

Post-Gacaca compensations for survivors: A missed opportunity for Reconciliation in Rwanda *by Albert Gasake*

Since the closure of Gacaca courts in July 2012, enforcement of Gacaca material compensation orders made to survivors remains one of the pressing challenges of the post-Gacaca period in Rwanda. In most cases, survivors have not received the compensation to which they were entitled, because in some cases the convicts claimed that they did not have the means to provide compensation, while in other cases they were simply unwilling to. In some cases convicted persons have reportedly bribed the local authorities in charge of the execution of Gacaca rulings in order to avoid compensating victims. As the Gacaca courts handled 1,266,632 cases related to property crimes,¹ this means that many survivors received only part of their compensation, or none at all, from persons convicted of perpetrating the genocide, which leaves many destitute.

In this paper, I define “compensation” as restitution of material belongings that were pillaged, looted, taken away or destroyed during genocide, which may differ from the legal definition. In its legal sense, compensation refers to the provision of repayments “for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case.”² Such damage includes: physical or mental harm, lost opportunities, material damages and loss of earnings, moral damage and the cost of legal, medical, psychological and social services.³

In some cases, genocide perpetrators have illegally sold their assets or made hidden pacts with their relatives to evade the Gacaca order to pay damages to survivors. The current legal framework has fallen short in its attempts to set up an effective mechanism for enforcing Gacaca rulings, which continues to hamper many survivors’ journey for self-reliance and impedes the country’s road towards unity and reconciliation. At the same time, an institutionalized system of providing comprehensive reparation, another critical factor in facilitating transitional justice, has not been established. This is in spite of IBUKA’s call for the creation of a task force that could be used for documenting problems and recommending possible problem-solving mechanisms related to reparations in the post-Gacaca era. This call for a joint taskforce, along with its proposed Terms of Reference, remains unheeded to date.⁴

In order to facilitate the transition to the post-Gacaca era, Parliament passed an organic Law shortly before the court’s official closing ceremony in 2012. This law aims to address unresolved issues that were previously under Gacaca jurisdiction, as well as to provide possible solutions to any issues that may arise after the closure of Gacaca, including those of property rights. But is this law actually serving its purpose?

¹ Summary of the Report Presented at the Closing ceremony of *Gacaca Courts Activities*, 18 June 2012

² UN *Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 16 December 2005

³ Ibid

⁴ IBUKA, SURF and Redress, *Right to Reparation for Survivors: Recommendations for Reparation for Survivors of the 1994 Genocide against Tutsi*, Discussion Paper, October 2012, available at <http://bit.ly/ZH3qrS>

The Gacaca Termination Organic Law

Since its enactment in June 2012, the Organic Law terminating the Gacaca Courts did little to address the issue of enforcing previous rulings, especially in cases where the perpetrator claims to be unable to provide compensation for the damaged material assets.

One example of the shortcomings of this bill is the case of insolvency. According to the Organic Law terminating Gacaca, in case of insolvency, the perpetrator shall be subjected to community service as an alternative penalty to imprisonment. This measure is commonly known as *Travaux d'Intérêts Généraux* (TIG)⁵. Several survivor organizations have accused this law of violating the survivor's right to own property, or receive adequate compensation in place of this right. These organizations submitted their views to Parliament, challenging (among others) the Organic Termination Law.⁶ These organizations argue that in case of a perpetrator's insolvency, the TIG measure does not benefit the survivor whose property was damaged directly, but rather the community in general. This could be considered as a form of nationalization, because the property in question should technically belong to its rightful owner, in this case the survivor. Therefore, these organizations recommend (*inter alia*) that something of commensurate value to community service should be given to the survivor.

Another issue that has been accentuated following the promulgation of the law is that of non-enforced Gacaca rulings relating to compensation for the illegal requisition of survivors' property during the genocide. This problem has stirred up tensions within communities during the last few months, and stems from the failure to set up a clear mechanism to compensate survivors. While survivors are, naturally, the first to be impacted by this matter, Rwandan society at large is also affected, because this problem hampers the ongoing recovery process. As the subject remains a public concern, the Prime minister commissioned a special committee to investigate it further.

Prime Minister's Special Committee

The Prime Minister's special committee was established in January 2013. Its purpose is to address all issues related to the property rights of survivors, including Gacaca compensation rulings that have not yet been enforced. The committee is due to complete its report by April 2013, after visiting Rwanda's 30 districts and meeting with survivors about issues related to property rights. While the decision to establish such a committee is in itself a positive development in addressing these longstanding issues, the committee's task may be too ambitious.

⁵ Article 20 of the *Gacaca Organic Law of 2012*

⁶ IBUKA, SURF and Redress, *Submission to Parliament of Rwanda on Draft Organic Law Terminating Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes against Humanity, Committed Between October 1, 1990 and December 31, 1994*, Submitted 26 March 2012, p. 5 (available at <http://survivors-fund.org.uk/news/what-we-do/legislation>)

Comprised of only a handful of individuals from various public institutions, the committee is expected to collect, analyze and solve immediately legal issues relating to the entire genocide survivor population, estimated at about 309,000 persons dispersed throughout all of Rwanda's districts, in only 60 days. This means the committee could only devote two or three days work *per district*! As a result, concerns have been raised regarding the ability of the committee to address all these issues in such a short time. Another problem is whether the committee's decisions have primacy over court decisions made in cases of survivors' property. The answer is probably negative, as the committee also lacks the necessary regulatory power to back up its decisions.

The main issue brought up by the majority of survivors during the committee's outreach visits was: "What happens in terms of enforcement of Gacaca compensation awards in cases where the perpetrators are too poor to compensate or where the perpetrators have not been found?"⁷ The official response of the committee was: "The organic law that terminates Gacaca courts stipulates that those who cannot pay will do *TIG* - the public community work." In other words, the committee does not seem to offer new solutions to survivors who question how the TIG measure will replace the cow taken away during the genocide by the insolvent perpetrator. As such, TIG will not enable survivors to be self-reliant, which otherwise may have been possible if the survivor were compensated with livestock

This kind of answer is frustrating to many survivors, who have been waiting for almost a decade and have traveled many kilometers to the district office to meet with the committee in the hope of solving this issue once and for all. In addition, it is still unclear how cases that were not examined by the committee, for various reasons, will be addressed after the completion of its activities. Some survivors argue that the fact that the committee was meant to address all property rights but failed to do so will prevent outstanding cases from being properly addressed in the future.

It is quite clear, as a result, that the capacity of the PM's committee to comprehensively address all property rights and related issues is questionable. I argue that in order to solve these outstanding property rights problems in a sustainable way a more holistic approach should be taken. The problem of enforcing Gacaca awards is an integral part of the broader issue of survivors' reparation. Hence, solving the latter problem would, in practice, solve the former.

The National Unity and Reconciliation Commission

The National Unity and Reconciliation Commission (NURC) surveys repeatedly indicated that failure to provide compensation for survivors slows down the process of reconciliation. The Rwanda reconciliation barometer states: "*The survey showed less appreciation of the efforts made to compensate genocide survivors.*"⁸ Furthermore, the NURC recently introduced countrywide community dialogue programmes that seem to unanimously confirm this finding.

⁷ Available at <http://www.igihe.com/amakuru/u-rwanda/nta-marangamutima-ku-itungo-y-abarokotse-jenoside.html>

⁸ Unity and Reconciliation Commission, Rwanda Reconciliation Barometer, 2010, p.72

For example, during the community dialogue organized in Rwamagana, the district's mayor, Nehemie Uwimana, noted that the reconciliation process was partially hampered by the relative inability to compensate genocide survivors: *"Those who destroyed property during the Genocide have practically nothing with which to compensate the victims. Some deliberately dodge compensation. So, in such circumstances, the victim fails to 'believe' there is reconciliation,"* he said.⁹ Attempting to suggest how to solve effectively the Gacaca unpaid compensations issue, Dr. Habyarimana, an NURC executive, reiterated the policy changes discussed with the Musanze sector executives' *itorero* in August 2011. Dr. Habyarimana said he has recommended sector executives to work closely with survivors and encourage them to forgive compensation debts from insolvent perpetrators. I view this option as problematic, at best, if not outright dangerous, given the Rwandan context and the current social status of survivors in respect to authorities: few survivors are likely to possess the courage to refuse an executive secretary who is pushing for forgiveness of a debt. Genocide survivors, like the majority of ordinary Rwandans, tend to be docile towards the official authorities. Unfortunately, many executives seem to be interested in this option, despite its controversial nature and the potentially negative impact it may have on survivors' freedom of choice.

Impasse

As Rwanda gradually continues to progress towards reconciliation, the issues related to victim compensation and property rights in the post-Gacaca era have yet to be adequately addressed, 19 years after the genocide. Several attempts initiated by government institutions have yet to produce significant results. Alternative attempts initiated by survivors organizations, such as IBUKA and its allies, have been generally ignored so far. In view of this impasse, I wish to echo the question posed by the Institute of Research for Dialogue and Peace (IRDP): *"What mechanisms can Rwanda put in place to manage the post-Gacaca challenges and to achieve national reconciliation?"* Although I do not endeavor to provide a "one size fits all" mechanism to solve all the post-Gacaca problems that slow down the process of reconciliation, I do recommend a comprehensive study of these problems. The most pressing issue, from my point of view, is to provide a reparation mechanism that can compensate survivors for Gacaca rulings that have not been enforced. Such a mechanism would be helpful in cementing Rwanda's transitional justice process, which at the moment seems to be phasing out.

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⁹ Rwembeho.S., Community Dialogue to be reintroduced, The New Times, 14 September 2012 available at <http://www.newtimes.co.rw/news/index.php?i=15115&a=58314>