

Justice Compromised

The Legacy of Rwanda's Community-Based *Gacaca* Courts

Case Studies • June 2011

The four case studies in this document are taken from Human Rights Watch's report *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts*, published on May 31, 2011 (<http://www.hrw.org/en/reports/2011/05/31/justice-compromised-o>) and should be read in conjunction with that report.

These cases have been selected because they illustrate a range of human rights concerns observed by Human Rights Watch during *gacaca* trials in different parts of Rwanda. Numerous other cases are cited in the full report.

Since 2005, just over 12,000 community-based *gacaca* courts in Rwanda have heard more than 1.2 million cases against people accused of involvement in the country's 1994 genocide. The local population across the country participated in these trials, and judges were lay members of the community. The objectives of *gacaca* were to deliver justice for the genocide, reduce the massive prison population, and foster reconciliation. This ambitious experiment in transitional justice leaves behind a mixed legacy.

Recognizing the enormous challenge the Rwandan government faced in building a system to rapidly process tens of thousands of cases, Human Rights Watch's report, "Justice Compromised: The Legacy of Rwanda's Community-Based *Gacaca* Courts", notes *gacaca*'s main achievements, including the swift work of the courts, the extensive participation of local communities, and the opportunity for genocide survivors to learn what happened to their relatives. *Gacaca* may also have helped some victims find a way to live peacefully with neighbors who may have perpetrated crimes against them or their families. However, the longer-term processes of justice and reconciliation remain fraught and incomplete.

Rwandans have had to pay a price for the compromises made in applying community-based justice to crimes as serious as genocide. Mixing elements of a modern punitive legal system with more informal conflict-resolution traditions, *gacaca* lacked a number of important safeguards against violations of due process.

Based on Human Rights Watch's extensive trial observations and interviews, and drawing on more than 350 *gacaca* cases, the report explains how justice has been compromised in many cases. It highlights a wide range of fair trial violations, including limitations on accused persons' ability to effectively defend themselves, intimidation of defense witnesses, flawed decision-making due to inadequate training for lay judges and insufficient guidelines on the application of complex criminal law concepts. Many decisions were likely influenced by judges' ties to the parties in a case or their pre-conceived views of what happened during the genocide. Other cases suggest that accusations of participation in the genocide were no more than trumped-up charges linked to disputes between neighbors and relatives or to the government's attempts to silence critics. Corruption by judges and interested parties was a constant threat to the integrity of the system and some judges had to be removed on that basis. The attached cases illustrate some of these concerns.

As *gacaca* draws to a close, the Rwandan government faces another challenge: correcting the injustices and serious procedural irregularities that have occurred through this process. The government's recognition in late 2010 of the need to correct miscarriages of justice is a positive step. However, the proposal to have such cases reheard in *gacaca* risks replicating the same problems and may not remedy the situation. A more appropriate mechanism might involve a specialized unit within the conventional court system, staffed with professional judges or other trained legal professionals, to review the cases. Fair and impartial handling of these cases is of paramount importance to the legacy of *gacaca* and to strengthening the Rwandan justice system in the longer term.



THE STORY OF FRANÇOIS-XAVIER BYUMA

The case of François-Xavier Byuma illustrates concerns about the right to fair and impartial justice, the right to counsel, the right to be presumed innocent, the right to present defense witnesses, and the right against self-incrimination.

Human rights activist François-Xavier Byuma was convicted of genocide-related charges following a *gacaca* trial that violated both Rwandan law and the fundamental principle that accused persons must be tried before a fair and impartial court.

Byuma had worked for the Rwandan League for the Promotion and Defense of Human Rights (LIPRODHOR) for many years. At the time allegations of genocide first surfaced against him in early 2007, he headed an organization for the defense of children's rights (Turengere Abana) and had recently started investigations into an allegation of rape of a 17-year-old girl by a local *gacaca* judge.¹ Knowing that this judge would preside over his case, Byuma immediately wrote to the National Service of *Gacaca* Jurisdictions (SNJG) expressing concern that he may not receive a fair trial. His letter was found to be "baseless and unfounded."²

¹ "Gacaca Trial Condemns Activist to Prison," Human Rights Watch news release, May 30, 2007, <http://www.hrw.org/en/news/2007/05/30/rwanda-gacaca-trial-condemns-activist-prison>; "Appeals Court Confirms Sentence Against Activist," Human Rights Watch news release, August 22, 2007, <http://www.hrw.org/en/news/2007/08/22/rwanda-appeals-court-confirms-sentence-against-activist>. At the time, Byuma was also vice-president of the Human Rights League of the Great Lakes (LDGL), a member of LIPRODHOR, and the Rwandan Writers' Association (IBARWA).

² SNJG, "The Case of François-Xavier Byuma," June 12, 2007, <http://www.inkiko-gacaca.gov.rw/pdf/June%20Byuma%20Final%20copy.pdf> (accessed December 10, 2010) [hereinafter referred to as the "SNJG Statement on Byuma"], p. 1.

Above: François-Xavier
Byuma © Amnesty
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Byuma's trial began in Kigali on May 13, 2007. He was accused of having been present at a roadblock erected to prevent Tutsi fleeing the genocide, having a firearm, and participating in weapons training. At the outset of the trial, Byuma asked to have the judges dismissed on the grounds of conflict of interest, but the court declined his request.³ In protest, Byuma refused to testify. The judge threatened to charge him for his refusal to testify.⁴ Byuma decided to subject himself to the jurisdiction, despite overt hostility shown by the presiding judge throughout the remainder of the trial.⁵

At a second hearing a week later, Byuma defended himself against the charges, but the presiding judge cut off many of his answers and those of witnesses who tried to speak in his defense. In one instance, the presiding judge accused a defense witness of lying.⁶ The court found Byuma guilty of participating in weapons training and several other counts (including participation in an attack and abduction and assault of a Tutsi woman) which were not mentioned when the charges were first read to Byuma before trial.⁷ It sentenced him to 19 years in prison. The court acquitted two co-accused of the same crimes, despite one of them having admitted to being guilty of one of the charges.

On August 18, 2007, an appeals court upheld the 19-year prison sentence despite numerous irregularities. Byuma had presented court records revealing that one prosecution witness who accused him of assault had previously testified that a different person committed the crime (and whose name the witness never mentioned in the *gacaca* case). Byuma pointed out that the trial court declined to hear some of the witnesses whom he sought to call in his defense and failed to reconcile contradictions in the evidence. The appeals court gave no justification for its decision affirming the conviction and offered no explanation for its failure to deal with the fact that the presiding judge of the lower court had a clear conflict of interest with Byuma.⁸

After a strong public outcry from local and international organizations, the SNJG accepted Byuma's request for revision and brought a bench of judges from the eastern

3 Article 10 of the 2004 Gacaca Law provides that judges cannot decide cases in which a "serious enmity" exists with the accused or where "any other relation [is] considered incompatible with the honest person's independence."

4 The SNJG supported the judge's threat in a later statement, saying that Byuma's initial refusal to testify at his trial was "against the spirit and participatory nature of the Gacaca process as a whole." SNJG Statement on Byuma, p. 2.

5 Human Rights Watch, trial observations, Jurisdiction of Biryogo Sector, Nyarugenge District, Kigali, May 13, 2007.

6 Human Rights Watch, trial observations, Jurisdiction of Biryogo Sector, Nyarugenge District, Kigali, May 20, 2007.

7 Human Rights Watch, trial observations, Jurisdiction of Biryogo Sector, Nyarugenge District, Kigali, May 27, 2007. The woman testified at trial to allegedly having been abducted and gave contradictory evidence of having been assaulted by Byuma. The court did not reconcile or explain the inconsistencies in its final judgment.

8 Human Rights Watch, trial observations, Jurisdiction of Biryogo Sector, Nyarugenge District, Kigali, August 4 and 18, 2007.

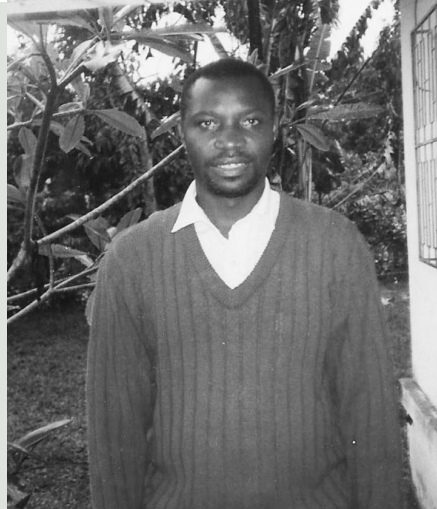
part of the country to decide the case. The SNJG reluctantly agreed to allow a lawyer to assist Byuma in his defense (as long as he did not wear his robe). During the hearing, however, the lawyer provided by Avocats Sans Frontières was not permitted to sit next to his client and was repeatedly denied the opportunity to question witnesses.⁹ These restrictions, coupled with the open hostility shown by the presiding judge to the lawyer's presence, rendered his assistance ineffective.

The court deciding Byuma's request for revision gave little consideration to additional defense witnesses who testified but concluded that new evidence had been offered by accusing witnesses, even though some of this information was inconsistent with earlier testimony given at trial and on appeal. The court also found Byuma guilty of possessing a firearm, in violation of a 2006 SNJG directive which stated that having a firearm or being at a roadblock did not in itself constitute a crime. The court upheld Byuma's conviction but reduced his sentence to 17 years' imprisonment.¹⁰ At the time of writing, Byuma remains in prison.

9 Human Rights Watch, trial observations, Jurisdiction of Biryogo Sector, Nyarugenge District, January 24, February 7, March 7 and 14, 2009.

10 Human Rights Watch, trial observations, Jurisdiction of Biryogo Sector, Nyarugenge District, January 24, February 7, March 7 and 14, 2009.

THE STORY OF PASCAL HABARUGIRA



The case of Pascal Habarugira illustrates concerns about the right to be presumed innocent and the right to present defense witnesses.

Dr. Pascal Habarugira was a doctor in the gynecology department at the University Hospital of Butare in 1994 and cared for a number of women and newborn children during the early period of the genocide. He returned briefly to his native town of Cyangugu in May 1994 before reaching Kigali in August where he began work at the Centre Hospitalier de Kigali (CHK). In 1995, he returned to the University Hospital of Butare and took up his prior position. The following year, Habarugira accepted a two-month internship in Paris, leading to rumors that he had fled the country, but he returned to Rwanda later that same year. The rumors persisted, and in 1999, he followed his wife to Côte d'Ivoire for her studies. The couple returned to Rwanda in 2003, and Habarugira resumed his functions at the hospital in Butare. Accusations against Habarugira were made during the *gacaca* information gathering phase in 2005, and police arrested him in March of that year as he left a medical conference in Kigali.¹¹

In August 2007, Habarugira faced trial before *gacaca* on five counts: participation in a genocide planning meeting, turning a Tutsi patient over to soldiers to be killed, attendance at a roadblock where killings occurred, membership in a crisis committee, and strangling a Tutsi newborn child.¹² On September 5, 2007, the trial court convicted Habarugira of all but the first charge. Five other doctors were also convicted of having

¹¹ Human Rights Watch interview with relative of Habarugira, Kigali, April 11, 2008.

¹² Human Rights Watch, trial observations, Jurisdiction of Ngoma Sector, Huye District, Southern Province, August 22, 2007.

Above: Pascal Habarugira. © Private

played a role in the death of Tutsi at Butare university hospital during the genocide. All were sentenced to 30 years' imprisonment.¹³

Habarugira appealed his conviction, arguing that the trial court had not considered the testimony of certain defense witnesses (including eight genocide survivors who worked with him at the hospital in 1994) and had ignored important inconsistencies in the testimony of several women who accused him. He tried to prove that one of the main witnesses against him was not in the area during the genocide as she had claimed, but the court refused to call a detained witness who could confirm this fact or to summon court records from another trial in which the woman had admitted to being elsewhere. Testimony on appeal revealed that Habarugira did not turn the Tutsi woman over to soldiers as alleged and that the newborn child whom he had allegedly killed was still alive (and present at the hearing with his mother). Despite the powerful testimony presented, the appeals court upheld the conviction on February 6, 2008, but reduced his sentence to 19 years' imprisonment without any explanation for the reduced sentence.¹⁴

The National Human Rights Commission (NHRC), which had sent monitors to observe the case, found so many due process violations at the appeals hearing that it wrote two separate letters to the SNJG executive secretary, calling for revision of the conviction. Of particular concern, the NHRC noted:¹⁵

- Habarugira was forced to proceed with his appeal even though he had only received a copy of the trial judgment the previous day and he had not had time to prepare his defense;
- Habarugira was forced to defend himself at one hearing despite being ill and having requested an adjournment;
- Habarugira was interrupted repeatedly by *gacaca* judges and denied the right to introduce letters from persons who could not be present at the hearing;
- The appeals court interrupted the testimony of several defense witnesses and refused to call additional defense witnesses with relevant information;
- The appeals bench included a judge who had testified against Habarugira at an earlier hearing in the case;
- The appeals court did not provide any reasoning in its judgment and did not state the crimes for which it found Habarugira guilty.

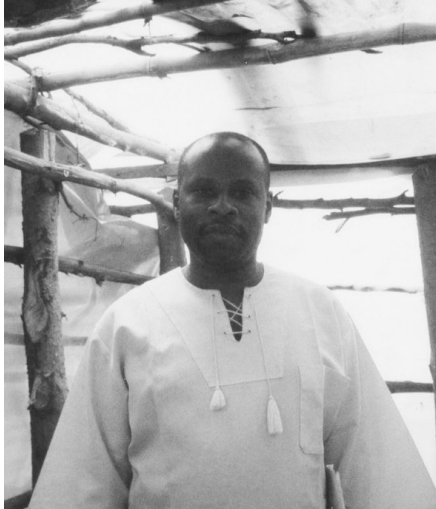
13 "Gacaca Court Jails Six Doctors for 30 Years," The New Times, September 5, 2007, <http://allafrica.com/stories/200709060079.html> (accessed December 10, 2010); "The Brother of the Former President, Sentenced to 30 Years in Prison," Hironde News Agency, September 10, 2007, <http://www.hirondellenews.com/content/view/9901/309> (accessed December 10, 2010).

14 Human Rights Watch, trial observations, Jurisdiction of Ngoma Sector, Huye District, Southern Province, January 30 and February 6, 2008.

15 Letter Ref: CDRH/183/08 from the National Human Rights Commission to SNJG Executive Secretary Domitilla Mukantaganzwa, March 31, 2008, p. 1 (copy on file with Human Rights Watch); Letter Ref: CDRH/735/08 from the National Human Rights Commission to SNJG Executive Secretary Domitilla Mukantaganzwa, December 10, 2008 (copy on file with Human Rights Watch).

Habarugira's request for revision was denied, first in April 2008 by the local *gacaca* jurisdiction, and again in June 2008 by the SNJG.¹⁶ At the time of writing, Habarugira remains in prison.

¹⁶ Letter Denying Revision, signed by the President of Ngoma Sector General Assembly of Gacaca Jurisdictions, April 16, 2008 (copy on file with Human Rights Watch); Letter Ref: 1046/MJD/2009 Denying Revision, Signed by SNJG Executive Secretary Domitilla Mukantaganzwa, May 13, 2009 (copy on file with Human Rights Watch).



THE STORY OF THÉODORE MUNYANGABE

The case of Théodore Munyangabe illustrates concerns about the right not to be tried twice for the same offense (double jeopardy), the right to have adequate time to prepare a defense and the risks faced by defense witnesses.

Théodore Munyangabe served as a high-ranking local official (sous-préfet) of Cyangugu préfecture before, during, and after the genocide. He was one of the few government officials who remained in service after the genocide, having received much praise for his actions to protect and assist Tutsi.¹⁷

In March 1995, Munyangabe was arrested by the police on accusations of involvement in the genocide. A conventional court tried and convicted him, sentencing him to death which was the maximum penalty at the time. An appeals court reversed the conviction in July 1999 and ordered his release. Police placed Munyangabe under house arrest within days of his release, however, and formally rearrested him a month later on new, unspecified accusations of genocide.¹⁸

Munyangabe remained in prison for nine years with no further hearing or trial until he was finally brought before *gacaca* in November 2008. The trial court concluded that the case was identical to the one decided in the conventional courts and dismissed

Above: Théodore
Munyangabe in Cyangugu
prison. © 1999 Amnesty
International

¹⁷ Among those praising him was Rwandan Interior Abdul Karim Harelimana. See letter from Munyangabe's wife to President Kagame Regarding the Case of Her Husband, July 31, 2009 (copy on file with Human Rights Watch).

¹⁸ Amnesty International, "Rwanda: The Troubled Course of Justice: Tried, Acquitted...and Still in Gaol," AI Index: AFR 47/11/00, April 2000, <http://www.amnesty.org/en/library/info/AFR47/011/2000/en> (accessed August 30, 2010).

the charges.¹⁹ Instead of being released, however, Munyangabe was brought before a neighboring *gacaca* jurisdiction and charged with the same crimes.

Munyangabe asserted that the case should be dismissed on double jeopardy grounds, but the court disagreed and proceeded to try him. One of the most flagrant irregularities at trial was the presiding judge's coercion of a man into making a written statement against the accused. A local representative of the ruling party, the Rwandan Patriotic Front, (RPF) testified that Munyangabe's former driver told him that the accused had attended a secret genocide planning meeting, the court summoned the driver to testify. The driver denied having ever made the statement, adding that the RPF representative and a second man had unsuccessfully tried to pressure him into accusing Munyangabe. The presiding judge immediately scolded the witness and threatened to arrest him for perjury. When the witness continued to insist that he had never made the statement, the judge adjourned the proceedings and told the witness to go home and think about the consequences of giving false testimony. The following day, the witness reappeared and reluctantly gave the court a written statement implicating the accused in the meeting in question. The court convicted Munyangabe largely on the basis of this statement and sentenced him to "life imprisonment with special provisions."²⁰

On appeal, Munyangabe argued that he had been unlawfully convicted of the same crimes for which a conventional court had acquitted him. The court rejected this argument and found that the alleged genocide planning meeting constituted a new accusation. Munyangabe pointed out that the issue of such meetings had been raised in the conventional court case but had been dismissed. He also noted that the new allegation had not been raised during the national information gathering phase of *gacaca* and that the new witness had contradicted himself several times. He asked the court to summon the driver, but the court refused and upheld Munyangabe's conviction.²¹

During the course of the appeal, two genocide survivors were intimidated and arrested for trying to defend Munyangabe. The two men showed up to testify on the first day, but the hearing was postponed. Shortly after the local community dispersed that day, police arrested the two men without explanation and kept them in detention overnight. The local prosecutor secured their release the following day after other survivors in the

19 Human Rights Watch, trial observations, Jurisdiction of Mururu Sector, Rusizi District, Western Province, November 27, 2008.

20 Human Rights Watch telephone interview with NGO observer who monitored the trial, December 10, 2010. Parliament introduced the penalty of "life with special provisions" when it abolished the death penalty in 2007. The law defines the penalty as follows: "(i) a convicted person is not entitled to any kind of mercy, conditional release or rehabilitation, unless he/she has served at least twenty (20) years of imprisonment and (ii) a convicted person is kept in isolation." Organic law no.31/2007 of 25 July 2007 Relating to the Abolition of the Death Penalty, Official Journal, no. 46 special edition. See also Law no. 32/2010 of 22/09/2010 Relating to Serving Life Imprisonment with Special Provisions. To date, this punishment has not been implemented in practice as Rwanda does not have the facilities to isolate large numbers of prisoners.

21 Human Rights Watch, trial observations, Jurisdiction of Shangi Sector, Nyamasheke District, Western Province, August 24-26, 2009, September 1-5 and 14-15, 2009.

community complained about the arrests.²² Despite the harassment, both men still decided to testify. The first man faced hostility from the judges but had no other problems during his testimony.

The second man testified that the civil party had bribed other survivors to accuse Munyangabe and that Munyangabe had not committed any wrongdoing during the genocide. After the man left the hearing, the civil party (a woman) accused him of having tried to intimidate her. The court ordered the man to be arrested and brought back to *gacaca* for questioning. Meanwhile, the judge scolded other survivors present at the hearing and reminded them of the “need to speak with one voice and not fight with each other.”²³ He threatened to send anyone else criticizing the civil party to jail for perjury. Soldiers went to the second witness’s house and brought him back to *gacaca*. By the time they returned, however, the day’s proceedings had ended and the man was detained. After strong protests from other local survivors at the scene, the presiding judge ordered his release.²⁴

The *gacaca* jurisdiction denied Munyangabe’s request for revision in November 2009.²⁵ Munyangabe then wrote to the SNJG to complain but had not received a response at the time of writing. He remains in prison.

22 Human Rights Watch interviews with local residents, Shangi Sector, August 25, 2009.

23 Human Rights Watch, trial observations, Jurisdiction of Shangi Sector, Nyamasheke District, Western Province, September 14, 2009.

24 Human Rights Watch interviews with local residents, Shangi Sector, September 14-15, 2009.

25 Letter Denying Revision, signed by the President of Gihundwe Sector General Assembly of Gacaca Jurisdictions, November 25, 2009 (copy on file with Human Rights Watch).

THE STORY OF JEAN-NÉPOMUSCÈNE MUNYANGABE



The case of Jean-Népomuscène illustrates concerns about the right not to be arbitrarily detained and the right to impartial justice.

In November 2007, Jean-Népomuscène Munyangabe learned that he had been convicted of genocide and sentenced to 18 years' imprisonment in a gacaca court in southern Rwanda. At the time, he was working for the UN World Food Program in Chad (where he had been since 2005). Neither he nor his family, who still resided in Rwanda, had been notified of the case against him, even though his employment at the time was well known in the area.²⁶

Confident of his innocence, Munyangabe took leave from his post in Chad and returned to Rwanda to challenge the conviction.²⁷ He filed his written appeal in January 2008. He was arrested and held in police custody for nearly three months until his case was heard.²⁸ A final verdict was handed down in July 2008 after a series of flawed gacaca proceedings, discussed below. Munyangabe was convicted of involvement in the death of two Tutsi who had sought refuge at his family's house and was sentenced to 19 years' imprisonment.²⁹

The trial revealed that rather than being responsible for killings during the genocide, Munyangabe and his family had actively sought to protect Tutsi from the killers in 1994

26 Human Rights Watch interview with Jean-Népomuscène Munyangabe, Mpanga prison, February 6, 2008; Human Rights Watch interview with gacaca official, Nyanza, March 18, 2008. One official told Human Rights Watch that it was well known that Munyangabe worked for the UN in Chad but could not explain why authorities made no attempt to notify him or his family.

27 Human Rights Watch interview with Munyangabe, Mpanga prison, February 6, 2008.

28 Ibid. See also Human Rights Watch interview with Munyangabe's wife, Butare, April 18, 2008; Human Rights Watch interview with district coordinator, Nyanza, May 7, 2008.

29 Human Rights Watch, trial observations, Jurisdiction of Kibilizi Sector, Nyanza District, Southern Province, March 18, 25 and April 4, 2008.

Above: Jean-
Népomuscène
Munyangabe
© Private

by hiding them at their house. The two victims came to their house seeking refuge but changed their mind when they found other Tutsi already hiding there and feared being discovered by local militia. The victims convinced Munyangabe's father to help them flee towards Burundi, but they were intercepted along the way and both were killed. Munyangabe's father was killed shortly after the genocide upon returning to Rwanda.

Seven witnesses, including four neighbors, and three genocide survivors who had taken refuge at his family's house testified in Munyangabe's defense. One relative of the victim claimed she saw Munyangabe traveling with his father and the victims that evening before the killings took place, but her testimony was contradicted by several other witnesses. Others accusing Munyangabe said merely that he was friends with a neighboring family that committed crimes during the genocide and that he must have committed genocide too. One person speculated that Munyangabe had left his studies in Butare and returned to his family's house in 1994 to commit crimes. All were family members of the victim, and none were eyewitnesses to the events in question.

The gacaca court acquitted Munyangabe and ordered his immediate release on April 4, 2008. The district coordinator delivered the release order to the prison where Munyangabe was detained, but later returned to retrieve it and prevented his release. The civil party appealed the acquittal, and Munyangabe was kept in prison, allegedly so that he would not flee the country.³⁰

The appeals trial, which began the following month, opened with the presiding judge refusing to disqualify himself despite allegations that he was a close friend of the civil party in the case. Three additional hearings took place, during which the presiding judge acted in a biased manner, took decisions without consulting other judges, reacted angrily to statements made by the accused, interrupted and detained at least three defense witnesses on allegations of perjury, and tried to manipulate the written record of proceedings.³¹ On June 17, 2008, the trial was suspended indefinitely.

The SNJG stepped in to change the jurisdiction hearing the case, but the newly appointed bench sat for just a single session and convicted Munyangabe despite the absence of new evidence. It sentenced him to 19 years' imprisonment.³² In May 2010 the SNJG denied Munyangabe's request for revision, leaving him with no other recourse.³³ At the time of writing, he remains in prison.

³⁰ Human Rights Watch interview with district coordinator, Nyanza, May 7, 2008.

³¹ Human Rights Watch, trial observations, Jurisdiction of Kibilizi Sector, Nyanza District, Southern Province, May 20 and June 10 and 17, 2008. The judge's efforts to alter the written record was opposed by the other judges.

³² Human Rights Watch, trial observations, Jurisdiction of Kibilizi Sector, Nyanza District, Southern Province, July 27, 2008.

³³ Letter Ref: 2422KE/MD/20010 Denying Revision, signed by SNJG Executive Secretary Domitilla Mukan-
taganzwa, May 20, 2010 (copy on file with Human Rights Watch).