, dependent on lawyers acting *pro bono*, since public and private funding for legal suits which can drag on for years and which require special expertise, is not available. Thérèse expressed her gratitude to the lawyers who have stood by her side for 13 years.

I could not have done anything without the lawyers working on my case on a pro bono basis. I am deeply indebted to them, because I did not have the means to pay a lawyer.<sup>111</sup>

And when the trial finally begins, it also takes its toll, as Marie found out.

The psychological suffering caused, first by the long wait and then, once the trial started, having to relive the horrors that took the lives of our relatives. The witnesses

---

<http://www.interpol.int/public/News/2008/RwandanFug20080109.asp> (last accessed August 2008); Claver Kamana was arrested by French authorities on 26 February 2008, see Interpol Media Release, 28 February, Fourth Rwandan genocide fugitive subject of Interpol Red Notice arrested in France, at <http://www.interpol.int/Public/News/2008/Rwandan20080228.asp> (last accessed August 2008).

<sup>107</sup> On the cases of Wenceslas Munyeshyaka and Laurent Bucyibaruta, see African Rights & REDRESS, “Extraditing Genocide Suspects from Europe to Rwanda”, September 2008, page 53/54.

<sup>108</sup> ICTR Press Release, ‘Ntawukulilyayo Transferred to Arusha, 6 June 2008, available at <http://69.94.11.53/ENGLISH/PRESSREL/2008/567.htm> (last accessed August 2008). He was arrested on 16 October 2007 in Carcassone, France and transferred to the Tribunal on 5 June 2008, where he plead not guilty to charges of genocide, complicity in genocide and direct and public incitement, see Press release, Dominique Ntawukulilyayo Pleads Not Guilty, 10 June 2008 at <http://69.94.11.53/ENGLISH/PRESSREL/2008/567.htm> (last accessed August 2008); it is worth noting that France previously, in 2000, had transferred two cases to the ICTR, the case of François- Xavier Nzuwonemye and Jean de Dieu Kamuhanda.

<sup>109</sup> Correspondence with survivor living in Germany, 12 September 2008.

<sup>110</sup> Correspondence with Alain Gauthier, 8 April 2008.

<sup>111</sup> Correspondence, 30 May 2008.

described everything in court and videos were projected, all of which was extremely painful because these things had happened to people we loved.<sup>112</sup>

### ***When the Charge is Not Genocide***

In sharp contrast to the trials at the ICTR, a major setback to the trials in Belgium, Switzerland and Canada is that none of the perpetrators were convicted of, or even charged with, the crime of genocide, due to the absence of domestic legislation expressly providing for universal jurisdiction over the genocide committed in Rwanda in 1994. Indeed, all seven defendants in Belgium were convicted for violations of international humanitarian law and war crimes where it is sufficient to demonstrate that large-scale massacres were committed. The attempt of the federal prosecution and the parties civiles to have Ephrem Nkezabera, arrested in Brussels in 2004, prosecuted for genocide failed, when the Brussels ‘Chambre des mises en accusation’ on 21 May 2008 decided to send the case, expected to start in early 2009, to the Cour d’ Assises on war crimes charges only. Martine Beckers, president of the Collectif in Belgium, asked a pertinent question.

What sense does it make to judge a civilian (Ephrem Nkezabera) for war crimes when the evidence clearly shows that it is rather a crime of genocide? The victims feel ridiculed.<sup>113</sup>

It is a criticism echoed by virtually all the interviewees living in Belgium. In addition, the decision not to prosecute for genocide is exploited by suspects and those who argue that no genocide was committed in Rwanda, adding to the anger and anguish of survivors.

Rejecting the argument that suspects cannot be tried because the relevant legislation does not exist, survivors asked why, 14 years on, no such legislation has been put in place to address the presence of thousands of Rwandese genocide suspects on foreign soil. Only Norway, after its failed attempts to help the ICTR with its caseload as part of the latter’s completion strategy,<sup>114</sup> introduced specific legislation with retroactive effect to ensure that genocide suspects living in Norway no longer enjoy impunity.<sup>115</sup>

### ***Sentencing***

While some expressed deep dissatisfaction with the sentences meted out in Belgium, ranging between 10 and 20 years, others, including Valens, argued that the length of the sentence was less significant than the verdict of guilt.

---

<sup>112</sup> Interviewed in Brussels, 30 March 2008.

<sup>113</sup> Martine Beckers at African Rights & REDRESS conference “The Extradition of Rwandese Genocide Suspects to Rwanda- Issues and Challenges”, Belgian Parliament, Brussels, 1 July 2008.

<sup>114</sup> *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-AR11bis available at <http://69.94.11.53/ENGLISH/cases/Bagaragaza/decisions/300806.htm> (last accessed September 2008).

<sup>115</sup> See FIDH & REDRESS, 31 July 2008, ‘Universal Jurisdiction Developments in Europe, August 2007- July 2008’ at [http://www.fidh.org/IMG/pdf/UJ\\_developments\\_Aug07-July08.pdf](http://www.fidh.org/IMG/pdf/UJ_developments_Aug07-July08.pdf) (last accessed August 2008).

Although the punishments were minimal, we must recognize the important symbolic contribution that the Belgian judgments have made, particularly in the fight against impunity. Those people believed, after leaving Rwanda, that they were immune from any lawsuit. But they came to realize that justice has no borders when it comes to such crimes. The perpetrators of the genocide now know that they must be wary of Belgium. And although Belgium has a historic responsibility for what happened in Rwanda because of the effects of colonialism, it was not obliged to undertake these trials, given the costs they imply. But it did so, and this could serve as a model for other countries, such as France.<sup>116</sup>

All the survivors we spoke with expressed the view that it was inappropriate for the defendants in the Butare Four trial to be considered for an early release after they had served part of their sentence. For Marie, “the saddest part is the fact that even though the sentences were relatively short, they were not fully served.”

The plaintiffs were not consulted or given advance notice of the proposed early release. You can imagine the shock of a victim who suddenly encounters the murderer of his loved ones, whom he imagined in prison.<sup>117</sup>

Valens agrees, and made a comparison with another group of prisoners.

They should not benefit from clemency measures that are accorded to prisoners convicted of common law offences, given the special nature of their crimes and the fact that there is no statute of limitations. They should serve the full sentences as is already, or was, the case, with prisoners convicted of paedophilia.<sup>118</sup>

Similarly, survivors living in France are frustrated by the release of suspects from pre-trial detention and the authorities’ lack of communication with survivors. Alain Gauthier, commenting on the release of Claver Kamana in September 2008, had this to say.

We learned about it more than a month after the decision had been taken and goes to show that the fight against impunity for alleged génocidaires is very time consuming. The idea that they can be set free is outrageous for us: the crimes they are accused of are the most serious crimes that exist; luckily not subject to a statute of limitation. His liberation confirms that those who take such decisions neither feel for nor think about victims.<sup>119</sup>

### ***When Victims Cannot Sue as Private Citizens***

Victims of the genocide play a relatively minor role, or no role at all, in jurisdictions that do not enable them to initiate formal criminal investigations, as is the case in Germany,

---

116 Interviewed in Brussels, 24 March 2008.

117 Interviewed in Brussels, 30 March 2008.

118 Interviewed in Brussels, 24 March 2008.

119 Taken from a Press Release of the CPRC of 5 September 2008, ‘La remise en liberté de Claver KAMANA, un nouvel affront à la mémoire des victimes, available at [http://www.collectifpartiescivilesrwanda.fr/communiqu%C3%A9\\_cprc\\_lib%C3%A9rationkamana\\_bivugabagabo.html](http://www.collectifpartiescivilesrwanda.fr/communiqu%C3%A9_cprc_lib%C3%A9rationkamana_bivugabagabo.html) (last accessed October 2008).

The Netherlands, Denmark, Sweden and the United Kingdom. In these countries, investigations of genocide suspects have typically been initiated with information from immigration services, as for instance in The Netherlands and Denmark, or from Interpol, as in Germany, or from the Rwandan Government, the media and human rights organizations, as in the UK. As a result, investigations are principally dependant on state institutions and the discretion of the prosecution services. The relatively large number of cases pending before French and Belgian courts, and the convictions of seven perpetrators in Belgium are not only due to the fact that genocide fugitives are concentrated in these two countries, but also because of the rights of victims to initiate criminal investigations as parties civiles.

## **The Perception of Survivors in Rwanda About Investigations and Prosecutions Abroad**

There have been so few trials and convictions in foreign countries (seven in Belgium and one in Switzerland), no extraditions and only one deportation that most of the survivors interviewed in Rwanda preferred to speak about other aspects of justice. Where they had heard about previous foreign trials, they were most struck by what they regarded as “lenient” sentences.

### ***Where Should Trials Take Place?***

With virtually no exception, all the survivors interviewed in Rwanda expressed a strong preference for trials to take place in Rwanda. It is essential, they argue, to try the suspects in the country where the crimes were committed, because it is there that the evidence exists, most of the witnesses reside and where the accused will come face to face with the maximum number of victims. Then maybe, said Bellancille in Cyangugu, “their conscience will help them recall many things that will help justice.” They point to the abolition of the death penalty, the establishment of special facilities and improvements in human resources within the judiciary to question the wisdom of trials abroad.

Underlying the preference for domestic trials is the deep sense of hurt and the profound anger that survivors feel at the failure of the international community to intervene in 1994. This helps to explain why, like Bellancille, so many feel that “they cannot trust those countries which didn’t do anything to protect us during the genocide.”

Chantal, a hospital employee from Gitarama, also made a plea for extradition of suspects to Rwanda where, she said, “they will be judged in full knowledge of the facts.” Laetitia, a farmer who is also from Gitarama, summed up extraterritorial trials as “only half-justice.”

As with the ICTR, survivors find it difficult to understand how foreign judges, who have never been to Rwanda and who have no familiarity with the country, can grasp the

complex reality of the genocide. In case extradition fails, Edouard of Ibuka in Ruhengeri put forward two suggestions.

The judges who will hear the case should first come to Rwanda to understand the seriousness of the genocide, and the truth about it, before they get to work. And associations of genocide survivors should be represented in these proceedings to establish a link between the court and the plaintiffs, and to provide plaintiffs with the support they required.

Alphonse, who is critical of the ICTR, is even less sure about trials in other countries.

The Rwanda genocide is treated in different ways, depending on perceptions of interest.

In addition, he believes foreign judges are simply too distant from what happened in Rwanda.

I certainly don't think that enough serious attention is paid to what we really went through, what happened to us. Everyone who feels concerned about what took place here in Rwanda, please fight to ensure that all the génocidaires are sent back here, to their country.

In Rukara, Kibungo, the decision by the ICTR to acquit Mpambara, the bourgmestre of that commune during the genocide was, as discussed earlier, a source of immense anger for the survivors. It also helped to turn people like Patrice against trials abroad.

Of course it's good that they are finally caught and punished for what they did. But when it happens in another country, there is no personal release for the people who were most affected most by their actions. The countries which put these génocidaires on trial don't really know what happened in our country in 1994. To them it's just someone who committed some very serious crimes a long time ago in another country, far from where they are. I would never say they don't care, but they don't care as much as we do.

These perpetrators need to be returned to Rwanda, to the communities where they committed their crimes. We need to be able to face the people who had such a dramatic effect on our lives, and we need to witness justice being done.

Hyacinthe welcomes the decisions taken in Belgium, but she expressed a strong preference for trials in Rwanda.

If they are put on trial in Rwanda, you can follow the court every day. You have the opportunity to give your testimony to the court and to face the person you are accusing. But more importantly, the people on trial have to face the people whose lives they wrecked.

Having testified in Canada at the trial of Désiré Munyaneza, as well as at the ICTR, Gisèle in Butare explained why she is in favour of domestic prosecutions.

In Rwanda, we are not asked shocking questions [during cross-examination]. It was especially the defence lawyers who asked us questions that were impossible to answer.

When I was in Arusha, a lawyer told me he thought I was crazy when we were in the middle of the trial! Their judgments take time and the penalties are not at all commensurate with the crimes committed. Or the killers are even acquitted.

The argument that trials should take place in Rwanda is broadly shared by survivors living outside Rwanda, and members of the associations which represent their interests. “The largest number possible should be tried in Rwanda”, emphasized Martine Beckers. Dominique, living in Norway, described extradition to Rwanda “as the ideal solution.”

Genocide was committed in Rwanda, by Rwandese and against Rwandese. Real justice demands that the torturer be tried in front of his victims and his accomplices where the crime was committed. Moreover, when the victims of genocide look at their torturers dressed in a suit and tie, be it in the tribunals in Arusha or in Europe, they have the impression that what they are witnessing is an absence of justice, impunity pure and simple.

Victims interviewed agree that where the extradition of genocide suspects to Rwanda encounters legal obstacles, such as the absence of an extradition treaty, efforts should be undertaken to conclude such a treaty and to facilitate extradition. The lack of an extradition treaty or other obstacles must not be used as an excuse to do nothing. Where countries providing a safe haven to genocide suspects do not extradite suspects to Rwanda, they must make sure to hold them accountable before their own courts on the basis of universal jurisdiction, as impunity cannot be an option. Martine Beckers has said:

The trials also need to take place outside Belgium, in other European countries, in America, in Asia, in Africa, everywhere where suspects are hiding. They raise awareness about what happened in Rwanda and can respond to an essential part of our struggle, which is that none of the alleged génocidaires should feel safe anywhere in the world.<sup>120</sup>

Domestic prosecutions show a seriousness of purpose, namely that the Government and public will not tolerate the presence of men and women with the blood of innocent people on their hands living in their midst. They also help to educate the public about the crime of genocide by revealing the human story behind the statistics, and thereby create an understanding and an awareness that can lead to protection of human rights and national and international action to prevent future genocides.

---

<sup>120</sup> Martine Beckers at African Rights & REDRESS conference “The Extradition of Rwandese Genocide Suspects to Rwanda- Issues and Challenges”, Belgian Parliament, Brussels, 1 July 2008.

## 6

### **A LACK OF ATTENTION Rape And Sexual Violence**

Throughout the genocide, rape was used systematically and routinely against Tutsi women as a weapon to further political and military goals. The very young, including children aged five, as well as women in their seventies, were subjected to rape, often repeated assaults, sexual tortures and gang-rape. Married women, including many who were pregnant at the time, were raped in front of their husbands and father-in-laws, and mothers were raped together with their daughters, sometimes in front of very young children. Women were raped in their homes, in the fields and in places of refuge such as churches, hospitals, schools and camps for the displaced, often after they had suffered unimaginable physical torture. Many subsequently died. Others were kept as “wives” for the duration of the genocide, and some were taken forcibly across the border into the camps in Tanzania, the DRC or Burundi. They were violated by strangers, as well as neighbours, friends and people with whom they had previously interacted in an official capacity.

Often these crimes had no overtly “sexual” component. Rather they were used to terrorise, dishonour, demoralise and divide the targeted group. The advocates of genocide—politicians, soldiers, local government officials and, amongst others, journalists—were offered the chance to rape and keep Tutsi women as an incentive, as well as a reward for taking part in the killings.

As intended, the policy of rape has had profound long-term consequences for the victims. A substantial number of the women became pregnant as a result of the rape, creating unbearable tensions with their surviving relatives who frequently disowned them and their children. Most important of all, HIV/AIDS is widespread amongst female survivors, who must also contend with ill-health, the psychological repercussions of the trauma they experienced, poverty, social isolation and the stigma of rape and HIV/AIDS.

Traditionally rape during war and conflict was seen as a “private” crime, the act of an individual, and an excess of warfare, rather than an integral part of operations. However, recent developments in international law, driven in particular by the ICTR and its sister tribunal, the International Criminal Tribunal for the former Yugoslavia (ICTY) mean that rape can now be prosecuted as a war crime, a crime against humanity, or as an act of torture or genocide.

This chapter discusses how Rwanda and the ICTR, which have put Rwandese genocide suspects on trial, have addressed gender violence in 1994, and what the women who entrusted them with painful histories make of what they have so far achieved.

## **Domestic Prosecutions: Little to Show**

Rwanda's laws on genocide justice reflect a determination to address crimes of sexual torture in a serious manner. Those responsible for rape and violence of a sexual nature were placed in the "first category", subject to the most severe sentences. And when the law on gacaca was introduced, rape was made a category one crime that could not be dealt with by gacaca but was left to the classical courts. Gacaca judges were told to verify what had been said, as far as they were able to, and to forward the information to the ordinary courts in a discreet manner.

Awareness of the firm legal ground for their claims may well have encouraged women to bring charges against their persecutors when they might otherwise have kept silent. However, even in such a receptive context, rape is a uniquely difficult crime to prosecute and in the process women may refuse to testify so as to avoid further humiliation and pain for themselves and their families. Married women, or those who have married since 1994, are understandably reluctant to be associated with rape cases. The reality is that very few of the hundreds of women interviewed by *African Rights* since 1994, including those who spoke to *African Rights* and REDRESS for this report, have seen their abusers prosecuted, and even fewer were willing to come forward.

In a study published in 2004, *Broken Bodies, Torn Spirits: Living with Genocide, Rape and HIV/AIDS*, based on interviews with more than 100 genocide rape survivors in Rwanda, *African Rights* found that one of the great problems is the fact that many of them do not know the identity of the men who raped them. Others remain in exile abroad. Some women have, of course, resorted to the courts, despite pressure from their families and friends, and harassment from the relatives of the men they identified, or directly from the men themselves. Some later gave up, demoralized by the long delays in the administration of justice, the release of prisoners or the lack of legal assistance.

One woman who demanded justice, and who we interviewed in 2003, and again in 2008, is Janvière, living in Gitarama, her determination sharpened by the knowledge that she had contracted HIV/AIDS. But one of the men in question was not only released from prison in 2003, but is now her neighbour.

I went to Ibuka to ask them to re-examine the case and take it to the public prosecutor's office in Gitarama. The others were sent to prison except for the one who raped me. I made a follow-up request in September 2007 and the prosecutor's office promised they would revisit the case, but up until now they have done nothing.

What happened next is revealing about attitudes to rape.

The man came and asked me for forgiveness, saying that he would buy me 30,000 francs worth of beer. I told him that what he did to me could not be resolved by 30,000 francs, and that what I wanted was to see him punished by the law. When I go to take my antiretroviral medication I bump into his wife who takes them in the same place.

Another man who raped me grew up in Cyangugu. I gave this information to the public prosecution's office in Gitarama, but nobody did anything about it.

Because she believes that they will be released, Laetitia in Gitarama sees no reason to "look for the energy", as she put it, to pursue the men who subjected her to sexual torment.

The people who committed rape will be set free, just as all the others have been, which is why I don't want to bother myself testifying against those who raped me.

Costasie, 54, a genocide widow living in Nyamata, Bugesera, did not hesitate to go to court and bring charges against the man who raped her and who she holds responsible for infecting her with HIV/AIDS.

He was imprisoned in Rilima, either in 2005 or 2006.

In 2007, she was summoned by the relevant gacaca at the sectoral level. She insisted on a closed hearing with only herself, the judges and the friend who accompanied her.

I had to ask for this because the *inyangamugayo* wanted a public trial, contrary to the rules for such trials. He was given a life sentence and the verdict was read in my presence.

Her relief, though, was short-lived.

To my shock, he was released after only three or four months. I don't know why. I would have been the first to be informed, had he appealed. But to my knowledge, he never did.

Costasie did not know where to turn when it became clear that her private pain was public knowledge.

The *inyangamugayo* who had tried the case circulated the information throughout my neighbourhood. Wherever I went, people mocked and made fun of me. It affected me so much that I became sick and remained bed-ridden for a long time.

She was even more bewildered when a survivor turned up at her doorstep with a message of apology and a promise of 100,000 francs from the prisoner who was now a free man.

I could not believe it; I thought I was dreaming. I very quickly chased him out of my house and told him never to set foot in my home again. Then the man himself turned up, asked me to forgive him and to try and forget the wrong he had done me.

She spoke eloquently about the cost of these events on her welfare and stability.

This whole episode really drained me and I don't want to talk about it anymore. I told the story to someone from Ibuka and he told me to go and report to the National Service of Gacaca Courts. I did not go and I don't think I will. Gacaca has already put me through enough. What can I possibly tell the people who put this impossible system in place? Should I knowingly hurt myself further? I have nothing else to lose, and only God can

provide justice; he is the only one who knows of my suffering. I am still tormented up to today. How can they let him out of prison without giving me a reason and before he could serve his sentence?

Understandably, she wants nothing further to do with gacaca.

Nothing in the world will make me go before these so-called judges who make us suffer as if what we went through during the genocide was not enough. If ever their conscience pricks them, and they arrest him again, I would prefer that they do not bother calling me to testify because I will not go; they should use the testimony I gave them before. They don't know how to keep a secret even though they are sworn to professional secrecy. The worst thing is that they are not even punished by their superiors when they do something like that. A person's dignity and reputation are sacred; no one has the right to destroy them whenever they feel like it. Frankly, I think this story speaks for itself and I should say no more. I do not want to continue talking about these terrible courts.

Despite the emphasis on punishing rape, interviewee after interviewee pointed the finger at men who have never been arrested, some of whom are working in government institutions. Drocella, who was raped in Butare town as well as in Nkubi, on the outskirts of Butare town, spoke of the many she believes are still at large.

In our sector, the persons accused of rape are very numerous, in Nkubi and in Butare town. Those that I named are those who raped me, or those who I saw rape others. Some are still in their functions, including a soldier who lived at ESO<sup>121</sup> who participated in the massacres and raped women. He is still in the military and is now serving in Darfur.

### ***Should Rape Be Judged by Gacaca ?***

As a result of the recent expansion of gacaca which will allow it to adjudicate category one cases, genocide rape cases will in future be handled by gacaca, a decision that has proved unpopular with many victims.

Chantal is herself a gacaca judge though not in the area where she lived and was raped in 1994. She has not brought any prosecutions for rape, saying that the men in question have either abandoned their place or origin or have died.

But even if they were still alive, I don't ever want to face them. I don't know what is happening in gacaca at home as I don't go there often, and I did not attend the sessions there.

Now living with HIV/AIDS, she finds it hard to conceive of a fitting punishment for the men she blames.

Since the death penalty has been abolished, they should at the very least get life sentences.

She is adamant that gacaca is no place to discuss the crime of genocide.

---

<sup>121</sup> Academy for Non-Commissioned Officers in Butare town.

Most of the victims I know don't want to hear that those responsible for rape will be judged by gacaca. I agree with them. The day this happens, I will ask for permission not to be among the judges, and I will recommend that the sessions should be held behind closed doors. It's not easy to take part in hearings about rape when I went through it myself. I worry that I would be traumatised.

Janvière too is opposed to rape trials at gacaca, saying it was "unacceptable."

It's very embarrassing to confront the perpetrator of such a crime in front of the judges and the public. We have to follow what is laid down by the State, but that does not mean we agree with all of its decisions.

At a minimum, she said, "those who cast judgement upon offences relating to sexual violence in gacaca courts should take into consideration the rights and dignity of the human being."

The State should also be on hand to support the victim who may be traumatised. Our hearts are filled with anger, resentment and frustration.

As a gacaca judge, in Gitarama, Immaculée cannot imagine what she would have done if she had to pass judgement on the man who was imprisoned after she accused him of rape. Because he died in prison, she was spared that ordeal.

I would have been ashamed to judge him, especially in front of an audience. I'm officially married. I was raped by interahamwe, but it remains my secret. My husband doesn't know that I was raped by the interahamwe. Trying rape crimes in gacaca could lead to divorce or separation because it degrades the women.

Like Immaculée, Yolande, who lives in Butare, is both a victim of rape and a gacaca judge; she too was able to put rapists, two men, behind bars. She is so unwilling to see them walk free that she is prepared to challenge them in the open.

As a witness, it's really difficult for me to testify in public because it concerns my innermost life. But I'll try to do it because I can't allow them to be released after everything they did. Holding hearings closed to the public would help us to speak in comfort, and if necessary, the judges could call additional witnesses.

Agnès, who was 25 in 1994, was raped many times by men she did not know, both in the house where she was hiding and at Sainte Famille Parish in Kigali. She has testified in Arusha against Lt.Col. Tharcisse Renzaho because she holds him as "partly responsible for what happened to me."

As the préfet of Kigali, he was coordinating the genocide in the city and was the leader of the génocidaires.

Although Renzaho's trial is still in progress, she has little expectation about the outcome, mainly because of her poor impressions during her stay in Arusha. She is less concerned

about Arusha, in part because she feels that survivors lack the international clout that would give weight to their demands, but mainly because the justice arena that concerns her the most is Rwanda. Now living in Ruhengeri, she is unhappy, like so many others, about what she sees as a failure to seek the opinions of the victims themselves before policies were formulated.

There is a Kinyarwanda proverb that says: “*Ugukanira ni we umenya urugukwiye*”, which loosely translated means, “it’s your tailor who knows your measurements.” I don’t think this is the case for the justice system when it comes to sexual violence. The Government took its decisions and then asked our opinion afterwards.

She is strongly opposed to a discussion of rape in gacaca.

Sexual violence concerns the most personal aspects of one’s life and therefore can not be discussed with just anybody. Even with doctors, it is up to you to choose which doctor to confide in. But in the gacaca courts, you have no choice in the matter.

The *inyangamugayo* are part of the public as far as the victim is concerned; they are strangers to her. So it won’t be easy to be so open about your personal life to them. And if the accused denies the charges against him, how will the victim convince the judges since there are no other witnesses to a rape?

Leaving with the memory of sexual violence is a huge load to carry. You can’t just go and speak in front of strangers you don’t trust. It is particularly unimaginable for a married woman. And if there are eyewitnesses, it could upset the families or further hurt the victim.

Suspicious about the *inyangamugayo* themselves also serve to harden attitudes.

Many of the judges participated in the genocide or have close members of their families who did. Can you therefore imagine the humiliation the victims will suffer for the second time, in front of the judges and even worse, in public!

Here in Ruhengeri, this decision was badly received by the women and girls who have been raped, and even by those who were not. Also, many of them don’t know the people who raped them, meaning they have no right to justice, not very different from those who do know their rapists. We didn’t even think about pleading our case to the National Service of Gacaca because it would be a waste of time to do so; they will not solve our problems.<sup>122</sup>

When she left her home in commune Kanzenze to visit a relative in the centre of Nyamata, just prior to the genocide, Delphine was 12 and she had seven brothers and sisters. They were killed, along with their parents. Delphine spent some time with a family who lived close to the home of her relative. The husband raped and beat her along with another girl. She was also raped by others. She wants, above all, to see them punished for what they put her through. She regrets that she does not know most of them,

---

<sup>122</sup> Interviewed in Ruhengeri, 9 September 2008.

and that the one man she did know has died. But for now, she prefers to concentrate on bringing up her children.

It's really tough to talk about rape, especially because the facts overwhelm us. I, personally, cannot because it disturbs me so much and I must focus on seeing to our survival, mine and that of my children.

Such is her desire to "point out the offenders" that, under the right circumstances, she is convinced that she could muster the strength to face them. But gacaca does not, in her view, create the right conditions.

Women must tell their stories to the parents of the génocidaires who in turn go and regale the entire village with the story. The Government should have thought about the victim's reputation and dignity.

The question of justice for rape cases was not well studied. As a consequence, the relevant decisions have not been efficient. In theory, rape is taken as a very serious crime which places the perpetrator in the first category. But in practice, he is treated like a minor criminal who does not deserve much attention.

With time, Delphine finds that she is more preoccupied than ever before with the consequences of the rape, and of the genocide in general. At the same time, she feels increasingly powerless to affect change.

I am sickly and living in very terrible conditions. I don't have the time to follow up justice like I should, to reclaim my rights. So I try not to think about it all, especially knowing that it's a waste of time.

She called for a reform of the law as it pertains to sexual crimes.

The law on gacaca has been modified so many times, it wouldn't be a crime to do so one more time in order to give rape victims back their rights. If not, the genocide will be an eternal crime. I hope, sooner or later, that we or our children will get the justice we have been fighting for so long.

When *African Rights* first interviewed Euphrasie in 2003 about her efforts to put the men who raped her on trial, she was despondent and said that she was "shattered from repeating her testimony" to no avail. She was violated when she was 53 and felt even more vulnerable by the loss of her husband and three children. Five years later, in September 2008, she was even more pessimistic and reluctant to speak.

I heard that the man died, but I'm not sure if this is true. He was in Rilima prison for other crimes related to the genocide. But a Hutu woman told me that they had lied to me and that he is still in Rilima, but I didn't go there to check and accuse him because I'm ashamed. How can an old woman like me go and say she was raped? It is too embarrassing. I still don't have the courage to denounce him even today.

She has no intentions of going to gacaca.

I will not do that, not only because of the shame, but also because I have no hope that he will be punished. In case he is not, I will have told my secret and exposed myself for nothing. I might have gone to the classical court, but I've been told that these courts are no longer trying genocide crimes. Instead of telling the *inyangamugayo* stories I should not be telling them, I prefer to let the rapist remain free. I know that I might regret it one day, but I have no choice.

Phidentia, who had recently given birth, was grateful when neighbours agreed to take her and some of her younger children into their home in Nyamata to wait out the genocide. But it soon became clear that they could not protect them and she gladly accepted the offer of their son, aged 18, to accompany her and her two children to the nearby Catholic Parish of Ntarama. On the way, he made her stop at a bar, and for the next two days he raped her at his convenience. After seeing what a friend, who filed rape charges in gacaca had to endure, Phidentia does not plan to follow suit.

The trial was conducted in private, yes. But people were listening in from behind the windows and no one told them to leave. The man was sentenced to life in prison, but he was released a few months later. Nobody knows why he was let out or who authorised it. He pleaded not guilty before the judges, although I doubt anyone can plead guilty to rape because the sentence is life imprisonment. Not only had I escorted her, but I was among the people who told her to prosecute him. The news of my colleague's rape went around the whole neighbourhood. She now blames me for having convinced her to testify. She was, and still is, frustrated by his release. After this, I could never think of taking my case to gacaca. I don't want my children to hear about it. I want justice, but the risks involved are only ours to bear. At the end of the day, our secret is divulged for no purpose whatsoever.

What holds Phidentia back even more is the interpretation that has been put on the delay in reporting rape.

Many of the rape victims had not yet reported this abominable crime. They were ashamed of doing so. Now, when they do, the judges say they are lying and ask them why they waited all this time. It's already a great sacrifice for the woman to tell these untrustworthy people that she was raped. As if that is not enough, they compound it all by reducing her ordeal to a lie. How are we supposed to convince the judges? What proof, apart from our word, do we have? Maybe they think it fills us with pleasure to go around telling lies about being raped. What could we possibly have to gain from doing that?

It is too late to convince Phidentia that she can look to gacaca for justice.

If they had tried rape cases when gacaca started, maybe we would have said something. We still believed then that the justice system would do its job. We didn't think it was possible for the génocidaires to get off easy. It is now, years after gacaca has been functioning, that they decide to try a crime as terrible as rape? After we have lost all hope in the justice system? I in fact spoke about the rape when they were collecting information, but that file had been locked up in a box and it was never spoken of again. Now that I don't trust gacaca, I can not expose myself to ridicule for nothing again.

Phidentia is willing to change her mind, but she has set conditions.

Rape cases should be tried by very honest *inyangamugayo* from different regions, or by creating special courts and letting us elect *inyangamugayo* in whom we have confidence because we believe that they can guard our secrets with care. So, for example, we could use *inyangamugayo* from Butare here in Nyamata. But first we must establish that they don't know the people in Nyamata and so won't reveal what they heard. It is also very necessary to make sure they are very honest.

Enatha was gang-raped and beaten with a club studded with nails by one man she knew and two strangers in her home area of Nyamata. They remain in exile, and this, added to the fact that she has contracted HIV/AIDS makes the prospect of seeking justice through gacaca a distant one.

To be able to accuse a person of a rape crime requires extraordinary courage. We cannot expose ourselves to scorn by going to tell our stories to the *inyangamugayo*. Those of us who did not file charges against the people who raped us before are worried that we will be accused of inventing stories because we did not speak up before. Even rapists who are dead, and those who are outside the country, should be put on trial, which is the case for the other crimes of genocide tried by gacaca. But we cannot put ourselves out without being sure that at least those who are around will be punished.

Just knowing that the rapists who are not in Rwanda will go free crushes me because rape is such a cruel crime. Sometimes I console myself with the fact that even if I had known them, and they were here, I would not have received justice and that would have frustrated me even more. It hurts me that nobody is really interested in getting justice for rape victims, that no one is trying to find the men and punish them.

If the will existed, she cannot understand how women like her could be asked to speak to people they do not know.

The country's decision makers know that in Rwandese culture you cannot bring up something like this openly with people you don't trust. Perhaps it is a strategy not to have to imprison many people for a long time since the sentence for rape is life imprisonment.

What she hears and sees has convinced Enatha to remain silent, whatever the cost.

Rape trials are supposed to be closed hearings, but it is not a secret when you tell someone who you neither know, nor trust. The *inyangamugayo*, who are sworn to secrecy, only wait until they leave the court room before they begin spreading the news. I don't think the law even fines these judges. We have lost value. The uppermost thing on my mind today is to try and live a healthy life like others, but here too, I have no hope.

She proposed the creation of special courts "with judges elected by the victims."

At least then we can choose people we trust.

For Clarisse, raped in Kibungo in front of her children, the consequences have taken on a specially painful dimension.

My children are now grown up, but they have never forgotten. My youngest always tells me that he wants to report the crime to gacaca, but I stop him, telling him it is useless because the culprit is dead. Deep inside, I fear the humiliation I would suffer if my story was told to all my neighbours. I went to accuse him before the gacaca in his cellule, but they told me that he was already in prison on charges of genocide in the first category and therefore could be given no greater punishment. He died last year before he could be tried. Sometimes I feel like I was lucky and that God punished him in his own way.

Like other women, Clarisse struggles with a range of contradictory emotions, intentions and wishes.

If he was still alive, I would have gone to gacaca even though it's not an easy thing to discuss before a public. Maybe I feel this way now because I don't have to do it. But I can imagine how hard it must be for those who still have to face up to it. Many of them simply want to let it go because of the high risk that they will achieve nothing, considering what normally happens in gacaca. Our feelings should have been taken into consideration before decisions were made. But our sense of satisfaction does not seem to have mattered. Even though they say there will be closed trials, the problem still remains because we don't have faith in the *inyangamugayo*. For the most part, they have some relationship with genocide suspects and therefore it would not be long before they spread the news.

I was very affected by what was done to me and I think I would stop at nothing to prosecute the person who is responsible for my suffering, despite the inevitable sacrifices and humiliation. We are torn between wanting to bring our rapists to justice and the fear of failure. We believe that justice will not be served and our stories will have been told for nothing. We are also afraid that retelling our stories will plunge us back into the past, causing us additional trauma.

## **The ICTR: Ground-Breaking Jurisprudence and a Poor Case History**

The mandate of the ICTR includes sexual violence, but it is here that its record for serious investigations, prosecutions and convictions is particularly disappointing.

The ICTR judgement in *Prosecutor v Akayesu* is perhaps one of the most progressive rulings on sexual violence during conflict in international law, and remains a watershed in the judgements of the ICTR. Brought by the Office of the Prosecutor (OTP) in 1996 against Jean-Paul Akayesu, the former bourgmestre of Taba commune, the initial indictment included no charges of rape or sexual violence. However, during trial the testimonies of witnesses to rape, coupled with the filing of an *amicus curiae* by the NGO Coalition for Women's Human Rights in Conflict Situations and high profile pressure from a number of other human rights groups, convinced Judge Pillay, the only female judge at the ICTR at the time, to suggest that the OTP open up an investigation of gender crimes in Taba commune during the genocide. The extensive evidence of Akayesu's encouragement of both individual and gang rape, as well as forced nudity, resulted in the submission of an amended indictment by the prosecutor on June 17 1997 that included charges of rape and other inhumane acts characterised as crimes against humanity, and that referenced rape in the counts of genocide.

One year later the judgement delivered provided a solid, innovative and extensive foundation for the further prosecution of charges of sexual violence, including rape. The Trial Chamber adopted a wide definition of rape and sexual violence which was defined as including acts that did not involve physical contact such as forced nudity. Working within these broadened definitions, the chamber found Akayesu criminally responsible for forced nudity and guilty of rape as a crime against humanity. Even more revolutionary was the conviction of Akayesu of rape as a crime of genocide. The Trial Chamber found that the systematic use of rape in Taba commune with the intent of destroying, physically or mentally, the Tutsi group constituted genocide.

However, though the *Akayesu* judgement delivered by the ICTR was ground-breaking in advancing gender jurisprudence worldwide, the record of prosecutions and convictions on rape charges reveals that crimes of sexual violence have rarely been viewed as central to the prosecution strategy. A number of cases demonstrate the relatively low priority given to rape charges. Even in *Akayesu*, and later in *Prosecutor v Musema*, which delivered a guilty verdict for rape as a crime against humanity, rape charges were added to the original indictment rather than being an integral part of the prosecution from the start. The *Musema* conviction for rape was overturned on appeal in November 2001 for lack of evidence beyond reasonable doubt.

The political will of the Chief Prosecutor has proved instrumental to the success of rape indictments and prosecutions at the ICTR. In directing the prosecution strategy, the chief prosecutors have a fundamental impact on the prosecution of rape. Louise Arbour in particular was crucial in advancing gender jurisprudence during her tenure, making the issue a policy priority within the OTP and demonstrating a commitment to prosecute rape charges at the highest level. The renewed commitment to prosecuting gender crimes resulted in the amendment of a number of previous indictments to include rape whilst many new indictments incorporated rape in their initial charges. The sexual assault investigations team was also given new impetus.

These advances, however, also resulted in a number of rape charges being brought without sufficient evidence to secure a conviction, and the sexual assault investigations team continued to be under funded considering the breadth of its mandate. Throughout the following tenure of prosecutor Carla Del Ponte, who took office in September 1999, there was little commitment to the prosecution of rape and other gender crimes, to the extent that a number of rape charges were dropped and a number of cases proceeded without rape charges even though the OTP possessed extensive evidence. Prosecution of sexual crimes became secondary to scheduling considerations and speed.

In late 2003 Hassan Jallow took over as the fourth and final prosecutor, expressing a commitment to renewed focus on the issue of sexual violence. So far he has had a mixed record. Whilst he has achieved a number of convictions and brought charges of rape as a crime against humanity against a woman for the first time, he also missed the deadline in 2003 to appeal rape charges in the *Kajerijeri* case and omitted sexual violence from the topics covered at the 2004 meetings discussing the prosecution and completion strategy

for the OTP at the ICTR. The sexual assault team continues to be under-funded, and lack of evidence persists as a crucial problem in securing rape convictions.

A number of rape charges have not been brought at all by the OTP, despite extensive evidence. The *Cyangugu* case contained extensive evidence of individual and group rape, particularly against military commander Samuel Imanishimwe who not only raped a woman himself but also killed a woman by inserting a pistol into her vagina and shooting her, yet no charges were brought. In September 1999 a motion to add sexual violence charges to the original indictment was filed. However, before the judges had a chance to rule on the motion, the chief prosecutor Carla Del Ponte requested that the charges be withdrawn. During trial, the judges barred rape testimony on the grounds that it concerned charges not filed in the indictment, and, following the filing of an *amicus curae* brief by the Coalition for Women's Human Rights in Conflict Situations in March 2001, the court declined to exercise their authority under rule 25 of the ICTR statute to call upon the prosecutor to review the evidence presented and to amend the indictment to include rape charges. The OTP also filed a response, calling upon the court to deny the *amicus curae*. The *Cyangugu* case closed without rape charges ever being brought, sending a clear signal that charges of sexual violence were not considered sufficiently grave to warrant the attention of either the court or the OTP at the ICTR.

The *Media Trial* provides another example of the OTP refusing to bring charges of sexual violence even though it had ample evidence. However, none of the three media executives, two of them founders of the radio station RTL, the third the editor of *Kangura* newspaper, were held responsible for their role in provoking widespread sexual violence against Tutsi women and girls by portraying them as seductive enemy agents and focussing almost exclusively on their sexuality. The OTP did not bring any charges of sexual violence against the accused, paying scant attention to the impact of gender propaganda despite strong evidence that it was a driving factor behind mass rape and other sexual aggressions during the genocide. Even the judgement acknowledged the importance of the media, stating that the sexual assault and rape of Tutsi women and girls was a "foreseeable consequence" of their overtly sexual portrayal in the media. Again the prosecutor sent the message that attaining justice for rape and other forms of sexual violence was not a priority at the ICTR.

Equally discouraging is the frequent withdrawal of rape charges by the OTP. In May 2003 the Prosecution requested a withdrawal of rape charges and charges of superior responsibility against Emmanuel Ndinidabahazi, the Minister of Finance in the interim government, and in several other cases it appears that rape charges have been dropped in exchange for co-operation of the accused with the tribunal as part of their guilty plea. Omar Serushago was accused of rape as a crime against humanity, amongst other counts, but rape charges were left out of his indictment when he submitted his guilty plea, giving priority to other counts. Similarly in the cases of *Muvunyi*, *Bisengimana* and *Nzabarinda* the accused pleaded guilty and rape charges were dropped.

The high rate of acquittals on charges of sexual violence at the ICTR is an indication of the extent to which it has failed to secure justice on behalf of the Rwandese victims of

rape. In *Kamuhanda*, *Nahimana*, *Kajerijeri* and *Niyitegeka* the accused were all acquitted of rape. Despite strong evidence which could have resulted in conviction, the OTP failed to appeal the *Niyitegeka*, *Kamuhanda* or *Kajerijeri* rape acquittals. In particular, the failure to appeal the *Kajerijeri* conviction points to a lack of commitment in prosecuting crimes of sexual violence at the ICTR. The acquittal rested on a dispute over the credibility of one witness, and one of the chamber judges had written a strong dissenting opinion concerning the rape acquittal, all of which provided a strong basis for appeal. However, through negligence the OTP missed the deadline to submit an appeal request. By the tenth anniversary of the Tribunal, ninety percent of completed cases had no sexual violence convictions at all. In seventy percent of these cases the OTP had not even brought charges of sexual violence.

Whilst the ICTR has had little practical success in prosecuting rape and other forms of sexual violence, a number of its jurisprudential developments, particularly those concerning the definition of rape in international criminal law and the assessment of what constitutes individual or command responsibility, could lay the foundation for more successful prosecutions in the future. The *Akeyesu* judgement was groundbreaking in advancing gender jurisprudence in both its finding of rape as genocide, but also on the counts it did not convict on, such as rape as torture. Though Akeyesu was not convicted on this count, the chamber did state that rape can constitute torture as both are violations of personal dignity. The ICTR widened the definition of rape in international criminal law to take into account the particular exigencies of armed conflict or genocide. In the case of *Muhimana*, the chamber reaffirmed this wider definition, deeming that genocide or armed conflict can create a generally coercive environment which then obviates the need for evidence of non-consent in finding an accused guilty of rape as a crime against humanity, as a war crime, or as genocide.

Notwithstanding the use of an expanded definition of rape, convictions for crimes of sexual violence still demand an extremely high burden of proof. This is particularly clear when seeking to prove individual or command responsibility for sexual crimes. In *Prosecutor vs Karemera et al*, following the International Criminal Tribunal for Former Yugoslavia, the ICTR has begun to prosecute crimes, including rape, under the newly articulated individual responsibility theory of Joint Criminal Enterprise (JCE). Under this theory, an individual may be held criminally responsible for a wider variety of events than just those for which he could be held individually or command responsible. By viewing rape within the context of and overarching plan of extermination, the OTP can avoid some of the heavy evidentiary burdens associated with securing convictions for rape or sexual violence by requiring that the prosecution establish that a particular crime or set of crimes was a clearly foreseeable by-product of a joint criminal enterprise, in the case of prosecutions before the ICTR, involving genocidal intent. The indictment against Edouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera, three top officials in the interim government, includes rape charges brought explicitly on the basis of this theory.

In common with rape survivors from Cyangugu, Assumpta cannot understand why the ICTR failed to hold Emmanuel Bagambiki, the préfet of Cyangugu, responsible for the extensive rapes committed by the militiamen who acted under his commands.

I became suspicious about the ICTR as soon as I arrived in Arusha. I told them that I wanted to speak about the rape which my daughter and I endured at the hands of the interahamwe who committed the massacre in Kadasomwa, just after the departure of Bagambiki. An employee of the ICTR stopped me from bringing up this crime, saying that it wouldn't have any impact on the charge against Bagambiki. But I, who had been the victim of this crime, I saw very clearly the relevance to the responsibility of Bagambiki.

A further problem associated with the ICTR is the harassment and degradation of witnesses by defence lawyers during cross-examination and the in-action by judges, in particular when questioning women who had been raped

Gisèle, who gave a first-hand account of rape during trials both in Arusha and in Canada, found the cross-examination an ordeal.

The defence lawyers asked us questions that are impossible to answer. When I was in Arusha, a lawyer told me he thought I was crazy when we were in the middle of the trial!

She saw other shortcomings at the ICTR.

Their judgments take time and the penalties are not at all commensurate with the crimes committed, or even the killers were acquitted.

## CIVIL REPARATIONS AND COMMUNITY SERVICE

As with other crimes prosecuted under Rwandan domestic law, survivors of genocide crimes are entitled to register as civil parties in criminal cases. This provides them with the opportunity to participate in the criminal process and to lodge claims for the damages they suffered in the context of the crimes being considered by the courts. When a perpetrator is found guilty, the judge has the possibility to award civil damages to the victims. The Organic Law on genocide proceedings provided in Article 29 that “victims acting either individually or through legally constituted associations for the defence of victims, represented by their legal representative or by a special representative designated according to their statutes, may request the commencement of a public prosecution by submitting a written petition setting out the grounds for the prosecution to the Public Prosecutor of the competent jurisdiction.”<sup>123</sup>

In the first years of the operation of the Organic Law, civil claimants registered to participate in proceedings in approximately 2/3 of all criminal cases before the specialised genocide chambers.<sup>124</sup> Civil parties faced numerous obstacles in lodging these claims for they lacked information about their rights, the procedures and key dates for trial appearances. There were also difficulties in obtaining death certificates and other key evidence and in getting to the court locations which may be far from their homes.<sup>125</sup> About half of those who applied for reparation in accordance with the Organic Law on the organisation of genocide proceedings received an award of damages. Compensation was awarded for moral grief and material prejudice. In many cases, the State was held jointly liable, given that the convicted perpetrators were state agents and/or because the state failed in its duty to end the killings.<sup>126</sup>

Virtually no claimants had actually received compensation even when it was awarded, since perpetrators were unwilling, insolvent or otherwise unable to pay, and no judgments against the state had been enforced when it has been held civilly responsible. This discouraged victims. Indeed, the 2001 Organic Law on the Gacaca Jurisdictions created a major hurdle for civil claimants seeking civil remedies when it made clear that “in return for the percentage of the annual budget that the State must reserve each year to the compensation fund, and having accepted its role in the genocide and crimes against humanity, any civil action filed against the State is to be declared inadmissible.”<sup>127</sup>

---

<sup>123</sup> Article 29, Organic law.

<sup>124</sup> Avocats sans Frontieres. L'état de la jurisprudence sur l'indemnisation liée au contentieux du génocide. Exposé donné lors du “ Séminaire sur l'indemnisation des victims du génocide”, organisé par le Ministère de la Justice du 3 au 4 avril 2000.

<sup>125</sup> ASF, *ibid.*

<sup>126</sup> ASF, *ibid.*

<sup>127</sup> Article 91(2) of the 2001 Law. See, generally, Heidy Rombouts and Stef Vandeginste. “Reparation for Victims in Rwanda: Caught Between Theory and Practice,” in *Out of the Ashes: Reparation for Victims of*

Consequently, compensation orders could only be made against convicted perpetrators in the specialised chambers.

The Government had drafted a second law on reparation for survivors of genocide. The premise of the draft law was the understanding that reparation in the form of material and moral damages could not practically be enforced exclusively through perpetrators. Initially the law was to work in conjunction with the Organic Law on the organisation of genocide proceedings, but with the introduction of the Gacaca Law, this draft law was re-oriented to work in conjunction with the gacaca courts. The 2001 Organic Law on the Gacaca Jurisdictions provides that the Gacaca judges are able to take an inventory of losses and make a finding on losses in accordance with the scale set out in the law on indemnification.<sup>128</sup> However, the indemnification law was never enacted, which meant that it didn't apply to the gacaca pilot phase. The revised Gacaca law of 2004 provided that the Gacaca courts have the jurisdiction to award compensation for purely material damages and that other losses and reparation issues would be dealt with by the Indemnification Fund (which has yet to be established).<sup>129</sup> Article 39 states that the Gacaca Jurisdictions have the competence to order restitution of the looted property, repayment of the value of the looted property, or carrying out work for the value of the looted property,<sup>130</sup> though this has to a large extent remained a paper remedy due to the lack of enforcement.

According to the Justice Minister, Tharcisse Karugarama, the Government has not abandoned plans to establish the Fund.

The law creating this Fund is now before the parliament. The procedures for implementation will begin as soon as the law is voted in.

Many survivors commented on the challenges relating to the non-enforcement of civil orders. Often, the perpetrators do not have the funds to pay for what they looted. For Marianne in Ruhengeri, the promises of reparation have yet to materialise.

Every time I turn to the administrative authorities to have these judgments enforced, the executive secretary often promises me that the property of those convicted will be coming to auction soon. We wait, but in vain.

Despite an order for payment from gacaca, Dismas in Cyangugu has yet to receive anything.

---

Gross Human Rights Violations, De Feyter, K., Parmentier, S., Bossuyt, M. & Lemmens P. (eds.). Intersentia, Antwerpen-Oxford, 2005.

<sup>128</sup> Rombouts and Vandeginste, supra., at 330.

<sup>129</sup> Rombouts, "Women and Reparations in Rwanda: A Long Path to Travel," in *What Happened to the Women: Gender and Reparations for Human Rights*, Ruth Rubio-Marin (ed.) Social Science Research Council, 2006.

<sup>130</sup> Article 94 of the 2004 Gacaca Law provides that cases relating to damaged property can be brought before the Gacaca Court of the Cell or other courts before which the defendants appear. The judges are competent to award restitution of the looted property looted, repayment of the value of the looted property, or carrying out work for the value of the looted property.

The defendants show no will to comply, saying they are poor.

Véronique, a gacaca judge who deals with property issues in Kibeho, Gikongoro, summed up the lack of progress in her cellule.

Despite the verdicts, no one pays for the goods they took or damaged. We simply write down the judgments in booklets because we have no forms designed specifically for this. In our cellule only two people have admitted pillaging and damaging goods.

Many survivors have queried the logic of the civil reparations process, which for the most part has not yielded results. Bellancille asked a question that is on the mind of many survivors.

If the Government realizes that the looters don't have the means to materially repay the survivors, why do they allow us to reclaim our possessions?"

Bellancille, who lives in Cyangugu, said she had made up her mind to forego claims to her family's property, "but on condition that the people responsible for taking what we had make the first move and ask for pardon." While she was waiting, she was approached by another survivor who advised her "to drop her claims against looters who cannot pay in the interests of reconciliation." She does not know if he was stating his own opinion, or reflecting an official campaign. But she, in any case, raised concerns about the Government's failure to step in when perpetrators are too indigent to pay.

Given that genocide is a collective crime and occurred because of the actions of the government in place, the current government should find another way to provide reparation to survivors.

Louis of Ibuka made a similar appeal.

It is obvious that most genocide suspects don't have the resources to return the possessions of the victims of the genocide. It is also the inalienable right of survivors to ask for their possessions. So it is up to the Government to establish a fund dedicated to material reparations.

The lack of enforcement is not only due to the indigence of perpetrators. Another problem noted by numerous survivors contacted in the course of this survey relates more to technical failures on the part of the Government to put in place and implement effective measures capable of securing recovery of property and other assets. At times, commented Louis, the perpetrators sold their possessions despite civil orders, without any reaction from the Gacaca jurisdictions, because the national-level Gacaca body had not given them any instructions to seize the assets.

Buildings that belonged to Théodore Sindikubwabo, the president of the interim government during the genocide, and which were located in cellule Cyarwa, Tumba sector in Huye were sold without any response from the local administration or the service of the Gacaca jurisdictions. The same thing occurred with the buildings belonging

to Dr. Gatera [of Butare University Hospital]. No thought was given to compensation for victims who had lodged complaints in the courts, as they were legally entitled to do.

Louis himself had been granted rights against Dr. Gatera.

Personally, I was entitled to compensation equal to 3,500,000 Rwandan francs. When Gatera's things were sold, we pointed out that we were due compensation. We wrote a letter, but all the property was sold by his wife and we got nothing.

Fortunate to have an experienced lawyer, Laurent Nkongoli, at her side, Gisèle was awarded a similar sum against Dr. Gatera, though she too got nothing. It was money that she badly needed at the time.

During this period, we were really vulnerable then, still hurting from our wounds and we had no shelter. I was treated in Kigali in 2004 and the costs were paid by the ICTR as I was a witness against Shalom Nyiramasuhuko and his mother. When Gatera's things were sold, we pointed out we were owed compensation. The paralegal of Ibuka helped us and we wrote a letter. But all the property was sold and we received nothing. Gatera's property was sold by his wife. In fact, nobody has ever received compensation.

Some of the reasons that have brought about this impasse were mentioned by Louis.

Sometimes, the genocide suspects dared to say that the victims had nothing of value that could be looted or destroyed, or still, the judges accorded a very limited value to possessions such as a house whose value is estimated at 20.000frw.

Léandre blames what she called her "lack of influence" in her local area in Cyangugu for being denied what she regards as rightfully hers. She lost out, she said, because a gacaca judge had a competing interest.

One of the gacaca judges became a witness for the defendants. He had the backing of the whole assembly. When I saw that I had no support, I decided to abandon all the accusations that I had made against those who looted my belongings. Afterwards, I discovered that this judge, also a survivor, was against me because he also had a material claim against the people that I had accused. He had come to an agreement with them that they would only have to pay him.

Dr. Marc pointed to the responsibilities of the families of the perpetrators.

The issue of compensation represents a shortcoming not only in gacaca, but also under the old system. I agree with the principle of inheritance, but the heirs must accept the assets as well as the liabilities and not only the former. It seems inconceivable that a child, whose father has completely destroyed and stolen the goods of his Tutsi neighbour, can inherit his father's criminally acquired property and thus prevent any possibility for the victims to be compensated. I know of a young survivor who settled into the house of the man who had demolished his home and when the man's family arrived he said publicly, "I will only leave this house under one of the following two conditions: dead or else by going into an identical house to the one that you tore down." He is the only one I know of who has been successful in using this argument.

The Government could have, and should have, he said, done more to ease the burden on survivors.

The State could have simplified the problem of compensation by taking that responsibility in hand; establishing clear criteria for the rate of compensation depending on whether a human death was involved, a house destroyed (establishing categories to assess houses could be a possibility), the theft of domestic animals, etc. This would have avoided the discord and the deep resentment that can arise when the victim, in the middle of gacaca, must make a list of his losses and propose an amount of compensation, often in the presence of the murderers, who, obviously, want to avoid that or pay as little as possible.

Other survivors have been ridiculed or threatened when they have tried to enforce their civil judgments. François in Cyimbogo, Cyangugu, eventually gave up and knows of others who came to a similar conclusion.

The perpetrators have transformed these proceedings into some kind of joke. The survivors are fed up. Some have stopped requesting material reparation. I'm one of them. This doesn't mean that we don't need compensation. But, instead of being killed when chasing after such things, we prefer to forget about them.

Why, asked François, has the Government not used the property of wealthy perpetrators to "afford reparation to survivors."

There are high-level perpetrators who have a lot of possessions. Why shouldn't these be sold to create a fund for survivors? Genocide is a collective crime and one should envision collective material reparation. The international community should be mobilised to support this type of reparation.

For the most impoverished among survivors, like Emile in Kigali rural, the lack of compensation means that justice remains elusive.

For survivors whose homes were demolished and everything they had stolen, and who now live in a deplorable situation, the failure restitution makes it impossible to believe that gacaca is meting out equitable justice.

### **The Fund to Assist Survivors of the Genocide (FARG)**

In 1998, the Government adopted Law No. 02/98 establishing a national assistance fund for needy victims of genocide and massacres committed in Rwanda between 1 October 1990 and 31 December 1994 – the *Fonds d'Assistance aux Rescapés du Génocide* (FARG). Its beneficiaries are survivors of genocide and massacres who are in special need, especially orphans, widows and handicapped persons. It has funded a range of social projects such as education, health, housing, and income-generation. The fund is extra-judicial, having no bearing on claims before civil or criminal courts. Importantly,

this is said to enable it to reach ‘all’ survivors, without requiring attachment to a particular perpetrator who has been convicted by the courts. While the fund did provide critical assistance to many survivors, it is understood that difficulties in the management and administration of the fund have inhibited its activities.<sup>131</sup>

In general survivors have been relatively pleased with FARG though maintain that it should not be confounded with civil compensation and restitution which serve separate and different purposes to this humanitarian fund. Also, given the restrictions of the fund to “the most vulnerable”, many survivors with veritable needs are excluded, which can become contentious when resources are scarce. The privileging of survivors to the exclusion of other needy people in the community is also contentious. Roger, a FARG official, explained how he was falsely accused of collaborating with the FDLR by certain local officials who were angered when he excluded certain children from the beneficiary list because their parents were not genocide survivors.

## Community Service

An initiative borne of gacaca and known as TIG, *Les Travaux d'intérêt général*, or community service, has become a central feature of genocide justice. It is not, yet, part of Rwanda’s penal code, but the Government is considering its inclusion. Its conception and purpose was spelt out by Anastase Nabahire<sup>132</sup>, the Associate Executive Secretary of TIG.

After consultation with foreign countries, we learned that this type of sentence is only applied to minor offences. We nevertheless opted to use it for the crime of genocide because we think that it supports the policy of unity and reconciliation. In other words, those people who destroyed the country can play their part in its reconstruction, thanks to this measure. It’s called community service to differentiate between forced labour and TIG as a punishment.

The work, he said, “must absolutely be in the public interest”, and private citizens are barred from overseeing it. Those engaged in it may work on private properties, provided they are monitored by TIG and “the labour is in the interest of many persons, for example by working in the fields of widows or orphans.” For this, they are given a sum of money for food and housing.

At the time of the interview on 5 August 2008, Nabahire said 94,318 people had been sentenced to TIG, out of which 25,664 were living in camps and working on projects while another 11,000 worked during the day and went home at night. 3,000 had so far completed their sentence. His office did not know the whereabouts of another 43,367 people who should have been part of the programme. The responsibility for handing them

---

<sup>131</sup> See Rombouts, H. “Women and Reparations in Rwanda: A Long Path to Travel,” in What Happened to the Women: Gender and Reparations for Human Rights, Ruth Rubio-Marin (ed.) Social Science Research Council, 2006.

<sup>132</sup> Interviewed in Kigali, 5 August 2008.

over to TIG lies with local officials. Aware of the possibility of escape, he added that “a feasible way to keep people from evading their punishment has to be found.”

Prisoners whose sentence requires them to serve time in prison as well as TIG, are to go to prison *after* completing TIG which, given the fact that nearly half of the total number have never turned up to TIG, should be revisited. The latest version of the law governing gacaca provides that those sentenced to TIG, who show evidence of good conduct, may have the rest of their sentence converted to TIG.

The Executive Secretary of gacaca, Domitilla Mukantaganzwa, explained the rationale for the shifts in policy, stating that at the outset the TIG component of the sentence was served at the end of the prison sentence, but it became clear that this was not helping the problems with imprisonment, with illnesses like dysentery, regularly denounced by the Red Cross and other NGOs. “This is why we decided to reverse the system – TIG first, then the prison term”, she said. In 2008, there was a new amendment which got rid of the prison component of the sentence, replacing it simply with TIG. “In effect, it seemed wrong to put someone in prison for seven years after having finished seven years of TIG with good behaviour. So, it was decided that a perpetrator that properly completes his TIG term will continue with TIG instead of going back to prison. But it is conditional on the prisoner fully complying with the TIG requirements.”

Nabahire listed the achievements of TIG as of April 2008, adding that other projects had started in the last six months.

- The construction of 114 houses in hydraform brick and 1,124 houses in adobe brick for the survivors of the genocide. The quality of the bricks used depends on the means granted by the basic authority;
- 2,828 hectares of embankments to fight against erosion;
- Tracing of 83,481 square kilometres of roads;
- Repairs to 85,301 kilometres of existing roads;
- Planting of manioc on 6,700 hectares in the Southern Province;
- Cutting 6,000,000 stones for the construction of roads or houses.

While the work is of a public nature, he said there was also “a particular accent on survivors, even if it is insufficient, though that does not depend on us.”

The Minister of Justice, Tharcisse Karugarama, put TIG in the broader context of the Government’s policies.

Community service is not simply an arrangement between the State and prisoners without a place for the survivors. It is an aspect of the country’s general penal policy which is defined by the State, and not by a specific part of its population, for the benefit of the entire population as a whole.

In accordance with gacaca, TIG is a positive response to requests for forgiveness expressed by the guilty. In general, penal policy is not a matter between the perpetrator and the victim, but rather for society in its entirety. Community service is not only

relevant in genocide cases. It is now part of the new penal code which is still being assessed by parliament. We would like our penal policy not only to punish, but also to serve an educational purpose, and to reflect our will to make Rwanda a law-abiding State.

While most of the survivors who commented on TIG were critical of it in the context of genocide justice, Raymond in Kibungo was wholeheartedly in favour.

I agree entirely with this type of sentencing because I have always been against feeding so many prisoners without their defraying some of the cost. We are not dealing with disabled persons; the prisoners could very well have contributed if only by producing the goods they need in prison. Now, thanks to community service, the people who damaged the country can help to rebuild it.

He rejects the view that community service should focus on building houses for survivors.

I don't need them boasting that they had created something for the survivors, or to say: "We killed their relatives but we built houses for them." I prefer that they do work of public interest, like constructing bridges and roads that the State would have had to pay for and now can use the money saved to provide the survivors with the basic needs they were deprived of because of the genocide.

At the other end of the spectrum, the very idea of TIG is what Immaculée objects to.

Community service is a way to help them live. Génocidaires should serve their time in prison because they have not all understood even the reason for community service. Some of them say it's an easy way, invented by the Government, to free them. I must say that I totally agree with them. The more extreme describe it as a chore. In this they are completely wrong because there is no correlation between what they did and the sentences passed by the gacaca courts.

What TIG does, in the eyes of Laetitia, is to devalue the importance of the victims.

I don't see community service as a punishment. When they get to the village, all they do is bully us, saying that our testimonies against them were in vain. The death of a Tutsi, especially a survivor, is considered equivalent to that of a hen or a goat.

From her encounters as a gacaca judge in Gisenyi, Josephine concluded that "genocide victims don't like TIG" because "they can see that the killer is essentially free despite the sentence."

Chantal, a member of a gacaca jurisdiction in Butare, sees TIG as a strategy for minimising prisoners' sentences which she already regards as too lenient.

I don't think you can say that those convicted of genocide are serving their punishment when they go home. On our hill, I have yet to see any of them engaged in public interest work. It's true that the work is for the benefit of the public in the broad sense of the term. But I don't see how this relates specifically to a survivor deprived of all his material belongings and who has lost his family. Personally, I think that we should first think

about what these works bring to the victims of the crimes committed by these people. I can't do anything about it, but I am sick of the culture of impunity.

Dr. Marc also wants to see TIG more directly tied to the interests of survivors.

It doesn't do much for the victims. What they accomplish is not of any use to the survivors whose families they killed. This should have been conceived in a way to truly be helpful to the survivors; as such it would have constituted a good basis for the hoped for reconciliation.

## THE ROLE OF THE CHURCHES IN DOMESTIC AND INTERNATIONAL JUSTICE

The Christian Churches in Rwanda remain at the centre of a prolonged spiritual and social malaise associated with the 1994 genocide. Their duty to act in the interests of healing, justice and peace, although inherent in their own doctrine, has yet to be fulfilled here. That the Churches individually and collectively have the strength to make a substantial and sustained contribution to the creation of a just and tolerant society is beyond question. They provide the primary social institution beyond the ties of family in this overwhelmingly Christian nation. The Church reaches into every remote village in Rwanda. Almost the entire population of Rwanda is Christian, more than half of it Catholic.<sup>133</sup> The influence of the Church, especially the Catholic Church, stems from its close ties with the colonial administration and independent governments and its control over a dense network of missions, schools and health centres. As the strongest civic institution in Rwanda, the Church would seem to be ideally placed to lead the journey towards healing in post-genocide Rwanda.

In April 1994, the targets of the genocide, the Tutsi community, turned to the Church for sanctuary and protection, just as their parents and grandparents had done during earlier periods of anti-Tutsi violence. But in 1994 the génocidaires held nothing sacred. For the first time in the history of Rwanda, massacre after massacre took place all over the country in churches and the schools, health centres and other buildings adjacent to parishes, especially in Catholic parishes which sit on huge grounds.<sup>134</sup> Unspeakable atrocities were committed there. Hundreds of thousands of people were killed, sometimes burned alive. Catholic, Anglican, Adventist, Methodist and Pentecostal parishes—as well as mosques—bore the hallmarks of guns, grenades and fire in 1994 and bore testimony to the refugees' desperate battle for survival and their desire not to die without a struggle. The majority of these buildings have been cleaned and restored, so no visible traces of the horror remain. Memories and emotions cannot, however, be similarly erased; the demons of the genocide continue to haunt survivors.

Survivors' accounts sometimes emphasize the efforts of a priest, pastor or nun to protect their congregation.<sup>135</sup> But the most damaging aspect affecting survivors' attitude towards the Church has been the evidence of direct participation by clergy in the killings or their tacit support. Some recounted specific incidents of betrayal; others were shocked by examples which they had come to learn about. Some blame a betrayal by the clergy, or their fellow worshippers, but continue to trust in God. Often they have rejected their

---

<sup>133</sup> According to the 1991 Census.

<sup>134</sup> Massacres also took place in mosques.

<sup>135</sup> See *Tribute to Courage, December 2002*, African Rights.

original religion or its practices, but have clung to their Christian beliefs and sought new ways of worship. Survivors—including priests, nuns and the lay staff of various Churches—speak openly about their loss of faith in organised religion, prompted in large part by the silence of Church leaders in the face of mass slaughter.

Some bishops, priests, pastors and nuns have been arrested, prosecuted and convicted at the ICTR, or Belgium or in Rwanda; others are on trial or await trial in Rwanda and at the ICTR.<sup>136</sup> Clearly in this context a thorough review would be expected of any institution. But none of the Christian Church authorities have acknowledged the full extent of the problem, nor have they embarked upon an inquiry into the allegations and in only a few cases have churchpeople accused of genocide been arrested. Many continue to live and work in the Church outside Rwanda. While individual Church leaders have expressed condemnation or condolence, no thorough attempt has been made within the institutions to discover those responsible and facilitate justice. Even where there have been international convictions of Rwandese Catholic clergy on charges of genocide, the response of the Church was to express scepticism about the seriousness of the accusations.<sup>137</sup> This is compounded by the claim that the Church has been the target of a “defamation campaign”, which has not been substantiated and which is, in any case, irrelevant to the charges made by survivors and witnesses against particular Catholic clergy.<sup>138</sup>

The genocide left all denominations of the Church divided, leaderless, and with many of its clergymen scattered outside the country. Bishops, priests, nuns and other religious workers fled to the former Zaire and established a Church in exile in refugee camps in neighbouring countries. Over time, the churches were rebuilt and new leaders were appointed. Yet restoring the faith of survivors in the institution will take much longer and will require wholehearted efforts by Church authorities to actively co-operate with efforts to bring to justice those members of the clergy accused of genocide. Against this backdrop, the ability of the Church to play a role in reconciliation has been questioned both by clergy and survivors, as discussed in the following chapter.

Over the years, as Rwandese congregations met in prayer, there were regular opportunities for religious ministries to engage in efforts to repair social fractures, to

---

<sup>136</sup> See for example, *Rwanda: Death, Despair and Defiance*, August 1995 ; *Rwanda : Not So Innocent, When Women Become Killers*, August 1995 ; *An Open Letter to His Holiness Pope John Paul II, 13 May 1998* ; *The Protestant Churches and the Genocide, An Appeal to the World Council of Churches' Meeting in Harare*, December 1998 ; *Fr. Wenceslas Munyeshyaka : In the Eyes of the Survivors of Sainte Famille*, Witness to Genocide Issue No. 9, April 1999 ; *Father Athanase Seromba, Parish Priest in Florence, Italy*, Charge Sheet Series No.2, November 1999 ; *Elizabethan Ntakirutimana : U.S. Supreme Court Supports Extradition to Arusha*, Charge Sheet Series No.3, February 2000 ; *Obstruction of Justice : The Nuns of Sovu in Belgium*, Witness to Genocide Issue No. 11, February 2000 ; *Fr. Hormisdas Nsengimana: Accused of Genocide, Sheltered by the Church*, Witness to Genocide Issue No.14, November 2001.

<sup>137</sup> In response to the conviction of the nuns in a Belgian court, Vatican spokesman Joaquín Navarro Valls, cited in *Afrol News*, 10 June 2001, commented: “The Holy See cannot but express a certain surprise at seeing the grave responsibility of so many people and groups involved in this tremendous genocide in the heart of Africa heaped on so few people.” Accessed in March 2003, at <http://www.globalpolicy.org/intljustice/tribunals/2001/0610rwnd.htm>

<sup>138</sup> See an unsigned editorial in *l'Osservatore Romano* on 2 June 1999.

encourage confessions and to assuage the grief felt by survivors. Unfortunately, such efforts have been rare and survivors, both clergy and laity—devastated by the misconduct of the Churches during the genocide, have often seen their Church as a source of anguish rather than of spiritual comfort or practical support. Certainly, both within Rwanda and outside the country, individuals and groups within the Church have thought long and hard upon the genocide and its implications and sought to address its consequences. Yet, such endeavours are limited in comparison to the scale of the 1994 catastrophe and their significance has been undermined by the refusal of Church leaders to support their efforts.

Overwhelmingly, survivors have been left with the impression that the priority of the Church has been to promote “reconciliation” in a manner that privileges forgiveness over justice. This view was supported by many who have worked within the Church or who continue to do so. The expectation that survivors should forgive genocide perpetrators has not been matched by a corresponding call for justice. Most noticeable is the failure of the Church to adequately address accusations against members of its own clergy. Until it is explicitly acknowledged by all those working within the Church in Rwanda that reconciliation is compatible with justice and dependent upon evidence of confession and repentance on the part of perpetrators, the institution will remain at odds with the survivor community.

## **Demanding Justice**

The determination to see justice within the Churches is understandably felt most strongly by the clergy who are also survivors. They were not only victims and targets themselves, but having given their lives to the Church, they feel the betrayal of superiors and colleagues most profoundly. Survivor members of the clergy grieve for their loved ones and wrestle with spiritual dilemmas provoked by the trauma of genocide. For them, the spiritual, familial, social and material losses of the genocide are intertwined in unique and painful ways. Some have already left their vocation, others have felt isolated and even rejected, but continue to work within their Church. All are extremely critical of its conduct before, during and since 1994.

Irène is convinced that the Church is “protecting murderers” and that there is a need for suspects to be “punished like any other murderer” so that the Church can move forward to “create a better future.” Once a Bernardine nun, she left the order to take care of genocide orphans. She spoke of the fear she lived through in 1994, and of the lack of comfort she received from her fellow nuns. Although she lost many members of her family in the genocide, Irène says her superiors were deeply unsympathetic to her plight: She tried to find ways of helping the remaining members of her family and other survivors from within the Church but was given no support. Finally she decided to sever her ties to her old order.

While Irène believes the Church has a part to play in promoting reconciliation, she believes it can only do so if it admits its own failings and if it recognises that the first step must be to “persuade the murderers to ask for forgiveness.”

At the moment, I’d say the church is simply protecting the murderers by preaching the need to forgive as though, when they killed others, these people had gone mad or lost their senses or become like little children again. The Church is claiming that it was only a few individuals who were responsible for the killings. But why did the rest of them allow it to happen? How can we be sure that people want to speak the truth unless they actually speak it?

Fr. Isaac acknowledges that the Pope has called for individuals within the Church involved in the genocide to admit their responsibility, but he sees no evidence of this in practice.

I condemn the fact that the Church, as an institution, is even trying to defend the génocidaires. If they committed their crimes without a Church mandate, they should be left to suffer the consequences, without any institutional backing.

Fr. Jacques spoke out strongly against the resistance of the Church leadership to justice.

Since the genocide of 1994, enormous efforts have again been made to conceal the truth. Our bishops and the entire Church hierarchy, right up to the Holy See, want everything to carry on as normal. It’s wrong. It’s completely inhuman. They’re doing it all to conceal their part in the genocide.

After she had come to the conclusion that the “Catholic Church is doing everything it can to erase all evidence that would prove its role in the genocide or show how it failed to fulfil its principal mission”, Louise abandoned her training to be a nun.

Nearly all the churches that were destroyed, and where many Tutsis perished, have been rebuilt and nothing is left to show that massacres took place in those churches. This was done intentionally in order to erase any incriminating sign. Having refused to protect the true temples of God – human beings – the Church is now fighting to save old bricks instead.

In terms of justice within the Church, there is still a long way to go. At least the State seems to be doing something by allowing those who committed genocide to admit to their crime and plead guilty, but the Church has done nothing. Instead, it asks the survivors to forgive and not to judge their “brothers” because God will be the One to judge them.

The divisions within the Church over the issues of justice and forgiveness run so deep, that this nun, Sr. Emilienne, who has remained in the Church, believes they constitute a radical split.

Church leaders have continued life as if nothing had happened; the problem rests on the shoulders of the Tutsi clergy who themselves have been victims of the genocide. They never thought of reforming the Church after the genocide. Génocidaires, including members of the flock and some priests, still attend church without showing that they have

a bad conscience and without any reaction from the leaders of the Church. It's only the survivors who are hurting because of all this, but their responses won't lead to anything.

The Church as such does not exist in Rwanda. What you find instead are individual units that belong to the Rwandese Church. What we have is a Church for public worship; the same we have always known. The Church kept quiet after the genocide. They confined themselves to celebrating the jubilee, but they forgot that you can't have a jubilee, in the biblical sense of the term, without self-criticism. Above all, the jubilee was not about celebrating, but was a year of conversion and reconciliation, a year of penitence. The Church ought to tell the prisoners that the Tutsis did not commit collective suicide in 1994.

Although she continues to participate, she does so with many reservations and her efforts to help survivors receive little support.

They go on giving the sacraments as they used to. They turn over the page, and continue as before. The weight of the institution presses down on us more heavily every day. We no longer find it easy to talk at meetings, because the survivors have become an embarrassment.

Of course, what we want is not noisy demonstrations, but to give the survivors back their self-respect and to help them have their say. The few members of the clergy who want to do something to help the survivors are soon brought back into line by the institution. In fact, religious circles have little life and dynamism. Yet, we have to be organized.

"Grief is killing me", lamented a priest who said that he finds it "hard to admit that I'm alone in the world when I had ten brothers and sisters and their families." Nor can he understand the positions taken by his Church.

The genocide was a hard test of Christian faith. We wondered where God was during the genocide, and whether the God we believed in was the same one our murderers prayed to. Why is it that, even right here in Rwanda, the priests suspected of genocide have not been questioned by the Catholic hierarchy?

Murderers and victims all celebrate mass together. Yet we all know one another very well: we know who did what during the genocide. But the Bishops have chosen to keep quiet.

The Church should ask forgiveness for what it did, then we would be back on the side of the biblical truth. What guarantee is there that someone who has not repented won't return to his former ways?

The image of the church has been tarnished and sullied by the genocide. This is also why new sects and religions are coming up like mushrooms.

A significant number of priests who have left the Catholic Church did so in the wake of the controversy over the arrest and subsequent release of Bishop Augustin Misago, the Bishop of Gikongoro in 1994 and since. For years, both clergy and lay survivors fought hard to bring Bishop Misago to justice, saying that he deliberately refused shelter to Tutsis in 1994, thereby exposing them to danger and telling them to seek shelter in places

where Tutsis were being congregated as a strategy for their elimination, in particular a school under construction in Murambi. Other accusations relate to the massacre of over 80 schoolchildren in Kibeho on 7 May and, amongst others, the circumstances in which several Tutsi priests from his own diocese were murdered.<sup>139</sup> Bishop Misago was arrested on 21 April 1999 and remained in detention for just over a year during which, many priests and nuns say, they came under pressure from the Church to show open support for him. Fr. Félix, who has since become a layman, was unable to bring himself to do that.

Straight after his arrest, we got a letter which we were meant to share with all the Christians in the parish during mass. The message asked that everyone should come together to pray for the bishop while he was undergoing trial. In the depths of my heart, I did not agree with this message. As I saw it, Misago had to face up to what he had done and justice had to be done for the victims of his deeds. So I decided not to tell the congregation about the Bishops' letter. My colleagues knew that I had shirked the issue, but I didn't care.

Yvonne, refused permission to visit her sister who had contracted HIV/AIDS, left the Church to care for her and keep her company.

The Church protects those of its members who got their hands dirty in the genocide. You should have seen the ceremonies that took place when Misago was released from prison. In our daily prayers I never heard the Sisters pray for the souls of the victims of genocide. But every day we prayed for the priests and nuns imprisoned for their role in the genocide. That troubled me. If at the very least the Church had spoken up against the genocide, it would have had the excuse that it had spoken but its words had fallen on deaf ears. Its responsibility would not have been so heavy.

Misago's release after a year, and the verdict of innocence, was largely seen by survivors as a political compromise by the Government in the face of unrelenting external pressure.

A former monk describes himself as a "troubled soul" whose "whole life has been broken by the genocide." He lost his entire family and many friends in the killings and while he retains some faith in God, and prays at home, he is highly critical of the Church.

The Church isn't built upon faith in Christ. It never condemned the genocide; it was silent from the time the genocide was being prepared until today. It hasn't punished or condemned its congregation and leaders who were involved in the genocide. The hearts of the real temples of God have not been cleaned, just the walls and bricks. The killers have returned to the houses of God to pray and receive the sacrament without any response from the leaders of the Church.

Perhaps no case illustrates so well the lengths which certain clergy have gone to shelter their own against the reach of genocide justice. Sr. Gertrude Mukangango and Sr. Julienne Kizito were, respectively, the Mother Superior and a nun in the Benedictine monastery of Sovu, Butare. Many strong and consistent accounts emerged soon after the

---

<sup>139</sup> For details about the accusations against Bishop Augustin Misago, see *Open Letter to His Holiness, Pope John Paul*, 13 May 1998, *African Rights*.

end of the genocide of the direct part played by the two nuns in facilitating and encouraging the militia who, on 22 April 1994, stoned, hacked and burned to death the hundreds of men, women and children at the monastery's health centre. They were accused by the head of the local militia, in addition to countless other interahamwe and survivors. Some of their fellow nuns said they handed over their relatives, who had come to hide with them, to the killers, a charge that has been confirmed by the militia themselves.

The Sovu nuns were evacuated to Belgium, and the divisions within the community soon became public as those who had witnessed the murders of members of their relatives spoke out, and named Sr. Gertrude and Sr. Kizito as accomplices of the militia. The case was widely covered by the media in Europe. Instead of an independent inquiry, they were given unconditional backing by the Catholic Church authorities in Belgium and their Benedictine superiors in Ireland. They were portrayed as the "victims" and the nuns who tried to tell their stories, in particular Sr. Scholastique and Sr. Marie-Bernard, were deemed "liars." These two nuns were blamed for the media coverage in Belgium, and for informing the Government in Rwanda, about the role of Sr. Gertrude and Sr. Kizito in the genocide. The Church put intense pressure upon them to deny their stories and, when this failed, it treated them as outcasts. Unable to bear the situation, Sr. Marie-Bernard left the Church altogether. Despite a concerted campaign by the Catholic Church, the two nuns were eventually prosecuted and convicted in Belgium in 2001.<sup>140</sup>

Sr. Pélagie was a prosecution witness.

Many men, and women, in religious communities discouraged us from testifying against Kizito and Gertrude by saying that we had to protect the Church's honour. In religious communities, accusing another member is seen as scandalous and the accuser is considered more guilty than the criminal. In our community, the white nuns thought we were jealous of our fellow nuns, that we were trying to become the Superior of our community and that we had made up stories to push out the Hutu Sisters.

Sr. Juliette, who similarly testified against the two nuns, also mentioned this reversal of roles.

The victim is taken for the killer, and vice versa. From what the European nuns said to us, we Tutsi nuns lacked a real religious vocation. All day long, they told us how all the problems in this country are due to the Tutsis' thirst for blood and power.

The trial of Fr. Hormisdas Nsengimana at the ICTR, which began in June 2007 and resumed in January 2008, has also been marked by efforts to silence potential witnesses. Nsengimana was the rector of Christ Roi secondary school in Nyanza, commune Nyabisindu in Butare. Serious allegations detailing his extensive complicity in helping to plan, incite and execute the genocide in Nyanza, and surrounding areas, surfaced almost immediately after the killings came to an end in early July 1994. The attempt to influence witnesses began soon after Nsengimana's arrest in 2002. It gained momentum after ICTR

---

<sup>140</sup> Sr. Kizito was given a 12-year sentence and Sr. Gertrude a 15-year sentence.

investigators started their interviews in Nyanza, and intensified in early 2007 as preparations for the 2008 trial got underway.

Eric, regarded as a key witness, said he was first approached by Fr. Gabriel Nkoranyanyabahizi of Nyanza parish, and later by his successor, Fr. Dénys Sekamana.

When Fr. Nkoranyanyabahizi realized that I had no intention of telling him what I had discussed with the ICTR and with *African Rights*, he changed tactics and wanted to set a trap for me by presenting himself as my benefactor. He wanted to give me money. I turned my back on the offer and told him that I couldn't reveal information that was confidential.

Nsengimana's arrest led to greater efforts on their part, he added.

Sekamana and Gabriel redoubled their efforts to get me to distance myself from those who intended to denounce Hormisdas. They tried to make me give up by convincing me that I was committing a sin.

Other witnesses were also being mistreated. These are the people who had kept their cool in the face of the relentless campaign by the two priests to stop them from exposing the truth about the crimes which had been committed by Hormisdas. Take, for example, the case of Gertrude [a pseudonym] who was sacked as the head of a school in Nyanza. The two priests also had a hand in getting her transferred to a school far from the town of Nyanza. They wanted to intimidate her so that she would resign. But she held out and came back to teach in Nyanza.

Eric's refusal to cooperate cost him dear.

When they saw that I didn't have the slightest intention of changing my mind, the two priests set out to get me arrested. They chased me out of my job at the parish and suggested that I become responsible for a mill they had bought for a group of poor women. They plotted with someone to say that I was a thief. This person had removed a piece of the mill. The two priests got me arrested by working with a certain judicial police inspector in Nyanza. I was released after an inquiry which proved my innocence.

The two priests then had me imprisoned on the basis that I had participated in the genocide in Nyanza. But they quickly failed because many people in Nyanza told the judicial police inspector that he would have problems if he let himself be manipulated by the priests.

I cut off all relations with the priests in 2003 when I got another job, but I continued to keep contact with the investigators from Arusha.

Gertrude, mentioned by Eric, was a teacher in a school that belonged to the parish, making her an easy target.

In the middle of the school year, I was chased out of the school for no reason. I was sent to teach at another school, very far from Nyanza. I decided to ask the priest about this injustice. I went to the office of Sekamana and I asked him how this could be happening

to me as I hadn't done anything wrong. I pointed out that I had been working at that school since 1985, and that I had never received any negative evaluations. I told him that I found the situation strange, and asked him for help. He told me: "Madam, I can't help you. If you want, go and take the matter to court and tell them that we fired you. I know what you did to my colleague Hormisdas, so go and do the same to me. I'm used to being in prison."<sup>141</sup> Fr. Sekamana created a group to demoralize me and tarnish my reputation. Luckily, local authorities looked into the matter.

Eric and Gertrude, along with many other witnesses, faced a host of new problems starting in May 2007, in an effort to stop them from leaving for Arusha to testify at the June trial. Eric said he was called into Sekamana's office.

He asked me what I wanted in order to give up the idea of going to testify against Hormisdas. He wanted me to mention the sum of money I needed. I told him that I couldn't keep quiet about the truth in exchange for money. His face immediately changed and he started to intimidate me, saying: "You are not more important than the others who have agreed to give up the idea [of going to Arusha].

Sekamana, he commented, then mentioned the name of one of the prosecution witnesses.

He has agreed not to go to Arusha. There are so many others. If you go on resisting, I swear to you that you will die before you even get to Arusha. You, you are ignorant. You don't know how the system really works. Hormisdas has friends everywhere who might kill you. You have no interest in going to Arusha. But if you accept my proposal, you will become very rich!"

To make Eric reflect upon the wisdom of going to Arusha, Sekamana let him know that he would not be safe in Arusha either.

I told him that I wasn't afraid to go and tell the truth. He replied: "You think that Hormisdas doesn't have friends who work in Arusha? There is a certain Ephrem Gasasira who is there. I hear that he was in Nyanza during the genocide and that he is suspected of being implicated in the genocide. You should be scared of him."

Attempts to dissuade him continued right until the day Eric was due to travel to Arusha, prompting him to speak openly in court about his experiences.

The positions and attitudes taken by the Church on justice are inter-connected with a range of other issues, especially the questions of remorse, forgiveness and reconciliation, which involve a broad spectrum of other actors, including the Government. The discourse on reconciliation, in particular, has generated intense debate and brought forth strong sentiments and arguments where survivors are concerned.

---

<sup>141</sup> Fr. Sekamana was arrested in connection with the genocide and spent some years in prison.

## **REMORSE, FORGIVENESS & RECONCILIATION**

### **What is the Relationship with Justice?**

Cruelly, survivors are often asked to demonstrate their unique sensibilities and compassion by offering forgiveness. I have no authority to forgive in the name of the dead, they politely reply. But where were the murderers stepping forward to admit wrongdoing? Did anyone say, I am sorry? Did anyone acknowledge, I did terrible things, without immediately offering excuse, justification, rationalization, ignorance? Where was the remorse? survivors demand. Where was the shame? Where was the considered debate about punishment? Aaron Hass, survivor of the Holocaust.<sup>142</sup>

The Government of Rwanda, the Churches, civic organizations and concerned donors argue that reconciliation is the key to durable peace in Rwanda. Reconciliation is used to describe the re-establishment of social and communal relations which have been damaged or destroyed by violent conflicts. Justice, truth, remorse and forgiveness form the essence of strategies to bring about reconciliation throughout the world.

Calls for reconciliation came from Church leaders even as the 1994 genocide was under way. With the military victory of the RPF in July 1994, the language of reconciliation was appropriated by exiled Rwandese politicians—many of them linked to the genocide. They claimed that the need for reconciliation existed less because of the 1994 genocide than because of the war which began in 1990 and ended in 1994, arguing that only political negotiations could deliver future peace.

The Government's concept of reconciliation necessarily addresses the aftermath of the genocide, hence the emphasis on justice and the search for platforms that can hopefully bring perpetrators and victims together in a spirit of remorse and forgiveness. But the Government's ambition goes well beyond the relationship between victims and perpetrators, and encompasses the nation as a whole. Reconciliation was already a key feature of the Arusha peace negotiations in the early 1990s between the Government of President Habyarimana and the RPF. But developments since 1994 radically changed the equation. The massive exodus in July 1994, the emergence of a grieving and impoverished survivor community, the return, on a huge scale, of 1959 refugees and the subsequent return of hundreds of thousands of refugees from neighbouring countries in 1996/97, were sudden and largely unplanned. The consequences were dramatic and priorities constantly had to shift. Civilians and former combatants have continued to return to Rwanda, mainly from the DRC, but also from other countries, from 1998 to the present, and they have been a particular focus of attention from the Government's National Unity and Reconciliation Commission (NURC).

---

<sup>142</sup> Aaron Hass, *The Aftermath: Living With The Holocaust*, Cambridge University Press, 1996, p.175.

Survivors are not only confused and angered by the discourse about reconciliation, they are profoundly distressed by it. Many of them feel that a demand for them to forget the past and forgive their persecutors is at the core of the calls for reconciliation. The fact that initially these demands came from exiled politicians and other organizations who, for their own purposes, sought to advocate reconciliation as an alternative to justice, necessarily influenced their views.

Although the Rwandese Government recognises that asking the survivors to “forgive and forget” is an impossible demand, with the introduction of the guilty plea and confession system in 1996, it sought to promote reconciliation through, rather than instead of, justice. It was hoped that this initiative, by giving genocide perpetrators the opportunity to shed light on what happened through full and truthful confessions, would make it possible for justice to become an agent of reconciliation. But as extensive research by *African Rights* on the confession system revealed<sup>143</sup>, delays in the administration of justice and the low rates of confessions reduced the potential of the procedure to contribute to reconciliation. But even if the majority of prisoners had confessed before the system was changed in favour of gacaca, the new procedure, far from bringing about a general rapprochement between perpetrators and survivors, appeared to have increased the pain and anger of survivors. It did, however, improve relations between prisoners and the State, which only served to heighten survivors’ suspicions about its origins and purpose.

The perception that sentence reductions offer a watered down version of justice lay at the heart of their rejection of the confession procedure. Secondly, the damages awarded to the plaintiffs did not reach survivors, as the perpetrators in prison were often too poor to pay and the State did not accept liability. Significantly, it did not ask the perpetrators to express remorse and seek forgiveness from survivors. Convinced detainees offered only partial confessions in order to ease their way out of prison, to improve their relations with the State or to make peace with their Church or with God; survivors largely withdrew from the process. They asked why the State and the Church, the two main institutions promoting reconciliation, had not fostered large-scale national initiatives to encourage those guilty of genocide to ask for forgiveness from their victims.

Gacaca too, as discussed earlier, has “reconciliation” as one of its primary goals. But like its predecessor, this aspect of gacaca has come in for harsh judgement from the survivors interviewed for this report.

### ***Who Has the Right to Forgive on Behalf of a Group?***

A number of survivors argued that because they were targeted as members of a specific group, and not as individuals, it was wrong to frame the question of forgiveness as a private matter between two individuals. Who, they ask, has the right to forgive on behalf of an entire community? They do not feel qualified to forgive on behalf of even their

---

<sup>143</sup> See *Confessing to Genocide : Responses to Rwanda’s Genocide Law*, 153 pages, June 2000.

relatives because, they insist, the victims were related to others whose opinions must also be sought. But much larger questions than family ties are at stake, as far as they are concerned. This view was most forcefully and eloquently expressed by Etienne, a lawyer living in Kigali.

During the 1994 genocide, a huge number of people in my family died. But I don't want to talk about my family in particular. In fact, to do so is a mistake because the génocidaires did not target this or that person as an individual. They pursued them because they were Tutsis. If I was not a Tutsi, I would not have been a focus during the genocide (with a few rare exceptions) even though I would still be the same person. I was therefore a candidate not because I am me, but because I am a member of the Tutsi ethnic group. The victim of the genocide is the Tutsi ethnic group. And this is why I consider all the victims as my family, without limiting myself only to the ties that bind me to my immediate relatives.

I find it difficult to forgive my aggressor because he did not attack me as an individual as such, but because of my identity as a Tutsi. If I had been attacked because someone wanted to steal my property, the logic would be different.

He is so strongly opposed to the principle of gacaca, which he described as an "aberration" in the context of the crime of genocide, that he refused to discuss it at any length. He is particularly opposed to what he sees as the interlinkage between gacaca and forgiveness.

The worst part is that gacaca is, by its very nature associated, more or less, with the idea of forgiveness. But I, as an individual, have no right to say that I forgive someone who murdered my relatives, my parents for example. Because other people, either because they are related to them, or by some other relationship, also have rights in what concerns my parents. Therefore my parents are not my private property. Even more broadly, my parents did not belong just to me, or to other close relatives, but to the Tutsi community as a whole which was targeted at the time. And as they were massacred for the simple reason that they were Tutsis, I think only this entity, this community called Tutsi, has the right to forgive, because this is the entity that was sought after by the killers.

Etienne's line of argument was echoed by Sister Sabine. She knows the demands of the Gospel and underlines the exceptional nature of the crime of genocide.

According to the teachings of the Catholic Church, forgiveness can be granted. That is good. However, genocide is a particular crime. It can only be tackled if it is approached collectively. It would be seen as cowardly, and even a betrayal, if I said that I forgave. What right have I? No-one has the capacity to do this. You are not alone in being a victim. The whole ethnic group is affected as well as the whole of humanity. No-one has the right to say, individually, I forgive.

Raymond, a civil servant from Kibungo, was surprised to be asked a question about forgiveness.

Forgiveness? No way. With regard to the people who killed my parents and relatives, I feel that I have no right to forgive them because I have no mandate to do so. The only

right I have is to forgive those who attacked me personally, and even there, I am not yet ready to do so. It seems too soon. Especially as none of the killers has taken any steps to ask for my forgiveness.

### ***“Not One Single Person Has Come to Ask Me for Forgiveness”***

One of the most fundamental problems with the notion of reconciliation in Rwanda, according to survivors, is the fact that the perpetrators of the 1994 genocide have not, by and large, shown any signs of remorse. Very few have been prepared to admit their guilt, even in the face of witnesses, let alone to apologize for the killings. Maurice of commune Mbogo in Kigali rural lost both his parents and his six brothers and sisters. The only member of his family who was alive after the genocide in 1994 was his six-year-old niece, and she found it difficult to accept him since she had never met him before.

One of his worst memories is of searching for the bodies of his family so he could bury them—no-one would tell him where their bodies had been thrown. He was made starkly aware of his solitude every time he visited his family’s grave and had to find someone to go with him. He was, for a long time, scared to go alone because he knew his former neighbours did not want to see him. Reconciliation with those responsible for these circumstances was not something Maurice feels he could contemplate.

Even if they have asked forgiveness of God, I know one thing, no-one has asked for my forgiveness. They have apologized to no-one. Some have asked forgiveness of the State but the State has no right to pardon those who have killed our families. No-one has asked the State to forgive on their behalf.

Olive was 75 at the time of the interview. Five of her children were killed along with their twelve sons and daughters. She was badly shaken by the idea of reconciliation and what it might mean for her.

Reconcile myself with the lions who have devoured my beloved children? What for? Who are these people who dare to play with the blood of my children? They must be people who really know nothing about what happened to us. They can take everything from you, even gold, and that can be forgotten and then you can live together, body and soul, with the person who took from you. But to take the life of your own child, even if it is just one child. It’s impossible! Here, it is more than one child. It is the other members of the family as well, and sometimes all of them. This is an irreparable sin and is therefore unpardonable. The people who talk about reconciliation between a survivor and the person who murdered that survivor’s family are killing our hearts.

What have I done to the génocidaires for them to punish me in such a way? What did I do to them after they tortured and killed my children? I did not take revenge. There is no question of reconciliation. They are in prison and their families go and see them whenever they like. As for me, when will I see my children again? There is no-one to bury me in peace when I die. There is no appropriate punishment for the killers of the Tutsis of Rwanda. But the least they can do is not to disturb the poor survivors in their distress by talking to them about reconciliation.

Survivors feel that it has not been made sufficiently clear who should be involved in the reconciliation process, and what their role should be. Robert, who has worked in the Free Methodist Church for many years, points out that the first and most important step towards reconciliation has yet to be taken.

In Rwandese culture, reconciliation takes place when the person who has done wrong recognises it, approaches the victim and asks for forgiveness. He must state that he is ready to make up for the damage he has done with the intention of being reconciled and re-establishing friendship. Here people killed. Then they left, and afterwards came back. Do they first of all accept their mistake? There are people telling the survivors to forgive, but forgive who? You pardon someone who asks for forgiveness. You can't pardon in a vacuum. Those who were wrong have to make the first move.

Simon, currently serving as a gacaca judge in Kibungo, said he was drawn to gacaca not only to advance justice, but also because he wanted “to contribute to the unity and reconciliation which it was hoped gacaca would bring about.”

But I had my own vision about unity and reconciliation. I assumed that first the perpetrators would acknowledge what they had done in front of the victims of the genocide. So now I'm very surprised to hear local officials, and some religious institutions, tell the survivors to forgive the génocidaires even though the génocidaires themselves have not taken any initiatives in this regard.

The violence which continues to be directed against survivors, in Kibungo and elsewhere, at the same time that the Government has initiated reforms to lessen the burden on suspects, has left him with many questions unanswered.

As someone who has closely followed gacaca trials, I find it difficult to come up with a suggestion as how to put an end to this violence. The Government has done everything it can to lighten the punishment of the génocidaires, but they continue saying that the sanctions are too severe. It is always the poor survivor who is in the middle of all these conflicts. As the survivors are always asking for justice, genocide suspects look upon them negatively and see them as the source of their misfortunes.

Part of the solution must lie, he said, in greater efforts to encourage those who took part in the genocide to accept the wrong they did.

If I say that releasing all the génocidaires is the solution, before they have even acknowledged what they have done, I would be a traitor to justice. What I can say to the Government, and to civil society, is to increase their work on unity and reconciliation by, above all else, encouraging the génocidaires to accept their crimes and ask the victims for pardon. I am convinced that everyone who is capable of repenting fully can reintegrate into society with his heart at peace. But to release someone whose heart is full of bitterness carries a lot of risks for our society. So it is better not to arrest a génocidaire who admits all his crimes, than to free a génocidaire whose confession is incomplete.

Hyacinthe in Rukara, Kibungo, wants perpetrators “to face up to their crimes.”

The most hurtful thing for the survivors is when the génocidaire refuse to accept their guilt. We need them to ask for forgiveness. We just need the killers to take responsibility for what they did, and ask for forgiveness. We forgive. How many interahamwe are now living amongst us?

It is not only survivors living in Rwanda, where the genocide casts a shadow over social relations, who live with what they regard as indifference, or worse, to their experiences and the fate of the families and communities of which they were a part. With the benefit of distance, and with time on his hands as he waited for a decision on his request at a centre for asylum seekers, Sébastien, living in Norway, thought long and hard about the genocide.

How could it have happened? Why us? What had we done to deserve it? I rarely asked myself these questions when I was still living in Rwanda. The reason, I think, is that when you live with other survivors where the genocide took place, it is with us and its effects live inside us. So you don't have the necessary distance to think about it in depth. Each one knows his own experience, and maybe that of his relatives, and that's all. We often stop there, and do not reflect on the deeper causes, the inhumanity that characterised people who had been our neighbours and colleagues. And then, all of a sudden, during my stay at the centre, I found myself the only genocide survivor among ordinary strangers who came from different countries of the world. And, unconsciously, I used my free time to go back to my memories and the questions that had no answers, for example: Why do the killers not bother to make the effort to express sincere regret and ask for my forgiveness?

He spoke about an encounter that he said left him speechless.

Instead of voluntarily going to the victim to express their remorse, some killers are not ashamed of twisting the knife in our wounds. One day while I was the only Rwandan at the centre, I saw many Hutus arriving from African countries such as Cameroon, Congo, the Central African Republic, and Gabon. I was close to only one of them who nevertheless said to me one day: "You Tutsis had to die, it was obvious." Instead of the slightest regret, he felt a kind of pride. He never explained his statement and I was too shocked and surprised to utter a single word.

### ***"There is No Respite"***

Although the genocide is deemed to have ended in 1994, the killing, intimidation and harassment of survivors and witnesses, has never ceased, as an earlier chapter illustrates. It is understandable that many survivors should feel, as Thomas from Kibuye does, that he "cannot reconcile with anyone whose intent remains unchanged."

As a parliamentarian, it's Gilbert's responsibility to reflect upon and decide on laws and policies that affect both justice and reconciliation, but he sees no easy solutions.

Reconciliation was the main goal of gacaca. Yet, the actual results prove the contrary: more and more we hear of survivors being killed, often by génocidaires who have been discharged by the gacaca tribunals. I refer to them as "post-gacaca victims." At present,

the authorities have no solution to this current problem. Only three weeks ago [the beginning of May 2008] a youth from Ntyazo was killed around 7:00 p.m. His assassin was arrested the next day, admitting his crime without remorse. And his justification? He said that he killed his victim because he had unjustly filed a civil suit against him to reclaim his possessions. Imagine that. The victim had not filed a criminal charge against him with the object of imprisoning him; it was only a measure to get his possessions back. And he should die for that?

The impunity which the perpetrators enjoyed during the genocide, he said, had bred created a mindset which Rwandese society needs to take into account.

For most of these recidivists, there is no difficulty in committing crimes to the nth degree. They killed Tutsis during the genocide, for which the gacaca tribunals sentenced them to a few years in prison, of which a few were spent in prison while the rest were served performing community work (TIG). They are amongst us, and if by chance a survivor, or someone else, does something to annoy them, they take up their machetes, not to injure but to kill. And the punishment is none other than prison, which they are already accustomed to and which does not bother them unduly. I am convinced that their extensive experience in killing has affected them.

We should not allow them to live among peaceful citizens who did not have this training in genocide. However, I realize that this is not an easy question, I only ask that we consider it among our most urgent priorities for which we must find a preventive or curative solution.

Strongly opposed to the confession system when it was in operation, Daniel in Kigali rural sees no reason to have changed his mind since the launch of gacaca. The major drawbacks he saw in confessions, namely the failure of prisoners to “tell the whole truth” and to seek forgiveness, are also features he recognizes in gacaca.

The objective of unity and reconciliation seems to me difficult to attain, especially as some of those guilty of genocide, and their relatives, don't want to reveal the full truth about what happened during the genocide. This is my situation. I cannot go against the government's decision to reduce the sentences. But neither can the Government force me to reconcile with those who killed my family. Worse still, some don't even bother to approach survivors to ask for their forgiveness. How can I reconcile with someone who does not want to tell me he is sorry?

## **The Churches: Calls for Forgiveness**

Church leaders called for reconciliation during the genocide itself and began preaching forgiveness almost immediately when the killings ended. In sermons, religious journals and at conferences, the theme of reconciliation has again and again been at the forefront of interventions by the Churches concerning the human, social and political legacy of the genocide. But demanding forgiveness of grieving survivors, without similarly advocating for confession, repentance, justice and reparations, the Churches have laid themselves open to criticism and consistently provoked angry responses from survivors, many of

whom no longer accept the Church as an authority on the interpretation of the Gospel, or what it has to say on forgiveness.

The thousands of Christians who slayed other Christians before the altar, and the stream of allegations against priests, nuns, bishops and pastors presented an immense challenge to the moral authority of the Churches. This, survivors say, should have been followed by an energetic programme to promote justice and to cultivate spiritual and moral growth within and outside church walls. Instead, they argue, the Church has used reconciliation as a convenient answer with which to side-step difficult issues. In the process, certain members of the Church have only raised further questions about the past and present conduct of the Church.

Eugénie, a Member of Parliament, sees the call for forgiveness as intended to draw a curtain over the past.

People are trying to mask what happened. The Gospels teach that the sinner must turn to God. If he comes to ask for your forgiveness and you refuse to give it to him, in the eyes of God, he is innocent. The people who insist on forgiveness without saying that the wrongdoer must ask for it, want to pressurize the survivors so that they give up judicial proceedings. Who must you forgive? You don't even know who to forgive. What they are asking us is that we stop sending people to prison. But what exactly do they want me to do? Doesn't the Gospel say that the laws of men must also be respected? Reconciliation is not incompatible with justice. This would be the right way. The survivor is also a human being. He has the right to everything the law entitles him to.

Survivors say the Church emphasises that forgiveness begins in the heart of the victim while remaining silent on the issues of justice and repentance. They are unable to believe that God could ever ask them to forgive a genocide perpetrator who will not repent. Judith, whose parents and ten siblings died at home in Shyorongi, Kigali rural, questions the motives of clergymen who want survivors to refrain from identifying perpetrators.

Some of the priests discourage people from accusing the génocidaires by saying that it is a sin. If someone is absolutely sure of their testimony, how can that be a sin? What is worse, to kill or to denounce a killer?

Robert of the Free Methodist Church, cited earlier, believes that the genocide robbed the Churches of the moral force they need in order to speak about reconciliation.

In Rwanda, every Christian Church is connected to the genocide. So which Church can speak with the necessary authority to tell a young man that he must forgive? The authorities of these Churches know this, and each and every one of us knows this too.

Germain, a parliamentarian, explained why he is not likely to give much weight to what he hears from a clergyman on such an important and personal matter.

The Church participated in the genocide through its actions and inactions. Priests who had degrees in theology were seen at the roadblocks with notorious louts. Priests, monks and nuns, whose parents, sisters or brothers are in prison, spend their time denouncing

what they term persecution as if the genocide had been committed by aliens. I don't think they have anything to teach the Rwandese now. I expect no more from the priest than I would from someone who had been the councillor of a sector or from a bourgmestre.

### *The View From Within*

Survivor clergy are troubled by the expectation from others within the Church that the responsibility for reconciliation begins with the survivors. This, they explain, is demonstrated in regular calls for forgiveness which place a demand upon the people who have suffered most and who have nothing left to give.

Fr. Yves feels justice is far from being achieved in Rwanda and that it is wrong to preach forgiveness in such circumstances.

Everywhere priests are preaching in favour of a superficial, senseless, unilateral and thus impossible act of forgiveness. I think it is a form of torture for the poor genocide survivors.

Fr. Jacques rejects the idea that forgiveness can be asked of survivors.

Those who are preaching reconciliation and forgiveness are wrong. They're demanding a lot from one side, and leaving in peace those who've caused suffering. You can't forgive someone who hasn't asked for forgiveness. Change can be learned, but not reconciliation. Reconciliation comes spontaneously. These false prophets are doing it on purpose. They know full well that it's impossible to forgive someone who's killed your children, your partner, your parents and still dreams of killing you, too. This way, we might embrace each other with our arms, but never with our hearts. Reconciliation requires justice, but the people who planned and executed the genocide don't want to accept responsibility for their actions.

What we need in the Church are people who follow the truth of the gospel. These people could work together with others who are fighting for the whole of Rwanda, for justice, without making any distinctions, without any ethnic or other motive.

The Church's mission is to "protect each individual and the whole individual." In other words, the Church should protect human beings without distinction and should also provide both spiritual and material aid.

Fr. Manzi is committed to the principle of reconciliation, but argues that preaching forgiveness without giving survivors the moral and material support they need is a "superficial" response.

Genocide survivors are being asked to forgive, and yet no-one has asked their forgiveness. They are imposing a heavy burden on the survivors, when they are already overwhelmed with the problems caused by the genocide. These artificial acts of forgiveness will not lead to the ripe fruit of reconciliation. The genocide survivors need moral and material support. You need to help them before you can start talking to them about reconciliation. Reconciliation is not for tomorrow or the next day.

Sister Juliette also resents the approach the Church has taken to reconciliation.

I don't agree with the way we are being forced to forgive our murderers. That is not the kind of mercy God asks us to show our tormentors. I need to know who I'm forgiving, and why. Animals forget, whereas human beings forgive. Even God does not forgive people just like that. There are ways of achieving His forgiveness, such as the sacraments. Nor do we forgive people who don't ask to be forgiven, because that would be just play-acting. Real forgiveness is conditional. We need more truth and justice.

She holds onto her faith in God and still "loves and respects the Church" but not in the form it now takes in Rwanda. She says she understands why some survivors have left the Catholic Church, since even she can no longer bear to go into her own parish church. Her trust in the clergy has been broken and what she has experienced leads her to conclude that the other nuns in her congregation neither understand nor sympathize with those who are survivors.

Forgiveness is impossible, in Sister Esther's view, unless it is preceded by expressions of regret.

Since the genocide, I can't find anyone, anywhere in the Church, prepared to ask our forgiveness. Their excuse is that the genocide was sparked off by our Tutsi brothers in the Diaspora, who were hungry for power.

Fr. Manzi is worried that survivors are being pressured into forgiveness by the demands of the Church.

Some Tutsis go through the motions of forgiving the people who killed their loved ones, not from genuine forgiveness but because they are scared of going to Hell now that they say accusing someone is a sin. This is what the killers tell them, because they want to hide the truth. They spend many days and nights praying with their families' killers. The killers are doing this deliberately to confuse those they wronged, because they don't want to ask their forgiveness.

True forgiveness can only be brought about when there is reciprocity between the wrongdoer and the victim. They can't manage it on their own. The Churches thus have a duty to help both sides so that true forgiveness can be achieved. Above all, the Church should set a good example.

Instead, argues Rebecca, survivors are being subjected to what she called a form of "moral terrorism." Though she had invested time in training to be a nun, Rebecca, alarmed by what she sees as an intense and persistent campaign by priests to convince survivors to forgive genocide perpetrators, eventually felt that she could not go through with her chosen vocation.

I use the phrase "moral terrorism" to describe what the priests are doing these days for the survivors. They terrorise them by convincing them that, in preparation for the afterlife, they must pardon those who have not asked to be forgiven and that they must take the first step themselves. Like all Christians, the survivors think about preparing for

their lives after they have left the earthly life. The priests take advantage of their belief in and respect for God and demand the unreasonable from them. Why don't they demand that the killers ask for forgiveness instead?

A nun for many years, Sister Pélégie is determined to believe in a Church of God and to carry on despite her awareness that some members of the clergy were implicated in the genocide. But she is furious about the demands being made of survivors, herself included.

When some priests say in their sermons that we survivors must forgive the interahamwe, I find such shallow sentiments shocking. I ask myself the question: what have I, or we, done to these interahamwe? They killed our families and we go on living among them. I even say hello to them. Is there any better form of mercy and rehabilitation than that? The only thing one can say is that the interahamwe committed crimes and will answer for them before God. They are afraid and some of them may have a few regrets. They should make amends instead, ask forgiveness in person, and pay what compensation they can.

“To deal with the consequences of the genocide”, commented this priest in Cyangugu, “you have to start with the causes.” He underlined the urgency and necessity of addressing the roots of the Catholic Church's failure before it can claim the moral authority to guide the nation.

None of the relationships that had previously united people held firm—nationality, religion, neighbourly relations, shared political beliefs, marriage, the spirit of co-operation. Nothing survived.

Personally, I don't see the genocide as the beginning of the Rwandese tragedy. I see it as the end result of the steady growth of hatred over many years. If we're to find a solution to the consequences of the genocide, it's not forgiveness or reconciliation that will be our starting point. The first step is conversion, to change the inner self that is manifested in outer behaviour. That is the true meeting place, after we've made the changes we have to make to be rid of evil. Only then can we embrace each other in a spirit of genuine reconciliation.

We hope, if nothing else, that this report will make it difficult to ignore the importance which the pursuit of justice holds for survivors, their extraordinary tenacity in the face of impossible odds and the price so many have paid, and continue to pay, for their determination. We hope that *Survivors and Post-Genocide Justice in Rwanda: Their Experiences, Perspectives and Hopes* will at least accord them the most basic consolation—the recognition they deserve.

## RECOMMENDATIONS

### To the Government of Rwanda

- Increase outreach, consultations and meetings with survivors at the national, district and sectoral levels to explain proposed policies and adopted decisions with regard to genocide justice;
- Increase staffing and training of the Rwandan National Police and the Victim and Witness Protection Service so as to pre-empt and prevent attacks on witnesses, survivors and judicial/ gacaca personnel;
- Increase the resources available to the judiciary and prosecution services to adequately handle survivors' complaints and to facilitate their right to justice without further delays;
- Enhance the capacity of the Rwandan prosecution services and in particular the "Genocide Fugitive Tracking Unit" to track down fugitives hiding abroad;
- Appoint staff to ensure proper and timely sharing of information between different institutions in charge of justice, including gacaca, the prosecutor's office, the police, immigration services and military investigators and tribunals;
- Revise legislation transferring rape cases to the jurisdiction of gacaca and provide for trials in such cases before conventional courts. Where rape cases are to be heard before gacaca courts, implement provisions to ensure that trial sessions are held strictly behind closed doors, that judges are trained in handling such sensitive information and that those who breach rules of confidentiality are barred from future responsibilities as gacaca judges. Most important of all, consult widely and with an open mind genocide rape victims themselves so they can offer their views about how rape trials can best be organised;
- Establish a victims' support unit to provide medical and psychological support to survivors testifying before conventional and gacaca courts, before, during and after the trial;
- Enforce restitution orders and examine a defendant's assets to enable survivors to benefit from such orders. Put in place and implement effective measures to secure the property and other assets of defendants, including effective measures to seize assets and establish clear criteria for the rate of compensation. Establish without delay the Indemnification Fund referred to in the Gacaca Law of 2004. Survivors at the national, district and sectoral levels should be consulted about the aims, content and operation of this law;

- High-ranking officials who are found guilty of genocide by gacaca should be suspended until the case has come to a close.

### **To Rwandan Police and Prosecution Authorities**

- Promptly investigate and, where sufficient evidence exists, prosecute those responsible for the killing, intimidation and harassment of witnesses and survivors;
- Ensure that those who escape judgment before gacaca courts are tracked down and brought to court before delivering a judgment in absentia;
- Take adequate and timely steps to prevent suspects from avoiding judgment by fleeing abroad, including, where necessary, detaining suspects before and during trial, causing the surrender of passports and cooperating closely with immigration authorities and prompt follow up on warnings of survivors, gacaca or local government officials regarding the possibility of escape of a certain suspect;
- Continue to cooperate closely with the ICTR, national authorities of third countries and Interpol to facilitate arrests, investigations and, where sufficient evidence exists, prosecutions of genocide suspects currently living abroad;
- Promptly bring to trial any suspects who are deported or extradited from a third country.

### **To the National Service of Gacaca Courts**

- Provide for the possibility of survivors and indirect victims alike to appeal a gacaca judgment;
- Ensure that sentences handed down for witness intimidation and harassment are properly served and that Article 30 of the gacaca legislation is enforced to empower survivors and witnesses to testify without fear;
- Investigate allegations of bribery of gacaca judges and ensure that judges are not presiding over cases involving relatives or friends. Gacaca judges should, where necessary, in particular in regions where there are only few survivors living, be appointed from a different commune to ensure impartial judgments to the extent possible;
- Help victims avoid trauma when testifying before gacaca. For example, survivors should be informed about their right, in cases involving rape, to confide in trusted gacaca judges or to go to the police directly, rather than testifying in public;

- Ensure that survivors affected by a specific case benefit directly from the works carried out by perpetrators convicted to do Community Service (TIG);
- Establish a body responsible for receiving, examining and evaluating complaints from both plaintiffs and defendants who are seeking a re-trial of cases.

### **To the Churches**

- End the silence about the role of the Churches in the genocide and facilitate a public apology to survivors for grave errors of omission and commission;
- Conduct a full investigation into the allegations that have been made against individual members of the different Churches, and collaborate with national and international judicial institutions to ensure such crimes are properly investigated and prosecuted;
- Foster a constructive dialogue on the genocide, which includes elements of acknowledgement, justice and forgiveness.

### **To the International Criminal Tribunal for Rwanda**

- Increase outreach, consultations and meetings with survivors to explain court procedures and the rationale for decisions taken by the Court;
- Ensure, to the extent possible, that the investigators taking testimonies of survivors are the same from the start to the end of an investigation;
- Ensure that charges reflect the full gravity and breadth of the crimes, paying sufficient attention to crimes of sexual violence;
- Follow up on allegations that ICTR personnel includes alleged génocidaires, in particular investigators hired by the defence and, where sufficient evidence as to their involvement exists, dismiss and prosecute such personnel;
- Provide for adequate witness and victims' protection before, during and after the trial. Ensure that survivors testifying before the Tribunal are treated respectfully by all parties and provide for their psychological support where necessary.

### **To Governments and Authorities of Third Countries Where Suspects are Residing**

- Assist and cooperate with Rwandan authorities to apprehend genocide fugitives residing on your country's territory and take the necessary steps to bring them to justice;

- Follow up promptly complaints submitted by survivors against genocide suspects living abroad. Increase resources dedicated to the investigation and prosecution of genocide suspects living abroad through the creation of specialized investigation and prosecution units;
- Assist Rwanda in the ongoing reforms of its justice sector with a view to facilitate extraditions and transfers of genocide suspects to Rwanda and to put Rwanda in a position to conclude a bi- lateral extradition treaty with your country;
- Facilitate victims' access to national authorities in your country, for instance by ensuring that victims are informed about possibilities to submit complaints and about the authorities in charge of such complaints. Inform complainants on a regular basis about the current state of affairs of their complaint and potential obstacles national authorities may encounter;
- Consult and inform survivors before perpetrators, taking advantage of clemency measures, are released;
- Establish a strategy on outreach and communication to form part of the investigation and prosecution of Rwandan genocide suspects in your country. Such a strategy should be established in consultation with civil society, survivors and the press departments of the relevant authorities and could include:
  - Dissemination of information on arrests of suspects, of investigations, prosecutions, convictions and dismissals in Kinyarwanda via local radio stations;
  - Dissemination of such information in electronic form and inclusion of such information on the authorities' website(s);
  - Translation of the summaries of decisions into Kinyarwanda.