

# Gacaca: grassroots justice after genocide

The key to reconciliation in Rwanda?



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# Gacaca: grassroots justice after genocide

The key to reconciliation in Rwanda?

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Arthur

## Glossary

Abiru	The guardians of tradition. They fulfilled a symbolic role in the Court of the Mwami.
Bazungu	Common language for white men.
Genocidair	Common language to identify a person who participated in the genocide.
Imidugudu	Villages that were constructed after the genocide to accommodate returning refugees and survivors whose houses had been destroyed.
Inkotanyi	Means literally “invincible”. The name given to the rebels of the RPF.
Interahamwe	Means literally “unity”. The name to identify the Hutu militia and other gangs of killers who participated in the genocide.
Inyangamugayo	Means literally “honest person”. The name of the judges in the gacaca courts.
Muzungu	Means literally: “someone that has taken in the place”. Common language for white person.
Mwami	Traditional Tutsi king.
NURC	National Unity and Reconciliation Commission.
Nyumbakumi	Administrative unit that formerly consisted of ten households.
Parquet	Office of the Prosecutor, at provincial level.
RPF	Rwandan Patriotic Front. Formerly the rebel army that stopped the genocide, but now the main political party.

## Introduction

When I look around, I see on my left about 50 people sitting on the grass. They are all inhabitants of a small Rwandan community called Gatovu. A little to the side, a group of four women are talking quietly. They are survivors of the 1994 genocide. On my right I see 15 men and women who are sitting on wooden benches, protecting their heads from the sun with colourful umbrellas. They also live in Gatovu and with the other villagers they share the same way of dressing, level of education, poverty, religion and way of life. Yet recently, their position in society has changed. As in every community in Rwanda, there has been an election in Gatovu in which the villagers have chosen a number of respected individuals among them to become judges in a gacaca court. This position gives them the power to prosecute those who committed crimes during the 1994 genocide.

Most people are silent, in the expectation of things to come. Is the population tense? Some have reason to be because today one of the prisoners whose case will be discussed has confessed. He will make public what he did and with who. Anyone's name could be mentioned so it might be better to remain unnoticed. Only Simon,<sup>1</sup> a farmer who is the "president" of the court, paces up and down impatiently. It is now almost two o'clock, and the prisoners should have arrived hours ago. Last week, he waited all day for nothing because the car from the

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<sup>1</sup> A number of interviewees asked explicitly not to have their real names used in this thesis. All the names of the people from my fieldwork area have therefore been changed.

prison could not travel due to the petrol crisis. The petrol crisis is not yet over, so he fears that he will lose another day. Suddenly, however, there is a sound that is unmistakably a car driving up the hill to Gatovu. Some minutes later, a pick-up arrives that is loaded with men dressed in pink who are guarded by one policeman who is casually carrying an automatic firearm. The men, all detainees from the central prison in Gikongoro, jump out of the vehicle and greet their relatives and neighbours warmly. For them too, today is a day marked by tension, because what will be said in the next few hours will decide if their future is one of captivity or freedom. For most of them, it has been eight years since they have set foot in their native village and they seem delighted by the warm welcome they are receiving. The survivors, conversely, look contemptuously at the men they suspect of having exterminated most of their family members. One woman shakes her head and says: "Look how they welcome them. They are even applauding them. They have killed ours, but they have lost nothing. If they want, they can even make babies!" Then "president" Simon raises his voice and urges everyone present to sit down in silence. He wants to open the meeting.<sup>2</sup> The meeting that follows is called "gacaca", which is the Kinyarwanda equivalent for "justice on the grass". In gacaca, the members of a community assemble to discuss the events of the 1994 genocide and to prosecute those who committed crimes during that period. In gacaca, laymen instead of educated judges administer justice and the court sessions take place in the community where the crimes took place rather than in formal courtrooms.

How is it possible that the administration of justice in Rwanda of serious crimes such as genocide is being taken away from professionals and entrusted to uneducated villagers? In the first place, the answer lies in the fact that gacaca is an emergency measure to cope with the crises that arose after the genocide. After the genocide had stopped and power changed hands, the new leaders decided to arrest those who had undertaken the attempted extermination of the Tutsi in Rwanda. Since participation in the genocide had been so widespread, around 120,000 people ended up behind bars. However, the Rwandan justice system, which had to deal with this influx of prisoners, was itself destroyed by the war and could not manage the enormous caseload of genocide suspects. Calculations warned that it could take up to 200 years to prosecute all prisoners,<sup>3</sup> which is of course unacceptable for both those in custody awaiting trial and for the survivors who want to see justice delivered. The Rwandan government had to search for an

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<sup>2</sup> Observations of the beginning of the gacaca meeting in Gatovu, 6 February 2003.

<sup>3</sup> Stef Vandeginste, *Justice, reconciliation and reparation after genocide and crimes against humanity: the proposed establishment of popular gacaca tribunals in Rwanda*, Paper presented at the all-African conference on African Principles of Conflict Resolution and Reconciliation (Addis Ababa, 8-12 November 1999). See: [www.africanprinciples.org/documents/paper\\_addis\\_full\\_text.doc](http://www.africanprinciples.org/documents/paper_addis_full_text.doc) (website visited 22 December 2003).

alternative and decided to consult its own legal traditions to find one. The government developed a justice system that, according to Rwandan President Paul Kagame, “will work along the lines of our traditional system of justice”.<sup>4</sup> The system is called gacaca, which traditionally functioned as a local mechanism for conflict resolution. Gacaca, however, underwent profound changes to make it applicable to the prosecution of those accused of having committed crimes during the genocide.

In addition to providing a form of emergency justice, the Rwandan authorities claim to have developed a system that will address long-term issues as well. Traditionally, gacaca aimed at reconciling the conflicting parties so that the conflict was resolved and harmony would return to the society. The new gacaca is, according to its founding fathers, shaped in such a way that this result will be transposed to the present post-war situation so that it will reconcile the population groups in Rwanda.

The question of how to deal with war crimes and massive human rights violations in the aftermath of violent conflict is not only relevant to Rwanda. In the past, various approaches have been adopted, ranging from bringing to court the top Nazis in Nuremberg to providing amnesty in exchange for confessions in the South African Truth and Reconciliation Commission. Yet the Rwandan approach of using traditional African principles of justice to deal with today’s post-war problems is totally new and, considering the fact that many African countries are saddled with comparable problems, therefore deserves attention. There are reasons to focus this attention on the possible relation between gacaca and the intended reconciliation of the Rwandan people. In recent years, a number of experts have come to realise that if sustainable peace in the aftermath of violent conflict is to be found, it is a precondition that the conflicting parties reach some degree of reconciliation.<sup>5</sup> If, in the aftermath of civil war, the question of reconciliation is neglected, this may very well result in mutual antagonism and the return of violence.<sup>6</sup> The fact that reconciling Rwandans is

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<sup>4</sup> Paul Kagame, *No title*, See: [http://www.gov.rw/government/president/interviews/2000/interviews\\_trade\\_mission.html](http://www.gov.rw/government/president/interviews/2000/interviews_trade_mission.html) (website visited 10 July 2002).

<sup>5</sup> Examples are: International Institute for Democracy and Electoral Assistance (IDEA), *Reconciliation after violent conflict. A handbook* (Stockholm, 2003); the articles of Johan Galtung, Louis Kriesberg, Mica Estrada-Hollenbeck, Joseph V. Montville and Wendy Lambourne in Mohammed Abu-Nimer (ed.), *Reconciliation, justice, and coexistence: theory and practice* (Lexington books, 2001); Hizkias Assefa, ‘The meaning of reconciliation’, Paper presented at the Seminar on Local Capacities for Peace: Vredesweek, 23 September 1999 (Pax Christi, 1999) 37-45; Martha Minow, *Between vengeance and forgiveness: facing history after genocide and mass violence* (Bacon Press, 1998); and John Paul Lederach, *Building peace: sustainable reconciliation in divided societies* (United States Institute of Peace Press, 1997).

<sup>6</sup> Louis Kriesberg, ‘Changing forms of coexistence’, in: Abu-Nimer (ed.), *Reconciliation, justice, and coexistence*, 47-64, there 61.

one of gacaca's top intentions adds extra relevancy to this unique experiment with justice.

The goals of this thesis are threefold. In the first place, it aims to describe how gacaca functions in practice and why it does so. Secondly, it explores the meaning of reconciliation in Rwanda. Despite the recent attention given to reconciliation, there is not yet a clear picture of what reconciliation entails and how it can be accomplished.<sup>7</sup> It is the intention of this thesis to take a step in answering these questions so that it can contribute to the development of the concept of reconciliation. And thirdly, I combine the first two pillars of the research and try to answer the question of whether one can expect a positive relation between gacaca and reconciliation. These goals have resulted in the following research questions:

How does gacaca function in practice and is it likely that it will contribute to reconciliation in Rwanda?

To facilitate my research, the following sub-questions were formulated:

- How does the modern gacaca relate to Rwanda's tradition and what is the value of Rwanda's legal tradition for its problems today?
- What elements does reconciliation consist of in the Rwandan context?
- What is the local history of the genocide that shapes the proceedings of gacaca?
- How does gacaca operate in practice, what determines this practice and what are its immediate social consequences?
- Is it likely that gacaca will contribute to the reconciliation process?

These questions deserve some critical reflections. The first concerns the limited possibility of drawing conclusions about the contribution of gacaca to the reconciliation process. Reconciliation is not an easy or straightforward concept. On the one hand, reconciliation is a very long and slow process that is more likely to take generations than decades to achieve. Gacaca, which is expected to take some years, only covers an early part of the process and should hence be considered as a point of departure instead of the conclusion of the reconciliation process. My fieldwork, moreover, only covered the beginning of gacaca's functioning and gacaca's initial results are not guaranteed to be the same in the future. On the other hand, gacaca is neither the only requirement for reconciliation, nor is it the only event that influences the process. Even if gacaca became a great success, reconciliation is not guaranteed. For these reasons, the outcome of this study can only be expressed in the form of indications. Reconciliation takes too long as a process and is dependent on too many other factors for one to draw hard conclusions in this initial phase.

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<sup>7</sup> See Section 2.1.

The second comment concerns the meaning of the results of my fieldwork for the operation of gacaca at a national level. My fieldwork entailed two case studies in two neighbouring rural communities that cannot be considered as representative of Rwanda as a whole. During my stay in Rwanda, gacaca was still in a pilot phase, in which twelve areas had been selected to try out gacaca. These areas were chosen according to specific criteria that distinguish them from the rest of Rwanda.<sup>8</sup> Observations made in this research can therefore not be automatically translated to the rest of the country. However, the value of carrying out case studies is that it allows studying a process in depth so that one notices more aspects and obtains a higher level of understanding of the process.

## Justification of methods

This thesis is the result of a combination of a historical and an anthropological perspective. This choice deserves some justification. Why was it decided to employ a historical perspective? Rwanda has an ambivalent relationship with history. Its history has been distorted and misused by former elites to prove legitimacy of autocratic rule and to promote ethnic hatred, which eventually led to the 1994 genocide. This has discredited the profession of historians so much that the teaching of history has been forbidden in Rwandan schools. Against this backdrop, it is interesting that it has now been decided to revert to Rwanda's tradition to solve the problems that have been caused by the past. In a country where present realities are so strongly moulded by the past, it is, in my opinion, also necessary to approach a piece of research like this from a historical angle. Aside from this Rwandan context, any research that deals with the concept of reconciliation should naturally have an eye for the past,<sup>9</sup> an understanding of history is indispensable.

Two historical lines shape the context of the present gacaca – the traditional gacaca and the history of ethnic violence and genocide. Studying the traditional gacaca and examining the way this system is translated into its successor enhances insight into the functioning of the new gacaca and explains some of its problems and successes. So far, not much substantial attention has been focused on this relationship between tradition and modernity, and it is one of the intentions of this study to contribute to knowledge on the relationship between

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<sup>8</sup> The criteria are: a) the sector must have an office where important documents can be safeguarded; b) the sector must have a relatively high number of confessing suspects; c) the population must have shown general enthusiasm for and good understanding of gacaca; and d) the *inyangamugayo* (the judges) must be relatively competent.

<sup>9</sup> See Section 2.2 on definitions of reconciliation.

the traditional and the new gacaca. In addition, there is also a wider relevance of placing gacaca in the context of its traditional predecessor. Sadly, Rwanda is neither the first African country to be ravaged by civil war nor will it be the last. These other societies are also struggling with the question of how to deal with the legacy of violent conflict and how to move towards a more peaceful future. The regular justice systems, which were imposed by the former colonial powers, often fail to answer these demands. Hence, examining the way Rwanda uses its own legal traditions for tackling the consequences of a violent past may provide important lessons for other African societies.

The second historical line that shapes gacaca's context is Rwanda's history of violence and genocide. Since the end of the colonial era, Rwanda has experienced several outbursts of violence in which the Tutsi minority was targeted. The crimes that were committed during these periods of unrest were never prosecuted and were even encouraged from above. This has caused a "culture of impunity" in which perpetrating hostilities against Tutsi gradually came to be normal behaviour. This culture of impunity is considered as one of the main causes and explanations for the all-embracing and brutal character of the genocide.<sup>10</sup> However after the genocide ended, the violence did not completely stop. In its immediate aftermath, roles were reversed and many Hutu fell victim to war crimes committed by the Rwandan Patriotic Front (RPF), the army that brought the genocide to a halt, and to crimes instigated by individuals looking for revenge.<sup>11</sup> For many Hutu, these offences form an integrated part of the Rwandan conflict and should therefore receive a place in the administration of justice and the reconciliation process. However, the Rwandan authorities have kept these crimes beyond the powers of gacaca. In my opinion, all events relating to the genocide and the way this history is being treated today shape people's behaviour in gacaca and ought to be discussed in any thesis trying to understand gacaca.

Why does this study approach gacaca from an anthropological perspective as well? Critics of gacaca have so far mainly focused on questions relating to the legal aspects of gacaca. How does gacaca relate to other judicial institutions, like the Rwanda Tribunal in the Tanzanian city of Arusha or the formal justice system in Rwanda itself? Is gacaca in compliance with basic fair-trial standards? Since this is not fully the case, the questions are whether this is a problem and what

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<sup>10</sup> See Chapter Five.

<sup>11</sup> For documentation see: Human Rights Watch, *Rwanda: deliver justice for victims on both sides* (New York, 2002). Website: <http://hrw.org/press/2002/08/rwanda081202.htm> (visited 22 December 2003); African rights, *Rwanda: the insurgency in the Northwest* (September 1998); Gérard Prunier, *The Rwanda crisis: history of a genocide* (New York, 1997) 305-311; Amnesty International, *Rwanda, reports of killings and abductions by the Rwandan Patriotic Army, April-August 1994* (October 1994). Website: <http://web.amnesty.org/library/index/engaf470161994> (visited 22 December 2003) and Section 5.4 of this thesis.

alternatives are available. Although these questions are highly relevant from a legal and human-rights perspective, they offer only a partial insight into a true understanding of the dynamics of gacaca. In essence, gacaca is not a legal practice but a social process. None of the stakeholders in gacaca, from the judges via the prosecutors to the defence, have any legal background whatsoever, and are all ordinary members of a community. As a consequence, gacaca is not shaped by laws and legal safeguards but by social interaction within the community. For that reason, I decided to approach gacaca from an anthropological perspective. I have employed two detailed case studies in which, by observing the process and interviewing the stakeholders, the focus was to uncover the dynamics of people's participation, to understand the reasons for this participation and to gain insight into gacaca's effect on relationships between the different groups in society. With this approach, I attempt to gain insight into the core of gacaca, so that gacaca's course can be understood, its problems identified and some solutions proposed.

### Justification of research techniques

The research techniques that have been employed are all of a qualitative nature. I stayed for nearly five months in a rural district in the southeastern province of Gikongoro where I followed gacaca in two neighbouring communities.<sup>12</sup> Because one of the determining factors for the way the proceedings will evolve in a community is the number of suspects that confess, I decided to study one cell with a higher number of confessors and one with a lower number. I acquired information through open and semi-structured interviews with stakeholders in gacaca. In total, I held 83 interviews with 60 different people and organised four additional group discussions. Because most interviewees spoke neither French nor English, I worked through a francophone interpreter. Most interviews were taped and then transcribed from Kinyarwanda into English with the help of Klaas de Jonge of the NGO Penal Reform International. With my second technique, observing how gacaca progressed, I was able to compare people's opinions in interviews with the way they behaved in gacaca and I was in a position to obtain extra information that people did not reveal directly in conversations. Consequently, observation was, as a technique, equally important.

In my judgement, these techniques are well suited to gaining insight into the operation of gacaca and its consequences for the communities. Rwandans are known to be hesitant with strangers, especially when the topic of discussion is politically sensitive, as gacaca and reconciliation naturally are. When outsiders

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<sup>12</sup> For a more detailed description of the area of my fieldwork, see Sections 5.1 and 5.2.

ask questions, many Rwandans prefer to be careful and give politically correct answers instead of offering their true opinions. Only by spending a lot of time getting to know people can one gain their confidence so that they will talk more freely. Also, I found out that people responded more easily to questions about their practices than to those regarding their opinions. In such an environment, quantitative methods – like holding opinion surveys – are highly problematic. So far, two large opinion surveys have been executed about gacaca.<sup>13</sup> Both studies concluded, on the basis of pre-coded questionnaires, that over 90% of Rwandans highly favour gacaca and are willing to contribute actively to its success. A comparable percentage of people believe, additionally, that gacaca will contribute to sustainable peace and reconciliation in Rwanda. From my experience with doing research in Rwanda, however, I strongly suspect that this is the result of prudence and political correctness on the part of respondents, instead of their true beliefs. Even if a lot of time and effort is invested to win over people's confidence, it remains difficult to discover their true views. The advantage of this study is that, since the process of gacaca was followed for almost five months, there was time for the community and the researcher to get to know each other. In addition, the utilisation of the technique of observation ensured that I did not only have to rely on what people said, but also on how they acted during the court sessions.

## Arrangement of chapters

This thesis consists of seven chapters. The first chapter questions whether the new gacaca should be seen as a revival or as an invention of tradition. After describing in detail the form and content of the traditional gacaca and the way this system has evolved over time, a comparison is made with the new system. The second, theoretical, chapter deals with the concept of reconciliation. It questions the importance of reconciliation, looks for a definition and discusses the different elements in the concept of reconciliation. At the end, a theoretical diagram of the concept is presented that aims to contribute to the development of a theory and serves as a benchmark to assess gacaca's possible contribution to the reconciliation process. The third chapter examines the Rwandan government's view on reconciliation and some of its strategies towards it. Due to time restrictions and the limited scope of this thesis, the chapter only discusses strategies that have a strong connection with and influence on gacaca. These

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<sup>13</sup> S. Gabisirege and S. Babalola, *Perceptions about the gacaca law in Rwanda: evidence from a multi-method study* (John Hopkins University, 2001)., and LIPRODHOR, *Juridictions gacaca au Rwanda. Résultats de la recherche sur les attitudes et opinions de la population rwandaise* (Kigali, 2000).

strategies concern the confessions of prisoners; the sensitisation<sup>14</sup> of the population about reconciliation; and the organisation of “pre-gacaca” meetings during which prisoners are brought to the hills to be presented to the population.

In the fourth chapter, attention returns to gacaca. In anticipation of the start of gacaca, the system is commented on from several angles. This chapter reviews these comments and highlights the high expectations of gacaca in government circles; the more critical attitude of the international community; and the, at least nominally, more or less compliant stance of the Rwandan population. Before the detailed examination of the practice of gacaca in the communities of my fieldwork in Chapter Six, Chapter Five provides a history of and background information about these communities. Only with knowledge of the history of the genocide and the broad spectrum of events relating to it, can the actual operation of gacaca be understood. In Chapter Six, the operation of gacaca in Gatovu and Vumwe is described and discussed in detail. It includes, among others, logistical and organisational issues, the quantity and quality of participation by the different stakeholders, the content of meetings and the consequences of the way gacaca proceeds on relations within communities. The chapter also comprises three in-depth cases in which some of the main topics that shape gacaca are explored in more detail. In the final chapter, before the conclusion, the practice of gacaca is linked to the theory of reconciliation. On the basis of the elements of reconciliation that were determined in Chapter Two, gacaca’s possible contribution to reconciliation is discussed.

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<sup>14</sup> The word “sensitisation” is commonly used in Rwanda as a synonym for the education of the population and/or propaganda.

## Gacaca: The revival or invention of tradition?

“The reason why the gacaca jurisdictions came into being is the fact that the number of prisoners and the number of problems caused by the genocide could not be dealt with by the normal jurisdictions. Therefore we chose to look back in history for a solution. We decided, after consultations with the population, that the only viable solution for the problems of genocide was a mechanism that is rooted in our culture.”<sup>15</sup>

The director of communication of the Gacaca Department of the High Court of Justice in Kigali, Charles Kayitera, continued explaining to me proudly that in ancient times Rwanda had its own justice system that resolved social disputes and enabled Rwandans to live together harmoniously.<sup>16</sup> One of the pillars of Rwanda’s traditional justice system was gacaca, and it is along the lines of this traditional system of justice that the Rwandan government says it has based the new gacaca jurisdictions.<sup>17</sup>

Considering that the new gacaca jurisdictions<sup>18</sup> are derived from a historical precedent, it is surprising that very few studies have focused on gacaca’s

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<sup>15</sup> Charles Kayitera, director of communication of the Gacaca Department of the High Court of Justice in Kigali, interviewed in Kigali, 17 March 2003.

<sup>16</sup> Ibid.

<sup>17</sup> Paul Kagame, *No title*, See: [http://www.gov.rw/government/president/interviews/2000/interviews\\_trade\\_mission.html](http://www.gov.rw/government/president/interviews/2000/interviews_trade_mission.html) (website visited 10 July 2002).

<sup>18</sup> When referring to the older form of gacaca, I use the term “traditional gacaca” or “old gacca”. When I mean the new gacaca jurisdictions, I use either “new gacaca” or simply “gacaca”.

historical roots. So far, it has been almost exclusively discussed in the light of the genocide and its aftermath.<sup>19</sup> I consider this as insufficient because a lack of historical conscience reduces the understanding of the new gacaca. This chapter attempts to provide this historical background.<sup>20</sup> First, I examine the content of the traditional gacaca and how it has changed over time and then having discussed the coming into being of the new gacaca, I will compare the two breeds of gacaca, and place the new gacaca in its historical perspective.

## Gacaca before colonization

There are not many certainties about the pre-colonial history of Rwanda because Rwandan society never wrote down its history and customs but passed them on orally. These mythical tales do not form a reliable base for interpreting Rwanda's ancient history.<sup>21</sup> In addition, we have little knowledge about Rwanda's pre-colonial history because of the hazy writing of history since independence. The new political elites falsified history in order to legitimise their position and also used it to polarise ethnic relations in Rwanda.<sup>22</sup> To attain this goal, history was rewritten with the aim of presenting the current situation as a legitimate and just outcome of what had gone before. The fact, that most sources on Rwandan history are either idealised or propagated makes it difficult to draw a concrete picture of pre-colonial Rwanda.

### *Gacaca's origin*

Knowledge on traditional gacaca is no exception to this rule. The current government is very keen to present ancient Rwandan society as one in which all population groups lived together in harmony. Since the old gacaca is officially seen as part of the backbone of this harmonious situation, writing about traditional gacaca becomes easily politicised, and, with that, unreliable. As a consequence, little is really known about the traditional gacaca and the information that does exist is often contradictory. With respect to articles that

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<sup>19</sup> Exceptions are: Charles Ntampaka, *Le gacaca: une juridiction pénale populaire*, see: <http://droit.francophonie.org/acct/rjj/actu/13Ntampa.htm>. (website visited 24 June 2002); Charles Ntampaka, 'Le gacaca rwandais, une justice répressive participative', in: Henry D. Bosly *et al.*, *Actualité du droit international humanitaire* (2001) 212-225; United Nations High Commissioner for Human Rights (UNHCHR), *Gacaca, le droit coutumier au Rwanda. Rapport final de la première phase d'enquête sur le terrain* (Kigali, 1996).

<sup>20</sup> The findings of this chapter are based on the literature, interviews with experts, two former traditional chiefs, and on interviews with old people who still recollect the functioning of gacaca during colonial times.

<sup>21</sup> Charles Ntampaka, 'La place de la coutume dans la législation rwandaise – état actuel', in: *Revue juridique du Rwanda* 8 (1984) 139-148, there 143.

<sup>22</sup> Catherine Newbury, 'Ethnicity and the politics of history in Rwanda', in: *Africa Today* 45 (1998) 7-24.

have discussed gacaca to date, some but not much knowledge can be elicited about its traditional functioning. Most authors dedicate only one or two paragraphs to the traditional gacaca before going into more detail about the shape of the new gacaca.<sup>23</sup> In these descriptions a picture is drawn of an informal, flexible and communal forum where violations of social norms and (inter-) familial disputes were discussed and solved under the guidance of the old and wise men in the community.

Concerning the origin of gacaca, most authors claim that the term gacaca is derived from the Kinyarwandan word for ‘grass’ or ‘lawn’, referring to the place where it happens. During my stay, however, people showed me a certain plant, called *umugaca*, on which they told me that the ancient gacaca was traditionally organised. This plant felt like a very soft carpet, which explains why people preferred to sit on it during sessions. In 1995-1996, UNHCR executed a study on gacaca and concluded that the traditional gacaca was based on the Kinyarwandan proverb “*uruja kujya i Bwami, rubanza mu Bagabo*” which literally means “before one addresses the *mwami*, one has to visit the wise men first”.<sup>24</sup> This proverb marks the position of gacaca in the social and judicial framework in which it operates. At one end of the spectrum, there were the levels of the family and the village. These were the domains of gacaca where the wise and old men ran the show. As heads of the families, these men fulfilled the roles of judge and arbitrator. The judges were traditionally called *inyangamugayo*, which means ‘honest person’.<sup>25</sup> Men traditionally monopolized gacaca; women and children were excluded from participation because they were not allowed to speak to a group in public. Women could, nevertheless, be very active behind the scenes and in that way women influenced the traditional gacaca tribunals. Children were sometimes ordered to be present at gacaca discussions, but this was mostly for educational purposes. The tribunals gave them the chance to learn about good morals and behaviour.<sup>26</sup>

Beyond the village level were the higher judicial structures that were superior to gacaca. Politically, Rwanda was headed by the *mwami*, (king) who led a pyramidal system of chiefs and sub-chiefs.<sup>27</sup> Since political and judicial powers were not separated, the *mwami* and the chiefs also executed judicial powers. Here

<sup>23</sup> Exceptions are: Ntampaka, *Le gacaca: une juridiction pénale populaire*; Ntampaka, ‘Le gacaca rwandais’; UNHCR, *Gacaca, le droit coutumier*.

<sup>24</sup> UNHCHR, *Gacaca, le droit coutumier*, 8.

<sup>25</sup> Similar to its traditional forefather, the judges in the new gacaca jurisdictions are called *inyangamugayo* but in the new gacaca women can also become *inyangamugayo*.

<sup>26</sup> UNHCHR, *Gacaca, le droit coutumier*, 9, 10.

<sup>27</sup> For a more detailed description of the ancient political organisation, see Filip Reyntjens, *Pouvoir et droit au Rwanda. Droit public et évolution politique, 1916-1973* (Tervuren, 1985); Charles Ntampaka, ‘La place de la coutume dans la législation rwandaise - état actuel’, in: *Revue juridique du Rwanda* (1984) 139-148; Ntampaka, *Le gacaca: une juridiction pénale populaire*; and Ntampaka, ‘Le gacaca rwandais’.

a body of wise men assisted every chief, while the *mwami* had its own court in which the *abiru* (the “guardians of tradition”) supported him. If the wise men in *gacaca* at the village or family level did not manage to solve a problem, the case was transferred to one of these higher institutions. This is where the proverb “before one addresses the *mwami*, one has to visit the wise men first” comes from. Thus, problems were first solved in the local and communal sphere but if this did not lead to a solution, conflicts and disputes were sent to higher-level institutions.

*Build to bring reconciliation: Gacaca’s characteristics*

In its principles and procedures, traditional *gacaca* showed all the characteristics that are attributed to traditional African justice systems in general.<sup>28</sup> Traditional *gacaca* was, firstly, purely oral. Nothing was written down and decisions were taken on the basis of custom instead of written laws. Secondly, the judges were heads of families, and thus members of the community. They were involved in social relationships with both the disputing parties. Thirdly, *gacaca* was flexible and informal. There were no pre-set dates and procedures for the sessions but the old *gacaca* was held whenever it was needed and in a way that was considered the most appropriate for the issue at stake. Finally, the most important characteristic that the old *gacaca* shares with other traditional African systems of justice is its focus on reconciliation. There was a prevalence of restoration over retribution by which it was hoped to support the social harmony in society. All procedures and sanctions were concentrated on this goal. Modeste Nanzabaganwa, an expert on Rwanda’s oral history, described this in the following words:

“At the end, the *inyangamugayo* made a synthesis, but the final judgement could never be in a way that it humiliated anybody. It was a correction and compensation, with the goal of reintegrating the offender, with the will of the victim. Another thing is that the culpable was not excluded from society, but would return in society after he had confessed. He had, of course, to pay an amendment and he had to repair the damage he had caused, but he would stay in the society. Like that he is discouraged to repeat his mistake another time, because he

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<sup>28</sup> In the literature on traditional African justice, it appears that these systems have a number of common characteristics. Compare, for instance, Penal Reform International, *Access to justice in sub-Saharan Africa, the role of traditional and informal justice systems* (London, 2000) 22-38; Various organizations, *Report of the all-African conference on African principles of conflict resolution and reconciliation* (Addis Ababa, 8-12 November 1999) 14-17.

See: [http://www.africanprinciples.org/documents/all\\_africa\\_conference\\_report\\_english.doc](http://www.africanprinciples.org/documents/all_africa_conference_report_english.doc) (website visited 23 December 2003); C.R.M. Diamini, *The effects of customs, religions and traditions on the right to a fair trial in Africa*, Paper delivered at the seminar on the right of a fair trial on 9-11 September 1999, Dakar, 318-332; Filip Reyntjens, *Introduction aux droits africains* (Bruxelles, 1994) 25-28; Jacques Vanderlinden, *Les systèmes juridiques Africains* (Paris, 1983) 3-24; and Max Gluckman (ed.), *Ideas and procedures in African customary law* (Oxford, 1969).

is punished but at the same time he is offered the possibility to continue to live with the population.”<sup>29</sup>

During my fieldwork, I held discussions and interviews with old people who still remember the operation of the old gacaca. They explained the goals and practice of traditional gacaca. One day, when I held a group discussion with the oldest men from the village, one grey-bearded man explained for instance:<sup>30</sup>

“Earlier, when a person committed a fault, the wise people of the hill were called together. They sat together with the family of the person that committed the fault and with the family of the victim, and they tried to solve the problem. After the discussions, a penalty was proposed for the offender and his family. The penalty was for the family as a whole and the family of the offender had to decide over it. After having punished the offender, we tried to forget the fault that he had committed.”

By stating that the penalty was inflicted on a family as a whole, this man stressed the fact that the traditional gacaca was based on the assumption of collective responsibility. Even if an individual committed a fault, all the members of his family, group or even clan shared the consequences and helped to fulfil the duties that were imposed in the penalty.<sup>31</sup> A second man, called Emmanuel, emphasised the role of traditional gacaca in shaping and maintaining social order in the community through striving for reconciliation. He added:

“The families assembled and discussed what had happened while drinking beer together. It was said that the fault had happened and should be forgotten, but that it couldn’t be repeated. The wrongdoer accepted his mistake, and the other lost his fear that he would be victimized again. Like that, the people reconciled and the problems in the community were solved”

Acknowledgement of the committed fault and discussion about it were important elements in achieving reconciliation. Under the leadership of the wise men, the parties deliberated as long as was felt necessary to reach an agreement. In addition, outsiders were also often encouraged to give their opinions and testimonies.<sup>32</sup> Another important method in achieving reconciliation was the punishment. On the one hand it was felt that a crime could not go unpunished, but on the other hand there was the principle that severe penalties worked contrary to the desired reconciliation. Penalties were handed out but they were of a compensatory nature. Another grey-haired man, who is also a judge in the present gacaca tribunal of his village, commented as follows:

“After having discussed the situation, a penalty was proposed. However, instead of going to prison, which was never demanded, the offender was asked to repair the damage he had caused and to buy beer in addition. The punishment for the offender functioned as an example for others. The penalty for the offender would pursue the others not to make the

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<sup>29</sup> Modeste Nzanzabaganwa , interviewed in Butare, 13 January 2003.

<sup>30</sup> Group discussion in Vumwe, Gikongoro Province, 19 February 2003.

<sup>31</sup> Centre for Conflict Management, *Les juridictions gacaca et les processus de réconciliation nationale* (National University of Rwanda, 2001) 32.

<sup>32</sup> Ntampaka, ‘Le gacaca rwandais’, 215-16.

same mistake as well. (...) After having fulfilled his obligation, he could return to the village and when he had a problem, the villagers would help him again. If he became ill, for example, the other villagers would nurture him and find medicine for him.”

In the end, traditional gacaca’s stress for reconciliation was expressed in the ceremony that concluded the meeting. The return of peace was celebrated by sharing locally brewed beers, usually provided by the party that had caused the harm.<sup>33</sup>

*Remaining questions on traditional Gacaca: Types of disputes*

There is no certainty about the competence of the traditional gacaca tribunals. What kinds of disputes did gacaca attempt to solve? What kinds of crimes did gacaca prosecute? Was gacaca used when more severe crimes were at stake, as now, with the prosecution of suspects of genocide? As gacaca was always the lowest echelon in the justice system, it seems likely that the ancient gacaca only had competence to rule on the least important disputes and crimes. This is indeed what is suggested in most of the articles that address traditional gacaca. Most authors attribute gacaca with the ability to solve (inter-) familial disputes and to correct minor misdeeds by individuals.

In the United Nations research on traditional gacaca cited above, it emerges that the old gacaca dealt with four types of conflicts.<sup>34</sup> Firstly, there were conflicts about land. When, for example, two people claimed the same piece of land, traditional gacaca was employed to settle the dispute. Secondly, gacaca dealt with pastoral conflicts. A gacaca tribunal mediated, for example, when the cattle of one family ravaged a neighbour’s fields, or when two families disputed the ownership of cattle. However, when the ownership of cows was at stake, gacaca was not granted a role because, in theory, the *mwami* owned all the cows in Rwanda. As a result, it was the *mwami* himself, or one of his chiefs, who presided over these instances. Thirdly, gacaca solved quarrels within households and families. Within families, all kinds of disputes can arise and in Rwanda they were traditionally settled in gacaca. Finally, the United Nations research mentions badly honoured contracts as one of the responsibilities of traditional gacaca. These conflicts could involve the failure to fulfil the obligations in a relation between a client and patron or the breaking of a commercial agreement between equal parties.

All four issues relate to what are nowadays called “civil conflicts”. Although the research states that in severe penal matters, like murder or the theft of cows, gacaca is not granted any role, it does not comment on the old gacaca’s role in less severe penal matters, like wounding or the theft of items other than cows. A

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<sup>33</sup> Ibid., 216.

<sup>34</sup> UNHCHR, *Gacaca, le droit coutumier*, 10-15.

study by the Centre for Conflict Management of the National University of Rwanda in Butare, on the other hand, states that before the introduction of the written law by the Belgians, traditional gacaca was the system of justice par excellence. The traditional gacaca treated, according to these researchers, all susceptible problems that arose in the community, including the more severe criminal offences. If a fault was severe, the judges in the traditional gacaca could even banish the offender (and his family) from the community.<sup>35</sup> The earlier cited expert on oral history in Rwanda, Modeste Nzanzabaganwa, holds yet another view of traditional gacaca's competence. He claimed in an interview that he has evidence that, even in cases of murder, the old gacaca played a role. Its role was, in his view, to determine the circumstances in which the act had taken place and to prepare what could be called an unwritten file for the superior courts. On the basis of the information gathered in gacaca, higher authorities could make a decision.<sup>36</sup>

What did the elderly people who remembered the traditional gacaca say about this matter? In interviews, all except one stressed that the traditional gacaca was only permitted to judge over minor cases. As examples of issues that were dealt with by the old gacaca, they mentioned disputes over land; arguments that have got out of hand; petty theft; small acts of violence; quarrels within the family; and the beating of one person by another. According to these interviewees, bigger acts like the theft of cattle and assassination were very rare, but even if they occurred, they were not treated by the ancient gacaca but were settled by a vendetta or were brought before the chief or the *mwami*. However according to one man, who thinks he is about 80 years old, the gacaca of the ancient state did discuss the killing of one person by another. Like Nzanzabaganwa, this old man claimed that after a murder had taken place, discussions were firstly held at the village level. When the culprit was found, he would be transferred to a higher chief who would settle the case.<sup>37</sup>

As a conclusion, it must be stated that there is no certainty about the competence of the traditional gacaca. It is very possible that it varied in time and place. For example, it is conceivable that when the chief was not well liked or was very weak in one region in a certain period, the villagers would prefer to bring severe crimes to justice themselves, whereas under different circumstances the competence of gacaca was limited to (inter-) familial disputes and petty crimes.

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<sup>35</sup> Centre for Conflict Management, *Les juridictions gacaca*, 32.

<sup>36</sup> Modeste Nzanzabaganwa, interviewed in Butare, 13 January 2003.

<sup>37</sup> Group discussion in Vumwe, 19 February 2003.

## Gacaca in colonial times: The decline of legitimacy

Rwanda was colonised at the end of the 19<sup>th</sup> century and gained independence at the beginning of the 1960s. In 1896 Rwanda was placed under German protectorate and the Germans stayed until their defeat in World War I. The Belgians then took over power and ruled Rwanda until independence in 1962. Since the Germans never tried to intervene in Rwandan society, the political and legal institutions remained little changed under German rule and apart from pacifying Rwandan territory, opening it up for commerce and to missionaries, the Germans left most things as they were.<sup>38</sup> Gacaca was also unchanged.

### *Undermining traditional structures*

The Belgians, however, exerted far more influence. Although they never intruded in gacaca directly, their policy towards the traditional administrative and legal system had its effects on the traditional gacaca. The Belgians employed a policy of indirect rule, which meant theoretically that all indigenous structures were left intact. However, the Belgian style of indirect rule was in fact very interventionist.<sup>39</sup> From the moment they seized power, their policy was directed at progressively changing and weakening the traditional judicial structures.

Firstly, the position of the head of the traditional justice system, the *mwami*, declined due to a number of interferences. In 1922, for example, it was decided that a delegate of the Belgian “resident” had to assist the *mwami* in his judicial decisions and in 1923, the *mwami* lost his autonomous right to appoint chiefs to the Belgian “resident”. The biggest blow to the authority of the monarchy, ultimately, was the dethronement of *mwami* Musinga in 1931, by the Belgian “resident”. He was replaced by a new *mwami* – Mutare III Rudahigwa – whose proclamation was done without any traditional ceremony.<sup>40</sup>

In addition to the legitimacy of the *mwami*, the legitimacy and authority of the traditional chiefs were reduced. To start with, the Belgians forbade certain rituals and symbols that the chiefs used in executing their judicial powers. These were considered superstitious and barbarous. Another measure that undermined the traditional authorities was the abolition of the “triple chief system”, because this institution did not match the idea of rational governance. In the traditional structure, every territory was governed by three different chiefs who all executed their own separate tasks. There was one chief of land, one of cattle and one of the

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<sup>38</sup> Reyntjens, *Pouvoir et droit*, 38; Ntampaka, ‘La place de la coutume’, 139; and Vanderlinden, *Les systèmes juridiques Africains*, 156.

<sup>39</sup> Jeswald W. Salacuse, *An introduction to law in French-speaking Africa. Vol. 1; Africa south of the Sahara* (Virginia, 1969), 523 and Reyntjens, *Pouvoir et droit*, 111-113.

<sup>40</sup> For a detailed account of the process of the weakening of the monarchy, see Reyntjens, *Pouvoir et droit*, 78-90.

army. Because ethnicity and profession in Rwanda were traditionally interlinked, this system of governance prevented tensions between the different groups.<sup>41</sup> However, the colonial power replaced it with a system of one chief per territory, in which they had the ultimate power over the installation and replacement of the chiefs. These new chiefs combined in one person the formally shared judicial powers, though the Belgians always had control over their decisions.

The third measure that weakened the traditional justice system was the imposition of written law and Western courts. Though the traditional courts continued to exist, they were inferior to the Western courts and placed under the control of the colonial authorities. The traditional courts were organised according to a strict hierarchy, that had not been known before and many of their powers were removed. The permission to judge in penal cases became strictly reserved for Western courts, while the traditional courts were only allowed to handle civil cases.

#### *The Belgians and gacaca*

Unlike with their policy towards the higher echelons of the traditional justice system, the Belgians never intervened directly in the traditional gacaca. One man from the community of Vumwe remembered:

“The Belgians were only observers. They came to observe, and when the problems were well resolved, they were satisfied and left. Since the Belgians saw that the work of gacaca went well, and that the problems were solved, they left it.”<sup>42</sup>

Although the colonial administration did not forbid or actively change gacaca, their rule nevertheless undermined it. Firstly, the numerous measures that shattered the authority and legitimacy of the traditional justice system as a whole had its repercussions on gacaca. Though these measures never touched gacaca directly, the fact that it was a part of the traditional structure led to a decline in its legitimacy.<sup>43</sup> Secondly, the introduction of a Western body of law removed traditional gacaca from the forefront of the judicial system. When a new generation grew up and became used to the Western type of justice, gacaca started to lose its value; it was no longer a necessity. All this together made the former chief of the northern province of Ruhengeri state that:

“Practically, I could say that gacaca was on its deathbed. Because with colonisation new tribunals and courts were introduced, (...) gacaca fell into forgetfulness.”<sup>44</sup>

One has to conclude that under the colonial regime, gacaca started its downfall. The legitimacy and frequency of its usage declined and it struggled to fit in the

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<sup>41</sup> Rene Lemarchand, *Rwanda and Burundi* (London, 1970) 27 and Reyntjens, *Pouvoir et droit*, 113.

<sup>42</sup> Group discussion in Vumwe, 19 February 2003.

<sup>43</sup> Ntampaka, *Le gacaca: une juridiction pénale populaire*, 9.

<sup>44</sup> Former traditional chief Michel Kayihura, interviewed in Kigali, 5 March 2003.

rigid judicial system that had been installed by the colonial power. However to say that gacaca was on its deathbed seems to be an overstatement. All the elderly people that I spoke to who could recall the colonial period remember the traditional gacaca vividly. It was alive and well, and still functioned pretty much the way it had always done.

## Gacaca after independence: Moving away from tradition

Rwanda's road to independence was violent. The violence, however, was not aimed at the colonial power but at the ruling Tutsi elite that had been a dominating power in Rwanda for ages. In 1959, a violent revolution took place in which the monarchy was abolished and the balance of power shifted towards a new Hutu elite. When Rwanda gained independence in 1962, this Hutu group formed the new government but the political transformation had its repercussions on the traditional justice system. On the one hand, the abolition of the monarchy had "beheaded" the traditional legal structure. On the other hand, because the new Hutu rulers associated pre-colonial traditions with the domination of the Tutsi-aristocracy, the first independent governments showed no interest in cherishing and maintaining past legal principles. As a consequence, traditional justice was discredited and the new government stressed the creation a uniform body of written laws. In the first constitution, the government entered articles that restricted traditional justice and declared the superiority of the written law over customs.<sup>45</sup> Through these restrictions, the Rwandan government hoped to fully integrate traditional law in the official legal system of the state, and thereby create a uniform body of law. However in spite of this policy, traditional gacaca remained an important source of justice. On the one hand, this was due to the fact that 95% of the population were engaged in agriculture, an area where traditional justice was generally strongly vested. On the other hand, because the formal courts were overloaded with cases, the government was forced to make use of the old gacaca as a tool for relieving the pressure of the formal Court of the Canton.<sup>46</sup>

Traditional gacaca was, however, not left as flexible and unrestricted as it used to be. Unlike the Belgian rulers, the new government wanted to control and change the traditional gacaca so that it conformed to their idea of an efficient administrative state structure. Whereas formerly the old men in a community led the traditional gacaca courts, gacaca was now placed under the responsibility of

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<sup>45</sup> Salacuse, *An introduction to law in French-speaking Africa*, 533.

<sup>46</sup> Some studies have shed light on the relevance of gacaca between independence and the genocide, these are: F. Reyntjens, 'Le gacaca ou la justice du gazon au Rwanda', in: *Politique africaine* 40 (1990) 31-41; J. van Houtte, F. Reyntjens and A. Basominger, 'Litiges et besoins juridiques au Rwanda', in: *Revue juridique du Rwanda* (1981) 188-203; Ntampaka, 'Le gacaca rwandais'; Ntampaka, *Le gacaca: une juridiction pénale populaire*; and UNHCHR, *Gacaca, le droit coutumier*.

the authorities of the cell and sector, which are the lowest administrative units. This means that these officials took over the role of judges in gacaca. Unlike before, all testimonies were written down in a file that served as the basis on which a formal judge took decisions if gacaca could not solve the problem. Gacaca meetings were also held on fixed days, instead of whenever the need arose and procedures were less fluid. Yet, other elements of the traditional gacaca were kept, like the high level of participation by the community, its accessibility, the long discussions and the primacy of reconciliation.<sup>47</sup> The main function was to offer a simple and accessible venue where testimonies were held, disputes were discussed and, if possible, resolved. If a solution was found, it was executed and effectuated on the spot. If not, the dispute was forwarded to the Court of the Canton at the district level, which also functioned as a court of appeal for the gacaca courts.<sup>48</sup>

The transformations, ordered from above, removed gacaca from its traditional character in such a way that one cannot speak of “traditional gacaca”. “Semi-traditional” would seem to be a more correct annotation. The semi-traditional gacaca captured an important place in society, especially in rural areas. In urban regions, people preferred official organs to gacaca for the settlement of disputes, which led to the disappearance of gacaca in the cities. According to calculations by Reyntjens made in a predominantly rural area during the latter half of 1986, around 1200 disputes were heard by gacaca courts, while the Court of the Canton and the Court of First Instance judged only 83 and 10 cases respectively.<sup>49</sup> These surprising figures show that gacaca was quantitatively the most important legal institution, while the official judiciary judged only the tip of the iceberg. In addition, the confidence that people had in gacaca, because of the fact that it is executed by people one knows personally, tended to outweigh people’s confidence in the official courts, which were often perceived as corrupt and remote from the disputants.<sup>50</sup> Even nowadays, as I witnessed during my fieldwork, the semi-traditional gacaca remains operational. When conflicts arise, people still turn to this age-old mechanism, which has changed to a certain extent over time. This semi-traditional gacaca operates parallel to the newly installed gacaca jurisdictions, to which we will now turn.

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<sup>47</sup> Reyntjens, ‘Le gacaca ou la justice du gazon’, 33.

<sup>48</sup> Ntampaka, ‘Le gacaca rwandais’, 216.

<sup>49</sup> Reyntjens, ‘Le gacaca ou la justice du gazon’, 38.

<sup>50</sup> Van Houtte, Reyntjens and Basomingera, ‘Litiges et besoins juridiques’, 197.

## The coming into being of new gacaca

Besides being a product of ancient history, the new gacaca is first and foremost a product of the recent history of Rwanda's genocide and its aftermath. While causing enormous social, juridical and political problems, the genocide destroyed, at the same time, all institutions that could have helped to deal with these problems in its aftermath. For this reason, at an international seminar in Kigali in 1995, the government made an appeal to all social and academic institutions to explore solutions and strategies that fitted the Rwandan context.<sup>51</sup>

With United Nations funding, a group of Rwandan research institutes explored the possibility of restoring the old gacaca as a means of dealing with minor crimes. Nzanzabaganwa, who was one of the researchers working on this project, told me:

“The idea was to consult ancient history and culture to see how the people solved problems in that time. While revisiting history we found that there was a system, gacaca, that had the objective to solve collectively the problems that were encountered by the population. (...) [On this basis,] our institute wrote a project for the government, presenting one of the possible solutions. However, we intended to offer a solution for the minor offences. There are other affairs that surpassed the competence of gacaca, but we offered gacaca as a possible solution for the minor offences.”<sup>52</sup>

In their report, the researchers rejected the idea of using gacaca for the prosecution of crimes against humanity and genocide. They, nevertheless, saw a role for gacaca as a mechanism for reconciling people after smaller offences, such as the looting of possessions.<sup>53</sup>

In the first instance, the government rejected the whole idea of gacaca, including the latter option, because they thought that it was too early and dangerous to put the population together to discuss the genocide and decided to opt fully for a new law that facilitated the prosecution of all suspects under the regular system of justice. This new law divided all suspects into four categories, according to the severity of the crime, and offered a reduced penalty for those who confessed their deeds and asked for forgiveness.<sup>54</sup> The approach of sticking to the normal justice system did not prove successful. Immediately after the genocide, thousands of suspects were arrested and when in 1996 many of them returned to Rwanda from camps in Congo, the prisons became even more overcrowded. A combination of huge numbers of prisoners with a terribly slow

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<sup>51</sup> Centre for Conflict Management, *Les juridictions gacaca*, 21.

<sup>52</sup> Nzanzabaganwa, interviewed in Butare, 13 January 2003.

<sup>53</sup> UNHCHR, *Gacaca, le droit coutumier au Rwanda. Report de la deuxième phase d'enquête sur le terrain*, 10.

<sup>54</sup> Republic of Rwanda, *Loi Organique No 8/96 du 30 Août 1996 sur l'organisation des poursuites des infractions constitutives du crime de génocide ou crimes contre l'humanité, commises à partir du 1<sup>er</sup> octobre 1990*. (From now on called “genocide law”.)

rate of prosecution made it clear that an alternative was needed.<sup>55</sup> Between May 1998 and June 1999 Pasteur Bizimungu, who was then Rwanda's president, organised a reflection meeting every Saturday with representatives of Rwandan society at his residence in "Village Urugwiro", where the most urgent problems and possible solutions were discussed.<sup>56</sup> The participants in Village Urugwiro agreed that a kind of justice was needed that would allow the population to participate actively in justice; punish the criminals and eradicate the culture of impunity; restore peace and harmony among the Rwandans; rebuild Rwanda without sectarianism; and give penalties aimed at rehabilitating people who had confessed, but which would also help with Rwanda's development.<sup>57</sup>

In this light, the option of installing a new gacaca was again discussed. During the discussions, a number of concerns were raised. Firstly, there were concerns about whether gacaca would reduce the genocide to a family quarrel since gacaca was traditionally used for such matters. Secondly, there were doubts about the ability of ordinary people to carry out trials of genocide in an appropriate way. Thirdly, concerns were raised about the impartiality of the population and the judges. Fourthly, there were concerns about whether the population would actually tell the truth. And, finally, there were further concerns about gacaca being in accordance with international law and human-rights standards.<sup>58</sup> These concerns made some participants conclude that the new gacaca was not a satisfactory alternative. Proponents, on the other hand, declared most of these concerns unfounded and added that the new gacaca was a way of empowering people to participate actively in the justice process, and that this popular ownership of justice would improve its operation. The proponents were, furthermore, convinced that the new gacaca would unify Rwandans and eradicate the culture of impunity.<sup>59</sup>

Eventually, the arguments favouring gacaca outweighed those opposing it and the lack of an alternative convinced the participants in Village Urugwiro that gacaca had to become the way for Rwanda to deal with the aftermath of the genocide. A "National Gacaca Commission" was installed that designed a bill, on which basis the Rwandan parliament adopted the law that set up the new gacaca

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<sup>55</sup> See statistics by Centre for Conflict Management, *Les juridictions gacaca* and Vandeginste, *Justice, reconciliation and reparation*. The Centre for Conflict Management only reports 1274 judgements in the first two years after the beginning of the prosecutions in December 1996. Vandeginste speaks of 1802 judgements until June 1999. With 122,000 people remaining in prison, this means that with this pace it would take 169 to prosecute all suspects.

<sup>56</sup> See Republic of Rwanda, *Report of the reflection meetings held in the office of the president of the republic from May 1998 to March 1999* (Kigali, August 1999).

<sup>57</sup> Ibid, 57.

<sup>58</sup> Ibid, 62-63.

<sup>59</sup> Ibid, 63-65.

jurisdictions on 26 January 2001.<sup>60</sup> In the next section, I describe the most important elements of the gacaca law, and place them in the perspective of traditional gacaca.

### The new gacaca law: A blend of traditions

Government lawmakers decided that in every administrative unit of the country the people of that unit should elect judges for a gacaca tribunal.<sup>61</sup> Rwanda is administratively divided in four echelons: the “cell”, the “sector”, the “district” and the “province”, so gacaca is accordingly divided into four levels. The cell is the lowest unit and the province the highest. Each gacaca tribunal is made up of a General Assembly, a Seat and a Coordinating Committee, a structure that exists at every administrative level. The General Assembly is formed by every inhabitant (aged 18 years or older) of each cell. These people have the task of choosing 24 honest persons from amongst themselves, of which 19 will function as judges in the Seat of the tribunal. The remaining 5 form part of the General Assembly of the sectors’ gacaca tribunal, some of whom will take a seat in the tribunal of the sector and others are sent to the district’s General Assembly. There, again, some will become judges and others will be forwarded to the tribunal of the province.<sup>62</sup>

In order to be elected as a judge (called *inyangamugayo*), one has to be considered an honest person. Any person who meets that condition and who is at least 21 years of age can be elected as a member of a gacaca tribunal without any discrimination on the grounds of sex, origin, religion, opinion or social position.<sup>63</sup> The Seat forms the heart of the tribunal, as this body organizes the suspects’ hearings, passes judgement and sentences the convicted persons. To increase public participation, everybody is allowed to play a part in the court sessions and is encouraged to testify. In the same way that the gacaca tribunals are hierarchically structured, the prosecution of suspects is highly structured as well. Prior to actual prosecution, all those who are accused of crimes are categorised according to the severity of the crime he or she is suspected of having committed.<sup>64</sup>

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<sup>60</sup> Republic of Rwanda, *Loi organique n 40/2000 du 26/01/2001 portant création des juridictions gacaca et organisation des poursuites des infractions constitutives du crime de génocide ou de crimes contre l’humanité, commises entre le 1er octobre 1990 et le 31 décembre 1994*. (From now on called “gacaca law”.)

<sup>61</sup> Gacaca law, article 3.

<sup>62</sup> Gacaca law, article 9.

<sup>63</sup> Gacaca law, article 10.

<sup>64</sup> Gacaca law, articles 51-74.

- Category one consists of the planners and organisers of the genocide, those who committed sexual crimes, and the “big killers” who distinguished themselves by brutality or a high number of murders. Suspects of the first category are, however, not prosecuted by a gacaca court, but by a regular court.
- Category two suspects are accused of having killed people during the genocide or of being an accomplice in a murder, without having planned or organised the genocide. The gacaca tribunal of the district undertakes their trials, while the province’s gacaca functions as an appeal mechanism. The maximum penalty is life imprisonment, but when the accused pleads guilty and confesses, the penalty is seriously reduced. He or she is then allowed to spend half of the sentence outside prison, working on community-service projects.
- Category three suspects, who are tried at the sector level, are accused of having caused injuries without the intention to kill. Their maximum sentence is 7 years’ imprisonment, but also here pleading guilty reduces their sentence.
- Category four suspects, at last, are suspected of having committed offences against other people’s property. The cells’ gacaca hears these cases and has the power to sentence individuals to repair the damage they have done.

#### *Comparison between the old and new gacaca*

In some aspects the new gacaca resembles the traditional gacaca. Firstly, gacaca remains of a participatory nature because every Rwandan inhabitant is a member of the General Assembly of a cell and everybody is encouraged to provide testimonies. The new gacaca, like its predecessor, is highly accessible to everyone, since prosecutions take place at a socially and physically short distance. The prosecution of category four suspects is, in particular, not necessarily alien to the old gacaca, as they will take place in the villages, and deal with crimes that were treated by the former gacaca as well. Secondly, the criterion that members of the seat must be honourable persons stems directly from the ancient principle that wise and honourable men are best suited to settling differences in a community. However, nowadays it is not necessarily the elderly who are the judges; everybody aged 21 or older, including women, is allowed to be a judge. Thirdly, the location where gacaca tribunals are organised have not changed. Gacaca tribunals continue to be organised on the grass in the villages. Finally, reconciliation remains the most important principle of gacaca. The Rwandan government stresses that reconciliation is a condition for peace and security in Rwanda. Therefore it has given gacaca the task of uncovering the truth about what happened during the genocide and of reconciling the Rwandan people. It is, however, questionable whether the type of reconciliation at which the traditional gacaca was aimed is comparable to the reconciliation that is needed after a genocide such as the one Rwandans experienced. In the same way, it remains to be seen if the new gacaca is indeed designed in such a way that it will contribute to reconciliation. This is an issue that is discussed later in this thesis.

The above-mentioned similarities between the old and new gacaca cannot cover up the fact that modern gacaca is in other aspects dissimilar to the traditional one. The most important difference lies in the fact that a central law creates and guides gacaca. The traditional gacaca used to be an extra-static legal body that did not have fixed rules or procedures, but it has now become incorporated into the state's legal system. As a consequence, gacaca applies state law instead of customary law, and the coercion of the verdicts lies with the state instead of with social control. The structuring of gacaca is a second profound difference. In ancient times, there was no structure at all, but in every community gacaca tribunals were organised on an *ad hoc* basis, independent from other communities. The gacaca law has totally done away with this flexibility. Thirdly, the gacaca law changed the kind of cases it deals with. Formerly, traditional gacaca handled mostly civil and minor penal cases, now even murder falls under its jurisdiction. This has consequences for the kind of punishments it can give. Whereas in earlier times discussions ended in compromise, now the end result can be imprisonment. One must therefore conclude that gacaca has been transformed from a forum for dispute settlement to a mechanism for prosecuting criminals.

### The new gacaca: A unique continuation of old policies

Although some elements of the former gacaca are still intact, people who would have participated in traditional gacaca session one or more centuries ago would find it hard to recognise the new tribunals as being gacaca. This is not surprising because change is inherent in tradition. No social tradition stays the same forever, since they are constantly adapting to changing circumstances. However, while changing circumstances are indeed important motors for the transformation of gacaca, (for example, the impact of cross-cultural contacts, political situations, social change and the genocide) in this case changing circumstances are not the determining factors. In the case of gacaca, change has mainly been the result of active interventions from above in the modus operandi of traditional justice. This impact is so profound that gacaca can no longer be labelled as traditional.

Nevertheless, in the light of the former repressive and restrictive policies towards traditional justice, the decision of the current government to employ the new system of justice to prosecute suspected participants in the genocide in a traditional justice system seems, at least at first sight, a break with the past. Indeed, in many respects the implementation of modern gacaca is both an innovative and unique experiment. However, when one studies the exact way that modern gacaca has been reshaped, striking similarities with earlier policies towards traditional justice emerge. Namely, the former policies towards the

traditional justice of structuring, formalising, introducing a strict hierarchy of tribunals and incorporating traditional justice in the judicial system of the state are all continued in the development of the new gacaca law. As we have seen, the new law gacaca has become highly structured, highly formal, strictly hierarchical and, finally, it forms an integrated part of the national legal system. From a historical perspective, one has to conclude that the application of modern gacaca is a corollary of both colonial and post-colonial policies. With the gacaca law, the extraction of the traditional character of traditional justice, a tendency that began in Rwanda under colonial rule, has reached its conclusion.

## Theorising reconciliation

The main intention of this thesis is to find out whether gacaca is likely to contribute to reconciliation. For this purpose, it is necessary to define what reconciliation is and through what elements it can be achieved. This chapter proposes a theoretical concept of reconciliation against which gacaca will be judged. At the same time, it is hoped to contribute to the development of a theory on reconciliation.

### The importance of reconciliation

Throughout the twentieth century, the field of peace building focussed mainly on the two initial phases of solving violent conflicts. The first phase is the pre-negotiation phase, which concentrates on strategies to get the conflicting parties around the table. The second phase is the negotiation and mediation phase in which the main focus is on ending the conflict itself.<sup>65</sup> However, negotiation and mediation alone are not sufficient to resolve most contemporary conflicts. One of the most important characteristics of the wars of the last decades is that they do not take place between states, but within country borders. J. Goodhand and D. Hulme, for instance, mentioned that of all the 83 wars that raged between 1989

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<sup>65</sup> Mohammed Abu-Nimer, 'Introduction', in: Abu-Nimer, *Reconciliation, justice, and coexistence*, ix-xiii, there ix.

and 1992, no less than 80 were intra-state.<sup>66</sup> This observation has important consequences for the way contemporary conflicts can be resolved. Whereas in inter-state conflicts the ending of hostilities and the separation of the fighting parties may be sufficient, in intra-state wars this is not the case. The fact that after a peace accord, former enemies have often to become neighbours again makes establishing sustainable peace after a civil war a complex matter. As a consequence, since 1945, only one third of all negotiated peace settlements of ethnic conflicts have resulted in long-lasting peace.<sup>67</sup>

Over the last few years there has been a tendency among scholars in conflict studies to stress the importance of reconciliation in post-conflict situations. They often mention examples of places where the absence or failure of a reconciliation process burdened the population with disastrous consequences. Summarising these examples, Louis Kriesberg concludes:

“The lack of reconciliation efforts have been followed by destructive violence, long-lasting antagonism, or at best a mutually mistrusting and hostile accommodation.”<sup>68</sup>

When there is indeed such a causal link between, to put it positively, the achievement of reconciliation and the prevalence of peace, reconciliation should receive a high place on political and academic agendas. But is reconciliation that vital? Or is it just a fashionable concept that is being floated about in books, articles and conferences for a couple of years? And even if reconciliation has proved to have a very positive outcome in some countries, why should it be important in all post-conflict societies? Up to now, statements on the importance of reconciliation have never been backed by any strong evidence, which makes some researchers rightfully suspicious.

Considering the increased attention the concept has received, it is apparent that reconciliation will become a future backbone of reconstruction policies after war has ceased. Although this shift of attention to what happens after a conflict has ended is very welcome, research should also focus on the relevance of reconciliation. In my interviews, the importance of reconciliation has often been discussed and I encountered four different attitudes, which are presented in Table 3.1 and clarified below with quotations of interviewees that serve as examples.

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<sup>66</sup> J. Goodhand and D. Hulme, ‘From wars to complex political emergencies’, in: *Third World quarterly* 1 (1999) 13-26, there 13.

<sup>67</sup> Wendy Lambourne, ‘Justice and reconciliation: postconflict peace building in Cambodia and Rwanda’, in: Abu-Nimer (ed.), *Reconciliation, justice, and coexistence*, 311-337, there 311.

<sup>68</sup> Louis Kriesberg, ‘Changing forms of coexistence’, in: Abu-Nimer (ed.), *Reconciliation, justice, and coexistence*, 47-64, there 61.

Table 3.1: Importance of reconciliation according to the different stakeholders<sup>69</sup>

	For peace	For harmony	For government	Not important	Total
Survivors	4	1	2	2	9
Accused	5	5	1	0	11
Population	5	4	1	0	10
<i>Total</i>	14	10	4	2	30

A woman puts the first attitude in words as follows:

“For me, reconciliation is a very important matter. In my life, I have seen many wars wherein I did not notice anything positive. I say we need reconciliation, because it is the only way to stop the killings and the wars.”<sup>70</sup>

The view that reconciliation is a necessity for peace was offered by almost half of the interviewees who I discussed this matter with and was shared by survivors of the genocide, the accused and the rest of the population. Among ordinary Rwandans there is a strong wish that war should not return, and many believe that reconciliation is the way to ensure this.

Others, though they say that Rwanda needs reconciliation, do not see reconciliation as an absolute requirement to prevent another war. The importance that they attach to it is that the process will enable them to live in harmony with the other groups in society. As someone explained:

“I find that reconciliation is a positive thing, of course. If ever people were reconciled, they can once again live in harmony. They will help each other cultivating and share beer again.”<sup>71</sup>

It is not surprising that it is almost exclusively the Hutu population who long for the situation as it was before the war. They often tend to idealise the pre-war situation as a period when the Rwandans cohabitated in peace and harmony. However, although that period was not as violent as 1994, many Tutsi remember the massacres of the 1950s, 1960s, 1970s and early 1990s too well to be nostalgic about old times.<sup>72</sup>

<sup>69</sup> In relation to gacaca and reconciliation, I identified three different stakeholder groups that all have their own background and interests. Firstly, there are the survivors of the genocide. They are mainly Tutsi but can also be Hutu who were married to a Tutsi and have accordingly lost close relatives. Secondly, there are those accused of genocide. This group contains mostly prisoners but also includes people who are accused of genocide but have not (yet) been imprisoned. Thirdly, as “population” one should understand every other inhabitant of a community, that is neither a survivor nor someone accused of genocide.

<sup>70</sup> Marguerite, interviewed in Gasarenda, Gikongoro province, 7 March 2003.

<sup>71</sup> Colette, interviewed in Gatovu, Gikongoro province, 10 February 2003.

<sup>72</sup> For a history of the massacres in the run-up to the genocide, see Organisation of African Unity, *The preventable genocide. Report of the international panel of seven eminent personalities to investigate the 1994 genocide in Rwanda and the surrounding events* (July 2000); United Nations, *Report of the independent inquiry into the actions of the United Nations during the 1994 genocide in Rwanda*

The number of interviewees who reacted less positively to the importance of reconciliation was quite small. However, among the survivors there are some who do not agree with the general opinion. Some people have an indifferent attitude towards reconciliation. They do not see the need for it themselves but have nevertheless supported it because the government tells them to do so. The Rwandan population is known for its obedience to the authorities. The population will accept whatever its leaders propose, This argument is often used to explain why so many people participated in the genocide, and might be applicable to the present reconciliation policy as well.<sup>73</sup> A typical example of this attitude was the response of a female survivor. When she was asked what importance she attached to reconciliation, she responded:

“What does it matter what I think? You know, a peasant has nothing to do, except to follow as a lamb what the authorities impose. Do not forget that to reconcile is an order of the high authorities, so what else can I do?”<sup>74</sup>

Finally, among some survivors there is opposition to the idea of reconciliation with those who executed the genocide, presumably due to persisting bitterness about events. Consequently, they attach no importance at all to reconciliation. One survivor said:

“Reconciliation? Will you reconcile with someone who killed your people to the extent that you are left all alone? How will you reconcile? How can that be important to me? Not at all I tell you. It is nonsense.”<sup>75</sup>

Notwithstanding these criticisms, most interviewees gave the impression that reconciliation was indeed, as more and more authors claim, very important, if not vital, for preventing the recurrence of war. Nevertheless, more research needs to be done to be sure if this goes for Rwanda as a whole or even for most post-conflict situations in the world.

As mentioned earlier, it has only been in the last few years that the idea of the need for reconciliation after war has come to be embraced. However, this insight has not yet been combined with a picture of exactly what reconciliation is and how it can be accomplished. The whole concept of reconciliation is still mostly unexplored and relatively few authors have attempted to fill this gap.<sup>76</sup> Considering the increasing number of intra-state wars since the end of World War II, this lack of knowledge about reconciliation is problematic. However,

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(1999); Andre Sibomana, *Hope for Rwanda: Conversations with Laure Guilbert and Herve Deguine* (Sterling: Pluto Press, 1999) xv-xix and Section 5.3 of this thesis.

<sup>73</sup> For a more detailed discussion on the reconciliation policy of the government, see Chapter Three.

<sup>74</sup> Berthe, interviewed in Gasarenda, 15 December 2002.

<sup>75</sup> Priscille, interviewed in Nyamigina, Gikongoro Province, 1 February 2003.

<sup>76</sup> The most important attempts to form a theoretical framework were conducted by Lederach, *Building peace* and IDEA, *Reconciliation after violent conflict*.

there are signs that the tide is turning. The flow of scientific literature on reconciliation has started, and more international organizations are supporting reconciliation processes in war-torn societies around the world. In the course of writing this thesis, for example, the International Institute for Democracy and Electoral Assistance (IDEA) published a handbook on reconciliation after violent conflict in which the different elements of reconciliation are explored.<sup>77</sup> Likewise, it is the intention of this study to extend the understanding of the concept of reconciliation. There is, however, still a long way to go.

## Defining reconciliation

The term “reconciliation” is derived from the Latin expression “*conciliatus*” which means coming together. According to Wendy Lambourne, the concept of reconciliation has its origins in Christian theology and has only recently entered the political discourse.<sup>78</sup> However, I doubt if Christianity, although very important because of the wide diffusion of the religion, is the oldest or only source of reconciliation. It is, for instance, widely acknowledged among scholars on traditional African law that the stress for reconciliation has always been one of the main common characteristics of these traditional African systems of justice, whose origins date from long before the rise of Christianity.<sup>79</sup>

How can reconciliation be best defined? This is a difficult exercise because the concept of reconciliation is quite vague and there is no consensus as to what it means exactly. I do not even expect it ever to be possible to establish such a consensus because reconciliation is such a highly subjective concept. The meaning of reconciliation can differ from person to person and varies according to culture and the nature of past atrocities. Therefore, reconciliation programmes must always be sensitive to the contexts in which they are implemented, no “confection approaches” are possible. While it is good to bear in mind the subjectivity and relativity of reconciliation, it is still useful to realise how others define it. Louis Kriesberg provides a detailed definition of reconciliation. According to Kriesberg:

“Reconciliation refers to the process by which parties that have experienced an oppressive relationship or a destructive conflict with each other move to attain or to restore a relationship that they believe to be minimally acceptable.”<sup>80</sup>

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<sup>77</sup> IDEA, *Reconciliation after violent conflict*.

<sup>78</sup> Lambourne, ‘Justice and reconciliation’, 314.

<sup>79</sup> See for instance: Penal Reform International, *Access to justice in sub-Saharan Africa*; Reyntjens, *Introduction aux droits africains*; and Vanderlinden, *Les systèmes juridiques africains*.

<sup>80</sup> Kriesberg, ‘Changing forms of coexistence’, 48.

In this definition, one can distinguish five different elements. Firstly, reconciliation is seen as a “process”. Reconciliation cannot take place all of a sudden, since it takes time to heal the wounds of the past and to build new sustainable relationships. Secondly, Kriesberg talks about “parties that have experienced an oppressive relationship or a destructive conflict”. This negative situation presents the starting point of any reconciliation process. Thirdly, it is important to note that the parties had this negative experience “with each other”. It is seldom the case that there is a clear-cut distinction between a perpetrator and a victim. Such a reproduction of the situation is not only most of the time false, it can also lead to distrust and lack of interest in the reconciliation process by the accused parties because they will feel that reconciliation has nothing to offer them. Fourthly, there is a “move to attain or to restore a relationship”, which refers to the ultimate goal of reconciliation. This goal has to be pursued together. Fifthly, Kriesberg adds the phrase “that they believe to be minimally acceptable”. This is a very interesting supplement that I have not come across elsewhere in the literature. It adds a realistic element to the concept of reconciliation and stresses that one should not try to realise the impossible (for instance, friendship), but that it is sufficient to facilitate peaceful coexistence. Johan Galtung, conversely, gives a less extensive definition. He defines reconciliation as:

“(…) the process of healing traumas of both victims and perpetrators after violence, providing a closure of the bad relation.”<sup>81</sup>

Galtung summarizes his definition as follows: “Reconciliation = Closure + Healing”.<sup>82</sup> He understands closure in the sense of not reopening of hostilities, and healing in the sense of being rehabilitated. Although Galtung’s definition covers most of the elements Kriesberg provided, it leaves out any reference to the goal of the reconciliation process, i.e. the building of some sort of positive relationship.

Wendy Lambourne, finally, also refers in her definition of reconciliation to the way in which reconciliation can be achieved. For the rest, her definition lies somewhere between those of Kriesberg and Galtung with regard to the precision of the definition. According to Lambourne:

“Reconciliation between individuals or groups requires the involvement of two or more parties in an interaction of apology and forgiveness and the willingness to embark on a new relationship based on acceptance and trust.”<sup>83</sup>

Importance is given to the fact that reconciliation prescribes the involvement of all parties and that it is achieved through interaction. Indeed, most authors agree

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<sup>81</sup> Johan Galtung, ‘After violence, reconciliation, and resolution: coping with visible and invisible effects of war and violence’, in Abu-Nimer (ed.), *Reconciliation, justice, and coexistence*, 3-23, there 3.

<sup>82</sup> Galtung, ‘After violence, reconciliation, and resolution’, 4.

<sup>83</sup> Lambourne, ‘Justice and reconciliation’, 314.

that an interaction of apology and forgiveness is crucial. However, it is not the only precondition for a successful reconciliation process. There are more challenges to be overcome before one can speak of a successful reconciliation process. There is, however, not yet a consensus as to what elements a successful reconciliation process entails.

Notwithstanding the fact that it is understandably difficult for uneducated Rwandan farmers to present all-embracing definitions of a concept like reconciliation, they nevertheless seem to have quite a clear impression of what reconciliation means. There is a general tendency to describe reconciliation as the way to overcome a history of conflict and to rebuild better social relations in which people can cooperate, share meals and drink beer together. This common understanding can be explained by the fact that to reconcile has always been a cultural phenomenon in Rwanda. Whenever there was a conflict between parties, the road to reconciliation was normally sought and often found in the traditional *gacaca*. Here, one was encouraged to forgive the person that had asked for forgiveness, so that reconciliation could take place. This practice is, for instance, expressed in a Rwandan proverb which, when translated into English, reads: “you don’t hit a hand that is reached out”. In itself, this historically predetermined cultural heritage gives hope in a situation Rwanda is now faced with. However, the naturalness of reconciliation after family dispute is quite different from reconciling after genocide.

To clarify what I mean by reconciliation, I will follow the definition given by Kriesberg because it is both embracing, unlike Galtung’s definition, and contains no inexact description of the reconciliation process, like Lambourne’s definition.

## Assumptions about reconciliation

Before discussing what elements need to be fulfilled to achieve reconciliation, some further statements should be made that help to understand the dynamics of reconciliation. In the first place, one has to be realistic about the amount of time that reconciliation entails. Reconciliation is not only a process; it is also a long process that is more likely to take decades or even generations than years. No quick fix can be expected.<sup>84</sup>

In the second place, one should be realistic as well about the chances of ever achieving full reconciliation. It is very unlikely that people will ever be able to put behind them totally horrific violations of their human rights. These leave deep scars that will probably never fully disappear. Therefore, it might be useful to think in degrees of reconciliation. What needs to be attempted in the

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<sup>84</sup> IDEA, *Reconciliation after violent conflict*, 13-14.

time after violent conflict is to maximise the degree to which reconciliation is accomplished. To make peaceful coexistence sustainable, a minimum degree of reconciliation has to be attained.

Thirdly, reconciliation means different things to different people. What it means is, among others, dependent on culture and the scope and severity of the conflict, but also personal experiences determine people's views on what is needed for reconciliation. Therefore, I believe there cannot be one concept of reconciliation to fit all post-conflict societies. Before one can implement programmes to promote it, one has to find out what the perceptions are of the population in question and fine-tune the programme to these perceptions.

In fourth place, it is important to bear in mind that reconciliation takes place between two or more parties and that its achievement requires active participation in the process by all parties. Each party can botch up the process by withdrawing its support. To prevent that from happening, it is important that all parties feel a sense of ownership of the process. Therefore, its notion, its elements and the right path towards reconciliation must be discussed openly and agreed upon by all groups.

Fifthly, there must be peace and personal security before the process can even start. If fighting is still going on, or if basic human rights continue to be violated, it is too early to think about putting the past behind you because the past is still too much in the present. Also in cases where the population is suffering from extreme poverty and/or food insecurity, it is difficult to find a breeding ground for reconciliation. Here there is an important role for the state: it is the one who must ensure the basic conditions in which the reconciliation process can take place.

And finally, reconciliation requires a generic approach. All dimensions must be addressed because neglecting one element can undermine the whole process. It is these elements of the reconciliation process to which we will turn now.

## Elements of reconciliation

What is more important than knowing how to define reconciliation is realising how to achieve it. What are the different aspects of the process? Few experts have so far attempted to clarify what actions must be undertaken to arrive at reconciliation. The first who, to my knowledge, has tried to make the concept of reconciliation operational is John Paul Lederach.<sup>85</sup> While giving workshops on conflict resolution in Nicaragua, Lederach developed a scheme that brings together the four most important elements of reconciliation. Lederach took these

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<sup>85</sup> Lederach, *Building peace*.

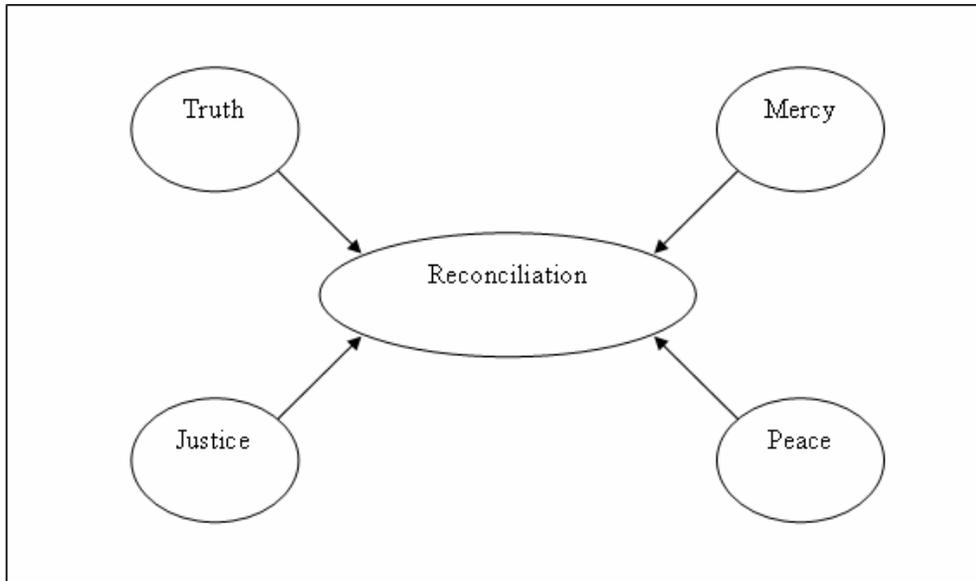
four elements – truth, mercy, justice and peace – directly from the bible. They are mentioned in two lines of Psalm 85, which read: “Truth and mercy have met together; peace and justice have kissed”.<sup>86</sup> Having decided that these are the elements of reconciliation, Lederach discussed them with workshop participants and asked them how they perceived these elements. “Truth” was seen as the longing for acknowledgement of caused harm and the validation of painful loss. Lederach and the participants coupled “truth” with “mercy” which articulates the need for acceptance, letting go and a fresh start. “Justice” embodies the search for individual and group rights for social restructuring and for restitution. “Justice”, in turn, was coupled with “peace” which is understood as the need for interdependence, well-being and security.

The strength of Lederach’s concept lies in his analysis of the interlinking of the different elements. He stresses that all elements of reconciliation, although they sometimes seem contradictory, should never be viewed in isolation. All the elements are interdependent, and to neglect one of them can undermine the reconciliation process as a whole. For instance, truth without justice is unacceptable for victims of severe human-rights violations and gives them a sense of vulnerability about future recurrences because the perpetrators are not held accountable for their deeds. At the same time, justice without truth is also undesirable, if not dangerous. Justice without truth is unacceptable because it creates historical amnesia and revisionism, which may very well result in the reopening of hostilities in the future. The same goes for mercy. Mercy is meaningless if it is not combined with some sense of acknowledgement and justice. The need for mercy may never be equated with a culture of impunity, in which perpetrators are not held responsible for their deeds. Without peace and security, finally, it is impossible for the population to focus on building new peaceful relationships. Lederach has placed these four elements in one diagram that reproduces the concept of reconciliation graphically (see Figure 3.1).

Although the diagram presents a first innovative step forward in the development of a theoretical concept of reconciliation, the completeness and correctness are debatable. For people who have not been nurtured in a biblical tradition, the choice of these four elements that come from a psalm appears somewhat arbitrary. In my opinion, the fact that the four words are mentioned in the bible is not convincing evidence. The question of what (former) disputants consider themselves as aspects of reconciliation would seem to be much more relevant.

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<sup>86</sup> Ibidem, 28.

Figure 3.1: Lederach's diagram of reconciliation<sup>87</sup>

Although the foundations of Lederach's concept appear weak, it seems nevertheless to have become the foundation of conceptualisation by others.<sup>88</sup> Both Kriesberg and the IDEA study have copied Lederach's scheme, after which they have partly changed and deepened the elements. The strength of Kriesberg's analysis, firstly, is mainly that he defines the elements more precisely than Lederach.<sup>89</sup> "Truth" is defined as a shared understanding of history, or at least recognition of each other's views. For truth to emerge, a programme must be executed that uncovers the varied sets of the history of the conflict. All sets must be acknowledged and, if possible, joined together. Such a mutual acknowledgment of the past forms the base upon which the other elements of reconciliation can be gradually constructed. Kriesberg has changed the term "mercy" into an interaction of "remorse and forgiveness". In my opinion, this is more accurate than singling out mercy because by combining remorse and forgiveness, the emphasis is placed on the fact that reconciliation requires interaction and a dialogue. Reconciliation requires deeds from both parties, i.e. the perpetrator must acknowledge the crime and show remorse, and the victim must accept this gesture and on his/her part make an effort to put the past behind him/her. Kriesberg also stresses the fact that the meaning of the term "justice" should be understood widely. The quest for justice can involve the prosecution of

<sup>87</sup> Based on a diagram by Lederach "the place called reconciliation". Lederach, *Building peace*, 30.

<sup>88</sup> Compare Lederach's scheme, for example, with Kriesberg, 'Changing forms of coexistence', 60 and IDEA, *Reconciliation after violent conflict*, 24.

<sup>89</sup> Kriesberg, 'Changing forms of coexistence', 60-61.

wrongdoers but also the establishment of a more equitable system of relations. On the one hand, prosecutions may provide a kind of retributive justice that is crucial for the victims. They are also considered as an effective means of stopping a culture of impunity, which is often seen as one of the causes of violent conflict. On the other hand, prosecutions on a massive scale against one group in society may endanger the legitimacy of the justice system because it will be perceived as victor's justice in the eyes of the perpetrated party. It is moreover doubtful if classic court sessions, which are determined to prove guilt, will promote a sense of truth finding. Which judicial approach is the most appropriate depends on each individual situation. "Peace", finally, is changed by Kriesberg into "safety" for persons and/or groups. "Safety" does not solely entail the absence of violence against persons or groups but also includes matters of human rights, basic needs and democracy.

In the IDEA study, the elements of "truth", "mercy", "justice" and "peace" are changed into "truth-telling", "healing", "restorative justice" and "reparation", after which one chapter is dedicated to the deepening of each element. In my view, the deepening by Kriesberg and IDEA of the concept is a step forward in theorising reconciliation because the different elements are better explained and clarified. However, the question of what these elements are founded on remains unanswered. In my fieldwork, the necessary elements of reconciliation have often been discussed with the population. It is on the basis of their responses that an attempt has been made to construct a new concept of reconciliation. Later on in this thesis, reflections on the possible contribution of gacaca to reconciliation will be based on this conceptualisation. Again, I would like to point out that the interviews were held mainly among the population of only two communities and that the concept that is presented here may not be representative of the rest of Rwanda or societies elsewhere in the world. Nevertheless, the conclusions that are drawn here can hopefully contribute to a better understanding of reconciliation.

The results of the responses are reproduced in Table 3.2. The responses are again spread over three groups in an attempt to show that a person's stance in the conflict partly shapes his/her viewpoint as to what should be done to achieve reconciliation.<sup>90</sup>

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<sup>90</sup> I decided to make a division into three groups. Many other studies add a fourth group, namely that of "returnees". This group mainly consists of Tutsi that fled during earlier crises and lived in exile for years, but returned to Rwanda after the RPF took over power. However, this group is not included in this research simply because in my fieldwork area there were no returnees. Another comment that needs to be made is that the "survivors" form a marginalised minority group. This goes for the area of my fieldwork as well as for Rwanda as a whole.

Table 3.2: Elements of reconciliation

	Number and % of survivors	Number and % of accused	Number and % of population	Total
Confess and ask forgiveness	10 (100%)	12 (67%)	8 (67%)	30 (75%)
+ show real regret	7 (70%)	1 (6%)	2 (17%)	10 (25%)
Forgive	7 (70%)	10 (56%)	9 (75%)	26 (65%)
Uncovering of truth	7 (70%)	6 (33%)	4 (33%)	17 (43%)
Justice				
-Punishment criminals	6 (60%)	3 (17%)	4 (33%)	13 (33%)
-Compensation victims	5 (50%)	0 (0%)	1 (8%)	6 (15%)
-Release innocent prisoners	1 (10%)	10 (56%)	2 (17%)	13 (33%)
-Reciprocity justice	0 (0%)	9 (50%)	4 (33%)	13 (33%)
Good government	2 (20%)	6 (33%)	7 (58%)	15 (58%)
Total	10 (100%)	18 (100%)	12 (100%)	40 (100%)

Sometimes people mentioned elements related to specific personal grievances. There was, for example, one man who allegedly looted a house during the genocide who complained that the *conseiller* (leader of the sector) had taken his identity card and now refused to give it back. When asked what was needed for reconciliation, he answered repeatedly: “The authorities should stop taking identity card”.<sup>91</sup> In a national reconciliation process one can, of course, ignore all personal wishes that evolve from specific grievances about particular events. However, when many people share a grievance, it should be taken seriously and receive a place in the national reconciliation process. For example, after the genocide many Hutu lost family members as a result of vengeance or massacres executed by the RPF. These people complained that the discussion about these events did not have a place in the reconciliation process. Since this is not a specific wish of an individual but a widely shared complaint among Hutu, this should without doubt have its place in the reconciliation process. Widely shared personal grievances must find their way in a national debate about reconciliation. In the following sections, I present five elements that were mentioned regularly in my interviews as being necessary components of reconciliation.

#### *Confession and asking for forgiveness*

From Table 2.2, it becomes clear that reconciliation requires firstly an action by the perpetrator. Although not everybody puts it in the same words, the vast majority of all the groups think that for reconciliation the wrongdoer must acknowledge the mistake openly by confessing to the crime and asking forgiveness. Besides being the most frequently mentioned elements, this is as well the most important exigency of reconciliation. The recognition of what has

<sup>91</sup> Martin, interviewed in Gatovu, 4 January 2003.

been done portrays the point of departure of reconciliation and all other elements come afterwards. When a guilty person does not acknowledge what has been done and fails to realise that the act is wrong, reconciliation is unthinkable.

Although both the Hutu, as well as the survivors, agree that a confession by the perpetrator is the first condition for reconciliation, they nevertheless differ in their views as to what a confession entails. Whereas the accused and the population assume that a public guilty plea should be sufficient, the survivors demand more than that. An often-encountered complaint by survivors is that, although many prisoners plea guilty, the prisoners show little regret for what they did. Many survivors are shocked by the way confessions are expressed in public. Prisoners often present their confessions with horrible accounts of their crimes during the genocide, but without showing any sense of remorse or shame.<sup>92</sup> Instead of that, survivors feel that prisoners only confess for their own interests, since a confession is rewarded with a strong reduction in penalty. These kinds of confessions are difficult to accept for survivors because they lack recognition of the pain related to their losses. And it is the feeling of being acknowledged that is so badly needed.

In Rwanda, confessions go hand in hand with a request for forgiveness. To me, asking forgiveness of a survivor of genocide seems somewhat rude. By requesting it, the survivor is placed in a situation where he/she must make a choice for which he/she might not yet be ready. By demanding forgiveness publicly, as is the custom in Rwanda, a survivor who is unable to offer forgiveness, is openly exposed in a bad light. After all, the public yearns for a positive response because that would help to bring about the desired reconciliation. A denial, on the other hand, is often seen as a shameful act of someone who is not willing to contribute to a better future. Rwandans, however, do not generally share my concern. Even survivors express the wish that perpetrators demand forgiveness. Whether a survivor should automatically provide it, however, is a matter to which we come now.

### *Forgiveness*

While the perpetrators must take the first step along the path to reconciliation, the victims must on their part also undertake action. When asked for the elements of reconciliation, people tended to mention in the same breath with confession by the wrongdoer, forgiveness by the survivor. The majority of all the three groups

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<sup>92</sup> This subject has been explored in several reports by Klaas de Jonge, a researcher with Penal Reform International. See: Klaas de Jonge, *PRI research team on gacaca. Report III: April-June 2002* (Kigali, July 2002) 15-27; Klaas de Jonge, *La procédure d'aveux, pierre angulaire de la justice rwandaise. Rapport de la recherche sur la gacaca - PRI. Rapport IV* (Kigali, January 2003) 8-10; and Klaas de Jonge, *Rapport de la recherche sur la gacaca - PRI. Rapport V* (September 2003) 8-9.

in this research project see forgiving misdeeds as a necessary element of reconciliation.

But although forgiveness is necessary, is it also possible for victims of genocide to put the events behind them and forgive their executioners? On the one hand, it offers hope if survivors realise that the reconciliation, which they themselves desire as well, also requires action on their part. This may in some, or even in many cases mean that under the right circumstances, victims will choose reconciliation and attempt to put the past behind. The fact that many Rwandans consider forgiving a person who accepts his misdeed as an age-old cultural phenomenon might also help. On the other hand, when discussing the subject of forgiveness, survivors often express the difficulty involved in forgiving. The ability to forgive depends on the character of the individual and the situation he/she is in. In general, those who have lost everybody find it more difficult to accept a request for forgiveness, while victims who have been less hard hit tend to be more moderate.<sup>93</sup> On the subject of forgiving, one survivor, who had lost among others her husband and two children, said:

“It is incomprehensible what they did. Although they had not any tug of war before, they [the perpetrators] were hunting my husband as if he was an animal. And when they caught him over there in the valley, they were hitting him with a machete as if he was a banana tree. I saw it! And now they want me to forgive them while back then they didn’t show any mercy. How can they expect me to forgive?”<sup>94</sup>

Alongside the severity of many of the crimes, the fact that forgiving confessors is seen as a moral obligation makes true forgiveness difficult. Since official government policy is to promote confessions and forgiveness, many survivors see forgiveness as an unpleasant duty. After all, as a Rwandan it is not done to oppose the policy of the high leaders. And indeed, among Hutu there is a widespread lack of understanding for survivors who refuse to forgive. Some even think that the government should force survivors to forgive and if they refuse, they should be punished. Such attitudes make survivors feel that any acknowledgment of their suffering is being denied. In Rwanda there are many people who underwent sufferings like the survivor quoted above and it is for many of these victims unthinkable to forgive. In my opinion, this cannot be expected either. Therefore, full reconciliation is not a realistic option for Rwanda but one should be content if some degree of reconciliation can be attained. When all the other aspects of reconciliation that are important for survivors are addressed, they might, although not fully forgive, be able to live with what happened in the past and think about living with the perpetrators in the future.

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<sup>93</sup> Trauma councillor Caritas, interviewed in Gikongoro, 7 January 2003.

<sup>94</sup> Priscille, interviewed in Gatovu, 17 January 2003.

### *Uncovering of truth*

In the literature on reconciliation, as well as in past quests for reconciliation worldwide, finding the truth is considered as one of the key elements of reconciliation. It is argued that if there is no common understanding of events, historical amnesia will prevail. This amnesia may very well, in the long run, help extremists on both sides to deny or disguise the past and use it as fuel for renewed hostilities. Or, as IDEA concludes, those who ignore their history are condemned to repeat it.<sup>95</sup> For victims, a knowledge and understanding of what happened is needed to bring closure.<sup>96</sup> For these reasons, leaders in many post-conflict societies have decided to organise a truth (and reconciliation) commission with the task of unearthing the crimes and events of the conflict.

Likewise, many interviewees, especially the victims, grant the uncovering of the truth an important place in the reconciliation process. One factor that it is important to realise is that the truth does not exist. There are as many versions of the truth as there are people and one should always prevent the imposition of one version of the truth upon others. The truth should, therefore, not be considered as something that can be found but as something that must be negotiated. Truth must be negotiated in such a way that all parties can find themselves in the end result and see their role as victim and/or perpetrator sufficiently reproduced.

### *Justice*

In recent years, there has been a debate about the relation between justice and reconciliation. Some experts separate reconciliation and justice and argue that reconciliation presents too soft an approach in dealing with war crimes. They reason that reconciliation is no more than a covered amnesty for criminal offenders and that justice, meaning the punishment of offenders, should precede reconciliation.<sup>97</sup> According to others, this implies a false dichotomy. They reason that an attempt for reconciliation without addressing issues of justice is indeed a mockery and a belittling of the sufferings of the survivors. In their opinion, justice should not be separated from reconciliation but treated as a core element of reconciliation.<sup>98</sup>

While it looks as if the latter stream has won the discussion and consensus has emerged regarding the fact that justice is an important element of any

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<sup>95</sup> IDEA, *Reconciliation after violent conflict*, 168.

<sup>96</sup> Krishna Kumar, *Promoting social reconciliation in postconflict societies: Selected lessons from USAID's experience* (April 1999) 13.

<sup>97</sup> Assefa, 'The meaning of reconciliation', 43-44.

<sup>98</sup> See for this statement: Joseph V. Montville, 'Justice and the burdens of history', in: Abu-Nimer (ed.), 129-143; IDEA, *Reconciliation after violent conflict*, 14; Lambourne, 'Justice and reconciliation', 315; and Assefa, 'The meaning of reconciliation', 44.

reconciliation process, the debate has moved on to the question of what kind of justice should be delivered. It is often stated that the Western retributive justice model is inappropriate in the process of reconciliation.<sup>99</sup> This model focuses solely on establishing individual guilt and punishing wrongdoers but leaves out any attempt to reconstruct relationships and fails to restore harmony in the community where the conflict took place.<sup>100</sup> Instead of inflicting punishment, “restorative justice” emphasises the restoration of relationships between conflicting parties.<sup>101</sup> This kind of justice aims at exploring options that concentrate on creating an environment in which offenders take responsibility and acknowledge their deeds, with the focus on compensating victims for their losses. Truth and reconciliation commissions, but also traditional African justice systems, are examples of restorative justice models.

One problem with these restorative justice models, however, is that punishments are unwanted. Survivors in my research continuously expressed the importance they place on the punishment of those who committed serious crimes during the genocide. While punishment of these criminals would give the survivors some satisfaction, the failure to do so makes them fear that the genocide will be repeated. After all, since those responsible for the massacres of 1959, 1963, 1973, 1990, 1991, 1992 and 1993 were never prosecuted and punished, they never saw a reason for not doing it again.<sup>102</sup> The survivors fear that if those who committed the 1994 genocide are not severely punished, the cycle of massacres will not stop. Although the aspects of restorative justice like restoring relationships through the acknowledgment of the offences and compensation for endured harm are welcomed, victims need retribution as well. In my opinion, it is too readily taken for granted in the literature that restorative justice is the most appropriate approach on the road to reconciliation. Restorative justice has become a fashionable concept in the last few years and there is virtually a consensus that this type of justice represents the right approach when dealing with the legacies of a conflict. It is true that restorative justice has many strong elements that are lacking in the retributive system. However, if one skips the issue of punishment, reconciliation is more likely to be hindered than facilitated. One should, therefore, seek a balanced approach between retribution and restoration rather than singling out one of the two. And indeed, while in the

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<sup>99</sup> See Mica Estrada-Hollenbeck, ‘The attainment of justice through restoration, not litigation: the subjective road to reconciliation’, in: Abu-Nimer (ed.), *Reconciliation, justice, and coexistence*, 65-85, there 66-68, 77; IDEA, *Reconciliation after violent conflict*, 23-24, 111-114; Montville, ‘Justice and the burdens of history’, 129; Assefa, ‘The meaning of reconciliation’, 44; IDEA.

<sup>100</sup> Estrada-Hollenbeck, ‘The attainment of justice through restoration’, 66-68.

<sup>101</sup> Lambourne, ‘Justice and reconciliation’, 312.

<sup>102</sup> For a history of the massacres in the run-up to the genocide, see Organisation of African Unity, *The preventable genocide*; United Nations, *Report of the independent inquiry*; Sibomana, *Hope for Rwanda*; and Section 5.3 of this thesis.

literature a division is made between retributive and restorative justice, in my interviews it appeared that components of both types of justice are needed for reconciliation. During my fieldwork, I encountered four different components of justice that, according to interviewees, must be delivered for reconciliation. These are the punishment of criminals, compensation for loss, the release of innocent prisoners, and reciprocity of justice.

While on the one hand longing for the punishment of those responsible for the genocide, most survivors demand compensation for what was inflicted on them. Compensation can serve an important role in repairing damage and in contributing to an acknowledgment of the victims. As a Rwandan trauma councillor explained to me:

“Something that facilitates forgiveness is to accompany a request for forgiveness with some material compensation. This is a kind of symbolic action; it shows that the confession and regret are sincere. (...) Another thing is that many [survivors] say that they have become poor because of the interahamwe [=Hutu-militia that killed and looted during genocide] who looted their homes and destroyed their houses. Also for this reason, compensation can be valuable and encouraging to get on.”<sup>103</sup>

Although punishment and compensation are significant, it would be wrong to apply a one-sided approach in the matter of justice. While survivors have clear and understandable demands, Hutu claims should not be forgotten. Since reconciliation is a two-way process in which all parties must participate, their demands must also be taken seriously. One of the biggest mistakes that can be made is to address only the grievances of one group, while ignoring those of the other. This is especially true concerning the element of justice. Although in social science there is no definition that prescribes an exact procedure for justice, a fruitful approach is for all parties to perceive the way justice is being delivered as fair. In this respect, those accused of genocide, but also other Hutu, expressed the need to release quickly those prisoners who are innocent and to bring to justice those Hutu who were victims of the massacres by the RPF or other acts of violence.

The arrest of genocide suspects in the first few years following the genocide was characterised by a high level of capriciousness. The pointing of a finger by a survivor was often enough to imprison someone and this situation was widely used to settle the scores in old familial disputes. As a consequence, an unknown but a substantial number of the more than 100,000 prisoners were detained innocently, of which many have been incarcerated for almost a decade now. These innocent prisoners form a time-bomb of social discontent that must be dealt with in order to make reconciliation possible.

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<sup>103</sup> Trauma councillor Caritas, interviewed in Gikongoro, 7 January 2003.

The same goes for the question as to whom justice is delivered. In Rwanda, the justice process focuses solely on the 1994 killing of the Tutsi. However, during the war and after the RPF ended the genocide and took over the country, a lot of killings still continued to take place. Everywhere in Rwanda, events of individual vengeance but also organised massacres against Hutu took place. In these killings, both *interahamwe* as well as innocent civilians were the victims.<sup>104</sup> This subject will be discussed in more detail in Section 5.5. Here, it is sufficient to say that many Hutu, especially those who lost family members themselves, want some kind of acknowledgement for their loss. For the reconciliation process, it is important that justice is delivered in a reciprocal manner. When the crimes committed against one particular group are not acknowledged, this group may well pull back from the reconciliation process, thereby making it impossible.

#### *A good government*

In the small and densely populated Rwanda, the “state”, as Rwandans often call the central authority, has always played a prominent role. Whereas in 1994 it was the “bad state” that was responsible for the genocide, many people think that it is likewise the state that must now provide reconciliation. With the argument that, if the leaders propose reconciliation, the population will follow it (like the way the population also followed the order to commit genocide), the prime responsibility is placed in the hands of the government. Their task here is two-fold.

On the one hand, the government must provide the right political and economic circumstances that can serve as a breeding ground for reconciliation. In the first place, this involves safety. When violence and bloodshed are still prevalent, or when human rights are being violated on a large scale, there can be no room for reconciliation.<sup>105</sup> Also poverty, or a lack of economic security, hinders the process. Secondly, the quest for more positive relationships thrive best in a situation where all groups feel represented in the decision-making process, so that they feel that they have a role to play in shaping the future. Especially among prisoners there is a demand for power sharing. As one prisoner explained to me:

“If the government is for the Tutsi, they will mistreat the Hutu. If the Hutu reverse the situation and take over power, they will in their turn mistreat the Tutsi. That is how it is. Thus, for reconciliation the leaders must share power.”<sup>106</sup>

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<sup>104</sup> Human Rights Watch, *Rwanda: deliver justice for victims on both sides*; African rights, *Rwanda: the insurgency in the Northwest*; Gérard Prunier, *The Rwanda crisis*, 305-311; Amnesty International, *Rwanda, reports of killings and abductions*; and Section 5.4 of this thesis.

<sup>105</sup> Kriesberg, ‘Changing forms of coexistence’, 60

<sup>106</sup> Charles, interviewed in Gikongoro Central Prison, 3 February 2003.

At the time of writing, since power is firmly in the hands of the RPF, efforts to distribute power more evenly are important.

On the other hand, the state must play an active role in promoting reconciliation. Firstly, this should be done by setting the right example. Leaders from all parties must show that they are lenient and are willing to build a better future together.<sup>107</sup> It is important that this willingness is propagated and that a well-planned policy is developed to encourage the population to reconcile as well. As an example of such a policy, many Rwandans express the opinion that the state should educate them (and especially the other group) on how to reconcile.

To summarise, what is expected of the government is that it change the “bad state” into a “good state”. Although this is a very important element of reconciliation, I do not expect gacaca to influence it. It is the state that shapes gacaca, and not the other way round. In Chapter Seven when the possible link between gacaca and reconciliation is discussed, this element will therefore not receive any mention. A detailed analysis of whether the government is “good” or “bad” goes beyond the scope of this thesis. However, it is a topic that is touched upon in several chapters, and most extensively in Chapter Three.

## Conclusion: A concept of reconciliation

Since reconciliation is considered as a necessity when dealing with the aftermath of a violent conflict, it is alarming that there is so little knowledge on how reconciliation can be attained. To implement a successful reconciliation policy, one needs to know the elements of which it should consist. Here it is important to bear in mind that, in any reconciliation process, people’s backgrounds determine what they consider the necessary elements. Table 2.2 shows that every group has its specific wishes. Whereas for the survivors the uncovering of the truth, punishment and compensation are deemed necessary, Hutu demand the release of innocent prisoners and reciprocity of justice. In order to make reconciliation possible, the demands of all the groups must be acknowledged and find their places in the process. Since reconciliation depends on the voluntary participation of all parties, failure to address any one element may well result in an early death of reconciliation and the birth of renewed violence.

On the basis of interviews with people from different groups in one particular area of Rwanda, a picture of the concept of reconciliation has emerged that is drawn below in Figure 3.2. It is not the intention to present the final conceptualisation of reconciliation, but it is hoped to make a contribution to this

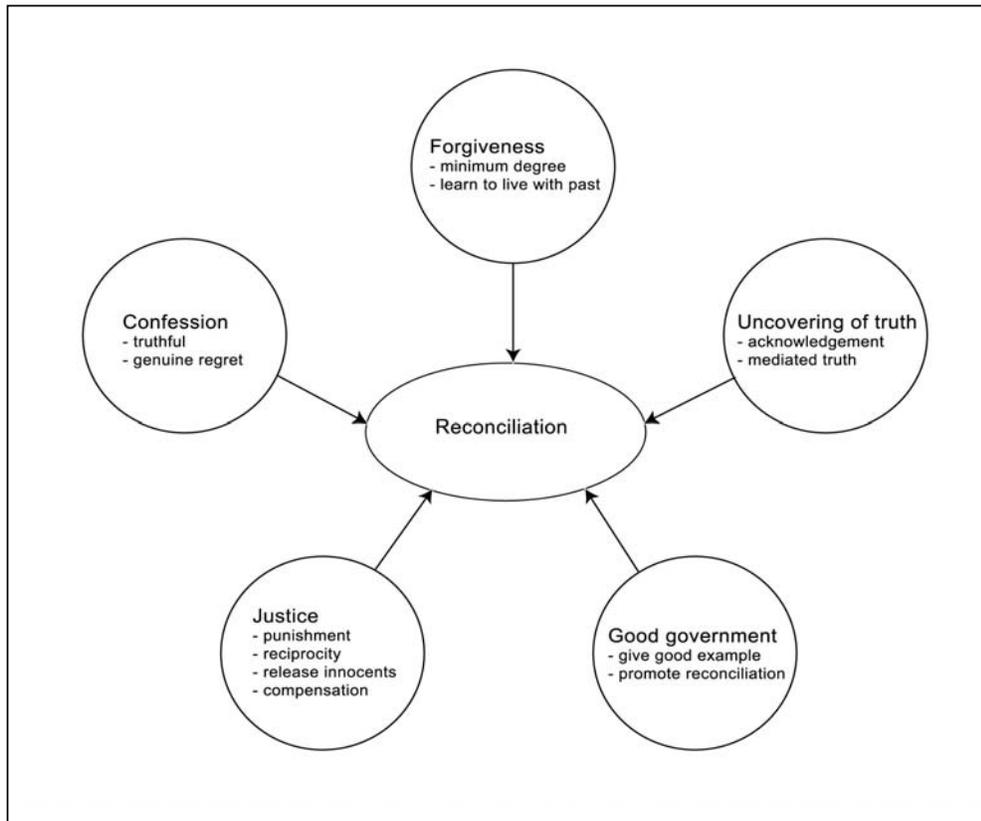
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<sup>107</sup> Several interviewees made this remark.

goal. In this diagram, reconciliation is placed in the centre, representing the (never fully unattainable) goal of the process. In the process, the elements of confession and a request for forgiveness; forgiveness; the uncovering of the truth; justice; and the development of a good government must be attained. This is a slow and difficult process, but every step forward is rewarded by the strengthening of sustainable peace.

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Figure 3.2: Reconciliation and its elements



## Trying to be a “good state”: The politics of reconciliation

One of the determining factors of any reconciliation process is the conduct of the government. In its discourse and policies, a government can significantly facilitate or hinder the process. If a regime decides that violent conflict should never return and is determined to put in place the right policies to address any problems that could provoke a renewed outbreak of hostilities, the chances of sustainable peace are relatively high.

Rwanda is known for the profound influence of central authority in its society. Even in the remotest areas of the country, the influence of the central government is extensive. As a consequence, a positive policy can be expected to have a bigger impact in Rwanda than it might elsewhere. On the other hand, as in 1994, a negative strategy can prove to have the most disastrous consequences imaginable. What is, then, the policy of the present Rwandan government in relation to the legacy of the genocide? This chapter examines the Rwandan government’s view on reconciliation and some of its strategies towards it. The main official strategy is gacaca, which will be discussed later on. Due to the limited time and scope of this thesis, this chapter only discusses strategies that have a strong connection with and influence on gacaca. These strategies include promoting the confession of prisoners; the sensitisation<sup>108</sup> of the population about reconciliation; and the organisation of “pre-gacaca” meetings during which the

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<sup>108</sup> The word “sensitisation” is commonly used in Rwanda as a synonym for education of the population and/or propaganda.

population is made aware of the idea of gacaca by bringing prisoners to the hills and discussing their misdeeds.

### Showing goodwill: A government set on reconciliation

A very positive point of departure is that the present government truly seems to realise the importance of reconciliation. It has been stated officially that reconciliation is the only weapon to overcome the problems caused by the genocide and that reconciliation alone can restore peace and security to Rwanda.<sup>109</sup> National and local leaders repeat this message continuously in the media and in public appearances. Subsequently, appeals are made to all groups to participate in the reconciliation process and the regime itself says that it is doing everything within its powers to contribute to it.

The government's enthusiasm for reconciliation is apparent in many of its words and actions. In the first place, the regime calls itself the "government of national unity", symbolising that the country is no longer ruled solely by one group, but power is shared between all. Rwanda must be a country where both Hutu and Tutsi live and share together, as they have done in the past.

Discrimination on an ethnic base has therefore been abandoned. Whereas, for example, under Belgian rule education was reserved for the Tutsi elite, and after independence, conversely, there was a quota for the number of Tutsi who were allowed access to secondary-school education,<sup>110</sup> nowadays selection on the basis of ethnicity has ceased to exist. More than that, the government has chosen the other extreme by officially abolishing ethnicity. It believes that if the existence of ethnic identities is denied, they will simply disappear together with the wars that were fought in their name.<sup>111</sup> Mentioning the terms "Hutu" and "Tutsi" has become taboo in Rwanda and if the person who nevertheless employs these terms is a public figure, he/she can quickly be accused of "divisionism", an offence that can in Rwanda be punished with the death penalty. If a young researcher uses the words in the presence of a government official, he/she can count on a firm

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<sup>109</sup> National Unity and Reconciliation Commission (NURC), *Annual report of activities by the National Unity and Reconciliation Commission: February 1999 – June 2000* (Kigali, 2000) 5.

<sup>110</sup> There was a quota for the number of Tutsi that were allowed to enrol in education. In one interview, for example, a male Tutsi told me that, although he was the second-best student in his class, he was denied a secondary-school education. As a consequence, he had never had the opportunity to learn French so he could only communicate with me through an interpreter. (Habiyakare, interviewed in Gasarenda, 3 December 2002).

<sup>111</sup> A remarkable study on the reconstruction of social identity is published by Johan Pottier. Johan Pottier, *Re-Imagining Rwanda. Conflict, survival and disinformation in the late twentieth century* (September 2002).

reprimand and a lesson in Rwandan history that proves that it is historically incorrect to speak in such terms.<sup>112</sup>

Thirdly, the government actively encourages the confession of crimes committed during the genocide. In 1996, the authorities implemented the “genocide law” which foresaw a dramatic reduction in the penalties of those suspects who confessed. However, in the first few years, the number of prisoners who chose to confess was extremely low.<sup>113</sup> It was, therefore, decided to introduce a sensitisation campaign in the prisons to encourage people to confess. The strategy of persuading prisoners to confess is discussed in more detail in Section 3.3.

Fourthly, in March 1999 a National Unity and Reconciliation Commission (NURC) was set up to facilitate the reconciliation process by, among others, organising debates, fighting any suggestions of disunity and sensitising the population to reconciliation.<sup>114</sup> However, the Commission’s chances of success leave a lot to be desired because its activities are either unknown to the general public or dismissed as biased, in particular by the Hutu population.<sup>115</sup>

This sensitisation of the population to reconciliation is not only being executed by the NURC but by all public figures at all levels of the political hierarchy. The Rwandan authorities firmly believe in the idea that not only the actions but also the thoughts of its citizens can be controlled by providing a constant influx of information on how Rwandan society was and how it will be in the future. In this way, people are convinced that unity and reconciliation is a natural state for Rwanda and that from now on this situation will prevail. This process of influencing the thoughts and actions of the population through sensitisation is the subject of Section 3.4.

Finally, to ensure that unity and reconciliation prevail, policy programmes have been developed that aim to contribute to it. At the end of 1998, for example, the Rwandan government launched an ambitious settlement programme, called *imidugudu*. *Imidugudu* was designed as a response to the immediate housing crisis, which was caused by the return of millions of refugees, but aimed eventually to regroup the entire population in villages. At the same time, *imidugudu* was presented as a means of bringing reconciliation. The reasoning behind this assumption was that the integration of different ethnic groups in

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<sup>112</sup> This happened to the author during an interview with a representative of the 6<sup>th</sup> Chamber of the High Court in Kigali, 17 March 2003.

<sup>113</sup> African Rights, *L’aveu de génocide. Réponses à la loi sur le génocide du Rwanda*, (June 2000) 3.

<sup>114</sup> NURC, *Annual report February 1999 – June 2000*, 5-6.

<sup>115</sup> Klaas de Jonge, *Interim report on research on gacaca jurisdictions and its preparations (July-December 2001)* (Kigali, January 2002) 2.

villages would eventually lead to informal and relaxed relationships between them.<sup>116</sup>

In this way, *imidugudu* and gacaca are comparable. Gacaca is also a response to a crisis (that of the judiciary), it is an all-embracing programme and is expected to bring reconciliation. However, while *imidugudu* has disappeared from the public debate, gacaca is now the government's pet project. All its cards have been put on gacaca and it is presented as Rwanda's path to reconciliation.

## Reconciliation in Rwanda: The official discourse

The above enumeration might suggest that the Rwandan government has a well-defined idea of what reconciliation is and has developed a balanced strategy to achieve it. However, it is difficult to grasp what the official government vision and strategy entails. The frequency in which the term reconciliation is employed cannot cover up the elusiveness of the manner in which it is done. In public gatherings, it is always explained that Rwanda needs reconciliation, but exactly what this means and what efforts must be made are left unclear. The main solution that is offered to the population is participation in gacaca, because that will automatically bring reconciliation. This lack of explanation can either mean that the authorities maintain a high level of trust in Rwanda's population being able to understand a concept like reconciliation and deal with it, or it could mean that the government itself lacks a clear outline of the concept. Considering the fact that in no written document can one discover a definite picture of the authority's views on reconciliation, one must fear the latter.

On the basis of incoherent information from official documents, discourse by local and provincial authorities during public gatherings and interviews with figures of authority, an attempt is made here to extract what the government considers as necessary actions in order to achieve reconciliation.<sup>117</sup> One clearly visible point of governmental thinking is that to arrive at reconciliation, one must do the exact opposite of previous regimes. There is a strong and, for the greater part, rightful tendency to put the blame for the genocide on the policies of the colonial power and the governments that ruled after independence. It is felt that

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<sup>116</sup> Dorothea Hilhorst and Mathijs van Leeuwen, *Imidugudu, villagisation in Rwanda. A case of emergency development?* (Wageningen, 1999) 2 and Pottier, *Re-imagining Rwanda*, 194.

<sup>117</sup> For official documents see NURC, *Report on the national summit of unity and reconciliation, Kigali, 18 – 20 October 2000*, 43-44, 47; NURC, *Annual report February 1999 – June 2000*, 14,19; and Republic of Rwanda, *Report of the reflection meetings*, 12-13, 39-41. The official discourse was however mainly met during the fieldwork in public gatherings where the authorities sensitised the population (see Section 3.4 of this thesis). I attended these meetings in Gitarama on 31 October 2002; Gasarenda on 4 December 2002; Gasave, Gikongoro Province on 10 December; Gasarenda on 17 December 2002; Gasarenda on 19 December; Gasarenda on 23 January 2003; and Kigali on 14 February 2003.

in this period ethnicity was created and changed into a disintegrating and disrupting factor in Rwandan society. This was combined with “bad governments” that executed strategies of discrimination, sectarianism and impunity for ethnic violence, which together caused the genocide.

The present government is keen to show its citizens, as well as the international (donor) community, that it forms a “good government”. Their way will solve the problems caused by the genocide and bring reconciliation to the Rwandan hills. The new leaders are fighting ethnic divisions by, on the one hand, abandoning ethnicity and forbidding any organisation on an ethnic basis and, on the other hand, educating people that all Rwandans are equal and that ethnic violence is inappropriate with the much longer history of harmony between the different groups. One important element here is the rewriting of Rwanda’s past and the constant education of the population in the new vision of history and ethnicity through media and public meetings.<sup>118</sup> In addition, the culture of impunity that characterised previous periods has been done away with by the reinforcement of justice. It is believed that by not punishing those responsible for the ethnic massacres since the late 1950s, people were encouraged to repeat ethnically based atrocities. This created a cycle of violence that eventually led to the genocide. The new leaders aim to brake this culture of impunity by not only punishing those who are responsible for organising the genocide, as happened for example after the Second World War in Germany, but also by holding accountable everybody who participated in it. Although this led to an enormous overpopulation of the prisons and an overload of the total judicial system, the government believes that with gacaca it has found the solution.

Besides doing the opposite of earlier regimes, the present government recognises a couple of additional necessary policies for reconciliation. As with the fight of impunity, these are all strongly linked to gacaca in the way that gacaca is presented as the solution. For reconciliation, it is argued, the population must tell the truth about the genocide, perpetrators should confess but must still be punished for their crimes and, finally, the Rwandan people must regain self-respect by showing that they can solve their problems themselves. All this will happen in gacaca, which has almost reached a mythical status of being capable of making all Rwandan problems disappear. As an example of this official attitude, I would like to quote the mayor of Gikongoro District who, while addressing the people who had gathered for the first gacaca meeting in their village, stated:

“Rwanda has great confidence in gacaca because it will solve our problems and bring us reconciliation. It is you, the population, who has to do it. It is you who must participate. In the first place, you must come here and tell the truth about what happened back in 1994. If you lie, hate will remain, but if the truth is spoken, we will have reconciliation. In the second

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<sup>118</sup> See further Section 3.4 of this thesis.

place, those who participated in the genocide must be punished. However, it is better that the guilty confess because then their penalty will be reduced. (...) If you participate well in gacaca, we will arrive at reconciliation. We must solve our problems so that our small children grow up in a country without problems, a country of which the children can be proud. You see that Muzungu? [white man. The mayor points at the author.] He has come here to study how we solve our problems. You must work well in gacaca, so that he returns to his country and tells the other bazungu [white men] that the Rwandans are very capable of solving their problems themselves."<sup>119</sup>

So gacaca is the key to reconciliation. Hence, it is of great importance that this programme becomes a success. For this to happen, the government has employed a number of strategies that aim to bring closer reconciliation and facilitate the success of gacaca at the same time. The following sections will deal with these exponents of the government's reconciliatory policy that are, as such, linked to gacaca.

### Making prisoners confess: A success story

The first requirement for reconciliation is an acknowledgement of the harm caused by the perpetrators. More than anywhere else, the Rwandan genocide knows many perpetrators. This section describes how the Rwandan government changed a desperate situation, with over 100,000 imprisoned suspects who were unwilling to confess, into a success story.

The army, which had halted the genocide and assumed power in the country, consisted mainly of the sons of the victims of earlier pogroms against the Tutsi minority. The confrontation, with the result of yet another but far more devastating outburst of violence against the Tutsi, made the military leaders decide that this time the crimes could not be left unpunished. In the beginning, however, this desire to punish was all too often mixed with acts of revenge. Human-rights organisations, like Amnesty International and Human Rights Watch, together with various other sources have reported numerous acts of violence by soldiers against Hutu. In some cases this happened after the suspicion of participation in the genocide, but in many other cases it was innocent civilians that fell victim to arbitrary acts of vengeance.

Although these killings occurred frequently, the imprisonment of suspects was more common. However, the combination of unprecedented numbers of participants in the genocide with the chaos that raged after the genocide made it impossible for these arrests to take place in an orderly fashion and to always target the right individuals. Many people abused the situation in order to settle old personal scores by imprisoning enemies, but the economy of corruption

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<sup>119</sup> Mayor of Gikongoro town, addressing the population before the start of a gacaca meeting in Gasave, Gikongoro province on 7 January 2003.

meant it was possible to get people in or out of prison. Arrests went hand in hand with the torture of suspects.<sup>120</sup> The police, insofar as they were functioning, had neither the time nor the manpower to investigate all the arrests and the very limited prison capacity rapidly became overburdened. The consequences are described in a horrendous fashion by André Sibomana, who visited a prison in 1995:

“The reality is that our prisons are inhumane death-traps in which death sentences are executed without trial. The living conditions are such that if you let enough time go by, the suspected killers or accomplices of the genocide will just die one by one. Whether guilty or innocent, these prisoners are gradually rotting away. (...) When I visited Gitarama Prison for the first time, in early 1995, what I saw defied imagination. There were three layers of prisoners: at the bottom, lying on the ground, there were the dead, rotting on the muddy floor of the prison. Just above them, crouched down, there were the sick, the wounded, those whose strength had drained away. They were waiting to die. Their bodies had begun to rot and their hope of survival was reduced to a matter of days or even hours. Finally at the top, standing up, there were those who were still healthy.”<sup>121</sup>

In the first few years, the situation was hopeless, with 120,000 prisoners. An initial solution to this problem was sought in the implementation of the genocide law in 1996. By offering a reduction in sentence to those prisoners who confessed, it was hoped to speed up the trials and contribute to reconciliation at the same time. However, the number of prisoners that took the opportunity to confess was disappointingly low.<sup>122</sup> The reasons that prisoners, who have only confessed recently, gave for not confessing at that time are mistrust of the government’s intentions, pressure by other prisoners not to confess, shame for their families and simply a lack of knowledge about the possibility of pleading guilty.<sup>123</sup>

Since the adoption of the gacaca law in 2001, conversely, the government has found the key to success in their prisoners’ policy. Not only does the speeding up of the trials offer a light at the end of the tunnel, the authorities have also succeeded in persuading almost the half of all prisoners to confess. The adoption of the gacaca law heralded a large sensitisation campaign, in which the whole Rwandan population, including prisoners, had to be made aware of the gacaca. In the prisons this was combined with the intensive promotion of confessions, which would prove to be highly successful.<sup>124</sup> Figures from the Gikongoro

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<sup>120</sup> During my interviews, some prisoners gave detailed accounts of how they were tortured. Some could still show scars on their bodies that were the result of being tortured.

<sup>121</sup> Sibomana, *Hope for Rwanda*, 108-9.

<sup>122</sup> De Jonge, *La procédure d’aveux. Rapport IV*, 5-6 and African rights, *L’aveu de génocide*, 3.

<sup>123</sup> Most prisoners that have confessed have done so in recent years. When I asked them why they waited so many years, these were the reasons they gave.

<sup>124</sup> The prison director at the Gikongoro Central Prison explained that an intensive sensitisation campaign was started in his prison in March 2001 to explain the benefits of pleading guilty. Interviewed in Gikongoro, 11 March 2003.

Central Prison show a tripling of the number of confessions in 2001. (See Table 4.1.)<sup>125</sup>

Table 4.1: Confessions in Gikongoro Central Prison

Year (on 31 December)	Total number of prisoners	Total number of those who confessed	%
1997	2538	222	9%
1998	2780	271	10%
1999	3063	402	13%
2000	3647	556	15%
2001	3923	1556	40%
2002	4287	1881	44%

Table 4.2: Confessions per prosecution office

Prosecution Office	Confessions in 2001	Confessions in 2002			Total 2001 – 2002
		January – June	July – December	January – December	
Kigali	4876	1200	7884	9084	13960
Nyabisindu	-	4438	9573	14011	14011
Ruhengeri	224	128	3033	3161	3385
Total	5100	5766	20490	26256	31356
%	16.3	18.4	65.3	83.7	100,0

Why was this campaign a success? There are several reasons that can explain the above achievements. An important one is the benefits that prisoners receive when they plea guilty. Not only do they see their sentence reduced by half, they are also offered the prospect of being pardoned. According to a number of the prisoners who were interviewed, President Kagame himself has promised to forgive all those who confess, and they assume that the rest of the population, including the survivors, will pardon them too. They have also been told over and over again that if they admit their crimes, they will soon be able to return to their villages and continue their lives as they were before the genocide. This outlook is an incentive for many to admit their guilt. In addition, those who confess are offered to a less strict prison regime. Unlike those who continue to refuse, they can get out of their cells and walk about freely in the prison yard. They are allowed to participate in labour projects outside the prison that offer a welcome alternative to the dull daily prison rhythm and the possibility to see and chat to

<sup>125</sup> Figures extracted from the archive of the Gikongoro Central Prison. The increase in the number of prisoners after 1999 is partly explained by detainees of the *cachots* (district jails) that were transferred to the Central Prison. The number of prisoners only includes those who are accused of genocide. Those who are detained for other crimes are excluded.

friends, wives and family members. Finally, in the Gikongoro Prison, those who have decided to confess are allowed a long visit by their relatives in order to explain what they have done and why, so they feel less alienated from their families.

These advantages alone, however, cannot fully explain why the programme of confession has become such a success. When one visits a Rwandan prison nowadays, it is clear that the atmosphere as described by Siboma has changed. Today, one can witness an ambience that breathes enthusiasm about confessing. The authorities have managed to create a momentum for confessions, which has encouraged prisoners in large numbers to acknowledge their crimes. What is most remarkable, and probably the factor that explains this momentum, is that this emphasis on the confession is not so much fed by the authorities anymore, but by those who committed the crimes themselves. It is the detainees themselves who plea for the chance to confess. How did this process come about?

The first push came from the authorities. After the adoption of the gacaca law, as mentioned earlier, a heavy sensitisation campaign was started. According to some prisoners, this campaign was so intensive that receiving training about pleading guilty and acknowledging their crimes became their main daily activity. In this period, however, confessing was still a difficult and dangerous undertaking because extremists within the prisons were challenging the official sensitisation campaign. They discouraged the inmates by feeding rumours that the programme was a trap and would threaten those who were still willing to confess. They created an animosity between those who confessed and those who refused to, which regularly led to fights and even murders. Initially, the advantages granted to those who confessed with respect to the prison regime even aggravated the situation, because it led to jealousy among the others.

The tide started to change when, by setting up structures within the prisons to facilitate and promote confessions, the authorities found the master-key to making detainees confess. These structures were cheaper and, more importantly, promoting confessions became internalised in prisons. It was no longer something coming from a hostile government, but it belonged to the detainees themselves who, in some cases, found in winning over their colleagues a new goal in their lives. As one prisoner explained:

“Before the prisoners organised the formation themselves, the commissions that had passed in front of us were composed of the authorities, like the police inspector and the prosecution officer. We could not internalise that, because we had not understood the benefit of the confession. (...) We feared the authorities too much for that, because they always beat those who tried to say something. Now it is better organised. What pushed us to understand the

formation by the prisoners was that some of them had been with us at the time of the genocide and we committed acts together.”<sup>126</sup>

The basic structure that was set up in the Gikongoro Central Prison is called the “commission of truth in gacaca”, simply called “truth commission”. Gikongoro Province consists of 13 districts and three prisoners from each district have been chosen to be on the commission. Together with representatives of women and minors, they form the truth commission of the Gikongoro Central Prison. The commission’s main tasks are to sensitise their fellow prisoners, to contribute to the fact-finding about the genocide and to take care of the administrative arrangements with regard to confessions.<sup>127</sup> The usual procedure of the commission’s work is to call together all the inmates from one district and, having prayed together, explain to them about the benefits of confessing. Most emphasis is laid on the reduction of a person’s sentence as is promised in the genocide law, but also social and religious arguments are used to convince the inmates. Those who confess are promised a place in society after release, and a place in heaven after they die.

Besides these meetings, the truth commission also organises what they call a “prison-gacaca”.<sup>128</sup> In this prison gacaca, prisoners give detailed accounts of what they did and what they saw during the genocide. They are encouraged to give the names of those with whom they were, so that these suspects, if also imprisoned, can be invited to admit to the actions in front of their colleagues. This procedure has proven to be successful because it has led to many confessions. After all, it is difficult to keep on denying an action when several other prisoners claim that you were with them.

In addition to talking, singing and dancing have also been effective in creating the momentum for confessions. The Group of Truth for example performs in the Gikongoro Central Prison, an ensemble of around 20 male and female detainees who performs songs and dances for the other prisoners, in which tributes are paid to confessing, gacaca and reconciliation. Likewise, the new national anthem was composed by a prisoner. Although it is doubtful if these performances make people confess directly, they certainly contribute to an ambiance of appreciation of the confession. And it is this that helps to explain the government’s success in attaining such a high number of confessions of genocide. Since a high number of confessions is the backbone of both gacaca and the reconciliation process, this success is important. To conclude this section, a translation of one of the Group

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<sup>126</sup> Emmanuel, interviewed in Gasarenda, 30 January 2003.

<sup>127</sup> Interview with Gaspard, president of “truth commission” of the Gikongoro Central Prison, Gikongoro 3 January 2003.

<sup>128</sup> The installation and functioning of these prison-gacaca’s is also described in Centre for Conflict Management, *Les juridictions gacaca*, 33-34 and De Jonge, *Interim report on research on gacaca jurisdictions*, 26-29.

of Truth's songs of is given below. The song, which is an example of the kind of lyrics that are performed, is called in English "The goal of the Rwandans".

Our goal is positive, listen to this positive goal  
 All the Rwandans, listen to this positive goal  
 It is reconciliation, listen to this positive goal  
 Rebuilding Rwanda, listen to this positive goal  
 Listen to this goal.

All the Rwandans  
 Come together and reconcile  
 Let's rebuild Rwanda  
 Everybody is concerned  
 Listen to this goal.

Rwanda is for the Rwandans  
 Who will solve Rwanda's problems?  
 It is we, the Rwandans  
 Nobody else is concerned  
 Listen to this goal.

All the Rwandans  
 Come together and reconcile  
 While sitting on the Umugaca  
 In order to reconcile  
 Listen to this goal.

## The invention of an unproblematic past: Education in the right way of thinking

While the government's reconciliatory policy among prisoners resulted in a successful sensitisation campaign aimed at making them confess, the general population has also been targeted by the reconciliatory programme. Although the importance of confessing is highlighted, the sensitisation of the population has a different focus. On the one hand, it is trying to get the population to change their actions. It explains over and over again that, for reconciliation to take place, people must attend gacaca and speak out on what they know about events during the genocide. On the other hand, the government has developed a discourse that attempts to change the way their subjects think. To achieve this, the government has set up a structure to ensure a constant top-down information stream that will transmit the right way of thinking about history, ethnicity and the genocide. The authorities hardly ever miss an opportunity to assemble the inhabitants of a village or region and educate them in the official reconciliatory discourse. These sensitisation meetings, which were held at least twice a month in the district where I did my fieldwork, are attended by a large proportion of the population.

The confidence that the authorities have in these meetings is incredibly high. A government official, who is charged with organising sensitisation in Gikongoro Province stated:

“The goal is to make people have the same opinions. It is very important that people in Rwanda think the same way because we need unity in this country. What we hope to achieve is that after a meeting, 75% of the people leave with the same mindset. Those people will also talk about what they have heard with other people, so that we reach almost the entire population.”<sup>129</sup>

The most important element of the official reconciliatory discourse entails a revision of Rwandan history and the social relations that that have characterised the past. The new vision aims on the one hand to provide an answer to the question of why the genocide took place and tries, on the other hand, to demonstrate that the genocide was an inappropriate result of the history of social relations. During and after colonisation, the differences between Hutu and Tutsi were always highlighted and served as a legitimising factor for leadership. Whereas in the colonial period the white foreigners and the Tutsi aristocracy worked together to create a myth of natural Tutsi supremacy, after independence, conversely, the Hutu rulers used history to prove their right to rule.<sup>130</sup> In both cases, the perceived inequality between the two groups was the motor behind the reasoning.

The new leaders are presenting a new vision of history that fits better in their ideology. Instead of emphasising inequality, their aim is to prove that the pre-colonial period was a kind of golden era in which the two groups always lived in harmony together. Explanations of the pre-colonial situation focus on the fact that the two groups share the same language, culture, religion and territory, which enabled them to cohabitate harmoniously. The differences that existed were, according to the new ideology, irrelevant and based only on economic origins. During one of the sensitisation meetings held in Mudasmwa District, a government official explained to the listeners:

“The separation of the Hutu, the Tutsi and the Twa<sup>131</sup> is artificial and created by the former regimes. Before, people loved each other and there were hardly any differences. The only difference was that if you had many cows you were a Tutsi, whilst if you worked on the land you were called a Hutu. It was a way to express wealth and nothing more. Furthermore, if a rich person became ill and lost his cows, he became a Hutu, while if a poor person gained wealth, he automatically became a Tutsi.”<sup>132</sup>

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<sup>129</sup> Interviewed in Gasarenda, 23 January 2003.

<sup>130</sup> Newbury, ‘Ethnicity and the politics of history’, 10-13 and Prunier, *The Rwanda crisis*, 35-40.

<sup>131</sup> Rwandan society is made up of three groups. In addition to the Hutu and Tutsi, there are the Twa, who are pygmies. They form no more than 1% of the population and are economically and socially marginalized.

<sup>132</sup> Mayor of Mudasmwa, addressing the population during a sensitisation meeting in Gasarenda on 23 January 2003.

Despite the fact that this presentation of history is more constructive than previous ones, it is no less questionable in its interpretation of the truth and, as before, this presentation probably aims to legitimise the power of the present rulers. Although it is certainly true that the colonial and post-colonial states changed ethnic constructions and aggravated differences, it is doubtful if before that period these differences were as irrelevant as the new ideology wants people to believe. In his book *Re-imagining Rwanda*, Johan Pottier argues for instance that ethnic differences, combined with severe inequalities, already existed before the Europeans came to Rwanda but that it is in the interest of the RPF rulers to deny this. He describes a well-balanced and successful des-information policy by the RPF that, by making ethnicity a non-issue, serves to legitimise the minority rule of the RPF.<sup>133</sup>

The RPF vision of history poses the question of why, if Hutu and Tutsi have always lived in harmony, the genocide took place? It is the answer to this question that plays a central role in the reconciliation discourse. The blame for the genocide is not laid on the Rwandans themselves but on their colonisers and the successive regimes that divided the population. The reasoning is that the whites, with the intention of strengthening their own power, changed social entities into racial entities. When the Europeans arrived in Rwanda, they misinterpreted the subtle and flexible social variations of the different groups and, while favouring the Tutsi, altered relations by turning them into ethnic identities. While the Tutsi were considered as intelligent, civilised and as a race that was born to govern, the Hutu were seen as ignorant, barbarous and as having been born to serve. The policy that followed from these conceptions destroyed the unity and harmony that had, allegedly, always previously existed and sowed the seeds of division and hatred among Rwandans. After independence, discrimination and division remained at the forefront of the bad government's policies.

During sensitisation meetings, the authorities are particularly keen to highlight the negative role of the colonisers in Rwandan history. During one meeting, this resulted in an incident. The authorities were stating over and over again that, if the whites had not come to Rwanda, the citizens would have continued to live peacefully together and Rwanda would never have witnessed genocide. At a certain moment, a priest stood up and said that he could not accept that all the country's problems were attributable to the whites. He feared that if the leaders continued with their reasoning, a war between the whites and blacks would break out. While the priest made his argument, the mayor of Mudasomwa exploded and shouted to the priest:

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<sup>133</sup> Pottier, *Re-Imagining Rwanda*, see especially pages 7-13 and 108-117.

“The ones who separated the Rwandans are the whites! I am angry with that. I have no problem saying that while the *muzungu* is here. [The mayor points at the author] It is also the *bazungu* who brought arms to Rwanda, so it is them who caused the genocide!”<sup>134</sup>

The discussion that followed took so long that the authorities forgot to explain that, besides the colonisers, the first regimes after independence were also “bad governments” because they continued to set the different population groups up against each other and organised the genocide. At other meetings, as well as in official literature, this is never forgotten but receives less attention than the role of the colonial power.

It is clear that the official historical discourse serves several goals, but it is difficult to grasp what is intended to be at the forefront. On a more cynical note, one can argue that the present discourse is merely a continuation of previous policies of misuse of history in order to legitimise an authoritarian rule. By renouncing the historical correctness of ethnic differences and stressing the historical naturalness of unity, the fact that the core power of the government is executed by a small elite that originates from an (ethnic) minority group is concealed. Moreover, accenting the negative role of the whites produces a sense of guilt among the Western donor community, which is easily translated into more funding with fewer strings attached for Rwandan government programmes. The financial support for controversial programmes such as *imidugudu* and *gacaca* proves that this strategy works.

On the other side, one can also see good intentions. It is for instance without doubt a very positive development that for the first time in a century, the country’s leaders are accentuating similarities instead of divisions. And blaming the Europeans for the genocide, together with the first independent governments, also serves the reconciliation policy. Because of the high participation rate of the Hutu population in the genocide, the government’s task of making all Rwandans live together peacefully is extremely difficult. Since so many Hutu were involved in the genocide, the survivors have very little confidence in the other group and find it difficult to live with them. To make this nevertheless possible, the government is trying to remove the real feelings of guilt from those groups that must live together and instead is putting it on the shoulders of outsiders (colonisers and previous governments). In this way, the Hutu who executed the genocide are transformed into accidental and spineless players in a game in which they are not guilty. Although these victims of circumstances must still be punished in order to break the cycle of impunity, they should also be forgiven and, because new leaders will ensure that there will never be a repeat of the genocide, the survivors need not to be afraid of the Hutu and can live with them without fear.

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<sup>134</sup> Mayor of Mudasomwa, during a sensitisation meeting in Gasarenda on 23 January 2003.

In my opinion, putting the real guilt on outsiders can, in the short run, facilitate peaceful cohabitation and maybe even create a substitute for reconciliation. It is, after all, easier to forgive someone who acted outside his realm of responsibility. Besides, the priest's concern that this could provoke war between the whites and blacks is not realistic. However, in the longer term there is a danger that Rwandans may again run away from their own responsibilities, as they consistently did in the latter half of the twentieth century. In spite of the clear short-term advantages of the present treatment of history in the short term, it can have negative consequences for the future. This concern makes Johan Pottier conclude that:

“If reconciliation is to take place in Rwanda then a broader, more detailed and historically informed conceptualisation of the drama is required. Under conditions of partisanship [because the RPF was a player in the war] (...) an agreed version of Rwandan society and history will not emerge, and autocratic rule will ‘present itself’ as the Rwandan government’s only conceivable solution for the ethnic strife.”<sup>135</sup>

### Pre-gacaca: The problems of confession in practice

Towards the end of 2000 and while awaiting the nationwide start of gacaca, the Office of the Prosecutor (“le Parquet”) started “pre-gacaca meetings” in collaboration with the NGO Citizen Network at which detainees were presented to the population.<sup>136</sup> In most cases, it concerned prisoners whose files were either incomplete or totally absent. During those presentations, the people were invited to testify in favour of or against the detainees. In cases where no evidence of the prisoner’s guilt was found, the detainees could be released provisionally, but when people stood up and testified against the detainee, he/she returned to prison in anticipation of the start of gacaca. According to figures by De Jonge, out of the first 800 detainees that were presented to the population, 200 were released provisionally, while 600 others returned to prison.<sup>137</sup>

The pre-gacaca meetings had several advantages. On the one hand, they generated knowledge about the genocide for the authorities and helped the judiciary to fill the often empty files of those being held in prison. At the same time, the authorities gained insight into what was likely to happen in gacaca, because in the pre-gacaca meetings certain aspects of the real gacaca, like the encounters of villagers with prisoners and public discussion about the events of the genocide were tried out. On the other hand, the pre-gacaca meetings had a function in familiarising the population with the arrival of gacaca. The meetings

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<sup>135</sup> Pottier, *Re-Imagining Rwanda*, 128.

<sup>136</sup> De Jonge, *Interim report on research on gacaca jurisdictions*, 7.

<sup>137</sup> De Jonge, *Interim report on research on gacaca jurisdictions*, 12-13.

always included sensitisation about gacaca (and reconciliation) and the repeated encounter of prisoners in public meetings familiarised people with the idea of doing so every week.

In my fieldwork district just before the launch of the pilot phase of gacaca, the design of the pre-gacaca gatherings was changed. On the initiative of the mayor of Mudasomwa and the director of the Gikongoro Central Prison, a different aspect of the coming gacaca was tried out. Prisoners continued to be presented to the public but the difference was that now detainees held public confessions in which they recounted their actions and publicly asked for forgiveness. Later, this method was also used in most other districts of the country. Although these gatherings stopped in the course of my fieldwork, I was able to witness these meetings twice.<sup>138</sup> This type of meeting was especially valuable because it provided a first insight into the workings of the confession. Since the confessions have such a central place in the reconciliation process, examining the way detainees confess in public and the interaction between detainees and the public was very useful. In Mudasomwa, the gatherings took place outside the district office, where there was space on wooden benches for several hundreds of people. Because the meetings were well attended, many people had to sit on the grass to hear the proceedings. The prisoners, about ten men all dressed in pink and a single woman, arrived sitting in the back of a truck and took their seats on benches opposite the people who were silently waiting what was coming. Local officials opened the gatherings by sensitising the population to gacaca, reconciliation and other official policies. When this had finished, the prisoners had the chance to speak and in turn took the opportunity to explain the importance of confessing to crimes, reconciling and participating in gacaca. Then the public confessions could start.

The most striking feature of these public confessions was the horrendous detail in which the detainees described their crimes. They did not even hesitate to talk about the murders of women and babies. They generally spoke in a loud voice, showing no sense of shame or regret. On several occasions, a shudder ran through the crowd while a detainee was speaking. In violent contrast to these long and detailed accounts was the brief and procedural way that the prisoners asked for forgiveness for their deeds. They did this, generally, without emotion, but in an arrogant way, implying that they expected to be forgiven immediately, as if they had automatically earned the right to be pardoned because they had taken the trouble to confess or as if they had forgotten that the victims might reject their apologies.

“My name is Anasthase. I come from cell Gasarenda, Sector Tare I. I have confessed and asked for forgiveness and I advise all of you to do the same. It was April 1994 and I was

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<sup>138</sup> On 4 and 17 December 2002.

among the group of *interahamwe* who killed my neighbour, who was called Marie. We went to her house and after we had found her, we took her down the valley towards the river. There we killed her. I tied a rope around her legs and then we threw her in the river. (...) The next day, I participated in the killing of Evariste at the hospital of Kigeme. Although I did not kill Evariste myself, I was with the group of people who killed him. For that reason I ask for pardon. I ask for forgiveness to God, the state and the population of Rwanda. That is it.”

The crowd was especially shocked by the story of another detainee:

“My name is Faustin. My cell of origin is Buhoro. I accept and ask for forgiveness. (...) On Sunday, I heard screaming at the road. I went there to see what was happening and when I arrived at the roadside, I saw a man who had been caught by a group of *interahamwe*. They told me that I had to kill this man, who was already lying on the ground. They gave me a machete and I killed the man. Elsewhere in Buhoro, there was a man who was hiding in the forest. We entered the forest and when we found him, we killed him as well. Then we went to his house to loot his cows and other possessions. The neighbour of this man told us that the rest of the family was already dead, except for one baby. The neighbour said that we could kill the child as well and she handed us the child. I took the baby and hit it with the machete. This is my story and I ask for forgiveness to God and Rwanda. I want you to forgive me. I also ask for forgiveness to the families of those who I have killed. I want you to forgive me as well.”

Although in Rwandan culture it is inappropriate to show emotions in public, which could explain the emotionless behaviour of the prisoners, people shared an unease with these kinds of confessions. One onlooker addressed herself to the author and said, while shaking her head:

“What they are doing is a formality, don’t you notice that? It is as if it is written in a book, and they are reading it without knowing what they are saying. It is very easy to ask for pardon like this, but it is not coming from the heart. They are confessing out of self-interest, because their penalty will be reduced, but they don’t confess out of regret. Therefore, I don’t think many survivors will accept these avowals and forgive those prisoners.”<sup>139</sup>

And indeed, according to some specialists, confessions without real or genuine regret are very common. It is possible to say one is sorry without any true acknowledgement of one’s guilt,<sup>140</sup> especially when the person confessing has a clear self-interest in doing so. Another problematic element in the confessions is the denial of self-responsibility. Although most detainees admit that what they did was wrong, they defend themselves by saying that they were forced to perform certain actions. Both during the pre-gacaca meetings and in interviews, many confessing prisoners stated that: “we had to; we had no choice” because “it was the policy of the state. The leaders forced us” or “everybody participated, and I was afraid that they would kill me if I didn’t.” In my opinion, this dangerous mentality of shirking one’s responsibility is fed by the ideological history discourse of the government, which put the blame on outsiders. If the perpetrators do not take on their responsibility this time and internalise their

<sup>139</sup> Marie José, interviewed in Gasarenda, 4 December 2002.

<sup>140</sup> See De Jonge, *Report III*, 16 and footnote 24.

guilt, what ensures that they will not repeat their mistakes in a renewed crisis? In practice, however, these defences are not solid because a different action other than the one they carried out was always possible. This is proven by the fact that in the whole of Rwanda, there are only few examples of people who were literally forced to participate in the genocide. Besides, many people did make another choice: they did not participate in the genocide and some individuals even decided to take the risk to defend or hide Tutsi. It is astonishing that the latter group employs the same discourse of inevitable fate when explaining their conduct. One man who had successfully hidden three Tutsi said:

“What else could I have done? Of course it was dangerous, but we have lived and shared together all our lives. I had to defend them, there was no choice.”<sup>141</sup>

## Conclusion

By publicly opting for the option of reconciliation instead of a continuation of ethnic hatred and war, the present government has made the best choice possible. However, despite the fact that the term reconciliation is on the forefront of any official communication, a clear and balanced vision of the concept seems to be lacking. Without this understanding, a coherent policy that addresses all needs for reconciliation is difficult to develop and, consequently, not available. In the future, it seems that the authorities will put all their trust in gacaca. It is to be hoped that this will prove the right option. Nevertheless, the official reconciliation policy has led to some successes, as the high number of confessions and the relative stability of the country show. However, the denial of self-responsibility by the confessing perpetrator makes many people question the value of confessions. How can a victim be reconciled with a perpetrator who says he/she is sorry mainly because he/she wants to get out of prison as soon as possible? Moreover, when they say that they were forced in 1994, who can guarantee that they will not act in the same way if they are forced to do something again in the future? The chances that people will remember their request for pardon in a renewed crisis situation are considerably higher if they internalise their guilt instead of putting the blame on outsiders.

Though the government was very successful in persuading prisoners to confess, the manner in which these prisoners did so has been ignored. It is on this subject that the government might be making a mistake. Although the government has encouraged perpetrators to admit their deeds, in its discourse it also leaves the door wide open by not adopting any responsibility for these crimes. In a genuine wish for peace and reconciliation and in the interests of

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<sup>141</sup> Ignace, interviewed in Gasarenda, 14 March 2003.

safeguarding their own position of power, the present rulers have decided to blame outsiders for the 1994 genocide. A new understanding of history has therefore been successfully developed and delivered to Rwandans as well as to many foreigners who are all too willing to believe this new version of the past.

## Before gacaca's start: Reviews and expectations in and outside Rwanda

The implementation of gacaca became definite with the adoption of the gacaca law in January 2001. It would however ultimately take until 18 June 2002 before President Paul Kagame officially launched the gacaca jurisdictions. In the meantime, there was a lot of space to review the gacaca law and to pronounce expectations about what it would deliver. This chapter highlights the high expectations of gacaca in government circles; the more critical view taken in the international arena; and the more or less docile stance of the Rwandan population.

### High hopes with blinkers on? Official expectations of gacaca

As gacaca's implementation was approaching, excitement, especially in government circles, began to rise and, as described in Section 3.2, the belief in gacaca began to attain almost religious proportions. The belief was that gacaca would reconcile the Rwandan population and thereby settle once and for all the legacy of the past. The government used a logical reasoning to explain why gacaca would reconcile Rwandans. Because all the elements that were perceived as necessary for reconciliation were also goals of gacaca, the latter would automatically lead to the first. In other words, the anticipated success of gacaca was synonymous with the achievement of reconciliation. In gacaca, the guilty would confess and ask for forgiveness. The population, who saw the events of

the genocide with their own eyes, would reveal all that they saw so that the truth would be known. When this has happened, the *inyangamugayo* will finish the job by punishing the crimes and thereby end the culture of impunity and prove that Rwandans are capable of solving their own problems themselves. All this together will ensure that reconciliation comes about and that harmony will return to the Rwandan hills.

The objectives that gacaca has officially been set are precise, well documented and are disseminated to the population clearly and regularly.<sup>142</sup> Apart from reconciling Rwandans and promoting their unity, the objectives behind gacaca are fourfold. In the first place, gacaca aims to establish the truth about what happened during the genocide. It is argued that justice is the main pillar of unity and reconciliation and the quest for justice can only be successful if it is based on the uncovering of the truth. Here one depends heavily on the willingness of the Rwandan population to participate actively in gacaca and to make public what they witnessed. After all, it is the population that knows exactly what occurred during those disastrous and chaotic months. In official circles this dependency is not seen as a problem, because there is a lot of confidence that Rwandans support the goals of gacaca and are willing to stand up in large numbers and speak out. Besides, even if some witnesses decide to remain silent, there will still be a large number of confessions from prisoners that will expose the truth.

The second and most practical of gacaca's objectives is to accelerate the process. By adding around 11,000 gacaca courts to the 12 regular courts that could prosecute the suspects of genocide, the burden on the heavily overloaded courts is indeed impressively eased. It is, however, far from sure that gacaca will also help to empty the prisons because the gacaca courts have the ability, as well as the duty, to imprison people who are found guilty of genocide but who are still at large. There are, furthermore, indications that gacaca will lead to many new arrests. According to data released by the Ministry of Justice, the 40,000 confessing prisoners have in their testimonies so far denounced around 250,000 accomplices who have not yet been arrested.<sup>143</sup> It is not sure how accurate these figures are, there might for instance be people counted twice, but they give a worrisome indication that gacaca might eventually end up worsening the detainee crisis.

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<sup>142</sup> For documentation, see Republic of Rwanda, *objectifs* See website: <http://www.inkiko-gacaca.gov.rw/fr/generalites.html> (visited 28 September 2003); Republic of Rwanda, *Manuel explicatif sur la loi organique portant création des juridictions gacaca*, (Kigali, 200?); Republic of Rwanda, *Gacaca tribunals vested with jurisdiction over genocide crimes against humanity and other violations of human rights which took place in Rwanda from 1<sup>st</sup> October 1990 to 31<sup>st</sup> December 1994* (Kigali, July 1999) 5; and Republic of Rwanda, *report of the reflection meetings*, 59.

<sup>143</sup> Figures cited by Antoine Mugusera, representative of IBUKA on a communication day on gacaca in Kigali, 14 February 2003; De Jonge, *Rapport V*, 12; and De Jonge, *La procédure d'aveux. Rapport IV*, 11.

The third objective behind gacaca is to eradicate the culture of impunity, which is seen as one of the main causes of the genocide. The reasoning is that all offenders must be punished in gacaca so that a strong signal is given that from now on ethnic violence is punished. This should raise a strong social barrier to prevent the recurrence of war and genocide. As with the finding of the truth, the eradication of impunity also depends on the cooperation of the population as a whole to determine who should be punished and who should be found innocent.

The final objective of gacaca is to prove the ability of Rwandan society to take care of its own problems. The usage of a justice system based on Rwandan cultural heritage symbolises the strength of Rwandans and their culture. Considering the fact that Rwanda does not cherish many good memories of depending on others, reliance on the own culture is understandable. As in colonial times when Belgian misuse of social and ethnic relations had catastrophic consequences, the inaction of the international community in 1994 had disastrous results as well. Now Rwanda hopes to prove it can solve its own problems and by doing so, it demonstrates that Rwandans – Hutu and Tutsi together – can also solve problems instead of creating them. Despite the fact that gacaca is reliant on foreign sponsors, it will have been designed and executed by Rwandans themselves. If gacaca is a success, it will certainly enhance national pride and self-confidence.

If it is up to the authorities, confidence will not be the problem. The official discourse is so passionate about gacaca and its anticipated outcome that the system has been almost granted a mythical status. When discussing gacaca with government officials, it can be useful to know that one is talking about a system of justice because otherwise one might well believe that the official is talking about his lover. The enthusiasm and confidence in gacaca is also passed on through the media. In the government-friendly newspaper *The New Times*, for example, the South African Truth and Reconciliation Commission pales into insignificance in depth, innovativeness and originality when compared to gacaca. The newspaper explains that the special design of gacaca will attract genuine confessions, a feeling of real remorse and a desire to repay harm done. The inbuilt systems of community service for confessors and compensation for the victims, at the same time, symbolises the ability of the community to forgive without letting crimes go unpunished.<sup>144</sup>

Yet, in spite of the fact that gacaca has already started, the structure to facilitate community service work is not yet operational, nor has the law to arrange compensation for the victims been passed by parliament. Some observers fear that the delay in these fundamental elements of gacaca and the reconciliation

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<sup>144</sup> The New Times, *Gacaca: a comparative study*, 5-8 December 2002.

process will have a negative impact, or in the worst case scenario, even cause the total collapse of the gacaca system.<sup>145</sup> These flaws are indeed problematic because confessing prisoners who have served their time in prison are now being released even though the organisation of community service is not yet complete. When this is finally the case, the ex-prisoners will be used to their regained freedom and will be disinclined to fulfil the second half of their punishment. For victims, on the other hand, the delay in the compensation law is difficult to digest and in interviews they expressed their disappointment that gacaca had nothing to offer to them.

Although officials in Rwanda constantly propagate the merits of gacaca, there is no mention of possible problems that might arise. Does this mean that the government does not expect any flaws and setbacks during the execution of gacaca? It seems so. Officials constantly express their belief that everybody will fully support gacaca and that each person will contribute his/her part to make it a success. Those who are critical are dismissed as foreigners who are afraid that gacaca will ‘beat’ their justice system or as Rwandans who simply do not yet understand gacaca. For the latter group an extra dose of sensitisation should be sufficient to change their minds.

### “Critical support”: The international attitude to gacaca

Although the international community is far less optimistic about the merits of gacaca, a substantial number of multilateral agencies, bilateral donors and NGOs nevertheless support and are funding the system. Since the publication of the first draft of the gacaca law in October 2000, a number of agencies and academics have reviewed and commented on the gacaca system and its possible effects. Opinions are mixed. On the one hand, most commentators respect the originality and daring of the Rwandan government to design and implement such a system. On the other hand, the commentators share a number of concerns about the way the system is designed and about the way it will function in practice.

On the negative side, Amnesty International is its fiercest critic. Although it admits that alternative measures are needed in addition to the modern justice system, concerns about gacaca’s failure to comply with international fair-trial standards weigh heavy for this organisation. According to Amnesty International, as well as others, the gacaca jurisdictions fail to meet basic standards for a fair

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<sup>145</sup> Klaas de Jonge, *Travaux d'intérêts généraux / indemnisation*. Presentation at the DGDC gacaca one-day meeting in Brussels, 22 April 2003; and, Heidi Rombouts, *Réparation pour les victimes au Rwanda? Observations concernant le projet de loi du fonds d'indemnisation (FIND) au Rwanda, premiers résultats d'enquête* – unpublished (August 2002) 10.

trial on two issues.<sup>146</sup> In the first place, the defendant does not have the right to legal representation by a defence lawyer, while according to existing safeguards in international law this right should be automatic. This is indeed a serious disadvantage for the accused, especially as the majority have little or no formal education, a limited awareness of their rights, hardly any knowledge on how to defend themselves before a court and, finally, no chance to collect evidence to support themselves. During one of the meetings in the cell of Gatovu, a prisoner who was accused of participating in the genocide defended himself by claiming that he was in hospital at that time. Whether this is true or not, the prisoner has had no opportunity to go to that hospital and find tangible evidence of his stay. In his case, the help of a lawyer could be vital. The government, conversely, claims that this is not problematic because the accusing party also lacks legal representation, so that the principle of equality is respected.

In the second place, the gacaca jurisdictions breach the right of a trial by a competent, independent and impartial tribunal. The persons who are elected as judges have generally no legal background but are nevertheless expected to hand down judgements in extremely complex and sensitive cases, with sentences as long as life imprisonment. In addition, these *inyangamugayo* must be able to resist considerable social and psychological pressure from the complainants, the accused, and their families. To enable them to fulfil their tasks, the *inyangamugayo* received a basic training of no more than six days in which the gacaca law was explained and their role as judge was practiced.<sup>147</sup> When discussing the training sessions with some of the judges, they confessed that they had already forgotten most of the information they had received during the training sessions and admitted that most of them had skipped some of the training days because they had had other things to do. Considering this lack of training, the *inyangamugayo* cannot be expected to exercise competent, independent and impartial trials, as is demanded by international law.

These breaches of basic fair-trial standards, in combination with the government's unwillingness to address its own poor human-rights record, make

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<sup>146</sup> On gacaca in relation to fair trial standards, see Amnesty International, *Gacaca: a question of justice* (December 2002) 2; Idi T. Gaparayi, 'Justice and social reconciliation in the aftermath of genocide in Rwanda: an evaluation of the possible role of the gacaca tribunals', in *African Human Rights Law Journal*, 1(2001) 78-106, there 88-99; Peter Uvin, *The introduction of a modernized gacaca for judging suspects of participation in the genocide and the massacres of 1994 in Rwanda. A discussion paper* (2001) 3-4; Amnesty International, *Rwanda: the troubled course of justice* (April 2000) 33-37; Karl Peter Puskajler and Joachim Kaetzler, *Mid-term evaluation of the Danish Centre for Human Rights Project "judicial defenders in Rwanda"*, (Denmark 2000) 32-34. Website: <http://www.humanrights.dk/upload/application/c0ca16c5/rwandamanust.pdf> (visited 29 December 2003); and Vandeginste, *Justice, reconciliation and reparation*, 30.

<sup>147</sup> Provincial coordinator of gacaca in Gikongoro, interviewed in Gikongoro, 17 January 2003. For an in-depth study of the training of the *inyangamugayo*, see African Rights, *Gacaca justice: a shared responsibility* (January 2003).

Amnesty International consider gacaca as a form of “gambling with justice”.<sup>148</sup> It fears that this gamble will result in the denial of the promised justice, truth and reconciliation. While Amnesty International reminds the Rwandan government that “the right on a fair trial is non-derogable, especially as the African Charter does not expressly allow for any derogations from the rights it enshrines,”<sup>149</sup> others, like Idi T. Gaparayi and Peter Uvin, argue that this breach of fair-trial standards should in the specific Rwandan case not be a reason to withdraw support.<sup>150</sup> Gaparayi, a lecturer at the National University of Rwanda, defends gacaca by demanding acknowledgement for Rwanda’s poor resources and the complete devastation of the judicial structure as a result of the genocide.<sup>151</sup> Some compromise is simply unavoidable because the fair-trial standards are not designed with an eye on such high numbers of both victims and perpetrators in such a poor country after such a crisis. In the Rwandan situation, furthermore, Gaparayi claims that by deciding to prosecute, Rwanda is indeed complying with important international standards regarding the question of accountability in the aftermath of massive violations of human rights and humanitarian law.<sup>152</sup> Would a failure in the latter not be more serious than the breaches that are now being made?

Uvin, a Belgian Rwanda specialist, comes to a similar conclusion as Gaparayi and adds a number of arguments to the defence of gacaca.<sup>153</sup> One argument is that the current practice, with thousands of people awaiting their court cases for an unreasonably long time in a harsh detention situation, violates human rights as well. The continuing use of the modern justice system, with which it would take almost 200 years to prosecute all prisoners, would be a clear breach of the basic right for a speedy trial and reasonable detention times. Gacaca, therefore, could be a way to solve this problem. A second argument in favour of gacaca is that international human-rights standards allow, under conditions of emergency and if the normal criminal law cannot function, to deviate temporarily from normal standards. Uvin concludes that full respect for human rights is simply impossible under the current circumstances and the flaws in the gacaca system are no more, and maybe even less, than those of any alternative. He therefore proposes that the international community critically supports gacaca and tries to ensure that the risks and violations of human rights are minimised and the benefits maximised.<sup>154</sup>

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<sup>148</sup> Amnesty International, *Rwanda: gacaca - gambling with justice* (June 2002). Website: <http://web.amnesty.org/library/print/ENGAFR470032002> (Visited 29 December 2003).

<sup>149</sup> Amnesty International, *Rwanda: the troubled course of justice*, 33.

<sup>150</sup> Gaparayi, ‘Justice and social reconciliation’, 99; Uvin, *The introduction of a modernized gacaca*, 4-7.

<sup>151</sup> Gaparayi, ‘Justice and social reconciliation’, 98-99.

<sup>152</sup> *Ibidem*, 104.

<sup>153</sup> Uvin, *The introduction of a modernized gacaca*, 4-7.

<sup>154</sup> *Ibidem*, 5-6.

Besides the debate on fair-trial standards, discussions are being held about the willingness of the population to participate in gacaca. It has already been argued that high popular participation is vital to reveal the truth and to hold individuals accountable for this truth. Since there are no other sources of information than the accounts of eyewitnesses, the success of gacaca will be determined by their decision whether or not to play an active part in the proceedings. Some commentators argue that the way gacaca is designed will encourage people to involve themselves and speak out. According to this reasoning, gacaca's strength lies in the fact that the justice process is brought to the communities where the people involved live and where the misdeeds took place. In their own communities, where people feel at ease, they are more likely to show up and speak about what they saw than in the unfamiliar situation of a formal courtroom. There exists, furthermore, hope that empowering the local population to collect and process information about the genocide, instead of solely using professional judicial staff, may create new possibilities for social engagement and set in motion a more sustained process for coming to terms with the past.<sup>155</sup>

Other reviewers, on the other hand, have doubts about whether people will indeed seize the chance to become involved in the judicial dealings with the genocide. These doubts emerge mainly out of concern about the social and political environment in which gacaca will operate. The governance by the RPF has, besides the introduction of stability and the disappearance of clear ethnic divisionism, resulted in strict political control, limited freedom of speech, a silenced independent press, a contained civil society and suppression of oppositional views.<sup>156</sup> In the name of national unity and reconciliation, Rwandan society, together with all its institutions, is subjected to an at best paternalistic, but often also oppressive doctrine that forbids all independent and dissenting political expression. According to a number of commentators, this climate of limited freedom of speech will, without doubt, have negative repercussions on the way people participate in gacaca. African Rights, for example, states that for gacaca to function efficiently, Rwanda needs to be an open society where justice, tolerance and peace are well established.<sup>157</sup> These necessary values for its functioning, however, are just the principles gacaca seeks to promote. According to African Rights, one can for that reason not expect gacaca to achieve all its

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<sup>155</sup> See African Rights, *Gacaca justice*, 1-2; Gaparayi, 'Justice and social reconciliation', 104; Amnesty International, *Rwanda: the troubled course of justice*, 32-33; Vandeginste, *Justice, reconciliation and reparation*, 20; and Ntampaka, 'Le gacaca rwandais', 213.

<sup>156</sup> International Crisis Group, *Rwanda at the end of the transition: a necessary political liberalisation* (Africa report 53, November 2002) i; Amnesty International, *Gacaca: a question of justice*, (December 2002) 2-3; and Human Rights Watch, *Rwanda: the search for security and human rights abuses* (April 2000) 2. Website: <http://www.hrw.org/reports/2000/rwanda> (visited 29 December 2003).

<sup>157</sup> African Rights, *Gacaca justice*, 51.

goals and perform miracles. Stef Vandeginste, a Belgian legal expert, also believes that a high degree of freedom of speech and a spirit of political openness are needed for people to buy into the process. He warns that, since these merits are lacking in the present political climate, people will prefer to remain silent.<sup>158</sup>

Amnesty International sees yet another reason why gacaca might fail to win the support of the population. Amnesty claims that there is a high level of popular dissatisfaction that the RPF abuses during and after the genocide do not fall within the competence of the gacaca jurisdictions.<sup>159</sup> Gacaca can only be successful when people have confidence in the fairness of the system. This public confidence can only be won when all human-rights violations are investigated and tried, including those committed by the RPF. If not, gacaca might fail to win the goodwill of its indispensable partakers and be considered a form of victory justice.

With gacaca proceedings still in their infancy, the debate about the merits and shortcomings of gacaca is still wide open. However, claims against gacaca about its failure to be in concordance with basic fair-trial standards have lost out against the realistic acknowledgement that there is no alternative that does not breach these standards. What remains are worries about how gacaca will function in practice, but for the time being gacaca is being given a chance.

## What the population says about gacaca

With such contradicting opinions and expectations about gacaca as portrayed in the last two sections, a relevant question has to be what the population who must carry out gacaca thinks about it. So far, two large opinion surveys have been conducted, both of which draw a picture of a highly supportive and confident population.<sup>160</sup> A survey published by the Rwandan human-rights league LIPRODHOR shows that 93% of all respondents are in favour of gacaca, while in the province of my fieldwork this was even 96%. On the question of what relationship people expect between gacaca and reconciliation, 58% foresee a close relationship, while only 9% does not believe that gacaca will contribute to reconciliation.<sup>161</sup>

According to a survey prepared by the John Hopkins University, 89% of the population intends to actively provide evidence during the court sessions. Another 87% says it has either high or fair confidence that gacaca will contribute

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<sup>158</sup> Vandeginste, *Justice, reconciliation and reparation*, 31.

<sup>159</sup> Amnesty International, *Gacaca: a question of justice*, 28-29, 44-45.

<sup>160</sup> Gabisirege and Babalola, *Perceptions about the gacaca*; LIPRODHOR, *Juridictions gacaca au Rwanda*.

<sup>161</sup> LIPRODHOR, *Juridictions gacaca au Rwanda*, 28, 48.

to sustainable peace in Rwanda.<sup>162</sup> Although the surveys were carried out in accordance with scholarly and statistical standards, it is nevertheless doubtful whether these results show a true reflection of the attitudes of Rwandans towards gacaca. Rwandans are known to exercise a “culture of lying”. When confronted with strangers, it is deemed wiser to be careful instead of open and when one is asked a question it is better to give an answer that will not have negative consequences than an answer that comes close to the truth. This custom will probably have become stronger due to the imposition of politically correct discourse by the present government.

Hence, in the course of my research many people alerted me to this cultural phenomenon and warned me not to take for granted what the respondents told me. And indeed, in many interviews I suspected that a respondent was giving a politically correct answer that had been picked up from the radio or during sensitisation meetings instead of his/her true opinion. What is interesting is that these politically correct and acquired responses disappeared as I spent more time in the community. Whereas in the beginning everybody was highly positive about gacaca, “which would quickly release all innocent prisoners, punish all the guilty and reconcile the Rwandans” (for as far as that hadn’t already happened), in the course of the months people’s opinions became much more critical of gacaca, the government and the other group in society. There were even a couple of people who I interviewed more than once, whose opinions in the later interviews were contrary to those in the first. In all cases, the interviewees had shunned critical reflection in the first conversation, while the second was punctuated with it. One example is a woman who had only given politically correct views in the first interview, but approached me two months later insisting that there would be a new appointment. She said that she had not spoken the truth the first time because she was unsure if my questioning had ulterior motives. Now she had learned that I was genuine in my interest, she wanted to tell me the truth, so that her true opinions would be reflected in this thesis.<sup>163</sup>

These kinds of examples show, in my opinion, the difficulties with opinion surveys in which strangers enter communities and pose a number of questions that are politically sensitive. The respondents will be polite enough to answer, but will not necessarily express their true opinion. Results that suggest that around 90% of the population is in favour of gacaca and intends to participate actively are to be expected in these kinds of surveys, but these results are not reliable. Even when using qualitative methods and investing a lot of time and effort to win people’s confidence, it remains difficult to discover their true views. The advantage of the techniques employed in this study is that, since the process

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<sup>162</sup> Gabisirege and Babalola, *Perceptions about the gacaca*, 13-14.

<sup>163</sup> Colette, interviewed in Gatovu, 24 February 2003.

of gacaca has been followed for almost five months, it does not rely totally on what people say, but also on how they act during the court sessions. Herein I discovered a discrepancy between what people said about gacaca and how they acted during meetings. Most people *say* that they support gacaca, but, as we will see in Chapter Six, only a few are putting this into actual practice.

When comparing views of gacaca within and outside Rwanda, it has to be concluded that there is a wide gap in expectations. Whereas the government of Rwanda expresses full confidence in the process, international observers are more cautious. In the official view, gacaca will punish the guilty, liberate innocent prisoners, fill Rwandan minds with self-confidence, end the culture of impunity and ultimately reconcile and unite all Rwandans. For all this to happen, it is an absolute necessity that the Rwandan population decides to embrace gacaca and contribute actively to its success. This demands that differences within society are set aside and that one is prepared to work together to piece together the truth about the genocide and accept the consequences that this might have. If this is the case, mutual confidence between the different groups will rise and may create a good breeding ground for reconciliation. Will all this come about? The government of Rwanda thinks so, but international observers are doubtful. The final answer is in the hands of the Rwandan people who participate in gacaca and it will be the actual practice of gacaca in the hills of Rwanda that will provide the final proof.

## History and the fieldwork area

### The chosen ones: The start of a pilot phase

Gacaca finally took off on 18 June 2002. This official start did not, however, mean that gacaca was introduced nationwide, but only marked the beginning of a pilot phase. In each of Rwanda's twelve provinces one single sector, around ten cells, was chosen to test the operation of gacaca. After 25 November, one sector per district was added, which increased the number of pilot sectors to 118. Although this pilot phase offers a good possibility to study how gacaca functions and what consequences it might have in the communities, one should be careful to translate observations from these pilot sectors to what will happen in the rest of Rwanda. Because the pilot sectors were chosen on the basis of specific criteria, the proceedings will to some extent be different from elsewhere. The choice for the sectors was determined on the basis of the four following criteria:<sup>1</sup>

- 1) The sector must have an office where important documents can be kept securely;
- 2) The sector must have a relatively high number of confessing suspects;
- 3) The population must have shown general enthusiasm for and a good understanding of gacaca. This was measured during sensitisation sessions and the elections of the *inyangamugayo*;
- 4) The *inyangamugayo* must be relatively competent. This was assessed by the quality and quantity of the judges' participation in their training.

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<sup>1</sup> Provincial coordinator of gacaca in Gikongoro, interviewed in Gikongoro, 17 January 2003. See also De Jonge, *Report III*, 6.

The fact that the pilot sectors were chosen on the basis of these specific criteria has some potential consequences. In the first place, the selection of the latter two criteria has resulted in the choice for only predominantly rural pilot sectors. As elsewhere in the world, rural areas are generally characterised by a higher level of social control and law abidance than urban areas. Hence, the regions where the population showed up in large numbers for the elections of the *inyangamugayo* and where these newly elected judges participated obediently in their training were generally of a rural nature. As a result, the lessons learned from the pilot phase are not representative of what will happen in the towns and cities.

In the second place, the pilot sectors are expected to function better than most other sectors, because a high number of confessions, a well-disposed population and competent *inyangamugayo* are precisely the ingredients needed to ensure gacaca's success. The pilot phase is also facilitated by the fact that one or two sectors, with about ten cells each per province are much easier to organise and control than about 1,000 cells per province that need to be coordinated when gacaca starts to operate across the whole country. This will demand complicated logistics that are in no way comparable to the one required in the pilot phase.

### The fieldwork area at a glance

In the southeastern province of Gikongoro, the sector of Nkumbere in the district of Mudasmwa was chosen as a pilot sector. Since independence, Gikongoro has been the poorest of all Rwanda's provinces<sup>2</sup> and although it has a number of tea plantations, these have never had a large impact on the region's wealth because the administration and benefits went to regions that were favoured by the old regime. Because the Nyungwe Forest covers a third of the province and this forest borders the unstable Burundi, the old regime felt that Gikongoro, if it was attacked from Burundi by Tutsi rebels, would be impossible to defend. Because of its poverty and geographical location, the province was officially considered a lost area.<sup>3</sup> As a consequence, Gikongoro became one of the least favoured provinces, which was apparent in the denial of political positions at the national level to people from Gikongoro and by a lack of investment by both the government as well as aid organisations.<sup>4</sup> Even though today's vice-president originates from Gikongoro and discrimination against the province has decreased, the province has not yet been able to make good its economic arrears

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<sup>2</sup> Until the genocide, provinces were called "prefectures" and districts were known as "communes". The names "sectors" and "cells" did not change. Here, the new names are used.

<sup>3</sup> Alison Des Forges, "*Leave none to tell the story.*" *Genocide in Rwanda* (Human Rights Watch 1999) 303-4.

<sup>4</sup> *Ibidem*.

compared to the rest of the country. Gikongoro is, for instance, the only province where, according to Rwandan Ministry of Finance figures, more than the half (53.07%) of the population lives in extreme poverty. The national average is 37.78%.<sup>5</sup>

Administratively, the province of Gikongoro is nowadays divided into seven districts. The district of Mudasonwa is situated in the central-east part of the province and is bisected by the important and paved Butare-Cyangugu road that goes to the Democratic Republic of Congo. According to the 2001 census, Mudasonwa has, a population of 69,046, more than 90% of whom are engaged in the agricultural sector.<sup>6</sup> Mudasonwa, like all the districts in Gikongoro Province, is mountainous and is at an altitude of between 1,900 to 3,000 meters. The district has only one real town, Gasarenda, which functions as the regional political and economic centre. Gasarenda houses the mayor's district office, has approximately 3,000 inhabitants and a bi-weekly market.

The pilot sector Nkumbere, one of Mudasonwa's 15 sectors, is located south of Gasarenda and is accessible by foot or by four-wheel drive over a narrow dirt road. It is in Nkumbere's nine cells that gacaca's was first introduced. In the first weeks of the fieldwork I visited a number of different gacaca meetings to determine what cells I would use for my case study. Because one of the determining factors for the way gacaca would proceed is the number of suspects that confess, I decided to choose a cell with a higher number of confessors and one with a lower number.

The first cell I chose is called Gatovu, and is spread out over three hills. The heart of the cell consists of a primary school and a small pub that is surrounded by about ten houses. Gatovu has an adult population of 332, against 275 adults and 419 children in 1994. Gatovu was known in the region as being the home of a substantial Tutsi community. Before the genocide, ten out of the total of 145 households were Tutsi, meaning that in total 48 people (18 adults and 30 children) were Tutsi. Of them, 21 were murdered during the genocide, leaving 17 survivors (six adults and nine children) behind. One of these survivors is now a judge of the gacaca court. During the first phase of gacaca, it was established that 14 of the 21 victims were killed during a massacre in Gatovu, while seven were caught and killed while they were on the run in other cells. Allegedly no one from another cell was killed within Gatovu's boundaries.<sup>7</sup> In total 35 people are accused of having actively participated in these killings, of which 24 have been

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<sup>5</sup> Republic of Rwanda, *Poverty reduction strategy – progress report* (Ministry of Finance and Economic Planning, June 2003), 94.

<sup>6</sup> World Vision International, *ADP Mudasonwa: Annual implementation plan*, November 2002.

<sup>7</sup> It is not certain whether or not other people were killed on Gatovu's territory. There are indications that a number of people, Tutsi from other regions who were on the run, were killed at a barricade in Gatovu. For this discussion, see Section 5.3.2 of this thesis.

imprisoned. The others are awaiting their trials in liberty. Only two of the prisoners had confessed before gacaca started and one more decided, after he found out that there was a lot of evidence against him, to do the same after his first appearance before the court.

The second cell, Vumwe, is of a comparable size to Gatovu, with 325 adults, against 269 adults and 364 children in 1994. Unlike Gatovu, Vumwe has no particular centre but is situated close to Bireka, the sector's largest agglomeration. Bireka has, with several pubs and shops and around 50 houses, a centralising function for the sector. During my interviews in Vumwe, I received many different figures about the number of Tutsi living there before the genocide. The reason for this is that some people had changed their ethnicity shortly after independence and there had also been some intermarriage, so that estimates about the number of Tutsi varied between one and twenty. The only certainty is that in total four families were targeted by the *interahamwe* during the genocide, which resulted in 13 deaths. Six of the Tutsis were killed in Vumwe and nine elsewhere. In total, 22 people are accused of having committed crimes relating to the deaths of the six people in Vumwe. Twelve of them are imprisoned and thirteen have confessed their crimes.

## A local history of peace and war after independence

Gacaca has a lot to do with history. Although it is currently in operation today, gacaca's origins date from the pre-colonial past. However, its closest link with history is the genocide of 1994. In gacaca this traumatic period of genocide is raked up, discussed and, when gacaca functions according to plan, dealt with. Without knowing the history of the genocide and the broad spectrum of events relating to it, the actual operation of gacaca can therefore not be understood.

Most events in Rwanda's history that relate to the genocide at a national level are well known and well documented. The extremity and all-embracing character of the violence in 1994 were unprecedented and went so far beyond what was imagined possible that the genocide has attracted the attention of many researchers who want to describe its history and unravel its causes. The world had to understand what had happened. Even though the historical narratives and explanations of political, social and economic events are often convincing, a true understanding of what happened at a local and human level nevertheless remains elusive. Why did neighbours, who were drinking from the same pot of beer the week before, all of a sudden take up arms to hunt and slaughter their fellow villagers? And why did they do so in such large numbers? I did not find an

answer to these questions and none of the interviewees, survivors or culprits I spoke to could provide any convincing clarification.<sup>8</sup>

The violent history between Hutu and Tutsi appears even more bizarre when one listens to Rwandans talking about the history of social relations between the two groups. When the topic of ethnic relations before 1994 comes up, most people claim that the Hutu and Tutsi lived in peace and harmony. The standard way of describing their friendly relations is that:

“There were really no problems between the Hutu and Tutsi. We intermarried, shared meals, shared beer and visited each other. When one person was ill, the other would carry him to the hospital.”<sup>9</sup>

Although there were people, especially those who I interviewed more than once, who also commented on problems in the relations long before the genocide, most survivors, prisoners as well as the rest of the population, give answers similar to the one cited above.

The first historical record of violence between Hutu and Tutsi only dates back to the revolution of 1959. Until that time, the Belgians had used a policy of divide and rule, favouring the Tutsi elite, to ensure their grip on the country.<sup>10</sup> While it is questionable as to whether it really made a difference for the poor Hutu and Tutsi masses which elite was in the power, a growing group of young Hutu intellectuals started to grow discontent with this discriminatory situation. One former Tutsi chief, who fled the country in 1959, realises now that:

“Just before 1959 the dissatisfaction had already become very high. The colonisers (...) realised that it was possible to set up the one against the other. They had formed a bloc of Hutu attending the seminaries that were complaining that all the work was uniquely reserved for the Tutsi, that all schools of good quality were also reserved for the Tutsi, everything, everything. ... To the others, who formed the majority of the population, nothing was attributed.”<sup>11</sup>

This Hutu plea for a more equal partition of political position could count on the support of the Catholic Church and, in the latter half of the 1950s also on the Belgian administrators, who became simultaneously sensitive to the idea of democratisation and displeased with the rule of the Mwami. In the late 1950s, the Belgians decided to open the door for the foundation of political parties, which was undertaken on ethnic lines. The Hutu's main party was PARMEHUTU, while the Tutsi elite founded the *Union Nationale du Rwanda* (UNAR), which

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<sup>8</sup> One journalist who came close to some understanding of the issue is Jean Hatzfeld who, on the basis of extensive interviews with a group of murderers from the district of Nyamata, narrates what happened and equally tries to find explanations. Jean Hatzfeld, *Une saison de machettes* (September 2003).

<sup>9</sup> Ignace, interviewed in Vumwe, 16 December 2003. Several other interviewees provided comparative discourses.

<sup>10</sup> See for instance Reyntjens, *Pouvoir et droit*.

<sup>11</sup> Peter Mungarurire, interviewed in Kigali, 4 March 2003.

had a strong pro-monarchist and anti-Belgian bias. The rivalry between the supporters of these groups soon rose to such a height that any incident could have resulted in an explosion. On 1 November 1959 a gang of young UNAR members beat up one of the few Hutu sub-chiefs. The (false) news of his death spread like wildfire and Hutu activists began to attack Tutsi chiefs and known UNAR members.<sup>12</sup> In the weeks that followed, Tutsi houses were burnt and most prominent Tutsi were killed or fled to neighbouring countries. After the events, Hutu replaced most Tutsi chiefs and around 130,000 Hutu were exiled. And in the years that followed, sporadic violence continued to break out.<sup>13</sup>

The events of 1959 did not leave Nkumbere sector untouched. Most elderly persons remember that there was some unrest in the region during the revolution, but that it was not serious. One survivor, called Priscille, stated:

“In 1959 it was not that bad. They only burned down the houses, and people fled abroad. But a person who decided not to flee could stay in his house without being menaced.”<sup>14</sup>

After independence, however, the situation worsened. The dictatorial president Grégoire Kayibanda, who had won the elections with PARMEHUTU in 1960, struggled with the legitimacy of his absolute regime. In order to unite the Hutu population behind him, he stressed the enmity of the Tutsi. An invasion of exiled Tutsi, called “*inkotanyi*” in December 1963 gave the authorities a pretext to organise attacks against Tutsi inhabitants. In total, approximately 10,000 Tutsi were slaughtered and many more fled to neighbouring countries.<sup>15</sup> When compared to the problems in 1959, the survivors from Gatovu suffered severely from the 1963 outbreak of hostilities. Gatovu’s only male survivor of the genocide explained:

“In 1963 Rwanda was already independent. In 1963 the Hutu planned to kill the Tutsi, because they said that the Tutsi had dominated for too long and had done many bad things. They wanted to exterminate the Tutsi, because they wanted to prevent the Tutsi from ruling again. In 1959 not many were killed but they were forced into exile. In exile, some Tutsi regrouped and planned to return to Rwanda by force and to take over power again. They wanted to rule over the Hutu again. After having formed those groups, they attacked Rwanda. In 1963 they killed the Tutsi who had not fled in 1959 because they wanted to prevent helping the groups that had attacked Rwanda from exile (...). In this war, I lost my father. I was two years old and had been hiding with my grandparents. They killed him when the war was almost finished.”<sup>16</sup>

Priscille, who said that the situation in 1959 was not as bad, saw that the situation in 1963 had become more serious:

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<sup>12</sup> Prunier, *The Rwanda crisis*, 48.

<sup>13</sup> Ibidem, 51.

<sup>14</sup> Priscille, interviewed in Gatovu, 13 March 2003.

<sup>15</sup> Prunier, *The Rwanda crisis*, 54-56.

<sup>16</sup> Jean Paul, interviewed in Gatovu, 22 January 2003.

“In 1963, it became worse. I was reasonable enough to observe the happenings. It is when my mother died and three of my younger brothers and sisters. I was a small child. My grandmother fostered me. They had also destroyed her house. But, at that time, it was different from in 1994. People were hiding others. Then, when it was over, they would help you by constructing a house for you. They would give you enough food for two or three months. Like this, you could also work for your future on your own.”<sup>17</sup>

After their defeat in 1963, the *inyenzi* stopped their raids into Rwandan territory. The number of Tutsi in exile had grown to hundreds of thousands. After 1963 it would take ten years before another wind of violence blew over the country. In 1973, the Tutsi minority regime in Burundi carried out a massacre of the Hutu living in Burundi. The unrest crossed the Rwandan border, and resulted in new massacres and a bloodless but successful presidential coup by Juvenal Habyarimana. Although a number of sources mention that Gikongoro was hardest hit by the hostilities, the Tutsi families in Nkumbere were not targeted.<sup>18</sup> Yet, it did have an impact on their feeling of insecurity. One survivor commented, for example, that he grew up thinking that a Tutsi was someone who needed to be killed.<sup>19</sup>

In the opinion of the survivors, this cycle of violence, besides devastating their family life, also affected the mentality of the rest of the population. By not pursuing those who harmed the Tutsi, it became more apparent with every round of violence that committing crimes against Tutsi would not have negative consequences. On the contrary, the people that participated in actions against Tutsi benefited by obtaining their victims’ goods. In this way, social barriers that would normally prevent people from committing crimes against each other disappeared. According to most survivors, this helps to explain why so many people decided to join the killers in 1994.

## The killing friends: Genocide in Mudasomwa

The genocide did not come out of the blue. Most of its causes are documented in books and articles and, in retrospect, many indicate that it could have been foreseen that something bad was about to take place. The combination of a policy of ethnic discrimination, a history of violence, elite insecurity, extreme poverty, severe economic crisis, and an invasion of the Tutsi dominated RPF army in the north was just too explosive.

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<sup>17</sup> Priscille, interviewed in Gatovu, 17 January 2003.

<sup>18</sup> Former Mayor of Mudasomwa (until September 1990), interviewed in Gasarenda, 5 February 2003. See also Des Forges, “*Leave none to tell the story*”, 303; African Rights, *Rwanda: death, despair and defiance*, 292.

<sup>19</sup> Jean Paul, interviewed in Gatovu, 1 December.

*The run-up to the genocide in Mudasmwa*

In November 1990, according to some respondents, tensions in Mudasmwa rose after the attack by the *inkotanyi* (the RPF army) in the north of the country, which marked the beginning of the civil war. Although in the run-up to the genocide there no massacres in Mudasmwa unlike in other parts of the country, the political climate grew progressively more extremist. A former mayor of Mudasmwa, who held the position until 1990 and was known as a prominent local member of the moderate *Mouvement Démocratique Rwandaise* (MDR) political party, commented that he and his political associates received death threats on a regular basis from Hutu extremists and Hutu militia that were called *interahamwe*. The mayor commented:

“Here, in Mudasmwa, the soldiers and the *interahamwe* planned it [the genocide]. The *interahamwe* were created at the end of 1993, as a means of defending the population against the *inkotanyi*. But they also terrorised others. I was for example in that time a member of the MDR, a moderate party. They threatened to kill me, which they could easily have done, since they had guns. (...) One day, in February 1994, their leader Francois Gakuru, told me that I had to die because I didn’t want the Tutsi to get killed. (...) The *interahamwe* consisted of a number of vagabonds who lived in the centre of Gasarenda, but they had all received military training in Gikongoro. Their initial task was to start barriers meant for defending the country against infiltrations from the *inkotanyi*, (...) but it was this group who started the killings on the night of the 7<sup>th</sup>.”<sup>20</sup>

*Mudasmwa: A quick start and rising participation*

On Wednesday evening, 6 April, the plane of president Habyarimana was shot down. This officially marked the start of the genocide in Rwanda. Yet, in some regions, like for example in Butare, it would take weeks before violence broke out. There was, however, no such delay in Mudasmwa. A number of witnesses told me that early in the evening of the 7<sup>th</sup> they saw a car with policemen from Gikongoro circling around Gasarenda, the principle town in Mudasmwa. The policemen provided the *interahamwe* with hand grenades and instructions, after which they left the town. An hour later, seven Tutsi who worked for a construction company and one merchant had been killed.

The next morning confusion reigned. The only certainty in people’s minds was that bad things would happen. According to one man:

“Everybody knew what was going to happen, so they [the Tutsi] packed their stuff and left. Friday was an exodus in Gasarenda. Many went to Gikongoro, to Murambi. Others fled on to Butare, because the prefect there was known as a moderate man, while some tried to make it all the way to Burundi.”<sup>21</sup>

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<sup>20</sup> Former Mayor of Mudasmwa, interviewed in Gasarenda, 5 February 2003.

<sup>21</sup> Edouard, interviewed in Gasarenda, 8 January 2003.

Most refugees would not make it far because everywhere roadblocks emerged to prevent Tutsi from passing. The provincial authorities had ordered all Tutsi to assemble in the newly built technical school in Murambi, near Gikongoro town. In earlier crises, many Tutsi had sought shelter in schools and churches where the authorities had protected them. This time, however, people's hopes for a safe haven proved to be in vain. They were trapped. On the night of 20 April armed soldiers and police, assisted by villagers with clubs, sticks and machetes, opened the attack on the school. In the gruesome hours that followed, 35,000 people were slaughtered, making it one of the worst massacres of the genocide.

In the afternoon of Friday 8 April, the genocide in Mudusomwa started to spread all over the district. Groups of *interahamwe* were formed that undertook expeditions in the whole region. The first day the groups were quite small, containing no more than twenty persons. Their numbers rose however every day, with groups swelling to several hundreds of individuals. People give three reasons for the rising number of participants. Firstly, many prisoners say that the authorities forced them. This argument does however not seem valid because those who did not participate deny that there was pressure on them to take part in the genocide. Secondly, survivors and authorities are convinced that the history of leaving violence against Tutsi unpunished lowered the threshold to attack them once again. Thirdly, people from all groups mention material gain as a motive. The *interahamwe* returned from expeditions with the possessions (including cows) of the people they had attacked, which was for the poor population of Mudusomwa a sign that one could gain wealth from taking part in these expeditions. When people realised what opportunities the new situation offered, and saw that the authorities were doing nothing to stop the *interahamwe*, it became easy to accept the invitation to take part. Considering the swelling number of attackers after a couple of days, when the opportunities to get rich became clear, this last explanation seems plausible. Another feasible explanation (that was not mentioned by my interviewees) focuses on peer pressure as a reason for the massive and brutal participation of so many people. The genocide should also be seen as a social process in which just the fact that many people participated made it easy for others to join the madness in April 1994. For these reasons, it might be justified to say that most people did not participate automatically, as is often suggested in the Western media, but that the individual decision was actually incited by opportunism. Had the authorities for instance stopped the expeditions, most people would probably have stayed in their houses until the unrest had blown over. The reality was unfortunately different. Through the radio and public meetings, the population was summoned to defend Hutu interests and kill all the Tutsi.

*Genocide in Gatovu and Vumwe*

Because a number of people had radios, the message of the death of the president reached Vumwe and Gatovu the same evening. Some respondents commented that everybody was afraid of what was about to happen and most Tutsi, who remembered what had occurred during earlier political unrest, hid their possessions in neighbouring houses. Friday night, the first group of Nkumbere's *interahamwe* was formed after a meeting in Bireka. This group would not yet kill, but roamed around the sector, looting Tutsi houses and burning them down afterwards. The same pattern was repeated on the Saturday, but both the number and size of the groups had grown. It was Sunday 10 April that marked the worst disaster in Gatovu. After two days of looting, the groups returned to Gatovu on the Sunday morning with the intention of exterminating the Tutsi population. On Saturday, there had been several gatherings during which the local leaders had urged the *interahamwe* not only to loot, but also to kill. And this order would be executed. One survivor from Gatovu recounted:

“That Friday night they didn't kill a person, because we were all hiding. Saturday the 9<sup>th</sup> they didn't kill either. Although they knew that we were hiding in the sorghum, they decided to loot our houses first. They said that they could kill us any day they wanted, so it was better to first steal our possessions. But then, on Saturday, the top leaders said that they could not continue to steal without killing. As leaders you must think about the burgomaster [head of the district] and the councillor [the head of the sector]. Saturday, the burgomaster organised a meeting in Nyamigina [a neighbouring sector where many Tutsi lived], where he sensitised the population to kill. So the killing started on Sunday the 10<sup>th</sup> around 8 o'clock in the morning. On Sunday they killed 13 persons, but I was lucky that someone hid me.”<sup>22</sup>

The next day, on Monday, one child was murdered after being buried alive, which brought the official death toll in Gatovu to 14. The other seven dead from Gatovu were killed elsewhere and their cases will not be discussed in the cell's gacaca. In the days and weeks that followed, groups of *interahamwe* continued to roam through Gatovu and the rest of the sector, but since most of the Tutsi were either dead or had fled the cell, the frequency of the visits declined. Instead of Nkumbere, they went for the neighbouring sectors of Buhoro and Nyamigina, where traditionally many Tutsi lived who had a large number of cows. People from Gatovu and Vumwe also joined expeditions into these sectors.

While the official number of deaths on the territory of Gatovu is put at 14 in gacaca, the well-known study by Alison Des Forges “Leave none to tell the story” indicates that more people were killed. The study mentions explicitly a barrier that was put up in Gatovu as a place where many refugees were slaughtered. This barrier is described as one that was particularly hard to pass and a number of people fleeing massacres in more southern districts were slain by

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<sup>22</sup> Jean Paul, interviewed in Gatovu, 22 January 2003.

machete here.<sup>23</sup> Although the presence of the barrier in Gatovu was discussed in gacaca, the official outcome was that the barrier, where all men were obliged to work, was only meant for defence and that nobody was killed there.<sup>24</sup>

Although Vumwe, like most cells in Nkumbere, did not have a large number of Tutsi who could be massacred in one go, like for example in Gatovu, the genocide nevertheless disrupted life. Also in Vumwe, groups of *interahamwe* crossed the cell in search of Tutsi, quite a number of people from Vumwe were recruited to join expeditions, there were lootings and in two separate incidents six people were killed. On Monday 10 April a group killed three children that belonged to a mixed marriage between a Tutsi man and a Hutu woman. The man had fled but was killed in the neighbouring cell of Kigusa. The woman hoped that the fact that she was a Hutu would save her children but her hope was in vain.<sup>25</sup> When the *interahamwe* came, they first ate her pigs that were given as a ransom to spare the children, but that same day three of her four children were nevertheless killed. The second murder happened a week later, again on Monday. This time the family of a woman called Berthe were the victims. Her mother, only brother and sister were killed, after which she fled to Burundi. Today she is the only member of her family who still lives in Vumwe. There is however controversy about the reason for the extermination of her family. According to Berthe, her family was targeted because they used to be Tutsi, but had changed their ethnicity shortly after independence.<sup>26</sup> Although a single interviewee confirmed her claim, most people, including those who confessed to having killed her family members, declared that Berthe's mother was a well-known prisoner and that her death must be seen as an act of revenge made possible by the chaotic situation in April 1994.

Another issue of controversy is the role of the population of both Gatovu and Vumwe in the genocide. Did they take part and, if so, in what numbers? On the one hand, the Hutus who still live there are trying to minimise their own role. They generally say that it was the people from neighbouring cells and sectors, with those from Bireka and Gasarenda being the most evil, who came to their cells and instigated the bloodbath. The inhabitants of Gatovu and Vumwe have their own opinion, with the exception of a couple of individuals who were innocent of the massacre. Although most survivors and prisoners agree that the first groups were formed in the two agglomerations, in their opinion the population of Gatovu and Vumwe joined these groups in large numbers. Most

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<sup>23</sup> Des Forges, "*Leave none to tell the story*", 324.

<sup>24</sup> Discussions during gacaca meeting in Gatovu, 14 November and 21 November 2002.

<sup>25</sup> Drocelle, interviewed in Vumwe, 18 January 2003.

<sup>26</sup> Berthe, interviewed in Gasarenda, 15 December 2003.

informants from these groups stated that between 70% and 90% played a role in the genocide. In the words of one confessing prisoner originally from Vumwe:

“The reason why I told you that each cell was having a group [of *interahamwe*] is that almost all men took part, in fact there was not any man who stayed home. Those who are not imprisoned, I can say that they were spared because everybody was roaming there, even the young girls. No one was staying with crossed arms, except the old people. Even the wives were involved. Whenever the man could loot a cow and that the wife saw a lamb, she carried it immediately. Or she could harvest Irish potatoes in the fields. So, everybody was moving. Us who are imprisoned, we rose on the wrong side.”<sup>27</sup>

In first sight, it would seem that the inhabitants of Gatovu and Vumwe would have a clear incentive to minimise their role in the genocide, so that their account would be the least reliable. However, the other groups, on their part, have clear reasons for overestimating the role of the population. The prisoners hope to prove, by stating that everybody acted in the same way as they did, that what they did was not special, so that a huge part of the blame is taken off their shoulders. The survivors, however, are traumatised and angry about what happened to them. They lost many of their loved ones, they lost all their belongings and they have been hunted for months, without being able to count on much help from their fellow citizens. It could be that their anger is making them overestimate the number of people that took part in the genocide. In reality, the truth lies somewhere in between. If one looks at the origins of the suspects of the genocide in Gatovu and Vumwe, it is clear that around 40% of them come from their own cell. Another 50% lived in the Nkumbere sector in 1994, but only a small minority came from outside the sector.

This means that it was indeed the sector’s own population, though not necessarily direct neighbours, who committed the genocide against the Tutsi. But in what numbers? About 12% of the adult population of the Nkumbere sector is officially accused in *gacaca*,<sup>28</sup> but is this the total picture? In this calculation, offenders who got off scot-free, those who took advantage of the situation to steal Tutsi goods, or were on the streets cheering and supporting the expeditions are left out. Nobody knows how many people were involved in this way.

### After the genocide: Reversed roles?

In most of the country, the genocide was stopped by the RPF, which seized power and took control of the country. For years the Hutu had been told that these *inkotanyi* planned to kill all Hutu, and it was unlikely that they would change their plans after seeing what the Hutu had done to the Tutsi. Stirred up by

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<sup>27</sup> Emmanuel, interviewed in Mudasonwa communal prison, 30 January 2003.

<sup>28</sup> Based on information by LIPRODHOR, provided by provincial coordinator of Gikongoro.

parts the old regime and its extremist media, millions of people decided to flee Rwanda and head for the camps in neighbouring countries. Alongside the refugees came many people who had planned to kill and/or had taken part in the genocide, but also countless persons who had not been involved in the atrocities. The latter group served as a protection buffer for the rest.

*RPF crimes and the idea of a “double genocide”*

By bringing the genocide to a halt, the RPF did what the rest of the world had failed to do. However, there is a lot of controversy about the way the *inkotanyi* stopped the genocide and how they acted afterwards. Their takeover of power went hand in hand with violence against the Hutu. In some cases this violence targeted individuals, but there were also small-scale massacres of the Hutu population. Sometimes the victims were suspected of having committed crimes during the genocide, but all too often they were innocent of those crimes. Some of the killings took place on Rwandan soil but many others were killed in the former Zaire, where RPF raids into refugee camps cost many lives.<sup>29</sup> Inside Rwanda, especially in the northern and northwestern provinces, where the RPF entered the country, where the old regime had its strongest power base and where the *interahamwe* undertook many insurgencies from Congo, the RPF is known to have repeatedly violated human rights. Although it is a politically very sensitive issue, most interviewees who have relatives in that area made these killings by the *inkotanyi* a prime subject of the interviews. They continuously returned to the fact that their group lost many people as well. Whether it was about gacaca, reconciliation or the peace process, the process can only be a success if the executioners of their families are held accountable.

In this respect, some people talk about a “double genocide”, meaning that after the genocide against the Tutsi, a second one took place against the Hutu. Prisoners are particularly keen to say that they have calculated that more Hutu than Tutsi were killed. One refusing prisoner stated for example:

“In this country, they remember their brethren. Mornings and evenings. However, they do not allow the other part to remember their brethren who died. But, when I calculate and make percentages, I find that the number of Hutu that were killed is larger than the number of Tutsi killed. Then, why don’t they allow us to bury our dead honestly? Instead, they mixed our people’s bodies with theirs, saying that it is only theirs who died so that maybe foreign countries think that it is only the Tutsi who were killed and that there are no Hutu who were killed.”<sup>30</sup>

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<sup>29</sup> For documentation, see: Human Rights Watch, *Rwanda: Deliver justice for victims on both sides*; African rights, *Rwanda: The insurgency in the Northwest*; Prunier, *The Rwanda crisis*, 305-11; Amnesty International, *Rwanda, reports of killings and abductions*.

<sup>30</sup> Maurice, interviewed in Gikongoro Central Prison, 28 January 2003. This prisoner refers to a widespread belief that bodies of murdered Hutu were brought to the massacre site of Murambi and portrayed as being Tutsi victims. In this way, the murders of Hutu were covered up, and the murders

Serious sources dismiss claims of a “double genocide” or claims that more Hutu were killed than Tutsi. The RPF crimes did take place but they were usually unorganised and relatively limited in number.<sup>31</sup> However, the “double genocide” ideology has become a powerful source of discontent among segments of the population. In my opinion, the way the present regime addresses this issue only strengthens the power of the idea of a double genocide. As this prisoner cited here indicates, one is not allowed to talk about Hutu that were murdered during the stopping of the genocide and thereafter. By keeping this issue out of the public debate, it can easily be turned into a myth that is far more dangerous than being open about the reality of what happened.

#### *Hutu victims in Gikongoro*

Although Gikongoro Province was not as severely hit by this second cycle of violence as the northern part of the country, it nevertheless played a large role in people’s lives. Gikongoro was, together with other southeastern provinces, relatively spared because it fell under the *zone turquoise*, a zone that the French had invaded at the end of July 1994 to create an area of security under their control.<sup>32</sup> French soldiers stayed until the end of August, thereby preventing the RPF from taking over the southeast of Rwanda during the period of their greatest fury. Nevertheless, the Hutu of Gikongoro suffered in the aftermath of the genocide; people died or lost family members in the camps of the former Zaire, including a small number of people from Gatovu and Vumwe. There is uncertainty about what exactly happened in the former Zaire, but interviewees that had fled to the camps all claimed that the RPF soldiers killed a large number of people there.

In April 1995, a huge massacre took place in the town of Kibeho, some 20 kilometres from Nkumbere. During the genocide, the parish of Kibeho and its school saw one of the worst bloodbaths of the genocide. Afterwards, a camp consisting of around 100,000 internally displaced persons was set up. In April 1995, the authorities decided to close down the camp because it had a negative impact on the region’s security situation. The closure, however, was executed

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of Tutsi were exaggerated, which would lead to more international pity for the Tutsi. One prisoner even told me that he had been forced to dig up the bodies of murdered Hutu near the closed-down refugee camp of Kibeho, and bring them to Murambi where they were buried together with the Tutsi victims of the massacre there.

<sup>31</sup> Prunier, *The Rwanda crisis*, 106.

<sup>32</sup> The *zone turquoise* is certainly not without controversy, partly because the installation was very late, but also because the French government had always maintained friendly relations with the old regime and unfriendly ones with the Anglophone RPF. And indeed, the *zone turquoise* was used by many prominent organisers of the genocide as a safe way out of the country, thereby escaping prosecution. For a detailed account on the *zone turquoise*, see Prunier, *The Rwanda crisis*, 281-311.

with machine guns and grenades, killing approximately 2,000 to 8,000 people.<sup>33</sup> In Nkumbere, one could hear the sounds of the explosions and see its smoke. Many interviewees cited this bloodbath as proof that their group too had been the target of violence. They demand that, for true justice and reconciliation, the perpetrators must be held accountable as well.

Hutu complain about individual acts of vengeance. In Gatovu, I came across three such cases. As with the genocide, these incidents carry enormous consequences for the social relations in the community and have without doubt affected the operation of gacaca. Contrary to the sensitive issue of killings by the *inkotanyi*, these episodes are discussed openly in Gatovu. In the first incident, Gatovu's only male survivor, Jean Paul, plays a key role. According to many inhabitants of the cell, including his only remaining sister, he killed two men after the genocide. The men, called Silas and Michel, were the brothers of two people he had imprisoned for the murder of his family. The president of the gacaca court, who was normally careful about revealing sensitive events in Gatovu's history, explained to me:

“I know that story very well. It was at night, and Silas was sleeping in his house when Jean Paul came with a group of men. They called Silas, and took him to the bridge towards Gasarenda. The next morning his body was found in the tea plantation.

Question: has Jean Paul been in prison for that?

Answer: No he has not. Everybody knows, but I think they are afraid of accusing him since he is a survivor and the councillor, so he can easily have you arrested.”<sup>34</sup>

Other villagers told exactly the same story about the murder of Silas. Silas' brother Michel was accordingly killed the same night, in the same way. The second case of revenge took place against a former soldier who came from Gatovu. After the genocide he had fled to Congo but returned in 1996. One day, he had gone to Gasarenda to have a beer with some friends. Suddenly, a couple of soldiers came into the bistro where he was sitting and shot him. According to the people of Gatovu, it was the survivors who had given the order to kill this man. Although there is no way that they can prove this, the fact that the finger of blame is pointed immediately at the survivors is characteristic of the relationship between the groups. The third case is about the child of the former cell-leader, who suddenly disappeared after the genocide and never returned. Also in this case there is no proof of involvement of any survivor, but again people are convinced that they masterminded the kidnapping.

In addition to these acts of revenge, Hutu suffered because of the waves of arrests after the genocide and after the return of refugees from Congo in 1996. Everywhere in Rwanda this wave of arrests led to an explosion in the prison

<sup>33</sup> Gérard Getrey, *Kibeho, ou la face cachée de la tragédie Rwandaise* (Paris, 1998), 56; Pottier, *Re-imagining Rwanda*, 44

<sup>34</sup> Simon, interviewed in Gatovu, 27 February 2003.

population. The vast majority of arrests were made by or at the request of survivors. In the first years after the genocide, the pointing of a finger by a survivor was enough to lock someone up for years. Especially in the district of Mudasomwa, where the mayor is a survivor and the chief of police a Tutsi repatriate from Congo, survivors had as great deal of power. In this way, many criminals were arrested, but also people who had nothing to do with the genocide ended up behind bars. It was a time that offered the possibility to settle old scores, or to regain wealth by demanding money for not imprisoning or releasing people. According to one prisoner:

“After the war, when the RPF seized power, there was a problem: survivors could imprison just anybody. When you were having a simple quarrel, the survivors used this situation to have you imprisoned, thinking that you would be killed immediately. Besides, at that time, the genocide survivors thought that every Hutu had killed. So they imprisoned anybody they wanted to.”<sup>35</sup>

These four kinds of events should, again, not be seen as a “double genocide”, this time targeted at the Hutu. Genocide means the execution of a pre-determined plan to exterminate a certain population group. This clearly was the case in the first 100 days after 6 April, but not after that. There was no plan here and the scale was too small to use such a term. However, terrible things did happen. And people who lost loved ones during the genocide or suffered losses in different kinds of crimes long for acknowledgement of their suffering. Failure to do so shapes an additional imbalance within communities. Especially during gacaca, where one is only allowed to speak about the first category of crimes, this imbalance is given expression. By making gacaca exclusively the domain of discussion about crimes against Tutsi, others lose any sense of ownership that gacaca hoped to offer the population. Here one risks transforming the perception of gacaca as a form of popular justice into a kind of victory justice. As we will see, in both Vumwe and Gatovu there are clear, but different, signs that the majority indeed see gacaca that way.

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<sup>35</sup> Claver, interviewed in Gikongoro Central Prison, 3 January 2003.

## Grassroots justice in practice: A virtue or a curse?

Gacaca means a revolution in judicial spheres. Normally, justice is administered in a procedural and technocratic way, in faraway courtrooms where legal jargon is the official language and where strangely dressed professionals who are strangers to the people in the hills dominate the proceedings. For most people, the modern judicial process is geographically and socially a very remote affair, which therefore fails to make a deep social impact, either positively nor negatively. With the introduction of gacaca, conversely, this situation has been turned upside down. For the immediate future, the administration of criminal justice has been brought into the communities of origin of the wrongdoers, the victims and all the other people who must live with the consequences of the genocide. Justice is not distant, procedural and incomprehensible anymore, but will become an inescapable matter of everyday lives in people's own backyards. Without doubt, this will have an enormous impact on life in all communities in Rwanda. But what will the impact be? Will it be positive, in that it helps reconcile the inhabitants of the communities as was planned? Or will its effects be counterproductive, by reopening deep wounds that were just beginning to heal and by generating new tensions? With the ceremonial launch of gacaca on 18 June 2002, the time to answer these questions has drawn near.

First this chapter provides a brief overview of the different stages that gacaca must complete before the judicial process can be closed. Then it goes on to describe how gacaca operates in two communities that were chosen to try out the

system. This description is divided into four sections. The first section provides a view from the outside. Instead of discussing the content of the meetings, it describes where gacaca takes place, what gacaca does and when it fails to happen, and in what numbers the population has decided to take part in it. The second section, a view from the inside, deals with the manner of participation of the different stakeholders and aims to offer explanations for this. By presenting three detailed cases in the third section, an attempt is made to deepen the insight into how gacaca functions and why it does so. The fourth section, finally, explores the short-term effects gacaca has on relations in the communities where it is taking place.

### The three stages of gacaca

The official start of gacaca went hand in hand with high expectations of the great things gacaca would achieve. Yet, the first meetings dealt with rather modest matters that did not bring about immediate social changes in any positive or negative sense. The overall process of gacaca is divided into three grand stages. In the first stage, one aims to identify the truth about the history of the genocide and the massacres at cell level. The second stage considers the collection of information from every individual suspect and puts him or her in one of the four categories of responsibility. The third stage is the judging of the suspects.<sup>1</sup> The gacaca courts at cell level have to execute the first two stages, while the third stage is divided between the different echelons, with the jurisdiction of the cell judging the suspects of the fourth category, the sector judging the third category suspects and the district-level gacaca judging the category two suspects.

#### *The first stage and structure of the assemblies*

At first sight, finding the truth about the history of the genocide sounds a highly complex enterprise. In gacaca, however, this task is simplified because history needs only to be narrated in quantitative terms. In the first stage, which takes in principle five meetings, the *inyangamugayo* together with the population draw up four different lists that enumerate the history of the genocide.

In the first meeting, gacaca is officially opened. The goals and regulations of the trials are explained once more and the General Assembly (the population present) chooses a fixed day to hold meetings. During the second meeting, a list of people who lived in the cell before 6 April 1994 is drawn up. The next two meetings are dedicated to the identification of the number of people who died within the cell's boundaries and the number of inhabitants in the cell who were

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<sup>1</sup> Republic of Rwanda, *Manuel explicatif*, 18-19.

killed outside the cell's limits. The fifth and last meeting of the first stage deals with determining the damage suffered by each victimised household during the genocide. At the official launch of gacaca in June 2002, this cautious beginning disappointed some of the population, as well as many foreign correspondents. They had believed that the actual trials would start immediately and were unaware of the preparatory stages that come first.<sup>2</sup>

The cells in my fieldwork area had already passed through this first stage before I arrived. By visiting cells in a neighbouring sector that had started gacaca at the end of November 2002, it was nevertheless possible to get an impression of the first stage of the proceedings. The meetings were well structured and nearly identical throughout the country.<sup>3</sup> Every gacaca jurisdiction has a chairman or "president" who is responsible for the meetings. The fact that all presidents do this nearly identically indicates that at least they are well prepared to lead and oversee the proceedings. To help them perform their task, all presidents receive a guidebook that clarifies the order of proceedings and explains exactly what to say to the population.

Officially, most cells have scheduled to start at 9 am. To start the meeting, a quorum of 100 people in the General Assembly and the presence of at least 15 (of the 19) *inyangamugayo* is required.<sup>4</sup> However, because people prefer to work on their fields in the morning or in their houses instead of in gacaca, in practice these numbers are more likely to be reached in the afternoon. For the authorities the delays, which are a nationwide phenomenon, are a thorn in their flesh. Every time they come into contact with the population, they sensitise their subjects to avoid delays and to arrive at 9 am the following week. At times, the population is even threatened with fines if they do not respect the official hours. Although the population generally listens to the reprimands in a resigned manner, I never witnessed any change in their behaviour in the following weeks. This "disobedience" raises interesting questions about the often-described obedient character of the Rwandan population. The fact that Rwandans are used to carrying out orders is often used as an explanation for the high participation rate in the genocide. However, in gacaca one can see that if an order does not please people, they are not very likely to obey it. The delays are also for a number of gacaca judges a constant source of frustration. They are told by their coordinators to be present at 9 am every week and those who turn up then pass many idle hours of waiting every week.

When the quorum is finally reached, the president opens the meeting with a short word of welcome, after which counting takes place again to ensure that the

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<sup>2</sup> De Jonge, *Report III*, 8.

<sup>3</sup> *Ibidem*, 9.

<sup>4</sup> Republic of Rwanda, *gacaca law*, articles 23 and 26.

quorum of 100 has really been reached. Although gacaca law stipulates that the quorum of 100 must be attained in the General Assembly,<sup>5</sup> in the field one copes pragmatically with this requirement. Both in Vumwe and Gatovu, as in most parts of the country, there have been problems reaching the quorum. Although the number of persons present tends to rise after the assembly has opened, it is quite difficult to reach the quorum before it starts. Hence, one court decided that in calculating the quorum, the judges present would also be counted in the 100 people to help reach the quorum more easily. In some instances the local defence force (a kind of local police) went around to find inhabitants in the cell and bring them to gacaca. Halfway through the second stage, the authorities suddenly decided, in defiance of gacaca law, that a quorum of 100 was not needed at all anymore in cells that had already arrived at the seventh meeting. In Vumwe this resulted in a noticeable drop in the attendance to between ten and thirty people.<sup>6</sup>

After the president has spoken his words of welcome, he or she invites the population to rise and observe a minute of silence in memory of the victims of the genocide and to think about national reconciliation. On the one hand, this can be explained as a mark of respect for the victims of the genocide, but on the other hand it also leads to embarrassing situations. A couple of times people in the General Assembly, in spite of the president's insistence, refused to stand up to pay their respects. In addition, I have never seen the minute of silence take the full 60 seconds. Thirty seconds was the absolute maximum. In Vumwe, a join Catholic prayer follows the "minute" of silence. There are also cells where one sings the national anthem.<sup>7</sup> Subsequently the president reads the eight rules that ensure that the assembly proceeds in an orderly way. The president also repeats that everybody is obliged to tell the truth. The population is usually reminded that failure to reveal information, or to lie about it, is according to article 32 of the gacaca law punishable with a one- to three-year prison sentence. Another repeated announcement is the president's lamentation, often accompanied by the threat of fines, about the people who arrive late or who do not show up at all. Although this does not lead to better attendance at meetings, they do say something about the general perception of gacaca. On the one hand gacaca is presented as being owned by the population, but on the other hand it is deemed necessary to use threats to get people to participate. Does this not mean that gacaca is a duty imposed from above, and not a right administered from below?

When these formalities have been completed, the president explains what the goal of the meeting is and the ways in which this will be implemented. During the first stage, the role of the *nyumbakumi* (a unit of ten households) is very

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<sup>5</sup> Ibidem, article 23.

<sup>6</sup> See Figure 6.1.

<sup>7</sup> De Jonge, *report III*, 9

important.<sup>8</sup> The task of drawing up the lists, like the number of inhabitants before April 1994, is farmed out to the leaders of the *nyumbakumi* who, in the week prior to the meeting, have to consult the households below them and to write down the names and numbers. During gacaca, the lists are combined and read publicly, after which the General Assembly has the chance to add or remove names. If the long lists had to be drawn up during the public meetings, it could become a dangerously time-consuming exercise. The leaders of the *nyumbakumi* proved to be highly efficient so the first stage elapsed quickly, in a well-ordered manner and was often finished within the five prescribed meetings.

### *The following stages*

The procedures of the assemblies as described above are maintained in the second and third stages of gacaca. However, the character of the meetings changes dramatically with the start of the second stage. It aims to collect information on every single suspect and to put the suspects in one of the four categories of responsibility. At the so-called sixth meeting, the population is invited to testify about who they think committed crimes during the genocide so that a list of the accused can be put together.<sup>9</sup> The names mentioned are combined with a list of the accused, which is drawn up by the *parquet* in Gikongoro town. At the seventh meeting, every suspect will be presented individually in gacaca. It is somewhat strange to describe the latter two processes as a “meeting”, because this work takes a high number of assemblies. However, because the drawing-up of the list of accused is commonly called “the sixth meeting” and the collecting of information on each accused “the seventh meeting”, this term will also be used here. In the seventh meeting, the accused are brought before the court and can publicly deny or admit their guilt. The members of the General Assembly are encouraged to present their testimony about the suspect’s whereabouts and behaviour during the genocide. The secretaries of the gacaca court write down all information in the suspect’s dossier and on the basis of this dossier the *inyangamugayo* decide together in what category he or she is to be placed.

The second stage is much more delicate than the first. Whereas in the first stage the population is only asked to contribute numbers, in the second stage they must provide names. Contributing to the first stage cannot really have serious consequences for anyone in the community, so the threshold for showing one’s

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<sup>8</sup> During the old regime, cells were divided into groups of ten households, called *nyumbakumi*. Every *nyumbakumi* has a leader, who is the contact person for the cell leader. The *nyumbakumi* still exist but, due to population growth, they represent generally more than only ten households.

<sup>9</sup> It is unclear if the sixth meeting is considered as a part of the first or second stage. Some sources consider it as part of the first stage because it deals with the drawing-up of a list. Others see it as part of the second phase because it deals with the collection of information about the accused.

goodwill and helping the gacaca judges with their work is quite low. And indeed, the first-stage meetings that I visited proceeded in an orderly fashion and with a high rate of active participation by the population. To contribute in the second stage, however, one must point out members of one's own community as *génocidaires* and describe in detail what they have done. One could imagine that this will have social repercussions that will make people more reluctant to take an active part in the second stage as well.

The third stage, finally, is the judgement phase. In this stage the gacaca at cell level will arbitrate over the fourth-category suspects, the gacaca at sector level will judge the suspects of the third category and the gacaca on district level will judge the second-category suspects. The jurisdiction at provincial level, finally, will function as a court that treats appeals against judgements pronounced at district level. The third stage will only begin when all the cells in a district have finished the second stage. Considering the fact that more than a year after the start, most pilot cells have not yet finished the second stage and that gacaca at the time of writing still has to become nationwide, it is likely that it will take some years before the judgement stage is well under way. The slow pace of the second stage is shown by figures of the Gacaca Department of the Supreme Court in Kigali. These figures indicate that, by 16 June 2003, only 3,403 dossiers out of a total of 38,863 suspects that are listed by the gacaca jurisdictions have been completed.<sup>10</sup> At the end of the fieldwork period, gacaca in Nkumbere had already been running for 10 months. Though in Vumwe the seventh meetings had been closed some weeks earlier, the preparatory stage in Gatovu was far from finished. Although gacaca without doubt speeds up the trials of genocide, with this justice system it will be a long-winded matter and all stakeholders need a high degree of patience and perseverance.

## Gacaca in Gatovu and Vumwe: A view from the outside

This section gives a first impression of the functioning of gacaca in Gatovu and Vumwe. I call it a view from the outside because it does not yet consider what happens at the meetings. Instead of discussing the content of the meetings, this section describes where gacaca takes place, what gacaca does and when it fails to take place, and the numbers of people who decides to take part in it. When I arrived, all the cells in Nkumbere sector had already started the seventh meeting, i.e. the process of collecting information about the individual suspects. Yet, with the help of the local population and the NGOs LIPRODHOR and PRI, that have

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<sup>10</sup> Republic of Rwanda, *La situation actuelle des Juridictions Gacaca*. Website: <http://www.inkiko-gacaca.gov.rw/pdf/info062003.pdf> (visited 23 September 2003).

observers in the region, I was nevertheless able to get an idea of how Gatovu and Vumwe conducted the first stage.

### *Gacaca's surroundings*

Both in Gatovu as well as in Vumwe, the meetings are held in a scenic environment. Countless green hills, fields and tea plantations surround both meeting places. In Gatovu, the people assemble on an inclined grassy area between some primary school buildings. Consequently, every meeting is interrupted by a hoard of children who are either curious about so many people meeting or unaware of what is going on and just wanting to play, laugh and run around. Whereas in earlier days, children were often encouraged to be present at gacaca so that they could learn good morals, nowadays they are chased away by members of the local defence force whose task it is to make sure that the meetings run smoothly. Because the centre boasts a pub, after the meeting the inhabitants can reassemble there to discuss what has happened. This way, gacaca becomes even more integrated in people's social lives. Vumwe, on the other hand, has no central area with a pub and a school. The General Assembly has chosen a plateau at the top of Vumwe's highest and most beautiful hill as the place to discuss the genocide. At times, I found it ironic to discuss such terrible matters in such beautiful surroundings. Maybe because of this location, the assemblies in Vumwe were less lively but at the same time more orderly. Except for some babies who were on their mother's back or were being breastfed, no sounds of children interrupted the meetings.

During the meetings, the *inyangamugayo* sit on a row on wooden benches, facing the people who are seated on the grass. This is about the only difference between the judges and the rest of those in attendance. The judges are dressed the same as anyone else, most walk barefoot, the women carry children on their backs and breastfeed them, the judges are ordinary farmers, and only a couple of them know how to read and write. In this way, gacaca lives up to its reputation of being an accessible form of popular justice in which everyone can take part. The position of judge is a realistic ambition for everyone who did not take part in the genocide, and everyone who wants to can make their contribution by testifying or giving his/her comments. Indeed, I have never noticed that anyone who wanted to testify was denied that right. Even the village idiot in Gatovu stood up and had his say as often as he liked.

Prior to the elections of the *inyangamugayo* the authorities organised a promotion campaign to encourage the selection of women, so that both sexes would be represented. And this campaign was successful. On average, one third

of all judges are female,<sup>11</sup> which might very well be a world record. In Gatovu, nine out of the nineteen judges are female, while in Vumwe there are four women. So far, three of Gatovu's *inyangamugayo* have had to be replaced. One was replaced because he died, and two others because they were indicted of genocide in the neighbouring cell of Kigusa. In Vumwe, one judge was replaced after he was put on the list of accused. After all, the judges must be "persons of integrity", and an accusation of genocide casts serious doubt on someone's integrity.

### *The cancelling of gacaca meetings*

Whereas most of the discussions are about *how* gacaca will function, it is also relevant to question *if* gacaca will function. Will the Rwandan countryside, villages and towns indeed be the scene of continuous gatherings at which all stakeholders discuss the genocide and the individual consequences it should bear? The pilot phase can give an indication as to whether this will be the case. The good news is, on the one hand, that in all pilot cells gacaca is at least taking place. According to a report of the Gacaca Department of the Supreme Court in Kigali, by the end of December 2002 almost all cells that had started gacaca in June 2002 had arrived at their sixth or seventh meeting. Only the cells of Kigali Town were lacking behind.<sup>12</sup>

On the other hand, even in the pilot phase there are problems with meetings failing to take place. Until the end of March 2003, 29% and 38% of the assemblies were cancelled in Vumwe and Gatovu respectively.<sup>13</sup> One worrying trend in both cells was that the longer the process took, the harder it got to assemble (see Figure 6.1). Especially after November 2002, when the second wave of pilot sectors started and attention drifted away from the first pilot cells, the number of assemblies that failed to occur increased. Considering that in the pilot phase, communities were chosen that were the best disposed towards gacaca and bearing in mind that for the authorities control and coordination is relatively uncomplicated, the cancellation of meetings in the pilot phase is a source of concern for the future operation of gacaca.

Meetings can be called off for a number of reasons. In the first place, meetings can fail to take place because of alternative activities and people's commitments elsewhere. It has happened for example several times that an NGO organised a labour-intensive agricultural project, in which the local population was invited to participate as paid labourers. When such a project takes place on a day when

<sup>11</sup> De Jonge, *Interim report on research on gacaca jurisdictions*, 41.

<sup>12</sup> Republic of Rwanda, *Rapport d'activités des juridictions gacaca, octobre, novembre, décembre 2002* (February 2003) 3-4.

<sup>13</sup> Figures for the months June-October 2002 by Liprodhor and the Gacaca Department of the Supreme Court in Kigali. Afterwards: the author's own figures.

gacaca is scheduled, it will be very hard to find enough participants for gacaca because not many people will be prepared to miss the opportunity to earn some extra money. However, usually it is not NGOs who are responsible for disrupting gacaca activities but the authorities themselves who call the population away from their gacaca duties. In Mudusomwa, the local authorities employed a high number of official meetings that substituted gacaca. During my fieldwork, there were for instance three sensitisation meetings and a visit by the prefect that were considered as more urgent and replaced gacaca.

Secondly, Rwanda has a large number of holidays on which gacaca is not organised. Apart from the well-known Christian holidays like Christmas, there are also Islamic holydays (circa 1% of Rwandans are Muslim), national days like the liberation of Rwanda by the RPF and the international day of the tree, all of which were additional reasons for calling off gacaca. Because of the frequency with which the alternative activities and holidays occur, they naturally interrupt the smooth running of gacaca. However, they will only be a hindrance and not an existential threat for gacaca. The same cannot be said of the next two reasons for cancelling meetings, i.e. organisational or logistic problems on the part of the authorities and the failure of people and judges to show up.

For gacaca to function in every of Rwanda's approximately 10,000 cells, a highly efficient organisation is a necessity. There must be a control mechanism to verify whether all cells are organising gacaca properly and to intervene if this is not the case. After all, with a maximum of only six training days, one cannot expect all lay judges to know what to do throughout the entire process. In addition, there are logistical challenges to make sure that the right prisoners arrive at the right cells on the right days. During the pilot phase, this organisation is relatively simple. In the whole province of Gikongoro there are four coordinators for around 30 cells. However, when gacaca goes nationwide the number of cells will rise to around 1,000 in Gikongoro, while it is not likely that the number of coordinators will rise significantly. In this light, it is extra problematic that even in the pilot phase, the organisational structure showed cracks. Especially after the second wave of pilot cells was added at the end of November 2002, the prisoners that were invited by the gacaca jurisdiction frequently did not arrive (at least four times in Gatovu). In some cases the reason for this was beyond the power of the coordinators. There has for example been a regional fuel crisis, which made it impossible to transport the prisoners to the cells in the countryside. However, in other cases the absence of prisoners was due to organisational failures.

Even if the government managed to deal properly with the organisational challenges, of gacaca, one remains dependant on the goodwill of the local population and the judges. The gacaca law stipulates that for a meeting to take

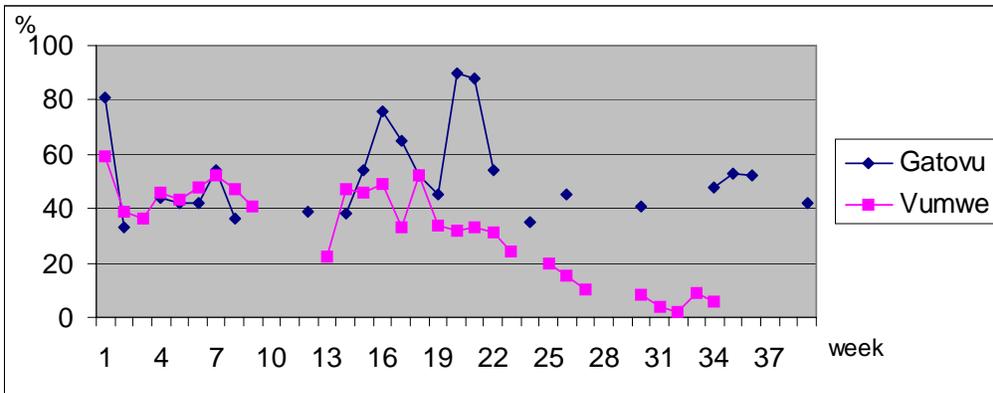
place, the General Assembly must consist of at least 100 people and the *inyangamugayo* must be at least 15. If one of these quorums is not reached, the meeting cannot take place. Throughout the process, it proved to be difficult to motivate the unpaid *inyangamugayo* to fulfil their tasks every week. In Vumwe and Gatovu respectively two and three meetings could not take place because an insufficient number of judges had shown up. Although at the beginning there were no problems in reaching the quorum in the General Assembly, when the novelty of gacaca had worn off, popular interest in gacaca also declined. Because it became harder to reach the quorum all over the country, it was decided in November to lift this obligation from the seventh meeting onwards. With this measure, quorum problems were eliminated and the pressure on the population to show up eased. These changes led to a dramatic decline in attendance in Vumwe (see Figure 6.1). Prior to this decision, the authorities had gone to a lot of effort to persuade the population to attend gacaca and warnings about fines for absence were believed to be useful. The fact that a decline in pressure to attend came with a drop in the attendance rate is worrying. After all, considering the criteria for the choice of the pilot sectors, these are expected to be the most favourable to gacaca. What will happen, then, when less well-disposed populations have to reach the quorum of 100?

#### *Popular attendance in gacaca*

Figure 6.1 shows the attendance in percentage per week by the inhabitants of Gatovu and Vumwe since the start in June 2002. At a couple of spots in the graph there are no points drawn, indicating that that week's meeting was cancelled. In Vumwe, the last meeting took place in week 34 (week one was the launch of gacaca). That week, the last suspect was heard and the *inyangamugayo* had sufficient information to fill in the individual dossiers of the suspects and to put every individual in a category. With that, the first two stages were completed. In Gatovu, on the other hand, the finish was at that time still far away. In March 2003, the seventh meeting, which had started on 3 October 2002, had not yet reached the halfway mark.

In the first months, large sectors of the inhabitants in Gatovu and Vumwe showed interest in gacaca, so there were no problems reaching the quorum. With the start of the seventh meeting, respectively on 3 and 16 October, the attendance patterns of the cells started to differ. While turnout dropped in Vumwe, directly after the news that a quorum was not required anymore, in Gatovu the number of participants rose to an incredibly high 90%. I will try to explain this difference in Section 6.3

Figure 7.1: Attendance rate (as % of total adult population) of gacaca in Gatovu and Vumwe



Soon after the start of the seventh meeting another change occurred. While in Vumwe the seventh meeting continued at a steady pace, Gatovu was slowed down by the high number of meetings that were cancelled. Apart from holydays, it was mainly the *inyangamugayo* and the authorities who were responsible for this. The first increasingly failed to show up, so that the minimum of 15 *inyangamugayo* was not reached. Every week people failed to show up for different reasons. One *inyangamugayo* from Gatovu explained:

“Also the *inyangamugayo* can have problems. They can for instance be ill. Another thing is that you cannot be a judge when you have an empty stomach. If you didn’t eat, you cannot come to gacaca, but you must go and find some money or food. Should my children or me die because of gacaca? ... They don’t give us anything, not even 100 Francs, for our work in gacaca. Should we be hungry then? I want you [to author] to go to the authorities and tell them that.”<sup>14</sup>

Most *inyangamugayo* complained that, despite some promises, they did not receive any compensation for their work in gacaca, which easily mounts up to ten hours per week. This increasingly demotivated the judges and contributes to the high absence rate. Because their motivation is one of the main determining factors of the success of gacaca, and because their work is considered so important, one should put in place as far as possible ways to compensate the *inyangamugayo*. In addition to the judges, the authorities also caused some gacaca sessions to be called off. As stated in the previous section, they organised a number of events that replaced gacaca meetings and failed to transport the prisoners to the assembly a couple of times. While the latter hindered the course

<sup>14</sup> Female *inyangamugayo*, interviewed in Gatovu, 16 January, after the assembly failed to take place because were insufficient *inyangamugayo*.

of the process profoundly, it also highlights the problem about the time involved when 10,000 cells have to be covered instead of the present 1,000.

*In summary*

The peaceful and scenic environment in which the meetings are held almost distracts from the fact that gacaca is a serious matter dealing with terrible events from the past. It is as if Rwanda's natural beauty has been created to camouflage the terrible events that took place on its soil. This section's view from the outside on the functioning of gacaca provides reasons for both hope and concern. On the positive side, one can say that gacaca is at least functioning in the pilot phase. In addition, it is positive that gacaca lives up to its reputation of an open and accessible justice forum. The judges are ordinary people who meet with their fellow villagers in the very same places where people live their daily lives. Everybody who wishes to have a say can do so.

The view from outside also shows that there can be quite a lot of differences between cells. Although the seventh meeting was taking a very long time in Gatovu, in Vumwe the gacaca jurisdiction managed to complete their work within months. While in Gatovu more than half of the population on average continued to attend the meetings, in Vumwe, when the obligation and pressure to attend decreased, turnout dropped to under 10%. The case of Gatovu shows that it is possible to raise interest in gacaca among the inhabitants of a cell. The case of Vumwe, in contrast, warns that when pressure slips, people may very well decide to turn away from the process. What course will be followed when gacaca starts nationwide? The fact that the pilot cells are considered to be the best disposed makes one fear they will be the first and the last.

## Views of gacaca from the inside: Grassroots justice as a factor of separation

Having assessed gacaca from the outside, the next step is to view it from the inside. The subject here is the content of the meetings and the manner in which people behave there. After having observed the functioning of gacaca, I have to conclude that participation can best be understood along with the perspectives of the three most important stakeholder groups. As will be shown, a person's social position in relation to the aftermath of the genocide determines for a large part his or her behaviour in gacaca. For that reason, I am telling the story from the viewpoint of the three most easily distinguishable stakeholder groups, i.e. the (Hutu) population, the survivors and those accused of genocide (mainly

prisoners).<sup>15</sup> Although this way of presenting information is considered as “divisionism” in the current political climate, I nevertheless think that it is the only way to truly understand what is happening in gacaca and why.

*Silent protest and self-protection: The role of the population*

Generally, one can say that the Hutu population<sup>16</sup> in the hills knows what occurred during the genocide. Most killings took place during the day and since the population was no target of the killers, they did not need to run or hide. Therefore, they could see events happen before their own eyes. And even if they had not seen it, they would for sure have heard who did what. After all, during the genocide, killing a Tutsi was considered as something to be proud of and at night perpetrators would boast openly about the “work” they had done that day. For this reason, the government is confident that gacaca, which is executed in and by the community where the massacres took place, will facilitate the disclosure of the truth. However, is the fact that the population holds this information a guarantee that they will also reveal it in gacaca? This section deals with the role of the population in gacaca. What attitudes do the Hutu inhabitants adopt and how can they be explained?

If the population decided to be open about their knowledge, gacaca offers a good chance to achieve two of the strongest pillars of reconciliation, i.e. truth and justice. In the previous chapters it became clear that the Rwandan government has absolute confidence that the vast majority of the population will come to gacaca to reveal what they know and saw. By holding the trials at the place where the witnesses live, it is argued, the uncovering of the truth is facilitated. Moreover, one should have confidence in gacaca because it is designed to bring reconciliation. Since all Rwandans realise that this is what their country needs, the population will without doubt embrace gacaca and do all within their powers to make it a success.

When one considers the extremely high levels of political control on society and the suppression of dissident opinions – which are clear signs of a lack of trust in its subjects – this confidence is surprising. After all, people are expected to put behind them their own interests in favour of the collective goal of justice and reconciliation. Isn’t this a somewhat naïve expectation? Human beings usually act in accordance with what they believe to be in their best self-interest or group-

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<sup>15</sup> I decided to make three groups. Many other studies add a fourth group, namely that of “returnees”. This group mainly consists of Tutsi who fled in earlier crises and lived for years in exile, but returned to Rwanda after the RPF had taken over power. However, this group is not included in this research, simply because in the area of my fieldwork there were no returnees. Another point that needs to be made is that the “survivors” form a marginalized minority group. This goes for the area of my fieldwork as well as for Rwanda as a whole.

<sup>16</sup> When referring to the “population”, I mean the Hutu population who are neither in prison nor accused of genocide.

interest and will seldom behave differently. Unfortunately in Gatovu as well as in Vumwe, the population proved unwilling to do so. During the assemblies I kept a record of which people made what kind of comments. These records are shown in Tables 7.1 and 7.2. Although there were clear differences between the two communities, one similarity is that in both Gatovu and Vumwe the population did not accuse fellow Hutu during gacaca. Except for in one case, it was the survivors that blamed individuals for the crimes of genocide. It was furthermore conspicuous that the *inyangamugayo* did not explicitly make use of testimonies by detainees in determining a suspect's guilt or innocence.

Table 7.1: Numbers and kinds of testimonies per group in Gatovu <sup>17</sup>

Total no. of cases: 12	Accuse	Defend	Neutral comment
Population	1	19	8
Survivors	24	0	2
Prisoners/accused	1	0	0

Table 7.2: Numbers and kinds of testimonies per group in Vumwe

Total no. of cases: 15	Accuse	Defend	Neutral comment
Population	0	1	0
Survivors	15	0	0
Prisoners/accused	1	0	0

At the start of my fieldwork when the seventh meetings were just getting underway, the attitude of the Hutu inhabitants of Gatovu and Vumwe was similar. Although quite a large proportion of the population made the effort to attend the assemblies so that the quorum was reached, their attitude was generally passive. They were sitting on the grass and listening to the discussions, but without participating actively. The discussion took place between the survivors who pointed fingers and the accused who, when pleading innocent, defended themselves. The only others who had an active role were the presidents of the *inyangamugayo*, who performed the role as discussion leader. Here there was a slight difference between the court of Vumwe, where the president also interrogated the defendant and the court in Gatovu where the president limited himself to giving the word to anyone demanding it and inviting others (the Hutu population) to provide more information about the whereabouts of the suspect during the genocide. Although the president of the Gatovu court made a big

<sup>17</sup> Record made by author, during a court session. In the counting, the testimonies of the defendants are excluded. The fact that the number of cases does not correspond with the number of testimonies is explained by the fact that it is possible that in one case more people testified.

effort and remained persistent in demanding the population testify as well, his attempts usually fell on deaf ears. The population abstained from active participation. Only when the president started to threaten to fine people if witnesses remained silent did some people play on the safe side and open their mouths. However, the comments that were made were all along the lines of: “If I knew anything about this case, I would say. But I don’t know what happened, so I can’t say anything.” This kind of comment, while of no use to the proceedings, seemed only to avert the risk of being punished for passiveness. This behaviour increasingly frustrated the president of the Gatovu court. Whereas in November he was still positive about the course of gacaca,<sup>18</sup> at the beginning of January he sighed and said:

“It is only the survivors that are talking. I always point my finger at the others, and invite them to speak as well, but they remain silent. It is visible for everybody; gacaca does not go very well like that. Since the beginning I did all I could to make them more active, but it isn’t having any effect.”<sup>19</sup>

Towards the end of the year however, the role of the population in both communities started to change. Whereas the inhabitants of Vumwe lost interest in gacaca and stopped attending the assemblies, the population of Gatovu started to become more involved. As a result, the differences between the two communities increased. In Vumwe all the cases were treated quietly, quickly but also in a somewhat dull fashion. There were no discussions between witnesses, only the accuser (almost always a survivor) and the defendant crossed swords. As one can see in Table 6.2, there were in 15 cases, apart from the defendants, only 17 persons who testified. This indicates how calmly the assemblies proceeded in Vumwe.

Gatovu, on the other hand, saw its court proceedings grow livelier and more hectic. In December, the population seemed to have broken what the survivors called a “conspiracy of silence” and joined in the discussions. However, the manner in which they did this did not please the survivors. What happened was that the population started to defend the suspects and increasingly showed their discontent with the behaviour of the survivors. It was as if a section of the population felt that they had accepted for long enough that the survivors could indict their families without any resistance. While some people restricted themselves to defending the individual suspect, others openly condemned and made fools of the survivors, advising the *inyangamugayo* to stop listening to their “lies”. As a consequence, the assemblies in Gatovu increasingly ended up in a clash between survivors and a section of the population where each group was

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<sup>18</sup> Simon, interviewed, 28 November 2002.

<sup>19</sup> Simon, interviewed in Gatovu, 9 January 2003.

shouting at the top of their voices that the other group was lying or covering up the truth.

All this added to the frustration of the president of the court, who saw his dominance slipping away as he became less and less able to control the proceedings. This man initially attached great value to letting the meetings proceed exactly according to the rules. However, towards the end of my fieldwork he realised that following these rules had become impossible. While all meetings officially had to end with a speech by the president, by that time he had stopped bothering with this rule. All over the place, groups were discussing, shouting and fighting verbally. Nobody heeded the president anymore, while he packed his papers rhetorically demanding of those still standing around him what kind of task he had let himself in for.

Notwithstanding the differences, the populations in both villages were disinclined to denounce their fellow Hutu. They did not show any interest in making the truth about the genocide known, as was expected from them by the authorities. How can this non-compliance be explained? In my view, the population could have six reasons for not telling the truth in gacaca. In the first place, there are cultural reasons that restrain people from speaking their true minds. In Rwandan culture, speaking the truth is not judged as a positive virtue. When asked to reveal your opinion or your version of an event, it is always better to say something that suits your self-interest or sounds socially correct than to tell the whole truth. People have learnt from childhood to restrict open expression, especially when they are dealing with strangers, authoritative figures or a wider audience. Besides, some people explained that the genocide was so grave that it was not good to talk about it. Wasn't seeing it with your own eyes enough? Why upset yourself even more by putting it in words as well?

Secondly, many people have a strong personal interest in hiding the truth. A very high percentage of the population took part in the genocide, if only by stealing the victims' goods. As many as 12% of the adult population of Nkumbe is officially accused of having participated in the genocide, but the true figures, especially when one includes minor acts like looting and realises that many of the criminals are either dead or in exile, are likely to be much higher. In addition, although many people have been arrested, the chaotic situation after the genocide allowed many perpetrators to get off scot-free. As a consequence, many people who attend gacaca have something to hide. Since these people were present at the scenes of the crimes, they witnessed the events and are aware of who did what. However, they rightly fear that, if they stick their necks out and accuse a person of genocide, this criminal might in turn very well remember that the accuser himself played a part in the genocide as well. People

are in the same position; they share the same guilt, so it is better for all to remain silent. One of the *inyangamugayo* explained:

“If you talk about others, the others will speak about you. We have a proverb in Kinyarwanda, which says that if you are searched, you can’t search yourself. This means that if you start to accuse people of genocide, while you were there as well, you will get yourself imprisoned.”<sup>20</sup>

Thirdly, for people that did nothing wrong personally during the genocide the above mechanism might very well apply. Because Rwandan families tend to be large, there are only few Hutu who do not have any family members with things to answer for. Accusing people of genocide might therefore very well lead to members (bread winners) of their own family going to jail. One prisoner who pleaded guilty, but indicated that there were acts he was not responsible for, explained the system.

“You see, my family cannot say what I did. It is impossible to attack your own family. (...) But also another family cannot relate what they know about me. I did do things, but also their kin committed acts. I am in the prison and they stayed outside in the village. Until now I did not betray them, but if they accuse me I will find it easy to add their crimes in my testimony, so that they will join me in prison. For that reason, the population must keep the secret and remain silent in gacaca.”<sup>21</sup>

Fourthly, even in the rare case that a person does not have any family interest to defend, there are strong barriers when talking in gacaca. One has to realise that gacaca does not operate in isolation. By bringing the judicial process to the communities, it also becomes part of the complicated system of relationships. Within a small community, one person accusing another of genocide is not a minor issue. The consequences for the accused and his family are so large, that it will, at least, throw the relations between the families into confusion. Especially in rural areas, where people live interdependent lives, one cannot afford to do that. In addition, a number of people commented that it can even endanger one’s personal safety to indict a person. One day, the accused or a member of his family might very well come for the accuser and hurt him. In this respect, people are particularly afraid of poisoning. All over the region are stories of people who accused others in gacaca, and some days later suddenly became ill and died. So when there is not much to gain personally by accusing someone, why spoil the good relationships that you have and even put your own life at risk?

Besides the previous reasons for being silent in gacaca that are all a kind of self-defence, the Hutu can also, in the fifth place, be silent out of conviction. The fact that only the crimes of the genocide are prosecuted in gacaca and not war crimes committed by the RPF or the acts instigated by vengeance makes some

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<sup>20</sup> Interviewed in Gatovu, 30 January 2003.

<sup>21</sup> Charles, interviewed in Gikongoro Central Prison, 3 February 2003.

people consider gacaca as victory justice. As a consequence, some people decided to boycott gacaca. Even if they attend the assemblies, they will not relate there what has happened in 1994. One woman from Gatovu, who lost a child in the aftermath of the genocide, put in words why she did not accuse members of her community in gacaca:

“We cannot easily find the truth, because those who want the truth have also killed themselves. That person [a survivor from Gatovu] who accuses many persons and pushes others to tell the truth about the people that have been killed, has himself killed others as well.”<sup>22</sup>

Although she said in private that she knew what some of the villagers had done, she was not willing to relate that without receiving any acknowledgement for her personal loss. Also anger about the fact that many people, often breadwinners, are imprisoned innocently can make people refuse to cooperate in extending people’s stay in jail or imprisoning even more Hutu.

Finally it might also be the case that the officially non-existent ethnic cleavages might still play a role. Bearing in mind the course of history since colonial times, it is easy to imagine that among Hutu it is inappropriate to let down a fellow Hutu. In gacaca, which is sometimes seen as an instrument to punish the Hutu, the Hutu should stand together and defend their interests. Although I did not receive evidence of this reasoning in my interviews, the behaviour of the population in gacaca provided an indication that such logic still plays a role. Especially in Gatovu, the population acted in a united manner in showing its solidarity with the Hutu that were accused by the survivors. At the beginning of the seventh meeting this was done in a manner that resembled a sort of conspiracy of silence. Over the course of the proceedings, the population increasingly came out of their shells and started to actively defend the accused. The population defended the accused en masse. Here the attitude towards those who indicted the accused became increasingly disapproving.

*To condemn and to be condemned: Survivors of genocide in gacaca*

For the survivors, the start of gacaca marked the beginning of a very important and touching era. On the one hand, it is a time of expectation, because they have been promised they will finally receive justice and acknowledgement of their losses. Simultaneously, because the horrible events of the genocide are brought up again, it will also be a time when traumas are relived. According to a Rwandan traumatologist who is working with survivors, this is a difficult side-effect of gacaca:

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<sup>22</sup> Colette, interviewed in Gatovu, 24 February 2003.

“A negative effect of gacaca is that for many people it increases the trauma. Among people who had just found a way to cope with it, I notice a relapse because they must talk about the genocide and they remember the events again.”<sup>23</sup>

Consequently, throughout the country there are reports of increasing numbers of survivors committing suicide.<sup>24</sup>

For the survivors, much is at stake in gacaca. Immediately after the genocide, in the period of their deepest anger, they had the authorities on their side and were in a position of having everyone imprisoned that they suspected of having killed their relatives. The pointing of their finger was often enough to put someone in jail. With gacaca the moment has arrived to see the people they believe to be their executioners with their own eyes. However, will this be the overture for the release of the prisoners or the chance to finally receive justice? It is exactly this question that makes gacaca such a tense experiment for the survivors. While they are frightened of the first, the latter would in their opinion help them to somehow come to terms with the past. One survivor, while assessing this tense situation, said:

“I hardly dare live during these days of gacaca. When the people I have accused have been punished and are in prison, I can go on living with my children that are left. After a person has been judged and punished, he cannot repeat his mistakes. However, if they are released from prison, what will my life be? They will all remember that I am the one who imprisoned them. Don't you think that they will come to wherever you are and kill you too?”<sup>25</sup>

The return of prisoners to the communities, for the first time in years, was indeed a big event in the communities. Every time the car carrying the men in pink arrives the level of excitement rises. In general, the population welcomed the prisoners warm-heartedly with hugs, laughs and the exchange of greetings. For survivors, this cordiality is a thorn in their side. Especially when those prisoners they blame the most are greeted warmly, they look on in disgust. Once it bitterly slipped a survivor's tongue that:

“Look how they welcome them. They even applaud them. They have killed ours, but they have lost nothing. If they want, they can even make babies!”<sup>26</sup>

For survivors the enthusiastic greetings between the prisoners and the population tell them that their neighbours are on the same side as the accused, which means against them. Once, however, a (confessing) prisoner also approached a survivor and to my surprise they were very friendly and polite to each other as well. They had a chat about each other's well-being, laughed and even embraced. However, when I complimented the survivor on her friendly behaviour towards the

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<sup>23</sup> Interviewed in Gikongoro, 7 January 2003.

<sup>24</sup> Klaas de Jonge, in a number of private conversations.

<sup>25</sup> Priscille, interviewed in Nyamigina, Gikongoro Province, 11 February 2003.

<sup>26</sup> At the beginning of a gacaca meeting in Gatovu, 6 February 2003.

prisoner, she smiled mysteriously and responded: “As a survivor one must be able to pretend.” Later, she came back to the issue and explained that she could forgive him on the outside, because that is what is expected of her. However, her true feelings were different.

Prior to the start of *gacaca* there were fears that, because they are so few, the survivors would be hesitant to come forward and speak out. This is, however, not what happened in Gatovu and Vumwe. In both cells, the survivors were very active in accusing those persons they suspected of having caused harm. As can be seen in Tables 6.1 and 6.2, in both communities survivors spoke out on all incriminating testimonies. Although in Vumwe the number of cases discussed was higher, in Gatovu I witnessed more incriminating testimonies. This dissimilarity can be explained by the difference in the characters of the meetings in the two communities. According to the specified procedure, the president of the court opens the session every meeting and announces what case will be heard that day. Subsequently, in Vumwe the word was granted to the accuser, which was in every case a survivor. During my fieldwork, two separate incidents were discussed in Vumwe’s *gacaca*, i.e. the murder of the mother, sister and brother of a woman called Berthe and the murder of the three children of a woman called Drocelle. The two murders were treated completely separately from each other because they happened on different days and were carried out by different groups. These two women account for all accusations that took place during my fieldwork. After Berthe or Drocelle had announced the charges they brought against the suspect, this person was granted the opportunity to submit a plea. Almost half of the defendants pleaded guilty. After the defendant made his plea, he/she was interrogated by the *inyangamugayo* (mainly the president) who, when available, confronted the defendant with testimonies by confessors in which the suspect’s name was mentioned. Although the survivor was asked what she thought of the testimony by the accused, the accuser and defendant did not often get into discussion together. The population who was present never opened their mouths, but initially listened silently. After a while they just did not show up at all anymore. As a result, the assemblies in Vumwe passed in relatively calm and with hardly any incidents. At times, the survivor became angry when she thought the defendant was lying (this could be both when the accused confessed or refused), but since she was alone and the population kept aloof, this never resulted in an incident or a tense situation.

In Gatovu, the survivor’s role was much more a source of controversy. After the opening of the meeting, the president gave the floor first to the defendant. In nine out of the twelve cases I observed the defendant pleading not guilty, mostly accusing those who dared to claim he was lying. The president of the court of Gatovu did not play the role of interrogator but invited as much people as

possible to give their comments. During the assemblies, he made countless appeals to testify for or against the suspect. Usually, the survivors waited until they were sure that nobody in the population would initiate an accusation. Since the population never did, on the umpteenth fruitless request by the president for information on the suspect, one of the survivors would stand up and relate what misdeeds he or she suspected the defendant of. In Vumwe however, the accusation of one survivor was often followed by others. In Gatovu, the defendants were confronted with a block of survivors who more or less accused them of the same crimes. This also explains the higher number of incriminating testimonies in fewer cases.

The survivors became increasingly frustrated with the fact that the population did not initiate or support accusations. The silence of the population was always a main subject that the survivors brought up in interviews and even in gacaca they complained openly about this. In their opinion, before the start of gacaca the population had always been open about the genocide and talked about what had happened. For that reason, they had expected support from the population in bringing the perpetrators to justice. However, in gacaca people suddenly became silent, which was a big disappointment for the survivors.

When the population eventually did start to join in the discussions, things only got worse for the survivors. Instead of being supported in their accusations, the survivors were openly condemned for their presence and behaviour in gacaca. Emotions subsequently rose on both sides. The population, on the one hand, showed their anger about the survivors who aimed to imprison or lengthen the stay in prison of their relatives. They explicitly condemned the survivors for sticking together to construct lies about their family members and to lie en masse in gacaca. The survivors, on the other hand, could not hide their disappointment about the fact that the population sided with people they suspected of having killed their relatives. The ideal of justice seemed to be beyond their reach. For some, this was clearly too much. In the months of February and March, two women in particular lost their ability to control their emotions, as is expected from a person in Rwandan culture, during the assemblies. The last meetings I observed ended in a quarrel between one or two survivors with either a suspect or a farmer they accuse of lying during the assembly. The survivors were shouting, but the crowd surrounding them were cheering and laughing at them, which fuelled their fury even more.

One can draw a number of conclusions from the problematic course of the proceedings. On the positive side it became clear that those who wanted to speak out could indeed do so. By bringing the process of justice to the countryside, it was hoped to make the judicial process more accessible and to make it possible for anyone interested to participate. Although in advance there were worries that

the marginalized and isolated survivors would not dare to stick their necks out in gacaca, gacaca proves to be the easily accessible forum it is meant to be. Even though some survivors told me that they are indeed afraid of suffering consequences following their accusations, their fear does apparently not match their will to hold accountable those who committed genocide. The survivors are clearly the ones that participate most actively in the process. They see it as their duty to their murdered loved ones to prosecute their murderers and their accomplices. After all, if the survivors do not speak, the victims will have died for nothing. One survivor explained his courage to testify:

“When you say you know what happened, there will be consequences. However, I am left alone, the prisoners killed my children. I have to do it for them. One has to testify, because if you say nothing, the victims will be forgotten.”<sup>27</sup>

Another one said:

“If you accuse a man, he can kill you. But I no longer fear death (...) I have no choice. I must accuse them. No thunder made me a widow; they are the ones who killed my people. If they want, let them come and kill me. I will not be afraid.”<sup>28</sup>

Summarising, one could say that the survivors’ role in gacaca is to condemn suspects of genocide for their acts and to hold them accountable. In this however they are not assisted by the rest of the community even though they must know a lot about what happened during the genocide. This again, is a reason for the survivors to also condemn the population. The consequences of this ungrateful task, however, are that they themselves are condemned as well. For people who lived through the genocide but lost almost everything, it is understandable that this is sometimes too much to bear.

#### *Confessing and denying: The accused in gacaca*

As well as the bystanders who saw the events with their own eyes, another group that is able to recite events in detail are the people who took part in it. Because the promotion of the confession among prisoners has become such a success, the authorities have put their hopes for finding the truth now on the prisoners that plead guilty. Once I discussed with the director of the provincial prison if the silence of the population in gacaca would not turn gacaca and the revealing of the truth into a failure. The director did not see this as a problem at all:

“During the genocide the *interahamwe* operated in groups. This means that if one confesses, he will mention names of accomplices. Then we address ourselves to them, who will in their part mention some names, and so on and so on. We only need one person to confess because then the others can’t stay behind. This way a chain of confessions really develops.”<sup>29</sup>

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<sup>27</sup> Wemislas, interviewed in Ruango, Gitarama province, 31 October 2002.

<sup>28</sup> Eugénie, interviewed in Gatovu, 3 February 2003.

<sup>29</sup> Director of Gikongoro Central Prison, interviewed in Gikongoro, 6 January 2003.

Considering that around 40% of the detainees have confessed so far, the idea of this chain is very attractive. Because the vast majority of the killings took place in groups, this would mean that hardly any perpetrator could escape. Even though the population in the villages refuses to testify, the confessors will make sure that the truth will be known and justice prevails.

And indeed, I observed that meetings in which the accused confesses are generally more fruitful than those in which they deny the charges. In some cases, the chain effect was clearly visible. During the fieldwork it happened twice, once in Vumwe and once in Gatovu, that a prisoner rejected the accusation during his first appearance before gacaca, but when he found out that his accomplices had already testified against them, he decided to return to gacaca and confess. After all, continuing to refuse would probably be useless and to confess would result in a reduced penalty. In Vumwe, a man called Nyandwi, who was still at large, changed his mind about his testimony during the meeting. He was accused of being a member of the group that killed Drocelle's children and looted her family's animals. At first, he refused all charges, saying that he only passed Vumwe on the way back from his work. But, when the secretary read the testimony of a confessing prisoner who claimed that he had been with Nyandwi, he suddenly apologised for having lied in gacaca and admitted his guilt.

Though these success stories are valuable, they are also exceptional. In the majority of cases, a person who denies his guilt will not retract his or her position, regardless of what is said in gacaca. More than that, even when an accused pleads guilty, there is no guarantee that his case will be settled without problems. It happens all too often that the truth and sincerity of the confession is cast into doubt. In total, I witnessed nine confessions in gacaca (two in Gatovu and seven in Vumwe), but in only three cases was the person fully believed and the testimony accepted by all parties. In the six other cases either the survivors thought that the admission of guilt was incomplete and that the confessor was still hiding some of his crimes, or the persons mentioned as accomplices refused to testify.

Experts in perpetrator studies agree with not accepting perpetrators' testimonies unquestioningly. In "Hitler's Willing Executioners. Ordinary Germans and the Holocaust", Daniel Jonah Goldhagen makes a powerful statement on the issue of the reliability of genocide confessions:

"Aside from memory's natural deficiencies in portraying events of often over eight (...) years past, the perpetrators have powerful motivations for concealing, evading, dissimulating, and lying. Their testimony is replete with omissions, half-truths, and lies. To accept the perpetrator's self-exonerations without corroborating evidence is to guarantee that one will be led down many false paths, paths that preclude one from ever finding one's back

to the truth. On the other hand, were such self-exonerations indeed true, a variety of other evidence supporting them should have come to light. It rarely does.”<sup>30</sup>

And indeed, in Rwanda too there is reasonable doubt about the truth of many confessions. People tend for instance to minimise their own personal role. Although around 40% of the detainees have confessed, it is difficult to come across confessors who admit to having actually killed someone. The vast majority only admits to having been among the group of *interahamwe*, but to having abstained from killing. These acts are often pinned on to people who are either dead or in exile.

One can imagine several reasons for providing half-truthful confessions. There is the social factor of fear of being rejected by one’s own community or family when one reveals one’s acts in every gruesome detail. Simultaneously, there is also the factor of opportunism. It goes without saying that the reduction in penalty is a strong incentive for confessing. However, the gacaca law stipulates that those who committed rape and those murderers who were exceptionally zealous in their killings will be put in the first category, which will receive no reduction in sentence.<sup>31</sup> As a consequence, many prisoners give only partial confessions in order to benefit from the reduction in sentence without running the risk of falling into the first category. The most convincing evidence for this assumption is that of all 1881 confessing prisoners in the province of Gikongoro, not even one confessed to having committed the crime of rape, which falls into the first category.

When survivors do not believe that a confession consists of the whole truth, or if they feel that the confessor does not feel remorse for his misdeeds, they will not accept the confession. The suspicion of artificial or insincere confessions leads to disappointment, anger or dispute, but not to reconciliation. This matter will be disclosed in more detail later on.

Although problems do not necessarily disappear when the perpetrator confesses, generally a confession positively influences the course of the proceedings. After all, it is better to have a suspect, if he/she is guilty and who at least reveals something, than one who hides the truth completely. In some cases a confession can even settle the matter satisfactorily. On the one hand, this can be attributed to the difference in the way the confessors are received. One of the fruits of the authorities’ promotion of the confession is that those who have confessed can count on a certain level of popular respect. In interviews, the population often talks with pride about “their” confessors, while the survivors are far less negative about them. This more positive attitude is frequently reflected in

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<sup>30</sup> Daniel Jonah Goldhagen, *Hitler’s willing executioners. Ordinary Germans and the holocaust* (London: Abacus 2001) 471-472.

<sup>31</sup> Republic of Rwanda, *gacaca law*, article 51.

the way people approach confessors in gacaca. On the other hand, one can attribute the higher chance of a positive court session with a confessing suspect to the behaviour of the accused. In some cases, but certainly not always, confessing prisoners talk more moderately about the survivors, who are responsible for their detention. Although in gacaca, as well as in public presentations of prisoners (see Chapter Three), some of them portray a very arrogant attitude, others were calm and moderate. In the latter case, the survivors responded more positively and the proceedings went more smoothly than when the accused denied the charges.

Those who claimed to be innocent, conversely, were without exception angry with the survivors. In gacaca sessions, this anger was often expressed through aggressive language, which provoked, in turn, fury among the survivors who were convinced of their guilt. In a number of instances, the accused and the survivors ended up screaming at each other, accusing one another of lying and playing dirty games. The atmosphere worsened when, towards the end of the year, the population openly sided with the defendants and started applauding their arguments and jeering the accusers.

Another interesting feature of gacaca is the way the accused that pleaded innocent defended themselves. Very often suspects that reject claims that there is conflict between the accuser and himself or between their families. They try to portray the accusations as shameless acts of revenge for an old quarrel between the families. In total, I witnessed 17 times that the accused denied the charges and in ten of these cases the accused referred to a dispute between the families in order to prove that the accusation had to be false. Sometimes the conflict has arisen since the genocide, but in other cases people refer to quarrels that have existed for generations between the families. The origins of the quarrels vary from problems about money, land, cows and material possessions to love relationships. In Vumwe, for example, one person, who is still at large, was mentioned in the confession of his detained half-brother as being one of the killers of Drocelle's children. The man defended himself by saying:

“Don't believe what he is saying! He is only accusing me out of jealousy. We have the same father, but different mothers. Because the father liked my mother more than his one, the two women started to hate each other. Now he wants to take revenge against me and put me in the same trouble [being imprisoned] as he is.”<sup>32</sup>

*Concluding: Integrated in daily life, but dividing the community*

This example of an accused person referring to an old quarrel that has at first glance nothing to do with the genocide is an often-used defence strategy in

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<sup>32</sup> Discussion during a meeting in Vumwe, 22 January 2003.

gacaca. It attempts to undermine the credibility of the witness. Sometimes these references to old family quarrels seemed so irrelevant that it was almost embarrassing that they were brought up in relation to a subject as serious as genocide. On the other hand, the fact that it nevertheless happens offers an important lesson in the comprehension of gacaca. As said before, gacaca takes away the judicial process from the formal courtrooms, and gives it to the ordinary people in the hills. By doing so, the context in which the judicial process takes place is changed dramatically. One should not underestimate the enormous influence this change of context brings. While lawyers, prosecutors and judges are all trained to restrict themselves to the one event that is at stake in relation to the law, ordinary people are not. You cannot expect them to distinguish gacaca and ordinary life. By bringing justice into to hills, it becomes part of communal life that is larger than only gacaca. One should realise that as a result all events and elements of this life, including age-old disputes between families, will play a role in the judicial process.

This process also works the other way around. What happens in gacaca has a direct influence on life in the community. Gacaca functions in a community, and in this community people live in a complicated web of relationships that is shaped by the past and determines people's futures. Since these relations are often familial and/or characterised by mutual dependency, they are extremely important to people and determine for a large part the actions they will take in gacaca. Because testifying in gacaca can have enormous consequences, like imprisonment for life, it has the power to disrupt social networks. It would be naïve to expect people to accept these kinds of effects and decide to testify truthfully about what they witnessed. Only when one has a strong interest in doing so, like the survivors and some confessing prisoners have, might one take these consequences for granted. If this is not the case, people will not, as we have seen in Gatovu and Vumwe, take the risk.

What becomes clear from this inside view of gacaca is that all stakeholders generally testify in accordance with their personal or group interests. Survivors are the ones who accuse, the accused defend themselves and the population either stays neutral or defends the members of their own group. Only confessors, who must mention names of accomplices in order to gain a reduction in the penalty, have an incentive to accuse as well. As a consequence, gacaca leads to the exposure of cleavages within the communities and in Gatovu it even offers a forum where these differences are fought out. The way gacaca is designed means that the judicial process has become integrated in communal life. Whether this in the long run leads to more tensions, reconciliation, or both, remains to be seen.

### Three cases: Some problems and challenges in practice

Following the “inside view” of gacaca, this next section aims to explore further some of the main topics that came forward in gacaca. Through the presentation of three in-depth cases, I hope to provide more understanding of the dynamics between gacaca and the communities in which it operates. Though the cases are not totally representative of the whole process of gacaca as I observed it, they nevertheless cover some of the most important elements of gacaca in practice and expose some of the largest trouble spots within its functioning. The first case deals with confessions and shows both an example in which a public confession leads to success as well as examples in which it only increases the problems. The second case portrays a situation where it seems evident that the population has information on a suspect but nevertheless decides to keep quiet. It shows that the wish to elicit the truth and make gacaca a success is not the strongest factor determining the actions of the population in gacaca. Other interests weigh more heavily. The third case, finally, is an overture to the final section of this chapter that deals with the immediate consequences of gacaca on life in the community. It shows what happens when a Hutu woman decides to break her silence about an accused and narrates what she witnessed him doing.

In narrating these cases, it is not my intention to prove who is telling the truth and who is telling lies. This difficult assignment is the duty of the *inyangamugayo*. My task as an observer is easier. By describing what happened during the cases and portraying what the different stakeholders said about it, it is aimed to show some of the complexities of gacaca.

#### *Confession into discredit: The murder of Drocelle’s children*

The high percentage of confessions among prisoners is rightfully hailed as one of the most important successes in the government’s struggle against the legacy of the genocide. If there were one key to opening the door to reconciliation, a high number of well-valued confessions would be the one. In addition, because they facilitate truth finding, the confessions are also one of the main pillars on which the success of gacaca depends. However, one should not have too much faith in the truth of perpetrators’ confessions. De Jonge, for example, believes that chances of incomplete or faulty confessions are particularly high in Rwanda where, he claims, prisoners have had years to sit together and construct narratives of the events that suit them best. Herein, the main blame is laid on those who are already dead or in exile.<sup>33</sup> Moreover, they have even had sufficient time to start believing in their fabrications themselves. The confessions of the killing of the children of a woman called Drocelle back this theory. This story also shows that

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<sup>33</sup> De Jonge, in several private conversations.

a confession that is believed to be inaccurate will not serve the reconciliation between survivor and perpetrator, but only increase the conflict.

Drocelle is a Hutu woman from Vumwe who was married to a Tutsi husband with who she had four children. Since the Belgian colonisers had introduced the idea that ethnicity is passed on through the male line, her children were considered as Tutsi. When the genocide started in Nkumbere, her husband tried to flee, but was killed in the neighbouring cell of Kigusa. Drocelle said:

“Then I decided to seek refuge with my family. Since my family is Hutu, I hoped that my children and I would be safe there. The children were in the compound of my parents. They were 4 children. (...) After some weeks a group nevertheless came for them.”<sup>34</sup>

The group did not leave a mystery about why they came; they said openly that though Drocelle would be spared since she was a Hutu, they had come to kill her Tutsi children. Drocelle first tried to mediate with the *interahamwe* and offered them a pig if they would show mercy on the children. Drocelle:

“My children were in the house, but they forced them out of the house to the entrance of the fence. This one [she points at her only surviving child] stayed at the entrance with me, because she said that she had a different father. Then we had a pig, which was in fact my property, but it was stalled at my brother’s house. So they asked the children to go with them and show them where it was. The children went with them and they showed them the pig. They took it and carried it. They returned, but on the way back to my parents’ home, they killed them. They killed all the three that they had taken with them. (...) After they had left the area it rained. Then, my brother went to see what happened and found out that they had killed them. Later, he brought them and buried them.”<sup>35</sup>

In gacaca, her father, brother and a judge confirmed her version of the events. The children were indeed found and buried together.

Today, ten years after the genocide, Drocelle says she wants to see justice delivered and to find acknowledgement for her loss. At first sight, the chances of this seem good because a number of men from the group of killers have confessed. In total, I observed eight accused being presented in gacaca in relation to the murder of the children and no less than six of them officially confessed. Among the eight accused, four are still at large, three are detained in the communal prison of Mudasomwa and one in the Gikongoro Central Prison.

Prior to gacaca, Drocelle had established a list of persons she accuses of the murder of the three children. She had seen most of them when the group entered her parents’ compound and she had heard the names of some others from bystanders. When she heard that most of them had confessed she initially had faith in the case being easily solved. After all, the authorities had promised that in gacaca the confessors would tell the truth, that all offenders would be punished and that there would be reconciliation afterwards. The actual processes in gacaca,

<sup>34</sup> Drocelle, interviewed in Kigusa, province of Gikongoro, 18 January 2003.

<sup>35</sup> Ibidem.

however, became a huge disappointment for Drocelle. She found it emotionally very difficult to talk about her children. Every week she had to repeat in detail her version of the events, which she found hard. Now and then she cried silently during the assemblies, which is considered inappropriate behaviour and the population mostly sniggered uncomfortably in the presence of a crying woman. Even more difficult was the fact that the high number of confessions did not uncover the truth about what exactly had happened to her children and which individuals actually killed them. In her view, the confessions consisted of half-truths and lies about people's personal roles. Observing the confessions I, as well as other observers, shared this impression. Most of the accused tried to minimise their personal role, saying that they just went along with the group and shared the looted things. Moreover, the fact that the different confessions were often contradictory means that at least some confessors interlarded their testimonies with lies.

Apart from Drocelle's version of the events, that three of her children were killed, the accused made up three different stories of the events. The only one that can reconcile with Drocelle is the testimony by a prisoner, called Karamiro, who is detained in the Gikongoro Central Prison. Karamiro:

"I was in Gasarenda with a group of around 10 to 20 men of who I will mention the names. Among them was Gisimba, who told us to head to Vumwe to kill the children of Kampayana [the husband of Drocelle] and to loot their cows. (...) When we arrived at that woman's house [he pointed at Drocelle] we found out that another group had already taken the cows, but they said that, if we spared the children they would give us a black pig."<sup>36</sup>

About what happened next, Karamiro told a similar story to Drocelle. He added that, after they had found the pig, his companions asked him to kill the children. Karamiro said:

"They asked me to kill the children. I killed one, the boy, but after that I left. The other children stayed with the group. I think they killed them, though I did not see who did it. (...) That is my testimony. I ask for pardon from the state, God and Drocelle."

The version of the events of the two confessors that are still at large does not add much to this story. Though they confirm that there were indeed three children, the two men said that they had already left the area before the children were murdered. According to them, their own role had only been to benefit from the lootings, but after the genocide they had repaid the material damage. Drocelle confirmed that they had indeed done so.

Three detainees at the communal prison of Mudasomwa, whose cases were treated in the weeks after Karamira, provided a different version of events. For a number of reasons, their conduct led to a lot of controversy. Firstly, Drocelle became annoyed because the three men shirked their own responsibilities by

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<sup>36</sup> During gacaca meeting in Vumwe, 18 December 2003.

saying that they did not do anything wrong apart from being a part of the group and eating the pig. Secondly, there was strong suspicion that the three men only admitted a part of their crimes, while hiding others. Though Karamiro said that two children stayed with the group, and that there is strong proof that the children were killed together, the other confessions contradict this evidence. They deny that there were three children, but claim in quite detailed fashion that they only took one child with them, who was killed by Karamiro. After that, they ate the pig and left again. When the *inyangamugayo* and Drocelle asked them what happened to the other children, they all responded with indifference, saying that they did not know, that they had not seen the other children and that it was not their business. For Drocelle, this behaviour was very confronting and evoked her anger. She needed to know who was responsible for the death of her three children and have them punished. In this manner this was not very likely to happen. Drocelle said:

“They say they confess, but they do not accept what they did! They only acknowledge half. If only they could ask for forgiveness after having said all that they did. If they could relate things as they happened. Look, it was obvious to everybody that there were three children killed, but they only testified about one child, whereas there were three children. (...) Only when they acknowledge all their acts and ask for forgiveness, can people live in harmony as they used to before the genocide.”<sup>37</sup>

Thirdly, the confessions of the three prisoners lead to controversy because, though contradicting others, their three stories resembled one another in every detail. This raised strong suspicion that the prisoners have held preliminary talks to put their stories together. After all, they have been together in the same prison for years and have had all the time needed to do so. The fact that all the other testimonies of people that have not been in that same prison do not confirm their version of events provides extra indication that the confessions are pre-fabricated and explain only a part of the truth.

The way the murder of Drocelle’s children was dealt with provides a number of lessons about the value of confessions. It shows that they are not always the magic key to uncovering the truth in gacaca. Although Karamiro admitted to having killed one child personally and though most of the group members confessed, Drocelle still does not know what happened to two of her children. As a consequence, she has lost the faith that gacaca will help her learn the truth and see the perpetrators punished. This case, secondly, supports warnings by specialists that testimonies by perpetrators should not always be assumed as being the truth. They have strong interests in distorting the true course of events to represent their own role less negative and altering the reality of what happened. This self-interest will in most cases lead to the telling of half-truths

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<sup>37</sup> Drocelle, interviewed in Kigusa, 18 January 2003.

and outright lies that will not lead to a knowledge of events as they occurred. Although it is not possible for me to know with certainty which confessor is telling the truth, the fact that different confessions about the same event contradict each other means that at least one of the confessions is not in accordance with the facts. Finally, the case of Drocelle shows that a confession does not automatically lead to reconciliation either. Instead of reducing her anger, confessions like those in Vumwe only stir it up. In both gacaca and an interview, Drocelle made it clear that there is no way that she can be reconciled with confessors that do not admit all their deeds. However, she said that Karamiro, who is the only one who she is sure is actually a murderer, is someone with whom she hopes to live peacefully with one day. She has no faith in the others whatsoever. Drocelle said:

“They do not accept what they did. They only acknowledge half. I think reconciliation is good, but with these people it is impossible. Don’t you see it? If they release these kinds of persons, they will come to me and kill me too.”<sup>38</sup>

*Anxiety of accusing: The case of a suspect who is still at large*

In gacaca, many suspects, who have been in prison since the RPF took over power, are put on trial. Others have got off scot-free and remained at large. The question of whether a suspect has been in prison for years or is still at large and living in the community makes an enormous difference to the way a case is treated in gacaca. This goes both for the accused as well as for the possible accuser. For someone who has already been in prison for eight years, gacaca offers the chance to get out of jail, while for a person who is still at large, gacaca poses a threat of going to prison for years. For instance, when an accused confesses, he or she receives a big reduction in sentence. For many prisoners, this means that they can leave prison almost immediately because the time they have already spent on remand equals the maximum sentence, while for persons who are free, confessing means that they will spend the next seven years in jail. On the other hand, it also makes a large difference for the accusers as to whether the suspect is a prisoner or an inhabitant of the same community. In the latter case, relationships with that person will be broken and one might well create a situation of insecurity for oneself. After all, it feels safer if the person you accuse returns to prison after the court session than if he or she can wander around freely on the road to your house.

The case that is discussed below deals with the indictment of a man who is not in detention while his case is being heard, but lives openly in Gatovu. This man, called Martin, spent the first years after the genocide in refugee camps in the

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<sup>38</sup> Ibidem.

former Zaire. When he returned, unlike many others, he was not arrested, but lived a life hiding from the police. According to some villagers, Martin did not leave his house for years, fearing that he would be recognised on the road as someone who had committed genocide, while others said that until recently he continued to work as an infiltrator for the *interahamwe* in Nyungwe Forest. Martin himself refused to say any more about his life after the genocide than that he had lived a normal life like all other people.<sup>39</sup>

Martin is a pariah in the community. He is aggressive in his behaviour and people describe him as a vagabond. Even members of his own family have rejected him, which was also shown in gacaca when his own brother refused to defend him. How does the population behave when an outcast is on trial? Some of the reasons why the population defends or refuses to accuse other Hutu (see 6.3.1) do not apply, so in this case one might expect the population to side with the survivors for once.

Martin's case was heard for the first time on 28 November, the period during which the population were mostly refraining from participating. After the president had opened the meeting, he read that Martin was accused of having killed a man and a woman, and that he had taken goods from the houses of his victims.

**Martin:** *I was not present at the place where those people got killed. I was in my house. I want those who say that they saw me killing to come forward and repeat that in front of the population!*

**President:** *Who can testify about Martin?*

**Marie (survivor):** *I accuse Martin. Though I haven't seen him myself, I heard other people say that he killed Mukamudenge. There is for instance a prisoner, Richard, who says that. There are many others who also say that he killed, but I only want to cite Richard.*

**President:** *Is there anyone else who can add something?*

**Jean Paul (survivor):** *What I know about Martin is that there are prisoners who accuse him. In addition, Martin has also stolen my property including a cow. I accuse him of killing and stealing.*

**Martin:** *It is not true! Jean Paul is only saying this because of an old hatred between the two of us. I was ill during the war and stayed in my house all the time.*

**President:** *In a small cell like Gatovu, it is well known when someone is ill for three weeks. I ask the population to confirm or refute that Martin was ill during the genocide.*

What followed was a discussion about whether Martin was ill or not. Martin's neighbours were invited to speak but none of them confirmed that he was ill. Even his own brother did not back his case.

**Martin's brother:** *Me, I'm not obliged to say anything because Martin is my brother. Forgive me, but I don't want to say anything.*

**President:** *Aren't you telling lies Martin? Even your own brother does not testify for you. If you have a family member who can testify, normally they will come directly to discharge*

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<sup>39</sup> Martin, interviewed in Gatovu, 4 January 2003.

*you. Why does your own family not defend you? Martin, there are many people who accuse you and no people who confirm that you were ill. Won't you accept and confess?*

**Martin:** *I cannot accept those accusations. The people who accuse me belong to one family [meaning the survivors] with who I have had conflict for a long time. I cannot accept the testimonies by the survivors.*

**Eugénie** (Hutu widow of a Tutsi husband)<sup>40</sup> *Me, I accuse Martin of killing a man with a stick. I was with my son and you, Martin, you came to us saying that you wanted to kill Emmanuel [her son]. I asked you to spare him. You didn't kill Emmanuel but immediately thereafter you killed Priscille's husband with a big stick. After you had killed him, you screamed: "I have killed an inkotanyi." Were you really ill that time, Martin?*

**Martin:** *If it were true what you say about that man, why wouldn't I have killed you and your child as well?*

**Eugénie:** *You know very well that I am a Hutu and should not be killed. Therefore, I could walk around freely and witness your misbehaviour.*

**Martin:** *I can't accept her testimony because she is the sister-in-law of Jean Paul with who I have a conflict. He must have incited her to accuse me. Again, I was ill during the genocide and did not leave my house.*

**President:** *Is there anyone else who can testify for you Martin?*

Another survivor replied positively to the president's demand and added that she saw Martin roaming around from her hiding place. She said that he was clearly not ill, but that he was on the warpath. As expected, this testimony did not impress Martin. He said laughingly that none the accusations were trustworthy because they were the work of the family of the survivors. As a result, the president of the court begged the population to testify as well, using threats of fines for those who withheld information, but they were not willing to testify against Martin. To the disappointment of the survivors, everyone remained silent. Priscille, one of the survivors reacted:

*Before gacaca many people were talking openly about the people who behaved well and the people who behaved badly at that time. If you were talking about people who were killers, Martin was always mentioned. But now, in gacaca, you refuse to testify while you all know what Martin did.*

The president of the court agreed and added:

*It is not good to talk in the pub and be silent in gacaca. You need to be talkative!*

In interviews, all the survivors from Gatovu complained that the population had been talking openly about Martin's misdeeds before gacaca, but fell silent at the moment when it mattered. If true, this is a clear sign that the population is frustrating the gacaca process. For whatever reasons individuals may have, they do not want the truth to be revealed and the guilty to be punished.

During my fieldwork I indeed gathered evidence that, at least in the case of the outcast Martin, people knew more than they were disclosing in gacaca. Two men confided to me that they had indeed witnessed Martin committing crimes and

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<sup>40</sup> Eugénie is a Hutu but because her husband and children were targeted during the genocide she is nevertheless (also officially) counted among the survivors of the genocide.

some other people confirmed that they had heard a lot of talk about Martin's bad behaviour during the genocide. Martin is an outcast in the community who is not loved by the other villagers and is repudiated by his family, so accusing him in gacaca would not hurt themselves. Nevertheless, nobody except for the survivors wants to testify against him. Why? One of the two men who told me that he had seen Martin committing crimes during the genocide still lives in Gatovu. He is called Claver and confided:

"I saw him killing a person with his knife. He stabbed the knife in the throat of the person and then I saw the person fall down. Another time, I saw him running after a woman wanting to kill the child she had strapped on the back. Fortunately, when he reached her and saw that he knew her, he spared her. (...) This is what I know about him. He was also looting because he was going here and there killing people."<sup>41</sup>

When I asked Claver why he was telling this in private instead of in the forum that was designed for it, he first answered reluctantly that there were enough others who had accused Martin so there was no need for him to testify anymore. When I said that it was only the survivors who accused Martin and that an accusation by a non-survivor would be very important, he changed and said:

"It is better not to be enemies with this man. He still roams the streets and if you start to accuse him, he could easily kill you."

The second man who admitted having seen Martin during the genocide is a detainee at the Gikongoro Central Prison who had confessed participating in the genocide. About Martin he said:

"I know Martin's behaviour very well because we joined the same group. He did not behave very well. However, I am telling this only to you. If I go there in gacaca, I cannot say that Martin did this. I cannot accuse him because I must protect my family."<sup>42</sup>

When I told him that Claver had made a similar statement and that if everybody reasoned like them, the truth would not be revealed, he reacted by saying:

"Everybody in Gatovu knows what Martin did, but nobody will reveal it in gacaca. Remember when I said that the organization of Gacaca is bad. Why? The peasants are the rulers and they are cowards. They cannot go in front of the meeting and affirm that this person did this or that. Why? When they say that Martin is the one who killed the person; and that they saw him killing, Martin will say that they were together. (...) In the case of Claver, Martin would be speaking the truth [laughs].

The case of Martin shows that the survivors can count on little support from the population in their fight against the perpetrators of genocide and impunity in general. Even when the accused is an outcast, the population does not openly side with the survivors and back their accusations. Anxiety, whether out of safety or for becoming a suspect oneself, constituted a stumbling block to openness in

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<sup>41</sup> Claver, interviewed in Gatovu, 3 February 2003.

<sup>42</sup> Charles, interviewed in Gikongoro Central Prison, 3 February 2003.

gacaca. Gacaca takes place in communities where hardly anyone takes a neutral stance concerning the genocide and its aftermath. In almost every case, including Martin's, people's positions as a stakeholder with regard to the aftermath of the genocide is the decisive factor in determining their conduct in gacaca. For the population, the reasons of personal, family or group interest weigh heavier than the goal of achieving truth and reconciliation through gacaca. Only for the survivors are rationales that restrain from accusing less important than the motivations for accusing suspects in gacaca. However, the reason for this is probably not that the survivors have a stronger desire to work for a better Rwandan society. Like the population, they also behave in gacaca in accordance with what they believe to be in their own best interest. For them, this means that they adopt the role of prosecutor instead of defender.

*Reconciliation or retaliation? The effects of accusing in gacaca*

Though the population did not charge Martin, because he is an outcast he was not defended either. The next case sketches an image of what happened in Gatovu when a better-liked member of the community stood trial. It became immediately clear that the population was strongly siding with the suspect. Ranks closed and the people worked hard to defend the suspect and to discredit the accusing survivors. However, the process took an unexpected and interesting turn when suddenly a Hutu woman with no special bonds with the survivors stood up and testified against the accused. In my opinion, this case is especially interesting because it was the only occasion on which a member of the Hutu population accused another Hutu openly in gacaca. Earlier in this chapter we saw that among the population it is seen as a betrayal to accuse other members of the community. This case shows some of the consequences that a breach of this unwritten law brings about. In addition to portraying some of the dynamics of the interaction between the different groups in gacaca, this case provides an example of the enormous impact of accusing people of genocide in the setting of gacaca.

On 6 February, the pick-up vehicle that transports the prisoners to gacaca brought a 25-year-old man called Alphonse to Gatovu. After the official opening of the assembly, the president explained to him that he was invited because he was accused of murdering a woman by the name of Odette.

**President:** *Do you accept these charges?*

**Alphonse:** *I deny everything because I did not do those bad things. Let someone prove that I did! I accept nothing, because I did nothing. I am in prison because of lies! I want to know who accuses me and let them repeat it in front of the population.*

While the secretary wrote down this statement, the president, who had already become frustrated with the passiveness of the population in Gatovu, asked those present several times to testify. However, only the village idiot stood up.

**Village idiot:** *This man is innocent, because I don't know anything about him.*

**President:** *This is a very important meeting. If you said that Alphonse was guilty before, but say nothing now, you risk being imprisoned because you will be considered a liar. If you lie or hide the truth, it is like throwing yourself in the fire. You are obliged to talk about what you saw. If you refuse or lie, you will be punished.*

His reprimand had little effect and the assembly kept silent. Then, the president adopted a different strategy. Instead of seeking evidence of Alphonse's guilt, he asked the prisoner if he could prove his innocence.

**Alphonse:** *I will prove my innocence after you show me the people who accuse me. During the war I stayed in the house all the time doing nothing.*

**President:** *[ignoring Alphonse's last statement] Give us witnesses who can confirm that.*

**Alphonse:** *I will give some names. They are Nzabamwita, Muragiye, Nzabigwami and his wife and Julienne.*

**Priscille (survivor):** *These people all belong to his family, so we cannot accept them as witnesses. [The population became noisy when she spoke and murmured disapprovingly.]*

**President:** *Before judging them, let us listen to what they say.*

**Julienne:** *My name is Julienne and I live next to Alphonse. Alphonse stayed in his house for one month. How can you participate in genocide when you are in the house? He did nothing wrong. After the war Alphonse was arrested while he was working in the carbon factory. I ask myself why he didn't give something [corruption] to the persons who came to arrest him.*

Also Alphonse's other witnesses defended him and confirmed that they had not seen him leaving his house. Then, after having waited for others to accuse the prisoner first, the survivors started to stir.

**Priscille:** *I repeat that we cannot accept these witnesses because they all belong to the same family. You say that you stayed in the house without ever going out, but why did you pay back that looted cow after the genocide? Why did you do that when you never went out to steal it? Why did you kill Odette?*

**Alphonse:** *I paid back that cow because I shared in the eating of it, but I did not participate in stealing it. The group passed my house and I asked if I could have a share. I don't know why Priscille wants to talk about a cow, whilst we should be talking about murder.*

**Priscille:** *That cow belonged to the family of Kanyamasinghe. [Odette's husband] You killed them all. Later you went to Nyamigina [a sector which was known for its high number of Tutsi] to kill and steal cows there.*

**Eugénie (survivor):** *I ask Alphonse: "did you really never leave your house?" Why then did I see you carrying a big club with nails on the road to Gasarenda? You went to kill in Nyamigina, but the car had already left. All you wanted to do was search and kill the Tutsi! [Angrily:] I saw you with that club! I saw you on the road, even when the population says that you stayed in the house.*

**Marie (survivor):** *Many of our people have been killed and lots of things have been stolen. It causes anger that before gacaca people were talking openly about what had happened, but remain silent now it matters. We will die without knowing what happened to our family members. Why don't you accept what has been done?*

Alphonse defended himself by accusing all the survivors of lying. He claimed that since he was a child his family had conflict with that family and that the survivors now had revenge. The president expressed his frustration that there was nobody from the population who wanted to testify and threatened once more penalties for those who lied or hid their knowledge. After that, more people

decided to stand up and have their say. All the testimonies were, however, in favour of Alphonse. Some people even condemned the survivors for consuming a lot of time in gacaca and presenting gossip as facts. Alphonse started to glow with confidence and the survivors shook their heads despondently. Then, something exceptional happened. When nobody expected any accusations anymore, an old woman called Nathalie stood up and started to speak.

**Nathalie:** *I will tell you what the situation was. It was nine o'clock in the morning when I heard some screams near my house. I ran towards it and saw an old woman sitting on the ground. It was Odette. It was very near to my house. There was Ngayiribi who asked the old lady where the rest of her family was. He had a big stick and threatened the old woman with it. She said that her cousin had already been killed and asked if they would kill her as well. Then Ngayiribi started to hit her on the head with his stick. The old woman protected her head and screamed: "What have I done wrong that I should be killed?" The woman fell on the ground and Alphonse [she points her finger at the prisoner] took a big stone and beat her head several times. Alphonse did not steal the woman's clothes, but searched her for money, which he didn't find. I am not lying; this is the truth. I saw it because it happened next to my house.*

All people that were present at the assembly were stunned and remained silent for a moment. Nobody seemed to have expected this. Then, Alphonse recaptured himself and cast doubt on the accusation.

**Alphonse:** *These are all lies. Jean Paul [the male survivor] must have told this woman to accuse me. For a long time there has been a conflict between Jean Paul and my father about a small forest and now he has told this woman to say this. What she says are all lies. [to the audience] Who knows about the conflict?*

Many people shouted enthusiastically that they remember that conflict and the responsible stated that the conflict had been dealt with without success in the old gacaca. Subsequently, the population lost its diffidence and started to defend Alphonse freely. Some examples follow:

**Man 1:** *You told us to charge and discharge. I tell you that this man is innocent. Stop listening to all those lies!*

**Man 2:** *According to us, Alphonse is innocent. Since his birth he has been a good person. You should forget the lies the survivors tell about him. We should not believe lies when we are seeking the truth.*

**Woman:** *Nathalie is a well-known liar. I know that she is lying now. Maybe she has some personal reasons for accusing Alphonse, because in reality he is innocent.*

For a while the survivors listened impassively to this stream of reproaches but at a certain moment Eugénie stood up and made an important and, by Rwandan standards, unusually direct remark.

**Eugénie:** *I don't understand something. Everything happened in daylight and many people took their sticks and machetes and participated. Now there is finally one person who explains what happened and you all start to ridicule her. Because you don't want her to accuse, she will face large problems in society now! You will cause as many problems for her as you are causing for us!*

After she said this, the assembly exploded. Everybody started to talk loudly and it took minutes before calm returned. This remark is very important because it indicates that the population does not accept people making accusations. On the one hand Eugénie points to the fact that the survivors are reproached for their active behaviour in gacaca. On the other hand she informs the audience that she knows how they will treat Nathalie from now on.

I decided to follow up what happened to Nathalie after accusing Alphonse. And indeed, it appeared that Eugénie had correctly predicted the consequences of Nathalie's accusations. When I interviewed Nathalie some weeks later, she did not stop talking about the social consequences she was suffering after her accusations of Alphonse. Nathalie said:

“Since I testified against Alphonse, the population has condemned me. I told the population that the state has said that someone who says what she has seen cannot be condemned. However, they do not listen and condemn me. (...) The problem that I am encountering is that I am excluded from the population in the pub. They don't want to share beer with me anymore and look badly at me when I enter. Another problem is that the population threatens to gain revenge for my act. They say that they will accuse me of having shown the killers where Mukakomati was hiding, since it was close to my house. All the people that I encounter say that they will say in gacaca that I showed the killers where Mukakomati was hiding. They want to put the blame for the death of that woman on me.”<sup>43</sup>

Besides Nathalie, others confirmed that she had become an outcast because of her accusation. Some Hutu tried for example to convince me that Nathalie is a bad person who should not be trusted. In addition, when I left Nathalie's house after the interview, one survivor, Véronique, approached me and asked what I had been doing. When I responded that I had been talking to Nathalie, her eyes twinkled and she said:

*“That pleases me very much! Nathalie is telling the truth, so she is on our side. Though the others are condemning her, what she says is the truth.”*<sup>44</sup>

With this simple remark, this woman reveals how much gacaca has divided the community into two camps. Every week in gacaca those who accuse and those who defend stand diametrically opposed. The case of Alphonse was yet one more example of the growing conflict between, on the one side, the survivors and, on the other side, the accused and the rest of the population. The popular reaction to Nathalie's decision to break the silence showed that to defect to the other camp is unacceptable. The cleavages have become fixated in gacaca and to betray one's own group leads irrevocably to social repercussions. The reaction to Nathalie's conduct was teaching everyone in Gatovu that to accuse someone in gacaca is

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<sup>43</sup> Nathalie, interviewed in Gatovu, 24 February 2003. The act the population threatens to accuse Nathalie of falls, according to the gacaca law, in the second category, for which there is a maximum sentence of life imprisonment.

<sup>44</sup> Véronique, in Gatovu, 24 February 2003.

considered a bad thing. For those who would nevertheless want to follow the government's order and reveal the truth about the genocide, the indirect, but very urgent advice is given to think twice before acting. Breaking the silence means not only harming the group's interests but also brings trouble for oneself.

### Gacaca's immediate consequences for communal life

Gacaca's main intended effect is the reconciliation of the Rwandan people. Reconciliation is, however, a long-term goal. In the next chapter we turn to the possible relation between this goal and gacaca. The proceedings of gacaca also have more immediate consequences for life in the community. If someone acts in gacaca, this has instant consequences for his relations with the rest of society. Considering the sensitive issues gacaca deals with and the drastic measures, like life imprisonment and the release of suspected murderers, that are taken, these consequences can be expected to be major.

We have seen that in gacaca the survivors on the one side and the population and accused on the other side have opposite interests. The survivors are in pursuit of the truth, acknowledgment and punishment of crimes and their actions in gacaca are meant to achieve these goals. Although others mostly subscribe to these ideals in theory, in practice distinct interest leads to different actions. The truth does not only hurt, for the population and the accused it also has severe negative consequences. This opposition of interest and the different way of acting that stems from it have clear repercussions for communal life. Because prisoners do not take part in this, I will mainly focus on the survivors and the population and the changes in their relations.

#### *Changing attitudes and opinions*

The first level of the immediate consequences of gacaca is related to the way the different groups think and talk about each other. Gacaca brings the community together in a new context and forces them to have contact in a manner that has never been experienced before. When one combines this with the high interests that are at stake, it is plain that gacaca must reshape mutual feelings about each other. In the Rwandan political climate, however, this is a very sensitive issue that can best be avoided talking about. Rwandans are expected to say that problems between Hutu and Tutsi never existed before colonial times and have as good as ceased since the installation of the government of national unity.

As a result, in the interviews during the first months of my fieldwork, survivors and the local population shunned any negative comment about the other. Most people said that gacaca leads to hope for reconciliation and not to conflict, tension and/or fear. After some time, however, the interviewees slowly

opened up and started to identify problems, portraying their frustration about the other groups' behaviour in gacaca. Though at least in Gatovu the atmosphere in gacaca had indeed worsened, in my view this change to more negative attitudes in the interviews was mainly due to decreased suspicion by the interviewees towards the researcher and his interpreter.

Negativity about the other groups' behaviour was prevalent on both sides. One thing I found striking was that both the survivors as well as the population mentioned gacaca as one of the main reasons that made them think negatively about the others. According to the survivors, they have changed their opinion about the population because of the difference in their behaviour before and after gacaca. They all say that the population before gacaca was talking openly about the genocide and its culprits. In some cases this was done in personal conversations with the survivors to help them know what had happened to their relatives. In other instances, especially shortly after the genocide, the population discussed it openly among each other, in a manner in which pride about the "achievements" shone through. In the perception of some survivors, this change from relative openness to being closed is explained by the fact that the population initially thought that there would be no legal consequences of the genocide. One could talk about the crimes of the genocide without any legal effect. The start of the prosecutions in gacaca meant that very different interests were at stake, which made most people decide to either remain silent or defend the accused and attack the survivors. Without exception, this attitude has created bad blood among the survivors that I interviewed. They do not only say in words that they are disappointed and angry, the fury also comes across their voices when they speak in gacaca. One woman, for example, explained:

*"They killed my husband and I am a widow. But now they don't want to reveal what happened. I feel dizzy. That is why I am very angry with them. I feel as if I am mad when I see them silent, refusing to talk when they are asked to relate what happened."*<sup>45</sup>

There is, however, also a second side to the story. On the part of the population, as well as the prisoners, there is widespread resentment against the survivors who accuse members of the community. Every week, the survivors do all they can to imprison or keep imprisoned members of the community and their relatives. In Vumwe, two individuals account for 22 accusations of murder or attempts to murder, while in Gatovu a group of survivors is clearly working together to incriminate their fellow villagers. Especially in Gatovu, people tend to describe the survivors as a "gang of accusers". Several individuals complained that the survivors held pre-meetings during which they fine-tune their stories so they can operate as one block against the suspects. Even when one survivor allegedly tries

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<sup>45</sup> Eugénie, interviewed in Gatovu, 30 January 2003.

to settle the score in an old individual dispute, the others stick together to back the accusations. One prisoner said:

*“They defend each other in supporting each other’s testimonies. If one Tutsi says something, all the others follow him, even when it is lies, they support each other. What they do is organise meetings before gacaca at which they prepare what they are going to say. The Tutsi want us to stay in prison for the rest of our lives.”<sup>46</sup>*

According to many, the survivors display shameful behaviour. They lie, cheat and cause many problems in the community. When the population contradicts an accusation in gacaca and relates that a person is not a criminal, the survivors do not accept their testimonies and get angry. The fact that they want all the prisoners to stay in prison and many others to go there proves to many Hutu that the survivors do not want to live with them anymore. In addition, because the survivors are accusing so many people, the population feels that they are all considered as *genocidaires*. One woman verbalised the widespread feeling of annoyance in the following way.

*“We find that they do not behave adequately. Their behaviour embarrasses us. You find that they still want that even if a person was put in prison innocently, they do not want him to be exonerated and be released. Another thing is that they want you to tell lies about people and say that they killed when you did not see them killing. Whenever you say that you do not know and that you did not see those things, they say that you are lying and that you are a betrayer as bad as the killers. They are really big liars. For instance, they are saying that I used to talk about the genocide in the pub. But these are lies, because I am an old woman who never goes to the pub. I do not even drink beer. Never. What they relate is really pathetic.”<sup>47</sup>*

### *Changing intercourses*

Gacaca did not create the differences within the communities, but merely brings them to the surface. Without gacaca the discontent about the other would probably be smouldering, but in gacaca it is offered a podium where it can be expressed and subsequently fuelled. The portrayal of these differences, besides influencing the way people think and talk about other group, also affects the intercourse between the groups. It was clearly visible during the seventh meeting in Gatovu that the atmosphere during the assemblies had worsened. People were becoming fiercely opposed to each other, rancour was openly expressed and arguments were fought in loud voices. Both groups had clearly had enough of the behaviour of the other and had lost the willingness to hide this. In Vumwe, on the other hand, antagonism in gacaca remained limited to the accused and the

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<sup>46</sup> Sebagenzi, interviewed in Gikongoro Central Prison, 25 February 2003. The survivors deny however that they held meetings prior to gacaca in order to fine-tune their stories.

<sup>47</sup> Colette, interviewed in Gatovu, 10 February 2003.

accusers. The survivors did, however, mention having problems in daily life with the families of the accused as well.

In situations of conflict and increasing contrasts, neutrality is often condemned. When two parties are strongly convinced of their own right in contrast to the other's wrong, they want all people to be in their camp. With the reasoning "if you are not with us, you are against us", a neutral entity soon becomes an enemy. Such a process also took place in Gatovu. In my opinion this shows how sharp the contrasts had become because of gacaca. For the legitimacy of gacaca it is very important that the *inyangamugayo*, and especially the president, are impartial. In my observations, both the presidents of Vumwe and Gatovu struggled hard and managed to keep a neutral position. In gacaca they granted the word to those who wanted to testify without discrimination, so that survivors, the population and the accused had equal opportunities to be heard. In their communication during the assemblies, they abstained from any comments that could raise the suspicion of prejudice or siding with one group. Also in personal conversations, both presidents stressed several times that they attached great value to their neutrality.

In my opinion, it is a virtue to stay impartial in a situation of conflict, especially when one is forced to be a player in the conflict. However in Gatovu, this is a virtue that is condemned by both sides. Because the president was not being as hard on one group as the other group wanted, the conclusion was quickly drawn that he had chosen the side of the other group. The president himself said the following about his position.

*"Every time there are the extremists, from both sides. There is the side of the survivors and the side of the non-survivors. Now, in my position, I need to be somewhere in the middle, I will try to be an arbiter. However, the others don't accept that and say that I am on the side of the other. They tell me to change and condemn me because I don't."*<sup>48</sup>

Shortly after my departure, this way of thinking led to an outburst. The survivors had requested the president order the arrest of a suspect who was still at large and allegedly influencing and threatening witnesses, but the president, who has the legal power to do so, refused to ask the police to arrest the suspect. The survivors were furious and because they saw the president as not acting impartially, they decided to boycott gacaca for some weeks.<sup>49</sup> In my opinion, the fact that neutrality is condemned shows that gacaca has created a battleground for two partisan groups.

After the encounter in gacaca, people cannot go their own separate ways, but spend the rest of the week in the same community. Here, the events in gacaca affect how people treat each other. As said, the issue in gacaca with the largest

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<sup>48</sup> Simon, interviewed in Gatovu, 9 January 2003.

<sup>49</sup> Information acquired from a German journalist who has done a research in Gatovu.

impact is the accusation of genocide, which can lead to someone being locked up for the rest of his life. Since this is so final for the person in question and his social network, accusations of genocide are the aspect that causes the most problems inside as well as outside gacaca. Those who nevertheless decide to point the finger suffer repercussions, as the case of Alphonse shows. Since the survivors of the genocide do most of the accusing, they are the ones who are looked badly upon. The consequences the accusers suffer are luckily not of a physical nature. Although some pointed out that they were afraid of this, especially when the prisoners they have accused are released, it is important to note that since the start of gacaca, nobody has (yet) been attacked, beaten up or killed. This does, however, not mean that the other consequences the accusers fear are less than real. The effect all survivors said they feared most was social exclusion from the community. People keep out of the way of survivors; they do not want to talk to them anymore and do not assist them in the work on their fields. Berthe, one of the survivors from Vumwe, explained:

*“Since gacaca, I cannot live in harmony with the wives whose husband I got imprisoned. In fact it is the whole family of the imprisoned with who I have problems. They cannot be nice to you. They wish you were dead. (...) You notice that during meetings, or even elsewhere in the villages through the cutting words they utter in daily conversations. They wish you had been killed.”*<sup>50</sup>

Eugénie, from Gatovu, was sorry that her accusations in gacaca had made her life much more difficult.

*“Because of that the population dislikes you and says that you accused people of their family. When I encounter them on the road, they ignore me. (...) Since I am considered as a spy, the others do not talk to me. And when I enter the little bar over there, conversations stop because people say: “She will hear the things we say and then accuse us in gacaca.” Even if I offer to buy beer for other people, they refuse because they are afraid that I will poison them.”*<sup>51</sup>

Because it is generally the survivors who undergo these consequences, at first sight they might seem to be instigated by ethnic sentiments. After all, the resentment mostly follows ethnic lines. In my opinion, this is not the case, or at least not the whole truth. The story of Nathalie, the Hutu woman who accused a man from Gatovu of murder, shows that also Hutu that accuse are condemned and excluded. This means that it is not so much the fact of being a survivor, but principally the fact of accusing that causes problems in the community. However, because the individuals that accuse and those who do not are almost exclusively divided over ethnic lines, gacaca does indeed bring to the surface and sharpen old cleavages.

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<sup>50</sup> Berthe, interviewed in Gasarenda, 15 December 2002.

<sup>51</sup> Eugénie, interviewed in Gatovu, 1 February 2003.

## Conclusion

One of the main strengths of the traditional gacaca lay in the fact that problems were treated in the community by the community. The traditional *inyangamugayo* possessed knowledge and understanding of the background of a conflict and brought this wider context into the search for a solution that would lead to the reconciliation of the different parties. The focus was less on retribution and punishment, but the old men of the community searched with those concerned with alternative measures that suited both parties and brought them together again. This helped to reconcile the disputants and their families. Officially, the new gacaca aims to achieve the same result through a comparable mechanism that has only been modified to fit the situation that arose because of the genocide.

Some of the virtues of the old gacaca have indeed been translated into the new system. For a large part, the genocide was a disaster that happened in the communities and was committed by its members. Gacaca offers the people on the ground a mechanism to deal with this legacy themselves, without too much interference from outsiders. The Rwandan authorities have managed to create a truly open and accessible form of justice in which everybody can participate. The assignment of judge is a realistic option for all, regardless of sex, ethnicity or literacy level, as long as one did not take part in the genocide.<sup>52</sup> During the assemblies, every person has the chance to have him/herself heard and relate his or her version of events. Though caution was expressed in advance that survivors might hesitate to stand up and testify for fear of repercussions, I observed the opposite in both Gatovu and Vumwe. The question is not so much whether people have the opportunity to participate in the legal closure of the genocide, but if they are willing to do so. Even in the pilot phase when generally well-disposed populations were testing out gacaca, problems arose in reaching the quorum of 100 people. In combination to the logistic and organisational problems that already appeared, this poses the question as to whether gacaca will indeed function satisfactorily on a nationwide level.

So gacaca can be seen as being a truly local grassroots affair. However, one of the findings of this study of the practice of gacaca is that it is in fact too deeply integrated in the community and this in itself poses problems. Because gacaca is a grassroots affair, life in the communities and gacaca mutually influence each other. On the one hand, relations that existed before gacaca play a determining role in the way people are acting in gacaca today. This is, for example, portrayed

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<sup>52</sup> Exceptions are persons in charge of government administration; persons exercising political activity; soldiers who are still in active service; members of the national police and local defence force; career magistrates; and members of political parties' leading organs, religious confessions or NGOs. Republic of Rwanda, *gacaca* law, article 11.

by the fact that many of the accused defend themselves by placing accusations in the light of old familial conflicts that have no direct link with the genocide. More importantly, the existence of close familial, professional and friendship bonds shapes a context that people cannot afford to put behind them in gacaca. For the population, to reveal the truth in gacaca directly harms themselves and their social network. Another reason for not participating too actively in the gacaca process is dictated by the fact that many witnesses have a lot to answer for as well. To reveal other people's misdeeds might very well equal buying a one-way ticket to prison oneself. For these and other reasons, it is not in the interests of the Hutu population to contribute actively to the truth-finding process in gacaca. The course of the proceedings in Gatovu and Vumwe showed that the population is not willing to go against their interests, not even for the higher aim of truth and reconciliation. The only ones who do have a strong interest in making accusations are the survivors who are looking for justice, and, to a lesser extent, confessing prisoners who are looking for a way to get out of prison as soon as possible.

On the other hand, the integration between communal life and gacaca is portrayed by the fact that people's behaviour in gacaca also influences their interaction in the community. Because gacaca deals with as a serious matter as genocide and leads to such serious consequences as life imprisonment, gacaca arouses strong emotions among the stakeholders. Sadly, gacaca has led to mutual anger about the behaviour of the other group. The survivors are furious with the local population because they refuse to help them in bringing the *genocidaires* to justice. The population and the accused, on their part, feel resentment towards the survivors because they are so insistent in trying to put or keep their family members in prison for life. This opposition seriously hinders the different groups living together as good neighbours.

It is paradoxical that gacaca, which is traditionally meant as a conflict-resolution mechanism, is now resulting in the creation and increase of conflict. This will not, however, necessarily be a problem on the long run. Sometimes conflicts are needed to achieve progress later on.<sup>53</sup> Are the social problems that arise in gacaca only a side effect of a good medicine, or is the medicine faulty in itself? This is a question that time alone will be able to answer.

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<sup>53</sup> Jannie Malan, *Conflict resolution wisdom from Africa* (Accord 1999) 6.

## Gacaca: The road to reconciliation?

Will gacaca reconcile Rwandans? It would be a great achievement for both those who designed the system as well as those who are implementing it. Reconciliation is, however, not something that suddenly ‘arrives’ or is simply ‘brought’; it requires active devotion by all stakeholders to produce real changes. If gacaca is to be the mechanism to facilitate this reconciliation process, all stakeholders must share a similar determination to make it a success. In this concluding chapter, the chances of a positive relation between gacaca and reconciliation will be weighed up. In the second chapter, I identified five elements that together form the concept of reconciliation in the Rwandan context. The elements are: a confession in combination with a request for forgiveness; forgiveness; finding the truth; justice; and a good government. (See Figure 2.2). This might give the false impression that among Rwandans there is a consensus as to what reconciliation entails. It is important to bear in mind that people formulate an idea of what aspects should be fulfilled for reconciliation depending on their background and participation in the conflict. Table 2.2 showed that every group holds its own specific wishes. Though all groups agree that to confess and to forgive are necessary elements, survivors generally demand the truth, the punishment of criminals and compensation for their losses. Hutu, on the other hand, attach great value to the release of innocent prisoners and the reciprocity of the legal process. To enable the Rwandan population to reconcile, the demands of all groups must be acknowledged and must find their places in the process. Reconciliation can only be a voluntary process that depends on interaction

between and participation of all parties. Therefore, failure to address the demands of one group may very well result in the early death of the whole process.

In this chapter, the functioning of gacaca, as observed in Vumwe and Gatovu, will be evaluated in view of the four elements of reconciliation that gacaca can be expected to influence.<sup>1</sup> This way, I hope to gain insight into possible relations between gacaca and reconciliation. Reconciliation is, however, not an easy and straightforward concept. In the first place, it is a very long and slow process that is more likely to take generations than decades. Gacaca, which is expected to take some years, only covers an early part of the process and should thus be considered as a point of departure and not the conclusion. My fieldwork, moreover, only covered the start of gacaca and the primary results in Vumwe and Gatovu present no guarantees for the rest of the process – not for the rest of the country and not even for the two communities themselves. In second place, gacaca is neither the only requirement for reconciliation nor is it the only event that can influence the process. Even if gacaca became a huge success, achieving reconciliation is not guaranteed. One precondition for reconciliation is, for example, that peace and personal security be assured. If fighting breaks out or if basic human rights are violated on a large scale, most efforts towards achieving reconciliation will have been in vain. For these reasons, the outcome of this study can only be expressed in the form of indications, and not as hard facts. Reconciliation is too long a process and is dependent of too many other factors.

## Gacaca versus the confession and request for forgiveness

Every process has a beginning. On the basis of what interviewees reported, I conclude that a confession in combination with a request for forgiveness is the most important element of reconciliation.<sup>2</sup> Acknowledgement by the wrongdoer of the harm that he or she caused forms the point of departure of the reconciliation process. If the offender understands that his or her acts were wrong and makes the effort to acknowledge this publicly, a big step has been taken in the right direction. In addition, a detailed and sincere confession can also facilitate two other important elements of reconciliation, namely forgiveness by the victim and the uncovering of the truth. Without this acknowledgement by the perpetrator, however, reconciliation is inconceivable.

In this light, the high number of confessions among prisoners in Rwanda, which is largely the result of a successful government policy to promote

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<sup>1</sup> Note that the fifth element of reconciliation, i.e. good government, is not included in this evaluation. This was decided because I do not expect gacaca to influence it. After all, it is the government that shapes gacaca and not the other way round. (See also Section 2.4.5.)

<sup>2</sup> See Section 2.4 of this thesis.

confessions, is promising. This success is closely related and partly due to gacaca. Already in 1996, the government had included a provision in the genocide law that stated that suspects that confessed would benefit from a reduced sentence. At first, this did not yield rewards and the number of prisoners who confessed was disappointingly low.<sup>3</sup> With the adoption of the gacaca law in 2001, in which the reduction of sentences for confessors was confirmed once more, the tide started to turn. Firstly, the gacaca law offered the prisoners a realistic time-span for release in return for a confession, which reduced the suspicion among prisoners that the guilty-plea procedure was a government trap. Secondly, the choice for gacaca changed government policy towards prisoners. In their quest to make both gacaca and the reconciliation process a success, the authorities correctly believed that many confessions would be helpful. As a result, they started a strong sensitisation policy in the prisons.<sup>4</sup> The official message was that to confess had many advantages, both for the individual suspect as well as for the nation. This appealed to many prisoners and after a while even the detainees themselves took on the role of propagating the confession to their fellow inmates. In every Rwandan prison a structure was set up that tries through talking, singing and dancing to persuade all detainees to confess. The promising result is that at the time of writing almost half of the Rwandan prisoners who are suspected of genocide have confessed. In this respect, gacaca seems to be making a contribution to the reconciliation process.

For reconciliation, however, it is not only the quantity of confessions that matters but the quality also decides what impact they will have on the process. For a positive reception and valuable contribution to the reconciliation process, a confession has to meet certain conditions. Firstly, the confession must be considered as sincere and completely truthful. Secondly, the confessor must acknowledge the pain he or she has caused the victims and survivors. Thirdly, the confession must sow trust among the victims that the wrongdoer will never repeat his crimes. Fourthly, the motivation to confess must be accompanied by regret instead of solely being instigated by the self-interest of being released in return for confessing.

Though one should not generalise, all the public confessions that I observed in gacaca and pre-gacaca meetings failed to comply with these quality requirements.<sup>5</sup> On the one hand, there are problems with the manner in which detainees present their confessions. A high proportion of the testimonies were outspoken and shocking, especially for the survivors. This was not only because

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<sup>3</sup> De Jonge, *La procédure d'aveux. Rapport IV*, 5-6; African Rights, *L'aveu de génocide*, 3.

<sup>4</sup> See Section 3.3 of this thesis.

<sup>5</sup> Other observers in different parts of the country documented similar worries about the presentation of confessions. See, for instance, De Jonge, *report III*, 6; De Jonge, *La procédure d'aveux. Rapport IV*, 4; De Jonge, *Rapport V*, 8-9; and African Rights, *L'aveu de Génocide*, 7.

of the horrendous stories that were narrated, but also because of the arrogant attitudes of some of the detained confessors. Both in pre-gacaca and gacaca meetings, confessions are presented in loud voices, without any sign of shame, regret or empathy for survivors. In addition, all responsibility for crimes is laid in the hands of third parties who forced his or her participation, thereby ignoring the individual choice that was made about taking part in the genocide.<sup>6</sup> At the end of their testimonies, the suspects officially ask for forgiveness. This request is usually spoken in a very formal and procedural way, portraying the expectancy of being forgiven immediately, as if it is a right. In most public confessions, the perpetrators show no signs of genuine shame or regret. Survivors commented that it would be very difficult to pardon these kinds of confessors because, to them, it is obvious that they are only confessing out of self-interest.

On the other hand, the quality of confessions is questioned because there is doubt about the truth of many confessions. Although the authorities are confident that the confessors will bring to light the truth about the genocide during gacaca, it was different in practice in Gatovu and Vumwe. In two-thirds of the confessions that I observed in gacaca, controversy arose about whether the testimony was truthful.<sup>7</sup> A common complaint among survivors is that most confessing detainees only admit one or two minor acts in order to qualify for the reduction in sentence but hide a large number of other horrendous acts that they committed. And indeed, experts in perpetrator studies, as well as some interviewed prisoners themselves, stated that confessors normally downplay their personal roles in order to suffer fewer social consequences or not to risk being put in the first category, for which there is no reduction in sentence.<sup>8</sup> This is shown by the fact that amongst the 1881 confessing prisoners in Gikongoro, there was not a single person who admitted to having committed sexual violence.<sup>9</sup> Sexual violence, one of the most widespread phenomena of the genocide, is namely a category one crime and admitting this crime equals a ticket for imprisonment for life. In interviews, most survivors indicated that it is impossible to have reconciliation if prisoners continue to provide less than truthful confessions.

Despite the positive situation of a high number of confessions, the above draws a somewhat depressing picture of the value of these confessions. Moreover, although my observations are limited to the district of Mudasomwa,

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<sup>6</sup> See also De Jonge, *Rapport V*, 9, which shows that this way of confessing is a nationwide pattern.

<sup>7</sup> See previous chapter. The story of the case about the murder of Drocelle's children (6.4.1) is a good example.

<sup>8</sup> De Jonge, *La procédure d'aveux. Rapport IV*, 8-10; African Rights, *L'aveu de Génocide*, 8; Goldhagen, *Hitler's willing executioners*, 471-472.

<sup>9</sup> Director of Gikongoro Central Prison, interviewed in Gikongoro, 6 January 2003; and President of the "Truth Commission" of the Gikongoro Central Prison, interviewed in Gikongoro Central Prison, 3 January 2003.

other studies by De Jonge and African Rights made similar observations, indicating that the poor quality of confessions is indeed a nationwide pattern.<sup>10</sup> One should, however, not forget that there are also positive examples of people who present strong confessions, in which genuine regret and acknowledgement of the suffering of the victim is expressed. One of those examples is a prisoner called Michel, who admitted to having participated in massacres in Gatovu, Vumwe as well as several other communities, which makes the chance of being put in the first category much higher. The author, together with the survivors of both Gatovu and Vumwe, was impressed by the way he portrayed his regret. He knelt for his former enemies, asking humbly for pardon. After this, unlike many others, he did not seem to expect to be forgiven, but left the decision to the survivors. He said:

“I ask for forgiveness. However, since the survivors are the ones who have suffered so much, it is up to them to decide. What they will decide, I can’t be against it. If the survivors refuse to forgive me, I will stay in prison. If the survivors are too angry to forgive, I will consider the case as closed and stay in prison for the rest of my life and wait for my death. I will accept that.”<sup>11</sup>

Michel’s behaviour triggered a very positive reaction among the survivors. Though many had lost faith in the value of confessions, Michel gave them hope that there could be a future in peace and reconciliation after all. Most other confessions exerted pressure on the survivors to forgive, which forced them into a situation of making a choice for something for which they were not yet ready. Michel’s confession, by contrast, left them much more freedom, which would eventually lead to a better result. In my opinion, it is on this issue of quality of confession that a lot can still be won, or lost. Therefore, it would be good to change the focus of the policy of attaining a high number of confessions to making sure that confessions are of a high quality, with respect for the truth and the dignity of the survivors.

In summary, the fact that gacaca is largely responsible for the high number of confessions may prove to be one of its main contributions to the reconciliation process. Nevertheless, despite the desire for confessions, a confession in itself is not sacred and neither is it a guarantee of reconciliation. Only when a confession is complete, sincere and genuine does it have a chance. For this reason, it is time to shift attention from the quantity of confessions to their quality. This could enhance the positive influence of gacaca on the reconciliation process considerably.

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<sup>10</sup> De Jonge, *report III*, 6; De Jonge, *La procédure d’aveux. Rapport IV*, 4; De Jonge, *Rapport V*, 8-9; and African Rights, *L’aveu de Génocide*, 7.

<sup>11</sup> Michel, interviewed in Gikongoro Central Prison, 18 February 2003.

## Gacaca versus forgiveness

Perhaps the most questionable and certainly the most difficult element of the reconciliation process is forgiveness by the victim. At a recent international conference on reconciliation in Stockholm, experts were highly sceptical about the possibility of forgiving acts of atrocity. According to Ludvig Igra, a Swedish psychoanalyst, it is impossible to forgive some deeds. In his opinion, forgiveness comes close to magical thinking and the inclusion of forgiveness in a reconciliation process risks turning the process into an empty ritual in which the perpetrator confesses on condition that he or she is forgiven.<sup>12</sup> Though initially I shared Igra's scepticism, the majority of my interviewees, regardless of the group they belonged to, considered forgiveness as a necessary component of reconciliation.<sup>13</sup> Although it is understandably difficult for genocide survivors to forgive former executioners, it is paradoxically in the extreme case of Rwanda highly important that forgiveness takes place. After all, the survivors and the perpetrators will have to live next to each other again one day.

But how must we understand forgiveness? Does it mean that the victims put all resentment behind them? Does it mean that the victim and perpetrator have to become close friends? This might be possible after a minor dispute or a petty crime but could this also be the case following atrocities such as those committed during the Rwandan genocide? Maybe this is indeed a kind of magical thinking, which in reality is reserved only for some highly principled individuals like Nelson Mandela. For this reason, Andrew Rigby of the Centre of the Study of Forgiveness and Reconciliation in Coventry employs a more pragmatic view of forgiveness. He understands forgiveness as dealing with the pain from the past in a constructive, future-oriented way:

“Forgiveness involves (...) letting go of the past, letting go of a desire for vengeance. (...) Forgiveness involves a process not of forgetting, but of learning how to live with the past and of creating new memories.”<sup>14</sup>

In my opinion, this reasoning is, in the light of the atrocities of the Rwandan genocide, much more realistic. There are different degrees of forgiveness. For the future of Rwandan society it is not necessary to reach the highest level of forgiveness, where the perpetrator must become the victim's best friend or lover. Nevertheless, some degree of pardon is required to achieve reconciliation. Letting go of the desire for vengeance is an important and realistic first step.

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<sup>12</sup> Ludvig Igra, *Conference on truth, justice and reconciliation in Stockholm, Sweden, 23-24 April 2002, proceedings*, (Stockholm International Forum) 227-228.

<sup>13</sup> See Table 2.2.

<sup>14</sup> Andrew Rigby, *Conference on truth, justice and reconciliation*, 228.

Can gacaca be expected to contribute to forgiveness? Since forgiving the perpetrators is probably the last part of the reconciliation process, the short time-span of this research makes it very difficult to formulate realistic predictions. However, there are both reasons to be concerned as well as those for prudent optimism. Though most survivors, also considering the operation of gacaca, can hardly imagine ever truly pardoning the perpetrators, some degree of forgiveness has already been achieved. Almost all the survivors I spoke to said that they do not wish for vengeance anymore. The guilty must be punished, but the death penalty is not being demanded. As one woman stated:

“You find that they killed innocent babies. However, we would not wish them to be killed as they did with ours. To revenge could not be good because if we did that, Rwanda would become a desert.”<sup>15</sup>

Another reason for being positive is that there is a lot of public attention and appreciation for the idea of forgiveness. As an element of the campaign of promoting and idealising confessions and requests for forgiveness, there is also a focus on forgiving those who confess. In the official discourse, to pardon a perpetrator is presented as a patriotic act that contributes to the desired unity and reconciliation of Rwandans. President Kagame himself has explained several times in the media that he is willing to forgive the wrongdoers of 1994 and urges all Rwandans to do the same.<sup>16</sup> On the one hand, this discourse has positive results. Most interviewees, including the survivors, saw the act of pardon as very positive and acknowledged its importance for the future of Rwanda. Some survivors also indicated that it would give them self-respect and dignity to forgive, in the sense that it is a sign of moral superiority over the demons of the past. This constructive atmosphere might in the long run be fruitful. On the other hand, the discourse on forgiveness also places survivors of the genocide in a difficult situation. As a consequence of the propagation by the authorities, forgiving is in the communities easily turned from a desirable act into something that it is compulsory to do. In a law-abiding society like Rwanda, not following government policy is seen as a sin. Accordingly, some Hutu have even come to the conclusion that survivors who refused to pardon a confessor should be punished or replace the confessor in prison. However, forgiveness can neither be imposed nor rushed, but can only be a voluntary act by an individual and any attempt to enforce it by policymakers or society as a whole will only be counterproductive.<sup>17</sup>

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<sup>15</sup> Priscille, interviewed in Nyamigina, 1 February 2003.

<sup>16</sup> Though I have not heard the president make these statements myself, several people told me that the president has making this plea on the radio.

<sup>17</sup> Edward Newman, “‘Transitional Justice’: The impact of transnational norms and the UN”, in Edward Newman ed., *Recovering from civil conflict: reconciliation, peace and development* (August 2002)

Forgiveness is not easily achieved but it is something that must be striven for. Although the main precondition for forgiveness is a sincere and regretful confession by the perpetrator, a confession alone will not be sufficient. Other elements like truth, acknowledgement, compensation and justice are still necessary and the quest for forgiveness should not be confused with amnesty. Justice is still needed. On this issue, gacaca offers a strong solution. With its promise of reconciliation and a reduction of sentence for those who confess, gacaca has successfully encouraged many prisoners to confess, without ignoring the need to nevertheless punish the criminals. Unfortunately, because most prisoners have spent so much time in remand, confessing can almost equal an immediate release. Hence, the survivors often consider gacaca's guilty-plea procedure as a kind of covered amnesty, thereby forgetting that the detainees have already served years of prison time. In my view, the survivors should receive more explicit explanations that the release of detainees who have confessed is not an amnesty but that since they have spent years in prison, it is a pragmatic balance between justice and the start of forgiveness.

The first and most important step in the quest for forgiveness is the confession by the perpetrator. It is gacaca that has prompted a large number of prisoners to confess and gacaca will be the main forum where suspects present their confessions and ask for pardon. Hence, the events in gacaca will decide for a large part if forgiveness is possible. Although in this respect the high number of confessions is promising, quality is still lacking. As said earlier, confessions are often presented without any tinge of regret or acknowledgment of the victim's suffering and their truthfulness is often doubtful. In the eyes of the survivors, these kinds of confessions are no more than acts of opportunism and self-interest that cannot be rewarded with forgiveness. If the pattern of presentation and the treatment of confessions as I observed them during fieldwork continue, forgiveness will be elusive. Nevertheless, since heartfelt confessions proved to lead to good results, more attention to the quality of future confessions may eventually yield rich rewards.

## Gacaca versus uncovering the truth

Uncovering the past is generally accepted to be an essential step in the reconciliation process. Without a consensual examination of the violations experienced on all sides, mutual acceptance remains elusive and historical

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31-50, there 36; Ervin Staub, *Conference on truth, justice and reconciliation*, 226; and Assefa, 'The meaning of reconciliation', 42.

amnesia will prevail.<sup>18</sup> This historical amnesia may very well become the reason for extremists to deny or disguise the past and use it as fuel for renewed hostilities. For victims, knowledge but also an understanding of the events that caused their pain is a precondition for closure.<sup>19</sup> In addition, knowing who is guilty also means that one can distinguish them from those who have done nothing wrong. Such knowledge could appease relations between survivors and the rest of the population. For these reasons, in many preceding quests for national reconciliation in other countries, uncovering the truth has usually been a central element of proceedings.<sup>20</sup> Among interviewees as well as in Rwandan government circles, uncovering the truth is considered to be one of the key elements in achieving reconciliation.

One should however be careful not to adopt idealistic expectations of uncovering the truth. There is not, for instance, one single truth because different people have different perceptions of events that took place in the past. As a consequence, the truth cannot simply be found, but is something that must be negotiated between the different parties. This final version of the truth must be negotiated in such a way that all players see their own and the other's role well represented and that they feel that their pain has been acknowledged. In addition, there should be room to develop a mutual understanding of the other's behaviour during the conflict.

One important element when searching for the truth is that the victims are granted the opportunity to tell their story. They need to be able to express their grievances and have them acknowledged.<sup>21</sup> On the basis of my observations in Gatovu and Vumwe, I have to conclude that gacaca indeed offers a great opportunity for survivors to expose their version of the truth. Gacaca is an open forum in which every individual can participate as actively as he or she wants. The survivors of both communities requested the word frequently, and no one prevented them from speaking. Whether telling their version of the story is accompanied by an acknowledgement of the suffering is a different question, but the fact is that gacaca offers the survivors an unprecedented opportunity to tell their stories. They can do so in their own environment where they feel most at ease and they do not face the expense of travelling.

Historically, gacaca seems more capable than any other existing justice system of achieving a consensus about the truth. As an open and informal forum, the

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<sup>18</sup> IDEA, *Reconciliation after violent conflict*, 168; Kumar, *promoting reconciliation*, 3.

<sup>19</sup> Kumar, *promoting reconciliation*, 13; Igra, *addressing the conference on truth, justice and reconciliation in Stockholm*, 227.

<sup>20</sup> See for instance the high number of *truth* and reconciliation commissions that have functioned in the last decades all over the world.

<sup>21</sup> Montville, 'Justice and the burdens of history', 134; Igra, *Conference on truth, justice and reconciliation*, 227.

ancient gacaca brought together families in conflict and under the leadership of the old men, the participants talked until a mutual understanding of the problem had been achieved and a feasible solution proposed. Though of course the traditional gacaca could not always solve problems, the fact that the parties cooperated and worked towards a solution that was in both their interests was one of the keys to success. Herein lies the vital role of the old men, who were chiefly mediators and not judges. They facilitated the process of negotiating the final version of the truth, thereby achieving reconciliation.

Although the new gacaca has adopted some of the merits of its predecessor, the course of the proceedings in Gatovu and Vumwe shows that it is largely failing to achieve the same results. In government circles it is argued that by bringing the justice process to the communities where the crimes took place, as was the case in the old gacaca, discovering the truth would be facilitated. In reality, however, social relations and opposing interests within the community restrain the vast majority of people from uncovering the truth as they witnessed it. As we saw in Chapter Six, a person's social position in relation to the genocide and the interests deriving from this turned out to be the determining factor in people's behaviour during gacaca. As a consequence, it is almost exclusively the survivors who accuse suspects and deliver incriminating testimonies against them. The Hutu population, in contrast, either refrained from talking or defended the suspects. In Gatovu, the defence of the suspects resulted in open condemnation and verbally attacks on the survivors.

The survivors and the Hutu population are cultivating opposite versions of the truth, and it is not likely that these versions will be reconciled in gacaca. As a solution, the authorities have put their bets for uncovering the truth on the high number of suspects that confess. They know what has happened and also have an interest in speaking about it. However, they do not necessarily have an interest in telling the truth. In gacaca, it appeared that the majority of their testimonies are not seen to be sincere, but contain lies and half-truths. Though a part of the truth will be revealed if one relies on the testimonies of the confessors, a lot of the events will remain shrouded in mystery and the survivors will keep on wondering what happened to their relatives and loved ones. With the present system, the same goes for the relatives of victims of war crimes committed by the RPF or crimes committed out of revenge. This era is a part of the truth.

In the way gacaca functions in Gatovu and Vumwe, the chances are remote that it will lead to agreement about the truth. Only in the rare case of a suspect confessing and providing a full and sincere testimony can a compromise about the true enrolment of the event be reached. While establishing the truth will be difficult, mutual acknowledgement of the pain caused by the genocide is even more elusive. On the contrary, gacaca leads to tensions and arguments. The

survivors, and any other individual who dares to accuse suspects, instead of harvesting empathy and acknowledgment, suffers social consequences for their behaviour in gacaca. Rather than coming closer to each other by listening to the different stories, there are cleavages in gacaca that are becoming only more obvious.

Considering the combination of the severity of the genocide, the problems of its aftermath, the fact that the different population groups are living together in society, and the devastating consequences of being convicted by a gacaca tribunal, it is not surprising that gacaca leads to as much tension as it does, especially in Gatovu. If this had been predictable, could it also have been preventable? Partly not. Gacaca simply deals with matters that are too serious and with consequences that are too drastic to function smoothly. On the other hand, the way gacaca is designed does not help prevent or alleviate these tensions either. Whereas in the old gacaca the judges performed a mediating role that was aimed at bringing conflicting parties together, this has not been copied in the new system. The modern *inyangamugayo* limit themselves to interrogating the suspects and persuading the General Assembly to provide information with the aim of finding facts. The idea that the truth might not be found but must be negotiated or mediated is not granted a place in gacaca. While opposing versions of the past collide in gacaca instead of working towards some sort of compromise, the solution that is being sought in gacaca is to adopt one version and reject the other. As a consequence, survivors do not feel that they are being taken seriously or acknowledged, and the Hutu feel that they are all being treated as murderers.

In addition, the actions of the *inyangamugayo* do not contribute to mutual understanding and recognition. There is no place for questions that could contribute to such an understanding and the questions asked are limited to trying to establish guilt or innocence. There is neither time for understanding explanations of criminal behaviour nor for positive actions by Hutu who saved Tutsi by hiding them or helping them to flee. This is also a part of the truth. For reconciliation and truth, people should come together in gacaca in a way that goes beyond establishing guilt or innocence, in a way that will allow them to reach a consensus about what happened and cooperate to solve the problems that exist as a result of these events. This would mean that the *inyangamugayo*, besides being judges, should also play the role of mediator. This is what gacaca was about traditionally and what it can potentially achieve today. In my opinion, not using these merits of gacaca's traditional predecessor would be a missed opportunity.

These proposed changes do not contribute to establishing guilt or innocence in a direct sense. But hasn't gacaca been introduced to go beyond this narrow

conception of justice? Gacaca's intended surplus value is to offer more than the Western type of justice can offer in the sense of reconciliation. In order to fulfil this promise, the role of the *inyangamugayo* must be expanded so that their work can result in a more constructive contribution in uncovering the truth and achieving reconciliation. The *inyangamugayo*, or at least the presidents who chair the meetings, would need a lot of additional training to approach the achievements of their predecessors. Although it will take time and money to enable them to adopt a more reconciliation-oriented approach, since gacaca is still in its pilot phase, there is still time to do so and the end result could be rewarding.

### Gacaca versus justice

Justice is invariably a key issue in post-conflict situations, but it is often neglected in the interest of short-term stability or self-protection by resigning elites. How societies deal with the issue of justice is highly dependent on the way power has changed hands. When former elites abstain from power through compromise, as happened in countries like South Africa and Chile, they are likely to negotiate an amnesty in exchange for a smooth transfer of power. When a regime is overthrown, as in Rwanda, the new rulers have more freedom in deciding how to deal with the past in a legal sense.<sup>22</sup> Since the former regime was largely defeated and because the Rwandan government sees the "culture of impunity" as one of the main causes of the genocide, it has chosen to prosecute all those who committed crimes directly related to the genocide.

Especially in view of the survivors of the genocide, this is a good and necessary decision in light of the reconciliation process. To settle the problems of the past, the crimes committed during the genocide need to be prosecuted. However, for all Rwandans to perceive that justice is being done, more is needed than just punishing the murderers. Firstly, besides this retributive aspect of justice, survivors also demand restoration in the form of compensation for their losses. Secondly, according to many Hutu, the crimes committed by the government's own forces in the process of stopping the genocide and thereafter should have a place in the reconciliation debate as well. Also for the victims of these war crimes, as well as the victims of cases of more individual violence, there must be justice. Finally, the Hutu are also demanding justice for all those who have been detained innocently and without trial for many years. From the

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<sup>22</sup> For discussion on constraints and possibilities of transitional justice, see Luc Huyse, 'Justice after transition: on the choices of successor elites make in dealing with the past', in A.J. Jongman (ed.), *Contemporary genocides: causes, cases, consequences* (PIOOM 1996) 187-214; Newman, 'Transitional justice'.

Hutu perception of justice, the thousands of innocent prisoners, who are often important breadwinners, need to be released. The following section discusses how gacaca influences the different groups' perceptions as to whether justice is being delivered.

### *Punishment*

Soon after the RPF took over power, it became clear that the massacres would now be followed up through the justice system. Since the end of the colonial era, political unrest had always been channelled as ethnic violence against the Tutsi minority. Though the earlier outbursts of violence were not as all embracing as the 1994 genocide, according to the Rwandan authorities, the general acceptance of violence against Tutsi has created a culture of impunity. To prevent future violence, this culture of impunity must be banned once and for all and the way to do so is to bring every suspect before a tribunal and punish anyone found guilty. The prosecution of crimes would additionally help to rebuild the moral fabric of society, regain credibility and legitimacy of state institutions and restore the dignity of victims.<sup>23</sup>

Also from a reconciliatory perspective it would be desirable to punish individual wrongdoers. Though foreign experiences with truth and reconciliation commissions, which often grant amnesty in exchange for confessions, argue the opposite, in Rwanda it looks as if it is indeed necessary to prosecute individual criminal acts. In the first place, punishing offenders is required due to the specific character of the genocide in Rwanda. Although the genocide was planned and prepared at the highest political levels, its execution on the ground was often characterised by such horrific brutality that it is not sufficient to only punish the brains behind the genocide and keep the executioners out of range. Another characteristic of the genocide in Rwanda is that the perpetrators and victims lived in the same communities. The atrocities were generally not committed by unknown soldiers but by the victim's neighbours and colleagues. For survivors, a general amnesty would be both unacceptable and terrifying because it would mean that they would have to live next door to the murderers of their family, knowing that they have not been punished.

Secondly, retribution is a necessary element of reconciliation because survivors are demanding it. As mentioned earlier, what is significant for reconciliation is that the most important wishes of the different players are fulfilled and, in this case, the delivery of some sort of retributive justice is one of the survivors' main requests. While punishing criminals would give them some

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<sup>23</sup> Newman, 'Transitional justice', 34-35.

satisfaction and could lead to some sense of closure, the failure to do so could very well provoke them to withdraw from the whole reconciliation process.

Thirdly, by prosecuting individual criminal acts, one can fight the existing negative stereotypes of (all) Hutu being murderers. By holding individuals accountable, it is not so much a group anymore who committed the genocide but the criminals become a numbers of individuals. This insight can help normalise relations between the survivors and the rest of the population. In this respect, it would be fruitful to also throw light on positive acts by individuals who went against the genocide rhetoric and saved people who were chased by the *interahamwe*.<sup>24</sup> During my fieldwork, I came across a number of examples of Hutu who did not only refuse to take part in the genocide but were also brave enough to hide Tutsi in their houses or help them to flee. These acts could easily have led to their own deaths as well. With the intention of promoting reconciliation between Hutu and Tutsi, these examples can be used as role models of how Hutu and Tutsi (or Rwandans in general) could treat each other. The frequent sensitisation sessions are good platforms for this discourse.

So, when retribution for the crimes of genocide is needed, is it likely that gacaca can deliver this? Today, months after the start of its pilot phase and probably some years before the actual verdicts are delivered, it is far too early to be certain. No gacaca tribunal has yet pronounced a judgement, and it is such actions that will be the proof of the pudding. The only certainty though is that no matter how gacaca functions, it is more likely to fulfil the need for retribution than any alternative. While a large-scale amnesty is not an option, continuing with the regular justice system would mean that most of the more than 100,000 detainees would remain in custody without trial for the rest of their lives, without the survivors ever seeing their relatives' murderers punished. In this respect, gacaca is the best, and only, choice. The determining factor of gacaca's success in delivering justice will be the popular perception of it as either a fair or biased process. In this light, the attitude of the presidents of the *inyangamugayo* was constructive. Both men tried to stand above the parties, refrained from any biased expressions, and operated as independent interrogators and discussion leaders. If all *inyangamugayo* can perform like the presidents of the courts in Vumwe and Gatovu, gacaca will, regarding impartiality at least, not be inferior to the regular justice system. However, although in Vumwe the president's work was respected, in Gatovu, where opposite interests collided heavily and extremism rose on both sides, this neutrality was now and then confused with choosing the side of the rivals.

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<sup>24</sup> De Jonge also makes this argument in *Report III*, pp. 27-32, where he presents an example of a blacksmith who said "no" to the genocide and saved a number of his Tutsi neighbours.

In Gatovu and Vumwe, it will probably not be the attitude of the *inyangamugayo* that will hinder the delivery of justice. What is questionable, however, is if the behaviour of the different population groups will contribute to the punishment of the guilty. In gacaca, people's actions are inspired by defending their own personal and group interests and not by the desire to bring others to justice. Because the different interests conflict, opinions about the guilt and innocence of suspects are determined by group membership. Since the *inyangamugayo* do not have instruments to reconcile opposing group interests, any verdict will please one group and not the other. As a consequence, there will always be at least one group that claims that justice is not being done. If a suspect is found guilty, the judges meet the survivor's demand for retribution, but fail to fulfil the Hutus' call for the release of innocent prisoners. If the suspect is judged innocent, it will be the other way around. Consensus is not a realistic outcome and, as such, gacaca is caught in a catch-22 situation. Without the mechanisms required to bring the opposing groups together, as described in the previous section, gacaca is not likely to please everyone.

#### *Reciprocity of justice*

Conflicts are always complicated. Hence, the portrayal of one group as the victim and the other as the perpetrator often presents a false picture of reality. A neutral position is possible but the roles of victim and perpetrator can also be combined in one person. For the delivery of justice to have a positive impact on the reconciliation process, it is necessary for crimes committed by both sides to be addressed.<sup>25</sup> There needs to be reciprocity of justice. Yet, the gravity of the genocide tempts many to portray the Tutsi as the only victims and the Hutu as the only perpetrators. As a consequence, although ethnicity has officially been abandoned, thinking about justice and reconciliation is in Rwanda almost exclusively based on the victimised Tutsi and criminal Hutu. This is, however, a misrepresentation of reality. On the one hand, many Hutu refused to take up arms in 1994 against their neighbours and some even actively resisted the genocide by helping Tutsi to survive. Increased attention for these positive role models could help facilitate reconciliation in Rwanda. On the other hand, there are also many Hutu who have been victimised. After the genocide, many Hutu fell victim to human-rights violations by the RPF and police inside and outside Rwanda, or were killed in acts of individual violence that were inspired by revenge.

Internationally, it is recognised that although these acts are separate from the genocide, they are an integral part of the violence that has divided Rwanda so deeply. Also these events present a threat to the future of Rwandan society and, if

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<sup>25</sup> Estrada-Hollenbeck, 'The attainment of justice through restoration', 72; Lambourne, 'Justice and reconciliation', 324.

they are not dealt with adequately, they will create serious problems.<sup>26</sup> If these victims do not see justice being done, this may fuel hatred and feelings of revenge. In addition, the culture of impunity will not be eradicated if these crimes are not prosecuted. One prisoner reported:

“There has been genocide against the Hutu after the one against the Tutsi. The genocide against the Hutu occurred in Congo. It is where all our people were killed. Others were killed at Kibeho [in the province of Gikongoro, during the closure of the refugee camp]. So, you see that they have to be judged as we are being judged too. If not, there will be no peace in our country. There cannot be peace because they favour one group and then mistreat the other one.”<sup>27</sup>

Although the province of Gikongoro was spared most of this second cycle of violence, here too it is the main issue on people’s minds. For a number of my interviewees, reconciliation will only be possible when crimes against the Hutu are equally acknowledged and prosecuted. If there is no justice here, reconciliation has nothing to offer them and they in turn will not contribute personally to the process. Equally, some Hutu asked what advantage gacaca had for them if they were not allowed to talk about their victims. With this in mind, the passivity of large sectors of the population in gacaca is even more understandable.

It is important to bear in mind that reconciliation is a two-way process that depends on the voluntary participation of all parties. As a consequence, withdrawal by one party automatically leads to the death of the process as a whole. In principle, gacaca could offer an opportunity to deal with the legacy of the post-genocide period as well. The population gathers every week to talk about the members of their community that died in 1994. So why not discuss the Hutu victims as well? The current authorities, conversely, keep these acts out of the reconciliation debate, arguing that they were only isolated and small-scale events that do not deserve a place in the judicial closing of the genocide. Anyone who argues the opposite is accused of equating the misdeeds against the Hutu with genocide. I once asked the director of communication of the Gacaca Department of the Supreme Court in Kigali why the misdeeds that were committed after the genocide were not being prosecuted in gacaca. He responded:

“Because they were not acts of genocide, but acts to stop the genocide. (...) Anyone who brings up this kind of argument is being sympathetic to the genocide. You cannot say that those who stopped Hitler are equally committing holocaust. The only thing is that in a war situation, unfortunate accidents happen. When you shoot a bullet, it is the whole environment that can suffer. But innocent people were not a target. So if you are claiming

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<sup>26</sup> Lambourne, ‘Justice and reconciliation’, 324; Human Rights Watch, *Rwanda: deliver justice for victims on both sides*; Amnesty International, *Rwanda, reports of killings and abductions*; and Igra, *Conference on truth, justice and reconciliation*, 227.

<sup>27</sup> Richard, interviewed in Gikongoro Central Prison, 20 January 2003.

that the state should repair your damage, you are not doing the right thing because you were not a target of the genocide. These people only say that because they want compensation, not because they have lost people!”<sup>28</sup>

It would indeed be nonsense to describe the human-rights violations by the RPF and the crimes committed in revenge during the genocide. However, things did happen and for the victims and their relatives these acts caused a great deal of suffering and, therefore, deserve to be followed up legally. For reconciliation, reciprocity of justice is a necessity. In Rwanda, however, the content of the reconciliation process is not the result of an open debate; the government has the monopoly to decide what is included and what is excluded. Sadly, the government made the decision that crimes against the Hutu are to be kept out of gacaca, as well as the justice and reconciliation process as a whole. As long as the sufferings of the Hutu are denied a place in the delivery of justice, reconciliation will remain an illusion: no matter how strong gacaca is, it will not truly reconcile the people of Rwanda.

#### *Release of innocent prisoners*

One day, when I and about 20 others were packed like sardines in a minibus taxi that transported us to Gikongoro town, a man asked me what had brought me to Rwanda. When I told him that I was in his country to do research on gacaca, his eyes twinkled and he said:

“Ah, gacaca, that is very good. Gacaca will liberate all our prisoners, so that we will have reconciliation.”

This man expressed the hope that is shared by many Hutu that another of their grievances, namely the prisoner problem, will finally be addressed. In the first years after the end of the genocide, more than 100,000 individuals were arrested. This happened very chaotically, without the chance to verify accusations. Usually, the pointing of a finger by a survivor was sufficient to lock up a person indefinitely and this situation was widely used to settle old scores that had nothing to do with the genocide. As a consequence, an unknown number of innocent people ended up behind bars. The combination of this enormous case-load of suspects with the ravaged justice system has caused a situation that can best be characterised as a ticking time-bomb of social discontent that must be properly dealt with.

The Rwandan authorities have recognised this problem and it was the immediate reason to design gacaca. It is shaped in such a way that its effect on this issue will be maximised. And indeed, for innocent prisoners and their families gacaca offers hope that their incarceration will be over relatively soon.

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<sup>28</sup> Charles Kayitera, director of communication of the Gacaca Department of the High Court of Justice in Kigali, interviewed in Kigali, 17 March 2003.

With the regular justice system, most prisoners would have died before it had been their turn to stand trial, but thanks to gacaca, their right to a trial within a reasonable time-span is finally likely to be honoured. However, miracles should not be expected. The lay judges cannot be expected to always make the right judgement, especially if the population refuses to cooperate and if the survivors are only interested in hearing guilty verdicts. Some innocent people will without doubt stay in or go to prison, and some guilty people will get off scot-free. Yet generally, gacaca can be expected to make a meaningful contribution to reconciliation.

The hope of a quick release of innocent prisoners should, however, not be confused with the hope of empty jails. Alongside liberating detainees, gacaca also has the power to imprison murderers who have not yet been arrested. Detainees that have confessed have so far mentioned 250,000 other individuals as accomplices.<sup>29</sup> If all, or even some of them, are found guilty, Rwanda will be saddled up with another terrible dilemma.

### *Compensation*

“Up to now I told you that the sorrow I have in my heart will not easily go away. And really, I told you that, I cannot forgive and forget unless the government gives me something to eat and live off. This is because it is the government that made me a widow.”<sup>30</sup>

The previous three components of justice all had to do with the retributive model of justice that aims at establishing individual guilt and innocence, and holding the guilty accountable for their deeds. When aiming for reconciliation, retribution is not sufficient. Recent literature has paid much attention to restorative justice that focuses more explicitly on rebuilding relations. One of the key concepts of restorative justice is compensation for the victims. For the survivors in my interviews, receiving a form of compensation is a necessary element of the reconciliation process. In the first place, this could facilitate living with the consequences of the war. Many survivors have lost everything and suffer serious physical and mental problems, to the extent that they have become seriously impoverished. A substantial compensation that would increase their standard of living would ease their suffering and help them to cope with the past and the future. Secondly, compensation serves a symbolic function by acknowledging what has been done to them. It shows that the provider of the compensation is serious about helping them to accept the past and move on to a better future. This can be encouraging.

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<sup>29</sup> Figures cited by Antoine Mugusera, representative of IBUKA on a communication day on gacaca in Kigali, 14 February 2003; De Jonge, *Rapport V*, 12; and De Jonge, *La procédure d'aveux. Rapport IV*, 11.

<sup>30</sup> Eugénie, talking about necessary elements of reconciliation, interviewed in Gatovu, 3 February 2003.

What can be expected of gacaca with respect to this restorative element of justice? Traditionally, compensating the injured party was the key to arriving at the end-goal of gacaca: reconciliation and the restoration of relationships. In the new gacaca, this principle also has a place. Gacaca's fifth meeting is dedicated to establishing a full account of the losses per victimised household. These losses, which can include the loss of family members, material possessions and injuries, are written on a form that is called *Fiche Parties Civiles*.<sup>31</sup> In principle, the survivors will receive compensation on the basis of these forms. However, although gacaca started to operate in June 2002, at the time of writing, arrangements to organise compensation for victims have yet to be concluded. Even the law that authorises compensation has not yet been passed in parliament.<sup>32</sup> This negligence has meant that many survivors have lost faith in such an arrangement ever taking place. When compensation arrangements have been made in a satisfactory manner, Rwanda can take an important step on the road to reconciliation. Whether this happens depends on a combination of political will and the financial room to move.

#### *Concluding thoughts about gacaca and the concept of justice*

In recent years, there have been debates about the relationship between justice and reconciliation. Some argue that reconciliation is too often used as a sop for victimised populations whose right for justice is being denied. In the view of others, this reasoning implicates a false dichotomy. While they agree that after a period of serious war crimes, justice should indeed take place, it is argued that justice should not be separated from reconciliation but treated as a core element in this process.<sup>33</sup> Whereas the latter seems to have won the debate, discussion is now focusing on what kind of justice is needed for reconciliation. In this respect it is often stated that the Western 'retributive justice' system is inappropriate and that 'restorative justice' fits the needs for reconciliation better. The problem with the retributive model is that it focuses solely on establishing individual guilt and punishing criminals but neglects to attempt to reconstruct relationships and restore harmony in the community. The restorative model, instead of inflicting punishments, lays emphasis on restoring relationships between conflicting parties through mediation, mutual acknowledgment of fault and compensation for the offended.

Although the virtues of restorative justice systems are definitely needed in Rwanda, in my opinion these kinds of justice systems are hailed too easily as the

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<sup>31</sup> Republic of Rwanda, *Manuel explicatif*, 64-66.

<sup>32</sup> De Jonge, *Rapport V*, 13-16; Rombouts, *Réparation pour les victimes au Rwanda?*

<sup>33</sup> See for this statement: IDEA, *Reconciliation after violent conflict*, 14; Assefa, 'The meaning of reconciliation', 44; Lambourne, 'Justice and reconciliation', 315; and Montville, 'Justice and the burdens of history', 129.

best solution for reconciliation. Another problem is that in restorative models, punishments are unwanted. Considering Rwanda's history of impunity and the survivors' quest for punishment for criminals, it would be unwise to ignore retribution. To pass over the issue of punishment is more likely to hinder than help the reconciliation process. In my opinion, instead of singling out one approach, it would be better to opt for a balanced approach between retribution and restoration.

It is exactly this balance that *gacaca* is officially said to offer. The combination of the reconciliatory incentive of the old *gacaca*, with added retributive aspects, is supposed to achieve truth, justice, the end of impunity, unity and reconciliation. However, we have seen that the practice of the new *gacaca* is entirely different from the theory of the tradition. Instead of bringing together the conflicting parties, they are being driven further apart. Rather than harvesting mutual understanding and recognition, *gacaca* discussions are generating anger and disappointment. And, instead of creating harmony in communal life, the new *gacaca* seems to be leading to conflict and social exclusion.

Why is the new *gacaca* unsuccessful in achieving the positive results that traditional justice models are known and respected for? In my opinion, the problem is that, although *gacaca* is indeed a blend between a restorative tradition and a retributive modernity, some of the best ingredients of the old *gacaca* have not been added into the new one. Though the location of the court sessions, their accessible character and the integration of the judges in the community remind one of *gacaca*'s predecessor, the way the proceedings are being organised is alien. The new *gacaca* emphasises solely the establishment of either the guilt or innocence of genocide suspects. This is a very important task but the problem is that it is not combined with the restorative or reconciliatory mechanisms that were prevalent in the old *gacaca*. Firstly, the new *gacaca* system with its *inyangamugayo* lacks mediating tasks that could bring both sides closer and ease emerging conflicts that result from accusations of genocide. Secondly, the judges must try to uncover the facts but do not have the duty of breeding a mutual understanding of each other's behaviour in the past and present. Thirdly, they do not have any role in rebuilding trust between former enemies. Fourthly, though *gacaca* aims to uncover the truth of the genocide, this is not followed by a process of arousing empathy for and acknowledgment of the victims' suffering. And, finally, though traditionally *gacaca* had an eye for the complaints of both parties, the new *gacaca* deals with only one side of the story.

## Conclusion

Gacaca is Rwanda's revolutionary answer to the question of how to deal with issues of justice and social rehabilitation in the aftermath of violent conflict. As an approach, gacaca shows courage, daring and originality on the part of the Rwandan government. By dropping conventional and often unsuccessful imported policies in dealing with the legacy of civil war and adopting a strategy that is based on its own historical and cultural values, Rwanda has set a new standard. Gacaca, as a blend between tradition and modernity, takes justice out of the hands of professionals in courtrooms and gives it to the communities that experienced the violence and must live with the consequences. Gacaca offers the people at the grassroots level a mechanism for dealing with this legacy themselves, without much interference from outsiders. In this way, a new chapter in thinking about conflict resolution is being written.

Especially for the African continent, gacaca can provide important lessons, because too many African societies share the problems of civil war and its aftermath. However, these societies also share these informal, accessible and restorative legal traditions that are incorporated in communities and whose main goal is to reconcile conflicting parties. For these reasons, gacaca's relevance goes beyond the borders of this small country. Since gacaca is still in its infancy, scholars in peace and conflict studies should pay close attention to this unique experiment so that both its merits and disadvantages are realised.

Another reason why gacaca deserves close attention is its official and ultimate goal: the reconciliation of the different groups in its war-torn society. The

Rwandan authorities are encouraging gacaca, which emerged as a response to an immediate crisis in the judiciary, as the ultimate method to achieve reconciliation. In recent years, more and more scholars have acknowledged that in the aftermath of violent conflict, especially if this conflict is intra-state, reconciliation is required to break the cycle of violence and create sustainable peace. The majority of the Rwandans who I interviewed showed an awareness of the importance of this concept. In contrast to this consensus, however, there is a gap in knowledge about the concept of reconciliation, both among scholars and among (Rwandan) policymakers. This study hoped to contribute to filling this gap. One important finding is that people's perceptions of reconciliation depend largely on their background and position relative to the conflict. People formulate specific wishes that need to be fulfilled in order to achieve reconciliation. The result is outlined in Figure 2.2, which combines the wishes of the different groups into one concept. This concept of reconciliation only concerns the communities in my fieldwork area and can certainly not be transposed to other post-conflict situations where different backgrounds shape different requirements. However, a universal precondition for reconciliation is that the demands of all groups be acknowledged and find their place in the process. Therefore, in advance of any reconciliation process, it is necessary to make an assessment of the different perceptions of reconciliation on which a balanced strategy can be built. Since reconciliation depends on the voluntary participation of all parties, failure to address the demands of one group may well result in withdrawal from the process by this party. This would mean an early death for reconciliation and the possible rebirth of violence.

Gacaca comes from Rwanda's traditional justice system. How do the traditional and modern forms relate to each other? When one compares the new gacaca with its traditional predecessor, it is mainly the differences that catch the eye. Although the new gacaca retains a participatory and accessible character, the judges are still called *inyangamugayo* and the location of the meetings has not changed, a Rwandan who lived a hundred years ago would find it difficult to recognise these new courts as gacaca. Unlike the tradition, formal state law creates the new gacaca and the course of the meetings is determined by fixed procedures. The coercion of verdicts lies with the state rather than social control and gacaca has become subject to a pyramidal structure that was not known before. Finally, the kinds of cases it deals with have totally changed. In this respect, the way gacaca is introduced presents mostly a continuum of the colonial and post-colonial policies towards traditional justice. Gacaca today reflects the earlier policies that aimed at structuring, formalising, introducing a strict hierarchy and incorporating traditional justice in the state's judicial system. With

gacaca law, extracting the traditional character of traditional justice has reached its conclusion.

Considering the fact that the problems the Rwandan communities are faced with today differ so markedly from those of earlier times, these changes in gacaca are neither bad nor surprising. However, as a result of the combination of anthropological and historical methods in this research, it became apparent that some of the strongest elements of the traditional gacaca have been denied a place in the new system. Traditionally, gacaca was shaped in such a way that the discussions brought the conflicting parties closer to each other in the sense that it fostered mutual understanding. Under the guidance of the traditional *inyangamugayo*, the two parties sought consensus and worked together to find a feasible solution that suited both so that the problem belonged to the past. But in Gatovu and Vumwe, gacaca is largely failing to achieve the positive effects that the traditional system managed. Why is this the case? Gacaca takes the judicial process from the formal courtrooms and puts it in the hands of the ordinary people in the hills, as was also largely the case before colonisation. By doing so, the context in which the judicial process takes place is dramatically changed. One should not underestimate the enormous influence this change of context brings about. Gacaca functions in a community, and in this community people live in a complicated web of relationships that is shaped by the past and determines people's futures. Since these relations are often familial and/or are characterised by mutual dependency, they are extremely important to people and determine for a large part the actions they will take in gacaca. Because testifying in gacaca can have enormous consequences, such as life imprisonment, it has the power to disrupt social networks. It would be naïve to expect people to accept these kinds of effects and decide to always testify truthfully about what they witnessed. Only when a person has a strong interest in doing so will he or she ignore the negative social consequences. If this is not the case, people will, as we have seen in Gatovu and Vumwe, not take the risk.

At one end of the spectrum, the population and most of the accused have no interest in bringing to light the truth and of denouncing the perpetrators of the genocide in gacaca. For them, the truth does not only hurt, but revealing it could have negative consequences too. If a person, or one of his/her relatives, has something to answer for, being open in gacaca means risking putting him/herself and/or the relative in danger of going to prison. Even when such risks are not at stake, accusing people in gacaca can lead to social exclusion. The defence of a person's own ethnic group can still play a role. Because it is almost exclusively crimes against the Tutsi that are at stake in gacaca, some Hutu may reason that for them there is not much to be won. As a consequence, the population in Vumwe and Gatovu remained either passive or fiercely defended the members of

their own group. Only some prisoners who confessed had an interest in speaking in gacaca. However, they do not necessarily have an interest in telling the truth.

At the other end of the spectrum are the survivors of the genocide. They have a strong wish to see the perpetrators of the genocide punished and thus do all it takes to realise this. The survivors attend gacaca unremittingly and do not miss an opportunity to accuse their fellow community members of the most horrific deeds. In Gatovu and Vumwe, a very small number of survivors accounts for more than 90% of the testimonies. However, because their constant condemning of suspects is diametrically opposed to the interests of the groups at the other end of the spectrum, they end up being the ones who are condemned. These opposing interests and actions lead to the paradoxical situation that gacaca, which is traditionally meant as a conflict-resolution mechanism, is now increasing local tensions and conflicts. Though gacaca did not create the differences within the communities, it is bringing them to the surface. Without gacaca, discontent about the other group would probably be smouldering, but in gacaca it is offered a podium where it can be expressed and stoked up.

Is it likely, in the light of this problematic course of proceedings in Gatovu and Vumwe, that gacaca will contribute to reconciliation? Although at such an early stage of both gacaca and the reconciliation process it is too early to draw any definite conclusions, some observations can already be made:

- Gacaca has encouraged a large number of prisoners to confess and request forgiveness. This will generate some degree of forgiveness and help uncover part of the truth.
- For the survivors, gacaca offers an accessible podium to voice their version of the truth.
- On the issue of justice, one can expect gacaca to simultaneously punish more perpetrators and release more innocent prisoners than any other alternative.

In contrast to these positive notes, the course of gacaca also provides reason for pessimism:

- Although a large number of prisoners have confessed, the quality of these confessions leaves a lot to be desired. Most lack regret, acknowledgement and truth.
- If these patterns of confession continue, hope for a high and stable degree of forgiveness will be elusive. It is, therefore, time to shift attention from the quantity of confessions to their quality.
- If testimonies are not truthful, a mutually acceptable version of the truth can probably not be established because the survivors and the population cultivate such opposite versions of the truth that it is not likely that these versions can be reconciled in gacaca.
- The same must be said about justice. Even though gacaca will without doubt punish many perpetrators and release numerous innocent prisoners because opinions about the guilt and innocence of suspects are determined by group membership, any verdict will please one group and offend the other. As a consequence, the equality and adequacy of the judgements will mostly be disputed by one of the groups.
- Gacaca is fully in defiance on the issue of reciprocity of justice. Gacaca only deals with genocide against the Tutsi, while crimes committed against Hutu by the RPF are being ignored. This alone may be enough to prevent gacaca from achieving reconciliation since there is no justice for one group and the culture of impunity is allowed to live on.

- Finally, the question of whether gacaca will fulfil the demand for a restorative kind of justice, in the form of compensation for survivors, remains unanswered because the law that arranges reparation for survivors has not yet passed through parliament and no mechanism to organise this is operational.

By founding the new gacaca on the traditional system that formerly enabled conflicting parties to reconcile, unite and live in harmony, the government anticipated that these merits would be transposed to post-genocide Rwanda. In reality, however, instead of bringing people together, gacaca is exposing and stimulating divisions even further. Furthermore, this situation is seriously hindering the uncovering of the truth and the delivery of justice, two key elements of reconciliation. Does this mean that the tradition has lost its magic? Not necessarily. When taking a close look at gacaca, and comparing it with the old system, one notices a failure to transfer some of the most important merits of the old gacaca into the new system. Those mechanisms in the traditional system that went beyond establishing guilt or innocence but aimed at bringing together the parties through mediation, the breeding of mutual trust and understanding, and the reaching of a consensus are not included in the new gacaca. The failure to include these key ingredients of the old gacaca may well mark the difference between a meagre mix and a revolutionary new taste. Nevertheless, when compared to its alternatives, gacaca should still be judged in a positive light. It is the only feasible and, therefore, the best solution to Rwanda's problems and the legacy of the genocide, even if it is still highly problematic. For a better future, it would be good to include more of the traditional merits than is now the case.