The European Master's Degree in Human Rights and Democratisation Programme

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The European Union's programmes on reconstructing the judicial system and delivering justice in post – genocide Rwanda. A pattern to be followed or lessons to be learned?

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ABBREVIATIONS

ACHPR	African Charter on Human and People's Rights
ACP	African, Caribbean and Pacific Countries
AI	Amnesty Intrenational
ASF	Avocats sans frontières
BCD	Bureau de Consultation et de Défense du Barreau du Rwanda
CFSP	Common Foreign and Security Policy
CLADHO	Collectif des Ligues et Associations de défense des Droits de l'homme au Rwanda
CS	Community Service
CSP	Country Strategy Papers
DCHR	Danish Centre for Human Rights
EC	European Community
ECHO	European Commission Humanitarian Office
ECPHR	European Convention on Human Rights
EDF	European Development Found
EIDHR	European Initiative for Democracy and Human Rights
EPC	European Political Cooperation
EU	European Union
FH	Fondation Hirondelle
GOR	Government of Rwanda
HRFOR	Human Rights Field Operation for Rwanda
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
IPJ	Inspecter de Police Judiciaire
LIPRODHOR	Ligue Rwandaise pour la Promotion et la Défense des Droits de l'Homme
LRRD	"linking relief, rehabilitation and development"
MinJust	Ministry of Justice and Institutional Relations
MS	Member States
NGO	Non – Governmental Organisation
NIP	National Indicative Programme
OJ	Official Journal of the European Communities
OMP	Officier du Ministère Public
PRI	Penal Reform International
RCN	Réseau des Citoyens Justice & Démocratie
UN	United Nations
UNDP	United Nations Development Program
USAID	United States Agency for International Development

INTRODUCTION

The question of delivering justice is of particular importance as far as post – genocide Rwanda is concerned. In the country where in 1994, nearly one million Tutsis and moderate Hutus was exterminated, where almost two millions of people had to flee the country and hundreds of thousands were internally displaced, solving the problem of accountability for the crimes committed in the course of the hostilities is a prerequisite for national reconciliation. Delivering justice is intrinsically linked to the questions of judicial and prison systems. Regrettably both human and material resources in Rwanda suffered gravely so the country emerged from the genocide darkness with practically non - existent judicial system. On the other hand over one hundred twenty thousands persons were imprisoned. Majority, with no legal charges on the grounds of unconfirmed suspicions. Even the best-organised judicial system could be overwhelmed while attempting to deliver justice in this case. Thereby the foreign aid for Rwanda was indispensable. Although the situation in the country is still grave the country is on the right, though still long to go, avenue to attain national reconciliation and the rule of law system. However had there not been the assistance of the international donors prioritising the judicial sector current results would have never been achieved.

Describing the impact, in the domain of the judicial sector, of particular actions of one exclusive donor, acting among at least ten another donors, in a complex and complicated country like Rwanda, would sometimes be virtually unfeasible. The programmes have tightly complemented each other, sometimes nearly overlapped. Accordingly an assumption must be made here. The European Union, throughout the years posterior to the genocide, deserved extremely well in terms of financial assistance as the biggest donor in the field of justice and judicial system in Rwanda. It follows from the tables annexed to this work (Annex II) that the EU's founding exceeded the second on the donors' list, the USA, by over 100%. Additionally the EU's contribution constituted around 30% of an overall support granted by all the donors together for the Rwandan judicial sector. Thus, its significant role in an overall process of the reconstruction of the judicial system and delivering justice cannot be doubted.

This work aims to answer the question of the extent to which the EU's hitherto intervention, could be followed as a pattern in similar operations and what aspects of the involvement proved to be lessons the EU should learn. This requires the analysis of the major EU sponsored projects and assessing their impact on the situation in the country.

Accordingly the Chapter I of this work will tackle the questions concerning the legal bases for the EU's activities in the field of reconstruction of the judicial system and delivering justice. It will additionally discus the financial mechanisms of the EU's intervention as well as the EU's policy towards the justice related issues in the country as based on the European Council's common positions on Rwanda. Subsequently in the first part of the Chapter II the attention will shift to the questions of the relevance of the domestic genocide trials and their relation to the reconstruction of the judicial system as regards particular case of Rwanda. The distinct EU's sponsored programmes and activities in this domain will be presented in the second part of this Chapter. The Chapter will encompass the projects: within the scope of the Human Rights Field Operation in Rwanda, reconstruction of the physical structure, programmes related to the genocide trials carried out by NGOs Réseau des Citoyens Justice & Démocratie and Avocats sans frontières, those pertaining to the prison system run by Penal Reform International, media project of Fondation Hirondelle and lastly the recent EU's programme 8 ACP RW 19 within the framework of intergovernmental development cooperation. Afterwards, in the Chapter III, the impacts of the particular programmes as well as a general evolution of the situation in the domain of reconstruction of the judicial system and justice will be analysed. The problems that still linger will be identified likewise. Then in the Chapter IV this work the aspects of the interventions concerning solely the EU's side will be tackled. The focus will be put on the timing and pertinence of actions, the choice of means used, the EU's flexibility. Ultimately the questions on whether the system should be *reconstructed* or *built* will be posed and how would the change of this approach impinged on the sustainability of the projects.

In view of foregoing it is assumed that this work will indicate the positive and negative aspects of the of the aforementioned programmes. Conclusively the question on whether the general framework of the EU's intervention can be considered as an exemplary for the similar actions will be answered.

CHAPTER I

Legal questions concerning the European Union's actions of reconstructing judiciary system and delivering justice in Rwanda.

1. General legal bases.

1.1. Lack of proper legal bases.

The European Community (EC) found its' overall legitimacy basing mainly on a reaction to crimes and flagrant violations of human rights committed during the Second World War. However it could not constitute legal basis within the area of human rights either in external or in internal policy. The sole indication of human rights could be found in the preamble of the EC Treaty expressing the Member States (MS) determination to "*preserve and strengthen peace and liberty*". Nevertheless since 1960s the EC has continued to enhance its activities within the field of human rights by utilising the economical power and the policy of conditionality. In 1970 upon lunching the European Political Cooperation (EPC), the predecessor of the Common Foreign and Security Policy (CFSP), a new instrument for the promotion and protection of human rights was born. However in the beginning any action on the promotion or protection of the human rights, carried out within the scope of the EPC, based on non-binding documents.[1]

In the preamble to Single European Act the MS stated that they would "*display the principles of democracy and compliance with the law and human rights to which they are attached*". It constituted again relatively feeble legal basis for such kind of undertakings. Therefore the commitments of the MS in that period should in spite of that be considered as political statements rather than legally bindings acts.

The next two acts, the "*Declaration on Human Rights – conclusion of the Luxembourg European Council*"[2] and the EC "*Resolution on human rights, democracy*

[1] M. Fouwels, *The European Union's Common Foreign and Security policy and Human Rights* in «Netherlands Quarterly of human rights », vol. 15, 1997. pp. 292 – 293.
[2] 28th and 29th of July 1991, http://europe.eu.int/comm/external_relations/human_rights/doc/hr_decl.91.htm.

and development"[3] could not create any legal basis either. The formal established on the political level, the principles and main features of promoting human rights and democracy. It committed at the same time the Community and its MS to pursue active promotion of the human rights and democracy. The latter in turn identified the respect, promotion and safeguarding of human rights as essential elements of the EC's and its' MS cooperation policy with the third countries.[4] Furthermore it, among others, stressed that the Community should gave a high priority to the positive approach stimulating respect for human rights and development of democracy. The document called also for a positive dialogue in this area between the Community and the governments of the developing countries. Then it recognised amid initiatives that could be undertaken through active support: the strengthening the rule of law, the strengthening of the judiciary, the administration of justice, crime prevention and the treatment of offenders. Moreover it emphasised on timely support for those initiatives by the expanded financial resources devoted to these aims within the allocations available for development. The financial support was to be available for positive activities promoting human rights and democracy carried out by both governments and non – governmental bodies. The general strategies were thus completed by more specific strategies indicating the target groups for the actions, for example, judges.

1.2. Maastricht Treaty.

The Treaty of the European Union of 1992 was a turning point in establishing the legal basis for the human rights activities. This Treaty provides in the Article 11 that one of the objectives of the CFSP is "*to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms*". Yet this Article has long reminded silent on the nature of the rights it could consider. The indication could be drown from the Article 6 which provides that the European Union (EU) respects all fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and resulted from the constitutional traditions common to the MS, as general principles of Community law. Currently the doubts on the indication of the rights seem to disappear upon the proclamation, in Niece, in 2000, of the

[3] *Resolution of the Council and representatives of the member states meeting in the Council on human rights, democracy and development*, 28th November 1991, 24 *Bull. EC* no. 11. 1991.
[4] D. Napoli, *The European Union's foreign policy and human rights* in Neuwahl, N., Rossas, A. (Eds.) *The European Union and human rights*, the Hague/Boston/London, Kluwert Law International, 1995, p. 304.

Charter of Fundamental Rights of the European Union. The Chapter VI of the Charter entitled *"Justice"* contains, *inter alia*, right to a fair trial and of defence.

Albeit the Article 11 does not link directly to the CFSP, yet it was situated among the Common Provisions of the Treaty and thus we may deduce that it is applicable to all the three pillars of the EU.

2. Legal bases as regards promoting and protecting the rules of law in the framework of development cooperation.

2.1. Lomé Conventions.

The texts of Lomé Conventions have reflected the evolution of the EC/EU policy within the framework of the development co-operation with African, Caribbean and Pacific countries (ACP). Therefore neither Lomé I, signed in 1975, nor Lomé II, signed in 1979 contained any provisions related to the rule of law. Although Lomé III, signed in 1984, had some references to human right they were of a very general nature. For those reasons Lomé I either Lomé II could not constitute any legal basis for human rights activities. Although Lomé III contained certain references to human rights could utmost be considered as a basis for negative measures, which are not a subject of this work.

2.1.1. Lomé IV.

I was not until signing Lomé IV when human rights' provisions appeared in the text of the document. The Lomé IV concluded in December 1989 contained in the preamble the references to internationally recognised human rights' documents like for example Universal Declaration of Human Rights and the two Covenants. Furthermore the statement of the contribution towards promotion of human rights in a wider sense i.e. economic, social, cultural and human development of the ACP states has been laid among general provisions. However the most important specific provisions were incorporated in its Article 5. This Article in paragraph 1 expressed close relation between development cooperation and the human rights providing in consequence that operations shall be conceived in accordance with the positive approach. In the scope of this approach the respect for human rights is recognised as a factor of real development and cooperation is regarded as a contribution to the promotion of human rights. Hence "*the role and potential of initiatives taken by individuals and groups shall also be recognized and fostered…"*. It was a first time in the EU – ACP development cooperation scheme where the emphasis on

a positive approach in the field of human rights were explicitly expressed. The first paragraph was accompanied by the second where the parties defined their comprehension of human rights and expressed their commitment to promote those rights as well as to abolish the hindrances in their execution. Finally the concluding paragraph 3, somehow completing, the first two, laid, for the first time ever, basis for the allocation of the financial support to human rights. It provided that: "*At the request of the ACP states, financial resources may be allocated (...) to the promotion of human rights in the ACP States through specific schemes, public or private…".*[5] The Article 5, an inevitable step forward, read in conjunction with the Article 10 of the Convention[6], proved that human rights became fundamental, however not yet essential, element of the development co-operation under Lomé IV.[7]

2.1.2. Lomé IV – Mid Term Review.

The EU and the ACP states signed a revised text of the Lomé IV in 1995. In the Article 5 of this act, in the paragraph 1, the parties stated that the development cooperation was from that time linked to "*the recognition and application of democratic principles, the consolidation of the rule of law and good governance"*. Furthermore they inserted an essential element clause which indicated, *inter alia*, respect for the rule of law "*which underpins relations between the ACP States and the Community and all provisions of the convention"*. Paragraph 3 of the Article provided with the financial consequences for the allocation of resources aiming to promote human rights in the ACP states by including, among others, "*a strengthening of the rule of law*". The paragraph 3 stated further that: "*practical steps, whether public or private, to promote human rights and democracy, especially in the legal domain, may be carried out with organisations having internationally recognised expertise in this sphere. In addition, with a view to supporting institutional and administrative reform, the resources provided for in the Financial Protocol for this purpose can be used to complement the measures taken by the ACP States concerned, with the framework of its indicative programme, in particular at the preparatory and start-up stage of the relevant projects and programmes*." This Article gave slightly more possibilities for non – governmental actors to act. Yet since the Article

[5] K. Arts, *Integrating Human Rights into Development Cooperation: The Case of the Lomé Convention*, The Hague/London/Boston, Kluwer Law International, 2000, pp. 183 - 186.
[6] In this article the contracting states committed themselves to taking all appropriate measures to ensure fulfilment of the obligations and facilitating of the pursuit of the obligations arising from the Lomé IV Convention.
[7] K. Arts, *op. cit.*, p. 186.

referred to a Financial Protocol of National Indicative Programmes (NIP), it implied the direct involvement of the government. If one reads this provision in conjunction with Article 251a (subjecting Community support for decentralised cooperation to "*the limits laid down by the ACP States concerned"*) the support for human rights projects and programmes could only be possible upon request or at least passive consent of the particular ACP State. Article 224(m) in turn in an explicit manner brought in development cooperation under Lomé for support aiming for institutional and administrative reforms, with a view to democratisation and the rule of law. A new Annex IIIa complemented those provisions by adding that the Community shall take account of the development and consolidation of, among others, the rule of law in its dialogue with the ACP states.[8]

2.2. Commission Communication to the Council and Parliament of 12 March 1998 - defining the concept.

On 12 March 1998 the European Commission (the Commission) issued the communication to the Council and Parliament "*Democratisation, the rule of law, respect for human rights and good governance: the challenges of the partnership between the European Union and the ACP States*".[9] In this document the Commission identified priorities for a proactive, practical and constructive approach, among them, promoting and strengthening the rule of law. In the Chapter II in a paragraph entitled "*The rule of law*" the Commission defined the whole range of issues grouped under the notion "*the rule of law*". In the paragraph it expressed that fostering and promoting the primacy of the rule of law is a fundamental principle of any democratic system. It entails means of recourse enabling individual citizens to defend their rights. The principle of placing limitations on the power of the State must shape the structure of the State and the prerogatives of the various powers. It implies, for example: an independent judiciary; effective and accessible means of legal recourse; a legal system guaranteeing equality before the law; a prison system respecting the human person; a police force at the service of the law; an effective executive enforcing the law and capable of establishing the social and economic conditions necessary for life in society. In the following paragraph concerning the next aim of cooperation and partnership, i.e. democratic principles, the Communication listed three fundamental characteristics defining the principles such as: legitimacy, legality and effective application. As regards effective application it involves, among others, the separation of power, which concerns, as one of the main components, the independence of

[8] *Ibidem*, pp. 190 - 199.

the judicial power from the executive power.[10] The Communication thus confirmed the hitherto lanced EU's concept of classifying the rule of law, strengthening of the judiciary and the administration of justice among the main components of democracy. On the other hand the EU does not define the democracy mentioning various elements of democracy instead. This can be considered as a somewhat off the cuff and incoherent way, with little concentration to detail.[11] The link between the rule of law and the judiciary is that the mechanisms to guarantee impartial and reliable administration of justice are necessary for the effective protection of the human rights. Accordingly the legal order must ensure the access to the courts, the reasonable time of proceedings and must censor the arbitrariness and corruption. Thereby enforcing the human rights protection can be achieved by promoting legal reforms of the judiciary, offering trainings to the judicial personals, facilitating an access to justice for poor and assisting with legal reforms.[12]

2.3. Cotonou Partnership Agreement.

The Partnership Agreement between the ACP States and the EC and its MS was signed in Cotonou in 2000. It replaced the Lomé Convention IV. The Cotonou agreement enriches the relations between the EU and the ACP states by giving the possibility of discussing, *inter alia*, the conflict prevention and the matters concerning civil society. However the most important is that according to the Agreement the partnership between the EU and the ACP states is based on respect for human rights and democratic principles of the rule of law and transparent government. It follows that finally the Cotonou Agreement endows human rights and democratic principles with a status of the essential element of the development cooperation between the EU and the ACP states. Article 10 of the Agreement stresses that one of the elements contributing to the maintenance and consolidation of a stable and democratic political environment is an access to justice. Whilst Article 33 provides that the cooperation shall support the ACP states in

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[9] COM (1998) 146 final (March 1998).

[10] It is worth noting here that two months after issuing the communication, on 25 May 1998 the EU Council adopted a common position concerning human rights, democratic principles, the rule of law and good governance in Africa, ((98/350/CFSP), 41 *OJ*L 158, 2 June 1998) where it indicated as one of the objectives of the partnership with African countries promotion of the rule of law, as well as stated that will support, among others, "*the rule of law, which permits citizens to defend their rights and which implies a legislative and judicial power giving full effect to human rights and fundamental freedoms and a fair, accessible and independent judicial system.*"

[11] G. Crawford, "Foreign Aid and Political Reform. A comparative Analysis of Democracy Assistance and Political Conditionality", Basingstoke, Polgrave, 2001, pp. 68 - 73.

[12] B. Simma, J. B. Aschenbrenner and C. Schultze *Human Rights Considerations in the Development Co-operation Activities of the EC*, in P. Alston, M. Bustelo, J. Heenen (Eds.), *The EU and Human Rights*, Academy of European Law, European University Institute OXFORD University Press, 1999, p. 602.

development and strengthening of the structures, institutions and procedures. This in consequence would help to, *inter alia*, develop and strengthen the rule of law and improve access to justice, while guaranteeing the professionalism and independence of the judicial systems. In this context of the cooperation the EU shall assist the ACP states in reforms, rationalisation and the modernisation of the public sector focusing on, among others, judicial reforms and modernisation of justice systems. Article 60, in turn, lists the measures that fall within the scope of financing under the Agreement. The list includes institutional development and capacity building.[13]

3. Reconstruction of the judicial system and delivering justice as a part of a positive approach.

A positive approach might encompass great variety of different measures. It can thereby include a dialogue on particular situations, actions within the framework of certain international organisation (or with cooperation with the organisations), inclusion of human rights and democracy clauses in agreements with partner states, unilateral declarations, the resumption of previously suspended cooperation, concrete measures or projects and others.[14]

Already in 1991 the European Council (the Council) in, above mentioned, "*Resolution on human rights, democracy and development*", emphasising the role of the development cooperation as a means of promoting and strengthening human rights and democracy in developing countries. It provided there, as examples of positive measures of support the strengthening of the rule of law, the judiciary, the administration of justice, crime prevention and the treatment of offenders. To those instruments one should add, the concept expressed in the Commission "*Communication on linking relief, rehabilitation and development (LRRD)*".[15] This idea includes the reestablishment of the rule of law in reconstruction programmes for the post conflict countries. According to this document reconstruction and functioning of the rule of law, understood, *inter alia*, as institutional mechanisms including laws, human rights and administration of justice, constitutes one of the main blocs around which reconstruction process should be pursued. In 1998 the

[13] See also European Centre for Development Policy Management, *Cotonou Infokit. Essential and fundamental elements*, http://www.oneworld.org/ecdpm/en/cotonou/20e.pdf.
[14] European Commission *Report on the implementation of measures intended to promote observance of human rights and democratic principles (for 1994)*, COM (95) 191 final, 12 July 1995, Annex 2, pp. 24 – 26.
[15] COM (96) 153 final, 30 April 1996, pp. 7 – 8.

Commission in its Communication[16] identified additionally essential components for making development policy more effective, stressing in particular the need for, *inter alia*, judicial reforms.

4. Strengthening of the rule of law – one of the priority areas for positive measures.

Throughout the years the EU has been prioritising certain areas, which were inclined to deserve its support. Accordingly in 1999 the Council Regulation No. 975/1999[17], endowed the EU with the legal bases for financing the actions in the domain of human rights and democratisation. Article 2 of the Regulation listed the operations where the EC shall provide technical and financial support. There, under the second position, it indicated supporting of the process of democratisation, including *inter alia*, promoting and strengthening the rule of law by upholding and enforcing the independence of the judiciary and support for a human prison system as well as the separation of powers implying the independence of the judiciary from the executive. The third position of the list concerned support for measures to promote respect for human rights and democratisation by preventing conflict and dealing with its consequences. It mentioned, in particular, supporting international, national or local organizations, including the NGOs, involved in preventing, resolving and dealing with the consequences of conflict, including support for establishing *ad hoc* international criminal tribunals and support and assistance for the victims of human rights violations. It should be noted that although the Regulation lists all the elements of the process of reconstruction of the judiciary system as well as delivering justice, which the EU could undertake, in the situation requiring taking such action, it was not completed by the more specific elements like for example prejudicial training and judicial assistance as means of facilitating public access to justice.[18]

[16] European Commission, *Communication on democratisation, the rule of law, respect for human rights and good governance: the challenges of the partnership between the European Union and the ACP states*, COM (98) 146 final, 12 March 1998, pp. 6 - 10.

[17] European Council, *Council Regulation laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and that of respecting human rights and fundamental freedoms*, of 29 April 1999, *OJ* L 120, 08 May 1999, pp. 1–7.

[18] For example in European Commission *Report on the implementation of the resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development, adopted on 28 November 1991, covering the period 1991 – October 1992*, SEC(92) 1915 final, Brussels, 21 October 1992, as recalled by K. Arts *op. cit.*, p. 294.

5. Instruments of realisation of the EU objectives in promoting and protecting of the rule of law.

5.1. Instruments and initiatives in relations with the third countries.

5.1.1. Classical legal instruments of the CFSP.

It has already been said that the EU, within the framework of its foreign policy, pursues the actions aiming for the promotion of the rule of law in the third countries. Due to this fact the EU would apply some of the classical legal instruments of the CFSP provided by Articles 13, 14 and 15 of the Treaty of the EU. They are common strategies, common positions and joint actions. The first category, adopted by the European Council, aims to set objectives and increase effectiveness of EU actions by enhancing the general coherence of the EU's policy. The second describes the approach of the EU to a particular problem of general interest of a geographical or thematic character. At the same time MS' national policies must correspond to the common position. The last addresses specific situations where the EU's action is considered to be necessary.[19]

5.1.2. Mainstreaming of the promotion of the rule of law.

One of the elements of mainstreaming of the rule of law was to consider human rights as *"essential element"* clauses in trade and cooperation with the third countries. In order to set up the rules governing the inclusion of the clauses, "*Commission Communication on the inclusion of respect for democratic principles and human rights in agreements between the community and third countries*",[20] proposed a set of standard clauses concerning human rights and democracy which were to be included in Community's agreements with the third states. This document was followed by "*Communication on the European Union and the external dimension of human rights policy: from Rome to Maastricht and beyond*".[21] The communication constituting a second step in the process of standardising the performance of the EU actions in the field of human rights and democracy illustrated specific objectives of development cooperation projects including consolidation of the rule of law. The next significant step in this process

[19] *European Union Annual Report on Human Rights 2002*, Luxemburg, Office for Official Publications of the European Communities, 2002, pp. 38 - 40.
[20] COM (95) 216 of 23 May 1995 where the Commission noticed a positive impact, in hitherto practice of including the clauses, on enhancement of the cooperation within the initiatives concerning the reinforcement of the rule of law and consolidation of the legal system.
[21] COM (95) 567 final, 22 November 1995.

was made by issuing the "*Commission Communication on The European Union's role in promoting human rights and democratisation in third Countries*"[22] which stresses that one of the major tools in conducting the policy of promoting the rule of law is to use CSP and the second is to establish a strategy for the European Initiative for Human Rights and Democracy (EIDHR), including the development and well functioning justice system as a way of dealing with the consequences of conflicts. Furthermore the Communication underlines the need for human rights dialogue between the EU and the third countries. It should base on the Country Strategy Papers (CSP) analysis and raise the questions concerning, among others, the rule of law including an independent and effective judiciary, transparent legal framework, and equality of all citizens before the law, police and public administration subject to the law and enforcement of contractual obligations.

5.2. Organisation of financing of the actions aiming to reconstruct the judiciary system and deliver justice.

5.2.1. General remarks.

The question of financing of the positive actions within the area of human rights and democratisation in general constitute a complicated and, so to say, blurred issue. Therefore I aim here only to systematise and outline those problems, which for the purpose of this work are both sufficient and indispensable. For a better understanding of those processes I wish only to mention that the EU aid in general can be classified into five categories: programme aid (support for structural adjustment), food aid, humanitarian aid, aid to NGOs and project aid.[23] Financial resources for positive measures in support for strengthening the rule of law/ the judiciary are obtainable from two principal sources. They are the mainstream regional development cooperation founds and dedicated budget lines.

5.2.2. General resources for development cooperation within the APC framework.

The European Development Found (EDF) established by the financial protocols attached to the particular Lomé conventions have been providing gross of the EU resources for development cooperation with the APC states. Most of the grants have been distributed via the programmable aid or non-programmable aid i.e. non-repayable grants

[22] COM (2001) 252 final, 8 May 2001.
[23] A. Cox, J. Chapman, *The European Community External Cooperation Programmes. Policies, Management and Distribution*, London, Overseas Development Institute, 1999, p. XIV.

financing traditional development programmes on the grounds of national or regional programmes. The difference between the two is that non-programmable aid is granted on the case-by-case basis, which in consequence promotes the value of the political dialogue between the EU and the ACP states. Distribution of the aid starts by allocation by the Commission in a certain ACP state an amount of money and forming an agreement launching NIP. NIP identify the priority of the development objectives, potential projects and principal sectors. After this the Commission makes the finances accessible.[24] It follows that the aid, to support programmes concerning promotion of, for example, the rule of law, can be granted within the regular development cooperation, on the basis of an agreement between the particular state and the EU. Recently an inherent part of the procedure comprises preparing CSP setting up general strategies of the EU's co-operation with the particular ACP state. This includes also the promotion of the rule of law.[25]

5.2.3. Resources available for NGOs.

Another way of financing the projects in the area of promotion of the rule of law is to both contract non-governmental organisations (NGOs) to pursue certain programmes and to work through their co-financing scheme where particular NGO is contracted to implement the projects and programmes prepared by the Commission.[26] In order to do so a special Budget line B7-6000 called "Co-Financing with NGOs" was set up in 1976. Operations co-financed through this budget line are currently indicated and chosen by the mechanism of the calls for proposals.[27]

5.2.4. The European Initiative for Human Rights and Democracy.

The EIDHR is a chapter no. B7-70 in the Commission budget which was created by an initiative of the European Parliament in 1994 in order to bring together a series of budget headings specifically dealing with the promotion of human rights. It was not provided with legal basis until 29 April 1999 when the Council adopted the two Regulations no. 975/1999 and no. 976/1999[28] on the development and consolidation of democracy and the rule of law

[24] B. Simma, J. B. Aschenbrenner and C. Schultze, *op. cit.*, p. 587.
[25] See for example discussed in the forthcoming parts of this work République Rwandaise – Communauté européenne, *Document de stratégie de coopération et Programme indicatif pour la période 2002 – 2007*, as accessed via http//: www.europa.eu.int/comm/development/body/csp.acp/csp_eu.cfm.
[26] A. Cox, J. Chapman, *op. cit.*, p. 37. The legal basis for this form of financing were provided by Council Regulation (EC) No 1658/98, 17 July 1998 on co-financing operations with European non-governmental development organisations in fields of interest to the developing countries *OJ* L 213, 30 July 1998, p.1 – 5.
[27] http://www.europa.eu.int/comm/europeaid/projects/foodsec/index_en.htm.
[28] 975/1999, supra note no 17, p. 10 and 976/1999 "*Council Regulation laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within*

and respect for human rights and fundamental freedoms. The projects and programmes are carried out mainly in partnership with NGOs and international organisations. The Chapter covers several budget lines pertaining to different particular areas. Presently the major means which are at the disposal of the Commission to implement the EU strategies in the field of promoting the rule of law are, already mentioned, calls for proposals but also targeted projects, which are the projects for joint programmes with partners who can include international governmental organisations or national authorities and micro-projects, which are small projects under Euro 50.000 and are administered directly by the Commission Delegations in the countries concerned.[29]

In the Communication on "*The EU's Role in promoting Human Rights and Democratisation in Third Countries*" the EC concentrated in principal on developing a coherent strategy for the EU external assistance in a field of human rights and democratisation. The EIDHR was also included in establishing of the new policy. Therefore the Communication identifies four themes on which the EIDHR was to focus from 2002 on. One of them was democratisation, good governance and the rule of law.[30]

5.2.5. Management of the EU external aid.

The management of the EU external aid has used to be administered by five Commission Directorates. They managed both the mainstream regional development cooperation programmes and dedicated budget lines. It was the DG VIII Development to handle the assistance for the ACP states and some budgetary lines benefiting all developing countries, like NGO co-financing. Whereas the responsibility for implementation of human rights and democracy measures was split between the "Human Rights and Democratisation Unit" located in DG IA (External Relation) with general responsibility for human rights policy, and distinct units for each geographical region.[31]

In 1998 the Common Service for External Relations was established in order to unite the services responsible for implementing the aid projects and improve their management. Then on 16 May 2000, the Commission adopted the "*Communication on the Reform of the Management of External Assistance"* which identified a programme of measures to make considerable improvements in the quality and timely delivery of

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framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and that of respecting human rights and fundamental freedoms in third countries." *OJ* L 120, 08 May 1999, pp. 8 - 14.

[29] http://europa.eu.int/comm/external_relations/human_rights/doc/eidhr02_04.htm.

[30] http://www.europa.eu.int/comm/europeaid/projects/eidhr/eidhr_en.htm.

[31] G. Crawford, *op. cit.*, p. 91.

projects while ensuring robust financial management and increased impact of the EU external assistance. The Communication recognised the creation of the EuropeAid Co-operation Office responsible for the implementation of the Community aid as one of the areas of major changes. The EuropeAid was created on 1 January 2001, as one of the Commission's departments, by the decision of the Commission of 29 November 2000, on the basis of the existing Common Service for External Relations. The EuropeAid is responsible for the implementation of all the Commission's external assistance instruments managed by the External Relations services which are financed from the Community budget and the EDF, with the exception of pre-accession instruments, humanitarian aid, macro-financial assistance, CFSP actions and the Rapid Reaction Facility.[32]

6. European Council's common positions as basis for actions of reconstructing judicial system and delivering justice in Rwanda.

Despite of deteriorating situation in the country the EU, during the period precedence to the genocide as well as in the time of the hostilities, was unable to adopt the common position on the situation in Rwanda nor did it took any juridical measures linked to the policy of conditionality. The cooperation has never been officially suspended but in fact halted. Nevertheless after the Rwandan Patriotic Front took over in July 1994 it became necessary to face the problems concerning the situation in the country. Finally the common position was adopted on 24 October 1994 when the common position was adopted.[33] In the declaration the Council emphasised the need to bring to the justice persons responsible for the crimes against humanity and thus considered as essential establishing the international tribunal to try the perpetrators.[34] Nevertheless it was not until the resolution of the European Parliament from 1995[35] that one of the EU bodies officially offered to, plunging into catastrophic economic and structural situation Rwanda, financial support in this regard. The Parliament after recalling that without the international support Rwanda would not be able to regain stability and expressing its concern on extremely bad conditions in the prisons, called the Commission to offer urgent help in restoring the legal system and improving conditions of imprisonment. In its subsequent common position of

[32] http://www.europa.eu.int/comm/europeaid/general/mission_en.htm and *Le dossier: La politique d'aide au développement* in « Chronique Européenne », No 49, 2003, pp. 34 – 36.
[33] *OJ* l 283, 29 October 1994.
[34] D. Fabre, *L'Union européenne face à la crise rwandaise* in « Afrique contemporaine », No 178, 1996, p. 5.
[35] *OJ* C 151, 19 June 1995, p. 274.

1998,[36] the Council defined that the objectives and priorities of the EU in its relations with Rwanda were, *inter alia*, to encourage, stimulate and support reconstructing the Rwandan judicial system and delivering justice. In order to support the progress in these areas the EU should have encouraged and support the Government of Rwanda's (GOR) efforts to improve the judicial system. It included bringing to account those responsible for crimes against humanity as well as support for the adoption of non-custodial measures to deal with certain lighter categories of prisoners. The Council's approach has been successively reiterated in the common positions of 1999, 2000, 2001 as well as of 2002[37] where additionally it called the attention to the GOR's efforts to reduce the prison population and manifested its stance towards the *Gacaca* jurisdictions. Nevertheless initially the EU, similarly to various human rights organisations and some other donors, has questioned the drawbacks of utilising the *Gacaca* process to deliver justice.[38] In its Common position of 1999 the Council manifested its concern that the *Gacaca* law might not comply with international standards and could cause further discord on Rwandan internal stage. Therefore it encouraged the GOR to establish clemency as a general working principle, to safeguard the right of civil defence and sensitise the population to the need of that procedure in order to cope with serious problems concerning overpopulated prisons. In 2001 the Commission acknowledged the constructive role the *Gacaca* jurisdictions could play in dealing with a genocide heritage. Nevertheless it repeated its concerns and added that the EU should encourage the GOR to adopt proper judicial procedures in this regard. Finally the Council reiterated its commitment to continue to provide coordinated support for *Gacaca* system. In the following year the Council in its common position welcomed the official launch of *Gacaca* tribunals and position upheld its concerns as well as commitment of providing assistance in implementing *Gacaca* jurisdictions. It stressed also, as regard the *Gacaca*, the need for introducing the community service.

As a consequence, of the EU's attitude the Commission's actions have focused on this country where political change and the condition of the judiciary could either lead to a progress in democratisation, or to a destructive period of long-drawn-out conflict. This explains the preponderance of, *inter alia*, financing for and focusing on Rwanda.[39]

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[36] *OJ* L 108, 7 April 1998, p. 1.
[37] Respectively: *OJ* L 178, 14 July 1999, p. 1; *OJ* L 236, 20 September 2000, p. 1; *OJ* L 303, 20 November 2001, p. 1; *OJ* L 285, 23 October 2002, p. 3.
[38] R. McCall, J. and Ch. Hjelt and S. Isralow*, Trip Report (to evaluate numerous challenges facing Rwanda),* Rwanda July 8 through 20, 2002*,* as accessed via http://www.dec.org/pdf_docs/_PNACR590.pdf., pp. 6-7.
[39] Basing on Franklin Advisory Services, channel Research Ltd, SEPIA, *External evaluation of Community aid concerning positive actions in the field of human rights and democracy in the ACP countries, 1995 –*

7. Question of *Gacaca*.

The EU's primarily position marked by somehow hesitation is, in this regard, entirely comprehensible. To all of the classically thinking jurists the *Gacaca* Jurisdiction, in its row traditional form seems to be unacceptable. Since it hardly mirrors common standards it might be perceived as contradictory to what in Europe is considered as rules of a fair trial. The worrying problems concerned the impartiality and independence of the *inyangamugayo*, the *Gacaca* judges, who would come from the very area in which the crimes to be tried had been committed. This would in European jurisdictions be considered as a reason for rejecting the court on the basis of prejudice. Moreover the proposed law openly violated the human rights as provided by Article 14 of the International Covenant on Civil and Political Rights (ICCPR) by not allowing, for example, for the traditional reasons, the parties to be represented by lawyer of their choice. Furthermore the law did not explain the concept of community service. It could be regarded as a work as punishment or forced labour, which would be contrary to the Article 8 sec (3)(b) of the ICCPR. Moreover the issue of a compensation of victims was not given enough attention.[40] Similar concerns have been expressed by Avocats sans frontières (ASF)[41] and Réseau des Citoyens Justice & Démocratie (RCN), the NGOs carrying out the programmes financed partly by the EU. RCN as invited by the GOR to consult the *Gacaca* law project, issued following recommendation concerning:[42] (A) the need for sensitisation of the society and detainees to the procedures of the new law; (B) the following the principle of the defence by authorising the close person to represent either a suspected or a victim in certain cases when those persons would be unable to act on their own during a trial and to foresee formerly, in the course of a process, the time for an explanation of the defence and the prosecution witnesses; (C) the need for the *Gacaca* tribunals to register the damages of the victims so to facilitate the process of assigning indemnity and accelerating the process of setting up the system of the community service as corresponding to the *Gacaca* jurisdiction.

1999, Synthèses Report (Phase 3), 28 August 2000, European Commission (SCR 3), http://www.europe.eu.int/comm/europaid/evaluation/evinfo/acp/951518_ev.html,, pp. 30 – 31.

[40] K.P. Puszkajler, J. Kaetzler, *Mid – Term Evaluation of the Danish Centre for Human Rights Projects 'Judicial Defenders in Rwanda'*, The Danish Centre for Human Rights, Denmark 2000, accessed by the http://www.humanrights.dk/upload/application/c0ca16c5/rwandamanust.pdf, pp. 32 – 34.

[41] ASF, Rapport annuel 1999, *Justice pour tous au Rwanda*, as accessed via http://www.asf.be/FR/Texte/Terrain/Rwanda/ASF.terrain.RWA.rapport1999.pdf , pp. 54 – 56.

[42] RCN, *Recommandations au Ministère de la Justice quant à la mise en place des Tribunaux d'Arbitrages (Gacaca). Remise au JSTG lors de la réunion tenue le 17/05/1999.*

Responding to some of the concerns, the adopted *Gacaca* law[43] provides in the Article 16 that the judges are excluded from cases wherein they are related by either friendship or enmity of the defendant or the defendant's guardian. The legislation further, in Article 12, stipulates a series of criteria, which can cause the replacement of any member of *Gacaca* organ upon the requirement of other members of that organ. Yet some of these criterias are undefined and thus can be interpreted and abused by *Gacaca* organ members, for example the pursuit of "*cultural divisionism.*" According to the *Gacaca* law the courts are independent, legal bodies implementing judicial functions. The public prosecutors are allowed to intervene only if the case for the prosecution is not established in adequate way or witnesses for the prosecution do not explain their case. The Article 29 of the law permits the judicial advisors, appointed by the *Gacaca* Jurisdictions Department of the Supreme Court, to assist the trials when necessary. Still the *Gacaca* legislation does not plainly define the character of their intervention.[44] Moreover Article 90 of the law imposes an obligation on the ordinary *Gacaca* jurisdiction "*to forward to the compensation Found for Victims of the Genocide and Crimes against humanity copies of rulings and judgments they have passed*" which shall indicate the details concerning the damages. The Found subsequently fixes the modalities for granting compensation. Finally as will be discussed in the respective paragraphs the GOR put considerable effort into sensitisation of the society and drafting and implementing the provisions establishing the institution of the community service (CS). [45] Although some of the recommendations have been taken into consideration in the process of drafting of the final version of the law the doubts regarding the *Gacaca* jurisdiction conformity with international legal standards multiply.[46]

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[43] Organic Law No 40/2000 of 26 January 2001, setting up "GACACA Jurisdiction" and organizing prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1, 1990 and December 31, 1994, Official Gazette of the Republic of Rwanda, year 40 no 6, 15th March 2001.

[44] AI, *Rwanda Gacaca: A question of justice*, AI index AFR 47/007/2002, December 2002 as accessed via http://web.amnesty.org/library/idex/ ENGAFR470072002/openPof=ENG_RWA, pp. 37 - 38.

[45] CS is a judicial decision, which allows the sentenced offender to make reparation for the harm that he/she has caused society, by carrying out work aiming both to benefit the community and to rehabilitate the criminal. As a rule it does not apply to serious criminals. In the post-genocide context of Rwanda, CS plays also other roles due to the fact that: the judicial decision will come from a popular jurisdiction; the scheme aims also to rehabilitate a specific social group en masse; it should accelerate releases and both rapidly and significantly alleviate the prison administration; beneficiaries will perform community service orders not as a total but as a partial alternative (second half) for a prison sentence of several years (up to 15 years); they will be persons convicted of homicide as part of the genocide; the programme will generate, within a very short period of time, a massive afflux of beneficiaries over the whole of the country. - PRI, *Strategic National Plan to set up CS in Rwanda*, 27 July 2002, p.6.

[46] AI, *Rwanda Gacaca: A question of justice*, *op. cit.*, pp. 28 – 41.

CHAPTER II

Reconstruction of the judicial system and delivering justice in Rwanda.

1. Background of the EU involvement.

1.1. Why to emphasise the reconstruction of a judicial system?

There are many reasons for emphasising the importance of having a sound and well functioning judiciary system in general. First of all, it is a recognised aspect of international human rights conventions as the ICCPR in Article 14 and the African Charter on Human and People's Rights (ACHPR) in Article 7. There are also legal premises to protecting of the prisoners form a situations when the detention conditions breach the principle of freedom from inhuman or degrading treatment and punishment as enshrined in for example Article 7 of the ICCPR, and Article 5 of the ACHPR. Moreover the needs for victims of the crimes and of state sponsored abuse of power to have access to justice and to receive a variety of forms of assistance and support have been recognised by the United Nations General Assembly.[47]

1.2. Why national trials in Rwanda?

The reconstruction of the judicial system in the country like post-genocide Rwanda is inherently linked to the issue of pursuing national trials of the human rights perpetrators. The relation is here reciprocal since if there had not been an urgent need for the genocide trials to be pursued, such a extensive action of the reconstruction of the system would have not been launched. On the other hand if there had not been appropriate conditions for establishing the trials could not have been carried out.

The prosecutions aiming for criminal accountability of the persons responsible for genocide can play several roles. These trials, by addressing the victims' grievance, can provide them with a sense of justice and catharsis. Furthermore they can offer a public forum the judicial confirmation of genocide verity. They can also establish a new dynamic in society due to an understanding that perpetrators will henceforth be held accountable. In

[47] The UN General Assembly *Declaration of basics principles of justice for victims of crime and abuse of power* – resolution 40/34 of 29 November 1985.

case of ethnic conflicts this approach, by confirming individual accountability, declares, that specific individuals, not whole ethnic groups, committed crimes. In consequence it rejects the further cycles of revenge taking and violence. Confidence that legal protection from prosecution will follow the commission of mass crimes can pass on to victims a sense that their powerlessness and helplessness are confirmed.[48] This in the course of the immediate post genocide aftermath could have encourage over one million of the refugees to return home. Furthermore all the EU's MS have an obligation under the Genocide Convention to take action "*for the prevention and suppression of acts of genocide*."[49] Moreover, if compared to international tribunals, domestic courts can be much more sensitive to the nuances of local culture, and resulting decisions "*could be of greater and more immediate symbolic force because verdicts would be rendered by courts familiar to the local community*."[50] It follows from the foregoing that it is of a vital importance to uphold complexity in approaching the problems of rendering justice in Rwanda. It means to foster interactions between the national jurisdictions and the International Criminal Tribunal for Rwanda (ICTR).[51] Additionally, as the processes searching for accountability for the genocide atrocities have a substantial weight for the traumatised society, they ought to be accompanied by local and international media. They should provide impartial information on wartime crimes and their prosecution, accordingly ensuring the sort of exposure and public education regarding the trial process and the suffering inflicted on others.[52]

1.3. Rwandan particularism.

1.3.1. Particular situation.

The situation in Rwandan relating to the process of rendering the justice and the judicial system has been characterised, in particular, by the two features. They are enormously overpopulated prisons coupled with austerely handicapped judiciary system. The overall number of detainees in the central prisons and communal *cachots* in

[48] N.J. Kritz, *War Crimes and Truth Commissions: Some Thoughts on Accountability Mechanisms for Mass Violations of Human Rights*, USAID Conference Promoting Democracy, Human Rights, and Reintegration in Post-conflict Societies paper, 30-31 October 1997, p. 3.
[49] Article VIII of the Convention on the Prevention and Punishment of the Crime of the Genocide.
[50] Preliminary Report of the Independent Commission of Experts Established in Accordance with Security Council Resolution 935 (1994) (29 September 1994), p. 31. as recalled by N.J. Kritz, *op. cit.*, p. 6.
[51] This work will focus solely on domestic proceedings and do not aim to discuss the problems concerning the comparison of international and domestic processes of rendering justice in post-genocide Rwanda.
[52] N.J. Kritz, *op. cit.*, p. 10.

December 1998 reached 125.028[53] and in 2002 there were still 112.000 prisoners remaining in overcrowded detention facilities.[54] There has been extremely little investigation of the accusations made against many of them as over-burdened classical jurisdictions hear approximately 1.500 genocide cases a year.[55]

On the other hand the judicial system in Rwanda, even before the 1994 war, was weak and subjected to the pressure from the government's part, with relatively few attorneys, magistrates, and police professionally prepared by the study of the law.[56] The Attorneys' Bar did not exist[57] and the Supreme Court was suppressed in 1978. It was only in 1992, upon concluding the Arusha Peace Agreement, when the principles of the rule of law, human rights and the judicial independence were renewed.[58] Additionally the system suffered severely destroyed during the genocide. Courts and Public Prosecutor Office buildings as well as a whole infrastructure including transport, communication means, archives, office equipment was in ruin or became a subject to pillages. But the most dangerous for the process of delivering justice were the human loses. Many of the judges, advocates prosecutors and other persons involved in the functioning of the judiciary system were either killed or fled the country or were themselves responsible for the genocide crimes. The figure number 1 presents the staffing constraints in the direct post genocide period.[59]

The profession/date	*Bachelors in law*	*Other education*	*Total*
Judges/end of 1995	9	42	51*
Prosecutors/end of 1995	6	13	19
Attorneys/end of war	26	4	30
IPJs**/Sept. 1994			22***

* According to other sources there were, in May 1995 - 40 magistrates working in Rwanda out of 800 who had been in office prior to April 1994.[60]
** *Inspecteurs de police judiciaire*.
*** There is no data on their background. In April 1994 there were 235 IPJs.[61]

[53] ASF, Rapport Annuel 1999, *op. cit.*, p. 46.
[54] In 1993, the accommodation capacity of the prisons and *cachots* was assessed at 10.000 detainees. - PRI, *Programme of support to prison administration in Rwanda, Activities Report–Interim Report–May2001*,p. 2.
[55] AI, *Rwanda, Gacaca: A question of justice*, *op. cit.*, p. 1.
[56] HRW, *Leave None to Tell the Story*, Genocide in Rwanda, March 1999, http://www.hrw.org/reports/ 1999/rwanda/Geno15-8-05.htm#P1070_331614, Conclusions: Justice and Responsibility. The Rwandan Prosecutions of Genocide.
[57] In 1987 *L'Association des Juristes Avocats au Rwanda* was founded yet only few members of the association survived the war period in 1994 - RCN - *Programme d'appui à la reconstruction du système judiciaire au Rwanda. Volet III,…op. cit.*, p. 1.
[58] CAGEP – Consult, *Assessment of the Judicial Sector in Rwanda*, (prepared for USAID/Rwanda and Ministry of Justice and Institutional Relations in Kigali), November 2002, as accessed via http://www.dec.org/pdf_docs/ PNACR573.pdf, p. 19.
[59] Basing on RCN, *Aperçus du système judiciaire Rwanda – décembre 1995. Présentation de la collaboration technique de RCN*, Editions RCN. The table does not include other courts staff where the bereavements were equally large.
[60] P. M. Manikas, *Promoting human rights and building a fair judicial system*. Rwandan evaluation (prepared for USAID, CDIE and DIA), May 1995, not published, p. 1.

1.3.2. Composition of the courts' system as regards genocide cases.

The composition of the Rwandan judicial system was highly inspired by the Belgian colonisers so the ordinary jurisdiction is based on: Canton Courts, Courts of First Instance, Courts of Appeals and Supreme Court. Additionally there are specialised jurisdictions like the military jurisdictions of War Council and Military Court and the recent form of *Gacaca* Jurisdictions. Genocide cases are judged beginning with the Courts of First Instance, where the specialised chambers were established to deal exclusively with this kind of dossiers. The cognition of these courts encompasses 2nd, 3rd and 4th categories of genocide crimes. There was recently established exclusive 6th Department of the *Gacaca* Jurisdiction at the Supreme Court.[62]

1.3.3. Particular approach.

It ensues from the abovementioned that few left magistrates and attorneys that could act at Rwanda's courts were absolutely unable to manage the immense mass of the cases. It is for these reasons that the Rwandan instance presents the need for the moderated approach to a prosecution. Accordingly, for example, an exceptional provisions setting up confession and guilty plea procedure were introduced by the GOR in the organic law of 30 August 1996. The procedure has subsequently been reiterated in *Gacaca* jurisdiction of 26 January 2001. It offers the chance for the suspected to confess to the genocide crimes, which must be accompanied by the inclusion of the information on accomplices or co-conspirators and apologising the victims. The confession takes place before a prosecutor. If accepted, the penalties are reduced according to the categories described by the organic law. There are four categories. The first concerns the persons playing the leaders role in the crimes, those responsible for the most serious crimes like for example sexual tortures. The crimes within this category are sanctioned by the death penalty. In case the confession is accepted, the persons falling within the scope of this category can be classified as second category offenders. This category encompasses the authors, co-authors and voluntary accomplices of the serious crimes causing victims death. Unless a person of this sort confesses, he/she can be sentenced to death or the life imprisonment. The third group concerns the authors of the grave attacks on the persons and is sanctioned by the

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[61] RCN, *Programme d'appui à la reconstruction du système judiciaire au Rwanda. Volet II Formation de 150 Inspecteurs et Officiers de Police Judiciaire*, p. 1.

[62] CAGEP – Consult, *op. cit.*, pp. 24 – 28. See also formal Rwandan Constitution of 30 May 1991, Article 88, as accessed through http://www.oefre.unibe.ch/law/ichl/rw00000_htm#C004.

temporary imprisonment. The forth, lighter group, those responsible for the infraction of property.[63]

Furthermore due to infeasibility of judging the prisoners in the reasonable time, the situation in Rwanda has required the actions, taken in parallel to dealing with the genocide trials, aiming to reform the prison system. It has been necessary for establishing more human conditions in extremely overcrowded and neglected detention facilities. Moreover giving that, firstly, the classical judicial system has presented highly insufficient capacity to handle all the cases and, secondly, as there was no question on whether the general amnesty law could be passed both the Rwandan society and the international community agreed that those responsible for the genocide crimes should be hold accountable. It has been necessary to reinforce the respect for the law and uphold the principle of punishment for crimes. Thereby the traditional, alternative to classical, *Gacaca* Jurisdictions have been proposed as a remedy for the situation. This led to the adoption in 2002 of Law on the creation of *Gacaca* jurisdictions and the organisation of proceedings against offences constituting crimes of genocide, crimes against humanity and other violations of human rights that took place in Rwanda from the 1st of October 1990 to the 31st of December 1994.[64] This legal system is based on participative justice, with elected over 250,000 *inyangamugayo*, and is tightly linked to the idea of reconciliation.

In June 2002, the *Gacaca* jurisdictions officially started to operate in restricted mode, i.e., in 12 pilot sectors distributed in 12 districts in each of the 12 provinces.[65]

2. Activities undertaken.

2.1. The EU as a part of the HRFOR.

The EU had been contributing to the Human Rights Field Operation in Rwanda (HRFOR) since March 1995 providing staff support and covering around 80% of the HRFOR's budget. One of the main objectives of the intervention, as regards a post-war Rwandan reconstruction process was "*to implement programmes of technical cooperation in the field of human rights, particularly in the area of the administration of justice*."[66] The activities concerned also collaboration with the officials of the judiciary in order to obtain a complete assessment of shortcomings, problems and needs of the judiciary

[63] D. Patry, *Le contentieux du génocide rwandais ou l'impasse judiciaire*, in « Revue Générale de Droit International Public », Tome CVI, 2002, pp. 414 - 415.
[64] PRI, *Rwanda Country Programme*, Annual Report 2002, produced by PRI Paris Office, 2003, p. 23.
[65] PRI, *Strategic National Plan to set up CS in Rwanda*, *op. cit.*, p. 4.
[66] Basing on P. M. Manikas, *op. cit.*, p. 14.

sector.[67] The technical cooperation unit of the HRFOR has become increasingly important while trying to coordinate foreign assistance for the rebuilding of Rwanda's judicial system. By March 1995, the Technical Cooperation Unit had completed a nationwide survey of needs for the rehabilitation of the judicial system, conducted in cooperation with the United Nations Development Programme (UNDP) and the Rwandan Ministry of Justice (MinJust). Subsequently, field officers were utilised to distribute, to the *prefectures*, the material assistance that was provided to meet short-term needs. More elaborate material assistance, urgently needed, failed to materialise in the first period until 1995, in large part for reasons beyond the control of the HRFOR.[68]

2.2. Reconstruction of physical infrastructure.

In November 1994 the EU introduced the First Rehabilitation Programme financed by the 6th EDF, amounting to Eco 67.000.000, aiming to complete the humanitarian and emergency actions. It was intended mainly to support the areas linked to the refugees and the economical infrastructure. Nevertheless its component concerning a technical assistance to implement an overall programme contained a subcomponent, concerning establishing of adequate conditions for the work of justice institutions.[69] The study within the framework of the subcomponent concerned the rehabilitation of the Supreme Court in Kigali and construction of the siege for General Public Prosecutor's Office.[70]

The actions of reconstructing a physical infrastructure were carried out subsequently within the Second Rehabilitation Programme of the NIP of the 7th EDF adopted in 1997. The 7th part of the programme concerned reconstruction of the judicial system and granted for this goal Euro 4.900.000 within the scope of the programme no. 6 ACP RW 036.[71] In 2000 the reconstruction of the Kigali sieges of the Supreme Court and

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[67] R. von Meijenfeld, *At the Frontline for Human Rights*, Final Report – Evaluation of European Union participation in the Human Rights Field Operation in Rwanda of the United Nations High Commissioner for Human Rights, October 1995, not published, pp. 13 - 38.

[68] Join Evaluation of Emergency Assistance to Rwanda *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*, 1997, as accessed via http://www.um.dk/danida/valueringsrapporter/1997_rwanda/b4/index.asp, study 4 Rebuilding Post-War Rwanda, Chapter 9 Promoting Human Rights and Building a Fair Judicial System.

[69] The EU during immediate genocide aftermath donated also salaries of the MinJust personnel. - Join Evaluation of Emergency Assistance to Rwanda, *op. cit.*, study 4 Rebuilding Post-War Rwanda, Chapter 9 Promoting Human Rights and Building a Fair Judicial System.

[70] GOPA – Consultatns, *Rwanda Evaluation du Programme d'Action Immédiate de Réhabilitation au Rwanda,* Réf. No. 7.ACP.RW.57, novembre 1998, Rapport définitif adressé à la Commission Européenne DG VIII/A/6, not published, p. 55.

[71] I. Kircher, P. LaRose – Edwards, *Evaluation of the European Union Contingent to the UN Human Rights Field Operation in Rwanda*, Commissioned by the European Commission, 1997, not published, p. 9.

Office of the General Public Prosecutor were completed and, as a subsequent step, the project intended to reconstruct, till the beginning of 2003, 30 Canton Courts.

2.3. Genocide trials.

2.3.1. Réseau des Citoyens Justice & Démocratie.

RCN in its activities in Rwanda has mainly focused on improving of the facilities of difficult and slow trial procedures. In general they have contributed to the acceleration of the procedures by assisting with a logistic support for the courts and prisoners in various and flexible ways.

A/ Programme of 1994.

It was already in 1994 when RCN was granted by the Commission a financial support for its project "*Programme d'appui à la reconstruction du système judiciaire au Rwanda*". The support was provided by the Commission budget line B7-552, under the contract No. B7 – 552/RWA/ED/173/94. According to the contract RCN was granted Euro 76.519,00.[72] The programme was composed of and implemented in three main components. First led to a creation of the collection of the law documentation accessible for governmental administration as well as civil society individuals. The library equipment, including furniture and technical tools was to be moved to the "*Centre Nationale de formation judiciaire*" reconstructed with a support of RCN.[73] Secondly it focused on organisation, in 1995, together with the MinJust, a training of 150 IPJs. In the course of the training RCN supplied the study materials and assisted the apprentices as well as organised technical support for the Public Prosecutor Office in order to ameliorate the work conditions for new inspectors[74]. Thirdly the NGO supported the creation of a Bar Association.[75] Informal meetings with Rwandan attorneys allowed elaborating the status of "*L'Association des Juristes mandataires professionnels en Justice*". In the following

[72] RCN, Contracte No B7 – 552/RWA/ED/173/94 *Programme d'appui à la reconstruction du système judiciaire au Rwanda. Constitution d'un fonds documentaire juridique. Formation de 150 inspecteurs de police judiciaire. Appui a la création d'un barreau*.
[73] RCN, *Programme d'appui à la reconstruction du système judiciaire au Rwanda. Volet I, Constitution d'un fonds documentaire juridique*, pp. 2 – 4.
[74] RCN, *Programme d'appui à la reconstruction du système judiciaire au Rwanda Volet II,…op. cit.*, pp.1-9.
[75] RCN, *Rwanda. La reconstruction d'un système judiciaire démocratique. Programmes d'assistance technique. Octobre 1994 – mars 1995*, Compilation. pp. 156 – 159.

period two Rwandan lawyers were granted a stage in different bars in France and the Association was provided with a technical assistance.[76]

B/ Programme of 1995.

In 1995 the Commission contributed again Euro 325.794,00 from the EIDHR budget line to pursue the second phase of the project *"Programme d'appui à la reconstruction du système judiciaire au Rwanda: formation de cent magistrats non – juristes"*, the contract no. B7 – 522/RW/ED/48/95.[77] In the course of this project RCN provided a technical assistance for the MinJust in training of one hundred judges. Due to an overall situation in the judicial sector in Rwanda this was an extraordinary undertaking in a sense that the candidates did not have to hold a law diploma and the whole course lasted no more then four months - between September 1995 and January 1996. The training was successfully completed by 98 graduates who were subsequently nominated for judges non jurists.[78]

C/ Programme of 1998.

In 1998 the Commission approved support for next RCN's programme *"Appui urgent aux aveux et aux procédures judiciaires liés au génocide et aux massacres et soutien de la société civile"*. This project, indicated as B7-7020/RW/ED/151/98, was granted support amounting to Euro 945.010,00. The program constituted a part of a greater project, which had been carried out in Rwanda since October 1998. The whole project was composed of three parts. The EU financed programme constituted the middle one. The programme was subsequently divided into three components. The first one aimed to assure the proper treatment of the confessions by accelerating the procedures, improving the quality of the sentences rendered as well as to diminish the number of incarcerated population. The second component focused on the society by enforcing a dimension of the individual rights and increase the awareness of the society to respect these rights, support for vulnerable groups and socialise consecutive genocide justice. Finally the third component aimed to execute the payments for the members of the judiciary corporation. In the course of this programme RCN provided support for the special teams of IPJs and

[76] RCN, *Programme d'appui à la reconstruction du système judiciaire au Rwanda.Volet III,…op.cit.*,pp.1-4.
[77] Country overview: Rwanda from 1994 until 2050 Tableau de synthèse FED (PIN) – Evolution chronologique FED (in the file with the author) and RCN, *Programme d'appui à la reconstruction du système judiciaire au Rwanda: formation de cent magistrats non – juristes*, Rapport Final, note de synthèse, 31 janvier 1996, p. 1.
[78] RCN, *Formation de 100 magistrats non-juristes 18 septembre 1995 – 27 janvier 1996. Rapport d'activités 31janvier 1996*, pp. 2, 12.

Officiers du Ministère Public (OMP) involved in work on the dossiers of the genocide suspected who decided to undergo the procedure of confession and guilt plea. Namely the NGO covered the expenses of IPJs and OMPs, and provided them with transport means necessary to pursue investigations. Equally RCN provided office equipment and transport for the magistrates of the Special chambers holding hearings and completing investigations on the hill sides places where the crimes had been committed. The same concerned the assistance to the *Chambres du Conseil*.[79]

D/ Programme of 2001.

In 2001 the Commission granted Euro 641.548,00 for RCN project "*Aide urgente aux procédures judiciaires relatives au génocide*", No. B7-703/2001/0227.[80] A special weight was attached, in this project, to acceleration of the judgments and increase of their quality. The programme sought also to assist to the transition from classical trials to *Gacaca*. The expected results of the project included the augmentation of the group processes, facilitation of logistic issues, diminution of the incarcerated population, privileged urgent treatment of those that decided to confess, enhancing the awareness of justice by organising "*procès en itinérance*", support for classical legal procedures as well as transition from the classical justice to *Gacaca* and logistic support for Courts and Public Prosecutors Office. Activities included again logistic and office material support to tribunals and prosecutors, training for legal support staff, provision of hangars and equipping existing facilities in order to run trials in them. [81]

2.3.2. Avocats sans frontières.

A/ Programmes.

ASF launched its programme entitled "*Justice pour tous au Rwanda*" in 1996. Earlier that year the Commission, as one of the donors supported the project from the EIDHR budget line of Euro 246.200,00. The project was indicated as DDH/1996/138. The support of the Commission for the programme was extended in 1997 when ASF was granted support for programme "*Justice pour tous au Rwanda – phase d'exécution*", no. DDH/1997/141. This aid amounted to Euro 996.114,00. In 1999 the Commission maintained financial assistance for the programme under the same title, indicated as a

[79] RCN, *Justice rwandaise liée au génocide et aux massacres – programme d'appui urgents aux aveux et aux procédures*, Rapport d'activités couvrant la période d'avril 1999 à juillet 2000, pp. 1 – 10.
[80] Project summary sheet B7-703/2001/0227 (in the file with the author).

project number DDH/1999/36.[82] The whole project of the "*Justice pour tous au Rwanda*" has been carried out since the end of 1996 till the end of 2001.

B/ Objectives.

The principal objectives of the ASF intervention in Rwanda were the protection of human rights, prevention of conflict, validation of the justice recourse as a way of non violent conflict resolution and fourthly the fight against impunity by the individualisation of the responsibilities with the aim of giving higher priority to social dialogue rather than challenging peace and the development of the country. These objectives covered also the humanitarian aims in the juridical domain such as the protection of persons particularly vulnerable, i.e. the accused and the victims. [83]

C/ Implementation.

a/ Assistance to parties.

ASF has been assisting to the parties in two routes. Firstly there were persons to whom the NGO rendered assistance by the expatriated attorneys and secondly those backed by Rwandan attorneys but remunerated by ASF.

Figure number 2 presents an example of the ASF' assistance to the accused (in a period of 1997 – 2000), in particular years when they were sentenced, in relation to an overall number of the tried in particular years.[84]

	Persons tried		*Persons assisted by ASF*		*ASF participation*
Year	Number	Increase	First instance	Courts of Appeal	Overall
1997	379		304	(no data)	(first inst.) 80%
1998	895	136%	392	57	50%
1999	1.306	45%	1.024	99	86%
2000	2.489	90%	983	97	43%
2001	1.416	- 43%			-
2002 (Jan. – June)	757	-			-

[81] Project profile B7-703/2001/0227 (in the file with the author).
[82] Country overview: Rwanda from 1994 until 2050 Tableau de synthèse FED (PIN) – Evolution chronologique FED.
[83] ASF, *Rapport d'activités 2000, Justice pour tous au Rwanda*, as accessed via http://www.asf.be/FR/Texte/Terrain/Rwanda/ASF.terrain.RWA.rapport2000.pdf, p. 12.
[84] Basing on ASF: Rapport Annuel 1998, *Justice pour tous au Rwanda*, as accessed via http://www.asf.be/FR/Texte/Terrain/Rwanda/ASF.terrain.RWA.rapport1998.pdf, *Rapport Annuel 1999 op.cit , Rapport d'activités 2000 op.cit*. and CAGEP – Consult, *op. cit*., ASF commenced their activity in Rwanda in December 1996.

According to the table the peak of the ASF participation on the genocide trials was reached in 1999 when they assisted to 1.123 accused which constituted 86% of the total number of 1.306 judged persons. The numbers for 1999 transpose into 199 dossiers out of 260 examined that year. This gives the participation of 76,5%.[85] In 2000 ASF intervened in 1.097 out of 1.413 court hearings, in both the first instance and the courts of appeal, which gives the participation on the level of 78%.[86]

All in all it appears from the abovementioned that ASF in the period of 1997 – 2000 assisted to 2.956 out of 5.069 judged which represents 58% on an overall judged population.[87]

b/ Attorneys.[88]

The ASF attorneys concentrated, in principle, on providing either themselves a legal assistance for both the accused and the plaintiffs or covering, often as the only payer, the expenses and honoraries of the national Rwandan attorneys engaged in genocide related cases.[89] In the latter case the national attorneys were generally designated by the *Bureau de Consultation et de Défense du Barreau du Rwanda* (BCD) to be briefed, upon a demand of ASF. The BCD could itself appoint another group upon the ASF notification of infeasibility of handling particular dossiers either because of the lack of attorneys or for security reasons.[90]

Table number 3 presents the participation of the expatriated lawyers in the genocide processes as related to the national advocates involved in the genocide trials in the period of 1998 - 2000.[91]

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[85] Numbers of dossiers do not reflect the number of judged as they often concerned more than one person.
[86] ASF, *Rapport D'activités 2000*, *op.cit.*, pp. 13 -16.
[87] The data here vary slightly from what was provided by the ASF. According to the NGO since its arrival in Rwanda the attorneys assisted to 2.722 judged persons which constituted 52% of the overall number of 5.229 judged persons, ASF, *Rapport D'activités 2000*, *op.cit.*, pp. 13 -16. However this does not change the fact that the participation by far surpassed 50%.
[88] The number of cases assisted does not necessarily have to reflect the number of people that beneficed from the ASF aid. It is for two contradictory reasons. Firstly, especially in genocide processes in Rwanda, very often one case concerns a group of accuses and/or a group of plaintiffs. Secondly, which is one of the biggest problem in Rwanda in the course of delivering justice, great part of the society has had no confidence vis-à-vis judicial apparatus including attorneys and in consequence often refuse to rely on their service.
[89] http://www.asf.be/FR/Frameset.htm.
[90] ASF, *Rapport annuel 1998*, *op. cit.*, p. 13.
[91] Basing on ASF: *Rapport Annuel 1998 op.cit., Rapport Annuel 1999 op.cit.* and *Rapport D'activités 2000 op.cit*. Indication of particular semesters in a year 1998 was caused by the lack of over year data.

Year	*1998*	*1999*	*2000*
Expatriate attorneys	First semester 48 Second semester 51	64	44
National attorneys	22	26	+60

As regards the national Rwandan attorneys ASF was charged, in for example 1998, to cover expenses and honoraries of all the 22 advocates. The relation between the number of foreign and national attorneys have been slowly evolving but it was not until 2000 when the national advocates outnumbered the expatriates.

Looking for the remedy for the shortage of the judicial assistants Danish Centre for Human Rights (DCHR) launched in 1998 training for judicial defenders.[92] In the course of the following year ASF participated in the programme offering certain apprentices one-month practices. The entire course was additionally completed by different seminars given by ASF and concerning the techniques of the advocate's work. The organisation was equally involved in the activities aiming to support for the emergence of the National Rwandan Bar as well as participated in numerous seminars, conferences, organised the distribution of documents and information in the prisons, organised a transport for the judges and delivery of summons to the witnesses.[93]

2.4. Prison system - Penal Reform International.

2.4.1. Programmes.

In 1997 the Commission granted the PRI's "*Programme d'appui a l'administration pénitentiaire rwandaise*" support, from the budget line B7 – 7020, under the contract B7 – 7020/RW/ED/94/97, amounting to Euro 1.253.250,00. This constituted 95% of an overall project budget. The programme was carried out during the period ranging from January 1998 to June 1999.[94] The second phase of the programme was run from July 1999 to January 2001. The contract B7 – 7020/RW/ED/46/99 for financing the

[92] The EU did not sponsor this programme. In its course 87 judicial defenders, persons without a legal background, were trained during an eight months training, to represent the accused and claimants in genocide cases in the first instance courts. They ware not supposed to replace advocates but to complete their job by offering legal advices to the trial parties. – DCHR, *Partners in Progress. Human Rights Reform and Implementation*, Denmark, B. Lindsnaes and T. Martin (Eds.), http://www.humanrights.dk/publications/al/PiP/partnet\rsinprogress.pdf, 2002, p. 36.
[93] http://www.asf.be/FR/Frameset.htm.
[94] PRI, *Summary of funding* received by PRI towards the implementation of its programmes in Rwanda and *Programme of support to the prison administration in Rwanda, Progress report April 1998*.

second phase of the programme was signed in February 2000. This time the EU contributed 28% of a total programme budget i.e. Euro 501.121,00.[95]

2.4.2. Objectives.

Both projects aimed to assist in the reconstruction of the prison administration of Rwanda and to help to improve the conditions of detention. To this end, the projects had three main objectives: (A) establish and/or develop production activities in the prisons using detainees labour which would generate income and in consequence led to reduction of the costs of running the prisons, to improvement of general conditions of detention and to prepare some of prisoners for integration back into society on their eventual release; (B) to increase management and prison administration capacity through material support and by training prison staff on management practices, administration and on international norms and (C) to improve, in quality and quantity, the constructive intervention of groups of the civil society in Rwanda and by doing so contribute towards national reconciliation.[96]

The second phase of the programme focused on the preparation of the handing over of the activities under the project to the GOR. To this end the activities aimed to ensure that all the required structures were established and the necessary sensitisation has been concluded.[97]

2.4.3. Implementation.

Initially the programme worked in eight prisons accommodating some 40.000 detainees representing 32% of the whole prison population.[98] It the course of the second phase four new prisons was embraced by the programme and in consequence the programme covered 42% of the total prison population.[99] The activities planned in the programme concerned the three areas: support to prison service, training for the prison staff at all levels and micro projects.

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[95] Project profile B7 – 7020/RW/ED/46/99 (in the file with the author).
[96] PRI, *Programme of support to the prison administration in Rwanda, Progress report April 1998*, p. 4.
[97] PRI, *Programme of support to prison administration in Rwanda, Activities Report - Interim Report–May 2001*, p. 1.
[98] PRI, *Programme of support to the prison administration in Rwanda, Progress report April 1998*, p. 7.
[99] PRI, *Programme of support to prison administration in Rwanda*, *Activities Report - Interim Report–May 2001*, p. 7.

A/ Training.

The trainings were organised for four categories of prison personnel: prison directors, deputy directors, legal secretaries and prison officers. The courses were specially adapted to their needs and concerned: management, prison administration, international protection of human rights, internal penal law. The classes were offered in Kinyarwanda by local trainers, who were paid by PRI. The total number of trainees reached, in the period from August 1998 to August 1999, the level of 551.[100] In 2000, due to a appointment, in 1999, of the new directors of almost all prisons, the PRI organised a three week training session attended by 17 out of 19 directors. Since the major problems infringing the functioning of the prisons were the lack of transparency in management, insufficient cooperation and confidence between the prison directors and accountants as well as not satisfactory performance of the prison management committees the main emphasis were put on the management aspects.[101] Those capacities were especially vital in the perspective of transferring to the government the activities carried out within the scope of the micro - projects.

B/ Support to prison service.

This activity covered: paying the salaries of some of the personnel, purchasing equipment for the MiniJust and the prison services, setting up different management groups and supervising the work of these groups. The PRI contributed also to the improvement of the management capacity of the Prison Service by formalising and supporting the Management Committees in the MinJust and the prisons' level. Upon the request of MiniJust, the NGO set up a precise description of the functions of these committees.[102] In August 2000, the Minister of Interior signed the document regarding the management of the micro - projects and all prison production activities. The document has been necessary for organisation of the structures necessary for handing over the micro – projects to the GOR. However due to the organisational problems within the Management Committee at the Ministerial level as well as at the lower stage, the PRI agreed that it

[100] PRI, *Programme of support to prison administration in Rwanda*, *Activities Report January 98 – September 99*, p. 6.
[101] PRI, *Programme of support to prison administration in Rwanda, Activities Report – Interim Report – May 2001*, pp. 3 – 4.
[102] PRI, *Programme of support to prison administration in Rwanda*, *Activities Report January 98 – September 99*, p. 5.

could not go further with the programme unless there were reasonable indicators that the prison service was competent to carry out the micro - projects.[103]

C/ Micro – projects.

In order to carry out production activities like for example: agricultural activities, fish – farming, brick making, breeding, carpentry and tailoring, mapping and rebuilding the prisons' infrastructures the PRI set up several micro - projects.[104] Nevertheless the Prison Service has postponed the assumption of the projects by the Rwandan authorities in 2000 and 2001. The Ministry and the prison service preferred to rely on the PRI's support instead of making the indispensable investments and were unable to follow the development of the programmes due to the staff and budget restrictions. Thereby the PRI had to maintain its activities instead of handing it over to the GOR. This led stopping of the NGO's support for a certain activities where the insoluble hindrances have arisen.[105] Finally the GOR's position combined with the insufficient capacities of the local system made the PRI to drop the activities.[106]

2.4.4. Community service.

The latest PRI programme in Rwanda concerns setting up the CS[107], which is a complementary scheme for the *Gacaca* Jurisdictions. The programme' implementation has not yet been initiated. At this stage an article of the law on *Gacaca* and a presidential decree of 01 February 2002, drafted partly by the PRI,[108] have provided its legal framework. They established that persons in the 2nd category who confess and persons in the 3rd category might choose to be released to spend the second half of their sentence performing the CS (3 days per week). If properly implemented and run, the CS will have not only the advantage of reducing the prison population but also of contributing to the reintegration of the detainees in the society. In 2002 the MiniJust invited the PRI to draw

[103] PRI, *Programme of support to prison administration in Rwanda, Activities Report – Interim Report – May 2001*, pp. 4 - 5.
[104] PRI, *Programme of support to prison administration in Rwanda*, *Activities Report January 98 – September 99*, pp. 10 – 13.
[105] PRI, *Programme of support to prison administration in Rwanda, Activities Report – Interim Report – May 2001*, p. 5.
[106] Interview with V.Geoffroy – Cyimana, the PRI Rwanda desk officer hold in Paris on 03 June 2003.
[107] For explanation see supra note no. 45, p. 18 of this work.
[108] Interview of 03 June 2003, supra note 106, p. 33 of this work.

up "*Strategic National Plan to set up CS in Rwanda*".[109] This document was subsequently approved by the GOR and is presently used as bases for the development of the CS.[110]

Regarding those aims the PRI applied to the Commission for granting from the 8th EDF for Rwanda a financial support for the programme "*Promotion of alternatives to custody in Rwanda via the orientation and training of specialist Community Service staff and monitoring of implementation*" amounting to Euro 299.857,00. It would constitute 57,41% of overall programme founds. The project seeks to strengthen the planning, monitoring, preparation, delivery and management of the national CS programme. Main activities would focus on orientation and intensive staff development programmes, coupled with monitoring of effectiveness of training against performance, in the management and delivery, of appropriate programme of the CS for prisoners released conditionally via the *Gacaca* procedures.[111]

2.5. Media - Fondation Hirondelle.

2.5.1. Programme.

In 2001 the FH obtained for its project "*Information, Documentation and Training Agency for the International Criminal Court for Rwanda*", from the EIDHR budget line, the grant amounting to Euro 440.219,00. It constituted 74,59% of the total programme budget. The project has been classified under reference number B7-702/2001/0501. The programme was supposed to be carried out in the period from 19 January 2002 to 18 July 2003.[112]

2.5.2. Objectives.

The two main objectives of the programme have been, firstly, to contribute to the acts of violence and the fight against impunity in the region of the Great Lakes and secondly to provide the population of the region, in the proper languages, with independent, professional and complete information on the work of the ICTR as well as national Rwandan tribunals. The information was intended to be disseminated via

[109] This project was financed Belgian *Coopération Technique* – PRI, *Strategic National Plan to set up CS in Rwanda*, *op. cit.* p. 6.
[110] PRI, *Rwanda Country Programme*, *op. cit.*, p. 1.
[111] PRI, *Actions linked to the support for the rule of law and for promotion of individual rights and reconciliation*, Grant Application Form. Financing: 8th European Development Fund for Rwanda, p. 2.
[112] Summary sheet of the project B7-702/2001/0501 (in the file with the author).

dispatches, radio transmissions and Internet in the following languages: English, French, Kinyarwanda and Swahili.

2.5.3. Implementation.

In 2002 the FH diffused 977 dispatches and articles in the four languages i.e. more than 500 primarily planed. The Arusha crew produced 170 radio correspondences diffused by both the international and Rwandan radio stations. Furthermore the FH website became an easy accessible source of current information on the processes at the ICTR as well as those pursued in Rwanda. The information has been forwarded, on a daily basis, free of charge, to 759 subscribers. Regarding activities in Rwanda, the FH has been cooperating since 1995 with a journalist preparing the relations on the process of delivering justice (28 relations in 2002).[113] Currently the agency covers also the *Gacaca* processes as well as became the only authorised agency to broadcast, on a daily basis, the information from the ICTR.[114]

2.6. Future development and support for the *Gacaca* jurisdictions.

2.6.1. Programme.

The EU within the framework of the political dialogue adopting the common positions on Rwanda, as presented beforehand, recognised that *Gacaca* can, under certain conditions, serve to establish judicial administration aiming to accelerate the process of reconciliation. For those reasons the EU decided to contribute to this process. The principal EU contribution is materialised within the framework of the Programme of Structural Adjustment 2 and budgetary support for the justice sector by covering the state's expenses aiming to set up *Gacaca* jurisdiction.[115]

In 2001 the Commission accorded under the auspices of the ACP cooperation framework, the programme no. 8 ACP RW 19 entitled "*Soutien à l'Etat de droit et aux initiatives de promotion des droits de la personne et de la réconciliation nationale*". The programme amounts to Euro 7.200.000 and is meant to be carrying out between 19 June 2001 and 30 December 2005. The project aims to offer technical assistance to the Minjust and the Supreme Court.[116]

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[113] Interim Assessment of the project B7-702/2001/0501 (in the file with the author).
[114] FH, New bulletin *What's new*, www.hirondelle.org, no 4, April 2003, p. 2.
[115] However see also, for example, RCN programmes, as discussed above, that aimed to prepare the grounds for setting up *Gacaca.*
[116] *Synthèse de projet no. 8 ACP RW 19*, (in the file with of the author), p. 1.

2.6.2. Objectives.

The global objective of the programme is to contribute to the consolidation of the rules of law, state of law and a national reconciliation. To this end the project envisages setting up the *Gacaca* jurisdiction and carrying on the programmes already under the phase of realisation. The specific objectives aim to contribute towards resolving the contentious problems concerning genocide, the respect of the rights of a person and to foster the process of the reconciliation as well as to prepare further development of the civil society and the justice sector institutions. These objectives focus, in turn, on the number of the detainees judged by the *Gacaca* jurisdiction, the quantitative and qualitative augmentation of the rendered judgments, projects realised by the civil society in the framework of the programme. The programme approaches the issue in a very broad way and is composed of six components. They are, as concerning the support for the state, *inter alia*, – supply of electronic equipment for the bureau of the Supreme Court amounting to Euro 300.000,00; enforcement of the contacts between Rwandan justice system (classical as well as *Gacaca*) on the one side and the ICTR on the other side amounting to Euro 500.000. Furthermore, as regards the support for the civil society organisations, they aim to found the programmes carried out by NGOs with a specific focus on, among others, the judicial sector. This part of the project amounts to Euro 1.750.000.[117]

2.6.3. Activities.

The programme, aims to provide the technical assistance to the Minjust and the Supreme Court. It will also to set up the tools of the internal management and the work control of the courts and tribunals like for example the statistical service. Above and beyond the programme plans to finance the training of the judges and clerks of the court. Moreover it will support putting into practice the projects facilitating the contacts between the ICTR and the Rwandan judiciary system by organising visits of the journalists and the representatives of the civil society in Arusha as well as by assisting in holding certain sessions of the ICTR in Kigali.[118]

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[117] The other components are connected with support: to semi-state project - National Commission on Human Rights (Euro 1.350.000) and National Commission for the Unity and Reconciliation (Euro 1.350.000); initiatives of the civil society in the domain of culture (Euro 400.000) - *Synthèse de projet no. 8 ACP RW 19*, *op. cit.*, p. 1.

[118] It is impossible at this stage to asses the impact of this projects however in the forthcoming chapters we will discuss to what extent the project responds to certain recommendations that could be made on the bases of the EU role in reconstruction of the judiciary system in Rwanda.

CHAPTER III

Rwanda - impact of the programmes and lingering problems.

1. Judicial system.

1.1. HRFOR mission.

The assistance for the rehabilitation of the judiciary, within the framework of the HRFOR, was an instrument to achieve a redress and prevent human rights violations along with establishing a confidence among a society. Thus the identification of the objective required effective implementation and adequate tools. The Report of October 1995 stressed in regard to the HRFOR in general, the need for clarification of the hierarchy of the objectives of confidence building. The different actors interpreted it differently, as some understood it as maintaining good relations with authorities, some more widely as, *inter alia*, rehabilitating a judiciary system. The definition of the objectives would significantly contribute to the higher transparency of the actions undertaken, would let to simplify the structuring, improve management conditions and let to have a more consistent presentation thorough the mission and better focus on the activities. If the EU had agreed to elaborate the hierarchy of the objectives it might have contributed in resolving real and apparent differences in mandate of the UN HRFORs and the EU contribution to HRFORs.[119] This in consequence could be more productive for the actions undertaken. The report suggests also introducing of the management by objectives so that the application of the technical assistance should be considered as one of the instruments for pursuing the objectives rather than a separate programme objective.[120]

1.2. Genocide trials.

Before turning to the discussion on the impact of the particular programmes one explanation has to be given at the outset. Both of RCN and ASF have carried out in Rwanda also programmes which were not sponsored by the EU. Therefore in some places

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[119] R. von Meijenfeld, *op. cit.*, p. 61.
[120] *Ibidem*, p. 82.

it will be indispensable, for the coherence and better understanding of the work, to recall the general impact of all the projects carried out throughout certain period.

1.2.1. Magistrates and judiciary staff.

Commenced shortly after the cease of hostilities the RCN's project of training, in 1995, of 150 IPJs seriously reinforced the MinJust capacities on the governmental stage. It increased the social visibility of the justice and thanks to this had significant impact on a society's hope of evolution of the situation. In the course of the programme 118 inspectors were allocated in the country prefectures. They subsequently contributed to the preparation of dossiers of detainees and assured a permanent presence of the judicial power on the communal level. Allocation of next 19 military inspectors allowed to enforce the capacity of pursuing investigations against military delinquents.[121]

Subsequent programme of training of the 100 magistrates non - jurists, organised in 1995, allowed to nominate 78 judges in 12 tribunals of the first instance and 8 judges in the War Council and in the Military Court.[122] It has been a substantial input to the process of dealing with the genocide crimes by the system where, as presented in the table number 1, at the end of 1995 there were only 51 actively working magistrates.

1.2.2. Attorneys.

The right to defence would never be respected if there was nobody to struggle for it. In this sense the RCN's contribution of provide all the jurists and ordinary citizens with the codes and handbooks on law as well as the efforts aiming to establish the Bar Association should be highly appreciated. ASF from their part, apart from managing the defence of trial parties, covering the attorneys' salaries or organising the seminars, implemented among the Rwandan advocates the spirit and culture of the profession, gave them the feeling that they were not left in lurch which played psychologically conducive role in the process of consolidation of the national attorneys.

The creation of the Association and subsequently the Bar[123] inevitably fostered the organisation of work of the Rwandan jurists and reinforced them in coping with a great task of dealing with the issue of delivering post genocide justice.[124] "*The bar is an*

[121] RCN*, Programme d'appui à la reconstruction du système judiciaire au Rwanda. Volet II,…op. cit.*, p. 9.
[122] RCN, *Formation de 100 magistrats non-juristes 18 septembre 1995 – 27 janvier 1996. Rapport d'activités 31janvier 1996*, *op. cit.*, p. 12.
[123] The Bar was established in 1997 under Law no. 03/97 of 19 March 1997.
[124] RCN, *Programme d'appui à la reconstruction du système judiciaire au Rwanda. Volet III,…op. cit.*, p. 4.

indispensable part of the legal system in any country."[125] confirms president Kagame. Indeed currently, form the perspective of few years the observers notice the significant role of the Bar Association in contribution to judicial system progress.[126]

ASF has stressed, in the course of implementing their projects, the need for the national attorneys to become involved in the genocide legal actions alike. Therefore its Report for 1998 underlines the need for "*justice pour tous*" project to unfold in a direction of accompanying rather than substituting national attorneys.[127] However it was not until 2000 when the national attorneys outnumbered the expatriated advocates.[128] It could also be argued, as pointed out in the *External evaluation of Community aid concerning positive actions in the field of human rights and democracy in the ACP countries, 1995 – 1999*[129], that ASF to certain extent imposed on the Bar Association their programme instead of capacitate it to use information technology, by meeting the need defined by a lead organisation. This in consequence ultimately undermined the regeneration of the Bar Association and its capacity to prosecute or protect clients. Therefore there was a risk that on top of ASF withdrawal from their hitherto conducted activities in Rwanda, in August 2002 would result in deteriorating the trials parties' position. It is also for, there is still highly insufficient number of the national attorneys in relation to the amount of pending and prospective court cases. Additionally the Rwandan law does non envisage any obligatory form of judicial assistance.[130]

1.2.3. Right to defence.

Recognition of the right to defence has been significantly improved among the magistrates who have often initiated the participation of the ASF advocates in the procedures. In the report for 2000 ASF making appraisal of the four year's activities in Rwanda affirmed that their intervention highly contributed towards the defence of the rights of the accused and the victims alike acting in the special chambers. Although not all of them could take an advantage of the legal assistance, majority beneficed from the aid offered by the lawyers. The observers concur that the intervention of ASF had also

[125] H.E. Paul Kagame President of the Republic of Rwanda, remarks at the occasion to mark the fifth anniversary or the Bas Association, Kigali November 9th, 2002, http://www.rwanda1.com/ government/president/speeches/ 2001/11_09_02_bar.html.
[126] CAGEP – Consult, *op. cit.*, p. 10.
[127] ASF, Rapport Annuel 1998, *op.cit.*, p.45.
[128] ASF, Rapport d'activités 2000, *op.cit.*, p. 7. See also the table number 3.
[129] Franklin Advisory Services, channel Research Ltd, SEPIA, *op. cit.*, p. 54.
[130] RCN, *Appui urgent aux procédures judiciaires liées au contentieux du génocide*, Rapport final d'activités 1er juin 2001 au 30 septembre 2002, p. 21.

significant effect on the improvement of the quality of justice rendered by the magistrates non-jurist.

On the other hand, due to the security problems, the legal aid repartition suffered, especially in the first period, from grave imbalance. For example in 1997 some 56% of defendants had no counsellor, many of them in regions where the local insecurity inhibited travel. No lawyer assisted the defendants in Kibuye and only about 20% of the accused in Ruhengeri and Gisenyi was been represented during their trials. In contrast, 92% of those tried in Kigali had legal advice.[131]

The problem is far from being ultimately resolved, nevertheless, as underlined by ASF, had the justice not been functioning the since 1996 the situation in the country would have become explosive.[132]

1.2.4. Assistance to victims.

One of the major problems of the genocide trials in Rwanda has been a very law participation of the victims. The shortage of information on their rights and the agenda of jurisdictions, administrative problems with obtaining documents, discouragement caused by ineffective mechanisms of compensation have caused a mistrust to the judicial procedures. Another reason was a disproportion in the management of the assistance by the national advocates. In 1998 in most of the cases i.e. in 102, the attorneys assisted the accused and only in 58 the plaintiffs.[133] In 1999 the number of the advocates likely to assist two sides of the trial slightly increased as 6 out of the 26 advocates, assisted solely to plaintiffs, 6 only to accused and 14 either to the formal or to the latter group. In that year the number of assisted 1.268 plaintiffs outnumbered this of assisted 1.123 accused. In the following year the tendency was maintained displaying that the victims were granted much more priority as 2.557 plaintiffs versus 983 accused were assisted. Generally, since their arrival to Rwanda in 1996 till the end of 2000, ASF assisted to 5.548 plaintiffs.[134] One of the interviewed NGOs' activists working in Rwanda confirmed that currently the situation could be considered as satisfactory.

[131] HRW, *Leave None to Tell the Story*, Genocide in Rwanda, *op. cit.*, Conclusions: Justice and Responsibility. The Rwandan Prosecutions of Genocide.
[132] ASF, Rapport d'activités 2000, *op. cit.*, p. 12.
[133] ASF, Rapport annuel 1998, *op. cit.*, p.7.
[134] ASF, Rapport annuel 1999, *op. cit.*, pp. 12 - 17.

1.2.5. Quality of work.

Throughout the years 1998 – 2000 ASF has been recording constant amelioration of the quality of the magistrates' work. The organisation of the trials, growing tendency of application of the principle of individual responsibility among accused and increasing technical skills of rendering judgments proved to be indicatives of the progress.[135] The quality of the legal assistance improved alike which led, to certain extent, to an overall reduction of sentences. According to the DCHR, for example, with respect to persons charged in 1997 in a 2 category, the absolute majority of those who received life sentences did not have any access to legal assistance, whilst those who did have such access received the temporary imprisonment sentences ranging from 9 to 12 years.[136] Accordingly the growing magistrates' skills and more common legal assistance together brought about an evolution of the sentences' contents. The table number 4 presents the evolution in the period from January 1997 to June 2002.[137]

Year	*1997*		*1998*		*1999*		*2000*		*2001*		*2002 Jan. - June*	
	No	%	No	%	No	%	No	%	No	%	No	%
Acquittal	34	9	195	21,8(18)	274	21(20)	379	15,4(21,4)	312	22	202	26,7
Temporal imprisonment	105	27,7	292	32,6(29)	462	35,4(33)	130	46(34,6)	577	40,7	331	202
Life imprisonment	123	32,5	286	32(35)	400	30,6(35)	616	25,1(32,9)	370	26,1	164	21,7
Death penalty	117	30,9	115	12,8(17)	144	11(10)	164	6,7(10)	120	8,5	29	3,8
Total	379		888		1280		1289		1379		726	

As presented in the figure all the variations in the substance of the sentences have been in favour for the accused, increasing number of acquaintances as well as temporal imprisonment sentences going nearly hand in hand with an opposite tendency of decreasing the number of life imprisonment and, in certain moment very considerably, death sentences. Those variations display that the quality of the system has constantly

[135] For example ASF: Rapport Annuel 1999, *op.cit.*, p. 9 and Rapport D'activités 2000, *op.cit,*. p. 9.
[136] Basing on the statistics from CLADHO as recalled in L. Lindholt, H. – O. Sano, *Rwanda 1998: An Analysis of Human Rights and Politics*, Denmark, The Danish Centre for Human Rights, as accessed via http://www.humanrights.dk/upload/application/da609235/rwanda.pdf, 1998, p. 28.
[137] Basing on CAGEP – Consult, *op.cit.* and the data in the parentheses (as it differs to certain extent) in the years of ASF activity on: Rapport Annuel 1998, *op.cit.,* Rapport Annuel 1999, *op.cit* and Rapport d'activités 2000, *op.cit.* The table does not take into consideration the persons who died in prison during the processes and other cases.

been developing and the judges have more frequently prioritised the individual responsibility. The variations of the sentences in favour of the accused should be considered within the whole framework of the evolution the genocide sentences. They have also been caused by the three other mechanisms, notably the group processes,[138] "*procès en itinérance*"[139] and the confessions and guilt plea procedure discussed in the following paragraphs.[140]

1.2.6. Acceleration of judgments.

Acceleration of judgments and diminution of the incarcerated population have been one of the head objectives of any actions undertaken in Rwanda. The effects obtained in this area steam from various factors. We discuss here those that could be deemed as an impact of the RCN and the ASF projects.

A/ Procedure of confession and guilt plea.

In 1998 RCN launched its action aiming to a provide technical and logistic support for special groups of IPJ's and OMP's responsible for dealing with dossiers of those who decided to confess - *Project National Aveux*. Due to this action the use of the procedure of confession and guilt plea and the processes became increasingly massive. Already in 1998 8.615 detainees expressed they will to undergo the procedure.[141] ASF in its report for 1999 wrote: "*Il y a lieu d'en féliciter RCN qui mène avec le Ministère de la Justice un projet de recueil d'aveux nomme 'Project National Aveux'*"[142] By the end of 2000, when RCN halted the project, 15.115 suspected manifested their intention to confess. Out of this number 8.919 confessions were heard.[143]

In order to acquire a clearer picture of the project's impact the period from December 1996 (the introduction of the procedure by the GOR) to July 2000 (the conclusion of the part of the RCN's project sponsored by the EU), should be divided into

[138] An inevitable asset of the group processes is that in the course of the process the judge can examine more different facts and evidences together that in consequence gives him the capacity to comprehend better the whole situation. In frequent cases when an accused person claim to be forced to commit certain crimes, the confirmation of the co-accused can often lead to an acquaintance.
[139] "*Audiences itinérantes*" allows the judges to approach the citizens and in consequence they are able to listen to the testimonies of all the people concerned.
[140] ASF, Rapport Annuel 1999, *op.cit.*, pp.29 – 30.
[141] ASF, Rapport Annuel 1998, *op.cit.*, pp.17 – 18.
[142] ASF, Rapport Annuel 1999, *op.cit.*, p. 38.
[143] RCN, *Appui urgent aux procédures judiciaires liées au contentieux du* génocide, *op. cit.*, p. 29.

two stages. If the dividing line went through 1998, when RCN initiated the action, we would conclude what table number 5 presents below.[144]

Period	*Number of judged*	*Judged per month*	*Increase per month*	*Judged persons that confessed per 100 judged in total*
Dec. 1996 – Dec. 1998	1274	53		
Jan. 1999 – July 2000	1776	99	50%	(January 1999) 23% (July 2000) 47%

The procedure of confession and guilt plea has been subsequently taken up in the context of the *Gacaca* Jurisdictions. RCN beginning in 2001 have been contributing to the action of information and sensitisation of the procedure providing the transport for presentations of the detainees to the society, and distributing, throughout the prisons, texts of the *Gacaca* Law. The greatest impact of those actions was recorded in Gitarama penitentiary centre where during the period ranging from December 2001 to May 2002 the average percent of the detainees that decided to confess grew up from 13,45% before the launching of the action of sensitisation to 26,40% after the action. It gives the average increase of 12,95%.[145]

The projects results were much lower than expected concerning the confession procedure have also initiated transformation of the prisoners' attitude towards more cooperative with the justice sector and inevitably increased their willingness to confess to the committed atrocities. This process constituted somehow a prelude to the *Gacaca* which requires the suspects' participation i.e. confession to the committed crimes. The value of changing the attitude of the prisoners has recently been confirmed as regards the last RCN programme. Monitoring of the project No. B7-703/2001/0227 assessed that: *" Surtout dans les domaines des procédures d'aveux on remarque un effet significatif suite à des activités de sensibilisation.*"[146]

Remarkably some forms of defeatism have been observed likewise as the number of the detainees who confessed was sometimes so high that many other prisoners who had already confessed did not see the effects of their action.[147] Additionally the projects of sensitisation, carried out in 2001, turned into counterproductive in some places. For example in Butare, where the prisoners who had expressed their will to confess became

[144]Basing on RCN *Justice rwandaise liée au génocide et aux massacres – programme d'appui urgents aux aveux et aux procédures*, *op.cit.*, pp.11-12.
[145] RCN, *Appui urgent aux procédures judiciaires liées au contentieux du* génocide, *op. cit.*, p. 39 - 42.
[146] RCN, *Rwanda – RWA – Aide urgente aux procédures judiciaires relatives au génocide*. Rapport de monitoring du projet B7-703/2001/0227, MR-00758.01 – 24 July 2002.

the subjects to the intimidation from the part of another detainees who lost the confidence in the judicial system and the promised long before but still, at that time, not being implemented the *Gacaca* Jurisdictions.[148] Notwithstanding these side effects and the fact that the results were much lower than expected an overall effect has been overwhelmingly positive. In January 2003 there were still 101.469 detainees and out of this number 32.429 (i.e. 32% of the whole prison population) confessed until 31 December 2002.[149]

B/ Group processes.

Group processes "*would never be successful*" without the RCN's assistance, which has been provided since the beginning of 1998.[150] For example in 1999 the group processes represented 34% of the global number of processes covering 80% of judged persons. Due to an introduction of those processes and intervention of RCN, only during the first semester of that year, 634 judgments were rendered contrary to 895 decisions issued in the whole 1998. Moreover if compared to the year 1996 the number of processes grew up during that year of 99,5%.[151] Liprodhor's report from November 1999 pronounced: "*Aujourd'hui, c'est grâce au financement de RCN que l'itinérance des procès groupés est réalisée...*".[152]

The group processes however, due to the lack of individualisation of guilt, have posed a real danger of abuses of the rights of suspected. Thereby providing of the legal assistance in those processes has been emphasised by ASF. It might be deduced that due to this fact the average statistic of penalties rendered at this particular domain corresponds to the average as presented in the table number 4. In 2000 for example there were 20% of acquittals and 15% death penalties rendered. The group processes constituted 52,4% of all the cases terminated in that year.[153]

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[147] ASF, Rapport Annuel 1999, *op. cit.*, p. 45.
[148] *Ibidem*, p. 44.
[149] According to the information in the *Table of what is involved in the Presidential communiqué as set out by prosecutors, representatives of the National Police in the provinces from the meeting on January 7th 2003*, as recalled in PRI, *The guilty plea procedure, cornerstone of the Rwandan justice system*, Research on *Gacaca* report Report IV, with support from the Department for International Development (DfID), January 2003, p. 5.
[150] RCN, *Appui urgent aux procédures judiciaires liées au génocide*, Formulaire de candidature de RCN, Initiative Européenne pour la Démocratie et les Droits de l'Homme, p. 24.
[151] RCN, *Justice rwandaise liée au génocide et aux massacres – programme d'appui urgents aux aveux et aux procédures*, *op.cit.*, p. 11.
[152] As recalled in *ibidem*, p. 11.
[153] ASF, *Rapport d'activités 2000*, *op. cit.*, p. 26.

C/ Procès en itinérance.[154]

The confession and guilt plea procedures and group processes correspondingly were often taking the form of "*procès en itinérance*". Their main goals were to accelerate the procedures, increase its' quality, approach the justice to the population and popularise the procedure of confession and guilt plea. Those kinds of processes were introduced in 1998 with a considerable logistical support of RCN. It may be assumed that without this assistance it would be impossible to pursue them. Indeed if we look for example at a period from June to November 2001, following one of the interventions of RCN, the total number of suspected whose files were closed by the first instance courts reached 856. This included 525 cases "*en itinérance"* trials i.e. 61%.[155]

D/ Presentation of the detainees with no files.

RCN assisted the Public Prosecutors Office also in the process of presenting to the population the inmates who had no dossiers or those whose files contained few charges. By the end of December 2002 11.659 inmates were presented to the public. At the end of the presentation process, 2.721 detainees, i.e. 23,30% of the presented, were provisionally acquitted. This represented 2,5% of the total prison population (i.e. 2.721 out of 106.980 prisoners). The others were returned to prison before appearing at the *Gacaca* courts.[156]

1.2.7. General observations.

A/ Thorough the period between the beginning of 1996 and 15 March 2001 the Public Prosecutor Office transmitted to the First Instance Courts 1.442 genocide files, concerning more or less 11.960 suspected, including 2.730 (i.e. 23%) of those that had begun the confession procedure. During that period 573 files were judged and closed (i.e. 40 % of those transmitted to by the prosecutors to the courts). Out of the total number of suspected 4.426 were judged by the first instance courts, which represent 37% of an overall number of, judged.[157]

In general from the beginning of 1997 to May 2002, 7.211 persons accused of genocide were judged. This, according to the authors of *Assessment of the Judicial Sector*

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[154] The principal character of the processes is to move the trial to the place where the crime was committed. It implies the transport of the judges, prosecutors, advocates, suspected, victims and other persons taking part in the process to those places as well as in some cases providing them with some other logistic facilities like accommodation and nourishment.

[155] RCN, *Appui urgent aux procédures judiciaires liées au contentieux du* génocide, *op. cit.*, p. 11.

[156] RCN, *General table of presentations 2001-2002*, Kigali, January 2003. PRI, *The guilty plea procedure, cornerstone of the Rwandan justice system*, *op.cit.*, p. 8.

[157] RCN, *Appui urgent aux procédures judiciaires liées au contentieux du génocide*, *op. cit.*, p. 13.

in Rwanda, is an "*impressive achievement*", especially if compared to the ICTR's results. Those results were attained with the essential support of RCN and ASF. The *Assessment* further on states, while praising the prosecutors and judges for "*unimagined performance levels, with a permanent increase in the number of people judged*", that they were supported by the interventions of NGOs, particularly RCN and ASF. The accelerating of the procedures was owed in particular to the actions of the formal.[158] The recent RCN programme has been also positively assessed in the course of conducting the external monitoring of the project. According to the monitors the tangible outcomes of the project could already be seen. For example the fact that between the months of December 2001 and May 2002 20% of the remaining persons falling within the scope of the classical justice were judged. In this sense the project is indeed efficient in augmentation of number of judgments and the diminution of the incarcerated population.[159]

B/ Judging over seven thousand persons within seven years of ongoing classical trials, with the means being at the disposal of the Rwandan judiciary system should of course be considered as a success. The trials are in general managed in a predictable way with respect for the rights of the accused. According to one of the observers: "*Compared with the beginning of the genocide trials, we see a progressive evolution. The first trials were catastrophic. (...) But today we see trials run relatively well.*"[160] It is also a fact that the so far introduced procedures like "*audiences itinérantes*" or group processes constituted for the Rwandan system continuing "*learning by doing*" in the prospect of *Gacaca* jurisdiction.[161] Nevertheless regarding the number of the detainees, the pace of the processes is too low. Further acceleration of the process of rendering justice is indispensable since there are still over one hundred thousand detainees remaining in the prisons, waiting to be tried.

The EU acknowledges the need and therefore it supports the *Gacaca* Jurisdictions.[162] One of the objectives of the programme no. 8 ACP RW 19 is to increase the number of rendering judgments and to support the *Gacaca.* In this regards the EU's financed activities should be considered as a positive. The pace of rendering the judgments depends on many factors. The government seems to be committed to the process of

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[158] CAGEP – Consult, *op. cit.*, pp. 10, 50.
[159] RCN, *Rwanda – RWA – Aide urgente aux procédures judiciaires relatives au génocide*, Rapport de monitoring du projet B7-703/2001/0227, MR-00758.01 – 24 July 2002.
[160] Management Systems International *Rwanda Democracy and Governance Assessment*, Final Version, (produced for USAID Office of Democracy and Governance), November 2002, as accessed via http://www.dec.org/pdf_docs/ PNACR569.pdf, p. 45.
[161] RCN, *Rwanda – RWA – Aide urgente aux procédures judiciaires relatives au génocide.* Rapport de monitoring du projet B7-703/2001/0227, MR-00758.01 – 24 July 2002.

acceleration of the judgment yet what matters is the capacity of the judiciary. This is still highly insufficient. Urgent actions of foreign NGOs or introducing the *Gacaca* Jurisdictions, necessary, in especially first post-genocide period, cannot replace effectively functioning domestic system. To this end the EU should focus more on constructing solid bases of the system, which would genuinely fostered the functioning of the system.

1.3. Prison system.

During the first phase of the project, due to the recruitment and training of accountants, the management capacity of the prisons has been improved. In addition the tools have been designed allowing setting all the activities in order to contribute to the management of prisons. Furthermore the number of prisoners involved in the micro – projects activities reached 1.583. It meant those people were provided with exercise, training in professional activities and money. In consequence the burden of up keeping the prisoners by their families has been eased. Moreover the prisoners' activities brought about an amelioration of the relations between the prisoners and the prison guards on the one side and the prisoners and the society on the other hand.[163]

Although the micro-projects themselves did generate income those positive outcomes were obstructed by widespread corruption, too centralised procedures and the lack of the commitment on the governmental counterpart. Furthermore the government suffered from a very weak planning and instead of taking up the activities, what amounted to a principal goal of the second phase of the project, it has persisted in relying on the PRI's support. PRI succeeded in establishing the management committees at the prison and ministerial level, which was indeed a first step in the process of reorganisation of the prison administration. Nevertheless the constant turnover of the prison stuff causing the discontinuity and the general lack of motivation, interest and commitment as well as the shortage of professional skills (in particular on the accountants part) have constituted a threat to the sustainability of the projects.[164] Those problems have not been solved and as a result (on top ceasing the PRI support in 2001) nearly all the projects have been suspended.[165]

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[162] République Rwandaise – Communauté européenne, *op. cit.*, p. 6.
[163] PRI, *Programme of support to prison administration in Rwanda*, *Activities Report January 98 – September 99,* p. 15.
[164] PRI, *Programme of support to prison administration in Rwanda, Activities Report – Interim Report – May 2001*, pp. 1 - 6.
[165] Interview of 03 June 2003, supra note 106, p. 33 of this work.

It follows from the preceding that the prison conditions in Rwanda remind a very sensitive issue. Treating the malady touching the prisons in Rwanda requires a complex action. No question the government's will, commitment and the performance are here the principal conditions for the success of any undertakings. Neither NGOs nor donors could overcome the situation without the government's backing. However as regards the planning of the donors' actions this programme would require a more compound approach. This would comprise much longer preparation - training period as well as long lasting supervision of the project by the implementing NGO. This would certainly require extra founds from the EU's side. Part of these founds could also be channelled through the government which would let it to be involved and partly responsible for the project from the very beginning.

1.4. Media.

The FH members admit that it is on the one hand indispensable for the victims to be able to *«intégrer»* what happened, to understand it and on the other hand not to leave the responsible for the genocide unpunished. Hence the victims should be given the echo of the process of delivering justice. The tangible effect of FH activities is certainly the fact that the information distributed by the Foundation are used by diplomats, lawyers as well as by huge press agencies like the Reuter or Irin.[166] It is vital to support reliable media at least partly based in Rwanda, especially within the light of *Gacaca* process, as the sector is generally quite weak. Radio is the most commonly mentioned source of information as regards *Gacaca*. It has been indicated so by 89,9% of the urban population and 81 % of the rural population examined in 2001.[167]

1.5. Hindrances affecting the system.

The judicial sector in Rwanda is still compelled by many obstructions. I discuses here only those that I deem the most treacherous for the process of delivering justice in Rwanda, i.e. the slowness of the procedures, the lack of competences and independency among the judicial sector actors. The criteria is here also the fact that those problems could be at least partly resolved by the proper training programmes what will be subsequently discussed in the following paragraph.

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[166] Interim Assessment of the project B7-702/2001/0501 (in the file with the author).

[167] S. Gabisirege, S. Babalola, *Perceptions About the Gacaca Law in Rwanda: Evidence from a Multi-Method Study*, Baltimore, Johns Hopkins University School of Public Health, Centre for Communication Programs, Special Publication, No. 19, 2001, as accessed via http://www.dec.org/pdf_docs/ PNACN606.pdf, p. 15.

The dilemmas mention here steam from various reasons. Throughout the post genocide period many magistrates have lost a motivation to their job. This has been reflected in frequent absents during the hearings and resigning their posts. The tendency was due to two major reasons. First of all not rare were the cases where the security of judges was threaten. Secondly they have suffered from an increasing depreciation of their financial status what in consequence has pushed them to search for another occupation.[168] The figure number 6 provides with a relevant data on the period from 1998 to 2000 as regards the Special chambers of the first instance[169]:

Month/Year	*Number of magistrates*
Nov. 1998	76
May 1999	104
Dec. 1999	107
(no data on the month) 2000	94

The lack of motivation among the judges coupled with a fable professional training of the magistrates has caused giant courts' delays. More particularly they have stemmed from an extraction of accused by the prosecutors, weak organisation as well as non-respect of the procedures regarding delivering summons - lacking both convocations and exhaustive information on the time and place of the hearings. Moreover the delays were instigated by prosecutors' unilateral practice, very hazardous in the process of delivering justice, aiming in their investigations solely to raise new charges and in consequence treating most of the witnesses as witnesses of the prosecution. It thus required subsequent re-examining of the cases by inquiring the witnesses in a manner to discharge the accused.[170] In 2002 the slowness of the processes was perceived as the main problem obstructing efficiency of the judicial system and the first reason of the lack of satisfaction among litigants.[171] Table number 7 presents the example of delays in the cases handed by ASF.[172]

Year	*1998*	*1999*	*2000*
Overall level	45%	41%	32,3%
Caused by Courts and Prosecutor's Offices	77%	76%	71%
Justified by defence	(no data)	15%	24%
Other	(no data)	9%	5%

[168] ASF, Rapport Annuel 1998, *op.cit.*, p. 5.
[169] Basing on Rapport Annuel 1999, *op.cit.* and Rapport d'activités 2000, *op.cit*.
[170] However it must be pointed out that this situation has significantly been ameliorated, for example in 1997 in January there was 0% of the defence witnesses appearing in court whereas in July – August it reached 40% - L. Lindholt, H. – O. Sano, *op. cit.*, p. 26.
[171] CAGEP – Consult, *op.cit.*, pp. 57 – 61, where the slowness was indicated by 65,1% surveyed whilst the second corruption by only 16%.
[172] Basing on ASF: Rapport Annuel 1998, *op.cit.,* Rapport Annuel 1999, *op.cit.* and Rapport d'activités 2000, *op.cit*.

Another problem is the lack of judiciary independence. Already shortly after the judicial system become operational, military officers, civilian officials, and other influential individuals begun interfering with its operations.[173] In 2002 the quality of trials has improved somewhat thorough the time, but allegations of political manipulation, corruption, false testimony, inadequate defence, and non-respect of judicial decisions were common. Vice President of the Supreme Court T. Karugarama, pointed out that the courts were often used instrumentally by the previous regime. This manipulation contributed to the culture of impunity that has reigned in the country for decades. While today the accusations of executive interference in the judiciary are not widespread, reinforcement of the judicial system could help to ensure that this would not become a graver problem in the future.[174] In this regards we should recall appeal of the Amnesty International (AI) to the EU to: "*continue to provide assistance to the public prosecution department and their judicial investigation police, and use its responsibility as a founder of these bodies to ensure that evidence is gathered and processed in a fair, accurate and timely manner*".[175] Particular attention should also be paid to the judiciary in the context of raising it up to the third branch of government. Both the Rwandan constitutions of 1991 as well as the new one adopted in the referendum in May 2003 guarantee the independence of the judiciary power from the legislative and executive branches of the government.[176] The EU as the most powerful political actor in Kigali should therefore support also on the political level respect the judicial independence in the country.

1.6. Training.

The training and education constitute critical elements of the process of post - conflict reconstruction operations. They can play a double role by enhancing the performance of the outsiders involved in the provision of the assistance to the country and at the same time improving the capacities of the local human resources and institutions. Institutional capacities of the country play decisive role in the route of transformation to

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[173] HRW, *Leave None to Tell the Story*, Genocide in Rwanda, *op. cit.*, Conclusions: Justice and Responsibility. The Rwandan Prosecutions of Genocide.

[174] Management Systems International, *Greater Horn of Africa Peace Building Project*, Rwanda Conflict Vulnerability Assessment, August 2002 (revised October 2002), as accessed via http://www.dec.org/pdf_docs/PNACS438, pp. 22 - 25.

[175] AI, *Central Africa. Memorandum to the European Union (EU) on the occasion of the EU – Africa Ministerial Meeting*, AI index AFR 02/001/2001, 11 October 2001, as accessed via http://web.amnesty.org/aidoc/aidoc.pdf.nsf, p. 7.

stability and sustainable peace.[177] Neither genuine justice nor reconciliation will be established in Rwanda unless judicial and penitential systems be endowed with those capacities.

In general, if compared to the immediate after genocide situation, the progress in staffing of the courts and the Public Prosecutor Office seems to be impressing. The level of education has also been increased. The table number 8 presents the growing rate and the level of education of the judges, prosecutors and paralegals.[178]

Profession	*Period*	*Bachelors Degree in Law*	*Growth rate %*	*Other trainings*	*Growth rate %*	*Total*	*Growth rate %*
Judges	End 1995	9	-	42	-	51	-
	Aug. 2002	67	644	655	1.460	722	1.316
Prosecutors	End 1995	6	-	13	-	19	-
	Aug. 2002	66	1.000	230	1.669	296	1.458
Paralegals	End 1995	-	-	-	-	-	-
	Jan. 2002	-	-	-	-	94	-

However as the authors of *Assessment of the Judicial Sector in Rwanda*[179] utter, the lack of the justice system capacity reminds to be the greatest problem facing the whole system whilst the lack of specialised skills occupies the middle positioning on the same the list. The suitable number of magistrates and appropriate skills are one of the crucial conditions for acceleration of judgments. Additionally a proper training and consequently improved professionalism prevent from corruption.[180] Training of relevant local staff is, finally, an indispensable prerequisite for the sustainability of the projects which final goal is to be handed over to the national authorities. As it has been observed on the example of the PRI prison micro – projects, they failed, to high extent, due to the lack of a special knowledge of the native managers.[181]

Although the continued training of judges, magistrates, lawyers along with other judicial staff and prison administration, should have remained a high priority for the EU's actions, it follows from the herein presented programmes that relatively low priority was

[176] See Article 86 of the Constitution of the Republic of Rwanda of 1991, *op. cit.* and Article 140 of the Constitution of the Republic of Rwanda of 2003, as accessed via http://www.cjc.gov.rw/ ProjetConstitutionDerniereVersion21052003.doc.
[177] Center for Strategic and International Studies and the Association of the U.S. Army, *Play to win. Final Report of the bi-partisan Commission on Post – Conflict Reconstruction*, USA 2003, as accessed via http://www.csis.org/isp/pcr/playtown.pdf, p. 18.
[178] CAGEP – Consult, op.*cit.*, p. 35.
[179] *Ibidem.*, p. 30. One of the most neglected areas is, for example, a training on sexual offences - Advisory Council of International Affairs, *Africa's struggle security, stability and development*, The Netherlands, No. 17, January 2001, p. 33.
[180] Management Systems International *Rwanda Democracy and Governance Assessment*, *op. cit.*, pp.46 - 47.
[181] Interview of 03 June 2003, supra note 106, p. 33 of this work.

given thus far to this kind of activities.[182] In this regard much attention should be paid on the programme no. 8 ACP RW 19. This project aims, *inter alia*, to set up an internal management, the work control of the courts and tribunals and the statistical service. What is more it, envisages financing of the education for the judges and clerks at the courts and putting into practice the projects facilitating the contacts between the ICTR and the Rwandan judiciary, which can also be conducive for these purposes.[183]

Despite this recent turn towards more complex training project we shall not forget that the changes in this domain do not appear momentarily. In order to contribute more efficiently to the process of dealing with the genocide justice the multifaceted projects on training should have been launched in the earlier stage. It could have been done shortly on top of or even in parallel to the urgent trainings projects, for example those run by RCN aiming nearly exclusively to provide the remedy for the genocide heritage.

2. Rwandan society and the judicial system.

It was clear for the EU, from the beginning, that only prosecution of the authors of the genocide would establish the confidence of the population in a system of law and justice. This would in turn decrease the desire for revenge, which could escalate new conflicts.[184] The proper prosecution of the genocide perpetrators could have twofold effect in Rwanda. Could permit both to end impunity and to launch the rule of law as well as to offer an opportunity to establish the independence of the judicial system and, in consequence, respect for the rights of all citizens.[185] Indeed as the 2002 research shows, the perspective that there would be a trial by which perpetrators could be judged and punished have been crucial in preventing some survivors from "*delivering justice*" themselves.[186]

2.1. Perception of justice.

Rwandan society had been long before the genocide, during the presidency of Habyarimana, exposed to violations of varies human rights and at the same time, there was

[182] Refer to the table no. 1. of this work. It follows that the "human resources" category is one of the least funded items, as regards the EU and other donors alike.
[183] Annexe - Convention de financement no 6400/RW, Dispositions techniques et administratives d'exécution (DTA) la République Rwandaise, projet no 8 ACP RW 19 (in the file with the author). Other donors also carry on the training programmes – refer for example to the USAID action of training of lawyers in 2001 - USAID Rwanda, *FY 2002 Annual report*, http://www.dec.org/pdf_docs/PDABW151, 2002, p. 5.
[184] R. von Meijenfeld, *op. cit.*, p. 13.
[185] HRW - *Leave None to Tell the Story*, Genocide in Rwanda, *op. cit.*, Conclusions: Justice and Responsibility. The Rwandan Prosecutions of Genocide.
[186] Management Systems International, *Greater Horn of Africa Peace Building Project*, *op. cit.*, p. 20.

hardly any crime in this extremely tightly controlled country. Thus law and order had rather been the outcome of suppression than a consequence of the society trust in the justice system. In this perspective, the role of reconstructing judicial system and delivering justice became a twofold process. It aimed to achieve consistency, predictability, impartiality and loyalty to the founding principles of society generating confidence among the population, which in turn would lead to respect of the decisions of judiciary and administration, refraining from doing justice their own hands. As one of the interviewed NGO's activist put it: "*where is victory there is no justice*". Moreover genocide, carried out, in fact, on the grounds of such a notion among members of society understanding the "law" as directives and instructions coming from above, appeared to be detrimental for an overall perception of justice. Nevertheless already in 1998 L. Lindholt and H. – O. Sano noticed that the justice system was working and doing its job and the culture of impunity was no longer accepted. Moreover there was a strong demand of justice accompanied by a parallel claim that death penalty should be a punishment for "*genocidaires*". On the other hand there were also voices saying that those imprisoned on lesser charges may then return to society after having served their sentences. However the occurrence of a large number of incidents where individuals killed other members of society did not ceased.[187] In 2001 dissimilarly, only 4,7 % of the average respondents indicated anger as an emotion reportedly currently felt concerning the genocide and 4,2 % felt fear of revenge while thinking of genocide. Additionally relatively few i.e. 12.6 % of respondents indicated a trial of genocide suspects as the major social problem in Rwanda.[188]

In 1999 PRI, while pursuing its micro – projects activities, noticed, unfortunately on a small scale, improvement of relations between, on the one hand, detainees and prison service and, on the other hand, between the prisoners and the society. People begun to feel more respect towards prisoners. It was the result of both the prisoners positive activity and the fact that local inhabitants, saw the detainees delivering the products obtained from the micro – projects doings, to the market, hence they became more accustomed to them.[189]

An interviewed member of an NGO working in Rwanda revealed that, in the first period, the cases were not rare when the acquitted persons were, under the society's pressure, rearrested by the prosecutors and placed again into the prisons. Although the situation has improved V.Geoffroy – Cyimana[190] points out that the problem remains in

[187] L. Lindholt, H. – O. Sano, *op. cit.*, pp. 39 - 60.
[188] S. Gabisirege, S. Babalola, *op. cit.*, pp. 5 - 7.
[189] PRI, *Programme of support to prison administration in Rwanda*, *Activities Report January 98 – September 99*, p. 15.
[190] Interview of 03 June 2003, supra note 106, p. 33 of this work.

small courts where the society's pressure often causes rendering fair judgments impossible. "*So far projects of reconstructing the judicial system did not stop the revenges yet they stopped the flow of revenge*" concluded another NGO's activists.

2.2. Perception of judicial system actors.

One of the NGO's activists who have carried out the justice related programmes in Rwanda remarked that when the genocide trials begun, the problem of the lack of court defenders stemmed also from the fear of the Rwandan attorneys to assist the accused. Another interviewed person who has been working in Rwanda confirmed this adding that even though people's respect to the justice begun to ameliorate relatively soon they still could not accept the fact of judicial assistance to those accused of genocide. The society members were not able to distinguish the trail parties from the professional advisers associating the latter to the formal. This meant that such an attorney was mechanically qualified as an accomplice to an accused of genocide atrocities. In 1997 and 1998 one of the Rwandan attorneys working with ASF was murdered and the second disappeared, which might have been linked to their willingness to defend persons accused of genocide. Another attorney working with ASF received both written and oral threats. The same concerned judges, prosecutors and other members of the judiciary as well as witnesses who refused to testify, also feeling at risk.[191] One of the interviewers highlighted the role of ASF in changing the people's attitude by making them to be more accustomed to the advocates acting during the processes. According to him the current situation is incomparably better than during the immediate genocide aftermath.

2.3. *Gacaca* jurisdictions.

The success of *Gacaca* jurisdictions will depend largely on its capacity to deliver justice. The impediments to justice are considerable. Even though in 2000 97% of respondents said they were in favour of *Gacaca* in principle, they kept many hesitations concerning security of participants, independence of judges, and the strict use of the truth.[192] The survey conducted in 2001 confirmed that the awareness of *Gacaca* was very high. 82% of the respondents have heard about the law and 76% of those aware of it understood that the tribunals would try only the genocide crimes.[193] The campaign of

[191] HRW, *Leave None to Tell the Story*, Genocide in Rwanda, *op. cit.*, Conclusions: Justice and Responsibility. The Rwandan Prosecutions of Genocide.
[192] Basing on the LIPRODHOR in Management Systems International, *Greater Horn of Africa Peace Building Project*, *op. cit.*, p. 27.
[193] S. Gabisirege, S. Babalola, *op. cit.*, pp. 11-12.

sensitisation carried out, among others, by RCN has produced some effects. The survey carried out in 2002 assess the knowledge level: on condemnation of the guilty and acquittal of the innocent on 38,65%; national unity and reconciliation on 32,78%, discovery of the truth on 17,16% and quickness of proceedings on 15,1%.[194] *Gacaca* enjoys also relatively high level of confidence. The 2001 survey revealed that about 58% of the respondents were "highly confident" that the new jurisdictions would succeed while 29% stated that they were "fairly confident". However the survey observes that not many people expressed specific concerns about the *Gacaca, which* could be due to a low general knowledge about the law.[195] The CS, immanently linked to the *Gacaca* was positively appreciated by 73,16% of the respondents and negatively by 26,84% of them. Nevertheless in this case as well as in *Gacaca* in general great part of respondents pointed out the need for further sensitisation and training for judges.[196]

2.4. Compensation.

One of the pillars of soundly functioning judicial system is its effectiveness. What reflects the effectiveness is the efficiency of the system in executing the compensation adjudged to the victims by the courts. This feature has badly failed in Rwanda. Until the end of 1998 not a one victim received a compensation granted by the court. In 1999 ASF in its report stated explicitly "*...les jugements ne sont pas exécutés...* "[197] This situation severely influenced the state of the plaintiffs' participation in the trials. ASF in 2000 noticed that, due to this reason, only in 28% of the dossiers the victims constituted the plaintiffs.[198]

Another fact is that the GOR has already promised to survivors substantial sums of money as reparation, yet has failed to put a hem on it. In addition bilateral donors, to whom the EU is classified, have refused to contribute to individual cash payments to survivors. Multilaterals, for example the UN, fear in turn that the payment be perceived as an admission of their responsibility in failing to stop the genocide. The failure to pay indemnity can in effect cause growing resentment and distrust toward the judicial system among survivors. Some forms of anger have already been reported.[199] On the other hand there are no doubts would Rwanda ever be able to cover all the demands. Accordingly one

[194] CAGEP – Consult, *op. cit.*, p.69.
[195] S. Gabisirege, S. Babalola, *op. cit.*, pp. 13-14.
[196] CAGEP – Consult, *op. cit.*, pp. 75 - 76.
[197] ASF, *Rapport Annuel 1998*, *op.cit.*, p. 56.
[198] ASF, *Rapport d'activités 2000*, *op.cit.*, p. 16.
[199] Management Systems International, *Greater Horn of Africa Peace Building Project, op. cit.*, p. 31.

of the ways of providing compensation is to guarantee a free access to some of the governmental services like for example education or health care system. In addition one of the objectives of the CS is to collect the money in order to supply Compensation Fund for the Victims.[200] Paying the compensation is certainly the domain of the state. Apart from the donors' reluctance to cover indemnity expenses it would be, as one of the activist of NGO working in Rwanda said, unfeasible to provide the support by for example NGOs. The question is how to distribute the money in a fair way so not to aggravate the situation. NGOs could not take a responsibility for that. Accordingly the support of the EU for the process of implementing CS will be of a great importance. The solution would be also to support the state's undertakings in providing the compensation by assuring free governmental services. This would recompense the citizens and equally would not be perceived as a token of guilt and could contributed to alleviation of the tensions in the society.

2.5. Civil society.

The impact in the justice domain depends to high extent on the government's commitment. Although the GOR's will to deal with the judicial problems is high the question stays whether the government is equally concerned about the fairness of the judicial procedures. The interviewed NGO's activists emphasise the need for the support for Rwandan civil society as this is the best way of both pushing the government to carry on the judicial system reforms as well as to monitor governments moves in order to prevent from violating the fair trial rules. It is important especially in the light of the fact that in recent years, the human rights groups, except for Liprodhor, have generally become less active, mostly as an effect of intimidation and cooptation by the government.[201] According to some opinions strengthening of a democratic civil society in Rwanda will, to a large extent, depend upon, the ability of the local NGOs to take more active role and combat overwhelming traditional passiveness and dependency on the state and foreign donors.[202] On the other hand those working in NGO's in Rwanda, for example V. Geoffroy – Cyimana stress the need for the donors, the EU, to support local NGO's working within the field of justice. Without sufficient financial means at their disposal the local NGO's will simply not be able to act.

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[200] PRI, *Strategic National Plan to set up CS in Rwanda*, *op. cit.*, p. 12.
[201] Management Systems International, *Rwanda Democracy and Governance Assessment*, *op. cit.*, p. 38.
[202] ARD, Inc., *USAID/Rwanda Civil Society in Rwanda: Assessment and Options*, Submitted to: USAID/Rwanda, as accessed via http://www.dec.org/pdf_docs/ PNACM181.pdf, 2001, p. 3.

Strengthening the civil society means also to provide the citizens with a civic education which can build understanding and confidence in the rule of law and this in turn should increase the likeliness of participation in self - governance. Civic education is also the way of making the public aware of their rights and obligations especially currently on those concerning *Gacaca* Jurisdictions. One of the types of civic education that would be the most appropriate is not a mass aimed but rather oriented at certain groups of politically relevant players. It would include civil society organisations and local justice sector personnel.[203]

It is vital to call attention to a development of a civil society from the earliest possible stage especially in Rwanda. There not only is the civil society nearly non - existent but it is essential for the country's stability and the process of national reconciliation. However in the hitherto conducted programmes the EU has not been paying sufficient attention on the civil society issues. Only recently it has assessed that the participation of the civil society in the public life is insufficient.[204] Accordingly the programme no. 8 ACP RW 19 aims, among others, to prepare the further development of the civil society and focus on a assisting to projects realised by the civil society within the field of delivering post - genocide justice.[205] However if looked closer at the technical side of the programme it approaches supporting the civil society on the basis of the accord signed between the GOR and the EU. There is then a possible constrain that might occur since this programme is being funnelled through governmental ministry. This in turn may weaken the independent position of the local NGOs towards the government and reinforce the latter by giving it an authority of deciding on the allocation of founds.

2.6. Monitoring.

The *Gacaca* process is critical to justice and reconciliation in Rwanda. Thereby both the Rwandan civil society and the International Community should closely monitor it. Since the GOR is obviously not enthusiastic about the idea of monitoring, the cooperation between the political powers and organisations carrying out monitoring is of a great importance. As regard foreign NGOs PRI, yet not within the scope of the programme supported by the EU, has been carrying out its research project since 2001 in order to collect the information, identify the problems and allow passable follow-up of this process. Albeit the reports have been welcome by the International Community and

[203] Management Systems International, *Rwanda Democracy and Governance Assessment*, *op. cit.*, p.63.
[204] République Rwandaise – Communauté européenne, *op. cit.*, p. 7.
[205] *Synthèse de projet 8 ACP RW 19*, *op. cit.*, p. 1.

researchers certain circles of the Rwandan administration have not perceived them well. The unofficial restrictions have been imposed in effect on the NGO in 2002 obstructing its activities in the country. The PRI activists were for example disallowed to enter certain prisons, which could, at the end of the day, paralyse their work. Here the EU Delegation, being the most politically influential foreign actor in Kigali, turned out to play somehow protecting umbrella role. Upon the strong intervention of the head Delegation at the MiniJust, all the sanctions imposed on PRI have been called back.[206]

Apart from foregoing the recent PRI's programme "*Promotion of alternatives to custody in Rwanda via the orientation and training of specialist Community Service staff and monitoring of implementation*" responds also partly to the need. It seeks, *inter alia*, to strengthen the monitoring of the national CS programme. A different programme on monitoring has been presented to the Commission by Collectif des Ligues et Associations de Défense des Droits de l'Homme au Rwanda, which applied for a grant to support the project "*Soutien au renforcement de la démocratisation, de la bonne gestion publique et de l'État de droit*". One of the objectives of the project is to assure the monitoring of the *Gacaca* process and by doing so to contribute to the establishment of the truth concerning the genocide as well as observing whether the *Gacaca* process unfolds in conformity with the organic law regulating the jurisdictions.[207] Furthermore the EU granted generous aid, within the programme 8 ACP RW 19, amounting to Euro 1.350.000 for National Commission for Human Rights which, coordinate, together with civil society organisations, monitoring for the 6th Chamber of the Supreme Court responsible for the *Gacaca*.[208] This process should maintain the priority in the EU's actions and as AI stated in 2001: "*...the EU (...) should (...) provide monitoring of the gacaca hearings, independent reporting of gross infringements of international legal norms.*"[209]

[206] Interview of 03 June 2003, supra note 106, p. 33 of this work.
[207] *CLADHO – Projet (P.A.P.G.) B7-701/2002/3037*, Description (in the file with the author).
[208] *Synthèse de projet 8 ACP RW 19*, *op. cit.*, p. 1.
[209] AI, *Central Africa. Memorandum to the European Union (EU) on the occasion of the EU – Africa Ministerial Meeting*, *op. cit.*, p. 7.

CHAPTER IV

The European Union – aspects of the intervention.

1. Pertinence.

The pertinence of the EU activities on the reconstruction of the judiciary system should not pose any questions. Even before the conflict the functioning of the system was eroded by the lack of independence, inadequate training of a judicial personnel, budgetary constraints and an authoritarian political culture. Furthermore constructing a viable judicial system and delivering justice in post - genocide Rwanda has been crucial for the following reasons: to encourage refugees' return, to ease the desire to exact revenge and fight a culture of impunity, prevent further acts of violence that could erupt in case of failure in delivering justice. Additionally the EU's MS have an obligation under the Genocide Convention to take action for the "*prevention and suppression of acts of genocide*" and a firm judicial system is a precondition to political steadiness and development of the country.[210] Furthermore establishing the responsibility of individual Hutu is the unique way to reduce the ascription of collective Hutu's guilt. The assumption that all Hutu killed Tutsi, or at least actively participated in the genocide in some way, had become increasingly widespread among Rwandans as well as outsiders. Fair trials can thus help in promoting reconciliation.[211]

2. Timing of action.

Secretary General of the UN, Boutros – Ghali urged in 1995 the Rwandan authorities exclaiming "*You have to start immediately with promoting reconciliation*".[212] However Rwandan authorities were unable to set up, as precondition for the reconciliation, the genocide trials, without a foreign assistance.

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[210] Join Evaluation of Emergency Assistance to Rwanda, *op. cit.*, study 4 Rebuilding Post-War Rwanda, Chapter 9 Promoting Human Rights and Building a Fair Judicial System.
[211] HRW, *Leave None to Tell the Story*, Genocide in Rwanda, *op. cit.*, Conclusions: Justice and Responsibility. The Rwandan Prosecutions of Genocide.
[212] R. von Meijenfeld, *op. cit.*, p. 17.

The timing of the EU's actions in Rwanda is a twofold question. On the one hand there was a bilateral support provided for the judicial sector by various NGOs like for example RCN which begun immediately after the cease of the conflict in 1994 on the other hand the actions were carried out within the scope of the HRFOR.

In December 1994, the UNDP and the GOR estimated that "*restarting*" the justice system in over two years period would cost USD 66.000.000. However the donors were not truly inclined to support the justice segment as in the following period most of the international assistance was channelled to the refugee camps. In May 1995 there was still very little assistance distributed in a coordinated manner. The UNDP pledged donors to contribute USD 44.600.000 for human rights and administration of justice yet in mid - May 1995 the executed projects amounted in total to USD 5.000.000.[213] The Commission, from its part, already in November 1994 accorded Eco 67.000.000 for the programmes of rehabilitation of the country. Nevertheless the programmes did not concern the reconstruction of the country's administration nor the judicial system even though Rwandan government applied for that.[214] In May 1995 P. M. Manikas urged that the priority in actions should be given to help to develop the trial strategies, the recruitment of francophone attorneys, training for IPJs and material supplies for the routine operation of the court system.[215] In this regard it was the first RCN project, already underway at the time, which accomplished some of the needs. However what the system needed was larger and quicker foreign aid in this domain. It was not provided. ASF could launch its programme in Rwanda only in December 1996 when the processes really budged. For example by the end of 1995 there was only one genocide related dossier to be transmitted from the prosecutors office to the court of the first instance.[216] On the other hand when the first trials were in full swing in the beginning of 1997, many voices severely criticised the Rwandan authorities for starting them too soon. It was complained that the Rwandan criminal justice system was not yet ready to guarantee proper and fair proceedings.[217]

It follows that the International Community, including the EU, could have been much more effective in the first period, in contributing to the process of reconstructing the judicial system and delivering justice if it would have been more forthcoming and sensible in providing the assistance. It could be argued that the EU's hesitations towards granting

[213] P. M. Manikas, *op.cit.*, p. 41.
[214] D. Fabre, *op. cit.*, pp. 13 – 14.
[215] P. M. Manikas, *op.cit.*, p. 45.
[216] RCN, *Aperçus du système judiciaire Rwanda – décembre 1995. Présentation de la collaboration technique de RCN*, *op. cit.*, p. 33.
[217] N.J. Kritz, *op. cit.*, p. 21.

more substantial aid could be caused by the instable situation in the country and the more urgent humanitarian needs. Nevertheless, as it has already been stressed, delivering justice in case of Rwanda is a central question for assuring the country steadiness. Moreover the global EU financial support was characterized by a manifesting disproportion. Notably the Commission accorded Eco 280.000.000 for the humanitarian aid which was designated to help 2,5 millions of refugees and at the same time only Eco 67.000.000 for the rehabilitation programmes covering approximately 6 millions inhabitants. It follows that the EU aid privileged the palliative actions of the urgent programmes instead of facing thoroughly the regional problems. It is clear that this kind of aid would rather prolong the critical situation and could often cause embezzlements.[218]

3. Choice of means used.

The question of the means used depends on the particular circumstances. Normally the domain of justice and prison systems pertain to the state and it should be the state to be directly supported in the process of reconstructing of the systems. Nevertheless if, as was the case of Rwanda, the state fails, the donor must find another partners, NGOs, to pursue the projects (in case of herein discussed sectors upon prior acceptance of the state government) through them or to combine the actions and carry out programmes via the government and the NGOs structures. In case of Rwanda the questions related to the justice and the judicial system have remained the top priorities throughout the whole period of the post genocide EU – Rwanda cooperation.[219] Thereby the EU took a very wide approach in its intervention in the judicial sector in Rwanda. It has been performed within the framework of the programmes of the rehabilitation financed by the EDFs which concerned the physical infrastructures (Supreme Court, General Prosecutors' Office, the tribunals) and within the framework of financing of the budget lines of the EIDHR in favour of the NGOs in the domain of the trainings, prison system, right to defence and to representation of the plaintiffs at the courts. Nevertheless the main focal point of the actions remained the NGOs. As one of the persons involved in the reconstruction of the judicial system in Rwanda explained, the NGOs in Rwanda "*fill the gap*", on the one hand, between the donors and the GOR and on the other hand between the donors and the society. Especially in the first period hardly anybody realised the real condition and needs of the system. The donors and the government could not talk down to their audience - the

[218] D. Fabre, *op. cit.*, pp. 13 – 14.

society. This appeared to be the role assigned to the NGOs. Apart from the foregoing, in the particular case of Rwanda, the question of reconstructing of the judicial system and delivering justice is indissolubly linked to the level of confidence towards the government and enormous tensions remaining in the genocide traumatised society. Has the society no confidence in the justice system it will not be able to function properly. For those reasons running the programmes thought impartial, European NGOs, which were not involved in the conflict, seems to be the remedy. In addition to that the use of foreign NGOs is much more favourable for activating local NGOs. In this sense as compared to the structural programmes they do not stimulate the NGOs being exclusively carried out on the governmental level thus focusing on reinforcing the state capacity. Nonetheless setting off local NGOs is essential in a political system to limit the government's actions and to urge it to take up certain actions in the domain of the reconstruction of the judicial system and delivering justice.[220] At present stage the need for activating the Rwandan local NGOs is perceived as one of the crucial points for carrying on the action of delivering justice in the country, especially in the light of a recent initiation of the *Gacaca* jurisdiction.[221] No one can be more efficient, in urging the government to take up certain acts or refrain from some movements, in monitoring government's performance, but strong civil society. Presently the EU seems to realise this reliance as it has already been presented in the paragraph on the civil society.

Contributing to the process of the reconstruction of the system through the NGOs, turned out to be generally beneficial for the whole process for one more reason. As brought up above the cognisance of the local reality together with the NGO's particular, specific scope of the activities allowed covering by the projects a very vast area of intervention. It has ranged from the provision of logistical, transport support, through training and assistance to the trial parties, to the prison conditions and dissemination of the information on the genocide trials. The NGOs have not been overlapping in their activities but rather complementing each other. It is remarkably observable on the examples of RCN and ASF. The two organisations managing their programmes in the areas frequently very close to each other displayed an excellent cooperation. This came about to be very favourable in terms of achieving the outcomes of their projects and should constitute an example for undertaking actions in parallel circumstances.

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[219] Answer given by the Commission to the written question E – 1036/98 by F. F. Martin (PPE) to the Commission, 6 April 1998, *OJ* C 323/108, 21 October 1998 and République Rwandaise – Communauté européenne, *op. cit.*, p. 19.
[220] L. Lindholt, H. – O. Sano, *op. cit.*, p. 63.
[221] Interview of 03 June 2003, supra note 106, p. 33 of this work.

4. Flexibility.

One of the problematic issues as regard, for example, financing the PRI programmes in Rwanda was an extraordinary slowness of the EU procedures. For instance part of the money for the project under the contract B7 – 7020/RW/ED/94/97 which was supposed to be paid in 1999 has not been transferred to the NGO's account until 2002. It has been pointed out in justification for budget revision to this project that delays in the payment it was impossible to implement all the elements of the project before its end.[222] This conduct is especially dangerous and may be detrimental for achieving particular NGO's objectives. Tardiness of the procedures might appear to be extremely inconvenient if combined with a deficiency of necessary flexibility. The latter is indispensable when an NGO, for the urgent reasons, must revise the distribution of the funds agreed by the Commission for certain project. The herein recalled PRI's programme must have been suspended for few months due to the Commission's procedural sluggishness. [223] The same was pointed out in an evaluation concerning the rehabilitation programme carried out in Rwanda. According to the evaluation the EC delegation in Kigali did not dispose of funds for initiating the works, which had not been planed before but happened to be necessary during the programme implementation phase. This led to significant delays and did not let the programmes to be fully exploited.[224] It has been detected that they were the centralised decision-making and the delegations' limited approval authority and responsibility for implementation and monitoring in the field that have mostly caused the shortage of prompt identification and solving the implementation problems.[225]

The flexibility is specially advised in the process of dealing with *Gacaca*. It is potentially a powerful instrument for achieving justice and reconciliation for the crimes of the genocide. But it is also a potential trigger of a conflict if the things would go wrong, in unexpected and unanticipated ways. Long - term funding projects and programmes frameworks may not work as effectively in dealing with the potential problems as more ad-hoc and flexible arrangements that can be readjusted swiftly and understandingly according to the demands of particular situation. Use of umbrella grant - making mechanisms, with prerequisite that recipients also keep high levels of flexibility to deal

[222] PRI, *7020/RW/ED/94/97 - Justification for budget revision*, October 1999.
[223] *Ibidem* and PRI, fax to the European Commission of 28 October 1999.
[224] GOPA – Consultants, *op. cit.*, p. 55.
[225] ICEA/DPPC, *Development and humanitarian assistance of the European Union. An Evaluation of the instruments and programmes managed by the European Commission*, Final Synthesis Report, http://www.europe.eu.int/comm/europaid/evaluation/evinfo/ acp/951474_ev.html, May 1999, p. 42.

with unexpected occurrences or consequences, is desirable to funding mechanisms that link to programmes over long periods.[226]

In this regard the Commission adopted on 16 May 2000 the *Communication on the Reform of the Management of External Assistance* aiming in principal to deconcentrate the external aid towards the delegations. By doing so the Commission expects to enhance the effectives of the management of the aid, quality of the operations and their impact. Rwandan Delegation was comprised in the third, last wave of the deconcentration process. The first delegations of the third wave are expected to begin operating under new modalities by October 2003.[227]

5. Reconstructing or building the system?

It was already in 1995 when the authors of one of the evaluations stated: "*If Rwanda is to establish a legal system that complies with international standards, then, it must construct a justice that substantially improves on the system which previously existed.*"[228] The EU's assistance to the judicial sector in Rwanda has been until now mostly shaped by the emergency programmes (EU's contribution to HRFOR, ASF, RCN, FH, PRI – *Gacaca* related projects) contributing in parallel to the reconstruction of the system and to short-term rehabilitation (First and Second Rehabilitation Programmes).[229] This fact has its inevitable advantages and drawbacks. On the one hand urgent support and rehabilitation assistance are highly relevant to crisis conditions, characterised by widespread prolonged risk and institutional weakness. However in case of Rwandan judicial sector, the programmes that could be qualified as an urgent aid have been carried out for years after the cease of conflict. Both kinds of actions help the population to acclimatise to new situations and to return to the minimum conditions for development. At the same time urgent support and rehabilitation programmes are less exposed to political constraints faced by more structural development aid.[230] On the other hand this kind of attitude hampers the process by emphasising too much the "*reconstructing*" of the judicial system. It focuses on solving the urgent problems related to the genocide past instead of

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[226] Management Systems International, *Greater Horn of Africa Peace Building Project, op. cit.*, pp. 48 – 49.
[227] http://www.europa.eu.int/comm/europaid/general/mission_en.htm.
[228] P. M. Manikas, *op.cit.*, p. 40.
[229] According to the Commission Communication COM (96) 153 *Linking Relief Rehabilitation and Development*, section 2, rehabilitation is "*an intermediate strategy of institutional reform and reinforcement, of reconstruction and improvement of infrastructure and services, supporting the initiatives of the population concerned, towards the resumption of sustainable development*".
[230] APT, *Evaluation of the implementation of the budget lines B7-3210 "Assistance to rehabilitation programmes in Southern Africa " and B7-6410 "Rehabilitation in all developing countries, ACP section"* - 1994-1995-1996-1997, 951346, http://www.europa.eu.int/comm/europeaid/evaluation/evinfoacp/951346_ev.html. p. 58.

laying bases for a strong and effective judicial system as such. It follows from hitherto presented work that only the PRI's programme included some values that could be considered as strictly "*building*" a prison system in order to hand it over to the government. Nevertheless the programme failed. No doubts is it the GOR that bears the principal responsibility for being unable to create the conditions for carrying on the project. The bureaucracy, corruption and the lack of training and motivation among the local staff brought the programme down.[231] It is a general requirement that where the reforms of the judiciary and prisons systems are at stake the government's engagement is crucial. It must demonstrate a will to complete the project and to create political, social and economical conditions for accomplishing it.[232] But was it a sole reason? No, the NGO implementing the programme could put more emphasis on the preparation of the local stuff for taking over the execution of the project. Still it is equally an overall donors' in general and the EU's in particular responsibility for the attitude to the solution of the Rwandan judicial system question. The need for urgent, exclusively genocide related aid cannot be questioned. Cannot either be cast a doubt on the fact that during the immediate war aftermath nobody thought on taking a "*building Rwandan judicial system*" approach. Thus should not be questioned the need for operational support. As presented in the table A of the Annex II to this work operational support receives the greatest share compared to other items in the figure like rehabilitation of infrastructures and buildings. Nevertheless the durable and capital infrastructure investments are also indispensable to enable the country to manage its own affaires. The situation in Rwanda is nowadays generally stabile so the sole problem that remains is the mistrust towards the government. The GOR human rights record is indeed poor.[233] Some NGOs are reluctant to set up any projects leading to the construction of a strong and truly efficient judicial system in Rwanda. What they fear of is that the oppressive government could use the system for its vicious goals. Whether this approach is right or not falls beyond the scope of this work. Nevertheless it illustrates that what the country needs is "*building up*" a new judicial system. According to one of the interviewers working on the support for the Rwandan judicial sector, the EU's role would be to politically press the GOR in order to ameliorate the human rights situation and by achieving so to create conditions for a genuine construction of the new system. In

[231] Interview of 03 June 2003, supra note 106, p. 33 of this work.
[232] Basing on E. Brusset, E. Achilli, Ch. Tiberghien (PARTICIP GmbH), *Rapport de synthèse des activistes de la communauté européenne dans le champ des droits de l'homme, de la bonne gouvernance et de la démocratie*, Rapport de référence, Commission Européenne, 10 août 2001, p. 27.
[233] U.S. Department of state, *Background Note : Rwanda,* www.state.gov/r/pa/ei/bgn,2861.htm. November 2001.

order to bring about this the EU policy should comprise programmed approach to the problems related to the Rwandan judicial system. It would be important to establish an overall approach to the issue and according to it draw up the available tools like specifically allocated founds on the promotion of the rule of law. This could lead to a creation of the appropriate environment for the implementation of certain programmes. For example it might concern the reduction of the corruption and enhancing the capacity of the administration as well as imposing political pressure on the government to take up certain actions. Yet to this end it is indispensable to establish, by the right programming, the linkages between the objectives and to set up common priorities for the activities within the domain of the judicial/prison system and delivering justice, CSFP and the development policy. This in consequence could render the EU's activities more proactive in deciding on the projects, which in turn could bestow the whole process in much higher efficiency and wider impact.[234]

The EU, from its side, seems to realise the gravity of the problem. The Rwanda CSP confirms that the domain of political and personal freedoms including the situation in prisons, the process of the democratisation and reconciliation is one of the subjects of the political dialogue with the GOR.[235] The third phase of the EU cooperation with Rwanda, which commenced in 2000 by signing the NIP of the 8th EDF, marks the shift towards the long - term development cooperation based on the CSP Programming.[236] Founded by the 8th EDF, vast development programme 8 ACP RW 19[237], combines indeed the strictly genocide justice related assistance with laying a solid foundation for building that system. Additionally the support for the good governance within the 8th EDF encompasses also aid for the judicial sector and the macro – economic support pertaining to NIP of the 9th EDF as one of the objectives indicates the consolidation of the progress within the justice sector.[238]

Even though as presented in the paragraph 3 of this chapter, Rwandan case represents a positive example of linking relief and rehabilitation aid, the EU could have contributed more to the efficiency and quality of the system if had decided earlier to put emphasis on the construction of a new framework of the system instead of mainly

[234] Basing on E. Brusset, E. Achilli, Ch. Tiberghien (PARTICIP GmbH), *Synthesis report on EC activities in the field of human rights, democracy and good governnece*, Synthesis Note, European Commission, 10 August 2001, pp. 14 - 15.
[235] République Rwandaise – Communauté européenne, *op. cit.*, p. 5.
[236] *Ibidem*, p. 17. The first phase covered the precedence to genocide period. The second concerning the reconstruction was carried out in the period of 1995 – 1999.
[237] Refer also to http://europa.eu.int/comm/ develoment/body/country/countr_home_en.cfm.

focusing on urgency aspects. It is certainly true that any projects depend on an internal country situation. In this regard it could be argued that long-term projects would not be feasible in the earlier stage due to Rwandans (still) weak administration capacities and instable situation. However the projects of for example complex training for the magistrates and technical court staff, coupled with creating a decent condition for their work could have twofold effect. Dealing with urgent problems and in parallel laying foundations for an efficient, impartial and professional judiciary system in the country.

6. Sustainability of the projects.

It is, for the reasons mentioned in the preceding paragraph, difficult to talk on the sustainability of the actions so far undertaken by the EU in the area of reconstruction of the judiciary system in Rwanda. Those programmes basing on mostly palliative goals were rarely implemented in the way that they could be continued after the completion of the particular project. The positive outcomes of the projects did not transposed into creation of the grounds for the programme continuation by the Rwandans themselves. The RCN projects did not aim to set up neither long lasting structures nor programmes but only to assist in the process of delivering justice. ASF by launching the action of offering the legal assistance to the trial parties did not launch any sustainable projects either. They merely attempted to offer the right to defence steaming from the international conventions signed by the Rwandan government. The sustainability could be discussed in case of PRI, which indeed aimed to pass the management of the activities to the Rwandans but failed. They were unsuccessful mostly because of the lack of proper training of the Rwandan staff and the reluctance of the GOR to fully commit to the process. In this case however stronger support and the emphasis on the training and a follow up to the project by its monitoring and pushing the Government to take up the appropriate actions should be considered. In this regard it can be noted, as stated in the evaluation of *Development and humanitarian assistance of the European Union*, the institutional support to governments and civil services should be given a greater Commission's priority. It should concentrate, *inter alia*, on public management and essential education.[239] If then treat this actions as a rehabilitation i.e. as actions in an emergency transition framework pending the introduction of development aid the criteria of sustainability is not important.[240]

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[238] European Commission – Republic of Rwanda, *Joint Annual Report: 2001*, of 10 September 2002, (in the file with the author), pp. 10 – 18.
[239] ICEA/DPPC, *op. cit.*, p. 21.
[240] APT, *op. cit.*, pp. 17 – 18.

Likewise the concentration on the short - term effects of rendering the post genocide justice resulted in weak justice administration. There are opinions according to which the EU should focus in the future programmes on the long term goals of development by establishing, where the justice service is particularly deficient, a local management of its aid completely separated from that of the recipient country and hiring and directly contracting national civil servants for the sake of its own Project Cycle Management.[241] On the other hand the EU decided, while drafting the last programme no. 8 ACP RW 19 to rely on the project circle management carried out by the MinJust.[242] This approach may play more conducive role in enhancing the administrative capacities of the MinJust. Nevertheless it requires close monitoring, from the EU's part, of the implementation of the projects in order to assure its effectiveness as well as its coordination and harmonisation with another elements of the programme.

Similar observations as regards the activities financed from the B7 – 7 budget line until 2000 have been made by the Court of Auditors. According to the Court the Commission paid insufficient attention of the fact if the activities financed from the B7 – 7 budget line, would continue when the financing stopped.[243] Furthermore many of the programmes fell into too rare financing scheme, which in consequence appeared to pose unnecessary hindrances. This general tendency was observed on the example of ASF and RCN. According to the authors of *Assessment of the Judicial Sector in Rwanda* the reduced allocations in 2001 in relation to these NGOs affected negatively the number of closed cases. Indeed if referred to the table number 2 of this work, we would find exceptional results in terms of genocide cases in 2000. When in 2001 the support was reduced the number of adjudicated accused also diminished significantly - 1,416 in 2001 against 2,489 in 2000.[244] The Commission should thus change to provide more systematic and long – term support to organisations, which have the potential to improve the judicial system in Rwanda. The Commission pronounced that it shared the view of desirability of such activities.[245] It follows from the abovementioned that in cases where the choice of the performer amounts to a programming or tactical decision about the undertakings in the

[241] Basing on ICEA/DPPC, *op. cit.*, p. 21.
[242] Annexe - Convention de financement no 6400/RW, *op. cit.*, paragraph 3.
[243] Court of Auditors, *Special Report No 12/2000 on the management by the Commission of the European Union support for the development of human rights and democracy in third countries, together with the Commission's replies. OJ* C 230/, 10 August 2000, p. 10.
[244] CAGEP – Consult, *op. cit.*, p. 46.
[245] *Ibidem*, p. 26.

field of judicial system, the target projects should be preferred to calls for proposals as a scheme of selection of projects in the Commission. [246]

[246] Franklin Advisory Services, channel Research Ltd, SEPIA, *op. cit.*, p. 14.

CONCLUSIONS

In the course of this work the focus has been put on finding out whether the particular programmes of the EU aiming to reconstruct the judicial system and deliver justice in Rwanda can be either considered as a pattern for further similar undertakings or in contrary they have transpired to be the lessons the EU still have to learn.

Finding the answer to this question bears particular importance. Even thought Rwanda should be considered as an extraordinary case, "*recognizing that Rwanda is unique does not suggest that we can not learn from these experiences*".[247] For the projects undertaken in the countries undergoing with post - civil wars accountability for the crimes, the Rwandan lessons could be invaluable.

The work based on the analysis of the legal provisions as well as the documents and interviews related exclusively to the particular programmes. Analysis of the situation in Rwanda, of the impact of the programmes and the conduct of the subject NGOs and EU have been carried out additionally on the grounds of reports prepared on various levels.[248] The conclusions should thus be applied to a parallel state of affairs with prudence as each situation has its own distinct characteristics.

The EU has created sufficient legal bases for pursuing the programmes and retains the relevant financial instruments necessary for handling the process of reconstruction of the judicial system and delivering justice. The problem impeding its activity concerned mostly the lack of its flexibility in managing the projects. Furthermore it has, consequently throughout the years, maintained its attitude towards the Rwandan problem by prioritising the policy, as envisaged in the Council common positions. This attitude allowed to channel considerable sums of money into the projects and to stimulate the global approach to the matter alike. It follows from this work that the EU has used various means in support for the process, covering a very broad scope of the actions related to the general objective. They have comprised the participation into the HRFOR, structural programmes concerning the physical reconstruction but particular emphasis have been put on the

[247] Management Systems International, *Rwanda Democracy and Governance Assessment*, *op. cit.*, p.64.
[248] This work does not pretend to be exhaustive. The EU's activities in the domain of reconstruction of the judicial system and delivering justice in Rwanda have been scattered over many distinguished programmes. However the herein presented discourse covers the core and most of the EU's financed projects in the area and as such must be considered as constituting a bases for drawing general conclusions.

projects carried out by the NGOs. This permitted for profound recognition of the needs and more precise targeting of the activities. Those programmes proved to have a very significant impact against a background of the overall development of the process. Specifically constructive results have been recorded as regard the urgent actions aiming to accelerate the pace of rendering of the judgments, training of the paralegals, providing the legal assistance to the trial parties as well as enhancing the quality of the magistrates work and the recognition of the right to defence. The EU's attention has also been given to the need of dissemination of the information relevant to the genocide trials and the support for the prison administration likewise.

It might be thus inferred that those programmes, due to their scope and extent, have played noteworthy role in the progression of the Rwandan society's attitude towards the process of delivering justice and the judicial system. An overall intervention must be assessed as highly pertinent to the situation in Rwanda and timely implemented. However in Rwanda the judicial system impediments are rooted in the past and found a fertile ground in the current situation. Therefore certain actions should have been taken much earlier, in parallel to the urgent projects. What is understood here would be the projects aiming to build a new judicial system of solid fundaments. The EU has neglected these actions until the introduction in 2001 of the programme 8 ACP RW 19 marking the turn of the cooperation from the reconstruction to development scheme. Nevertheless had the approach been applied in the earlier stage the issue of training of the judiciary staff would have gain more importance. This in consequence could have produced further acceleration of the trails, their higher quality, independency of the administration of the foreign technical assistance, as well as a lower susceptibility of the magistrates on government's influences and corruption alike. This would also permit to launch the projects that could be more sustainable and beneficiary for the system. Moreover in the course of the EU's financed programmes not adequate attention has been paid on the problems concerning compensation to the victims, fostering of the position of civil society and its role in monitoring of the process of delivering justice in Rwanda.

As a consequence although the EU's programmes must be assessed very positively they cannot entirely, as whole be considered as a pattern that could be followed in the parallel situation. There are still lessons which must be learned even though the EU, by for example introducing the reforms of the management of the foreign assistance and setting off a new development programme of 2001, has already begun doing them.

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ANNEX I

Abstract

The European Union's programmes on reconstructing the judicial system and delivering justice in post – genocide Rwanda. A pattern to be followed or lessons to be learned?

The EU has been endowed by, *inter alia*, the Treaty of Maastricht, the Lomé conventions, the Cotonou agreement in appropriate legal bases and relevant financial instruments to pursue the activities of reconstructing the judicial system and delivering justice in Rwanda. Those undertakings fall within the EU's concept of promotion of the rule of law. The EU's attitude towards the issue derives also from the European Council's common positions.

The discussed projects concern: the EU's participation in the HRFOR[249], structural programmes on physical reconstruction, projects carried out by NGOs[250] and the recent programme no. 8ACP RW 19 marking the shift from the reconstruction to development approach.

A very constructive impact of the programmes on an overall situation and Rwandan society has been recorded. However many problems such as training, independency and corruption of the judiciary, compensation and support for the civil society have not had enough EU's attention. Albeit the work assesses positively the pertinence and, in general, the timing of the undertaken intervention it reproaches the lack of flexibility on the EU's part. It above all emphasises that the EU should have taken up the *pro-building* rather than *pro-reconstructing* approach to the matter.

The conclusions states that although the EU's programmes constitute a very good example they cannot, as a whole, be considered as a pattern to be followed due to the aforementioned deficiencies.

[249] Human Rights Field Operation for Rwanda.
[250] On genocide trials by Réseau des Citoyens Justice & Démocratie and Avocats sans frontières, on prison system by Penal Reform International and on media by Fondation Hirondelle.

ANNEX II

The European Union as the biggest donor in the judiciary sector in Rwanda

(source: CAGEP – Consult *Assessment of the Judicial Sector in Rwanda*, (prepared by for USAID/Rwanda and Ministry of Justice and Institutional Relations in Kigali), November 2002, http://www.dec.org/pdf_docs/PNACR573.pdf.)

Figure A
Donors' support according to the GOR budgets of 1999 – 2002 (in millions of RWF).

Donor	*Building*	*Institu-tional support*	*Human resources*	*Judicial assistance*	*Jud. Proced. & Genocid*	*Gacaca*	*Peniten-ciary*	*Docu-ment-ation*	*Gen. Sup. Rule of law*	*total*
EU	**1.593,6**	**538,8**	**0,0**	**0,0**	**0,0**	**1.600,0**	**100,0**	**0,0**	**991,4**	**4.820,8**
USAID	0,0	615,5	0,0	0,0	0,0	0,0	0,0	0,0	1.330,0	1.945,5
Total all donors* (RWF)	2.823,0	3.103,9	278,9	1.020,3	478,6	1.600,0	2.364,7	987,8	3.031,1	15.688,3
Total (USD)	6,3	6,9	0,6	2,3	1,1	3,6	5,3	2,2	6,7	34,9

* EU, Belgium, Holland, Canada, USA, Norway, France, Denmark, Germany, UNDP, UNICEF.

Figure B
Donors' support, covering the period 1996 – 2004, including: the so far contributed, ongoing and planned support.

Donor	*GOR*	*NGOs*	*HRNGOs*	*Total*	*Total in USD*
EU in millions of Euro	**16,36**	**5,75**	**0,0**	**21,93**	**21,56**
USA in millions of USD	2,13	6,6	0,12	8,74	8,74
Total - all donors*					63,98

* EU, Belgium, Holland, Canada, USA, Norway, Sweden, Denmark, Germany, Switzerland .

ANNEX III

The organisations

Avocats sans frontières - non governmental organisation, associating lawyers, created in 1992 in Belgium having currently its branches in several European and African countries. According to their motto "*œuvrant dans le domaine du droit et de la justice, veut contribuer à un monde plus juste et plus solidaire. Dans cette perspective, ASF travaille à la promotion et à la protection des droits civils, politiques, économiques, sociaux et culturels des personnes et des peuples* ". (http://www.asf.be/FR/FR propos/Coup_Oeil.htm).

Fondation Hirondelle - a Swiss based NGO of journalists which sets up and operates media services in crisis areas. It was founded in 1995. It has, *inter alia*, established and managed Radio Agatashya in the Great Lakes, the Hirondelle News Agency at the International Criminal Tribunal for Rwanda at Arusha in Tanzania and Radio Blue Sky in Kosovo. The organisation support the idea of independent media and collaborates in the development of tolerant and democratic societies. The Foundation is particularly interested in justice, one of the preconditions for reconciliation in divided societies. (www.hirondelle.org).

Penal Reform International - international non-governmental organisation founded in London in 1989. PRI seeks to achieve penal reform, develops programmes on a regional basis, assisting both NGOs and individuals to establish projects in their own countries. PRI's regional programmes include sub-Saharan Africa, the Middle East, Central and Eastern Europe and Central Asia, South Asia, Latin America and the Caribbean. (http://www.penalreform.org/english/frset_pre_en.htm).

Réseau des Citoyens Justice & Démocratie - non governmental organisation based in Brussels. It was established in 1994 and the direct incentive for setting it up was a situation on post genocide Rwanda. The founders of RCN realised that an NGO would be the best form to promote the values of law and contribute to the reconstruction of the judiciary system and creating of an independent judiciary, supporting at the same time the emerging civil society, accordingly art 3 of the RCN statute provides that "*des actions dans le domaine de la justice auprès des autorités engages dans un processus d'instauration ou de restauration de l'Etat de droit et de la société civile*" (Information brochure published by RCN).