

# **Greater Horn of Africa Peace Building Project**

## **Rwanda Conflict Vulnerability Assessment**

**August 2002**

**(revised October 2002)**

**Management Systems International**  
600 Water Street, SW, Washington, DC 20024 USA

**Team Members:**  
**Willet Weeks, MSI; Sara Rakita, MSI; Michael Brown, Innovative Resources Management; and  
Josephine Munyeli, MSI**

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# Rwanda Conflict Vulnerability Assessment

## INTRODUCTION & DISCLAIMER

During March and April, 2002, a team from Management Systems International under contract to the USAID Regional Economic Development Support Office for East and Southern Africa in Nairobi, conducted a conflict vulnerability assessment (CVA) for USAID/Rwanda.

The team consisted of Willet Weeks (Team Leader), Sara Rakita, Michael Brown, and Josephine Munyeli. The team held extensive interviews with government officials at all levels, members of civil society, international and local NGOs, donor-government representatives, and private citizens at all levels, both in Kigali and in the provinces. The team is most grateful to the many individuals, both Rwandan and foreign, who took the time to meet and share their perceptions, often with remarkable candor and thoughtfulness.

The team operated under a number of constraints, among them time and the availability of specific interlocutors (though response to our requests for interviews was remarkably high). In line with its scope of work (SOW), the study focuses principally on internal matters, and it thus deals only briefly with the all-important regional conflicts and the ways these might potentially interact with Rwanda's internal stability.

Given constraints of time and personnel, the team focused its efforts on several central issues which were seen as having particular potential to cause violence. These were: the dynamics of citizen participation in public affairs; the pending reform of land use and land tenure policy and law; and the community-based process by which those accused of having participated in the 1994 genocide are to be judged. While not encompassing every potential trigger of violence, the team felt that, broadly speaking, these issues were likely to be key elements in ensuring stability or otherwise over the medium term (three to five years) that was the study's framework.

The team's findings and recommendations were presented and discussed with USAID and the US Embassy prior to the drafting of the report. Many additional comments and suggestions have been received following the completion of the first draft, many of which have been incorporated here – many thanks to all who took the trouble to prepare and assemble these. The draft was substantially reworked in October and again in December 2002, and events that have occurred since the team's visit received mention in some cases. Thanks are extended to the USAID Mission, the US Embassy, and REDSO for their consistent and enthusiastic support for all stages of this exercise.

***The analysis and views included in this report are those of the team alone, as is responsibility for any errors. This report should not in any way be construed as reflecting the official position of the U.S. government or of USAID.***

## EXECUTIVE SUMMARY

### *Prospects for Violent Conflict*

1. Rwanda does not face an imminent prospect of internal violent conflict. The Rwandan Patriotic Front (RPF), which holds effective power, is too well organized and its military is too effective for an effective challenge to be organized in the short term. Rwanda is, however, entangled in violent conflicts in the subregion, particularly in the Democratic Republic of the Congo (DRC) and in Burundi.
2. Rwanda is undergoing a tightly managed transition to democracy. The etiology and aftermath of the 1994 genocide remain the central concern of Rwanda's political life, and the categorical imperative of "never again" is the national government's stated organizing principle. The underlying assumption is that Rwanda cannot be considered an ordinary country but must be seen as, in effect, a society in post-traumatic convalescence.
3. The Government of National Unity (GNU) under the leadership of the Rwandan Patriotic Front (RPF) has made a strong commitment to national reconciliation, good governance and administrative reform, and it can claim a number of significant achievements. It has managed to develop and maintain generally constructive relations with the international donor community.
4. Because of the history of genocide, great importance must be attached to the maintenance of peace and stability and the promotion of long-term national reconciliation.
5. It appears the RPF leadership may be seeking to institutionalize the ways in which it has managed political life until now and to extend its exclusive control of the political system beyond the current transitional period. The district elections of 2001 were conducted impeccably in terms of there being high levels of participation and technical processing of the ballots, but were marred upstream by manipulation of the candidate selection process, allowing only persons of established reliability and loyalty to stand.

### *Underlying Issues and Potential Triggers*

6. Serious unresolved issues and potential triggers of violence remain. There is a danger that the GNU's emphasis on government by consensus building and through national mobilization may cause these tensions to fester, while the lack of effective structures for the expression of dissent or for seeking redress of grievances may mean that individuals or groups will ultimately have recourse to armed insurrection or look sympathetically on such an insurrection.
7. The nation faces severe challenges related to population density and to generalized poverty. The political system will be further tested by a series of pending specific events, including:
  - 2002 and onward: Promulgation and implementation of new land use and land tenure policies;
  - 2002 and onward: Implementation of Gacaca, the nationwide community-based procedure for providing justice and closure for the genocide.
  - 2003: End of the formal transitional phase; referendum on a new Constitution, to be followed by Presidential and Parliamentary elections.

8. Rwanda is densely populated, with high levels of poverty and significant potential for conflict over land tenure and land use issues. The GNU is preparing a major overhaul of land policies and legislation.
9. The Rwandan government, through the PSRP, is currently encouraging increased commercialization and “professionalization” of agriculture with greater emphasis on cash crops and export markets. There may not be unanimity on how this will be achieved, i.e. whether through small-holder agriculture or through the promotion of larger scale-holdings. The Land Policy and Land Laws are both ambiguous on whether “consolidation” of all plots less than one hectare will be mandatory and how this will be implemented. Currently there is considerable under or unemployment in rural areas although people are classified on the books as engaged in agriculture. The provision of rural off-farm employment opportunities is key to the success of the development agenda and will be even more so if large numbers of people become landless as a result of the proposed land reforms. Should there be a great deal of land “consolidation”, the perception that large numbers of individuals have been left poor and landless while a small minority prospers could have explosive implications in the post-genocidal context.
10. Faced with an overload of 120,000 untried cases of persons accused of crimes connected to genocide, the GOR has begun steps to implement a bold, nationwide program, known as Gacaca, to bring justice, truth, and reconciliation to Rwandan society. Gacaca is a modified version of a traditional Rwandan dispute resolution system that will seek to provide closure in the aftermath of the violence. The first trials are likely to begin by the end of 2002, but the process could take years to complete. The ambitions and magnitude of the Gacaca project are unprecedented. It faces daunting logistical, juridical and social challenges that, if unsuccessfully handled, could have destabilizing consequences, at least locally.
11. The team was not able to gather enough reliable data on HIV/AIDS to draw specific inferences about its effects on potential conflict, but prevalence rates are known to be high and the numbers of woman- and child-headed households are known to be increasing. This could exacerbate any underlying instability.

***Principal Recommendations:***

***USAID Programming:***

- Conflict prevention and mitigation should become an organizing principle for Mission programming. The present DG Strategic Objective (SO) could usefully be reformulated (in line with USAID’s global changes) so that, for example, Food for Peace resources and others link closely to conflict issues.
- Ongoing support to civil-society development as posited in current USAID programming is essential, especially given that explicitly political institutional development outside of the RPF-established framework is likely to remain stymied for the short run.
- Agriculture programming should refine its conflict lens – resources should be devoted on a priority basis to working with the GOR to find ways of avoiding the dangers, outlined in Section II, of a rapid and potentially coercive imposition of the proposed land use/tenure reform. The mission may want to encourage the GOR to implement the land

policy on a pilot basis and not pass the law quickly so that monitoring of the impact can be judged first.

- Direct support to the monitoring and to training activities connected with Gacaca should be maintained and expanded.
- Current programs on population and HIV/AIDS are also crucial and should be maintained as central and seen as having significant long-term conflict mitigation implications. Research on demographic trends should be considered so that there can be a better sense of likely numbers with respect to mortality among young adults, of woman- and child-headed households and of other issues likely to affect the dynamics of any potential violent conflict.

***Donor Organizations (bilateral and international):***

- There should be enhanced donor coordination and coordination between donors and the GOR with respect to the potential trigger issues mentioned.
- USAID should increase its involvement in donor coordination with respect to Gacaca, in particular. The process is complex and subject to sudden blockages – donors must maintain week-to-week involvement with the process at all levels and adjust their support activities in function of ongoing feedback.
- Similarly, the reform of land tenure and use requires constant field-based monitoring beyond the scope of any single donor's resources. Donors should encourage the GOR to implement the land reform program on a pilot basis and monitor it closely before moving to nation-wide adoption or passing of new legislation. Donor structures should be put in place to coordinate with the GOR on the gathering and analysis of information about issues such as potential conflicts over land claims between returnees and settled populations. Again, resources should be flexible and at least some should be held in reserve to allow for ad-hoc interventions where circumstances require them to defuse sudden flare-ups of local tensions.

***US Country Team and the International Community:***

- Every effort should be made to ensure that the current excellent relations that generally prevail between the GOR and the international community continue, yet at the same time it will be vital for there to be greater frankness on issues, particularly with respect to Rwanda's military activities in neighboring countries. Recent developments allow for some hope for improvement in both the DRC and Burundi, but these are fragile and subject to last-minute destabilization.
- Plans should be in place for joint démarches with regard to issues such as land tenure/use reforms and Gacaca if and as pitfalls suddenly loom. The GOR would no doubt welcome support of this nature, implying as it does that it is not being left on its own to cope with such complex and potentially disruptive problems.

## Rwanda Conflict Vulnerability Assessment

### I. BACKGROUND

#### A. *The Rwandan Exceptionalism*

##### *“Majority Rule” Democracy in the Context of Genocide*

From whatever perspective one considers it, the Rwandan genocide of 1994 was an event of singular significance in African and world history. Its etiology and aftermath remain the central concern of Rwanda’s political life, and the categorical imperative of “never again” is the national government’s organizing principle. Whether one is considering demographic trends, issues of ownership of or access to land, or even issues of such seeming technocratic straightforwardness as the privatization of state assets or penal code reform, the background of horror and of self-inflicted devastation impinges on the consciousness of all concerned and colors judgements that in other countries would hinge on simple administrative principle or on plain expediency. The genocide has given rise to a series of unique and in many ways unprecedented challenges for which the present government of Rwanda (GOR) and its international partners must devise, fund and implement innovative and inevitably imperfect responses.

The genocide was conceived in the waning days of the government of the late Juvénal Habyarimana, who had taken power by coup d’état in 1973, and it was implemented following his death in a plane crash on 7 April 1994. The entire state and parastatal apparatus of a highly centralized and authoritarian polity were mobilized in the service of the demented project of eliminating the country’s Tutsi minority, along with Hutu deemed to stand in the way of achieving that aim. As many as 800,000 Tutsi and Hutu were slaughtered before the Rwandan Peoples Army (RPA), an insurgency that had been on the verge of joining the government under the recently-devised Arusha accords, was able to seize control of the entire country and bring the killings to an end.

Significantly, the international community largely stood by in horrified inaction. Instead of mobilizing and strengthening the peacekeeping assets that had been on the ground, it decided to withdraw these as the implementation of the carefully-planned genocidal project gained momentum. Subsequent international intervention, both humanitarian and military, was haphazard and reactive, a reality that has had profound effects on the moral and political climate in which Rwanda’s relations with the outside world are conducted today.

The present study is concerned with looking at the prospects for peace and stability in Rwanda, at the potential for violent conflict within Rwandan society, and at ways in which the international community might use its resources to assist in avoiding the latter; it should be obvious that in any such study the notion of violent conflict will take on a very special meaning in the context the 1994 genocide and its aftermath.

In the many interviews the study team held with political and social leaders and with key members of the donor community, an unspoken assumption seemed to underline discussion of the nation’s future: that Rwanda cannot be considered an ordinary country, that it must be considered as, in effect, a society in post-traumatic convalescence. This gives rise to what is referred to here as the “Rwandan exceptionalism” – an assumption that the ordinary rules of nation building and democracy cannot be applied, by the government or by the international community, in the ordinary ways.

The most obvious case in point is the central notion of democratic governance – the notion that a society’s key political issues can be most effectively and equitably dealt with through rule by the majority, and that power can most legitimately be apportioned by an electoral process that hinges on a decision by 50% plus one of all votes cast.

At independence, in 1962, Rwanda had already been through a period of ethnic purges, in which the majority Hutu (then officially estimated at 85% of the population) had revolted against what they had perceived as their subjugation by the élite among the Tutsi minority (officially 15%). Throughout the colonial period, the Germans and then the Belgians (until the sometime in the 1950’s) had systematically supported the Tutsi aristocracy and consolidated its dominance of political and economic life. And though it was far from the case that all Tutsis were aristocrats, the political movements that emerged to take power in the 1950s demanded that the democratic principle of “majority rule” be applied in such a way as to eliminate *all* Tutsi from privilege and power and allow for rule by *rubanda nyamwinshi*– the majority people. This principle, which was aided and comforted by colonial officials and by some foreign religious missionaries, led to a series of massacres and persecutions against the Tutsi that began in 1959 and recurred with some regularity thereafter. Many Tutsi, particularly among the political and economic and political élites, were killed, and many more were driven into exile in neighboring countries. The government that came to power at independence in 1962, which was dominated by the Hutu-power PARMEHUTU party, institutionalized the principle that the majority people hold absolute power. Past hegemony in effect disqualified Tutsis, as a group and as individuals, from holding any significant position within the political system. These principles remained in place following Habyarimana’s seizure of power by military coup in 1973.

This perversion of the basic tenets of democracy – the idea that democratic rule was automatically to be equated with a political monopoly for the ethnic majority – stood at the heart of the Rwandan political system from 1959 until 1994 and was the central ideological foundation upon which the genocidal project was elaborated. This has in turn led to an understandable distrust on the part of those presently in power in the efficacy of unmediated electoral politics as a means of governance.

This report will return to specific ways in which alternative, or buttressing, innovations have been developed to deal with this basic dilemma. But it is vital to stress, from the outset, that Rwanda at this point in its history is in no position to accept unquestioningly the prescriptions for democratic governance that would be put forward by the international community in the case of more “normal” countries, and that in approaching issues of such deep sensitivity as conflict prevention and mitigation in Rwanda today, the international community must be – and indeed to a large extent already is – guided by a pervasive awareness of the limitations and inappropriateness of the generic, prescriptive solutions that it would normally proffer.

With respect to analyzing the potential for violent conflict within Rwandan society and of envisaging ways in which a donor such as USAID might assist in forestalling it, this situation poses a fundamental dilemma: if Rwanda is justifiably entitled to at least a provisional exemption from some of the basic norms of democratic organization, how is it to avoid falling into the trap of tyranny? How, in other words, can a society with Rwanda’s appalling recent history find alternative ways of handling the grievances that inevitably accumulate in a nation of painfully limited resources? These questions will be central to the analysis that follows.



## **B. Governance Structures & Power Realities**

### *Formal Arrangements*

In this analysis of underlying causes and focal points of potential violent conflict in Rwanda, it is important to consider the somewhat unique state structures that have emerged there since 1994, and to understand something of the political realities that underpin them. These are the elements that will be called upon, at least in the short to medium term, to apprehend and deal with underlying causes of potential conflict and to contain or mediate emerging conflicts, including any potential challenges to the state itself.

In the formal sense, the interim governing structures of Rwanda were established under the Arusha accords of 3 August 1993, which provided for a cease-fire in the civil war between the then government of President Habyarimana and the insurgent Rwanda Patriotic Front (RPF). This agreement provided for a transitional, all-party government to be established in Kigali; it was elements within the then government and security structures who were in opposition to the implementation of these accords that organized and unleashed the genocide in April 1994, following the plane crash at Kigali airport which killed Habyarimana and his Burundian counterpart under circumstances which still have not been officially elucidated.

In the swirl of events that ensued, the RPF successfully marched on Kigali and eventually was able to seize effective control of the rest of the country, though not before at least 800,000 Rwandans, primarily Tutsi but also Hutu known to be supportive of peace and reconciliation, had been slaughtered and the social fabric of the country rent. In taking power, the RPF agreed to abide largely by the Arusha accords, with the major reservation that the former ruling party, the *Mouvement révolutionnaire pour le développement* (MRND), and other smaller parties aligned with the former régime be excluded from power. These governing arrangements were formalized in an agreement signed between the RPF and the remaining political parties in November 1994.

While formally creating the multi-party transitional Government of National Unity, it was clear from the beginning that real power would be exercised by the RPF. The Arusha agreements had carefully apportioned ministerial portfolios between the various signatory parties, but the November 1994 protocol provides that, “given that the political parties have been deeply shaken by the systematic liquidation of their memberships...the respective weight of the political parties cannot be that prevailing at the time of the conclusion of the Arusha agreements [and] the government will therefore be made up of personalities selected by the Prime Minister in consultation with and subject to the approval of the President of the Republic in function of their competencies and of their representativity [among] the political forces [as these existed] prior to the outbreak of the genocide and massacres.”<sup>1</sup>

It was widely understood at the time of the Arusha agreements (and has been amply confirmed since) that effective power within the Government of National Unity (GNU) would be exercised by the RPF, with persons from the other parties playing secondary and largely emblematic roles. Seats in the transitional parliament were apportioned to individuals affiliated with the various parties through the Forum on Political Parties, but with the RPF again playing a key role in their selection.

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<sup>1</sup> Ministry of Justice document, “Protocole d'accord du 24 novembre 1994 entre les forces politiques F.P.R., M.D.R., P.D.C., P.D.I., P.S.R. et U.D.P.R. sur la mise en place des institutions nationales.”

### *The RPF*

The underlying reality of political power in Rwanda today is thus that the RPF, the political movement associated with the Rwandan Patriotic Army (RPA), is in effective control of the organs of the state, and the RPA itself stands as the national army. (It has since absorbed former elements of the *Forces armées rwandaises* (FAR), the army of the former government, though its command structures remain firmly in the hands of the original RPA.)

Like a number of similar insurgent movements that have come to power in Africa in recent decades<sup>2</sup>, the RPA/RPF has taken control of the state structures while maintaining direct control over the armed forces and security services and while keeping its internal command structure intact and outside the reach of state itself (albeit with periodic purges of that structure's personnel). The leadership of all these movements emerged from or was affected by the political upheavals of the 1960s, and while all of them have formally abandoned Marxism as a formal economic and social ideology, their structures and methods are consistent with the associated principles of democratic centralism.

In the case of the RPF, this means that key decisions are taken within a narrow central committee within which debates are conducted secretly and about whose inner workings little or nothing is known by outsiders. In keeping with its origins as an insurgency (and in the case of the RPA, reflecting the profound and enduring influence of the Ugandan NRA's methods and practices), the movement then maintains control and influence over events through structures that parallel those of the state, particularly through the various security organs. These structures are present at every level within the national and local governments; they provide swift feedback to the leadership as to what is being thought, said and felt within the community at large.

The core membership of the RPF was initially composed of members of families which had fled to Uganda in the wake of the anti-Tutsi persecutions that began in 1959<sup>3</sup>. The sons and daughters of these families grew up in exile, imbued with a deep sense of injustice, but with little direct experience of how life within Rwanda had evolved in the intervening decades. (Having been educated in Uganda, few of them spoke French, the principal foreign language in official use in Rwanda; as a result, they are often referred to as *Ugandans* or *anglophones*.) In the areas in which they lived in Uganda, they mixed with local populations with whom they often had close family and cultural ties. In the early 1980's there was bloody persecution of Rwandan refugees in Uganda, which impelled many of these young people to rally early to the NRA and participate, often in key roles, in the overthrow of the then Ugandan government and in the establishment and consolidation of the present NRA-led dispensation in that country.

When young men of Rwandan origin organized themselves into the RPF with a view toward entering into insurgency against the Habyarimana régime, they received support and encouragement from the NRA, which provided training and weapons for their initial attack on Rwanda in October 1990.<sup>4</sup> Their background and experience within the NRA were undoubtedly key elements (along with the tight discipline of their central command structures) contributing to their ultimate military victory in Rwanda itself and their subsequent consolidation of power.

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<sup>2</sup> These include the National Resistance Army (NRA), which took power in Uganda in 1986 and within which many of the key commanders of the RPA had previously served while living in exile in Rwanda; the Eritrean People's Liberation Front (EPLF); and the Tigray People's Liberation Front (TPLF), which seized effective power in Ethiopia in May 1991.

<sup>3</sup> The leadership was later broadened to include persons who had been in exile in neighboring countries, as well as Europe and the US, as well as some who had remained in Rwanda; however, the widespread perception is that the "Ugandans" remain its tightly-bonded core.

<sup>4</sup> See Gérard Prunier, "The Rwandan Patriotic Front", in Christopher Clapham, ed., *African Guerrillas*, Oxford: James Currey, 1998.

While ideologically pragmatic and organizationally tightly disciplined, the insurgencies mentioned above are also deeply idealistic. This is certainly true of the RPF/RPA, which attracted support from across the ethnic and political spectrum via its commitment to the principle of disregarding ethnicity in government and public life by, for example, eliminating ethnic categorization from all official documentation – a step that has been widely and justifiably applauded. As a result, many idealistic and politically aware Hutu individuals and groups (who were by definition opponents of the existing order and many of whom were singled out for assassination during the genocide) rallied to the support of the RPF and joined it while it was still in insurgency.<sup>5</sup> While all public life and political party activity must, under current law, be conducted regardless of ethnicity, the special status of the Tutsi as the targets of one of the twentieth century's most clear-cut genocides and their minority status within the population as a whole (the figure of 14-15% is still widely accepted, the numbers of those who have returned from exile substantially equating with the numbers of those who were slaughtered) mean that there continues to be a wholly understandable self-protectiveness within the Tutsi community: the imperative of “never again” continues to operate at many different levels and in many overt and subtle ways.

As a result, it is clear to all that effective power remains for the time being firmly in Tutsi hands, though great pains are taken to ensure that Hutu are placed in positions of apparent authority throughout the government. The RPF continues to act, albeit discreetly, as the arbiter of public life, placing trusted Tutsi figures in key positions if not necessarily in those with the greatest formal power.

This reality is counterbalanced by the RPF's self-image as a vanguard organization keen to seek out and promote commitment, talent and loyalty. One of the universal perceptions on the part of expatriate interlocutors in Rwanda was that the RPF leadership is extraordinarily bright and competent, and there seems to be little doubt that it is seeking to identify and promote those qualities throughout the society. It is clear that, while there is little movement to open up participation in real power at the core levels in the short term, there is a very active and conscious effort ongoing to build a broader base for the future.

A characteristic of the insurgent groups mentioned above, and one that certainly applies to the RPF, is a belief in the efficacy of co-opting and retraining individuals. There is thus great reliance on the virtues of personal transformation based on intense group interactions at every level of society – among the military, students, government officials, prison inmates and so forth (a process known generically as “*ingando*”). These forums present a double opportunity: to try to bring about changes in attitude through group “sensitization” activities along lines that are both idealistic and instrumental, using group dynamics to pressure individuals into transcending counterproductive thought patterns (in other contexts these might have been referred to as counter-revolutionary, but, although it is clear that many of the ideas the RPF seeks to promote are indeed, within the Rwandan context, “revolutionary” in the core meaning of the term, the RPF is careful to avoid the kind of induced hysteria that accompanied, say, the Chinese cultural revolution or to appear to promote undue social disruption), and also to identify and groom likely talent and to spot and keep an eye on those with more obdurately negative attitudes.

#### *Governing by consensus*

In an interview with team members, a highly placed official of the government was categorical about the dilemmas raised by normal democratic practice as applied to the Rwandan context: “just plain democracy is a trap for us: it would inevitably be based on ethnicity. Our system therefore favors dialogue and consensus building instead”.

In discussions with individuals throughout the government and civil society, the importance attached to the achievement of consensus as a core principle of governance in Rwanda was emphasized again and

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<sup>5</sup> Among these was Pasteur Bizimungu, named President of the Republic by the RPF in 1994 and presently in disgrace.

again, particularly with regard to issues of potential conflict (e.g., land allocation as between diaspora returnees and the local farmers who had occupied their former plots for decades). It has become standard in cases where local conflicts threaten to come to a head for officials at all levels to initiate lengthy consultations with the groups concerned, seeking to find common ground and to bring about some kind of resolution.

Reliance on consensus building obviously raises some tough questions: to what extent does an emphasis on dialogue and consensus genuinely resolve the underlying issues in dispute? What are the mechanisms by which consensus is reached and who gets to take part? To what extent is consensus achieved under pressure from political authorities and agreed to with reluctance and perhaps strong reservations by the parties involved? Group dialogue and surface consensus are time-honored tools of conflict resolution throughout Africa and certainly in Rwanda, but these often lead to the imposition of the views of group leaders that silences those who disagree without necessarily defusing underlying tensions and resentments, which may surface at a later time. It is certainly the impression of informed interlocutors in Rwanda that there are cases in which the officially-imposed consensus resolution of contentious issues has been more a matter of surface acquiescence than of genuine agreement, with underlying, often very strongly-felt differences left unresolved.

### ***C. A Track record of successful reforms***

Rebuilding in the wake of a trauma as profound and pervasive as the 1994 genocide would have challenged any society and government. Rwanda faces additional, huge challenges related to high population densities and rapid increase, to what are undoubtedly high levels of HIV prevalence (though accurate figures are hard to come by), depleted soils, depressed international commodity prices, and levels of household poverty.

Under these circumstances, the achievements of the RPF government since taking power are particularly remarkable. These include the following:

- An extended period of relative peace and stability within the country's borders. (The key security challenges derive from Rwanda's involvement in conflict in neighboring countries and from the threat of cross-border incursions: Section IV will return to these.)
- The maintenances of a highly competent, professionalized, and disciplined military which has avoided the kind of petty harassment of the civilian population that is so characteristic of other countries in the region.
- The promotion of high standards of competence and dedication within the civil service. By all accounts and on the basis of the team's own observation, the people at senior levels of government – in the military, in the civilian ministries, in local administration and in the key parastatals – are of extraordinary calibre. (Given the pervasive problem of human capacity in a country that has suffered from genocide and in which former officials are in many cases purged or in prison, these high levels of competence fall off very quickly as one moves down the hierarchy, but the standards that are articulated and enforced at all levels are among the most rigorous in the region.)
- A willingness to tackle core problems head-on. Section II of this report will outline the government's evolving response to the central issues of land use and tenure, while Section III will focus on the extraordinarily imaginative and appropriate instrument of *Gacaca* as the chosen means of tackling the huge body of justice and reconciliation issues remaining in the wake of the genocide. In these and other cases, the approaches may be controversial and legitimate concerns can be formulated with regard to the specifics of some of the options chosen, but the fact remains

that policy issues are approached strategically and imaginatively, qualities that are, to say the least, not universal in the region.

- Other innovations are already in place and proving effective – the rapid decentralization of local government, for example, or the establishment of the National Unity and Reconciliation Commission, a body specifically mandated to deal with issues relating to conflict within the society. Such structural innovations face inevitable difficulties (particularly related to scarce resources), but their inception and the fact that they receive strong and consistent support from government at the policy level reflect genuine courage and imagination.
- Commitment to gender promotion and equality – there is an unusual emphasis on the promotion of women to positions of visibility and real responsibility at all levels of government.

Taken together, these accomplishments represent a profound restructuring of public life in Rwanda, extending well beyond mere good intentions to constitute, after eight years of power, a record of substantial accomplishment. These have been achieved, moreover, in sustained, constructive interaction with the international community. Donor governments have been impressed by the reforms the RPF-led government has achieved to date and feel that in many respects the donor-GOR policy dialogue has been exceptionally responsive and productive. While there are inevitable differences on aspects of the formulation and implementation of economic policy, Rwanda is seen as making progress in these areas far more rapidly and with greater competence and capacity for self-correction than many, if not most, of the states on the continent.

It is in the nature of the present study that we will emphasize some of the inevitable weaknesses and failings of the present political system. As these matters are elaborated below, it will be important to keep this record of successful reform in mind, both because of the importance of many of these institutional innovations (e.g., Gacaca) in their own right and because of the underlying talent and problem solving capacities that they reflect.

#### ***D. Key interest groups and their relation to the new order: Ethnicity vs. other dynamics***

No one can spend any time at all in Rwanda and not be struck by the centrality of ethnicity to everyone's consciousness. The Hutu/Tutsi divide, which was so unfortunately (and at least at first, it seems, artificially) fashioned into ethnic polarization during the colonial period, has been a central feature of Rwandan politics for the past half century, and has shaped every individual's sense of opportunity and entitlement – and indeed at times decided whether they lived or died. While far from being the *only* parameter in determining the course of social relations, it is clear that almost everyone immediately “pegs” almost everyone else in the first instants of an interaction, and that this assessment permeates the subsequent relationship. This does not mean that ethnic difference entails automatic antipathy – many other parameters are more likely to establish sympathy or otherwise between individuals – but in their franker moments Rwandans are quite ready to concede that *consciousness* of ethnicity is always present in a relationship, at least until that relationship evolves into genuine intimacy, and the not-infrequent cases of ethnic ambiguity (for there are many individuals who are difficult to “peg” on first acquaintance, or who appear to others to be one thing when they are in fact another) seem often to entail a distracting unease.

This is true despite the fact that the matter is almost never explicitly discussed. Even during the Habyarimana régime (at least during its heyday in the 1970s and early 1980s), mention of the very words “Hutu” or “Tutsi” was considered socially maladroit and politically dangerous, despite the fact that every

individual was officially classified and that this classification appeared on a person's identity card with all kinds of fateful implications for every official interaction.<sup>6</sup>

Since 1994, discussion of such matters outside the scope of complete privacy and personal trust has become inconceivable. It is official policy that Rwandans are to be referred to exclusively as such, the government in effect banning any mention of the subject of ethnicity in public (outside relatively structured environments such as that of the "ingando"); the implications of raising the topic in the post-genocide environment appear in any case to be too fraught for this to occur naturally.

This said, it is easy, especially for outsiders, to overstate the role of the core Hutu/Tutsi duality in determining the course of events in the practical world. Many other factors are as or more likely to have immediate practical consequences for everyday interactions.

Although Rwanda is a very small country united by a single language and culture, political and social prejudice and rivalry, not infrequently spilling over into actual violent conflict, has been a recurring feature of recent Rwandan history. In the Habyarimana years, such issues were most frequently related to regional and clan loyalties among Hutu groups – Habyarimana and his ruling circle were from the Northwest, and there had been considerable tension between them and other groups, particularly with groups from the Southwest. These tensions were kept under control only by means of fierce repression, including recourse to imprisonment and executions.

Observers in Rwanda today note that for the present, and for the reasons mentioned above, it is the "Ugandan" (i.e., Ugandan-born and educated) core of the RPF that remains in effective political control of the country. Foreign and Rwandan interlocutors have varying views of the extent and exclusiveness of this control: according to some observers, the "Ugandans" intend to remain in more or less exclusive control of affairs for the indefinite future; for others, this control is an incidental effect of the historical circumstances mentioned above that is bound to become more porous as, over time, members of other groups are progressively co-opted into the inner circle and as the political system opens up, as eventually, in this view, it inevitably will.

One politically significant group that has expressed feelings of marginalization in recent years is that of the deeply traumatized *rescapés* – those Tutsi who were in the country at the time of the genocide and who managed to survive. This issue is a profoundly sensitive one: the RPA seized power in 1994 explicitly to bring an end to the genocide and to rescue those who had escaped its earlier waves. The concern expressed by some is that many of the survivors have been left in conditions of severe destitution – often it was women and children who survived (there are a disproportionate number of woman- and children-headed households in this group), and many have had few resources on which to fall back. The genocide survivors have been organized into a support group known as IBUKA, and their demands for justice and for compensation for their appalling suffering remain a central feature of political life. Yet, it is pointed out, few such survivors occupy key positions in the government, and fewer still are represented in the inner circles of power.

Other parameters, based on regional ties or on such seemingly trivial issues as when and where a family had been in exile (among Tutsis, Uganda vs. the Congo for example), are also perceived as serving as barriers to access to influence and status, and each of these may on a day-to-day basis be at least as significant a factor in triggering rivalries and resentments between individuals and groups as the basic fact of being Hutu, Tutsi, or Twa. The accumulation of such resentments and the ways in which those who

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<sup>6</sup> The Twa – descendants of the original inhabitants of the region – constitute the country's third ethnic group, but constitute a small and in many respects submerged minority of perhaps 20,000 who for historical participate only in limited ways in the public life of the country, though efforts are under way by civil society and others to promote greater increased Twa participation.

share them are able to express and seek redress for perceived grievances within the political space available (as opposed to falling back on conspiratorial and potentially violent dissent) will form a major challenge to the stability and prospects for success of the current government.

Broadly speaking, the challenge to a political system that relies as heavily as this one does on consensus building and on the avoidance (at least for the present) of the “trap” of partisan electoral politics will be to find ways of allowing grievances such as these to be given constructive political expression, as opposed to being allowed to fester. It is not clear that such channels have been opened – the press is for the present quiescent, political party activity is essentially held in abeyance (and the formation of any new political parties during the transitional period is formally banned), civil society activities are kept under close scrutiny. The nation and those who control its politics face a fundamental dilemma, in that increased scope for open expressions of political dissent may unleash passions that, in the post-genocidal context, could quickly become violent and threaten the absolute ban that has been placed on the political instrumentalization of ethnicity; on the other hand, a failure to allow for structures in which dissent can be expressed and channeled and in which interests and even resentments can be allowed opportunities for constructive political organization may make outbreaks of violent conflict more likely. Section IV, below, will return to various implications of these dilemmas.

### ***E. The Managed Transition: Pending Challenges***

For reasons we have outlined above, Rwanda is at present undergoing what can be thought of as a tightly managed transition to democracy. Close control of the process at every step is seen as the only way to transcend the lingering threat of a recurrence of the genocide: unbridled majoritarian electoral politics, it is felt, would reopen old resentments and lead to a reinstatement of rule-by-majority-ethnicity that led to the catastrophe in the first place. In this endeavor, the international community has on the whole been enthusiastically supportive, though reservations have been expressed about many of the specific practices that have accompanied the process, particularly in relation to the principles of human rights and of internationally accepted standards to which Rwanda subscribes.

The “management” in question is that of the core leadership of the RPF operating as a vanguard movement. The parameters of public debate are narrowly focused and, increasingly in recent years, there has been a tendency to treat dissent expressed outside this narrow framework with severity. As mentioned above, the RPF itself stands outside the state structures, lacking accountability and transparency. It is able to maintain this control because of its unchallenged control over the military and the security apparatus, and because the society is, broadly speaking, weary of conflict and violence and seems prepared, on the whole, to accept the system in place.

But the transition faces a series of daunting challenges in the short term, each of which needs to be borne in mind as issues of potential conflict are considered, as each has significant potential to serve as a focus of resentments and potential violence. The fact that a number of these are likely to occur more often and/or simultaneously heightens the dangers.

A partial list of pending issues for the RPF government would look something like this:

- 2002: Promulgation and implementation of new land use and land tenure policies (see Section II);
- 2002: Implementation of Gacaca (see Section III): justice to be meted out to the bulk of those responsible for various aspects of the genocide. Simultaneously, the government will need to find ways of satisfying the expectation among the genocide survivors that they will receive some form of compensation for the losses they suffered.

- 2003: End of the formal transitional phase. Referendum on a new Constitution, to be followed by Presidential and Parliamentary elections.

Managing these processes while maintaining peace and stability throughout the country will test the conflict-management capacity of the present system, even without the security problems deriving from the ongoing armed conflicts in which Rwanda is involved in the DRC and Burundi. As will be discussed in the final section of this report, it will be vitally important that the government receive appropriate and well-conceived international assistance in implementing these processes, each of which will strain its resource base and institutional capacity.

Against this background, it must be kept in mind that Rwanda is deeply involved in violent conflicts in the DRC and in Burundi, and has in 2000 and 2001 faced the prospect of conflict with Uganda, matters to which we shall return in Section V. The high level of suffering in the eastern DRC that has accompanied the prolonged occupation of that area by the RPA has led to profound resentments against Rwanda that in turn ensure that the DRC will remain a fertile venue for potential anti-Rwandan political and military activity for many years to come.

The following three sections of this report will examine the conflict-vulnerability implications of these three separate but synchronous processes. Section V will examine the probabilities of actual outbreaks of violent conflict, and the final section will formulate specific strategic recommendations for USAID and other donors.



## II. LAND, NATURAL RESOURCES, AND POVERTY

### A. Context

Land and human settlement issues are perceived by many informed sources to be the most likely sources of potential conflict in Rwanda.<sup>7</sup> Fifty-two percent of the country's surface is arable land.

Approximately 81% of *all* Rwanda's land mass was under cultivation in 2000 (the figure goes as high as 91% in Cyangugu), with 11% of available land in pasturage or fallow.<sup>8</sup> Ninety-one percent of the population is classified as employed in the sector<sup>9</sup>, although there may be high rates of rural under and unempolymnt , and 43.5% of GDP is derived from agriculture. The dependency of the masses of Rwandans on the land base is undeniable, as few alternatives for employment exist in rural areas or urban centers.

Population density is high at 329 people/sq. km and increasing, given the 2.8% population growth rate<sup>10</sup>. In 1999, 66% of Rwandan households lived below the poverty line as compared with 40% in 1985, showing a distinct negative trend. Stabilizing this decline represents a major challenge.

In 2000, the average size of a family agricultural parcel was 0.71 hectares, with the Kibungo area on the high end, averaging 1.1 ha/family, and Cyangugu on the low end, at 0.37 ha/family. Over three quarters of households hold one hectare or less of land, as follows:

- 27% of households have 0-0.25 ha per family;
- 27% have 0.25-0.5 ha;
- 14% have 0.5-0.75 ha; and
- 11% have 0.75-1 ha.

Only 5% of households own more than 2 hectares per family, while 16% hold between 1-2 ha.<sup>11</sup>

Given the small size of the plots, land use is essentially oriented toward labor-intensive subsistence agriculture. Beans and sorghum are staples. In 1990, the breakdown of different crops on agricultural lands was as follows: root crops (tubercules) 32%, bananas 23%, leguminous 22%, cereals, 18%, coffee and other high value crops 4%, and vegetables 1%.<sup>12</sup> The proportion of banana cropped has increased over time but production is still oriented toward home consumption and beer-making. Tea and coffee are the main foreign exchange crops.

The Government of Rwanda under its Poverty Reduction Strategy Paper (PRSP), the main framework for all aid interventions in Rwanda<sup>13</sup>, has identified agriculture (and livestock) as the primary engine of growth in Rwanda<sup>14</sup>, through which its poverty reduction objectives will be achieved. This growth will be enabled or constrained through management of natural resources, and in particular land based resources.

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<sup>7</sup> Center for Udvikslingsforskning, 2001; Republic of Rwanda, 2001.

<sup>8</sup> Ministère de l'Agriculture, 2000, p. 16

<sup>9</sup> GOR, 2001, p. 4

<sup>10</sup> CARE, 2002

<sup>11</sup> Ministère de l'agriculture, 2000, p. 1721

<sup>12</sup> Ministère de l'Agriculture, 2000, p. 22

<sup>13</sup> Center for Udvikslingsforskning, p. 3

<sup>14</sup> Government of Rwanda National Poverty Reduction Programme, 2001

Over the years, reserves and national parks have been degraded through *de facto* use and the government's resettlement policy (*imidugudu*). Most particularly, policies to transform Akagera National Park into resettlement villages, while eroding a national resource, have addressed a major national focal point of conflict – the provision of land to returnee families that had been in exile for decades and found their ancestral lands occupied upon their return in 1994. Under the 1993 Arusha Accords, returnees no longer had the prerogative to lay claim to land upon which they once had had traditional tenure rights, yet these families were facing destitution. Use of national parks land was seen as a necessary compromise solution, despite the expected long-term negative ecological and economic consequences.

### *Socio-cultural ties to the land*

Conventional wisdom, as well as common sense, has it that Rwandans have a deep attachment to the land. As an agricultural and livestock owning people, land holding (even in the absence of legal title, as formalized land tenure security has never existed) has been, and continues to be, not just a source of sentimental attachment, but the principal resource available to secure domestic livelihoods. Rural land users require land to secure livelihood as the basis upon which to start a family. Fathers historically provided sons with land upon marriage, dividing up family holdings, but this practice has come under strain, as many parcels are no longer viable for subdivision.

One long-standing strength of Rwandan society has been that despite their poverty, most families have had a small parcel of land to anchor economic and social life. Yet the dislocation due to civil strife of the past 40 years has attenuated attachments to *specific* ancestral land. It appears, at least anecdotally from team discussions with farmers, that Rwandans today may be thinking more practically - - e.g. *any* land, so long as it can be feasibly and sustainably cultivated, is likely to be acceptable to most. However, some Rwandans (in Ruhengeri for example) are still demanding the resolution of disputed claims resulting from the various waves of displacement that have occurred since 1959.

### *Traditional Land Tenure Systems*

*Ubukonde* was a type of sharecropping system that was operative in northern Rwanda that is, according to one interviewee, still in place, at least to a limited extent. Under *Ubukonde*, land that was originally forested belonged to the first occupant who converted it to agricultural land. Should the owner of the land choose to grant use to another occupant (called *abagererwa*), the occupant would pay tribute in kind, or possibly cash. In-kind payment may have taken the forms of labor or crops.

During the early colonial period, more concentrated settlements were introduced. While tied to planned *villagization* (putting Rwandans together in villages as opposed to traditional homesteads widely dispersed), many Rwandans interviewed by the team saw the innovation in a positive light, since it entailed improved service delivery and increased production. The team did not have the means to verify this claim, but it at least appears that Rwanda has had some positive precedents for village-based living and agricultural systems. Living in isolated homes scattered across the hillsides may in fact not be a cultural imperative, though family units operating independently on the hillsides has been the norm.

### *Current GOR Land Use Planning*

The state perceives agriculture as the principal means for national economic development<sup>15</sup>, but only if the country can develop a *modernized, professional* agricultural sector. According to draft policy documents and to discussions held with officials in the course of this study, the GOR has concluded that a

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<sup>15</sup> Poverty Reduction Programme, 2001.

minimum threshold of 1 ha. should be established for land holding. The new land bill (which is still under Cabinet review) calls for the creation of a tenure system that will promote rapid agricultural modernization. The GOR seeks to raise professional standards for land use; if the standards are not adhered to, the state would have legal grounds for expropriating land.

The GOR is not, for justifiable reasons, content with trends in the agricultural sector:

Rwanda's land system requires...reforms, starting with the formulation of a national land policy and then a land bill and land code which will guide the *proper* [emphasis added] land use and land management. This would act as an economic springboard, capable of delivering the country from the grips of poverty<sup>16</sup>

The new land policy and land law now under consideration seek to reduce poverty by bringing about production efficiencies through a modernized and commercialized agricultural sector. They make two critical assumptions: (1) families will pool land fragments together to create parcels of 1 ha. or more that will then qualify for various development subsidies and/or receive special legal considerations; and (2) additional concentration will be achieved through land sales.

To base a national development policy on these assumptions is arguably risky, as there is no historical precedent in Rwanda for believing families will respond as hoped. While culturally the family (as corporate entity) controlled land holdings, modern notions of individualism have entered Rwandan consciousness. This is due to various factors -- families splitting up during the many exoduses of the past thirty years, competition engendered within families for increasingly scarce resources, and more recently the genocide. If families do not consolidate holdings and instead retain (or even sell) their separate tiny parcels the likelihood of continued or exacerbated impoverishment for many farm families is very high.

A key premise of the new plan to move to formal land titling is that farmers will invest more in fields they own versus those they rent. Available empirical evidence supports this: owner operated parcels in Rwanda are much more likely to have received organic fertility-enhancing inputs, such as manure or compost, and to have been improved through adoption of anti-erosion technologies, such as terraces and grass strips. Purchased inputs are also somewhat higher, and less erosion is observed. Yet, the same data do not show that there are significant productivity improvements on parcels farmers own versus those they operate as tenants. This surprising outcome is perhaps connected to soil fatigue, suggesting that investment would be necessary to compensate from years of intensive cultivation and nutrient depletion.<sup>17</sup>

It is unclear whether lands under 1 ha. in size will be eligible to be secured through title or not. According to one reading of the Land Policy, "all land should be registered for security. The title will be tradable, but not in a way that fragments plots below 1 hectare"; and then "households will be encouraged to consolidate plots to ensure that each holding is not less than 1 hectare". According to this analysis, the draft Land Law then specifies that "people with customary holdings less than 2 hectares, and those with customary holdings between 2 and 30 hectares where the owner has a project and a development plan, will be recognized as owners". In neither the draft policy nor the draft law does it appear that plots less than 1 hectare will be securable through legal title. The analysis goes on to say that "it will be important to devise cost-effective methods of resolving disputes at a community level, and to ensure that the 1 hectare minimum *is not misunderstood to imply the expropriation of any current occupants*<sup>18</sup>. As Bloch<sup>19</sup> notes in his reading of the Land Policy, if the state has the right to confiscate land it deems improperly used, "it will create negative consequences, such as opportunities for corruption and reduced confidence

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<sup>16</sup> GOR, 2001, p. 5

<sup>17</sup> Clay, 1996, pp. 15-16

<sup>18</sup> ACTS, 2001[?], p. 27)

<sup>19</sup> Bloch, 2001[?])

in the state by its people”. Even if the policy comes to be seen as legitimate by Rwandans, poor implementation could lead to very negative reactions.

The proposed policy will forbid the apportioning of “agro-pastoral” land to “non-professionals”, a measure that could have major implications for the Rwandan poor. The policy states:

Not every Rwandan can possess a plot of land. Agro-pastoral land will only be allocated to those who are professional farmers or pastoralists. This is to avoid wastage by under-exploitation. Henceforth, a clause forbidding the partitioning of land by inheritance or transfer among living individuals will appear in the land law. The process of regrouping land will be favored, and the regulation of sale and purchase of land among inheritors will be established, so as to render the regrouping of plots effective.<sup>20</sup>

Distinguishing “professional” from “non professional” may become a key issue. If more and more land comes into the hands of a narrow group of élites, either through purchase or expropriation, then resentments will build. The risks are complicated by the fact that it is conceivable that large numbers of subsistence farmers (who were predominantly Hutu) could lose or sell (through economic desperation or government coercion) land to these élites; should genocide survivors also receive the cash reparations they have been seeking, one group would then have the funds to buy up fertile lands, potentially just at the time that the new law and policies are going into effect.

It is difficult to envision a peaceful Rwanda over the long-term absent a more engaged civil society that *participates* in development planning for critical issues of land use. While the government is indeed making efforts to broaden consultative processes in rural areas, consultation, as is so often the case in the rhetoric of development planning seems to involve one way communication from government to those who will benefit or be affected by policy and programming. The most that one can say today, based on the opinion expressed by expatriates and Rwandans during this study, is that civil society has to date been only minimally consulted in national prioritization processes, such as the draft Land Policy and Land Bill.

While consultation is said to be taking place on the Land Policy and Land law, it was reported to the team that even NGOs involved in rural development and civil society activities had not actually seen the draft Policy or Law. And though they heard that they would be consulted once the Policy and Draft had been approved at the Cabinet level, it was unclear whether consultations would extend beyond GOR awareness raising among the various constituencies.

There is then an urgent need for consultation to be expanded to obtain widespread input from local populations, NGOs, and others involved in work at the grassroots *before* basic policy decisions are reached. According to Ministry of Lands, the next round of consultations is to be conducted on an accelerated basis in the period May 5 – June 10<sup>th</sup>. The effectiveness of such consultations (especially if they yield consensus on specific local variations) could have a direct effect on the appropriateness of policy and law and ultimately on peace and stability throughout the country. At this writing, it is difficult to see how top-down approaches to planning will lead to the decentralized vision for appropriate land use planning that officials claim to favor. As things stand, if local visions of development elicited through planning/consultative processes are inconsistent with the GOR’s, it is not clear that the local vision would prevail, leading to potential tensions and conflict.

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<sup>20</sup> Ministry of Lands, 2001, p. 25

## Resettlement: *Imidugudu* villagization

As recently as 2001, the GOR stated that, “The ultimate objective of the government is to enable the entire rural population to live in grouped settlements”.<sup>21</sup> The rationale for this is to (1) improve service delivery to citizens; (2) allow for more “rational” distribution of land and thereby enhance productivity; (3) assist in reconciliation and reintegration; and (4) enhance security for residents<sup>22</sup>. The encouragement of grouped settlements (such settlements are known in Kinyarwanda as *imidugudu*) as “a fundamental factor for optimal land use in the Rwanda context” is central to the proposed land law<sup>23</sup>.

Promotion of villagization for both economic and security reasons has been a constant of RPF policy from its days as an insurgent movement,<sup>24</sup> and policies along these lines were pursued in colonial times; more recently, as early as 1983, at the peak of the Habyarimana regime, the then GOR was wrestling with the question of identifying an intermediate approach to the question of rural settlements in relation to rural development. During a national seminar on land use planning in Rwanda, it was noted that it would be “imperative” to “regroup” rural zones for development.<sup>25</sup>

In 1996-98, shortly after it came to power, the present government began aggressively promoting settlement in *imidugudu*, with local officials often using crude coercion to force families to move into settlements that were frequently far from their fields and that contained inadequate shelters. The rationale for *imidugudu* was that “distancing cultivators from their fields would cut their emotional attachment to the land as part of a family heritage” and would make these cultivators more likely to treat land as an economic good valued only in terms of its productive capacity. It is also easier to provide services to, and to exert political control over, a less dispersed population. The policy was pursued aggressively and at times brutally. Promised infrastructure was in many cases unavailable, and considerable suffering ensued. The program came under heavy international criticism, though some donors felt compelled to provide assistance to the populations thus displaced.<sup>26</sup>

Such aggressive, forced resettlement has since been abandoned (at least in part because of donor pressures), yet the principle of concentrated settlement remains a central part of the GOR’s development agenda. Based on discussions with Rwandans and expatriates, it would appear that support for *imidugudu* remains mixed. Critics refer to the failures of implementation of this early phase as proof that the concept itself is not practicable and point to the ultimate failure of similar experiments in countries such as Tanzania, Ethiopia and Guatemala. Supporters point to improvements in implementation of service delivery in recent years among some of the *imidugudu* established at that time. Many planners remain convinced that *imidugudu* is an optimal mechanism to address housing/settlement issues, land/agricultural production issues, and multifaceted security issues.

If implemented gradually and on a voluntary basis (i.e., one that relied on positive incentives as opposed to coercion) it seems possible that *imidugudu* could represent a partial approach to addressing the complex issues surrounding land and poverty. *Imidugudu* could become centers where economic development and social cohesion could be successfully promoted. There are presently *imidugudu* across the country in which ethnically mixed groups of Rwandans are demonstrating that they can live together and work cooperatively on community projects through agricultural and social welfare associations. Inter-marriage is occurring. With adequate consultation and care, groups have reached initial agreement

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<sup>21</sup> Ministry of Lands, 1999

<sup>22</sup> Ministry of Lands, Human Resettlement & Environmental Protection, 2001)

<sup>23</sup> Ministry of Land and Human Resettlement, 2000

<sup>24</sup> For a full discussion of RPF’s promotion of villagization, see *Uprooting the Rural Poor in Rwanda*, New York: Human Rights Watch, 2001

<sup>25</sup> République Rwandaise, 1983

<sup>26</sup> *Uprooting the Rural Poor*

about where villages should be placed, and about where fields should be attributed to displaced villagers. Land use can continue to be based on existing usufruct rights while living in *imidugudu* and/or new attributions can be made, and improvements to land use and agricultural production can be introduced in these settings. The new land policy is likely to facilitate both collective agricultural pursuits such as radical terracing, as well as the application of inputs purchased at preferential prices through *imidugudu* for existing holdings.

However, *imidugudu* could instead become a means for the GOR to exert more control over the rural population for internal security reasons. Depending on how the policy came to be implemented, *villagized* communities could become engineered environments in which already poor Rwandans become poorer and élites become wealthier through capitalizing on lands expropriated from small-holders through the vehicle of new land legislation.<sup>27</sup>

Since the GOR lacks the means to implement widespread villagization, with its requirements for improved infrastructure and services, on its own, donors are needed to support the process and are in a position to exercise substantial influence over how the process is pursued. If left unsupported and poorly implemented, future *imidugudu* resettlement could lead to generalized discontent and potential conflict. Technical assistance from donors to guarantee that land use planning is based on objective criteria and participation, versus coercion, will be key. Donors can do this by participating proactively both in planning *imidugudu*, and in both advising and insisting on participatory processes for decision making on land use and social service provision occur once implementation begins.

## **B. Conclusions**

### *Land Policy*

Land-users need security of tenure and access to inputs to climb out of deepening poverty and to enable family-level livelihood security and social life to be sustained. Enhanced availability of inputs alone will not by itself reduce poverty. Yet if the process of registration leads to the widespread sell-off of small parcels (something that could become an irresistible temptation for a family at a time of great need), it could come to be seen as a system of land alienation, not of increasing the security of holdings. Officials have assured the team that there will be checks in place to prevent impulsive land sales, but it is unclear what these will be. Donors will need to follow such issues closely.

**The government apparently is seeking to develop a variant of the Asian “green revolution” which did not automatically require a move from small scale to plantation agriculture. In such a situation, unless there is intensification and/or switch to high value crops, it is in fact not practical to support a family on less than one hectare of land total. The issue this policy raises is how to support the “professionalization” of agriculture and whether to insist that scattered plots that add up to more than 1 hectare have to be consolidated.**

The GOR thus needs describe more clearly its path to agricultural modernization since the range of documents consulted indicate that there is a tension between whether small-holder, albeit more intensive agriculture production, or plantation agriculture for export is being promoted. The former, if carefully managed and poorer farmers are not disenfranchised of their land can lead to more equitable and sustainable development. The latter easily could the national economic level performance indicators but lead to increased inequalities and potentially be explosive over the medium to long term.

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<sup>27</sup> It is difficult to assess how many Rwandans are currently living in imigudugu. The Brookings Institution (Ministry of Lands, 2001) says that, as of late 2001, 265,200 houses had been built in imidugudu since 1995, with the bulk being in Kibungu (45%) and Ruhengeri (28%) provinces, both of which had been affected by the influx of large numbers of returnees.

It is unclear how the GOR policy of promoting 1 hectare minimum limits, with the prohibition on turning over agro-pastoral land to non-professionals, will impact poorer families. The GOR has itself stated that “not every Rwandan can possess a plot of land”. Under the draft policy, agro-pastoral land would only be allocated to those who are “professional” farmers or pastoralists. This “professionalization” of the agricultural sector could become a prominent proximate cause for conflict if access to land tenure mainly benefits élites.

It is unclear that greater land tenure security *per se* will lead to reduced vulnerability to conflict. Increased tenure security for *some* could in fact lead to increased livelihood *insecurity* for others. If a narrow segment of society were perceived as being the primary or exclusive beneficiaries of such changes, land reform could become a major focus of resentment and could perhaps lead to conflict between those able to pay cash and meet other criteria on the one hand and vulnerable micro-parcels holders on the other. An emergent landowning class could be perceived by newly landless, cash-poor rural or peri-urban groups as a major focus of resentment.

#### *Agricultural Sector Issues*

Donors should in particular do more to help the GOR develop a diversified strategy for land use that balances the GOR priority of agricultural modernization with support to land-poor farmers over the coming five years (when incentives will be highest to Rwandans to consolidate parcels to obtain land title or to sell parcels, leave the sector, or become salaried laborers within the sector). *This will be the time when conflict over land and poverty encroachment will be greatest, meriting donor focus and programming.*

The Poverty Reduction Strategy’s emphasis on agriculture as the engine of development is logical if agricultural development efforts actually target the majority of Rwandans. The program needs to strike the right balance between food and cash crops for domestic, regional and international markets. A program that overly emphasizes high-value export crops produced by Rwandan farmers fortunate enough to (1) currently have secure tenure through title; and (2) receive credit for expanded/intensified agricultural production by using land as collateral, risks increasing stratification between Rwandan land users. This could exacerbate tensions leading to conflict, *even though macro-level growth indicators may be improving.*

An agrarian transformation approach that balances the needs for food and cash of small-holder farmers and enables rural agro-enterprises and other enterprises to flourish in rural areas is required. Donors should be encouraged to greatly expand assistance to the sector as a means of pulling larger numbers of Rwandans out of poverty.

In this period, Rwanda will need donor help in securing livelihoods both through economic diversification and through smallholder agricultural intensification. The GOR’s Poverty Reduction Strategy emphasizes adding value to agricultural commodities and enhancing exports. Donors should find ways of assisting with more immediate as well as medium term improvements in smallholder production and well-being.

#### *Concentrated Settlement*

Based on reports from Rwandans living in the countryside, intellectuals, government individuals, and expatriates, there is reason to believe that the GOR has learned a number of lessons about the design and implementation of *imidugudu*. Many concur that if *imidugudu* are not forced on rural populations, and if

the logistics for service provision improve based on lessons learned from the first phase of implementation, they could become positive conduits for rural development (and cross-ethnic cooperation) in Rwanda. The more successful existing *imidugudu* have shown themselves to be effective in (1) securing rural agricultural production for inhabitants; and (2) serving as a conduit for credit and extension services to support agriculture. Many also mentioned that there was a greater sense of security among residents as compared to life in isolated hillside houses. Donors could contribute significantly not just financially, but in actively helping the GOR to monitor the conditions under which *imidugudu* are established and supported at the national, district, or sectoral level.

How *imidugudu* work from both a human settlement and livelihood security perspective, could go a very long way to determining whether conflict resulting from land and/or ethnic related issues will occur in Rwanda over the next five to ten years. At the current rate, donor contributions to *Imidugudu* will be minimal to moderate. This could increase the probability that there may be incidents related to land and poverty issues that could serve as triggers to conflict, as the GOR seems committed to expanding *imidugudu*, and many current *imidugudu* remain unsatisfactorily serviced. Vigorous implementation of an ill-conceived *imidugudu* could lead to the creation of concentrations of thousands of landless paupers, potentially susceptible to instrumentalization by groups seeking to promote civil unrest and violence.

#### *Governance and Conflict over Resources*

The GOR has numerous strong and charismatic people in key government positions. However, capacity at lower levels is often weaker, particularly at the local level where the GOR's development strategy under the Poverty Reduction Strategy is focused. It is important, therefore, that the eloquence of senior level GOR representatives not be allowed to persuade donors that the risks laid out in this section are immaterial and that a radical transformation of the agricultural sector will be easily and painlessly achieved. Similarly, it is important to retain some skepticism concerning the belief that benefits from the consolidation of small parcels and the resulting re-employment of the poorer (and thus likely to be uneducated) labor force elsewhere will trickle down to poorer families. Any attempt to carry out such a major transformation of rural society rapidly could backfire, leading to serious socioeconomic dislocation and possibly to tensions and conflict.

Rwanda could be on a collision course between the state's need to achieve economic growth, and individual household needs for livelihood security. It is not inconceivable, therefore, that GOR needs to modernize the agricultural sector could be to the detriment of local livelihood systems. It is also not inconceivable that the push for a more 'rational' or 'scientific' approach to agriculture and land management could be used to justify (for lack of a better term) a 'professional'/'élite control over land and resources. This could lead to "crony capitalist" benefits for a narrow group of well-connected individuals. This could, in turn, work to the detriment of most Rwandans currently employed in the agricultural sector from both an employment and livelihood security standpoint. It could increase inequality and exacerbate class divisions, which if politicized, could lead to conflict.

A further issue requiring international-level concern and attention involves the re-allocation of lands that have changed hands over the past decades as a result of displacement. In areas of the east and of the southwest (e.g., in Cyangugu district), returnees were able to occupy or re-occupy lands that had been held for decades by families who fled in 1994 to Congo/Zaire and Tanzania. Both groups feel they have legitimate claims, and officials have attempted to convince communities that the solution can be found in ad-hoc arrangements for the sharing of parcels. Such sharing has been promoted in lengthy community-education sessions held by senior officials, and consensus has been claimed in support of this solution. Indications in the field, however, are that this consensus is seen as having been externally imposed, and resentments continue to fester. Active external support to communities in which such problems exist, especially to provide rapid productivity improvements where possible, might help to mitigate this issue,



which has grave potential to serve as a trigger to local (but potentially widespread) violence, much of it likely to take strong ethnic overtones.

### III. THE GACACA EXPERIMENT

The Government of Rwanda has begun steps to implement Gacaca, a modified version of a traditional Rwandan dispute resolution system, to try the massive backlog of genocide cases. Gacaca will seek to bring justice, truth, and reconciliation to Rwandan society, as well as some sort of closure to the aftermath of the country's devastating genocide. The first trials are likely to begin by the end of 2002, but the process could take years to complete. Gacaca, which will take place in some 11,000 jurisdictions at local levels all across the country, will define the environment in which the entire Rwandan society operates. Its success or failure will have profound effects on all USAID programs supporting Rwanda's transition and development.

There is broad agreement among many sectors of Rwandan society and the international community that Gacaca is the best and only solution to a problem that appears otherwise insurmountable, given the number of cases pending and the dramatic limitations of the formal justice system (the absence of properly trained judges, the tiny number of lawyers). Yet it is not without substantial risk. According to USAID's Program Data Sheet:

The pending issues surrounding Gacaca are vast and include: compensation, crime categorization, witness security, psycho-social traumatization, file preparation, the right to counsel, land rights, post-trial integration of detainees, and unity and reconciliation. Despite these obstacles, the majority of the population believes Gacaca is the only alternative for resolution of an estimated 120,000 untried cases of those suspected of crimes during the genocide. Given the complexity of the issues involved, success of Gacaca will be measured by many factors, but ultimately by reconciliation and peace in Rwanda and the Great Lakes Region.

The Gacaca process in and of itself is not likely to lead to widespread violent conflict. Rather it is one element of many that must be considered for its potential to increase conflict vulnerability, as discussed below. Gacaca has the potential to defuse tensions that might otherwise fester and contribute to the onset of violent conflict, but it also has the potential to exacerbate them. This chapter aims to evaluate the various risks of conflict vulnerability that Gacaca and other rule of law issues may create, and to provide strategic guidance for USAID in order to best address these risks.

#### *A. Background*

An unprecedented crisis of the justice system is one of the many difficult legacies the new GOR inherited when it took power after defeating the genocidal regime in 1994. The system itself was in shambles: trained lawyers, prosecutors, and judges had been killed, fled the country, or were themselves accused of having participated in the genocide and much of the physical infrastructure had been destroyed. Yet it was faced with a task of monumental proportions: delivering justice for all those who had killed in a genocide that pitted neighbor against neighbor, involving large numbers of people all over the country. Indeed, assurances that there would be a process by which perpetrators can be judged and punished have been vital in preventing some survivors from taking justice into their own hands. At the same time, Rwandan society was faced with many acute problems in the aftermath of the genocide including urgent needs of genocide survivors. Against this backdrop, providing fair justice to those accused of being responsible for the genocide was not a top priority for the government.

In 1994, after having failed to intervene effectively to stop or minimize the slaughter, the UN Security Council voted to create the International Criminal Tribunal for Rwanda (ICTR) based in Arusha, Tanzania. The ICTR seeks to concentrate on senior figures who conceived and executed the genocide and has focused in particular on those who had fled abroad (and whose extradition to Rwanda would have

been problematic because they could face the death penalty there). It was not designed to serve as substitute for national justice. It has completed only eleven cases since 1997 and has some fifty-five suspects in custody.<sup>28</sup>

To date, on the other hand, some 120,000 people have been arrested on charges of genocide inside Rwanda proper, and most of these have been in prison awaiting trial for years. In the emergency periods following the genocide and later the massive repatriation of refugees from Zaire and Tanzania, Rwandan officials conducted widespread arbitrary arrests. Many detainees who reclaim their innocence have spent years in prison without case files or without concrete allegations of wrongdoing against them. National tribunals acquitted an average of 17% of those tried in the first five years of genocide trials.<sup>29</sup>

The population of detainees poses enormous costs to Rwandan society in financial and human terms. The government must house, feed, and protect the prisoners within its limited means and has not always been able or willing to fulfill its obligations in this regard. The families of the detainees also pay a heavy price. They must make frequent journeys to visit the detained relatives and bring them food. Some observers say that prisoners' children are even more vulnerable than orphans: not only do they lack the support and care of the absent parent, but they must also struggle to support the parent and to cope with the stigma of being associated with a family accused of genocide. Women and child-headed households have almost become the rule rather than the exception in many sectors of Rwandan society, as large numbers of men are either dead, in prison, or in the Congo. Inevitably, to the extent that cases go untried and that many of those held assert their innocence, resentment among these prisoners (many of whom will soon be released in the course of Gacaca procedures) and their families will contribute to anti-GOR feelings and intra-communal tensions, particularly as conditions in the prisons are widely held to have fallen short of minimum international standards. (Although conditions have stabilized in recent years, overcrowding, poor hygiene, lack of food and medical care, and allegations of mistreatment remain common.<sup>30</sup>)

With time, the justice system has begun to deal with the heavy task of dispensing justice. But much remains to be done. Many prisoners still lack proper case files. For example, the Prosecutor of Kibuye told the team that approximately 1,500 out of some 7,000 genocide detainees in the province have no case files. Some justice experts cautioned the team that existing case files may have little more than name, identity card number, and a few names of people who might or might not have relevant information if called upon to testify. In late 2000 and 2001, prosecutors began intensive efforts to complete case files for prisoners. In some regions, they publicly presented prisoners against whom they lacked concrete evidence and asked communities to say what they knew about the prisoners' conduct during the genocide. If people concurred that those presented had behaved correctly, they were provisionally released. In the former Ntongwe commune in Gitarama province, which had one of the highest prison populations in the country, prosecutorial statistics indicate that approximately 25% of those presented in these so-called "pre-gacacas" were released as of November 2001.

By March 2001, after five years of trials, the official courts had tried 5310 genocide suspects.<sup>31</sup> The quality of trials is said to have improved somewhat over time, but lawyers and others who watch the

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<sup>28</sup> Although under-funded in its initial years, it has spent far more money than is available to the Rwandan justice system to try a much larger number of suspects. In 2001, the ICTR had a budget of nearly \$100 million. The GOR and survivors' groups have become increasingly frustrated with the ICTR's slowness as well as its perceived insensitivity towards the victims of genocide, perhaps the most egregious example of which was when a panel of three judges laughed during the testimony of "Witness TA," a rape victim in the Butare trial, in December 2001.

<sup>29</sup> LIPRODHOR 2001 p. 8

<sup>30</sup> Amnesty International 2000

<sup>31</sup> LIPRODHOR 2001, p. 6

justice system told the team it remains poor. Allegations -- on both sides -- of political manipulation, false testimony, corruption, inadequate defense counsel, and non-respect of judicial decisions (e.g. failure to release those acquitted or rearrests) are not uncommon. The Belgian NGO Avocats sans Frontières has provided foreign defense lawyers in some genocide cases since 1996 but will cease to do so in mid-2002.

Against this backdrop, one can understand why the GOR had to develop an alternative to trials in classic courts. If the process is left to the formal justice sector, it could take a hundred years to try all those remaining in prison. In the meantime, the prison problem continues to pose a heavy burden. Those who proclaim their innocence and their families are becoming increasingly angry and frustrated as they languish in prison, and may seek revenge against those who accused their loved ones. An international researcher has reported that prisoners who have made confessions and their families are being threatened and intimidated by prisoners whom they named as accomplices and their families respectively. At the same time, survivors complain of a climate of continued impunity as they say that many killers remain in liberty on the hills to terrorize them. In some regions including Kibuye, survivors have threatened to perpetrate acts of revenge against any prisoners who will be released. In Gitarama, they have staged threatening demonstrations when others have been acquitted.

Absent a credible alternative to dispense justice, these kinds of incidents could be expected to increase, which could lead to widespread local violence, settling of scores, and attacks on potential plaintiffs and witnesses, destabilizing the civic peace that has been such a significant achievement in the years since 1994. Gacaca as conceived represents a potentially effective means of dealing with these threats.

## ***B. Evolution of Gacaca Jurisdictions***

Gacaca jurisdictions will be a modified form of a traditional mechanism used for dispute resolution among community members. Stemming from the Kinyarwanda word roughly meaning lawn, Gacaca was usually held on a patch of grass under a tree where neighbors would come together and discuss a problem such as theft of livestock, determine what happened (“the truth”), and agree on a penalty for the responsible person. Rwandans continue to use Gacaca informally for local disputes, and in at least some regions have conducted Gacaca on their own initiative to deal with property disputes arising from the genocide even before the Gacaca Law was enacted.

In 2001, after years of discussion and debate, the GOR enacted a series of legislation, including a constitutional amendment, creating Gacaca jurisdictions. The main law (the “Gacaca Law”) establishes the structure and functioning of the Gacaca courts. As of this writing, most of the basic legal framework is in place and the process is moving forward, although the GOR has yet to complete a necessary but controversial law on indemnification of victims.

The Supreme Court Department for Gacaca Jurisdictions, led by Aloysie Cызayire, was created to manage the Gacaca process. The Department has a number of legal advisors and support personnel. It is in the process of installing two staff people in every province and district to assist it. USAID provides approximately \$1 million of material support, and other donors including Belgium also provide considerable direct support for the process. However, it nonetheless still lacks sufficient means to deal with the seemingly infinite juridical and logistical challenges inherent in the Gacaca process. In addition, diplomats and international justice experts told the team they fear the Department lacks clout over the Ministries of Justice, Interior (prisons), and Local Administration (communal *cachots*), which will also be essential players in the Gacaca process.

The Gacaca law created four levels of courts. (Under the 1996 Organic Law, genocide crimes are divided into four categories, the fourth being the least serious and the first being the most heinous, with penalties corresponding to each category. Gacaca will only deal with categories two, three, and four. Classic

courts will continue to try category one offenders.) At the cell level, the lowest administrative level, Gacaca will try those accused of category four crimes, primarily destruction of property. There are more than 9,500 cells across the country. At the sector level (some 1,500 courts), they will try those accused of physical harm but not killing. One survivor told the team there are not likely to be many category three cases, with the exception of crimes committed in 1990-1993. The 106 districts will try those accused of category two crimes, the majority of those accused of killing, with the power to hand down sentences of up to life in prison. Some analysts estimate that as many as 80-90% of all detainees are accused of category two crimes. Individuals who are convicted in Gacaca will have the opportunity to appeal their convictions to the next highest level court, that is to the sector, district, and province levels for categories four, three, and two respectively. However, some are concerned that there may not be adequate written records on which to base appeals.

In October 2001, communities came together to select more than 250,000 people considered wise and of high moral character to serve as *inyangamugayo*, or judges for Gacaca courts at all four levels. Women were among those elected in most localities. A collective of local civil society organizations organized monitoring of the election process, but was reportedly ill-prepared and, as of April 2002, had yet to issue a report. During the elections, community members were encouraged to speak publicly about whether the candidates were persons of integrity. Some accused the candidates of having participated in the genocide or having participated in revenge killings against Hutu in addition to alcoholism, maintaining poor relations with their wives or neighbors, and many other transgressions. Others declined to make these accusations in public. IBUKA, an organization that speaks on behalf of genocide survivors, has alleged that there are *génocidaires* among the judges. Prisoners have told researchers that this is true in some cases and the government is in the process of investigating these allegations and plans to bring charges as appropriate.

In April 2002, some 800 trainers were dispatched to Rwanda's 1,500 sectors to conduct six-day training seminars for all those elected judges. Within the six days, they presented a bare bones summary of the Gacaca law, procedures to follow, and group management skills. None of the *inyangamugayo* have a background as judges and nearly half are illiterate (the law only requires the five members of each jurisdiction's coordinating committee to be literate). Some observers have criticized that the level of training is woefully inadequate, the trainers themselves having undergone only ten days of training, which was reportedly not sufficient or consistent.<sup>32</sup> Juridical and procedural aspects of the Gacaca process such as definitions of crimes have not been explained in a consistent manner. Likewise, only cursory introduction was provided to important reconciliatory issues like group management and dealing with sensitive issues that will inevitably be raised as neighbors are asked to confront each other about the slaughter of their loved ones. Judges also received a booklet with some additional information.

Meetings of gacaca courts are to take place in several stages. The preliminary phases, which began in pilot locations in June 2002, may well be the most crucial. Yet they are being conducted at the lowest administrative level (where the highest number of judges are illiterate and, because of the large number of cells, monitoring will be the most difficult), prisoners will not be present for these meetings, and there is no appeal for decisions made at them. In the first phase, general assemblies in each of Rwanda's more than 9,500 cells are to meet to establish a historical record. They will make lists first of those who were killed, then of property that was destroyed or pillaged, and finally of those accused of being responsible.

After completing the historical record, the cell-level assemblies will perform the crucial task of dividing the accused into four categories depending on the gravity of offenses they are accused of having committed. Thus the lowest level jurisdictions, comprised of the lowest level of judges, will have the

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<sup>32</sup> Pierre St. Hilaire, "Critical Problems Emerging from the Gacaca Training of Trainers Seminar," Kigali: USAID, March 2002.

power to classify defendants in the first category, in which they risk the death penalty, though these cases will actually be judged in the classic courts as noted above.

At this point the general assemblies will transfer the category two and three cases to the district and sector levels. Only then will the actual trials begin. As a rule of thumb, Gacaca courts will aim to try those who have confessed first. They will try vulnerable prisoners next, including the elderly, those suffering HIV/AIDS, and those who were minors at the time of the genocide. Detainees who maintain their innocence are to be tried last.

Once the trials begin, it is likely that large numbers of prisoners will begin to be released. In order to encourage prisoners to tell what they know, the law grants substantial reduction in penalties for prisoners who confess to their crimes and name their accomplices. Half of the reduced penalty of those who confess prior to Gacaca will be commuted for them to perform community service three days a week while living at home (known as TIG, *Travaux d'intérêt general*). A presidential decree was promulgated establishing the framework for TIG, but practical modalities have yet to be worked out. The international NGO Penal Reform International is working with the Ministry of Justice in this regard. The risks are substantial, including inevitable confrontations between the victims' families and convicted killers and abusive use of TIG for private interests, which has been a problem with prison labor projects in previous years.

Gacaca courts will also have the authority to arrest individuals on genocide charges. Speculation is rampant as to whether the GOR intends for Gacaca to be a tool to "rotate the prisons" (i.e., release some prisoners but arrest others). Some representatives of the Ministry of Justice and of IBUKA, and indeed President Kagame in an important speech at Butare on April 7, 2002 at the annual genocide commemoration, have made it clear that they believe that many more Hutu were complicit in the killings and should be incarcerated. Some survivors have expressed anger that, since the Gacaca Law was passed, prosecutors have stopped making new arrests, preferring instead to wait for Gacaca. At the same time, other Rwandans say they fear that Gacaca could lead to a new wave of arbitrary arrests. Foreign experts interviewed by the team cited estimates of as many as 40,000 – 60,000 new arrests that could take place once Gacaca starts. If sound evidence exists against these individuals, they must indeed be arrested and tried. However, one must wonder how significant numbers of *génocidaires* could have escaped arrest in previous years.

A senior international advisor to the process has pointed out that Gacaca courts will not respect minimum international standards for due process and a fair trial as defined under relevant treaties.<sup>33</sup> For example, neither accused nor victims (such as vulnerable rape victims) have the right to legal counsel, Gacaca arguably lacks a presumption of innocence, the definitions of crimes are not clear, and some crimes and penalties have been legislated retroactively. In addition, instances of abuse of power, corruption, false testimony, and other forms of manipulation may occur, even if these are not widespread. Nevertheless, when one takes into consideration that Gacaca will accelerate the pace of trials, notably of those who may have been wrongly imprisoned yet continue to languish in inhumane prison conditions, it may well be the lesser of evils. Even human rights organizations including LIPRODHOR and Human Rights Watch have endorsed Gacaca as the best and only solution to the justice problem, while urging the GOR to do more ensure that the process is conducted as fairly as possible.

### ***C. Gacaca and the Classic Justice System***

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<sup>33</sup> Letter from Pierre St. Hilaire, U.S. Resident Legal Advisor to Rwanda to Gerald Gahima, Procureur-General pres la Cour Supreme regarding The Gacaca Law and Notice of Derogation from Fair Trial Guarantees Enshrined in International Covenant on Civil and Political Rights, September 26, 2001.

The regular, or classic, justice system still plays an important role. As noted above, Tribunals of First Instance in the classic court system will continue to try first category crimes of genocide – including planning the genocide and rape – which carry a maximum penalty of death and for which prisoners do not necessarily receive a reduced penalty in exchange for confession. Pursuant to the Organic Law, the government has published a list of suspected category one offenders in the Official Gazette. To date, it has named less than three thousand individuals on the list, but the Minister of Justice has stated that as many as 10,000 are guilty of category one crimes.<sup>34</sup> And, now that the crisis of justice for genocide will soon be behind it, the justice system must urgently turn its energies to dealing with common crimes and civil disputes.

One important area where donors could intervene is to support strengthening of the independence of the judiciary. Tharcisse Karugarama, Vice President of the Supreme Court, correctly pointed out that the courts were often used as an arm of the executive under the previous regime. This manipulation of the judiciary contributed to the culture of impunity that reigned in Rwanda for decades. While accusations of executive interference in the judiciary are not widespread today, reinforcement of the judicial system could help ensure that this does not become a bigger problem in the future. The Canadian International Development Association already has a program of support for courts and tribunals. In addition, Karugarama says that only 69 of 770 magistrates have adequate training in law.

Prosecutors will also be important players in Gacaca. They are currently spending the bulk of their time (at the expense of their other work) preparing for Gacaca by registering (if not verifying) prisoners' confessions, conducting investigations for those lacking solid case files, and preparing forms summarizing the contents of case files to be transmitted to the cell level jurisdictions. Gacaca jurisdictions will also be able to call on prosecutors for advice as the process unfolds, though it remains to be seen how extensive a role prosecutors will play in eventual Gacaca trials.

Many justice experts among the international community expressed fear that the GOR is forging ahead with Gacaca too quickly. The Belgian cooperation complained, for example, that the Ministry of Justice did not want to wait for completion of a study of TIG before holding a conference to plot out the logistics. Donors also complained that the GOR seems to prefer to take their money without technical assistance. As noted above, the necessary infrastructure, knowledge, and follow-up does not appear to be in place for the processes of establishing a historical record and categorization to begin at the cell level following the official start of Gacaca on June 18, 2002. Serious preparations for Gacaca have been underway for more than two years and, the more preliminary work and thinking that goes into the process, the more potential risks and problems become evident. Is there a point at which the government must just go forward?

The process will begin in one sector per province initially. In such an untested experiment, having such "pilot" procedures will be vital in order to learn lessons and to improve others.

#### ***D. Elements of Potential Conflict***

The problems that Gacaca seeks to address – impunity, the prison problem, reconciliation – all have the potential to contribute to violent conflict. Gacaca represents a unique, ingenious compromise of the divergent interests of all the various stakeholders, in an attempt to resolve these issues and bring closure to the justice conundrum. Should Gacaca fail to achieve the delicate balance sought, the risks may be enormous.

That said, no one expects Gacaca to function perfectly. Cызayire herself acknowledges that it would be unrealistic to strive for 100% success. Rather, she is struggling to make Gacaca function as well as it can

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<sup>34</sup> Letourneux p. 53.

under the circumstances. Thus, she and many observers concur, it is counter-productive to hold Gacaca to absolute standards. The hope is for Gacaca to help society achieve the sometimes conflicting objectives of truth, justice, and reconciliation to the greatest extent possible.

Almost all of those interviewed for this assessment said that they are confident that Gacaca will succeed *if* it is well managed. Yet few had a common vision of what well-managed means in the context of Gacaca. Some were concerned that Gacaca courts will deviate from legal standards and prescribed procedures, for example by failing to apply the precise definitions of crimes. Others were concerned that too *much* attention had been paid to juridical aspects of Gacaca at the expense of the social and reconciliatory aspects of the process. Yet others pointed to the vast logistical challenges inherent in the process. All are valid concerns.

A few interlocutors discussed the possibility that Gacaca could directly spark violent conflict. For example, individual acts of revenge or intimidation could fuel existing distrust among groups and spiral into a larger-scale conflict. However, most thought this scenario unlikely. The non-violent conduct of other recent community procedures including local elections and so-called pre-Gacaca presentations over the past year and a half is also an indication that Gacaca trials in and of themselves are not likely to lead directly to violent conflict. A journalist postulated that people will participate peacefully in Gacaca because they are afraid of the consequences of violent conflict, with insecurity in the Congo being so close by.

Nor will Gacaca be a panacea for all the ills of Rwandan society. Jeremy Sarkin, a critical observer, wrote, “Will it help to alleviate the pressure on the courts? Possibly. Will it lessen the burdens on the prisons? Probably not.” He also cautioned against “Using [Gacaca] in the way envisaged by the new legislation, untried and untested ...”<sup>35</sup> A European diplomat told a member of the CVA team, “There will be some trials and some convictions. We hope it will give some insights into the truth, although that is not always certain. Reconciliation between families and groups is more of a stretch [given the depth of the bitterness that exists].”

Some deficiencies could have drastic implications for both justice and reconciliation. For example, the lack of information about Gacaca remains a major problem despite large public-information efforts conducted by Johns Hopkins University (funded by USAID), the Ministry of Justice, and numerous civil society organizations. People cannot participate fully if they do not understand the process or are afraid of the consequences. Likewise, they will not feel confident in the process if they do not understand its aims. For example, survivors who equate Gacaca with an amnesty for those who killed their loved ones may be less likely to participate in Gacaca and may feel even more resentful and vulnerable at the end of the process than at the outset.

As Christophe Bazivamo, Executive Secretary of the National Electoral Commission, told the team, “Gacaca will only help reconciliation if people have confidence in the judgments.” The quality of judging – the judges’ ability to apply the law as written rather than succumb to pressure and also to encourage people on different sides to come together – will likewise determine the success of Gacaca to a large extent. As noted above, the training of judges in progress during the CVA fact-finding mission has not uniformly or adequately addressed many important issues. Furthermore, people must have confidence in the judges and their integrity. As mentioned, IBUKA and prisoners alike have complained that certain judges elected in October are themselves implicated in the genocide and thus may be biased. These allegations must be investigated as a priority and, if founded, the individuals in question should be removed and tried for their alleged crimes

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<sup>35</sup> Villa-Vicencio and Savage, p. 89



## *Justice*

The GOR has made the pursuit of justice a major objective. Its success and the success of Gacaca are necessary to break the cycle of impunity that has existed in Rwanda for decades. Several government officials reminded the team that the culture of impunity prevailing since 1959 was one factor that made genocide possible. As Simeon Rwagasore, President of Supreme court, told *Jeune Afrique*, “*Cette tragédie a eu lieu parce que les auteurs des massacres précédents, en 1959, 1963, ou 1973 ont bénéficié d’une totale impunité. Il importe aujourd’hui que tous les coupables soient jugés.*”

The success of Gacaca will depend largely on its ability to dispense justice in a highly charged environment. The failure to do so could generate further resentment among those who perceive justice to be unfair and perpetuate the culture of impunity in which the genocide took place. The obstacles to justice are substantial. A cross section of Rwandan society expressed guarded optimism for Gacaca in a 2000 study conducted by LIPRODHOR, a local human rights organization. Ninety-seven percent said they were in favor of Gacaca in principle, yet held many reservations including security of participants, independence of judges, and the strict use of the truth.<sup>36</sup>

Much will depend on the extent to which people tell the truth, the whole truth, and nothing but the truth. Failure to tell the truth could lead to false convictions or new arrests generating increased resentment, as well as to false acquittals, which would contribute to a culture of impunity and may leave survivors vulnerable to revenge.

As in the trials in classic courts, testimony is the primary form of evidence of genocide crimes. Little physical evidence exists. However, few eyewitnesses remain, and many of those who saw the killings were the killers themselves, who may be guided by self-interest. According to the Minister of Justice as quoted in *Jeune Afrique*:

*Dans la justice classique aussi, les preuves sont actuellement constituées à 100% de témoignages. Pendant le génocide, en effet, on ne se cachait pas: on tuait avant d’aller boire une bière. Nous voulons que toutes les personnes qui ont vu quelque chose puissent parler librement.*<sup>37</sup>

As noted above, much of the evidence available will come from confessions. There is no guarantee that these confessions are all true, though. Less than half of the confessions made to date have even been registered, much less verified. One international researcher has found that some prisoners have confessed not only to crimes they themselves committed, but also to those that their friends or accomplices committed. The logic in such cases is that those convicted will have the same sentence no matter how many crimes they confess to, allowing others (e.g., close relatives) to go free. Others have reported that prisoners were bribed to implicate third persons falsely in their confessions. The researcher also questioned the political will of the government to encourage confessions, since it has failed to take steps such as separation of confessed prisoners (who have named accomplices) from those who have not confessed, leaving them vulnerable to intimidation and reprisals. The director of the Johns Hopkins University program in Rwanda, Jean Karimbizi, predicted that less conflict is likely when there are more confessions and other community members are not obliged to testify as much.

A major question is whether people will feel free to say what they know in front of the entire community. Rwandans have rarely had the space or freedom of expression for a frank discussion of the genocide in the past. However, several recent processes have shown that this may be possible notably pre-Gacaca

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<sup>36</sup> LIRPODHOR 2000, p. 34

<sup>37</sup> Letourneux, p. 53

presentations and debates following screenings of documentary films by Internews. Another problem, particularly in urban areas, is that survivors or other witnesses may have moved away and will not know when their testimony is needed or have means to travel to where they were in 1994 in order to testify.

Justice experts told the team that more direct manipulation of testimony will undoubtedly occur in the form of threats against potential witnesses, political interference, and corruption, though the extent of such manipulation remains to be seen. Ethnic allegiances will be a factor in some of these manipulations, but not all. Property disputes and other family rivalries will likely be relevant as well.

The Secretary-General of IBUKA, Francois-Xavier Ngarambe expressed guarded optimism: “if one in one thousand tells the truth, the mask of lies falls apart.” However, this may not be enough in all communities. The judges will have to work scrupulously to ensure that witnesses tell the truth. The Gacaca Law provides for a penalty of one to three years imprisonment for anyone who makes a false testimony or refuses to testify,<sup>38</sup> but many expressed doubt whether this will be enforced vigorously.

Survivors, a minority in most communities, are likely to be among the most vulnerable to intimidation. A Tutsi woman at an Internews debate attended by two members of the team expressed the fear that, with so few survivors, there will be no evidence to convict those responsible. She questioned whether the families of the accused would dare say what they know for fear of prolonging the imprisonment of their loved ones: “If my brother spent five or six years in prison, even if he killed, would I say he is a criminal?” A senior cleric has a similar fear. “The truth is not pretty,” he told the team. “It will be difficult for the one who tells it, who will have to accuse his neighbors of killing. Others may hide the truth to avoid trouble. ... Widows wonder who will protect them.”

There are no concrete mechanisms within the Gacaca infrastructure to protect witnesses: no procedure for witnesses to testify in confidence, no resources for extra policing, etc. The team heard unconfirmed reports of killings in Cyangugu connected to testimony in genocide trials as recently as early 2002. It is essential for threats or acts of intimidation of witnesses to be prosecuted quickly and in an exemplary fashion.

Some interlocutors said that the government should attempt to control the Gacaca process to make sure it is correct. Others expressed the opposite view, that the government should stay out of it and let the people do it themselves, worrying also about government influence over judges. Several interlocutors expressed a worry that inyangamugayo judges could be biased, citing the prevalence of Tutsi returnees or Hutu judges in certain regions. Others discounted this because it may be difficult to influence *all* the judges presiding over a given matter. These concerns will likely play out differently from one hill to the next.

Unfortunately, there is little chance that either Gacaca or the classic courts will provide effective justice for widespread rape and sexual violence that was committed during the genocide. The crime of rape is not defined in Rwandan law. The Organic Law considers sexual torture category one crime, thus carrying a maximum penalty of death. However, to date, the courts have tried few defendants on rape charges (in categories one or three) due to systematic deficiencies across the board ranging from the reluctance of women to come forward to insensitive and poorly trained male magistrates. The Gacaca Law redefines category one to include sexual torture *and* rape. Thus, in theory, all rape should remain in classic courts and should not be dealt with at all by Gacaca with the exception of categorization. However, not all inyangamugayo have received adequate training on this issue. In addition, insufficient steps have been taken to prepare women and communities to address the issue of rape during Gacaca. USAID is funding a nationwide NGO-implemented program that will provide gender-based-violence training to Gacaca

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<sup>38</sup> Article 32.

judges and police who be investigating such cases and providing training in the identification of community-based resources for handling such cases to help address these shortcomings.

While some survivors say that most of those who committed crimes during the genocide committed property crimes, many such disputes have already been resolved informally among communities, sometimes in unofficial Gacaca proceedings. Yet one observer told the team that he feared survivors might claim restitution for those items a second time once Gacaca begins, as there is no official record that the property was already paid for, contributing to resentment among Hutu.

Some churches have played a positive role in encouraging people to say what they know in Gacaca. The Catholic Church, for example, has organized “Christian gacacas” based on the notions of pardon and forgiveness. The Adventist church has encouraged hundreds of prisoners in Murama and other cachots in Gitarama to confess and tell all in order to be pardoned by God. Yet other small sects have reportedly encouraged their followers not to testify in Gacaca, apparently taking issue with the punitive nature of the process. Churches often wield large influence over Rwandans and, as such, their role will likely have substantial impact on the success or failure of Gacaca. The role of churches in civil society is discussed in the next chapter.

Independent monitoring of the Gacaca process is also an important means of ensuring that justice is served, and that problems that could contribute to conflict vulnerability are identified in time. The National Human Rights Commission, NURC, and civil society organizations have all expressed their intention to monitor their Gacaca trials. This will be no easy task given the vast scope of Gacaca. As of this writing, these institutions were still in the process of preparing their monitoring projects and had not yet begun full monitoring. It is unfortunate that they were not able to monitor important preliminary processes such as the training of judges. It is not clear whether they will be ready to monitor the crucial initial phases of Gacaca which will take place at the cell level, as discussed above.

During local elections in 2001, civil society monitors were hampered in their mandate in that they were only able to monitor the voting process and not the run-up period covering campaigning and registration of voters and candidates. In addition, they have exhibited some reluctance to criticize government policy or conduct. They should be encouraged to provide timely information and analysis about the Gacaca process as it unfolds with a view to feeding information back into the system to improve on shortcomings that may become apparent. No institution or institutions should have a monopoly on information. With some 11,000 jurisdictions around the country, the more actors monitoring developments the better.

The risk of perpetuating a culture of impunity applies not only to crimes committed as acts of genocide, but also to other crimes against civilians. Human rights organizations have reported that war crimes and crimes against humanity have been committed in the wake of the genocide as the RPF came to power, against Hutu refugees in then-Zaire, and in the northwest during the 1997-98 insurgency. Discussion of these crimes is not intended to banalize the genocide, and it is not alleged that they were of the same scale or nature as crimes of genocide. However, in the interests of justice and reconciliation, the GOR cannot let these crimes go unpunished. The victims’ families have started to ask whether their loved ones’ lives are worth less than Tutsi lives. Some are still confronted with the officials they believe are responsible for the killings on a daily basis. Members of the team heard calls for equal justice from many segments of society, including elite in Kigali and relatives of the victims from the hills. People complain that they want Gacaca to deal with all the killings, not just victors’ justice.

One foreign expert commented, “People will participate if they think it is *their* process. If the government tells them what they can and cannot talk about in Gacaca, they won’t come.” Consistent with this, residents of some areas where such killings took place in Ruhengeri, Byumba, and Gitarama threatened to refuse to participate in Gacaca elections and the training of judges. The government

dispatched ministers then armed military observers to one district in Gitarama in order to ensure that the people there turned out to vote for Gacaca judges in October. Elected judges in one sector in Ruhengeri reportedly boycotted their training one day during the CVA mission because that the crimes of concern to them would not be dealt with in Gacaca. In the past, individuals (including RPA officers and victims families) testifying about such crimes have reportedly suffered reprisals.

The official GOR response to this has been that such killings should be dealt with by the regular and military court systems, not in Gacaca, which is only meant to deal with genocide. Yet many of the victims reclaim that they, too, want the entire community to address their families' losses in Gacaca. In addition, many doubt that the regular justice system will really take up their cases as few of these crimes have been prosecuted to date (though the latter is in part because the victims have been afraid to lodge complaints). It is understandable that these crimes have not all been prosecuted in a timely fashion in the wake of the enormous backlog posed by genocide cases. Now that Gacaca will help resolve this backlog, though, it is imperative for the government to address this issue. Donors, including USAID, should facilitate this task.

### *Reconciliation*

Gacaca involves enormous compromise. Each group of stakeholders will get some but not all of what they seek. It remains to be seen whether the Gacaca process will be able to manage the competing interests of the process and all the stakeholders to further reconciliation rather than contribute to latent conflicts and tensions. Judges are receiving only minimal training in group management, consensus-building, trauma counseling, and reconciliation. Yet these skills will be desperately needed once the judges begin to preside over popular genocide trials.

There is a long way to go before true reconciliation can be achieved. A study conducted by Johns Hopkins University with funds from USAID found that many people still harbor deep resentment. A male opinion leader told the researchers, "... people are still afraid. They are prone to intense fear. You see it around especially during the reburial of genocide victims." A female opinion later described the atmosphere in her community as follows. "General mistrust: One says, 'this person caused my relations to be put in prison.' Another says: 'this person exterminated my family.'"

Many survivors fear that Gacaca will do little for them, and agreed to support it only under intense government pressure. IBUKA has three major goals: memory, justice, and survival. There is no guarantee that Gacaca will satisfy any of these. The lack of documentation emanating from Gacaca trials, where some judges may not write well or may lack means to draft proper reports, may impede documentation of a proper historical record of the genocide. As for justice, many are unhappy with and even insulted by the light sentence (including TIG) that confessed prisoners will receive, viewing it as little more than amnesty. Their resentment has grown as prisoners begin to be released. Some prisoners have even gloated as they confessed; the law does not require them to express remorse. In addition, there are risks of retraumatization of victims during Gacaca trials that have not been adequately addressed.

The GOR promised survivors substantial sums of money as reparation, yet this has failed to materialize. The amount and form such payments will take have yet to be determined, as the Ministry of Justice is still studying a draft law on reparations. However, at least some of Rwanda's bilateral donors have clearly expressed that they will not support individual cash payments to survivors. It remains to be seen if multilaterals will be willing to do so, though some have quietly expressed reluctance because this could be perceived as an admission of their complicity in failing to stop the genocide. Resentment among survivors may grow if they do not receive the funds they have been promised. At the same time, there is already some resentment of the fact that survivors who have already benefited from assistance with school fees and medical costs through the FARG (Fond d'assistance aux rescapés du genocide, which

receives 5% of the government budget) will now receive even more assistance. Should survivors receive sizable cash payments at a time when small farmers are being encouraged to sell their land, this could contribute to a significant transfer of land ownership from one group to another.

Part of the rationale behind Gacaca is that, by involving the entire community in the justice process, people should feel more confident in the outcome, less suspicious of corruption, etc.. Nevertheless, one cannot rule out the possibility of individual acts of revenge against survivors, witnesses, or released prisoners. The CVA team does not believe that revenge killings will occur in more than isolated cases absent other contributing factors, such as government failure to discourage such behavior or prevailing insecurity.

Assistance workers in regular contact with prisoners say the detainees are anxious for Gacaca to begin. They say they want their day in court, and are ready to say what they know.<sup>39</sup> Yet, once Gacaca begins, it will be necessary to pay attention to the situation of prisoners who will be released, to facilitate their reintegration into communities. Their situation will be similar in many ways to that of demobilized soldiers, whose reintegration has been problematic. They will lack skills and resources. They may encounter problems with their wives who have become more independent in their absence. They may contribute to the spread of HIV/AIDS, as homosexual activity was reportedly prevalent in prisons while there were few or no programs to educate prisoners about transmission of HIV/AIDS or to distribute condoms in prisons. Perhaps most importantly, those angry about having been imprisoned, if not properly reintegrated into society, might be prone to fighting those they see as having oppressed them, notably Tutsi.

Another important step to reconciliation is recognition by all that certain individuals committed the genocide, and that all Hutu need not bear collective guilt. Community involvement in Gacaca, debating the conduct of one individual at a time, should contribute to this. Efforts underway to recognize Hutu heroes will also be valuable in this regard.

The minority Twa have also expressed serious concerns about Gacaca and the justice process. According to Zéphyrin Kalimba of CAURWA, 10,000 Twa were killed during the genocide and surrounding war and 20,000 survived. He further estimates that 3,000 Twa were arrested and 2,300 of them died in prison. This leaves some 700 Twa to be tried in Gacaca. Yet he fears that their rights will not be protected. Some of those who in fact killed during the genocide may have done so on behalf of their Hutu “patrons” and under their orders. He does not know of any Twa who have been elected inyangamugayo judges. Further, traditionally marginalized Twa are not accustomed to speaking publicly and, as such, may be reluctant to testify in Gacaca. One local NGO exists to assist Twa in prison, but its capacity is weak. It will be imperative to ensure that the Twa are protected during Gacaca.

#### ***F. The Role of USAID and Other Donors***

The costs involved in Gacaca are enormous, but the stakes are even higher. Even with substantial donor support, there will not be enough money for everything, nor will logistics, oversight, or monitoring be perfect to ensure that the process serves to reconcile Rwandans rather than create tensions that could lead to renewed conflict. The training of judges was just one small piece, lasting six weeks with a budget of 5 million Rwandan Francs (approximately \$110,000) plus in-kind support (such as requisitioning of vehicles, not all of which were made available on time). Yet its budget was woefully insufficient for even basic logistics. The GOR was not able to address the expectations of the more than 250,000 judges to receive per diems, or even minimal refreshments, for each of the six days of training. One soft drink

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<sup>39</sup> Prisoners have even been preparing for the last few years in parallel “Gacaca” proceedings within the prisons. The records of these prison gacacas will be important elements in establishing what happened during the genocide. However, some also fear that the prisoners may have manipulated confessions, facts, and testimonies in these proceedings.

for each judge each day would have cost some \$400,000. Some judges around the country threatened to boycott the training and possibly the entire Gacaca process unless they receive compensation for their work, but the GOR has no budget for this.

In order to maximize resources, donor coordination and strategic targeting of financial assistance will be crucial. And financial support should be accompanied by technical assistance provided by experienced justice professionals to help the GOR keep the process on track.

Because Gacaca is virtually untested, it will be difficult to predict all the risks inherent in the Gacaca process. Thus, USAID should adopt a flexible approach to its support of Gacaca and must fully engage the GOR in the process. It is essential to keep abreast of developments and work with the government to improve the process as Gacaca unfolds. In the event that alarming trends become apparent (for example, government interference with Gacaca or large numbers of new arrests), USAID must be able to react quickly and to use its leverage with the government to minimize the risks for conflict vulnerability. Already, urgent needs have become apparent in terms of monitoring of the process, further training of judges, and further awareness raising among community members. Both the donors and the GOR must take action to address these needs and others that will emerge over the coming months and years.

With regard to donor coordination, some European donors expressed a concern that USAID did not communicate with them about its involvement Gacaca as effectively as they would have liked. They said, for example, they felt that USAID had unexpectedly withdrawn from a coalition to fund the NURC, leaving them in a difficult position. USAID explained that it had never committed to fund the NURC project, but had said only that they would be interested *if* funds became available (which they did not) and that this message had been distorted when conveyed to other donors, unbeknownst to USAID. It will be helpful for DG staff to continue to attend regular coordination meetings hosted by the Belgian embassy and to continue informal exchanges with members of the donor community about USAID projects and Gacaca generally.

## IV. PARTICIPATION IN PUBLIC LIFE

### A. *The Limits of Consensus Politics*

As mentioned in Section I, the managed transition in which Rwanda is currently engaged is scheduled to be brought to a formal conclusion in 2003. Officials interviewed by the team insisted that the GNU fully intends to respect this time frame and to have a revised constitution in place in time for a referendum that year, to be followed by the election of a president and then of a national assembly.

The stakes during this period will be high: at issue will be whether the RPF will continue managing the political process in response to the imperatives outlined in Section I, or whether there will be a progressive loosening of what is for the moment a tightly controlled political and social playing field.

Little is known for the moment about the draft constitution being prepared by the Constitutional and Juridical Commission, but it is said that it will place significant limits on the scope within which partisan political activity will be allowed to evolve. While there are to be, as at present, elections for officials at all levels of government, for example, it is said that parties will be barred from organizing locally – that party labels will only be permitted for candidates for region-wide political office and above. If this proves to be the case, it will be an indication that the constitutional system may be consciously crafted to prolong the present system favoring consensus and civic education over open debate and electoral confrontation – that there is likely, in other words, to be continued management of the political process from outside the formal institutions of the state beyond the formal transitional period.

If this proved to be the case, it would have serious implications for the future. Even if one accepts that the current careful management of the political process is justified for the reasons outlined in Section I and (more debatably) that this management has until now been largely benign, the lack of transparency and accountability on the part of those doing the managing will inevitably, over time, engender cumulative suspicions and resentments. As time goes on, the legitimacy of the guiding hand of the RPF may start to erode and a potentially explosive challenge to it may become more likely.

In this respect, recent Rwandan experience of electoral politics is instructive. Nationwide elections were held in March 2001 for district offices. In the formal sense, these were by all accounts conducted in near-exemplary fashion by the National Electoral Commission and by local officials: most polling places were well managed, participation was over 90%, and international observers came away deeply impressed. However, in an important report, the International Crisis Group (ICG)<sup>40</sup> was able to document how the process of candidate selection was so tightly managed by local RPF officials using procedures that were clearly orchestrated from the center that in many cases individuals who had expressed no previous interest in running suddenly found themselves selected as candidates and projected into local political office while willing (and in some cases potentially popular) candidates found themselves excluded from the ballot.

It was clear to most informed observers that the RPF saw the March 2001 district elections as an important precursor to the 2003 national elections, and that it wanted to ensure that local officials on whose loyalties it could count would be in place at that time. The ICG report states the underlying dilemma very cogently:

By constricting political freedoms under the motto of national unity and reconciliation, the RPF risks eroding the very foundations of its own policies and dampening hopes for Rwanda's recovery...[T]he omnipotence of the security services and the political control applied to basic political freedoms in the name of national goals have become counter-

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<sup>40</sup> International Crisis Group, "Consensual Democracy" in *Post-Genocide Rwanda: Evaluating the March 2001 District Elections*, October 2001.

productive. [These] have driven government opponents outside the country and risk feeding the external threat that the government claims to fight most. In this context, “consensual democracy” has become the imposition of one party’s ideology...[N]ine years on, a change of course is necessary if the transition is to succeed. Without the acceptance of opposition voices in the internal debate and the eventual return and reintegration of the Hutu groups, political life in Rwanda will remain distorted and unhealthy. The ongoing writing of the new constitution is a good opportunity for the regime to show its willingness to increase political freedom.<sup>41</sup>

In April 2002, during the team’s visit, there were signs that these concerns were justified and that the RPF does seem to be attempting to co-opt the transitional process and remain in effective control beyond the transition’s agreed, formal duration. One very senior official, clearly uncomfortable with this state of affairs, said to the team that: “stability can only be achieved through good governance and true democracy. We must consolidate transparency, remove roadblocks to political activity, and allow for the possibility of peaceful change through the ballot box”. This official was clearly concerned that, though achievements have been made on the good-governance front, events seemed to be moving, long term, in the wrong direction with respect to democratization.

While the political parties that participated in the Arusha process (and that were not seen as agents of the former government) continue to have a formal existence, they have little or no scope in which to function in opposition to the RPF. All parties are members of the Forum of Political Parties, an institution that is also constrained by a requirement for consensus. According to a decision that was imposed by the RPF, no new parties may be formed prior to the promulgation of the new constitution; while some of the established parties have been allowed to reorganize, a similar attempt by former President Pasteur Bizimungu to reorganize his party under the new denomination of *Parti Démocratique pour le Renouveau* (PDR, or Ubuyanja in Kinyarwanda) led to harassment, house arrest and, in May 2002 (also during the team’s visit), imprisonment on corruption and incitement-to-hatred charges that many observers see as having been trumped up to remove an opponent from competition during the run-up to the 2003 elections.<sup>42</sup>

The arguments advanced in Section I to justify the concept of a Rwandan exceptionalism and the need for a managed transition in a post-genocidal context remain valid and will doubtless continue to do so for some time. But there is a countervailing fear, which is that such legitimate concerns may serve to mask an attempt to secure a long-term stranglehold on political power, preventing other groups – even groups operating within the general parameters that might otherwise be deemed appropriate to the present circumstances – from developing the experience of autonomous political action or from achieving access to political power.

If it is indeed the objective of the RPF to maintain a de-facto single-party system indefinitely, then this should be a matter of grave concern for the international community. Single-party states, even in cases where the single party starts out as highly idealistic and effective, entail political stagnation, lack of accountability, self-serving privilege and, eventually, decay, corruption and increasing repression.

With respect to the central issues presented in this present report, such institutionalization of the RPF’s single-party status past the 2003 elections would discourage the effective political aggregation of individual interests and the open debate of grievances. This could only heighten tensions within the

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<sup>41</sup> Ibid., p. iii. It should be noted that the National Electoral Commission has prepared a reasoned rebuttal to many of the points raised by the ICG report: see Commission Electorale Nationale, “Observations de la Commission Electorale Nationales sur le rapport “Consensual Democracy in Post-Genocide Rwanda” de International Crisis Group”: Kigali, October 2001. The rebuttal, however, emphasizes the procedural successes which the ICG report acknowledges while failing to deal convincingly with the upstream manipulations that the report documents.

<sup>42</sup> “L’ancien président rwandais Pasteur Bizimungu est en prison”, *Le Monde*, May 20, 2002



society and convince those who feel marginalized that they have no alternative to violent conflict in the pursuit of their interests.

## **B. Civil Society**

While it would seem that access to participation in political affairs is likely to remain tightly controlled for some time to come, participation in public life should be possible through other channels. Every district, for example, has a local community-development committee that is supposed to analyze local needs and bottlenecks and make plans for dealing with them, using budget resources provided by the state.<sup>43</sup> By many accounts, while levels of participation and enthusiasm inevitably vary from one community to the next, these committees are frequently dynamic forums within which issues of genuine concern are discussed and dealt with. This, says one senior government official, is where reconciliation and good local governance are being built and where, at least potentially, local tensions can be defused and disputes resolved.

Though these CDC's have official status and are convened by the local administration, their activities fit into the broad category of activity associated with civil society – a space where direct control by the state is minimized and where shared concerns and ambitions can be freely pursued.

The past history of civil society in Rwanda is decidedly mixed.<sup>44</sup> Its strongest institutions are the churches, and these (particularly the Catholic) have generally retreated from involvement in public affairs in the wake of what is perceived to have been the instrumentalization of their hierarchies by the genocidal project. While the churches provide, as they always have, an important range of social services, they are only now beginning once again to involve themselves in public life. (There are signs, for example, that the Catholic Justice and Peace committees, which in many other countries play an essential role in human-rights advocacy and monitoring and in dispute resolution, are beginning to bestir themselves. However, as one observer wryly put it to the team, the Church's independent publications seem for the moment "to be remarkably focused on exclusively spiritual matters".)

As had been the case in the Habyarimana years, there exists a substantial local NGO sector which benefits significantly from support from their international NGO counterparts and from the donor community. As in many African countries, this sector is closely watched by the authorities. A law "relating to non-profit making organizations" was promulgated in July 2000. It grants local authorities and the Minister of Justice substantial oversight of NGO activity and broad powers to suspend or (after seeking a court order) dissolve organizations on the grounds that "the organization's actions are likely to be a threat to law, public order and good moral standards"<sup>45</sup>

Such organizations are in fact unlikely to pose such a threat, or indeed to shake up the established order in any significant way in the short term. The leadership of such organizations is generally composed of members of the élite who overlap very directly with the power structure and who are more likely see their institutional role as being to serve government aims in an auxiliary capacity. The leadership of the organizations with whom the team met were generally enthusiastic supporters of the government's aims with respect to reconciliation and reconstruction. Several of the NGO's visited were born-again Christian movements with ideologies of personal commitment and transformation along lines remarkably similar to those of the government's own re-education campaigns. Yet experience worldwide has shown that this

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<sup>43</sup> The team was told, however, that the International Monetary Fund had ordered that the central government cut back its proposed subsidy to the local authorities from 5% to 2% of what was already a shrinking total national budget, raising real questions as to whether the resources will be available to meet even the most minimal of expectations on the part of the community development communities – another potential source of tension.

<sup>44</sup> A useful and lucid overview is provided by a previous study for USAID/Rwanda: Associates in Rural Development, "Civil Society in Rwanda: Assessment and Options", n.d.

<sup>45</sup> Law 20/2000, in the *Official Gazette of the Republic of Rwanda*, Year 40, # 1, 1 April 2001.

sector matures and consolidates over time, and that it comes to see that it has corporate interests and interests on behalf of its various constituencies that are distinct from those of the state. USAID and other donors are, rightly, supporting civil society organizations while they proceed through various phases of this transition.

In a somewhat separate category are the human rights organizations. There are several of these, all receiving the bulk of their resources from outside sources. The best known and most active is the *Ligue rwandaise pour la promotion et la défense des droits de l'homme* (LIPRODHOR); its activities are closely scrutinized by the authorities. The GOR has denied it permission to do civic education and it has banned it from one province. Other human rights groups are either paralyzed due to administrative problems or conduct only non-controversial programs such as the teaching of the universal declaration of human rights in primary schools. Such groups, in other words, are limited to very circumscribed activity in the promotion of human rights. Protection activities, a key role for such organizations elsewhere, are almost completely banned.

Activities in pursuit of ethnic and political reconciliation are encouraged, and both at the grass roots and at the national level, community groups and NGOs have engaged successfully in activities such as those promoted by a coalition of such groups calling itself "Imagine Coexistence".

Generally speaking, while the NGO sector (and particularly the dynamic sub-group of women's organizations) has been playing an admirable and generally highly useful role in the pursuit of social and economic improvement within the society, it has not so far been able to fulfill its potential role as serving as an alternative channel for the pursuit of remedies for grievances or for providing meaningful space through which individuals can participate in public life. Such participation may become more normal and natural as the CDC's hit their stride and as the churches recover some of their self-confidence, but for the moment, access to participation in public affairs is limited to channels established and filtered by the government (in practice, the RPF), and civil society's ability to serve as an alternative vehicle for conflict prevention and resolution is severely limited.

Press criticism, whether in print or on the air, is essentially unheard of (save for limited campaigns against politically safe and relatively innocuous nuisance targets). Open and strenuous dissent from government policy and from approved consensus thus has no channel for internal expression and therefore tends only to be beamed back into the country from offshore sources. Some of the latter, notably the VOA Kinyarwanda service (which is very widely followed and performs an indispensable service by giving voice through its local correspondent to criticisms that cannot otherwise be openly expressed) are reasonably balanced; others are extremist and redolent of the hate radio that played such a key role in the genocide.

All this means that most individuals or groups with grievances have few channels through which to pursue these peacefully and constructively. While the RPF's relentless pursuit of civic-education and consensus-building consultations does provide some scope for aggressive individuals to come forward and express their views, once a consensus has been promulgated (and especially when it becomes what is known in democratic-centralist jargon as a "line", meaning that it has been ratified on high) it can be perilous to challenge it further. The result is that groups or individuals who do not wholeheartedly share in the announced consensus are most likely to retreat into silent resentment and to renounce, at least for the time being, the active pursuit of their aims. Such "consensus", it must be emphasized, is generally achieved through fear that dissent will entail serious consequences – it does not require that much actual repressive action.

Such outward passivity is not unusual in Rwandan history, which has been characterized by unusually high levels of clientelism and of the subjugation of individual ambitions to the will of powerful figures in return for patronage and preferment. Observers have universally commented on the high levels of

acceptance of authority within Rwandan society – but while such acceptance has been the norm over extended periods, Rwandan history has also been punctuated by outbreaks of sudden and explosive violence, such as those that occurred in 1959.

Rwanda has by all accounts become a more open place than it was in the Habyarimana years, and interactions between communities and government authorities far more dynamic and responsive. But there appears to remain a wide range of personal and collective grievances for which there is no safe forum for expression. To the extent that some of these may be widespread and relate to issues perceived to be fundamental to personal survival or self-respect and that they remain unexpressed and ignored, they become potential channels for instrumentalization by subversive elements.

## V. POTENTIAL DYNAMICS OF VIOLENT CONFLICT

This section will analyze some of the potential proximate causes of violent conflict and the foci around which such conflict might organize itself. This is an analysis of possible scenarios and should not be read as being predictive or as reflecting a feeling on the part of the team that such conflict is in any way imminent.

Rwanda has, since at least 1996, been involved in a very violent ongoing civil war being fought on the soil of a neighboring country.

### A. *The RPA monopoly of force*

The RPA is one of the most capable and seasoned fighting forces in Africa. It has been continually at war since 1990 and has generally prevailed in most engagements. This fact alone is of great significance to what follows: in the short-run, there is no credible internal threat with which the RPA could not cope handily, and this fact serves in itself as a deterrent to any potential instigators of violence or of internal destabilization. Rwanda is too small, communications are too good, and the intelligence capacity of the military and of the security organs too efficient for such violence to seem like an attractive alternative. It is thus the assessment of the team that for the indefinite future there is almost no threat of an internal insurrection. Internally-generated violence is most likely to occur as a result of spontaneous outbreaks in response to strictly local tensions; even such outbreaks are probably unlikely and would in any case be quickly (and probably quite ruthlessly) contained.

### B. *External Threats*

#### *The Congo Wars*

In 1994, when the RPF successfully took power in Kigali, there was a massive outflow of the country's Hutu population into neighboring countries, and particularly into the eastern provinces of the Democratic Republic of the Congo (DRC, then known as Zaïre). Figures have always been impressionistic, but at one point there were somewhere between 1 and 3 million Rwandan Hutu in camps in North and South Kivu provinces alone. It was clear that this move was centrally organized and that its primary aim was to reconstitute a Hutu-dominated segment of Rwandan society beyond the reach of the RPF. The former army (FAR) and the genocidal militias (known collectively as the *Interahamwe*) regrouped and rearmed in these camps and used them as staging grounds for murderous incursions back into Rwanda proper. Meantime, the civilian population of the camps was, under the amazed eye of the international humanitarian community, organized into a near-perfect replica of Rwanda itself, with refugees regrouped according to their areas of origin and under the control of their previous local civilian authorities.

Having given up on the international community's will or capacity to put an end to this situation, the RPF in 1996 invaded Kivu and, through an alliance with an improvised Congolese rebel group (which included Congolese Tutsis of Rwandan ancestry and language) that, to universal amazement, marched clear across the DRC and, in May of 1997, took control of Kinshasa and put an end to thirty years of dictatorship by Mobutu Sese Seko. The campaign had been brilliantly led by Rwandan officers and received critical assistance from Angola in its concluding phase.

As soon as the Rwandan assault began in 1996, the majority of the camp populations moved back across the border and were eventually reabsorbed into Rwandan society. The ex-FAR and Interahamwe fled deeper into the DRC, with the RPF and its Congolese Banyarwanda allies in hot pursuit. Engagements on this front continued across the entire Congolese land mass and into the Central African Republic, with some ex-FAR eventually becoming refugees for a time in Congo-Brazzaville. These combats were particularly bloody, with a number of massacres known to have occurred, but the RPF cause was seen as just by the guilt-stricken international community; and blame for the massacres was by general consensus ascribed (misleadingly) to the Congolese.<sup>46</sup>

Other ex-FAR and Interahamwe units, however, were able to retain a foothold in the mountainous terrain of Kivu and the adjacent forests of Maniema, and to continue to harass the RPF and eventually to resume incursions. Genocidal propaganda continued to be broadcast sporadically into Rwanda, and massacres were committed by both sides. Throughout 1997 and most of 1998, the RPF, through agreement with the government of L.D. Kabila, retained full military control of the theater in Kivu and Maniema, including all nominally Congolese units in the area.

In 1998, in a sequence of events that has not yet been fully elucidated, Kabila and the RPF had a major falling out. Kabila was apparently plotting with FAR/Interahamwe, the Rwandans apparently attempted an unsuccessful coup in Kinshasa, and there was a violent split in Kinshasa in which, among other horrors, a number of Tutsi of Rwandan origin were massacred. In August, Rwanda and Uganda once again invaded Kivu in force, involving the creation of a further Congolese "rebel" group, the *Rassemblement congolais pour la démocratie* (RCD).

The fortunes of the ensuing wars within the Congo, the brilliant but misguided and failed attempt by the Rwandans and Ugandans to retake Kinshasa via an airlift from Goma, and the involvement by Angola, Namibia, Zimbabwe, and Burundi (as well as of various and assorted militias and insurgents) all lie beyond the scope of this report. What is relevant to our report, however, is that in 2002 there continued to be a war, largely fought in Kivu and Maniema, between the RPF and the former FAR/Interahamwe, with the latter receiving at least modest levels of material support and training from the DRC and its allies, while there remain Rwandan Hutu units attached to the Congolese military cantoned in areas under Zimbabwean protection.

Rwanda remained in military occupation of large parts of the eastern Congo, from Kisangani in the north to Katanga in the south, controlling all of North and South Kivu, Maniema and considerable portions of the Kasais until September-October 2002. Whatever the precise realities of the situation, it is clear that this presence was largely funded from Congolese resources and that the DRC occupation contributed

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<sup>46</sup> The units involved in fact were allegedly under direct RPF command, though a number were made up of Congolese of Rwandan origin, but it fit many purposes at the time for a different impression to be allowed to linger. Similarly, when the international community through the Security Council in 1997 demanded investigations of these alleged massacres, the then-government of L.-D. Kabila was allowed to take the blame for obstructing these, though it is clear that it was acting on instructions from its Rwandan protectors.

significantly to broadening Rwanda's resource base and the fortunes of at least some of its leadership.<sup>47</sup> What will happen in the eastern DRC following the RPF withdrawal, which leaves a huge vacuum, and how the RPF will interact with its allies in the region remains unclear.

The ex-FAR/Interahamwe problem also remains unsolved, however, and, though these have ebbed and waned over the years, there continue to be significant cross-border incursions. There are signs that the Rwandan Hutu forces in Kivu have evolved and that a new generation has emerged. Reborn ALIR and now the FDLR, they now claim to have cast aside the genocidal agenda and to have become a newly-legitimized anti-RPF insurgency seeking to bring about a broader-based government for Rwanda as a whole. Political contacts have been taking place in Europe and in Kinshasa between this Hutu irredentist movement and Tutsi opponents of the RPF, some of whom had previously been RPF insiders who had fallen out with the present leadership and gone into exile to save themselves from arrest and possible assassination. Among the latter are Valens Kajiguhakwa, a wealthy businessman, and Joseph Sebarenzi, the former Speaker of the transitional parliament.<sup>48</sup>

If the formation of such a front can be consolidated, it could represent a credible threat to internal stability, especially if key figures from the genocide can be effectively excluded.

### *The Burundi Wars*

Despite the efforts of international mediators (including the GOR), the multi-faceted conflict in Burundi continues to fester, with periodic flare-ups evidently being engineered with the intention of disrupting any settlement. It appears that the RPA has been intervening directly in Burundi with increasing frequency since 2001.<sup>49</sup> A complex series of crisscrossing alliances between all the different governments and fronts involved in the region – and especially in the DRC – destabilizes peacemaking efforts in Burundi. Rwandan interests here are unclear – there are indications that it fears that the inception of a broad-based coalition government could be threatening to internal Rwandan stability, either because the existence of such an arrangement, if successful, could lead to pressures for similar measures in Rwanda (though the internal politics of the two countries are very different) or that such a government might provide support to anti-RPF forces.

### *Conflict with Uganda*

In 1998, a falling-out between RPF and NRA forces in Kisangani led to a series of armed confrontations between these former close allies, and since then there has been considerable tension between the two states and their respective leaders, Presidents Kagame and Museveni. For some time there were rumors of build-ups along the two countries' common border and some talk of impending war; this tension appears for now to have subsided. However, rivalries over influence and control of resources in the DRC remain a potential flash-point, and the two nations' respective Congolese "rebel" clients continue to be rivals, greatly complicating the search for peace in the DRC. Uganda has welcomed Rwandan dissidents (and vice-versa) and, in the event of a further deterioration in relations, it is clear that Ugandan support for an anti-RPF insurrection cannot be ruled out.

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<sup>47</sup> Perspective on the Rwandan occupation of the eastern DRC was given on March 1, 2002, in testimony to the Belgian Senate by Deus Kagiraneza, a former RPF official who had been Prefect of Ruhengeri District, among other posts. This is available at <http://www.senat.be/crv/GR/gr-14.html>.

<sup>48</sup> Under the South Africa-brokered agreements that led to the withdrawal of the RPA from the eastern DRC, the GDRC is supposed to deny the use of its territory to the ADLR. In October 2002, ADLR cadres in Kinshasa were expelled, while ex-Interahamwe suspects were also detained. Whether the GDRC will have the means or the resolve to fulfill its commitment to operate similar arrests and expulsions from the eastern DRC, however, remains to be seen.

<sup>49</sup> See International Crisis Group: *Après six mois de transition au Burundi: Poursuivre la guerre ou gagner la paix?*, May 2002.

### *Tanzanian Refugee Caseload*

In addition to the ex-FAR, etc., presence in the DRC, there remains a significant caseload of Rwandan Hutu refugees in Tanzania. These groups are said to remain in the kind of subordination to former government leaders that had characterized the situation in the DRC prior to 1996. These groups for now remain quiescent, but in the event of the onset of a significant challenge to the RPF, they would probably count among its supporters.

### ***C. The Potential/Prospects for a Cross-Border Insurrection***

The prospects for an internal insurrection or a significant internal violent conflict within Rwanda are felt by the team to be very slim indeed. This assessment would change radically, however, were a sustained, credible cross-border challenge to be mounted from the DRC by the forces mentioned above. Under current circumstances, such a challenge would most likely be assembled in the DRC, but this could over time be extended to the territory of one or more of Rwanda's other neighbors.

In the recent past, incursions into the Northwest were resisted by the local population, which preferred peace and accommodation with the RPF to a resumption of warfare in which they would likely become the victims of both sides. The insurgents were denounced and the incursions rapidly brought under control. This situation can probably be counted upon to obtain for the present: there appears to be little incentive for Hutu within Rwanda proper to risk their lives and livelihoods in such an adventure.

This could change significantly, however, were the insurgency to appear to be broad-based and were the political climate within the country to degenerate significantly. The proximate causes of such a degeneration would likely be multiple and would include, more or less simultaneously, some combination of the following:

- Further **economic deterioration and (yet further) increases in poverty levels.**
- A **perception that the RPF was deliberately attempting to control the 2003 electoral process to ensure its continued control**, especially if such an effort were accompanied by the kind of brutal repression that the RPF has largely been successful in avoiding (except in the DRC) since 1996.
- A **poorly-conceived or executed effort at land reform.** One potential scenario that is of particular concern to the team would involve, more or less simultaneously, a generous cash compensation package for genocide survivors and official pressure for the holders of small plots (< 1 ha.) to sell their land. Such a process would lead to the perception of an officially-sanctioned strategy for transferring land from Hutu to Tutsi and could be very explosive.
- A **perceived failure of the Gacaca experiment**, probably involving a sense that the system had been corrupted, or that innocent individuals were being railroaded. This would need to be a widespread perception (not a local, anecdotal, phenomenon) and, like the other proximate causes listed here, be fanned by efficient propaganda.
- A continued **failure by the RPF to provide at least exemplary (and transparent) judgment against RPF elements accused of committing war crimes in 1994-96.** There remains a deep resentment among many Hutu that these alleged crimes were not included in the Gacaca process. The RPF has responded that these matters would be more properly handled through the regular military justice system, but to date, as far as the public is aware, few if any prosecutions have been initiated. Failure to address this grievance is creating an appearance that Gacaca is mere victor's justice and is thus very dangerous.
- Far from succeeding in neutralizing its enemies, the Rwandan occupation of the DRC, by incurring through its brutality the profound enmity of the local population, has increased the

scope for anti-RPF mobilization on Congolese soil. The sudden withdrawal of the RPF from the DRC in September-October 2002 may help to resolve this problem over time, but in the short term, the vacuum left in the wake of this withdrawal brings dangers of its own.

Due to the absolute security superiority of the RPF, no one of these potential proximate causes would alone, or even combined, lead to violent conflict. However, if several of them were to occur more or less simultaneously and were accompanied by a sustained cross-border attack by insurgents based in the DRC, the situation could quickly become very grim.

An equally great danger as the threat of an externally-based insurrection, is that of possible reactions by those attempting to contain it. A massive and brutal reaction to insurgency (similar to that of the Habyarimana regime in 1992) could intensify the threat of widespread conflict.

#### ***D. Potential Foci of Mobilization for Internal Violent Conflict***

As mentioned above, the RPF monopoly of lethal force is so overwhelming that it is hard to conceive how internal violent conflict could be ignited on any scale except, as also mentioned, in conjunction with a sustained, credible cross-border attack. There are, however, groups that, under those circumstances, might be mobilized in connection with an external armed insurgency:

- **Demobilized Soldiers**, both former FAR and RPF – individuals who may have found no effective outlets or economic prospects since their return to civilian life. It is likely that there may be as many as 30,000 or 40,000 individuals around the country with some kind of previous military experience, and, presumably, in the event of an outbreak of violence on any scale, many could be tempted to take up arms once again.
- **Local Defense Forces**. In keeping with its Leninist/revolutionary origins, the RPF has organized, trained and funded local militias to assist with the maintenance of law and order around the country. Military observers in Kigali state that there are perhaps 20,000 such militia members, in every region. In principle, the LDF's arms are kept in central locations, under police control, but in some regions (particularly in the incursion-prone Northwest) they are said by these observers to have permanent possession of their weapons. The elements are poorly trained and probably of limited military value, but in a situation of widespread violence they could become involved.
- **Students and other former attendees at “solidarity camps” (ingando)**. These sessions include rudimentary drilling and training in weapons handling (again in keeping with hallowed revolutionary traditions), on the purported grounds that it is important to “demystify” weapons. Such participants are not normally issued arms and are probably of marginal or negative value, but, once again, such groups often get caught up in the chaos of insurgencies and one or another party may make the mistake of arming them.
- **Released prisoners** emerging from the Gacaca process, many feeling aggrieved by the length and conditions of their imprisonment.
- **Landless paupers**, especially if there is a dramatic increase in their numbers: see the section on land issues.

## ***E. Potential Conflict Causes, Triggers and Warning Signs***

Again, it must be emphasized that while there may be frequent outbursts of strictly localized violence (which may include assaults, assassinations and incidents of urban terrorism as well as local inter-group armed attacks), most such episodes will not rise to a broader level of concern. The most serious threat remains that posed by the Rwandan civil war as it continues to play out in neighboring countries, particularly the DRC. A sustained and well-planned incursion may be beyond the capacity of the ex-FAR/Interahamwe operating there now, but rearmed, better trained and better funded groups could conceivably emerge in the future.

As stated earlier, widespread violence is more likely to result from the troubles occurring synchronously in relation to several key triggers. The following are the most likely triggers of such conflict. The greatest likely threat is posed by the first category, that relating to competition over access to public power; the other causes are complementary causal elements – i.e., unlikely to provoke sustained conflict in their own right but constituting an underlying set of grievances that could ignite conflict in a situation in which stability was threatened by a sustained political and military challenge to the present order.

### ***Cause 1: Competition over access to political power***

*Triggers (multiple elements would likely be required to raise conflict to levels of generalized violence):*

- Further repression of political expression and organization leads to a perception that the narrow group presently in power within the RPF is seeking to retain a monopoly on political power past the 1993 transition.
- Conspiracies and purges among those in power.
- The present regime fails to expand its political base and continues to rely on coercion to retain control over affairs in the hands of a narrow-based political movement representing a small segment of the population (i.e., former refugees in Rwanda and their children).
- Sustained cross-border attacks from the DRC, perhaps with tacit Ugandan support; sudden increase in perceived political and military effectiveness of the DRC-based opposition.
- Economic benefits and opportunity for political insiders continue to increase while access for others narrows.

*Warning Signs:*

- Those with close family or personal ties to the RPF inner circle come to be seen as enjoying favorable economic treatment, either as domestic entrepreneurs or as beneficiaries of spoils from military involvement in the Congo.
- Conflict in the DRC continues to fester with no solution in sight.
- Cross-border incursions become more frequent and effective.
- Insurgents again begin to receive civilian support in rural areas.
- DRC-based insurgents broaden their political agenda and abandon neo-genocidal propaganda.
- Increasing resort to arrests of civil society members and others for political activity.



- Further arrests, allegations of political murders and other violence, and further defections of former RPF insiders.
- Opposition political movements led by former RPF figures such as Bizimungu, Kajiguhakwa and Sebaranzi continue and expand, additional defectors join these, and effective (even if opportunistic) alliances are forged with elements of the former Rwandan government.
- The emergence of an effective, charismatic opposition leader linked to the existing armed and unarmed groups.
- Better organization and effectiveness of the Congolese resistance.

*Appropriate donor responses:*

- Intense diplomatic activity to strengthen the peace process in the DRC following the RPF withdrawal and to help resolve the ex-FAR/Interahamwe issue.
- Rapid and forceful diplomatic response to abuses by all parties within the DRC .
- Continue to support positive political change and to push for openness; provide support or Rwanda to explore appropriate constitutional and political system design engineering appropriate for divided societies.
- Expand existing USAID and other donor support to civil society organizations. Even where these latter are broadly (and usually quite appropriately) supportive of GOR initiatives, such ongoing support provides vital encouragement to the concept that interests can be aggregated and pursued peacefully.
- Active donor involvement in helping to ensure that the 1993 end-of-transition benchmarks lead to genuine increased political openness. There should be close monitoring of the entire process by NGOs and international organizations, not just of the electoral events themselves.

**Cause 2: Competition over Land Resources**

*Triggers:*

- A perception that the new land use/land policy issues will lead to widespread, more or less coercive land alienation.
- Economic growth and increased prosperity that is limited to a small minority, with large numbers of landless families ending up pauperized in towns.
- Tough repression of protests of the above.
- Large increases in social suffering as a result of a deterioration of social services, increased spread of HIV/AIDS, drought-related or other sudden-onset food shortages.

*Warning Signs:*

- Promulgation of a new land policy/law that aggressively seeks to reduce the number of landholders in the relatively short term.
- Sudden increases in the numbers of persons moving into urban areas/towns; sudden-onset, large-scale displacement as a result of food shortages, etc.
- Urban or rural protests that start turning violent.
- New land policy is followed quickly by a perceived sudden, widespread land purchases, e.g., with funds provided as genocide victims compensation.

*Appropriate donor responses:*

- Lobby for greater clarity and less ambiguity in both the land policy and land law.
- Propose, and be willing to support financially, the implementation of the land policy on a pilot basis that would be monitored for 2-3 years before passing the land bill and implementing it nation-wide.
- Encouragement of genuine citizen engagement in the policy process. Support to effective, gradual land tenure/use reform and concentrated settlement (imidugudu), backed by systematic, high-quality, independent feedback from the field (e.g., through NGOs). Constructive dialogue with the authorities on the basis of this feedback. Ongoing substantial support to small-holder agriculture (i.e., avoidance of use of donor resources solely to back the cash-crop sector).
- Ongoing FEWS monitoring and rapid, market-based mobilization of food resources in the event of potential shortages. Continue and strengthen ongoing efforts to combat AIDS.
- Continue support to ongoing family planning efforts.
- Swift diplomatic response in the event of brutal repression of urban or rural protests.

**Cause 3: Perceived failure of justice for the events of 1994**

*Would not be likely in itself to become a cause of widespread violent conflict, but could become a focus of such conflict in a context of increased tension and instability and if one or more of the triggers below were activated.*

*Triggers:*

- Discontent over perceived partiality or ineffectiveness of Gacaca.
- Lack of consistency in judging and sentencing suspects, instrumentalization of the process for personal score-settling or for asset-grabbing.
- Lack of diligence in prosecutions, leading survivors to feel that the process is a sham.
- Widespread vendetta-style violence between victims and persons released after acquittal, confession, etc.
- Discontent over failure of the GOR to prosecute alleged instances of war crimes perpetrated by the RPF in 1994.
- Compensation paid or granted in some form to genocide survivors but not to victims of alleged RPF war crimes.
- Failure to grant any compensation to survivors.

*Warning Signs:*

- Widespread reports of local protest against Gacaca, especially if violent or if significant violence is used to put it down.
- Serious, recurring patterns, widely reported or disseminated by rumor, of procedural bungling or misconduct by the tribunals.
- Dissemination of underground propaganda calling, e.g., for justice for war crimes.
- A pattern of individual revenge attacks or killings.

*Appropriate donor responses:*

- The donors need to be closely engaged with Gacaca. Monitoring will be a Herculean task, but there cannot be enough of it.
- It is clear, however, that, although significant donor resources have already been made available, the process remains seriously under-resourced, as does the regular court system. The donors need to remain constantly engaged throughout the process and to become aware of generalized problems as they emerge.
- The most effective resource-based response would be to have a flexible, rapid-response funding instrument in place (perhaps as an NGO umbrella grant) to be able to make key needed inputs available on short notice, in response to unforeseen circumstances. There are many factors that could cause Gacaca to fail. Unless there is a sudden change of orientation at senior levels of the government, a failure of the political will to make the process succeed is not likely to be one of them. But it would be tragic if the process failed for want of resources and thereby set off a violent spiral.

***Note on a Potential Resumption of Genocide***

Once again, it is the team's conclusion that no one of the set of triggers listed above is likely to precipitate widespread political conflict, but that in combination any number of them could do so, especially those related to Cause 3. To what extent would such events lead to a resumption of the 1994 genocide? There would almost certainly be localized killings with ethnic overtones, and in some areas there could, if things got badly enough out of control, be actual massacres along ethnic lines.

It is, however, our considered view that such developments would probably not lead to a resumed genocide along the lines of 1994, even if there were to be a sustained period widespread violent conflict under the worst of the possible scenarios that might be inferred from the hypothesis outlined above. The 1994 genocide resulted from a conjunction of factors that are most unlikely to recur: it required the full power of an organized state to set it in motion and a large and dedicated human infrastructure to sustain it. While there are repeated tales of unrepentant individuals who mutter darkly about coming back to "finish the job", the recurrence of the unique enabling environment of 1994 is highly unlikely. This may seem like a naïve or sanguine assertion, but the opposite hypothesis – that any political violence will automatically lead to a resurrection of the genocidal demons within Rwandan society – is also susceptible to overstatement.

It should be noted that the GOR has presented itself as a government of genocide victims and uses the genocide as a reason to crack down on all political opposition.<sup>50</sup> The lack of survivors in key posts as well as abject misery in which many live on the hills both interfere with this claim. Despite the persistence of the Hutu/Tutsi divide described in section I above, there are signs that opposition to the present government may nonetheless be partially coalescing along cross-ethnic lines.

In any event, it must fervently be hoped that any outbreak of violence will be followed with the utmost attention and seriousness by the international community, and that its efforts to help in containing it would be deployed swiftly and effectively. The Rwandans' past experience can hardly give them great

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<sup>50</sup> This was the case, for example, with the speech President Kagame gave during the team's visit, on April 7, at the annual commemoration held at Butare: a good part of this speech was devoted to linking the emerging internal opposition (e.g., of former Pres. Bizimungu) to the genocidal agenda.

confidence in this regard, but the fact remains that the international community is far more aware of the dangers today than it was eight years ago and is far more likely to be responsive to warning signs.

## VI. PRINCIPAL CONCLUSIONS AND RECOMMENDATIONS FOR DONOR STRATEGIC PLANNING

The period 2002-2004 will be one of maximum danger for the consolidation and successful conclusion of the transitional process that began in 1994. Simultaneously, Rwanda will: conduct a bold but delicate and dangerous experiment in alternative justice and reconciliation; conceive and manage a radical reform of land use, tenure and *villagization*; consolidate and support an ongoing process of devolving local control over local affairs; draft a new constitution and submit it to a popular referendum; and conduct crucial parliamentary and presidential elections.

These processes must be managed while Rwanda is involved in ongoing warfare (against both Rwandan and external enemies) within the DRC.

Any one of these processes could go seriously wrong; if several of them did so at once, the prospects of an externally-based insurrection succeeding in attracting significant internal support would be greatly enhanced. Neither the external, armed opposition nor the internal political opposition is at this point credible, but this situation may not last.

The 1994 genocide creates a “Rwandan exceptionalism” that, within limits, should allow Rwanda to approach the need for expanding access to public life differently from other countries. It should be supported in its efforts to devise and implement innovative alternatives to a majoritarian 50% + one vote electoral democracy *provided* that these do indeed increase opportunity for augmenting political space and individual involvement in public affairs. Efforts to invoke Rwanda’s exceptionalism as an excuse to tighten political control and stifle dissent will be counterproductive and serve to increase, rather than diminish, the nation’s vulnerability to a significant return to violent conflict.

There has been significant progress toward improvement in good governance. Senior officials are generally very bright and dedicated, and innovations such as Gacaca reflect innovation and daring. Nonetheless, there has been a disturbing trend toward imposition of a form of consensus politics (with the consensus being increasingly imposed from above) that could over time become stifling, especially if the RPF is indeed intent (as some fear) on consolidating its position as a vanguard organization at the head of what appears to be a de-facto one party state.

The lingering threat of potential, large-scale violent conflict in Rwanda (whether or not it takes on a specifically genocidal turn) remains very great – perhaps among the greatest in Africa. The genocidal past and the international community’s failure to respond to its onset rapidly and decisively place a continuing obligation on the international community to respond generously and effectively to Rwanda’s ongoing needs.

The challenge is to do this in ways that support the genuinely positive reforms and initiatives that have been undertaken in recent years while helping its Rwandan partners to avoid the trap of eventual sliding into de-facto one-party despotism.

The following are broad principles that USAID is urged to integrate into its strategic planning:

1. The overall thrust of USAID’s programming, with emphasis on health, agriculture and issues of governance, is sound and should be retained in its broad lines. However, only health is currently well funded. Both agriculture and, especially, democracy & governance are severely underfunded – they have had impact in the past but look unlikely to do so in any significant fashion in the future unless they are given substantial new resources.

2. The idea of conflict as a cross-cutting theme to USAID programming is absolutely crucial, but in its implementation it needs to be better focused. The present Democracy (DG) Strategic Objective (SO) could usefully be reformulated (in line with USAID's global changes) so that, for example, Food for Peace resources and others link closely to conflict issues. Given local sensitivities to the use of the word "conflict", this SO could perhaps usefully be rechristened as a "Peace and Reconciliation" SO, organized in ways suggested by the outline of causes, triggers and responses outlined above.
3. Ongoing support to civil-society development as posited in current USAID programming is absolutely essential, especially given that explicitly political institutional development outside of the RPF-established framework is likely to remain stymied for the short run. (It should again be emphasized that the institutions being developed within that framework are by no means only negative – that there is much occurring that is positive and for which a compelling case for USAID support can be made – only that it is vital that alternative channels of social organization be encouraged to emerge alongside these.)
4. Agriculture programming should refine its conflict lens – resources should be devoted on a priority basis to working with the GOR to find ways of avoiding the dangers, outlined in Section II, of a precipitous and coercive imposition of hastily-conceived land use/tenure reform. There have been excellent USAID-funded research activities in the past that have made substantial contributions to realistic policy formulation – these should be built upon. Support to public participation in policy reform processes is also merited: The SO team should ensure that the programs USAID supports ensure both economic growth opportunities and provide a safety net for poorer families. It would be advisable to track the land reform process whether or not actual resources are devoted to it because poor implementation could severely impair the SO teams' ability to achieve desired results. See the more specific suggestions, which appear in Section II of this report.
5. The assessment team was not able, in the time available, to provide substantive analysis of the interaction of issues such as HIV/AIDS and population growth with present and potential future underlying causes of conflict. The Health SO team certainly has the competencies to pursue these issues, particularly with respect to ways in which the spread of HIV out of the prisons and the Congo war theater may create further social dislocations.

***Recommendations to USAID and other Donor Organizations (bi- and multilateral):***

1. Issues such as support to land tenure/use reform, agricultural production or Gacaca all have major potential to serve as conflict triggers and need close donor monitoring and coordination. By and large, long-term funding commitments and program frameworks may not work as effectively in dealing with these issues as more ad-hoc and flexible arrangements that can be readjusted quickly and sensitively as circumstances warrant. Use of umbrella grant-making mechanisms (with requirements that recipients also retain high levels of flexibility to deal with unexpected developments or unintended consequences) is preferable to funding mechanisms that lock in programs over long periods.
2. Gacaca requires particular attention in this regard. It is conclusion of the team that it is potentially a powerful tool for achieving the purposes for which it was conceived – i.e., justice and reconciliation for the crimes of the genocide. But things could go horribly wrong, and do so unexpectedly and in unanticipated ways, both at the local level and in the aggregate. As stated in the Gacaca section above, *there cannot be enough monitoring*. Such

monitoring should of course be done in the first instance by civil society organizations and NURC, but donors should be directly involved as well, and be seen to be involved. Joint donor monitoring missions, frequent Kigali- and provincial-level consultations, and the programmatic suppleness to be able to respond to unforeseen developments could be very important in helping to ensure the process's ultimate success and to head off potential violence.

### ***Recommendations to the U.S. Country Team and to the International Community***

1. The conflicts in the region, and particularly in the DRC, are felt by the team to be the main vector along which violent conflict could eventually be unleashed in Rwanda proper. In this context, the dramatic and swift-paced developments with respect to the DRC in September-October 2002 are of vital importance. The RPF apparently has completely withdrawn its forces from the eastern DRC under a South African-brokered agreement under which the DRC military is to neutralize the "negative forces" in Kivu that are Rwanda's principal (and legitimate) security concern. As mentioned above, the international community has, from 1994 onwards, been reluctant to commit resources to achieving the pacification of the eastern DRC and to bringing these negative forces under control. If, as seems at least plausible, the promised DRC efforts to neutralize the ex-FAR/Interahamwe and others ultimately prove unsuccessful, it will be time for the international community to rethink its present approach, which leaves the resolution of this central issue in the hands of the belligerents. Consideration must be given sooner or later to a more robust UN operation in the DRC or to other mechanisms that can bring to bear the right mix of political and military ingredients to the removal, once and for all, of the ongoing threat to Rwanda posed by the presence of these elements within the DRC.
2. The brutalization and the humanitarian cost of the Rwandan occupation of the eastern DRC, now apparently ended, have added considerably to the long-term threat to Rwanda's own security, as the resentments and hatreds it engendered had become deeply entrenched among the Congolese (including many Congolese of Rwandan origin) and as brutality and expediency come to be accepted as normal within the RFA itself. In particular, the corruption, the brutality and the political incompetence of Rwanda's principal Congolese ally, the RCD/Goma, has become increasingly clear over time. Events in May in Kisangani<sup>51</sup> highlighted why it is important for the international community, and the U.S. in particular, to encourage Rwanda to rethink its support to this group, which is badly discredited. Ongoing military or political support to the RCD will be a strong temptation, but in the interests of long-term stability and of the possibility of rebuilding healthy long-term economic cooperation in the subregion, the donors should urge Rwanda to resist it. The RCD will either have to find a way to accommodate itself to a post-occupation order in the DRC or it will collapse; if it continues to receive Rwandan military and political backing, it will continue to be seen as a Rwandan-front organization, and the threat of cross-border destabilization will remain in place.
3. Following the RPF withdrawal, the RCD is left in sole control of a huge area, a task for which it lacks the political competence and possibly the military resources. It will come under challenge from the local resistance (which includes a Rwandophone Munyamulenge militia that had until recently been under brutal attack by the RCD), and there will be a strong

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<sup>51</sup> See, for example, Human Rights Watch, "War Crimes in Kisangani: The Response of the Rwandan-backed Rebels to the May 2002 Mutiny", New York, August 2002.

temptation for Rwanda to intervene, covertly or overtly, should things come unstuck in the resulting vacuum. Again, Rwanda has a legitimate interest in preventing incursions by ex-FAR/Interahamwe elements, and these may very well increase given the limitations on the GDRC's or the RCD's ability to control these. Should such incursions resume, there will be a strong temptation for Rwanda both to respond forcefully to these and to use them as a means of reimposing itself in the Congo. This would be exceedingly dangerous and could cause the process set in motion by the South African accords and the RPF withdrawal to spiral out of control. Rwanda's international partners will need to impress on the GOR how vital it will be for them to show restraint in the event of such provocations.

4. Rwandan withdrawal was thus a necessary condition to the reconstruction of a stable and prosperous eastern DRC, but it is far from sufficient, and in the short term it is likely to raise as many problems as it solves. It will be up to the international community to help cope with these, through the provision of resources for economic and political reconstruction and, possibly, a rethinking of the mission of MONUC. To the extent that there remain signs of incursions from Rwanda into the eastern DRC or of overt Rwandan involvement in the political processes occurring on the ground, these should be firmly discouraged as further fuelling existing resentments and thereby ensuring a continued hospitable environment for the evolution of extremist views.
5. While all sides benefit greatly from the excellent relations between Rwanda and its principal donor partners, particularly the United States, and all sides have considerable incentive to continue to maintain these relations at their present levels of warmth and responsiveness, maintaining these qualities over the long term will require that there be frank discussions of those issues that could serve as proximate causes for future internal conflict. The issues, in particular, relating to inclusiveness and to the progressive opening up of channels for public expressions of dissent, will require that the U.S. and other donors be increasingly frank in formulating their concerns. To the extent that dissenters can sense that public and private pressures in support of key political rights are being exerted by the donors, they more likely to channel their demands peacefully. A sense on their part, on the other hand, that donors place value exclusively on smooth relations, avoiding frank discussion of such concerns, could serve to help make violent conflict a more likely outcome. It should be possible to continue to support the many positive actions of the GOR while increasing the levels of concern about aspects of the country's political development that may be moving less positively.



## GLOSSARY

<b>ALIR</b>	<i>Armée pour la libération du Rwanda</i> (armed opposition group)
<b>CDC</b>	Community Development Commission
<b>DRC</b>	Democratic Republic of the Congo (capital Kinshasa)
<b>FAR</b>	<i>Forces armées rwandaises</i> (military forces of the former government)
<b>FDLR</b>	<i>Front démocratique pour la libération du Rwanda</i> (opposition group, externally-based)
<b><i>Gacaca</i></b>	Traditional mechanism for dispute resolution, adapted as community-based system for handling justice and reconciliation for genocide (lit., “lawn”; pr. “gaCHACHA”)
<b>GNU</b>	Government of National Unity (established under Arusha agreements of 1994, official designation of GOR through the present transition period)
<b>GOR</b>	Government of Rwanda
<b>IBUKA</b>	National organization of genocide survivors
<b>ICG</b>	International Crisis Group
<b>ICTR</b>	International Criminal Tribunal for Rwanda (based in Arusha)
<b><i>imidugudu</i></b>	Concentrated settlements/villagized communities (singular, <i>umudugudu</i> )
<b><i>ingando</i></b>	Political education seminars
<b><i>Interahamwe</i></b>	Militias under former government, played key role in carrying out 1994 genocide (lit., “those who stand together”)
<b><i>inyangamugayo</i></b>	Persons of integrity (community members selected to sit on <i>Gacaca</i> tribunals)
<b>LIPRODHOR</b>	<i>Ligue pour la promotion et la défense des droits de l’homme au Rwanda</i> (human rights NGO)
<b>MDR</b>	<i>Mouvement démocratique rwandais</i> (member of governing coalition)
<b>MRND</b>	<i>Mouvement révolutionnaire national pour le développement</i> (in power under Habyarimana, now banned)
<b>NRA/F</b>	National Revolutionary Army/Front (in power in Uganda)
<b>NURC</b>	National Unity and Reconciliation Commission (GOR body)
<b>PDR</b>	<i>Parti démocratique pour le renouveau</i>
<b><i>rescapés</i></b>	Term used for genocide survivors
<b>RPA</b>	Rwandan Patriotic Army (present GOR military)
<b>RPF</b>	Rwandan Patriotic Front (in power)
<b>TIG</b>	<i>Travaux d’intérêt général</i> (community service/labor, as alternative to incarceration)
<b>USAID</b>	U.S. Agency for International Development
<b>VOA</b>	Voice of America

## **LIST OF PERSONS INTERVIEWED**

### ***IN THE U.S.***

#### *AID/Washington:*

Stephen Giddings, Chief, Policy, Outreach, Strategy and Evaluation Division, Bureau for Africa

John Stamm, Private Enterprise Officer

Lisa Whitley, Program Economist/Rwanda Desk Officer

#### *Others:*

Rob Clausen, Chemonics International

Alison des Forges, Human Rights Watch

Catharine Newbury, Political Scientist

Peter Uvin, Social Scientist

### ***GOVERNMENT OF RWANDA***

#### *In Kigali & environs:*

Christophe Bazivamo, Executive Secretary, Electoral Commission

Andy Cook, Senior Agriculture and Food-Security Policy Adviser, Ministry of Agriculture

Kabanda Celestin, Secretary General, Ministry of Plan

Aloysie Cyanzayire, President, Department of Gacaca Jurisdictions, Supreme Court

Tharcisse Karugarama, Vice President of the Supreme Court; President, Dept. of Courts & Tribunals

Aloysie Inyumba, Prefet, Province of Kigali-Ngali

Protais Musingi, Secretary General, Ministry of Local Government & Social Affairs

Ambassador Joseph W. Mutaboba, Secretary General, Ministry of Foreign Affairs

Vincent Ngarambe, Directeur du Génie Rural et de la Conservation des sols, Ministère de l'Agriculture, de l'Élevage et des Forêts

Fatuma Ndagiza, Executive Secretary, National Unity and Reconciliation Commission

Professor Laurent Nkusi, Minister, Ministère des terres, de la réinstallation et de la protection de l'environnement

Ntwara Bakiga Émile, Deputy, National Assembly

Valère Nzeyimana, Rural Engineer, Rural Sector Support Project, Ministry of Agriculture

Tito Rutaremara, Président, Commission juridique et constitutionnelle

Eugène Rwangwa, Director General, Ministère des terres

#### ***In Byumba:***

Gatera Emmanuel, Conseiller du Secteur, Secteur Zoko, District of Kisaro

#### *In Cyangugu:*

Elysée Bisengimana, Préfet

Vincent Muragwa, Secrétaire Exécutif

#### *In Gikongoro:*

Karenzi Paul, Secrétaire Exécutif de la Ville de Gikongoro

Kwaya, Louis, Chargé des Affaires Sociales, District Karaba

*In Kibungo:*

Isaac Kariymwaba, Mayor, Kabarundo District

James Kimonyo, Préfet

Desiré Mushumba, National Unity and Reconciliation Committee, Rukira Sector,

Éjulia Mutuyemariya, National Unity and Reconciliation Committee, Rukira Sector

Téléfore Nyakarundi, National Unity and Reconciliation Committee, Rukira Sector

Chrysanthe Nzavamvita, National Unity and Reconciliation Committee, Rukira Sector

Joseph Rutakarmize, National Unity and Reconciliation Committee, Rukira Sector

*In Kibuye:*

Jean-Baptiste Hakizimana, Sous-Préfet

Nkusi Déo, Préfet

Jules Ntaganzwa, Coordinator, Natl. Unity & Reconciliation Commission

*In Ruhengeri:*

Bizimungu, François, Conservateur, ORTPN/Parc des Volcans/Ruhengeri

Mgirimana François, Chief Guide, ORTPN/Parc des Volcans

Mugisha, David, Assistant Warden, ORTPN/Parc des Volcans

Ntirenganya Ignace, Maire du district de Kinigi/Ruhengeri

Rucagu Boniface, Préfet

***INTERNATIONAL & NON-GOVERNMENTAL ORGANIZATIONS, CONSULTING FIRMS,  
INDIVIDUALS IN THEIR PRIVATE CAPACITY***

Dr. Abdelkadir Aouni, Senior Advisor, SNV (Dutch NGO), Cynagugu

Abbé Bawe Achilles, Ruhengeri Diocese

Afurika Juvenal, Food and Economic Security Program Coordinator, CARE/Rwanda

Veronica Avila, Volunteer/TA for Environmental Management, Rwanda Initiative for Sustainable  
Development (RISD)/Landnet

Henri-Paul Bolap, Chief Technical Advisor, International Rescue Committee, Cyangugu

Jennie Burnett, PhD candidate, University of North Carolina/Chapel Hill and diversity consultant, CARE

Alexis Byamana, Secrétaire Exécutif, Réseau d’Evaluation d’Impacts Environnementaux dans les Pays  
des Grands Lacs (REIE-PGL)

Maureen Capps, Country Representative, Catholic Relief Services

Michelle Carter, Program Manager, CARE/Rwanda

Paul Delucco, Country Representative, ACDI/VOCA (PL 480 Title II Program)

Aloys Habimana, Coordinateur de Projet, LIPRODHOR

François-Xavier Havugimana, Lowland, Water and Roads Rehabilitation Project Manager, Catholic  
Relief Services, Butare

Benoit Joannette, Réseau des Citoyens

Klaas de Jonge, Gacaca researcher, Penal Reform International

Annie Kairaba, Director, Landnet

Urusaro Alice Karakezi, Head of Justice, Human Rights and Governance, Center for Conflict  
Management, National University of Rwanda, Butare

Kalimba Zéphyrin, Communauté des autochtones rwandais (CAURWA, MuTwa organization)

Thomas KAMILINDI, Journalist, BBC

Jean Karambizi, Democracy & Good Governance Coordinator, Johns Hopkins University (Gacaca  
support project)

Kayira Kassim, Videographer/Editor, Internews Network (Gacaca social marketing)

Mike Kayihura, “Mzee”/Veterinary Officer, former Chief, ‘59 returnee, Kigali

Athanon Kayijamahe, Team Leader, Agriculture Department, Catholic Relief Services, Butare

Michel Kayitaba, Coordinator, MOUCECORE (Evangelical & Peacebuilding NGO)  
 Mgr. Kizito Bahujimihigo, Ruhengeri  
 Marara Camille, Chef de Division Sustainable Settlement, Ministère des terres  
 Laura McGrew, Imagine Coexistence Project, UNHCR  
 Patrick Mehlman, Representative, Diane Fossey Gorilla Fund International  
 Ann Morris, Director, CARE/Rwanda  
 Edson Mpyisi, Michigan State University, In-country Coordinator, Food Security Research Project  
 Rose Mukantabana, Secrétaire Executive Nationale, Haguruka  
 Musabyeyezu, Marie, Présidente, Nouvelle association d'Umudugudu Akaraba, Secteur Chanika, District  
 Karaba, Gikongoro  
 John G. Muyenzi, Programme Coordinator, RISD  
 Alice Ndegeya, Secrétaire Executive, Seruka  
 François-Xavier Ngarambe, Secretary General, IBUKA  
 Nizurugero Rugaji Jean, Sociology Department, National University of Rwanda, Butare  
 Alphonse Ndimubandi, Administration / Logistics Manager, Internews Network  
 Eugène Ntaganda, Center for Conflict Management, National University of Rwanda, Butare  
 Bonaventure Nyibisi, Director General, Rwanda Investment Promotion Agency, former Minister,  
 Executive Secretary, IBUKA  
 Susan Page, United Nations Development Programme  
 Yvan Porcheron, Chief Of Party, Management Sciences for Development, Inc. (USAID support project  
 for Ministry of Justice)  
 Antoine Rutayisire, Coordinator, African Evangelical Enterprises; Vice Chairman of Natl. Unity &  
 Reconciliation Commission  
 Oswald SAMVURA, Charge de Programme, Seruka  
 Florian Ukizemwabo, Secrétaire Permanent, LIPRODHOR  
 Noel Twagiramungu, Secrétaire Exécutif, LDGL  
 Ben Siddle, Program Officer for Human Rights, Justice Peace and Reconciliation, Trócaire  
 Fr. Octave Ugirashebuja, Peace and Justice Commission, Archdiocese of Kigali  
 Antoinette Uwimana, Trainer, Associates in Rural Development  
 Lars Waldorf, Researcher, Human Rights Watch  
 Personnes Intègres/Gacaca Process, Secteur Zoko Byumba Province:  
 Jean de Dieu Habyarimana, Veronique Mukamana, Valerie Mukantgara, Didan Murindabigwe,  
 Frodouard Ndugaruga, Venuste Ngendahimana, Alphonse Rukimirana, Titian Uzayisenga

### **USAID**

Beth Drabant, Health Team Leader  
 Heather Goldman, Regional Food Security Officer  
 Richard Goldman, Mission Director  
 Donna Gray, Deputy Program Officer  
 Andy Karas, Agriculture & Economic Growth Team Leader, USAID/Rwanda  
 Ken Lizio, professor of anthropology (former USAID DG officer)  
 Pierre Munyura, Democracy and Governance Specialist  
 Brian Murphy, Democracy and Governance Team Leader  
 Kimberly Pease, Program Support Officer  
 Serge Rwamasirabo, Food Security Advisor, USAID/Rwanda  
 Venant Safali, Food Aid Manager, USAID/Rwanda  
 Pierre R. St. Hilaire, Trail Attorney, Terrorism & Violent Crime Section, U.S. Dept. of Justice Criminal  
 Division  
 Steven A. Smith, Senior Regional Conflict Prevention Advisor, Regional Economic Development  
 Services Office for East and Southern Africa, Nairobi

***U.S. EMBASSY***

Kent Brokenshire, Deputy Chief of Mission  
Ronald Capps, Political Officer  
Nan Mattingly, Regional Affairs Officer  
Margaret McMillion, Ambassador

***DONOR GOVERNMENT MISSIONS***

Ingrid Berg, Swedish International Development Agency  
Sue Hogwood, Ambassador, British Embassy  
Gerard Howe, (British) Department for International Development  
Victor Losada, European Union  
Joeren de Lange, First Secretary, Royal Netherlands embassy  
Gaspard Ndagijimana, Expert, Royal Netherlands Embassy  
Erwin de Wandel, Attaché Coopération, Belgian Embassy

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