



RWANDA

Law and Reality

Progress in Judicial Reform in Rwanda

HUMAN
RIGHTS
WATCH



Law and Reality

Progress in Judicial Reform in Rwanda

Copyright © 2008 Human Rights Watch
All rights reserved.
Printed in the United States of America
ISBN: 1-56432-366-8
Cover design by Rafael Jimenez

Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: +1 212 290 4700, Fax: +1 212 736 1300
hrwnyc@hrw.org

Poststraße 4-5
10178 Berlin, Germany
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629
berlin@hrw.org

Avenue des Gaulois, 7
1040 Brussels, Belgium
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471
hrwbe@hrw.org

64-66 Rue de Lausanne
1202 Geneva, Switzerland
Tel: +41 22 738 0481, Fax: +41 22 738 1791
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor
London N1 9HF, UK
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800
hrwuk@hrw.org

27 Rue de Lisbonne
75008 Paris, France
Tel: +33 (1)43 59 55 35, Fax: +33 (1) 43 59 55 22
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009 USA
Tel: +1 202 612 4321, Fax: +1 202 612 4333
hrwdc@hrw.org

Web Site Address: <http://www.hrw.org>



Law and Reality

Progress in Judicial Reform in Rwanda

- I. Summary..... 1**
- II. Methodology..... 6**
- III. Recommendations..... 7**
 - To the Rwandan government7
 - To the judicial system.....7
 - To the Rwandan legislature..... 8
 - To donors 8
- IV. Background..... 10**
- V. Justice for the Genocide..... 12**
 - Practical Problems: Turning on the Lights12
 - Identifying and Prosecuting Perpetrators: the Issue of Scale..... 13
 - The Legal Basis for Prosecution14
 - Prosecution in Conventional Courts16
 - Gacaca*: Popular or Political Justice? 17
 - “Justice is a Political Problem”19
 - Reclassification by Administrative Decision..... 21
- VI. Creating a Modern Professional Judicial System 23**
 - Fewer Courts..... 24
 - Administrative Autonomy 26
 - More Highly Trained Personnel27
 - Increased Efficiency..... 28
 - Greater Speed for Justice—but not for Genocide Cases 29
 - Improved Protection for Human Rights..... 31
- VII. “Divisionism” and “Genocide Ideology” 34**
 - Imprecise Laws.....34

One Truth	36
The Campaign against “Divisionism” and “Genocide Ideology”	37
Prosecutions of “Divisionism” and “Genocide Ideology”	40
The New Law on “Genocide Ideology”	41
VIII. Independence of the Judiciary.....	44
Law and Reality	44
Limits on Administrative Autonomy	45
Misuse of Prosecutorial Power.....	46
Interference in Judicial Cases.....	51
Political Cases	52
Genocide cases	60
Other Cases.....	64
Consequences of Trying to Remain Independent	66
Lack of Respect for Judicial Orders.....	67
IX. Challenges to Fair Trial Standards	70
The Presumption of Innocence.....	70
The Right to Present Witnesses.....	73
The Right to Legal Counsel.....	78
The Right to Humane conditions of Detention and Freedom from Torture	82
Protection from Double Jeopardy	85
Monitoring Trials	87
X. Equal Access to Justice: Prosecuting Crimes by RPA Soldiers	89
Interface with Other Judicial Systems.....	94
XI. Future Plans for Justice	96
XII. International Support	98
XIII. Acknowledgments	100
XIV. Annex 1 - Number of Genocide Cases Judged	101
XV. Annex 2 - Analysis of RPA prosecutions by the Rwandan government for crimes committed in the year 1994	103

I. Summary

“We have beautiful laws, among the best in the world.

But they are not obeyed.”

— A Rwandan judge

The Rwandan authorities have improved the delivery of justice in the last five years, a noteworthy achievement given the problems they faced. But the technical and formal improvements in laws and administrative structure have not been matched by gains in independence in the judiciary and assurance of rights to fair trial. The laws have changed considerably, the underlying political dynamics far less. So far, the political context has hindered the full realization of the potential of the reforms.

When the government dominated by the Rwandan Patriotic Front (RPF) took power in Rwanda at the end of the 1994 genocide, it was confronted by the need to deliver justice for the horrible killings that had cost the lives of an estimated three-quarters of the Tutsi population. At the same time it saw the need to reform a judicial system, decrepit even before the onset of war and seriously damaged by the years of violence.

From 1996 to 2002, the government brought some 7,000 persons to trial on charges of genocide and made some progress both in recruiting new staff and rebuilding the infrastructure of the judicial system. But as of 2001 more than a hundred thousand persons were still detained and the courts continued to operate much as they had in the past, slowly and inefficiently.

The government sought to make faster progress in the judicial domain by undertaking two dramatic initiatives.

It launched *gacaca* jurisdictions, a form of popular justice modeled on past customary conflict-resolution practices, to judge most cases of genocide. Hundreds of thousands of elected judges, chosen for their integrity rather than for their formal education, were authorized to deliver justice in the name of the local community.

At the same time the government initiated a thorough reform of conventional justice, seeking to create a “modern” professional judiciary that would support the commercial and financial development envisioned for Rwanda. With a series of new laws, aspects of Anglo-American jurisprudence were incorporated into a system previously modeled on European-based law. The judicial system was provided with greater autonomy, the number of courts and judges was reduced, and educational criteria were set for judicial posts. Some rights of the accused were strengthened and in 2007 the death penalty was abolished, a notable step. Unfortunately at the same time the maximum penalty for serious crimes was set at life imprisonment in solitary confinement.

Gacaca jurisdictions and conventional courts differ from each other in law, procedure, and personnel, but the two nonetheless comprise a single judicial system with considerable interchange between them. This report focuses on the conventional sector and those aspects of *gacaca* jurisdictions that impinge most directly upon it. The result of research conducted between 2005 and 2008, the report assesses recent changes across a broad spectrum rather than focusing specifically on the question being debated at the time of publication, whether Rwandan genocide suspects should be sent back to Rwanda for trial. Human Rights Watch takes the position that at this time the independence of the courts and the assurance of fair trial rights are too limited to permit such extradition or transfer. The information presented in this report will make clear why we take this position.

Judicial authorities operate in a political context where the executive continues to dominate the judiciary and where there is an official antipathy to views diverging from those of the government and the dominant party, the Rwandan Patriotic Front (RPF). A campaign against “divisionism” and “genocidal ideology” imposes the risk of serious consequences on persons who question official interpretations of the past and who would prefer other than the official vision for the future.

A significant number of genocide prosecutions have been marred by interference in the judicial process by powerful persons, some official and some not, and by other violations of due process rights. Long after the end of prosecutions for genocide, the precedent of such inappropriate practices may well continue to burden the Rwandan

judicial system as it attempts to bring its courts into conformity with international standards of due process.

The *gacaca* jurisdictions, based on popular meetings at local level, were supposed to protect the rights of all participants by the transparency of the proceedings and the full participation of all members of the community. But changes in procedures for gathering accusations and for designating the gravity of crimes made it easier for officials and others working with them to influence the course of justice for personal and political ends. As *gacaca* jurisdictions prepare to end operations in 2008—after two short years of full trial activity—they leave behind significant numbers of dissatisfied people, both among survivors of the genocide and among those who believe themselves unfairly convicted of genocide.

The conventional courts are now staffed by judges who have more formal education and who deliver judgments more rapidly than in the past. Judicial authorities enjoy greater control over their budget and operations than previously. Judges remain subject, however, to pressure from members of the executive branch and other powerful persons. Basic fair trial rights are not fully assured, including the presumption of innocence, the right of equal access to justice, the right to present witnesses in one's own defense, the right to humane conditions of detention, the right to freedom from torture, and the right to protection from double jeopardy.

Delivering justice for the genocide is essential for the establishment of the rule of law in Rwanda and in the international community more generally. Since 1994 Human Rights Watch has advocated for those credibly accused of genocide to be brought to justice, and has contributed to that effort by providing documents and expert testimony to the International Criminal Tribunal for Rwanda (ICTR) and to national jurisdictions in Rwanda, Belgium, Switzerland, Canada, and the United States.

According to investigations by various United Nations (UN) agencies as well as non-governmental organizations (NGOs), soldiers of the Rwandan Patriotic Army (RPA), the military branch of the RPF, committed war crimes and crimes against humanity during 1994 and after. These crimes are not equivalent to genocide but the rights of

the victims of such crimes are equivalent: under international and Rwandan law, all have the right to justice, regardless of the nature of the crime and regardless of their ethnic and political affiliation and the affiliation of the alleged perpetrator.

Within Rwanda political considerations have made it virtually impossible for victims of crimes by RPA soldiers to receive justice. According to government statistics, only 32 soldiers have been brought to trial for crimes committed against civilians in 1994, with 14 found guilty and given light sentences. In jurisdictions beyond its borders, Rwanda has vigorously pursued its goal of averting prosecution of its soldiers. When the ICTR prosecutor announced investigations of crimes by RPA soldiers, Rwandan officials in 2002 impeded the travel of witnesses for genocide trials at the ICTR, forcing the suspension of several trials for months. After a French judge issued warrants for nine RPA officers, Rwanda broke diplomatic relations with France; after a Spanish judge issued warrants for 40 RPA soldiers, President Kagame and government ministers denounced his action and called for other national jurisdictions to ignore the warrants. In June 2008 the ICTR prosecutor told the UN Security Council that Rwanda would soon prosecute four military officers accused of having killed 15 civilians, 13 of them clergy, in 1994. It is not yet clear if this case represents a new effort to render justice on a meaningful scale or whether it is merely a token gesture made in the face of international pressure.

Human Rights Watch calls upon the Rwandan government to adopt and implement laws that will give judges the means to enforce their orders over other agents of the state, including the police. We urge the legislature to amend the law abolishing the death penalty to eliminate the sentence of life imprisonment in permanent solitary confinement, and to delete similar provisions from recent legislation amending *gacaca* jurisdictions and the proposed revision of the penal code. We urge the government to order police and other state agents to respect the lives and physical integrity of citizens, including detainees, and to hold accountable those police and state agents who fail to do so.

We urge the Rwandan government to make it possible for all Rwandans to have equal access to justice, including those who suffered from crimes committed by RPA soldiers in 1994.

Donors have generously aided the Rwandan judicial system with financial and political support. They have intervened effectively in individual cases where they perceive there to have been miscarriages of justice. In addition they criticized the killings of detainees by police officers in early 2007, apparently helping to end of that abuse. Given their substantial support for the judicial sector, donors are in a position to do more, specifically to press more vigorously for passage of legislation reinforcing judicial authority and eliminating the provision of life imprisonment in solitary confinement as well as to firmly support prosecutions in connection with RPA crimes.

II. Methodology

This report is based on observations of conventional trials and *gacaca* proceedings and on some 100 interviews with legal professionals, of both Rwandan and other nationalities. Most of the research was done between 2005 and mid-2008, although Human Rights Watch research materials from earlier years have been used to provide background to more recent developments. Among the jurists interviewed were four ministers of justice and past ministers of justice; 14 judges or former judges at all levels of the conventional sector from local courts (*tribunaux de base*) to the Supreme Court; 11 prosecutors and former prosecutors; the inspector of courts and her staff; court clerks; the executive secretary of the National Service of *Gacaca* Jurisdictions and her staff; coordinators from the *gacaca* service; a score of *gacaca* judges; and 12 Rwandan attorneys, including three presidents (*batonniers*) or former presidents of the Rwandan bar; 15 representatives of international and Rwandan non-governmental organizations working in the field of justice; and two prosecutors or past prosecutors and seven attorneys of the office of the prosecutor of the ICTR. In addition to jurists, we interviewed over a hundred Rwandans who were victims of abuses, including abuses of the judicial system, and others who were satisfied with the justice they received. We also interviewed persons who served as witnesses in trials and others who could have given testimony but declined to do so.

The delivery of justice in Rwanda is an issue of great political importance. Some who have made criticisms of the way the judicial system operates fear reprisals should their opinions become known. They agreed to comment on the system only if assured of confidentiality. For that reason, identifying details about some interviewees are omitted from some references.

III. Recommendations

To the Rwandan government

- Order government officials to end interference in judicial proceedings.
- Order all police officers and other agents of the state to respect the lives and physical integrity of all detainees; prosecute any who kill or torture persons in custody, including in instances meant to influence their testimony, or the obtaining of testimony.
- Order all agents of the state to respect the presumption of innocence and to end the use of collective punishments.
- Direct state agents to uphold the right to equal access to justice, including by prosecuting violations of international humanitarian law by RPA soldiers.
- Provide increased resources to the judicial system to facilitate the hiring of more judges and prosecutors, to reduce the backlog of cases awaiting trial, to permit the witness protection service to expand its activities, and to improve conditions inside the prisons.
- Ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as the Optional Protocol relative to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ratify the Second Optional Protocol to the International Convention on Civil and Political Rights (ICCPR) relating to abolishing the death penalty.
- Establish a mechanism that allows the public to know the proposed content of resolutions and to follow their progress.

To the judicial system

- Direct prosecutors and *gacaca* jurisdictions to register only those accusations that have been rigorously vetted and to pursue prosecution of persons who knowingly accuse others falsely.
- Investigate, prosecute, and punish appropriately, all war crimes and crimes against humanity committed by soldiers of the Rwandan Patriotic Army (RPA).

- Expand the program to protect and assist victims and witnesses and assure that witnesses of both prosecution and defense have access to its service.
- Enforce legal provisions requiring authorities to respect defendants' rights and comply with court orders.

To the Rwandan legislature

- Revise the Penal Code to set sanctions for state agents who fail to execute judicial orders.
- Revise the Penal Code to make intimidating or tampering with witnesses or judicial personnel a crime.
- Revise the Code of Criminal Procedure to disallow the admittance into evidence of any witness statements or confessions made under duress or coercion.
- Revise the Code of Criminal Procedure and the 2004 and 2007 *gacaca* laws to clearly prohibit the trial or punishment of an accused already convicted or acquitted of the same offence.
- Revise the July 2007 law abolishing the death penalty to eliminate the provision for imprisonment in permanent solitary confinement and delete similar provisions from the recently passed law amending *gacaca* jurisdictions and the proposed revision of the penal code.
- Establish the proposed commission on reform of the laws and ensure it has the resources necessary to draft laws that are precise and afford necessary guidance to police and judicial officers.

To donors

- Continue to vigorously point out cases of apparent injustice to Rwandan authorities and press them for immediate corrective action.
- Call on the government to pass proposed revisions to the Penal Code giving judges greater authority to enforce their orders and to delete provision for imprisonment in permanent solitary confinement.
- Provide additional funds and assistance for the development of appropriate witness protection programs.

- Provide police and other relevant criminal justice agents with training in international human rights law, including international fair trial standards, and the protection of defendants' rights under Rwandan laws.
- Press the UN Security Council to extend the ICTR mandate and assure that funding is provided to permit completion of its full mandate of prosecuting genocide, war crimes, and crimes against humanity.
- Support all efforts to press for and assist the Rwandan government and the ICTR in investigating and prosecuting war crimes and crimes against humanity committed by the RPA between January 1, 1994 and December 31, 1994.
- Support independent Rwandan and international nongovernmental organizations seeking to monitor judicial proceedings in Rwanda and to publish the results of their observations.
- Respect obligations under the Interpol or European Arrest Warrant systems and encourage Rwandan authorities to do the same.

IV. Background

The Rwandan Patriotic Front (RPF), a politico-military movement made up largely of Tutsi, invaded Rwanda in 1990 with the declared aim of assuring the right to return of refugees, many of whom had been living in exile for a generation, and of ending the rule of President Juvenal Habyarimana. Like most government officials and the majority of Rwandans, Habyarimana was Hutu. After nearly three years of alternating combat and negotiations, the RPF and the Rwandan government signed a peace treaty in August 1993 but an agreed-upon transitional government was never put in place.

In April 1994 after an airplane carrying President Habyarimana was shot down, combat resumed and the Rwandan government, assisted by tens of thousands of soldiers, militia, and ordinary citizens, carried out a genocide against Tutsi civilians, whom they treated as enemy combatants. In July 1994 the RPF took control of Rwanda and drove the government and its defeated army out of the country.

During this period in Rwanda—as later in the Democratic Republic of Congo (DRC)—RPF soldiers committed serious violations of international humanitarian law, including massacres and summary executions of civilians. These crimes, documented by UN experts and by Rwandan and international human rights organizations, are less well known than the genocide which is widely recognized, including by judicial notice at the ICTR.

Given the scale and nature of the genocide, international leaders as well as Rwandans demanded that the perpetrators be brought to justice. In November 1994, after a United Nations-appointed commission of experts found that genocide and war crimes had been committed, the United Nations Security Council established the ICTR to try these crimes. Since then Belgium, Switzerland, Canada, and Rwanda have also prosecuted persons accused of genocide and war crimes. Other national judicial systems are currently investigating charges against persons resident in their jurisdictions.

While the need for justice was felt more acutely within Rwanda than elsewhere, the government was ill-prepared to deliver it. The scale and complexity of the crimes would have overwhelmed even the best-equipped judicial system and that of Rwanda, feeble and poorly staffed before the war, had been further crippled by war-time losses. Officials had to get the system functioning again and at the same time begin the daunting task of prosecuting persons accused of genocide.

From the establishment of the government in 1994 through to the time of this writing, mid-2008, genocide cases have demanded the greatest share of judicial and police resources, initially exclusively in the conventional sector and later in the *gacaca* jurisdictions (customary conflict-resolution processes adapted to address crimes linked to the genocide).

V. Justice for the Genocide

The challenge of delivering justice for the genocide in Rwanda has been huge. It started with the basic realities of life in a society in which both lives and institutions were shattered by genocide. It involved coping with criminal acts on an immense scale. It required establishing the legal basis of prosecution—and establishing institutions and systems that could bring justice.

Practical Problems: Turning on the Lights

Like other parts of the Rwandan government, the judicial system suffered serious losses in staff, facilities, and equipment during the war. Of some 600 judges in service before April 1994, for example, only 237 were available to resume work in August 1994 and only 53 of these sat in courts with jurisdiction over serious crimes. Similar losses had thinned the ranks of prosecutors, judicial officers, police officers, clerks, and lawyers. The ministry of justice recruited hundreds of new employees but was able to provide them with only minimal training before putting them to work.¹

Other practical problems were similarly daunting. War-time damage to the judicial ministry building was so serious that the new minister of justice worked from his hotel room, filing documents in boxes under his bed. Other court buildings had been stripped of furniture and electrical fixtures. At the national prosecutor's office, judicial officers had trouble finding paper and pens to record the interrogations that they wrote out by hand.²

International donors, both multilateral and bilateral, provided substantial assistance in rebuilding the staff and infrastructure of the system, but it took time for their support to take effect.

¹ United Nations High Commissioner for Human Rights Field Office for Rwanda (HRFOR), "The Administration of Justice in Post-Genocide Rwanda," HRFOR/Justice/June 1996/E, pp. 12-13 and annex 1.

² Human Rights Watch field observations, Kigali and Butare, August 28-September 1, 1994; United Nations Human Rights Field Operation in Rwanda (HRFOR), "The Administration of Justice in Post-Genocide Rwanda," p. 4.

Identifying and Prosecuting Perpetrators: the Issue of Scale

In August 1994 the new government had to decide how many of the hundreds of thousands of participants in the genocide to prosecute, how to evaluate their levels of guilt, and how severely to punish them. The minister of justice and other officials began with the premise that officials and political leaders of the previous government had deliberately misled ordinary people into seeing Tutsi civilians as enemies, the equivalent of combatants to be attacked and killed. They were clear that such leaders should be prosecuted, as should those who had killed most often and most brutally, a number that the minister estimated would amount to some ten thousand persons.³ He was firm on the need for such persons to be tried in conventional courts and rejected any use of the *gacaca* process. Himself a Hutu, he said that *gacaca* proceedings would “trivialize the genocide” and diminish the credibility of convictions. He feared that failure to clearly establish the guilt of some Hutu would lead to the generalization of guilt to all Hutu.⁴

The minister held that the massive number of others who had participated by manning barriers, doing patrols, and damaging or stealing property should not be imprisoned but should instead be educated to see the harm they had done and should be obliged to make restitution for all property damaged or stolen.⁵

Despite the intention of prosecuting a narrowly defined group of suspects, however, the government permitted soldiers and others without legal authority to arrest persons accused of genocide, sometimes on the basis of a single unverified accusation. Numbers of detainees mushroomed. By October 1994, an estimated 58,000 persons were detained in space meant for 12,000,⁶ and by 1998, the number jailed had grown to 135,000.⁷ Overcrowding and inadequate sanitation, food, and

³ Human Rights Watch interview, Minister of Justice Alphonse-Marie Nkubito, Kigali, August 28, 1994.

⁴ Ibid.

⁵ Human Rights Watch interviews, Minister of Justice Alphonse-Marie Nkubito, Kigali, August 28, 1994 and Prosecutor General Francois-Xavier Nsanzuwera, October 12, 1994.

⁶ United Nations, Office of the Resident Coordinator, “Rwanda: United Nations Situation report covering the month of October,” October 1994.

⁷ Figures cited by President of the High Court Johnston Busingye in a paper delivered at the Centre for International Legal Cooperation, Seminar on Legal and Judicial Reform in Post Conflict Situations and the Role of the International Community, Dec 7, 2006 and published as “Reality and challenges of legal and judicial reconstruction in Rwanda,” The New Times, December 31, 2006.

medical care created conditions that were universally acknowledged to be inhumane. Many persons were held for years with no investigations done and no charges specified, a situation that violated Rwandan law until legislators passed several exceptional measures permitting such detentions.⁸

The Legal Basis for Prosecution

The 1996 Law and Categorization of Crimes

Rwanda had signed and ratified the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions and other conventions of international humanitarian law in 1975, but as of 1994 it had no provision for prosecuting and punishing these crimes in its domestic penal code.⁹ Although justice officials recognized the need to immediately create a legal basis for prosecuting genocide, the necessary law—Organic law 8/96—was not adopted until two years after the new government had taken power.¹⁰

To avoid offending the principle of non-retroactivity (the prohibition on punishing persons for crimes that were not defined as crimes when they were committed),¹¹ the lawmakers grounded the authority to punish these offences in the prior Rwandan ratification of the relevant international conventions. The law punished crimes specified in the Rwandan penal code, such as murder, which were also listed as crimes in the international convention against genocide.¹² In addition, it punished as constituent acts of genocide violations of the Rwandan penal code that were not

⁸ Human Rights Watch/International Federation of Human Rights Leagues, *Leave None to Tell the Story* (New York: Human Rights Watch, 1999), p. 749.

⁹ Rwanda had ratified the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and its additional protocols, and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968.

¹⁰ Organic law 8/96 of 30 August 1996 on the Organization of the Prosecution of Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed since 1 October 1990, Government of Rwanda, *Official Journal*, no. 17, September 1, 1996. Although the title of the law speaks only of genocide and crimes against humanity, the first article refers also to the Geneva Convention and its additional Protocols of 12 August 1949 which prohibit what are generally called war crimes.

¹¹ The principle of non-retroactivity is specified in the International Covenant on Civil and Political Rights (ICCPR), article 15, and the African Charter, article 7 (2). Rwanda has ratified both treaties.

¹² Organic law 8/96 of 30 August 1996 on the Organization of the Prosecution of Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed since 1 October 1990, article 1.

listed in the international convention but that were committed “in relation with events” surrounding the genocide and crimes against humanity.¹³

With this provision, the law neglected an essential part of the definition of genocide according to the international convention, that is, the intent of the actor to eliminate all or part of a listed group. Thus persons convicted of crimes like theft committed between April and June 1994, could be—and were—convicted of genocide with no consideration of whether they were merely seeking to profit opportunistically from the situation or whether they actually sought to eliminate persons of the Tutsi ethnic group.¹⁴

Reflecting early thinking on differences in levels of responsibility among perpetrators, the 1996 law divided accused persons into four categories on the basis of the gravity of the crimes committed: category one included leaders, organizers, and the most notorious killers, category two included killers and rapists¹⁵, category three included those who killed or inflicted bodily harm without the intention to kill, and category four included those who stole or damaged property. Penalties ranged from death or life imprisonment for persons convicted of category one crimes to restitution of property but no imprisonment for persons convicted of category four crimes. The 1996 law specified that the national prosecutor was to draw up and publish a list of all persons accused of category one crimes. Consistent with the notion that many Rwandans had been misled and would come to recognize the wrongness of their actions, the law introduced a form of “plea-bargaining,” permitting sentences to be reduced for those who confessed their crimes and gave full information on their accomplices.¹⁶

In 2001 a new law shifted most genocide prosecutions to *gacaca* jurisdictions (see below), but retained the division of accused into categories according to the gravity

¹³ Ibid.

¹⁴ See the detailed discussion of this problem and relevant judicial decisions in Caroline Stainier, Albert Muhayeyezu, Jean Jacques Badibanga and Hugo Moudiki Jombwe, *Vade-Mecum, Le crime de genocide et les crimes contre l’humanité devant les juridictions ordinaires du Rwanda* (Brussels: Avocats sans Frontières, 2004), pp. 119–139.

¹⁵ In later laws rapists were put in category one.

¹⁶ Organic law no. 8/96 of 30 August 1996 on the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity Committed Since 1 October 1990, article 2.

of the crime allegedly committed.¹⁷ The 2001 law, and its 2004 amended version, generally followed the definition of genocide found in the 1996 law, but required that violations of the penal code be committed with genocidal intent—rather than merely in relation with the events of the genocide—in order to be qualified as genocide.¹⁸

Prosecution in Conventional Courts

Judicial officials began genocide trials in conventional courts in December 1996 but two years later were already preparing to embark on another strategy to dispose of the growing backlog of cases. By 1998 only 1,292 persons had been judged and relatively few accused persons had confessed, disappointing hopes that plea-bargains would reduce the enormous number of persons to be tried. If the same rate of prosecutions were to continue, it appeared sure to take decades to prosecute the estimated 135,000 detainees.¹⁹ Rather than invest additional resources in speeding the delivery of justice in conventional courts, the government turned to another plan, the *gacaca* jurisdictions.

The new direction was announced in January 1998 by Vice-President Paul Kagame, already the dominant political figure in Rwanda. After remarking that Rwanda could not afford the U.S. \$ 20 million a year necessary to support the huge population then in prison, he proposed that the most guilty be executed, and that others be dealt with through customary judicial mechanisms, with those convicted being sentenced to terms of enforced labor on public works.²⁰ The first of the measures was carried out in part three months later when 22 persons convicted of genocide were

¹⁷ Organic Law no. 40/2000 of 26 January 2001 Establishing the Organization, Competence and Functioning of Gacaca Courts Charged with Prosecuting Establishing the Organization, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and other Crimes Against Humanity, Committed between October 1, 1990 and December 31, 1994

¹⁸ Organic Law of June 19, 2004 Establishing the Organization, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and other Crimes Against Humanity, Committed between October 1, 1990 and December 31, 1994, article 105. A 2003 law punishes any genocide committed after the date of its passage and a 2007 law refers genocide prosecutions transferred from the ICTR and other foreign jurisdictions to the Rwandan High court, but without treating the definition of genocide as such. Organic Law of June 19, 2004 Establishing the Organization, Competence and Functioning of Gacaca, article 1.

¹⁹ Figures cited by President of the High Court Johnston Busingye in a paper delivered at the Centre for International Legal Cooperation, Seminar on Legal and Judicial Reform in Post Conflict Situations and the Role of the International Community, Dec 7, 2006 and published as “Reality and challenges of legal and judicial reconstruction in Rwanda,” The New Times, December 31, 2006.

²⁰ Integrated Regional Information Network (IRIN), news report no. 340, January 24-26, 1998.

executed, the first and only formal executions carried out as a consequence of the genocide.²¹ The second proposal resulted three years later in the establishment of *gacaca* jurisdictions to try all but the most serious cases of genocide.

By mid-2002, conventional courts had judged 7,181 persons accused of genocide. After 2002, the rate of prosecutions slowed as prosecutors shifted their efforts to preparing cases for transfer to *gacaca* jurisdictions. Then the courts halted work for months as they took account of organizational changes and other aspects of the extensive judicial reforms of 2004.

From the resumption of court activity in 2005 to March 2008, conventional courts tried only 222 genocide cases.²² In 2008 judicial officials proposed and the legislature adopted a law sending virtually all remaining cases of genocide to *gacaca*, with the exception of accused persons who served as national or provincial leaders during the genocide and those sent back to Rwanda for trial from other national or international jurisdictions. As a result of the new law, the prosecution of genocide cases by conventional courts will soon be effectively ended after what amounts to less than a decade of full judicial activity.

***Gacaca*: Popular or Political Justice?**

When *gacaca* jurisdictions were established in 2001, they were meant to judge all but the most serious crimes of genocide (those of category one), which were left to the conventional courts. It was hoped that the *gacaca* process would speed the resolution of the huge backlog of cases, reduce the prison population, and contribute to reconciliation.

Gacaca jurisdictions brought together modified elements of customary practices for resolving conflicts and aspects of a conventional state-run punitive justice system.²³

²¹ Rwanda abolished the death penalty in July 2007; at that time some 1300 persons who had been sentenced to death saw their punishment commuted to life in prison. See below.

²² See annex 1.

²³ Little scholarship examines whether—and under what circumstances—*gacaca* historically operated. Ordinarily sessions were reserved exclusively for adult males. For one examination of customary practice, see Filip Reyntjens, “Le *gacaca* ou la justice du gazon au Rwanda” in *Politique Africaine*, “Les Droit et ses Pratiques”, No. 40, December 1990, pp. 31-44, <http://www.politique-africaine.com/numeros/pdf/040031.pdf> (accessed October 29, 2007).

In essence it involved popularly elected judges deciding cases related to the genocide before a gathering of the local population. The judges, who were to guide the hearings and then finally to deliver the verdict of the community, were chosen on the basis of their integrity rather than their formal learning. Some did not read or write, although all received several days of training on the relevant laws and procedures. The transparency of the process and participation of the entire community was supposed to assure the legitimacy of the proceedings and to protect the rights of all participants, making unnecessary the kinds of fair trial guarantees provided by Rwandan law and international conventions. The accused had no access to counsel in *gacaca* jurisdictions, for example, although that right is guaranteed by the Rwandan constitution and by the International Convention on Civil and Political Rights to which Rwanda is party.²⁴

After years of preparation—election of judges, explanatory meetings for citizens, collecting information and accusations from the local community—actual trials began on a pilot basis in about 10 percent of the country in 2005. Even before trials had begun throughout the rest of Rwanda in July 2006, judicial authorities had announced a projected end to the process in 2007, a deadline later extended into late 2008.²⁵

From its inception through its relatively brief period of operation, the *gacaca* jurisdictions were altered four times by law (2004, 2006, 2007 and 2008),²⁶ as well

²⁴ In one case, a lawyer engaged to defend an accused before a conventional court was permitted to continue advising his client after the court was transferred to a *gacaca* jurisdiction, but he was not allowed to appear formally—in his robes—before the judges. Human Rights Watch interview, lawyer, Kigali, September 11, 2007. According to the president of the bar association, the National Service of *Gacaca* Jurisdictions was considering permitting lawyers to speak in *gacaca* hearings, but again as members of the public and not in robes signifying their mandate to represent the accused. Fondation Hirondelle, “Rwanda/Justice – Des Avocats Rwandais devant les *gacacas*?” September 9, 2007.

²⁵ Human Rights Watch interview with Executive Secretary of the National Service of *Gacaca* Jurisdictions, Domitilla Mukantanzwa, November 7, 2007.

²⁶ Based on administrative units, the jurisdictions originally were to operate at level of cell, sector, district and province but in 2004 the district and provincial levels were suppressed. The number of judges required at a session, first set at 19, was reduced to 14 in 2004 and to 7, with a quorum of 5 in the 2007 law. Organic Law no. 40/2000 of January 26, 2001 Setting Up *Gacaca* Jurisdictions and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Between October 1, 1990 and December 31, 1994; Organic Law of June 19, 2004 Establishing the Organization, Competence and Functioning of *Gacaca* Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and other Crimes Against Humanity, Committed between October 1, 1990 and December 31, 1994; Organic Law no 28/2006 of 27/06/2006 modifying and complementing Organic law 16/2004 of 19/06/2004 establishing the organisation, competence, and functioning of *Gacaca* Courts charged with prosecuting and trying perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994; Organic Law Number 10/2007 of 01/03/2007 Modifying and Complementing Organic Law Number 16/2004 of 19/6/2004 Establishing the Organisation, Competence and

as by administrative order or informal but official directions on several other occasions. Some of the changes, such as in the size and number of jurisdictions, seem of relatively little importance, but others altered the fundamental nature of the process, reducing the independence of the jurisdictions and diminishing the transparency and participation that were supposed to protect the rights of the participants.

Initially welcomed by victims and accused persons alike, *gacaca* jurisdictions have met popular expectations in some communities but failed to satisfy parties—whether victim or accused or both—in many others. A general assessment of the jurisdictions lies outside the parameters of this report. Here we deal only with official and other interference with *gacaca* and with other aspects of the *gacaca* jurisdictions that impinge on the operation of conventional courts.

“Justice is a Political Problem”

Even before the *gacaca* jurisdictions were actually trying accused persons, senior officials in the ministry of justice anticipated that the process would necessarily be political. In a November 2003, one such official told Human Rights Watch researchers repeatedly that “justice is a political problem that needs to be solved politically.” The minister of justice, present in the interview, did not question this assertion.²⁷

This recognition of the political nature of *gacaca* justice notwithstanding, the *gacaca* law of 2004 seemed to provide some measure of judicial independence for the jurisdictions by excluding political leaders, administrative officials, magistrates, and police officers and soldiers from serving as judges.²⁸ Administrative officials—often members of the dominant RPF party—were to provide logistical assistance, encourage the participation of the population and “monitor” (in ways unspecified)

Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes against Humanity, Committed Between October 1, 1990 and December 31, 1994 as Modified and Complemented to Date.

²⁷ Human Rights Watch interview, Minister of Justice and high ranking official in the ministry of justice, Kigali, November 21, 2003.

²⁸ Organic Law of June 19, 2004 Establishing the Organization, Competence and Functioning of Gacaca Courts, article 15.

the jurisdictions.²⁹ They were not authorized to play any other role in the judicial process.

Limits on Judicial Independence in Gacaca

In November 2004, however, as authorities were preparing for accusations to be collected nationwide the National Service of *Gacaca* Jurisdictions (SNJG) granted local officials disproportionate power in the process of making accusations and assigning accused people to categories. Later in the process, in 2007, SNJG agents were permitted to wield extensive power over the categorization of accused persons. These changes in procedure opened the way for officials—and others working through them—to influence the judicial process, sometimes to the benefit of the accused, but probably more often to the benefit of the accusers.

Initially members of the community were to accuse alleged perpetrators in public gatherings, the local *gacaca* assembly, but in 2004 the SNJG mandated local administrative officials, and particularly the *nyumbacumi* or person in charge of ten households, to gather information from small groups or even by going door to door in the community. The *nyumbacumi* later presented the accusations to the assembly, but this was to permit local residents to check that the information had been correctly recorded rather than to test its truth.³⁰

The increased role of the *nyumbacumi* lessened the importance of the popular assembly and of judges originally charged with responsibility for gathering information about accusations. By acquiring a special role behind the scenes, the *nyumbacumi*—and others who worked through him—had disproportionate power to influence the nature and amount of information that would form the basis of the judicial files of accused persons.

The relatively private way in which accusations were gathered under the changed policy clearly deprived the accused person of the guarantee that was supposed to be provided by the openness of the process. He or she had no opportunity to ensure

²⁹ Organic Law of June 19, 2004 Establishing the Organization, Competence and Functioning of Gacaca Courts, article 33.

³⁰ *Ibid.*, articles 35-37.

that any information in his or her defense was recorded—in fact, the forms that the *gacaca* service provided administrative officials for recording information had space only for accusations, none for exculpatory information.³¹ Nor had the accused any opportunity to contest charges when they were read out to the assembly.

With the establishment of the *gacaca* jurisdictions, *gacaca* judges at the cell level assumed responsibility for assigning accused persons to categories, a duty previously attributed to the national prosecutor and his office. The judges based their determination on information gathered during the accusation process and that the accused had not had the opportunity to contest. The placement in categories effectively determined the seriousness of punishment in case of conviction.³²

In addition, when persons placed in category one were brought to trial in conventional courts, judges in these courts sometimes relied on the untested information gathered during the *gacaca* accusation process in deciding the case. In one appeals trial in the High Court in 2006, a three judge panel used information from a *gacaca* jurisdiction to justify its confirmation of the conviction of the accused without independently assessing the credibility of the information. In another such case, the judges accepted only part of the information provided by the *gacaca* jurisdiction but again did not attempt to verify the part accepted.³³

Reclassification by Administrative Decision

As the accusation phase of *gacaca* ended, some 818,000 persons had been accused, 77,000 of them placed in category one and so designated for trial in conventional court. These numbers, particularly those in category one, far exceeded those originally foreseen by Rwandan officials. Recognizing that so many conventional trials would take decades—one of the eventualities that the government intended to avoid by creating *gacaca*—lawmakers redefined the

³¹ See a thorough study of the importance of this change in Penal Reform International, “Rapport de monitoring et de recherché sur la Gacaca, La récolte d’information en phase nationale,” June 2006, p. 32.

³² *Ibid.*, pp. 36-39.

³³ High Court, Kigali, Cases no. RPA/ GEN/ 0235/ 05/ HC/ KIG, June 20, 2006 and JRPA/Gen/0035/0S/HC/KIG, August 8, 2006. See also Kamashabi Felicien, “Ngoma/Mugesera : Gakware Léopold a commencé à plaider,” Journal Umukindo N°29, March 2007.

categories in a March 2007 law and provided for some persons to be moved from category one to category two where they would be tried by *gacaca* jurisdictions.³⁴

During 2007 the National Service of *Gacaca* Jurisdictions sent its agents throughout the country to meet with local administrative officials and *gacaca* staff to select the persons who would benefit from this reduction in the assessed gravity of their crimes. The goal of the reclassification of the accused was to have no more than 10,000 and perhaps as few as 2,000 left in category one.³⁵

The qualifications of agents charged with the reclassification as well as the rules under which they operated were not publicly announced. Like the use of the *nyumbacumi* to prepare accusations, this process ran counter to the basic premise of *gacaca*—that is, open discussion with full community participation. Only those persons selected by the reclassification teams benefited from the change in the assessment of the gravity of their supposed crimes. Those not chosen were deprived of this benefit on what may have been an arbitrary basis, and without having had any opportunity to speak on their own behalf.

³⁴ Organic Law no. 10/2007 of 01/03/2007 Organic Law modifying and complementing Organic Law no. 16/2004 of 19/6/2004 establishing the organization, competence and functioning of *Gacaca* Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994 , article 11.

³⁵ Presentation of Prosecutor Augustin Nkusi, Bates College, March 31, 2007. Before the *gacaca* system was established, the national prosecutor was responsible for drawing up the list of category one suspects. In his third and final list in 2001 he named some 2,100 suspects in this category.

VI. Creating a Modern Professional Judicial System

At about the same time that the government decided to set up some 11,000 *gacaca* jurisdictions—remarkable by their number and the absence of educational qualification for judges—it also decided to move in the opposite direction of reducing the number of conventional courts and raising the qualifications for their judges. *Gacaca* looked to the past, supposedly joining elements of customary institutions with some concepts and practices of formal punitive justice. The new conventional courts looked to the future, fusing elements from Anglo-American law with the existing Belgian-created judicial system. *Gacaca* was to dispose of the enormous number of genocide cases, while the new conventional courts were to resolve all other judicial affairs in a modern professional system, appropriate for a nation aspiring to be a center for commerce and information technology.

A reform commission³⁶ drafted 13 laws, most of which were introduced in 2004 to deal with such problems as executive interference with the judicial system, lack of competence among judges, judicial corruption, and inadequate guarantees for due process in detentions, arrests, and trials. The elements of common law have not always fit smoothly into existing frameworks, leaving some gaps and incongruities that trouble jurists. In addition, according to one jurist who worked on the reforms, parliamentarians inexperienced in drafting legislation occasionally changed the wording of the texts proposed by legal professionals, introducing further problems.³⁷

Most jurists believe the reforms have improved the efficiency and general performance of the courts, but many also told Human Rights Watch researchers that the independence of courts is not yet assured, nor is the protection of the rights of the parties who appear before them.³⁸ Commenting in September 2007 about the

³⁶ Prime Minister of Rwanda, Decree No.53/03 of 27/07/2001 on the Establishment, Organization and Functioning of the Law Reform Commission. The commission included members from the supreme court, the prosecutor's office, the law faculty of the National University of Rwanda, the bar association and the ministry of justice.

³⁷ Human Rights Watch interviews, lawyer, Kigali, May 27, 2005. The proposed law on genocidal ideology (see below) illustrates poor legal drafting.

³⁸ Human Rights Watch interviews, judges, May 26 and 27, 2005, November 2, 3, 7, 8, 9, 2006, May 13, August 17, 2007; prosecutors, November 2, 9, 2006, May 2, 2007; lawyers, May 30, 2005, November 1 and 6, 2006, September 10 and 11, October 8 and 9, 2007.

changes, one lawyer spread his long arms wide apart and said, “Over here are the laws. They are excellent. Over here is the reality, which is a completely different thing.”³⁹

Fewer Courts

The drive to streamline the system was based on the premise that fewer courts working more efficiently would deliver justice faster and more cheaply than the existing system. The 2004 law on the organization of the judicial system cut both the number of courts and the number of judges. The effort to streamline the system was symbolized by the move from panels of three judges, usual for trials under the old system, to a single judge in all cases except certain appeals.⁴⁰ The number of judges, some 700 before the reform, stood at 247 in 2006.⁴¹

In a measure unrelated to judicial reform, the government unexpectedly changed the national administrative structure in January 2005, reducing the number of provinces from 12 to five and the number of districts from over 100 to 30. This change had an unintended impact on the judicial system because the jurisdiction of most courts was defined in terms of administrative boundaries. Legislators had failed to take that linkage into account and had made no provision for redefining jurisdictions to conform to the new administrative structure. The courts at provincial and district level were obliged to halt operations for three months. A short-term solution was found to enable the courts to operate until March 2006 when a new law brought the jurisdictional limits into conformity with the reformed administrative structure.⁴²

The March 2006 law reduced further the number of courts established under the 2004 law, providing for 60 lower instance courts with jurisdiction over less serious

³⁹ Human Rights Watch interview, lawyer, Kigali, September 11, 2007.

⁴⁰ Organic Law No.07/2004 of 25/04/2004 Determining and Organization, Functioning and Jurisdiction of Courts and Republic of Rwanda, Official Gazette No. 3 of 01/02/2004, Organic Law No.01/2004 of 29/01/2004 Establishing the Organization, Functioning and Jurisdiction of the Supreme Court.

⁴¹ Republika y'u Rwanda, Raporo y'urwego rw'ubucamanza 2006, (Republic of Rwanda, Report on the Judicial System 2006) p. 10.

⁴² Organic Law no. 14/2006 of 22/3/2006.

criminal and civil cases,⁴³ and 12 higher instance courts dealing with criminal and civil cases involving heavier penalties or higher monetary value, as well as category one genocide cases. The higher instance courts included chambers specialized in hearing the cases of minors, that is persons under the age of 18 years old, an innovation that seemed to promise faster and more appropriate justice for children.⁴⁴

A High Court comprised of 26 judges sitting in five chambers (with its seat in Kigali) was given jurisdiction over such crimes as murder or manslaughter, war crimes, treason, genocide and crimes against humanity—except those committed in Rwanda between October 1, 1990 and December 31, 1994, which as of this writing remain in the jurisdiction of *gacaca* jurisdictions and the higher instance courts. It hears appeals from courts of higher instance.⁴⁵

Gacaca courts, as described above, and military tribunals constitute separate, specialized jurisdictions of the Rwandan judicial system. The Military Tribunal and Military High Court hear cases involving members of the armed forces and civilians accused in association with them.⁴⁶ Decisions of the Military High Court may be appealed to the Supreme Court, if the defendant has been condemned to a sentence of more than ten years.⁴⁷

The Supreme Court, including 14 judges, heads the system with appellate jurisdiction over the High Court and the Military High Court. It is also responsible for overseeing the functioning of the entire court system. An Inspectorate of Courts, a new organ under the Supreme Court, monitors the performance of the courts and investigates alleged misconduct of judicial personnel.⁴⁸

⁴³ Organic Law no. 14/2006 of 22/3/2006, articles 35 and 36. Before resorting to lower instance courts, parties must attempt to settle most disputes, including some involving alleged crimes, with the help of a local mediation committee

⁴⁴ *Ibid.*, articles 44-48.

⁴⁵ *Ibid.*, articles 61-62 and 63-67.

⁴⁶ Organic Law No.07/2004 of 25/04/2004 Determining the Organization, Functioning and Jurisdiction of Courts, article 138-9.

⁴⁷ *Ibid.*, article 141.

⁴⁸ Organic Law No.01/2004 of 29/01/2004 Establishing the Organization, Functioning and Jurisdiction of the Supreme Court, articles 37 and 43 to 45.

Administrative Autonomy

The independence of the judiciary, including the military justice system, from the executive and legislative branches of government was affirmed by the new Constitution adopted in 2003 and several of the laws amended in 2004.⁴⁹ In concrete terms, the 2004 laws grant the president of the Supreme Court the power to hire, discipline, and remove judges with the approval of the Superior Council of the Judiciary,⁵⁰ a body composed of judges elected by their peers, the president of the National Commission of Human Rights, two representatives of law faculties, and the ombudsman (a national official charged with settling disputes and monitoring the ethics of officials).⁵¹ The president of the Supreme Court also oversees the administration of the courts and determines their budget.

Legal practitioners with experience in the system before 2004 praised the new structure for freeing the courts from the budgetary and administrative control of the ministry of justice.⁵² The office of the public prosecutor was also guaranteed financial and administrative autonomy from the ministry.⁵³

As part of the reform, judges' salaries were increased between two and five-fold, a measure that was meant to make them less vulnerable to corruption. Judges were also made subject to a judicial code of ethics, which required them to submit regular financial statements to the office of the ombudsman.⁵⁴

⁴⁹ The Rwandan Constitution of 2003, article 140; Organic Law No.07/2004 of 25/04/2004 Determining the Organization, Functioning and Jurisdiction of Courts, articles 64 and 143. Judicial independence is further guaranteed in Law No.06 bis/2004 of 14/04/2004 on the Statutes for Judges and other Judicial Personnel, article 22, and in Law No.09/2004 of 29/04/2004 Relating to the Code of Ethics for the Judiciary, articles 4 and 5.

⁵⁰ Organic Law No.07/2004 of 25/04/2004 Determining the Organization, Functioning and Jurisdiction of Courts, article 6.

⁵¹ Organic Law No.02/2004 of 20/03/2004 Determining the Organization, Powers and Functioning of the Superior Council of the Judiciary, article 1.

⁵² Human Rights Watch interviews with lawyers, judges and international legal professionals familiar with the system, Kigali, May 26 and 27, 2005.

⁵³ Organic Law No.03/2004 of 20/03/2004 Determining and Organization, Powers and Functioning of the Prosecution Service, article 2.

⁵⁴ Republic of Rwanda, Official Journal, no. 11 of 01/06/2004, Law No.09/2004 of 29/04/2004 Relating to the Code of Ethics for the Judiciary, article 17; Human Rights Watch interview, judge, November 2, 2006.

More Highly Trained Personnel

Another important change in 2004 was setting new educational criteria and a merit system for being nominated to judgeships. Among the judges serving before the reforms, only about 10 per cent held university degrees in law and some of the lower court judges had finished only primary school.⁵⁵ The new law required all judges to have university degrees in law. In addition High Court judges were to have six years and Supreme Court judges eight years of legal experience.⁵⁶ In July 2004 the government removed some 500 judges and appointed 223 judges, chosen from among those who had scored well in a competitive examination. Officials showed some flexibility in applying the law for the first group of candidates. About 40 percent of the new appointees at the courts of lower instance were still studying for their law degrees in 2004, a situation somewhat improved by 2006 when all but 16 of 118 lower court judges had received their diplomas.⁵⁷ Prosecutors are also supposed to have law degrees, but in 2007 only 80 percent had degrees with another 12 percent in the process of studying law.⁵⁸

In addition, officials defined “legal experience” broadly. The majority of judges named to the Supreme Court had never been judges previously.⁵⁹ In 2006, a former high-ranking official in the ministry of justice who had no previous experience as a judge was named president of the High Court.⁶⁰

Although in general more highly educated than their predecessors, many incoming judges had only just finished university. Some jurists saw the lack of courtroom experience as reducing significantly the effectiveness of the new recruits.⁶¹ A one month training program was provided to new appointees but since it focused on mastering recently adopted laws rather than on how to judge, it provided little

⁵⁵ Human Rights Watch interview, with Judge Tharcisse Karugarama, then President of the Law Reform Commission, Kigali, May 27, 2005.

⁵⁶ Law No.06 bis/2004 of 14/04/2004 on the Statutes for Judges and other Judicial Personnel, article 8.

⁵⁷ Raporo y’Urwego rw’ubucamanza 2006, p. 10.

⁵⁸ International Legal Assistance Consortium, “Justice in Rwanda: An Assessment,” Section 6.3.7, November 2007.

⁵⁹ Human Rights Watch interview, judge, November 8, 2006.

⁶⁰ “High Court president swears in today,” *The New Times*, November 3, 2006.

⁶¹ Human Rights Watch interviews, with judges, September 16, 2006 and Kigali, May 13, 2007; with Minister of Justice Tharcisse Karugarama, September 7, 2007; with former minister of justice, by telephone, October 25, 2007.

guidance on how to fulfill their responsibilities. According to the national inspector of courts, more experienced judges assist colleagues through monthly meetings in at least some jurisdictions and all are supposed to have the benefit of further training at an institute of judicial practice opened in May 2008.⁶²

Increased Efficiency

The 2004 reforms sought to hasten the slow pace of justice and to reduce the chronic and ever-mounting backlog of cases before the courts. Prior to the reforms, judges often failed to issue necessary implementing orders for their decisions, including those releasing detainees, while court clerks were years behind in providing documents necessary for filing appeals.⁶³

The 2004 law on the organization of the courts requires judges to deliver an official judgment, including reasons for the decision, within 30 days of the closure of trial proceedings. Those who failed to do so could be subject to unspecified disciplinary action.⁶⁴ A year after the reforms many judges were still failing to deliver judgments on time.⁶⁵ By 2007, judicial authorities had imposed a system of quotas on judges, with judges at the level of lower instance courts to complete 30 cases in a month and those in higher instance courts and the High Court to complete 60, or more than two for each working day in the month. No specific sanctions were provided for judges who failed to meet the goal, but they could be asked to explain to peers and superiors the reasons for their slowness.⁶⁶

⁶² Human Rights Watch interview with Inspector of Courts Odette Marara, November 2, 2006; with judge, Kigali, May 13, 2007 and with Minister of Justice Tharcisse Karugarama, September 7, 2007; with former minister of justice, by telephone, October 25, 2007; Human Rights Watch interview, Roelof Haveman, vice-rector of the International Legal Practice & Development Program, May 7, 2008.

⁶³ Human Rights Watch interviews, Kigali, May 26 and 27, 2005. In 2004 a court administrator told Human Rights Watch researchers that hundreds of copies of decisions had not been delivered in jurisdictions where he had worked, some dating back to 1998. Human Rights Watch interview with court administrator, Kigali, September 20, 2004.

⁶⁴ Organic Law No.07/2004 of 25/04/2004 Determining the Organization, Functioning and Jurisdiction of Courts, article 168; Human Rights Watch interview, lawyer, Kigali, November 1, and Inspector of Courts, November 2, 2006.

⁶⁵ Human Rights Watch interviews, judge and court clerk, Kigali, May 26 and lawyer, May 30, 2005.

⁶⁶ Human Rights Watch interviews with judge, May 13, 2007, and with Minister of Justice Tharcisse Karugarama and Inspector of Courts Odette Marara, September 10, 2007. In late 2005, Inspector of Courts Odette Marara spoke of 24 cases a month being the desirable quota for judges to meet. Human Rights Watch interview, Inspector of Courts Odette Marara, December 27, 2005.

Greater Speed for Justice—but not for Genocide Cases

Some Rwandans are clearly benefiting from speedier decisions in their cases, although the interruptions in judicial activity caused by reforms in laws and structures initially increased delays. These interruptions in operation meant that at the end of 2006 there was a backlog of nearly 48,000 cases in the judicial system.⁶⁷ According to 2007 statistics, the High Court had a backlog of 5,000 cases, with 100 cases filed every month and with only 50 being decided.⁶⁸ A project funded by the European Union has begun to address the backlog by supporting special teams of judges who deal only with long-delayed cases.⁶⁹

When the courts began to function at full speed in 2005 after the reforms, judicial authorities decided to address recently filed cases first, to keep them from adding to the mountain of undone work. A reasonable strategy in itself, this policy has meant that those jailed a long time ago have had to wait even longer for justice.

Persons awaiting justice in relation to the genocide, whether as victims or as accused perpetrators, have suffered most from this policy. They have also suffered from a clear unwillingness of judges to hear their cases. According to statistics from the inspectorate of courts, the higher courts—the only ones mandated to hear genocide cases—judged a total of nearly 23,000 cases between January 2005 and March 2008, but only 222 were genocide cases. From September 2007 through March 2008, an additional 17 genocide cases were judged.⁷⁰

The number of genocide cases judged in the year 2006 was only 42, a number so small that the 2006 annual report on the operation of the judicial system found it necessary to add an explanatory note, saying that the complexity of genocide cases and the numbers of people involved accounted for the relatively small number of cases.⁷¹ The number of 222 cases judged between January 2005 and March 2008 is

⁶⁷ Human Rights Watch interviews, staff members of two international NGOs working in the justice sector, Kigali, November 2, 2006.

⁶⁸ International Legal Assistance Consortium, “Justice in Rwanda: An Assessment,” Section 6.2.1, November 2007.

⁶⁹ Human Rights Watch interviews, Kigali, representatives of international NGOs working in the justice sector, Kigali, November 2, 2006.

⁷⁰ Raporo y’urwego rw’ubucamanza 2006 and other statistics provided by the Inspectorate of Courts. See annex 1.

⁷¹ Raporo y’Urwego rw’ubucamanza 2006, p. 33.

particularly striking when it is compared to the figures for the old—supposedly slower, less efficient system— which managed to try 7,181 persons over a period of five and a half years.⁷²

When asked about the apparent reluctance to try genocide cases, officials in the judicial sector, including judges and a prosecutor, said that judges and prosecutors see genocide cases as too complex and time-consuming. According to the Inspector General of Courts, judging one genocide case requires about four months, meaning that a judge hearing even one such case would fail to meet his monthly quota of cases decided.⁷³ Evidence in genocide cases is often scanty or of poor quality, making it necessary for judges to do further investigations.⁷⁴ In addition, some judges prefer not to hear genocide cases because the events themselves are painful to examine.⁷⁵ The failure to try genocide violates the rights of detainees, some of whom have been in prison for more than a decade without trial, and the rights of victims who seek resolution of their claims.

In arguing for the return of accused persons from the ICTR or foreign judicial systems, Rwandan officials have repeatedly asserted that trying leaders of the genocide in Rwandan courts would have significant educational and deterrent effect on Rwandans.⁷⁶ Yet Rwandan prosecutors have been slow to try some of the most highly visible persons already in their custody, those whose cases might have had such educational and deterrent effect.⁷⁷ Former Minister of Justice, Agnès Ntamabyaliro, the only minister from the previous government in Rwandan custody, was held for nine years before being brought to trial in 2006.⁷⁸ Journalists Dominique

⁷² President of the High Court Johnston Busingye in a paper delivered at the Centre for International Legal Cooperation, Seminar on Legal and Judicial Reform in Post Conflict Situations and the Role of the International Community, Dec 7, 2006 and published as “Reality and challenges of legal and judicial reconstruction in Rwanda,” *The New Times*, December 31, 2006.

⁷³ Human Rights Watch interview, Inspector of Courts Odette Marara, September 10, 2007.

⁷⁴ *Ibid.*

⁷⁵ Human Rights Watch interviews, judges, Kigali and elsewhere, November 1 and 2, 2006; with former prosecutor, May 30, 2005.

⁷⁶ Felly Kimenyi, “Arrest fugitives, West told again,” *New Times*, November 8, 2006

⁷⁷ Human Rights Watch interviews, detainees and judicial officials, Gitarama, October 18 and 25, 2007; Butare October 18, 2007; Cyangugu October 18 and 25, 2007; electronic communication, August 28, 2007.

⁷⁸ Ntamabyaliro was abducted from a refugee camp in Zambia in 1997 and incarcerated in Kigali Central Prison. The Rwandan authorities first scheduled her trial after having been notified that she was requested as a defense witness at the ICTR. Citing the need to have her available for her own trial, the Rwandan authorities delayed her arrival at the ICTR until August 2006. Her

Makeli, arrested in 1994, and Tatiana Mukakibibi, arrested in 1996, have not yet been brought to trial.⁷⁹

As of the end of June 2007, some 39,845 civil and criminal cases had been begun and were pending in the conventional courts.⁸⁰ Of these 1,142 were cases of genocide. According to information gathered by a visiting group of jurists in September 2007, 17,000 persons were waiting for their trials for genocide in conventional courts.⁸¹

Improved Protection for Human Rights

Since 2004, the most important reform regarding human rights was the abolition of the death penalty. In addition, changes in the code of criminal procedure assured the right to counsel and provided against arbitrary detention.

In a March 2007 law meant to facilitate the transfer of cases to Rwanda from the ICTR, under whose jurisdiction the death penalty is prohibited, Rwanda agreed not to impose the death penalty on any suspect transferred from the ICTR to Rwandan courts. A law adopted several months later, in July 2007, abolished the death penalty for all cases, commuting the sentences of 1,365 persons to life imprisonment.⁸² In a little noticed provision of the law, however, an article provided that certain crimes for which the death penalty might have been imposed, could be punished instead by life imprisonment with solitary confinement.⁸³ According to a press report, Minister of Justice Tharcisse Karugarama commented about the conditions of life imprisonment with solitary confinement, saying, “They will be tough in that they (criminals) will

trial in Rwanda, frequently suspended, continued as of April 2008. Human Rights Watch, interviews, lawyer, Kigali, September 11 and October 8, 2007; electronic communications, August 7 and 8, 2006 and October 25, 2007; Théoneste Muberantwali, “L’Ancienne Ministre de la Justice Serait Accusée d’actes de genocide perpétré au stade Gatwaro,” *Le Verdict*, No. 9, December 1999, p. 7; Florence Mutesi, “Former Minister “had a hand in the slaughter of 66 family members,” *The New Times*, <http://www.newtimes.co.rw/index.php?issue=1320&article=1661> (accessed October 16, 2007).

⁷⁹ Journalistes en Danger(JED), “Journalists Dominique Makeli and Tatiana Mukakibibi imprisoned for over 10 years without trial,” (accessed April 6, 2008) <http://www.ifex.org/es/content/view/full/81096>; Reporters sans Frontières, “Dominique Makeli,” (accessed April 6, 2008) www.rsf.org/article.php?id_article=2070

⁸⁰ Inspectorate of Courts, table of monthly judicial activity, June, 2007.

⁸¹ International Legal Assistance Consortium, “Justice in Rwanda: An Assessment,” section 6.2.1, November 2007.

⁸² Florence Mutesi, “Death row: over 1300 survive gallows,” *The New Times*, (accessed August 27, 2007) <http://www.newtimes.co.rw/index.php?issue=1269&article=473>.

⁸³ Organic Law N° 31/2007 Regarding the Abolition of the Death Penalty of 25 July 2007, articles 4 and 5.

regret not having been hanged.”⁸⁴ In an interview with a Human Rights Watch researcher, Minister Karugarama said his words had been quoted out of context and that what he meant was that he would prefer being hung to being imprisoned under such conditions.⁸⁵

It is the opinion of Human Rights Watch that prolonged solitary confinement constitutes inhuman treatment and violates the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 7 of the ICCPR which provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The Human Rights Committee has interpreted Article 7 of the ICCPR in the following way: “The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by Article 7.”⁸⁶

Rwandan judicial authorities seemed to accept this interpretation, stating in a March 2008 submission to the ICTR that permanent solitary confinement may violate the Convention against torture.⁸⁷ Despite this position of judicial authorities, the Rwandan legislature in May passed a law amending *gacaca* jurisdictions that provides life imprisonment in solitary confinement as punishment for certain crimes. As of this writing, the legislature is debating a second law amending the code of criminal procedure that also penalizes certain crimes by life imprisonment in solitary confinement.

Two changes in the code of criminal procedure in 2004 marked important advances for the rights of accused persons. The first grants all persons the right to have counsel present at all stages of proceedings, including initial interrogations, an important innovation in Rwandan practice.⁸⁸ The second grants judges *habeas*

⁸⁴ Felly Kimenyi, “Death Penalty-Recidivists to Have Special Imprisonment,” *The New Times*, 25 January 2007.

⁸⁵ Human Rights Watch interview, Minister of Justice Tharcisse Karugarama, May 21, 2008.

⁸⁶ Human Rights Committee, General Comment 20, Article 7, point 6 (Forty-fourth session, 1992), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.1 at 30 (1994).

⁸⁷ Republic of Rwanda, Prosecution Services, Republic of Rwanda’s Submission in response to *Amicus Curiae* Brief filed by Human Rights Watch in opposition to Rule 11 bis transfer of Fulgence Kayishema, undated but received by ICTR registrar March 5, 2008, parag. 35.2.

⁸⁸ Republic of Rwanda, Official Journal of July 30, 2004, Law no. 13/2004 of 17/5/2004 concerning the Code of Criminal Procedure, articles 64 and 96.

corpus powers to compel police and prosecutors to present before them detained persons who might have been illegally held and authorizes them to punish those state agents who have detained persons illegally. The sanctions that would permit judges to effectively use this power, however, were to be specified in a revised penal code still under discussion as of this writing.⁸⁹

The amended code of penal procedure also specified that detainees must be held at police brigades, making it easier for family members and others to know where to find persons in official custody.⁹⁰

⁸⁹ Republic of Rwanda, Official Journal of July 30, 2004, Law no. 13/2004 of 17/5/2004 concerning the Code of Criminal Procedure, article 89 and Law no. 20/2006 of 22/4/2006 modifiant et completant la loi no. 13/2004 du 17/5/2004 portant code de procedure penale, article 19.

⁹⁰ Republic of Rwanda, Official Journal of July 30, 2004, Law no. 13/2004 of 17/5/2004 concerning the Code of Criminal Procedure, article 40 and Law no. 20/2006 of 22/4/2006 modifiant et completant la loi no. 13/2004 du 17/5/2004 portant code de procedure penale, articles 9, 10, 12, 13.

VII. “Divisionism” and “Genocide Ideology”

In the same years that some Rwandan officials were reforming technical and formal aspects of judicial administration, others were carrying forward a far-reaching campaign against what in Rwanda is known as “divisionism” and “genocide ideology.” This campaign has had broad impact on many aspects of Rwandan life, including judicial operations. Although it has not specifically targeted the judicial system, it involves judicial officials as well as administrative officials, political leaders, the press, the clergy, teachers, civil society and, indeed, all Rwandans. The campaign has had impact particularly in the domains of judicial independence and the rights of the accused to present witnesses, to be presumed innocent, and to have equal access to justice.

Imprecise Laws

In 2002 “divisionism” (then called “sectarism”) was made a crime, but the law prohibiting it offered only a broad and vague definition of the term. It reads: “The practice of sectarism is a crime committed by any oral or written expression or any act of division that could generate conflicts among the population or cause disputes.”⁹¹ When asked to define “divisionism,” not one judge interviewed by Human Rights Watch researchers was able to do so, despite each having adjudicated and convicted defendants on divisionism charges.⁹² Judicial decisions have thus far failed to settle the meaning and scope of this crime.

“Genocide ideology” as such was made a crime only in a law adopted in June 2008 and still awaiting the presidential signature as of this writing, but the term has been

⁹¹ Law no. 47/2001, article 3. The French version is used here in translation because it is clearer than the English version. The French reads: “La pratique du sectarisme est un crime commis au moyen de l’expression orale, écrite ou tout acte de division pouvant générer des conflits au sein de la population, ou susciter des querelles.” The English version of the law reads that “sectarism is a crime committed through the use of any speech, written statement or action that causes conflict that causes an uprising that may degenerate into strife among people.” Laws are drafted in Kinyarwanda; English and French are also official languages but there are sometimes discrepancies among the three versions or between two of them.

⁹² Human Rights Watch interviews, Kigali, May 26, 2005. When asked if he could define divisionism, one judge replied: “I can’t define it, but I can give an example. In one case, the accused said publicly that the government paid people to go to Arusha [to testify at the ICTR] and lie.” The judge was thus employing a “I know it when I see it” approach to the criminal law, which violates the obligation on states to define precisely by law all criminal offences. Failure to define precisely criminal offences is considered a breach of the prohibition on the retroactive application of criminal law under international law, International Covenant on Civil and Political Rights, Article 15, and the African Charter, Article 7(2).

used loosely for at least five years to mean several kinds of conduct referred to in the Constitution of 2003 and made criminal in the 2003 law punishing genocide. In the Constitution of 2003, Rwandan authorities committed the nation to undertake fighting the ideology of genocide, a concept that until that time had not been isolated but rather subsumed within the crime of genocide. The concept itself, not one known as such in the past, was referred to by the relatively new term, “ibengabyitekerezo bya jenocide,” meaning literally the ideas that lead to genocide. In article 13 the constitution specified that revisionism, negationism (*i.e.*, denial) and the minimization of genocide were punishable by law while article 33 stated that all ethnic, regionalist, and racial propaganda, and any propaganda based on any other form of division is punishable by law.⁹³

In the 2003 law punishing the crime of genocide, crimes against humanity, and war crimes, article 4, prohibited denial, gross minimalization, and any attempt to justify or approve of genocide as well as any destruction of evidence of the genocide.⁹⁴ Neither the constitution nor the 2003 law provided specific definitions of the terms “revisionism,” “denial” or “gross minimization.”

Under the 2002 law persons guilty of “divisionism” were liable to imprisonment for up to five years and to loss of their civil rights. Under the 2003 law punishing genocide, persons condemned for denying or grossly minimizing genocide, attempting to justify genocide or destroy evidence related to it were liable to a minimum of ten years and a maximum of twenty years in prison. According to the law on divisionism, that crime is imprescriptible; the law on genocide crimes and crimes against humanity made these crimes imprescriptible but without specific mention of the crimes enumerated in article 4.⁹⁵

⁹³ The Constitution of the Republic of Rwanda, Preamble, Articles 9, 13, and 33 (June 4, 2003).

⁹⁴ Law no. 33bis/2003 of 06/09/2003 punishing the crime of genocide, crimes against humanity, and war crimes, article 4, found at <http://droit.francophonie.org/doc/orig/rw/loi/fr/2003/2003dfwlgfr1/2003dfwlgfr1.pdf>.

⁹⁵ Law no. 33bis/2003 of 06/09/2003, article 4 and law no. 47/2001, article 1, paragraph 2 and article 3, paragraph 2, articles 5 and 15.

One Truth

The issues at the core of “divisionism” and “genocide ideology” address the nature of ethnicity and the history of the genocide. During a scholarly debate in 2004 about the nature of the genocide, one academic expert remarked on the value of discussing different “truths.” A high-ranking official in the audience immediately demanded the floor to insist, “There is one truth and we know it.” Three tenets of that “truth” relevant to judicial issues and frequently mentioned by officials are:

- The Catholic Church assisted the colonial administration in introducing the divisions among Rwandans that led to the genocide and hence bears responsibility for much of the violence against Tutsi from that time forward.
- Hutu political leaders organized a genocide of the Tutsi minority and the Hutu population—perhaps all of it—was misled into following their evil plan.
- Although some RPA soldiers may have killed civilians, these crimes were the unfortunate result of wartime or were occasional acts of revenge and have been punished.⁹⁶

Although many, both in the academic community and outside it, accept some portions of the “truth” as it is defined by the RPF, others challenge several points—such as the extent of RPF war crimes and of justice for these crimes. Indeed representatives of four UN agencies as well as international and Rwandan NGOs have documented these crimes.⁹⁷

⁹⁶ National Unity and Reconciliation Commission, *Manuel pour les camps de solidarité et autres formations*, October 2006, pp. 81, 83, 154, 162.

⁹⁷ R. Degni-Ségui, “Report on the situation of human rights in Rwanda, submitted by R. Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of Commission resolution, E/CN.4/S-3/1 of 25 May 1994, E/CN.5/1995/7, 28 June 1994, pp. 3, 13; United Nations, *The United Nations and Rwanda, 1993-1996*, Blue Books Series, volume X, (New York: United Nations, 1996), UN High Commissioner of Human Rights, “Report to the Secretary-General on the investigation of serious violations of international humanitarian law committed in Rwanda during the conflict,” annexed to Letter dated 21 July from the Secretary-General to the President of the Security Council transmitting the report on the violations of international humanitarian law in Rwanda during the conflict, prepared on the basis of the visit of the United Nations High Commissioner for Human Rights to Rwanda (11-12 May, 1994), pp 313-315; UN High Commissioner for Refugees, “Update on the Rwanda emergency by the Executive Committee of the Programme of the United Nations High Commissioner for Refugees,” 26 September 1994, paragraph 13, p. 338; and UN Secretary-General, “Letter dated 1 October 1994 from the Secretary-General to the President of the Security Council transmitting the interim report of the Commission of Experts on the evidence of grave violations of international humanitarian law in Rwanda, including possible acts of genocide,” paragraphs 146-150 of the Commission report, p. 361. See also See Security Council Resolution 1503, August 28, 2003, S/RES/1503 (2003) and Security Council 1534, August 26, 2004, S/RES/1534 (2004); Final Report of the Commission of Experts established pursuant to Security Council Resolution 935 (1994), UNSC, UN Doc. S/1994/1405 (1994), paras.146 -147.

Ideological Conformity: Political Control

In the text of Rwandan laws about “divisionism” and “genocide ideology,” and in countless public presentations, Rwandan officials say they seek to eliminate these ideas in order to prevent future violence. While this goal is certainly legitimate and helps explain their efforts, it is not the authorities’ only impetus for seeking to eliminate certain views they deem inappropriate.

Promoting conformity on certain important questions has been central to RPF practice from its early days, even before the genocide. According to notes taken by an RPF recruit during training sessions in 1993, for example, the content shows remarkable continuity with the curriculum that was prescribed for a “solidarity camp” in 2006.⁹⁸ The “solidarity camps” have provided intensive ideological training for periods ranging from a week or two to three months for thousands of Rwandans since the current government was established in 1994. Camp sessions are organized to include people from the same background, such as prisoners just released from jail, refugees returning from exile, students, teachers, or officials of a particular branch of government. In addition, public officials reinforce many of the same ideas at community meetings, as do many clergy, teachers, and journalists, each in his or her own domain of activity.

The Campaign against “Divisionism” and “Genocide Ideology”

In 2002 officials began a campaign against “divisionism,” transforming it by 2004 into a campaign against “genocide ideology” as well. In public meetings and in the media, administrative officials, political leaders, teachers and clergy used these terms to denounce many different kinds of words and actions, further broadening and confusing the meaning of the terms.⁹⁹

⁹⁸ The curriculum treats the last century of Rwandan history in some detail but goes far beyond it to discuss such fundamental questions as the nature of humanity and the different stages of history in terms heavily influenced by Marxism-Leninism. It gives great importance to ideology which, says the curriculum, makes the difference between military leaders who have defeated dictators and are now working for the development of their people (Castro, Khadifi, current Rwandan President Kagame) and bad military leaders who have committed horrors (Amin, Bokasa, former Rwandan President Habyarimana). National Unity and Reconciliation Commission, *Manuel pour les camps de solidarité et autres formations*. Handwritten notebook, notes of training session, December 23, 1993 and copy of the manual (in French) in the possession of Human Rights Watch.

⁹⁹ See, for example, the wideranging debate led by government officials on Radio Rwanda, Discussion on “Genocidal Ideology,” October 24, 2005, 10:30 am to 12:45 pm.

Between 2003 and 2008 four parliamentary commissions investigated and condemned alleged cases of “divisionism” and “genocide ideology.” The first commission, which effectively destroyed the Democratic Republican Movement (MDR), the only political party strong enough to challenge the RPF, interpreted “divisionism” to mean opposition to such government programs as administrative decentralization, establishment of *gacaca* jurisdictions, and the creation of a Local Defense Force (a government-sponsored paramilitary force). Foreshadowing in its 2003 report the link to come between accusations of “divisionism” and “genocide ideology,” the commission also charged MDR adherents with minimizing the genocide, opposing compensation to genocide survivors, and speaking of crimes by RPA soldiers as if they were genocide.¹⁰⁰

The second commission, created to investigate killings of genocide survivors and other instances of “genocide ideology,” reported hundreds of cases of violence, threats and insults to genocide survivors. But its June 2004 report also included investigations of alleged cases of opposition to government policies (such as land reform), supporting political candidates who were not part of the RPF, and speaking of RPA war crimes.¹⁰¹ A third commission issued a report in June 2006 in which it defined “genocide ideology” as including references to “unpunished RPF crimes,” as well as to the idea that “Hutu are detained on basis of simple accusation” (*i.e.*, without adequate investigation or proof).¹⁰² A fourth parliamentary commission established at the end of 2007 reported finding genocide ideology in 26 of 32 schools visited.¹⁰³

¹⁰⁰ République Rwandaise, Assemblée Nationale, Rapport de la Commission Parlementaire de controle mise en place le 27 decembre 2002 pour enqueter sur les problemes du MDR, accepted by the National Transitional Assembly, April 14, 2003, p. 19. See also See Human Rights Watch, Preparing for Elections: Tightening Control in the Name of Unity, May 2003, <http://hrw.org/backgrounders/africa/rwanda0503bck.htm>.

¹⁰¹ République Rwandaise, Rapport de la Commission Parlementaire ad hoc crée en date du 20 janvier 2004 par le Parlement, Chambre des Députés, chargée d’examiner les tueries perpétrées dans la province de Gikongoro, l’idéologie génocidaire et ceux qui la propagent partout au Rwanda, accepted by the National Assembly June 30, 2004, pp. 36, 38, 43, 45, 50, 61, 66, 69, 82, 86, 87, 95, 115, 118, 122, 123, 126, 144, 145, 158.

¹⁰² Rwandan Senate, Rwanda, Genocide Ideology and Strategies for Its Eradication, 2006, p. 18, notes 5-7.

¹⁰³ National Assembly, “Rapport d’analyse sur le problème d’idéologie du genocide évoquée au sein des établissements scolaires,” December 2007, (unofficial translation).

Government officials denounced hundreds of people and dozens of Rwandan and international organizations,¹⁰⁴ many of them selected by state security agents or through accusation at public meetings in which Rwandans were pressed to identify persons or groups who held the disapproved ideas. With little or no verification and no judicial process whatsoever, the names of the accused were publicized in the parliamentary reports, on the radio, and at public meetings. The persons so labeled enjoyed no presumption of innocence; some suffered loss of employment, expulsion from school, and social isolation. Speaking of the consequences of being accused of harboring “genocide ideology” a Rwandan not herself accused said, “Everyone distances himself from the accused. We all say, ‘better not to walk near that one.’”¹⁰⁵

After the fourth report was issued, officials and school personnel who had been denounced were again dismissed.¹⁰⁶ The Anglican archbishop made the fight against “genocide ideology” the theme of his Christmas sermon.¹⁰⁷ Education officials announced that school committees would monitor student behavior daily and specially formed local committees undertook to visit schools regularly.¹⁰⁸ Six thousand teachers were trained in fighting “genocide ideology” and members of

¹⁰⁴ Among the international organizations accused of supporting divisionist and genocidal ideas by one or both of the parliamentary commissions were CARE International, Trocaire, Norwegian People’s Aid, 11-11-11, Kolping Family, Pax Christi, Voice of America (VOA), British Broadcasting Corporation (BBC) and Human Rights Watch as well as the Catholic Church, the Association of Pentecostal Churches in Rwanda, Jehovah’s Witnesses, Seventh Day Adventists, the International United Methodist Church, and the Mennonites. République Rwandaise, Rapport de la Commission Parlementaire ad hoc créée en date du 20 janvier 2004 par le Parlement, Chambre des Députés, chargée d’examiner les tueries perpétrées dans la province de Gikongoro, l’idéologie génocidaire et ceux qui la propagent partout au Rwanda, p. 161; Rwandan Senate, Rwanda, Genocide Ideology and Strategies for Its Eradication, 2006.

¹⁰⁵ Human Rights Watch interview, February 27, 2005.

¹⁰⁶ National Assembly, “Rapport d’analyse sur le problème d’idéologie du genocide évoquée au sein des établissements scolaires,” December 2007, (unofficial translation); Panapress, “Rwanda: Suspension d’enseignants accusés de prôner le genocide,” December 27, 2007; Eugene Mutara, “School directors move to squash genocide ideology,” *The New Times*, (accessed January 13, 2008)

<http://www.newtimes.co.rw/index.php?issue=1392&article=3221>; Florence Mutesi and James Buyinza, “Ministry to blacklist teachers with genocide ideology,” *The New Times* (accessed January 13, 2008)

<http://www.newtimes.co.rw/index.php?issue=1390&article=3175>; Bonny Mukombozi “Gakenke district leaders sacked,” *The New Times*, (accessed March 27, 2008),

<http://www.newtimes.co.rw/index.php?issue=13482&article=5156>

¹⁰⁷ G. Muramila, J. Buyinza and F. Mutesi, “Uproot Genocide Ideology in Schools—Bishop Kolini,” *The New Times* (accessed January 13, 2008) <http://www.newtimes.co.rw/index.php?issue=1390&article=3171>

¹⁰⁸ *The New Times*, “Upcountry insight: How ready are students for the new school term?” (accessed Jan 13, 2008)

<http://www.newtimes.co.rw/index.php?issue=13403&article=3392>; Bonny Mukombozi, “New measures to fight genocide ideology in schools,” *The New Times* (accessed January 19, 2008)

<http://www.newtimes.co.rw/index.php?issue=13413&article=3623>.

parliament planned to visit every school in the country to help root it out.¹⁰⁹ The parliamentary commission recommended that in some schools, teachers begin every class every day with three minutes criticizing “genocide ideology.”¹¹⁰

Prosecutions of “Divisionism” and “Genocide Ideology”

According to a report on judicial activity 2007-2008 cited by Deputy Prosecutor General Alphonse Hitiyaremye, Rwandan courts initiated 1,304 cases involving genocide ideology, some including acts of violence such as murder or damage to property, discrimination, and otherwise undefined threats. In addition 243 persons were charged with negationism and revisionism. In the proceedings concluded by the time the report was issued, eight persons were convicted and sentenced to life in prison, two persons were sentenced to more than 20 years in prison, 36 others were sentenced to between 10 and 20 years in prison, 96 drew sentences of between 5 and 10 years and 91 were sentenced to less than 5 years in prison. One hundred and two persons were acquitted.¹¹¹ A score of jurists told Human Rights Watch researchers that the broad and ill-defined charges of “divisionism” or “genocide ideology” have been frequently used to serve political or personal interests.¹¹² Several prosecutors and judges have refused to pursue some of these cases, saying they lack substance.¹¹³

At least one prosecution seems to have been carried out primarily because the speaker, Célestin Sindikubwabo, made a statement that challenged the tenet of the official “truth” about RPF war crimes. At a *gacaca* trial in the southern district of Nyakizu in October 2006, Sindikubwabo said that the defendant had fled to Burundi

¹⁰⁹ P. Kayiggwa and J. Buyinza, “6,000 teachers equipped to fight genocide ideology,” *The New Times* (accessed January 19, 2008)

<http://www.newtimes.co.rw/index.php?issue=13412&article=3603>; James Buyinza and Ignatius Ssuna, “MPs re-launch anti-Genocide campaign in schools” (accessed February 24, 2008)

<http://www.newtimes.co.rw/index.php?issue=13450&article=894>.

¹¹⁰ National Assembly, “Rapport d’analyse sur le problème d’idéologie du genocide évoquée au sein des établissements scolaires,” December 2007.

¹¹¹ Fondation Hirondelle, “Rwandan Official Proposes Rehabilitation of Persons Convicted for Genocide Ideology,” May 30, 2008.

¹¹² See below cases of Tuyishime, Kavutse, Gakwandi, Biseruka, and Nyirakabano.

¹¹³ Human Rights Watch interviews, lawyers, Kigali, February 3, 2005, September 10, 2007; judge, August 17, 2007; electronic communication, February 8, 2006.

because he had seen RPF soldiers killing local people. The defendant was acquitted, but Sindikubwabo was arrested several days later. Brought to trial in March 2007, he was sentenced to 20 years in prison for “gross minimization of the genocide.”¹¹⁴

The New Law on “Genocide Ideology”

In June 2008 the parliament adopted a new law that criminalizes “genocide ideology.” Article 2 of the law generally adheres to definitions of genocide as found in international conventions. Article 3, however, which specifies the “criteria” of “genocide ideology”, only aggravates the already-existing imprecision and confusion surrounding the term. The article reads:

Article 3 Criteria of the crime of genocide ideology

The crime of genocide ideology is manifested in any behavior characterized by evidence aimed at depriving a person or a group of persons of common interest of humanity like in the following manner:

1. threatening, intimidations, degrading through defamatory speeches, documents or actions which aim at propounding wickedness or inciting to hatred;
2. marginalise, laugh at one’s misfortune, defame, mock, boast, despise, degrade, create confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred;
3. kill, planning to kill or attempting to kill someone following the genocide ideology.¹¹⁵

¹¹⁴ Court of Higher Instance, Huye, No. RP 0015/07/TGI/HYE RPGR 40832/S2/06/MR/KJ, Prosecutor versus Célestin Sindikubwabo, 24/4/07.

¹¹⁵ The French text is as follows:

Caractéristiques du crime d’idéologie du génocide

Les caractéristiques du crime d’idéologie du génocide consistent en des comportements qui se manifestent par les tendances visant à déhumaniser un individu ou un groupe d’individus ayant en commun certains traits comme dans les conditions suivants:

1. le harcèlement par des propos, des actes, des écrits diffamatoires;
2. le harcèlement par le traitement inhumain, les tracts, le terrorisme, des propos méchants ou diffamatoires
3. user de ses pouvoirs et priver un individu ou un groupe d’individus de leurs droits;
4. marginaliser, diffamer, railler la misère d’autrui, se vanter d’avoir commis impunément des forfaits, mépriser, opprimer, médire, diffamer, semer la confusion, semer la zizanie, rendre le mal pour le mal, altérer le témoignage.

The punishments, specified in articles 4 to 13, are harsh—between 10 and 25 years in prison and a fine of 200,000 to 1 million Rwandan francs for first-time offenders, with penalties to be doubled and even increased to life imprisonment for recidivists. Persons who occupy or have occupied leadership positions, whether in government, the private sector, NGOs, or the church may be sentenced from 15 to 25 years in prison with a fine of 2 to 5 million Rwandan francs. Political and non-governmental organizations may be dissolved and fined 5 to 10 million Rwandan francs. Children are held criminally responsible at the age of 12 and may be sent away to a rehabilitation center for a year, and parents, guardians, teachers, and headmasters may be punished by 15 to 25 years in prison. Children between the ages of 12 and 18 will receive one half the penalty meted out to adults.¹¹⁶

The Rwandan law on genocide ideology is largely disconnected from the crime of genocide itself. It does not require that the perpetrator intend to assist or facilitate genocide, or be aware of any planned or actual acts of genocide. While it has been defended by Rwandan authorities as similar to laws banning Holocaust denial, in fact it is written in far broader terms than even laws banning incitement to racial hatred, and can cover a very wide range of speech that is unquestionably protected by international convention.

International human rights law prohibits hate speech that amounts to incitement of violence, discrimination or hostility against a protected group. Such restrictions, however, must be consistent with what is “necessary” in a democracy. It is inconsistent with freedom of expression to criminalize hate speech without the requirement that the speaker be proven to have intended that his words incite, and that incitement was the foreseeable and imminent result of those words. Punishing criticism of government policies, as the parliamentary commissions recommended, and prosecuting statements believed to be true by the speaker and made with no intention to incite violence, as in the case of Sindikubwabo above, represent abusive restrictions on free speech.

¹¹⁶ The proposed Law on genocide ideology, had been adopted by both the National Assembly and the Senate but not yet officially published as of this writing.

Human Rights Watch also maintains that the crime of genocide denial is only consistent with freedom of expression where genocide denial amounts to hate speech, that is, intentional incitement to violence, hostility or discrimination. States have a duty to recognize genocide and similar mass crimes but should not recognize mass crimes selectively, favoring some victims and ignoring others (see Equal Access to Justice below).¹¹⁷

¹¹⁷ Dinah PoKempner, "A Shrinking Realm: Freedom of Expression since 9/11," Human Rights Watch World Report 2007, <http://www.hrw.org/wr2k7/essays/shrinking/1.htm>.

VIII. Independence of the Judiciary

There have been changes for the better in the Rwandan judicial system, now more efficient and staffed with more highly trained jurists than ten years ago. But according to those working in the system, the process is not so far along as it seems, particularly with reference to the crucial questions of judicial independence and the protection of human rights.

Technical improvements in the administration of justice have not changed the dynamics of the political system, where the judiciary remains largely subordinate to the executive branch and even to elite unofficial actors who enjoy both economic and partisan political power. A former police officer asked to assess the effectiveness of recent reforms said, “You can’t understand. You see what’s on paper but you don’t know the truth... You foreigners are easily tricked.”¹¹⁸

Law and Reality

Most persons working in the Rwandan judicial system say publicly that it is independent, but in private conversations, some of these same people nuance or contradict their public assessments.¹¹⁹

When asked in separate conversations to evaluate the independence of the judicial system several officials, two of them of cabinet rank, and judges agreed that the system is not yet independent, but rather is “becoming independent.”¹²⁰ One judge commented,

Independence is now provided for in the law and, with better educated personnel to interpret and execute the law, there is some hope that at

¹¹⁸ Human Rights Watch interview, former police officer, May 30, 2005.

¹¹⁹ Radio Rwanda, Roundtable, “Evaluating the judicial reform in Rwanda,” July 17, 2006, 19h., including Sam Rugege, Vice-president of the Supreme Court; Tharcisse Karugarama, president of the High Court; Jean-Pierre Kayitare, president of the High Court chamber in Ruhengeri; Cassien Nzabonimana, Inspectorate of Courts; and Charles Kariwabo, president of the Kigali city court. Human Rights Watch interviews, judicial officials, May 13, 2007, August 17, 2007.

¹²⁰ Human Rights Watch interviews, judicial officials, May 13, 2007, with former high ranking officials of the ministry of justice, by telephone, November 6 and 8, 2007.

a certain point we will achieve independence. In this context, things are not good, but they could be worse. At least now there is hope.¹²¹

Another former judge said less optimistically, “The principle is one of separation, but the executive wants to control everything.”¹²² Another former judge confirmed this, saying, “In principle this is a state of law, but in fact it is the word of the chief that rules.”¹²³

In a November 2007 report, a delegation of international jurists who had visited Rwanda noted allegations of continuing political pressure on the judiciary and concluded that legislative reforms had yet to be accompanied by “a corollary shift in judicial culture towards greater independence.”¹²⁴ In supporting this conclusion, they remarked on the paucity of prosecutions against RPA soldiers accused of war crimes and crimes against humanity.¹²⁵

Limits on Administrative Autonomy

Many persons active in the delivery of justice in Rwanda take pride in the new autonomy of the courts, seeing it as a potential shield behind which judicial independence can grow stronger. Yet, as an example from October 2007 demonstrated, such autonomy is still incomplete. At that time the cabinet moved three judges (two from the High Court, one from a court of higher instance) and one prosecutor from their posts to newly created positions as deputy attorneys general in what had been the ministry of justice (now the office of the Attorney General). According to one well-placed lawyer who had discussed the matter with judicial officials, the cabinet—an organ of the executive—made the appointments without the approval of the Supreme Council of the Judiciary, the body that is supposed to control the posting of judges.¹²⁶

¹²¹ Human Rights Watch interview, judge, Kigali, May 27, 2005.

¹²² Human Rights Watch interview, judge, May 26, 2005.

¹²³ Human Rights Watch interview, judge, by telephone, August 16, 2007.

¹²⁴ International Legal Assistance Consortium, “Justice in Rwanda: An Assessment,” Section 6.3.7, November 2007.

¹²⁵ *Ibid.*

¹²⁶ Human Rights Watch interview, jurist, by telephone, November 6, 2007; Felly Kimenyi, “Karugarama is Attorney General,” *The New Times*, <http://www.newtimes.co.rw/index.php?issue=1318&article=1610>, accessed October 15, 2007.

The appointment of judges, required by law to be on the basis of merit, is also conditioned by political considerations. Several judges and lawyers told Human Rights Watch researchers that both ethnicity and affiliation with the RPF are considered in deciding judgeships.¹²⁷ “If one judge is Tutsi, the next must be Hutu,” said an experienced observer of the judicial scene. “Sometimes less than competent people are chosen because of that,” he added.¹²⁸ Another said that there had to be “équilibre” or balancing of ethnic groups, although it was not mandated by law.¹²⁹ According to judges and other jurists, many judges hold political party membership, most often in the RPF, although the law on judicial conduct prohibits judges from belonging to political parties.¹³⁰

One judge, named since the reform took effect, said that loyalty to the RPF was important in winning appointment as a judge and provided a detailed account of his own experience as proof. He had been recruited for his post in several meetings with a representative of the RPF who had no link with the judicial system.¹³¹ According to a lawyer, interviewed by a Human Rights Watch researcher in another context, political affiliation is also important in the choice of Supreme Court judges who are elected by the Senate. He said that of the two candidates presented for the vote, one clearly was meant to be chosen while the second was there only for show. Among some in the legal profession, he said, the second candidate is known as the “bridesmaid.”¹³²

Misuse of Prosecutorial Power

In some cases, prosecutors’ decisions about whom to prosecute, on what charges, and based on what evidence appear to have been made for reasons other than simply enforcing the law. In a few cases, the pressure for prosecution is public, as in the two cases where President Pasteur Bizimungu and President Paul Kagame

¹²⁷ Human Rights Watch interviews, lawyers, September 21, and November 1, 2006, September 11, 2007; judges, August 16 and 17, 2007.

¹²⁸ Human Rights Watch interview, lawyer, Kigali, September 11, 2006.

¹²⁹ Human Rights Watch interview, lawyer, Kigali, November 1, 2006.

¹³⁰ Loi no. 9/2004 du 27/04/2004 portant Code d’Ethique Judiciaire, article 21, “Toute adhesion à une formation politique est interdite au juge de carrière.” [Any membership in a political party is forbidden to a professional judge]. Human Rights Watch interviews, lawyer, September 21, 2006, and Kigali, November 1, 2006; judge, August 17, 2007.

¹³¹ Human Rights Watch interviews, judge, by telephone, August 16, 2007.

¹³² Human Rights Watch interviews, lawyer, September 21, 2006; lawyer, Kigali, November 1, 2006.

publicly pressed for the arrest of persons who were arrested soon after.¹³³ In most cases, however, persons outside the judicial system seek to apply pressure more discretely.

Whom to Prosecute

One former prosecutor at national level candidly admitted the role of political considerations in shaping decisions. Speaking of prosecutions for genocide he said, “There has always been flexibility for those people who were willing to work with the government. Those who stayed with us were not bothered.”¹³⁴ Prosecutions for “divisionism” and “genocide ideology” are particularly subject to political influence because of the broad and imprecise language of the laws prohibiting these practices, as is demonstrated in the effort to prosecute Brigitte Tuyishime.

The Case of Brigitte Tuyishime

The office of the Rwandan prosecutor general has issued an international arrest warrant for former member of parliament, Brigitte Tuyishime. In what is certainly an unusual omission, it lists no charges against her.¹³⁵ A Rwandan police officer speaking in his official capacity told a Human Rights Watch researcher that Tuyishime was being sought for “divisionism” because of words she said on November 4, 2005.¹³⁶ At the time on mission with six other parliamentarians, Tuyishime made a remark about a case of child rape. The alleged rapist, a survivor of genocide, had been arrested and then released, supposedly as a result of political influence. Tuyishime remarked that such people should be excluded from society.

Her remark, interpreted by her listeners to refer to child rapists, initially elicited no comment. The parliamentary group submitted a report on its mission without mentioning the supposed incident. But a month later Tuyishime was accused of having meant instead that Tutsi survivors of genocide should be excluded, or

¹³³ See below for cases of Pasteur Bizimungu and Bishop Misago.

¹³⁴ Human rights Watch interview by telephone, former high ranking official, November 6, 2007.

¹³⁵ Interpol Warrant for the arrest of Brigitte Tuyishime, (accessed March 14, 2008)
http://www.interpol.int/public/Data/Wanted/Notices/Data/2006/76/2006_31176.asp.

¹³⁶ Human Rights Watch interview with police inspector, Criminal Investigation Department, March 14, 2008.

indeed, eliminated. After publicity about the incident, the parliamentary group submitted a new report condemning the supposed expression of “genocide ideology.”¹³⁷ One member of parliament did not hesitate to tell journalists that Tuyishime was guilty of “genocide ideology” although she had not yet even been charged with a crime.¹³⁸

Two members of the parliamentary mission initially disagreed with the accusations, but they were eventually intimidated into silence. One, Beatrice Uwitonze, was herself accused of covering up Tuyishime’s crimes and was threatened in the press by other members of parliament who said “something should be done about Beatrice Uwitonze.” After having originally said that she did not hear the remark, Uwitonze eventually “dissociated herself” from it.¹³⁹

Tuyishime, who had had prior disagreements with important RPF leaders, was obliged to resign from parliament and took asylum abroad, where she is now being pursued under the international warrant.

What Charges to Bring: the Recent Increase in Rape Charges

From the beginning of efforts to deliver justice for the genocide, Human Rights Watch has sought to spur prosecution of cases of sexual violence. After documenting the number and seriousness of these crimes, Human Rights Watch offered assistance to the office of the prosecutor general in adopting appropriate methods to facilitate such prosecutions.¹⁴⁰ The offer was not accepted and the prosecutor’s staff at the time appeared unmoved by the need to pursue such cases.

More recently, however, the prosecutor’s office has shown remarkable interest in charges of sexual violence. In a December 2007 interview with Human Rights Watch researchers, Minister of Justice Tharcisse Karugarama said that some 90 percent of

¹³⁷ Human Rights Watch interview with persons knowledgeable about the case, December 20, 2005.

¹³⁸ James Munyaneza, “New Genocide Scandal Unfolds,” *The New Times*, December 16, 2005, <http://allafrica.com/stories/200512160122.html>

¹³⁹ *Ibid.*

¹⁴⁰ Human Rights Watch/International Federation of Human Rights Leagues, *Shattered Lives: Sexual violence during the Rwandan Genocide and its Aftermath* (New York: Human Rights Watch, 1996).

the accused awaiting trial for category one offenses would be charged with rape, an estimate repeated on several occasions by Executive Secretary of the National Service of *Gacaca* Jurisdictions Domitilla Mukantaganzwa.¹⁴¹

Given the improbability that this dramatic accumulation of rape cases represents a natural cluster in the prosecutorial process, there appear to be two possible explanations for the sudden plethora of rape accusations. The first is that the prosecutor's office has deliberately delayed prosecution of rape cases until virtually all other cases have been judged. This is highly unlikely—and if it were to be true, would seem to indicate a conscious discrimination against rape victims, a discrimination that would be all the more tragic given that some were exposed to HIV/AIDS as a consequence of the crime and may have a shorter life expectancy than victims of other crimes. The second is that the accusations are motivated by some purpose other than simple law enforcement, such as to enhance the possibility of obtaining convictions. In a number of cases there are grounds for believing that rape charges (which do not fit the facts) may be being used to undertake prosecution where other charges cannot be successfully brought or are unlikely to secure conviction.

As a result of recent legislation amending *gacaca* jurisdictions, most accused rapists will stand trial in *gacaca* jurisdictions. To protect the confidentiality of the victim in such cases, the proceedings are to be held behind closed doors. This, of course, is a laudable objective. In this situation, however, there are potentially negative consequences—in the absence of any trial observers, there will be no independent monitoring to document errors and to help deter unfair practices. Rape cases being prosecuted in conventional courts may also be held behind closed doors, but in those proceedings the accused has the right to counsel to help defend himself.

The case of Emmanuel Bagambiki, former prefect of Cyangugu prefecture is one in which rape may be being used as a fail-safe charge. Bagambiki was tried on charges of genocide at the ICTR where the prosecutor examined the possibility of bringing rape charges against him but determined that the evidence was insufficient.

¹⁴¹ Human Rights Watch interviews, Minister of Justice Karugarama, December 4, 2007 and Executive Secretary of the National Service of Gacaca Jurisdictions Domitilla Mukantaganzwa, March 11, 2008.

Bagambiki was acquitted by the ICTR, a decision that Rwandan judicial officials called “unforgiveable” and “ridiculous.”¹⁴² Soon after Rwandan prosecutors brought charges of rape against Bagambiki and obtained his conviction *in absentia* on October 10, 2007. Rwanda is seeking his extradition from Belgium where he now lives.¹⁴³

Rape charges have also been brought in the final stages of *gacaca* proceedings when it appeared that the defendants were about to be acquitted on other charges. In two trials in the last year, for example, one in southern Rwanda, one in western Rwanda, each defendant was charged with category two genocidal crimes. When it became clear that the jurisdictions were not going to convict them on those charges, the accusers brought charges of rape against each, an accusation that had not been previously mentioned.¹⁴⁴

The Production of Evidence

Anxious to obtain or to assist foreign colleagues in obtaining convictions, some Rwandan prosecutors have presented testimony in court which they knew or should have known was obtained through duress or torture.¹⁴⁵ In other cases, they have distorted or assisted witnesses in distorting the plain meaning of written evidence, or have kept exculpatory evidence from counsel for the accused.¹⁴⁶

Since 2006 the Rwandan government has undertaken strenuous efforts to identify persons suspected of genocide and to obtain their prosecution in the countries of current residence or their extradition to Rwanda for trial. Some 250 suspects have been located and Rwandan prosecutors have sought to facilitate prosecutions or

¹⁴²James Munyaneza, “Rwanda plots Bagambiki’s re-arrest,” *The New Times*, (accessed May 16, 2008) http://www.rwandagateway.org/article.php3?id_article=2215; Hirondele News Agency, Fondation Hirondele, “La Ville des acquittés du TPIR reste divisée,” February 10, 2006.

¹⁴³Hirondele News Agency, “Belgium investigates acquitted ex-Rwandan governor Bagambiki,” (Lausanne), June 3, 2008; Hirondele News Agency, “Govt intends to prosecute ex-Governor Emmanuel Bagambiki for rape,” March 8, 2006. AFP, “Rwandan Official Guilty of Rape,” accessed May 12, 2008) <http://www.thetimes.co.za/News/Article.aspx?id=584846>.

¹⁴⁴Human Rights Watch, interview, jurist, October 17, 2007; electronic communications, October 8, 16, 19, 30, November 6, 7, 8, 2007.

¹⁴⁵See below for cases of Bizimungu and Kavutse.

¹⁴⁶See below for cases of Nyirakabano and Theunis .

extraditions in a number of countries, including Denmark, the United Kingdom, New Zealand, Canada, the United States, the Netherlands, Belgium, and Finland.

In several cases, prosecutors from other national systems have found that the evidence upon which the Rwandan authorities issued arrest warrants was insufficient or erroneous. In Denmark, Sylvain Ahorugeze, arrested on the basis of a Rwandan warrant in September 2006 was freed in August 2007 after Danish investigators were unable to substantiate the charges brought against him.¹⁴⁷ Danish investigators who had gone door to door doing their own inquiry in Kigali judged testimonies in the Rwandan judicial file unconvincing. In April 2008, Ahorugeze was awarded nearly 1 million Danish kroner in damages for false arrest.¹⁴⁸ In a case in New Zealand, the accused person was able to present written documentation of his presence outside of Rwanda that appeared to contradict testimonies presented by Rwandan prosecutors about crimes he allegedly committed inside the country.¹⁴⁹

Concerned to bring accused persons back rapidly to Rwanda, prosecutors have not hurried to bring to trial the one person thus far returned to Rwandan custody. In 2005 Rwandan judicial authorities obtained the return of Enos Kagaba whom they wished to try on charges of genocide. Sent back by the United States on the grounds of having violated immigration regulations, Kagaba was assured of a prompt trial, according to Prosecutor General Martin Ngoga. As of early 2008, he had not yet been tried.¹⁵⁰

Interference in Judicial Cases

A former minister of justice, judges and former judges, former prosecutors, and lawyers all recounted cases of interference with the judicial system that they had experienced or knew of in some detail. A former official well-acquainted with such practices said that judges in important cases were rarely bought off, but were subject

¹⁴⁷ Reuters, "Denmark Arrests Suspect in Rwanda Genocide," September 8, 2006

¹⁴⁸ Human Rights Watch interview with Danish official, March 10, 2007; electronic communications with Danish official, March 19 and 20, 2007; Rwanda News Agency (RNA) ; Les Nouvelles de Kigali a Bruxelles, "1 million de DKK pour unsuspect du génocide," (accessed April 27, 2008) http://www.nkb-journal.com/spip.php?sommaire&var_mode=calcul

¹⁴⁹ Human Rights Watch, electronic communication, July 21, 2007.

¹⁵⁰ Fondation Hirondelle, "Extradited Genocide Suspect to Face Gacaca in Rwanda", April 25, 2005; Human Rights Watch electronic communication from U.S. official, January 25, 2008.

to pressure from the executive as well as from powerful persons outside the government. He said that judges “would know what to do.” Or, if there was any doubt about the decision, they would receive a call to tell them “this is what is expected.”¹⁵¹

In several cases documented by Human Rights Watch, important persons from the executive branch seem to have pressured judges or prosecutors. In other cases, less important officials or persons who were not officials but had political or economic power may have been the ones to intervene. Their motivations may have been political, economic, or personal—such as settling scores for some past wrong, imagined or real—or a combination of these reasons. Some of the persons targeted by these abusive actions themselves had considerable stature: political, religious, economic or military. Others were less visible.

In the last year the President of the Rwandan High Court Johnston Busingye has told at least two persons that judges in his court had been subjected to attempts by the executive to influence their decisions. He said that he had himself called those trying to pressure the judges in order to discourage their attempted interference.¹⁵²

In cases where judicial personnel have been subject to pressure, they have disregarded procedure, ignored allegations that evidence was coerced through abuse, willfully misread or distorted evidence, and substituted substantially different charges when the original charge fails. Some prosecutors and judges who have been subject to influence have taken decisions that fail to reflect the law and the facts of the case.

Political Cases

Officials have used the judicial system to punish and limit the activities of persons seen as opposed to the government and to the RPF, whether by detaining them for long periods without charge or by prosecuting them, often for “divisionism” and

¹⁵¹ Human Rights Watch interview with former judicial official, by telephone, November 8, 2007.

¹⁵² Human Rights Watch interview, May 13, 2007; Human Rights Watch trial observer notes, Testimony of Professor William Schabas, Westminster’s Magistrate’s Court, London, November 16, 2007.

“genocide ideology.” This pattern was well-established by the time of the 2004 judicial reforms and has continued since, despite them.

Léonard Kavutse, a leader of the opposition MDR party¹⁵³, spent eighteen months in pre-trial detention charged with discrimination, incitement to sectarianism, and threatening state security. The charges were based largely on a campaign-strategy letter, written and mailed to presidential opposition candidate Faustin Twagiramungu in the weeks preceding the August 2003 presidential elections.

At his trial before the High Court in early 2005, Kavutse pled guilty to the divisionism charge but repudiated a previous confession of guilt to the other charges, saying it had been coerced by beating him. Despite the evidence of abuse committed by state authorities, the court did not ask for investigation into the alleged beating, nor offer any remedy for the excessive time spent in pre-trial detention. It found him guilty of the broadly defined crime of sectarianism. He was sentenced to two years in prison, with one year as suspended sentence, and to probation for another two years.¹⁵⁴

Another MDR political leader, Jean-Pierre Gakwandi, was arrested in January 2002, and charged with inciting ethnic division, even though the law on divisionism, passed in December 2001, had not yet officially taken effect. After more than three years in pretrial detention, in 2005 he was found guilty and sentenced to four years in prison.¹⁵⁵

The Case of Pasteur Bizimungu and his Co-Defendants

One of the highest profile political trials in Rwanda, that of former president Pasteur Bizimungu, former minister Charles Ntakirutinka, and six others, is another that demonstrates the use of the judicial system for political ends. The accused were arrested in 2002 as Bizimungu was trying to mount a challenge to President Kagame and the RPF in national elections. They were tried and convicted in April 2004 as judicial reforms were being put in place and their appeals were decided by the

¹⁵³ The MDR dissolved soon after being targeted by the 2003 parliamentary commission on “divisionism.”

¹⁵⁴ High Court, Kigali, Case No. RP 0004/05/HC/KIG-RP 41.934/KIG, decision of April 20, 2005.

¹⁵⁵ Kigali, Case No. RP 641/S11/46/KIG, decision of October 28, 2005.

Supreme Court in early 2006 when reforms were supposedly fully operational. Despite many procedural irregularities in the earlier proceedings, the Supreme Court confirmed the convictions of Bizimungu and Ntakirutinka, but over-turned the convictions of the other six.

Pasteur Bizimungu, installed as president when the new government took power in 1994, was forced to leave the presidency in 2000, clearing the way for Vice-President Kagame to become president. In mid-2001 Bizimungu, former minister Charles Ntakirutinka, and several others formed a new party, the Party for Democratic Renewal-Ubuyanja (PDR-Ubuyanja). Legal under a 1991 law on the establishment of political parties, the foundation of PDR-Ubuyanja was nonetheless disallowed by authorities who declared that Rwanda was operating under a transitional agreement that excluded new formations.

Bizimungu and the others dropped the initiative but he and Ntakirutinka continued to suffer harassment. In August 2001, the two were detained and questioned by authorities. Shortly after, both were attacked by street gangs. Bizimungu published a book in November 2001, but it was confiscated before being distributed. In December 2001, an early member of PDR-Ubuyanja, Gratien Munyarubuga, was murdered at mid-day in Kigali, a crime for which no one was ever prosecuted.¹⁵⁶ In December 2001 and January 2002, several persons said to be members of Ubuyanja were arrested, including two persons whose small NGO published a newsletter with the word *ubuyanga* (meaning renewal or renaissance) in its masthead. These two, and perhaps others, spent several weeks in jail before being released without trial.¹⁵⁷

On April 7, 2002 Kagame made a highly publicized speech warning Bizimungu and other dissidents that no one—including foreign diplomats—would be able to protect them if authorities lost patience with them.¹⁵⁸ Two weeks later Bizimungu and Ntakirutinka were arrested and charged with endangering state security, fostering ethnic divisions, and engaging in illegal political activities. Twenty-four others were

¹⁵⁶ Human Rights Watch press release, “Rwanda: Opposition Politician Shot, Others Detained,” January 9, 2002, <http://hrw.org/english/docs/2002/01/09/rwanda3455.htm>.

¹⁵⁷ Human Rights Watch press release, “Rwanda: Activists in Detention,” January 31, 2002, <http://hrw.org/english/docs/2002/01/31/rwanda3716.htm>.

¹⁵⁸ Robert Sebuhirira, “Le jour où il n’y aura plus de tolérance ...,” *Umuseso*, year II, no., 81, April 8-14, 2002.

arrested in the following weeks, all charged with supporting Ubuyanja. Six of them were brought to trial with Bizimungu and Ntakirutinka.¹⁵⁹

When arrested, these men were initially charged with having formed a political party, but prosecutors apparently decided that there was no legal basis for such a charge. By the time Bizimungu and Ntakirutinka appeared in court, they were charged with creating a criminal association, spreading rumors to incite rebellion, and plotting to overthrow the government. Bizimungu was accused also of embezzling government funds, tax fraud, and possessing a firearm. Bizimungu appealed the court's decision to accept the redefined charges against him, but lost the appeal.¹⁶⁰

The six other persons were prosecuted for forming a criminal association, which was said to have harassed genocide survivors by throwing stones on their roofs, and to have planned to blow up a power plant. Two of the six identified themselves in court as survivors of genocide, presumably with no interest in harassing other survivors.¹⁶¹

When the trial began in April 2004, the rapidity of the proceedings contrasted with the delays in bringing the case to court. Bizimungu and Ntakirutinka had been in detention for two years, the others for nearly as long. The prosecution rested its case after six days, having relied largely on the testimony of a single witness, Theogene Bugingo, who had himself been involved in founding Ubuyanja. This witness contradicted himself repeatedly and showed confusion about dates and events central to the prosecution case.¹⁶² Other prosecution witnesses also presented contradictory and unconvincing testimony. There were doubts about the authenticity of one prosecution document and another, the record of an interrogation by the police, was said to have disappeared.¹⁶³

¹⁵⁹ Ligue Rwandaise pour la Promotion et la defense des droits de l'homme (LIPRODHOR), "Déclaration sur les récentes arrestations!" June 3, 2002

¹⁶⁰ Tribunal de Première Instance de Kigali, Jugement R.P. 4064/KIG, RMP 8394/S14. June 7, 2004

¹⁶¹ Human Rights Watch, trial observations, May 3, 2004.

¹⁶² Human Rights Watch, trial observations, May 11, May 19, 2004.

¹⁶³ Human Rights Watch, trial observations.

One prosecution witness testified that his statements presented to the court had been obtained under intimidation. Another witness interrupted the proceedings to say that he had been detained for two years in order to obtain his testimony against Bizimungu. Released at the end of the trial and warned to speak to no one about his experiences, this witness fled the country. The court took no notice of the alleged use of unlawful detention and abuse to coerce testimony.¹⁶⁴

The court several times refused to allow the defendants and their counsel the opportunity to fully examine witnesses against them. The defense presented seven witnesses but was refused the right to call others to support its position.¹⁶⁵

At one point during the trial the presiding judge charged defense counsel Jean-Bosco Kazungu with contempt of court when he tried to insist on questioning a witness. Kazungu was immediately taken to jail. Efforts by the bar association to get Kazungu released immediately failed and he spent the night in jail. He was freed the next morning by the Appeals Court of Kigali which reversed the decision of the trial court.¹⁶⁶

In its judgment, the trial court acknowledged the contradictions in the testimony of the primary witness Bugingo, but nonetheless found all the accused guilty of having created a criminal association. It convicted Bizimungu and Ntakirutinka of spreading rumors in order to incite rebellion and also convicted Bizimungu of embezzlement. It acquitted Bizimungu and Ntakirutinka of the other charges. The court sentenced the six co-defendants to five years in prison, Ntakirutinka to ten years and Bizimungu to 15 years.¹⁶⁷ The trial drew substantial attention, with most sessions attended by

¹⁶⁴ Human Rights Watch trial observation, May 3, May 11, May 12, 2004. The man in question, Niringiyimana, was listed as a witness for the prosecution, though never called to testify before the tribunal. He was initially detained for one week in October 2001 because of his suspected ties to Ntakirutinka. Police reportedly beat Niringiyimana and detained him for three days without food. He was released, only to be re-arrested in May 2002 on charges of illegal participation in Bizimungu's PDR-Ubuyanja Party. Authorities then held Niringiyimana for over two years and interrogated him repeatedly about his political activities and criticisms of the RPF, only to later falsify or destroy entirely his recorded statements. Human Rights Watch interview, Kigali, July 22, 2004. .

¹⁶⁵ Human Rights Watch, trial observations, April 23, April 26, May 3, 2004.

¹⁶⁶ Human Rights Watch trial observation, April 23, 2004; among the errors of the trial court noted by the Appeals court was that the judge had changed the term of imprisonment for Kazungu from 24 hours, announced in court, to 48 hours in the written decision. Jean-Claude Rubingisa, "L'Etat de droit triomphe, l'ordre des avocats s'en félicite," Orinfor release, April 24, 2004, (Accessed April 30, 2008) <http://www.orinfor.gov.rw/DOCS/justice5.htm>.

¹⁶⁷ Tribunal de Première Instance de Kigali, Jugement R.P. 4064/KIG, RMP 8394/S14. June 7, 2004

international observers.¹⁶⁸ The flawed verdicts handed down by the court show that the high visibility of a case did not guarantee due process to the accused.

In a 2006 decision, the Supreme Court confirmed the convictions of Bizimungu and Ntakirutinka, including on the charge of establishing a criminal association, but overturned the convictions of the six others on that same charge. The verdict could not be explained by purely legal considerations since all eight had been convicted of the criminal association charge largely on the basis of the same faulty witness.¹⁶⁹

The president of the trial chamber that convicted Bizimungu later fled Rwanda and told journalists that there had been no substantial proof of Bizimungu's guilt and that he had been convicted as a result of political pressure.¹⁷⁰ Bizimungu was freed by presidential pardon in 2007 but, as of this writing, Ntakirutinka remains in Kigali central prison.

The Case of Col. Stanislas Biseruka

The case of former military officer Col. Stanislas Biseruka illustrates political interference, an excessive period of pre-trial detention, and the problems of obtaining counsel in cases seen to have political importance. Biseruka's legal troubles began in mid-2001, just when Bizimungu and Ntakirutinka, with whom he was said to have political links, began to experience serious problems.¹⁷¹

Biseruka was first accused in a dispute over family financial matters, although other family members had accepted a proposed solution and felt no need to press charges against him. He was nonetheless tried on charges of embezzlement, found guilty, stripped of his military rank, and imprisoned in military prison for three years. On the day his term ended and with his family waiting to escort him home, he was

¹⁶⁸ Human Rights Watch observers monitored all sessions of this trial, specifically March 31, 2004; April 20-21, 23, 26, 27, 2004; May 3, 5, 11, 12, 13, 18, 19, 26, 2004.

¹⁶⁹ Human Rights Watch trial observation, March 31, April 20, May 3, 2004; November 11, 25, December 2, 2005; President Kagame pardoned Bizimungu in 2007 but Ntakirutinka remains in jail.

¹⁷⁰ Didas Gasana, "Bizimungu : Est-ce le pardon, la pression ou un plan politique ?" Umuseso, no. 280, May 19-26, 2007

¹⁷¹ Representative of the family of Stanislas Biseruka, "Deroulement du dossier de Mr. Biseruka Stanislas ," October 7, 2005; Human Rights Watch interviews with persons well-informed about the case, Kigali, September 10, 2005, August 16, 2007; by telephone July 24, 2005.

apprehended at the prison gate and taken to a civilian prison. He was detained from May 2004 to October 2005 without formal charges and, according to one knowledgeable jurist, without even a warrant for his arrest.¹⁷² At this time the reformed code of criminal procedure limited detention to a maximum of six months.

When Biseruka's request for release came before a local court, a high-ranking judicial official tried to persuade the judge to keep Biseruka in jail.¹⁷³ At the hearing, a number of obviously armed state agents appeared in court, an unusual circumstance, and the judge had to order them to leave their weapons at the door. Given the many procedural irregularities in the case, the judge released Biseruka. On appeal from the prosecutor, this decision was overturned by the appeals court and Biseruka was jailed again. Tried soon after, he was convicted of having shown contempt for public authorities in remarks that he purportedly uttered while in the military prison and was sentenced to two and a half years in jail.¹⁷⁴ The prosecutor also charged him with "divisionism" but could not muster witnesses to support that allegation. The prosecutor appealed the decision, seeking a heavier punishment. The Higher Instance Court of Gasabo in August 2006 confirmed both the verdict and the penalty.¹⁷⁵ Biseruka was freed in November 2007 after having completed his sentence.¹⁷⁶

According to family members, Biseruka experienced problems finding lawyers willing to defend him. Only after two futile attempts did he find one ready to mount a vigorous defense.¹⁷⁷

¹⁷² Human Rights Watch electronic communication with Rwandan jurist, May 11, 2008.

¹⁷³ Human Rights Watch interviews with persons well-informed about the case, Kigali September 10, 2005, by telephone July 24, 2005 and August 16, 2007.

¹⁷⁴ Lower Instance Court, Kabuga, N°0014/05/T.V.Kag; RMP 9395/S15/GS/MJB, Decision of November 30, 2005.

¹⁷⁵ Higher Instance Court, Gasabo, lCase no. RPA 0041/06/TGI/GSBO, Decision of August 29, 2006; Representative of the family of Stanislas Biseruka, "Deroulement du dossier de Mr. Biseruka Stanislas," October 7, 2005; Human Rights Watch interviews with persons well-informed about the case, Kigali, September 10, 2005; by telephone July 24, 2005.

¹⁷⁶ Human Rights Watch, electronic communication from family member, November 27, 2006.

¹⁷⁷ Representative of the family of Stanislas Biseruka, "Deroulement du dossier de Mr. Biseruka Stanislas," October 7, 2005.

The Case of Domina Nyirakabano

The case of Domina Nyirakabano, vicemayor of Ndiza district, shows how the lack of precise definition in the “divisionism” law facilitates prosecution of persons for political purposes. It also shows the manipulation of evidence by the prosecutor and the trial judge’s lack of interest in examining exculpatory proof. Nyirakabano, known as a local leader of some stature, refused to bow to pressure to join the RPF in 2004. She also had had several conflicts with her superior.¹⁷⁸

At the end of December 2004 she was arrested on charges of threatening state security and inciting civil disobedience. When the Nyanza High Court found inadequate proof to hold her on these serious charges, she was released but charged immediately after with “divisionism” for remarks she was said to have made at a local meeting. The prosecutor asserted that she had criticized the disparity between the relatively generous government assistance available to children who were survivors of genocide and the little available to other needy children. He said in court that these “divisionist” comments had been recorded in the minutes of an NGO meeting but this supposed written evidence was not examined by the judge nor was it made available to the accused.¹⁷⁹

Brought to trial in April 2005, Nyirakabano was found guilty and sentenced to 18 months in jail. According to her lawyer, who was able to consult the supposed documentary evidence only months after the trial, the minutes of the meeting mentioned neither her name nor the remarks she was said to have made. At the time of her conviction in April 2005, Nyirakabano appealed the decision, but her appeal was heard only two years later. In April 2007 she won acquittal. By then, she had finished serving her sentence and had been freed.¹⁸⁰

¹⁷⁸ Human Rights Watch, electronic mail communications from persons who followed the local situation from 2000 through 2005, April 25, May 5, and September 27, July 29, 2005.

¹⁷⁹ Human Rights Watch trial observation, Higher Instance Court, Muhanga, hearing the case of Domina Nyirakabano, RP0005/05/TD/NDIZA, May 26, 2006.

¹⁸⁰ Muberantwali Théoneste, “Muhanga : Tous les témoins ont déchargé NYIRAKABANO Domina,” Umukindo, no. 29, March 2007.

Genocide cases

Powerful persons attempt to intervene in genocide cases, as in others, for various reasons. Although ethnic hostilities may underlie some interventions, political, personal, and even economic objectives drive other efforts to sway judgments. In exceptional cases, it even appears that contradictory political influences can come into play, one leading to prosecution of a person and another leading to his acquittal. In one highly debated case, the Catholic Bishop Augustin Misago was arrested almost immediately after he was castigated by then President Pasteur Bizimungu in a highly publicized speech in 1999. But after more than a year in prison and a long trial, the Bishop was acquitted, reportedly because of the intervention of another high official. Asked about case, the person alleged to have intervened indirectly substantiated this explanation of the verdict. He said that the Bishop had been arrested while he was out of Rwanda, implying that had he been in the country he would have attempted to prevent the arrest. Concerning the acquittal, he said, “The potential harm of a guilty verdict weighed on everyone’s mind. The Catholic Church was still very powerful in Rwanda.”¹⁸¹ Some Rwandans, perhaps because they believed the acquittal was politically influenced, continue to refer to the Bishop as if he were guilty. The 2004 parliamentary report on genocide ideology says that the Bishop sent Tutsi to their death at an infamous massacre site near the bishopric.¹⁸²

The Case of Father Guy Theunis

Although approved and implemented by officials of the justice ministry, the impetus to accuse Father Guy Theunis, a Belgian priest, human rights activist, and journalist, seems to have come from persons hostile to the Catholic Church, including some who were seeking to regain control of the periodical *Dialogue* with which Theunis had once been affiliated. The journal, based in Rwanda before 1994 and now published in Belgium, often features articles critical of the current Rwandan government. The case shows how a small number of powerful persons can apparently play upon prevailing emotions—in this case hostility to the church—to

¹⁸¹ Human Rights Watch interview, former high judicial official, by telephone, November 6, 2007.

¹⁸² Rwandan Parliament, “Rapport de la commission parlementaire ad hoc, crée le 20 janvier 2004 par le parlement, chambre des deputes, pour analyser en profondeur les tueries perpetrées dans la province de Gikongoro, idéologie génocidaire et ceux qui la propagent partout au Rwanda,” June 2004, pp. 8-9 (unofficial translation).

achieve their objectives. It also shows how the prosecutor's office in the conventional system interfaces with the *gacaca* jurisdictions.

The prosecutor's office hastily cobbled together a case against Theunis, when he unexpectedly transited through Rwanda from Congo en route to Europe in September 2005.¹⁸³ In remarkable contrast to the tens of thousands awaiting trial in Rwandan prisons, Theunis was brought before a *gacaca* jurisdiction five days after his arrest.

A priest with two decades experience in Rwanda, Theunis helped launch one of the first human rights organizations in Rwanda in 1990 and documented abuses against Tutsi and Hutu alike. Evacuated during the genocide, Theunis worked to keep others informed of abuses being committed in the country. Later posted elsewhere in Africa, he returned to Rwanda briefly in 2004. No accusations were made against him then. Nor did Rwandan authorities ever raise any charges against Theunis with Belgian judicial authorities, with whom they frequently consulted about genocide prosecutions.

By the time Theunis made his unplanned stop in Rwanda, a Kigali-based group including some important RPF leaders was attempting to take control of the name and bank account of the journal *Dialogue*. Having learned of Theunis' presence in Kigali, a leader of the group sought Theunis out to ask his help in that effort. He declined, saying he had no further connections with the journal. The next day Theunis was arrested on a warrant from the prosecutor's office as he was preparing to board a plane for Europe.¹⁸⁴ The person who had sought his assistance on Tuesday accused him of genocide in front of the *gacaca* the following Sunday.

At this *gacaca* hearing, the usual tight restrictions on the attendance of foreign nationals and on audio and visual recordings were all relaxed, apparently to attract greater attention to the proceedings. An estimated 1,700 persons, some alerted by repeated announcements on the radio, attended.¹⁸⁵

¹⁸³ Human Rights Watch interview with government minister, Kigali, September 8, 2005.

¹⁸⁴ Human Rights Watch, electronic communication from person knowledgeable about the case, February 21, 2008.

¹⁸⁵ Human Rights Watch, *gacaca* observation notes, Kigali, September 11, 2005.

A score of witnesses, several of them prominent in the RPF, denounced Theunis for having supported the genocide. They relied on a tendentious and unfair reading of some his writings, ignoring, for example, the distinction between his words and those he was quoting (and had indicated by quotation marks). His efforts to alert others to the genocide were misrepresented as efforts to discourage international involvement. Some of the witnesses read from prepared statements, unusual in *gacaca* sessions where participants usually speak spontaneously.¹⁸⁶ One high ranking military officer in the audience remarked to a Human Rights Watch researcher that he was “gratified” to see the church humiliated by the proceedings.¹⁸⁷

The *gacaca* judges named Theunis as a category one genocide suspect and sent him back to Kigali prison. Returned to the jurisdiction of the prosecutor, Theunis was allowed the assistance of a lawyer when he was interrogated, but his right to be promptly and fully informed of the charges against him was not respected. It was only during his fourth interrogation and at the insistence of his lawyer that he was told of eight charges against him, including complicity in genocide as well as revisionism and minimizing the genocide, charges based on statements that he had allegedly made after 1994.¹⁸⁸ When he was presented to the High Court for a hearing on his proposed transfer to the Belgian judicial system, he was told there were ten charges, but he was not told the content of the two additional ones.¹⁸⁹

Theunis spent two and a half months in jail before he was transferred to Belgium. Once there, he was released while Belgian police investigate the case. More than two years later, the case remains open although official sources acquainted with the investigation said the file was “empty of any real proof.”¹⁹⁰

¹⁸⁶ Human Rights Watch, *gacaca* observation notes, Kigali, September 11, 2005.

¹⁸⁷ Human Rights Watch conversation with a general of the Rwandan Defense Force, September 11, 2005.

¹⁸⁸ Misna news service, “Missionnaire Arrêté: Interview de la Misna au Procureur National Rwandais, September 14, 2005.

¹⁸⁹ Human Rights Watch, electronic communication from person knowledgeable about the case, February 21, 2008.

¹⁹⁰ Human Rights Watch interviews with diplomat, Kigali, September 12, 2007 and with knowledgeable party, Brussels, by telephone, October 30, 2007.

The Case of Capt. Théophile Twagiramungu

The aberrant nature of the final decision in the case of Capt. Théophile Twagiramungu, rendered in February 2008, as well as the level of court that delivered it—the Supreme Court—attracted considerable comment from Rwandan jurists. Although motivations for the apparent interference in this case are not certain, two independent sources suggested that Twagiramungu was seen by other military officers as potentially troublesome because of his independence of thought.¹⁹¹

An officer in the former Rwandan army, Twagiramungu was briefly re-integrated in the RPA military force before being arrested in October 1994 on charges of genocide. Not brought to trial until June 2001, he was acquitted by the War Council after the military prosecutor presented only scant and contradictory evidence against him. He resumed his military career.¹⁹²

On January 7, 2003, Twagiramungu was sent to the Directorate of Military Intelligence for the night and was jailed on January 8. Two days later the Military Court (appeals level in the military system) heard an appeal to his June 2001 acquittal filed by the persons claiming damages in the case. Although the prosecutor had not appealed the decision, the Military Court on January 10, 2003 overturned his acquittal, found him guilty of genocide, and sentenced him to death. He was sent back to prison. In the course of these proceedings he had not had an opportunity to prepare an adequate defense.¹⁹³

Twagiramungu appealed his conviction to the Supreme Court, arguing the precedent of a prior case in which the Supreme Court had held that a party claiming damages had no standing to appeal the verdict in a penal case if the prosecutor did not do so.¹⁹⁴ The Supreme Court overturned the conviction on February 24, 2006 but held

¹⁹¹ Human Rights Watch interview, April 27, 2008 and electronic communication, May 13, 2008.

¹⁹² War Council, RP 045/CG-CS/00 and RMP 895 AM/KG496, June 20, 2001.

¹⁹³ Human Rights Watch interview with person knowledgeable about the case, March 11, 2008.

¹⁹⁴ Human Rights Watch trial observation, October 18, 2005; Human Rights Watch interview with lawyer knowledgeable about the case, March 22, 2008.

that the civil damages claim could still be heard.¹⁹⁵ Shortly after Twagiramungu fled Rwanda and successfully claimed asylum abroad.¹⁹⁶

The case continued, however, and on February 12, 2008, the Supreme Court held in favor of the civil claimants and ordered Twagiramungu to pay them 2,680,000 Rwandan francs (US \$ 4,940) in damages.¹⁹⁷ In a decision riddled with contradictions and logical errors, the court acknowledged that Twagiramungu could not be held criminally responsible because the prosecutor had failed to appeal his acquittal, but assigned damages nonetheless. According to three Rwandan jurists, two of them with considerable experience as judges, such a finding cannot be substantiated under Rwandan law. They said that no one could be held liable for damages in a criminal trial in which he was acquitted. For a party who claimed injury to receive any damages in such a case, he or she would have to institute a separate civil proceeding.¹⁹⁸ In addition, as a foreign jurist commented, the court assigned a detailed schedule of damages to be paid without giving any justification of how the determination was made.¹⁹⁹

Other Cases

Courts have also been subject to interference in cases involving important economic interests as well as other kinds of conflicts between powerful persons as shown in the examples below.

Alfred Kalisa, former president of the Bank of Commerce, Development and Industry (BCDI) was arrested in January 2007 on charges of fraud and violating banking laws. Powerful RPF members have significant holdings in the BCDI, one of the most important banks in Rwanda and Kalisa himself was said to have played a major role in financing the RPF in its early days. When Kalisa was arraigned, the judge saw no reason to detain him pending trial. According to press reports, he had returned

¹⁹⁵ Supreme Court, Jugement Case n^oRPAA 0004/Gén/05/CS, November 16, 2005, February 3 and 24, 2006.

¹⁹⁶ Human Rights Watch interview with lawyer knowledgeable about the case, March 22, 2008.

¹⁹⁷ Supreme Court, Jugement No. RPA 0004/Gén/05/CS, Supreme Court, February 12, 2008.

¹⁹⁸ Human Rights Watch, interviews, April 12 and 15, 2008; electronic communication, April 17, 2008.

¹⁹⁹ Human Rights Watch, interview by telephone, London, April 16, 2008.

voluntarily from South Africa when he learned of problems at the bank. She released him, but Kalisa was rearrested the same evening on order of the prosecutor general, supposedly because he posed a risk of flight. A High Court panel then reversed the decision granting bail, confirming that Kalisa must stay in jail.²⁰⁰

Kalisa maintained that members of the bank board must be charged too since all his actions had been under their supervision. A judge agreed and joined the others to the case, but all were permitted to remain free. The decision joining them to the case was appealed. Under normal judicial procedure, the original case would have continued while the appeal was being considered. But in August the High Court president suspended proceedings until the appeal was settled. In April 2008, the case resumed after having been stalled since the previous August with the former bank president having been jailed some fifteen months since his arrest. After his first attempt to obtain release, he tried twice more to be freed pending trial, both times without success.²⁰¹ On June 10, 2008, Kalisa was found guilty of abuse of confidence and of violating a banking regulation. He was sentenced to 2 years, 3 months of imprisonment and a fine of 1 million Rwandan francs.²⁰²

In a case in the military justice system, Col. Patrick Karegeya, once head of external security and longtime associate of President Kagame, was prosecuted in a case where the charges seem to have little to do with the real reasons for his arrest and punishment. By 2005 Col. Karegeya had been moved from his position as head of external security to the far less prestigious post of army spokesman, reportedly because he had lost the confidence of his superiors. That year Karegeya was

²⁰⁰ Human Rights Watch interview with person who followed the case closely, June 7, 2008.

²⁰¹ Human Rights Watch interview, with a lawyer, Kigali, September 11, 2007; Human Rights Watch interviews, by telephone, January 23, 2007, and in Kigali, lawyer, September 11, 2007; Felly Kimenyi, "Kalisa gets bail, ordered not to leave city," *The New Times*, http://www.newtimes.co.rw/index.php?option=com_content&task=view&id=417&Itemid=39 (accessed January 18, 2007); "Put Kalisa in jail, we will look for crimes later," *Umuseso* Newspaper number 275, January 21-28, 2007;

Felly Kimenyi, "Kalisa charged with six counts," *The New Times*,

http://www.newtimes.co.rw/index.php?option=com_content&task=view&id=1091&Itemid=1 (accessed April 5, 2007).

Felly Kimenyi, "Kalisa prosecution storms out,," *The New Times*,

http://www.newtimes.co.rw/index.php?option=com_content&task=view&id=1191&Itemid=44 (accessed April 14, 2007)

Felly Kimenyi, "Alfred Kalisa loses third bail bid," *The New Times*,

<http://newtimes.co.rw/index.php?issue=1255&article=203> (accessed August 14, 2007).

Burasa Jeran Gualbert, "L'affaire Kalisa BCDI vien de prendre un autre tournant," *Rushyashya*, no. 61, 1 July 2007

²⁰² Human Rights Watch trial observation notes, Announcement of verdict in trial of Alfred Kalisa, Nyarugenge Court of Higher Instance, June 10, 2008.

detained without charge for more than five months, at least part of the time in an unofficial place of detention. Military officers explained that the case had been handled as an administrative matter and the nature of the supposed offense was never made public.

When released, Karegeya was told to return home and await further orders. Several months later, in May 2006, he received a letter ordering him to report for duty on May 15. While dressing that morning, he was arrested for not having reported promptly for duty. In July 2006, he was convicted of desertion and insubordination, stripped of his rank, and sentenced to 20 months in prison largely on the basis of testimony of a single witness, his commanding officer, who said he had informed Karegeya to report for duty prior to sending the letter in May. The evidence seemed inadequate to support the grave charges against him.²⁰³ After Karegeya completed his sentence, he was released from prison and soon after fled the country.

Consequences of Trying to Remain Independent

Some prosecutors and judges try to resist pressure, whether from politically powerful persons or from wealthy businessmen. “Turn off your phone,” was the practical counsel from one judge to colleagues less experienced in such circumstances.²⁰⁴

Those who do “turn off the phones” pay a price for their attempt to protect the independence and integrity of the judicial process. Judges or prosecutors connected with the cases of the Bizimungu and Biseruka, for example, no longer hold positions in the Rwandan judicial system and at least three of them fled Rwanda and received asylum abroad.²⁰⁵

In one case, the judge Evode Uwizeyimana was interviewed by a Voice of America journalist after Alfred Kalisa had been rearrested following his brief liberation in the

²⁰³ Human Rights Watch interview with person knowledgeable about the case, Kigali, August 10, 2006; James Munyaneza, “Col. Karegeya arrested,” *The New Times*, May 18, 2006; Rwanda News Agency (RNA), “Karegeya back to prison after Court rejects appeal,” Kigali, May 30, 2006; Panapress, “18 mois de prison contre un ex-officier de l’armée rwandaise,” 3 septembre 2006.

²⁰⁴ Human Rights Watch interview, former judge, by telephone, August 16, 2007.

²⁰⁵ Human Rights Watch interviews, former judicial officials, by telephone, March 8, 2001, August 16 and 17, November 4 and 8, 2007

bank case. Uwizeyimana spoke up in defense of judicial authority and criticized the police for having taken Kalisa back into custody. Asked later by various officials to account for his statement, Uwizeyimana—who already had a reputation for expressing his opinions frankly—felt sufficiently threatened to resign his post.²⁰⁶ Although he was no longer a judge, the Superior Judicial Council summoned him for a hearing on an alleged case of corruption. They found him guilty and dismissed him from the judiciary, a punishment that was redundant considering his previous resignation but which made it impossible for him to practice law or other professions. He subsequently sought asylum abroad.²⁰⁷

Lack of Respect for Judicial Orders

The rule of law requires that judges be able to require state agents to obey lawful orders of the court. According to the 2003 Constitution and the code of penal procedure, judges have the authority to require such obedience, but in fact they are not always able to do so.²⁰⁸

In a landmark case in May 2005, for example, Tharcisse Karugarama, then president of the High Court, ordered police to produce a detainee who was illegally held, a first use of the habeas corpus power established by one of the 2004 judicial reforms. The police released the detainee but failed to obey the order to produce him in court. Because the new penal code that is to provide sanctions for state agents who fail to obey judges' orders had not then—and has not yet—been adopted, Judge Karugarama had no way to punish police officers for not complying with his order.²⁰⁹

Human Rights Watch researchers also documented several cases where persons acquitted by courts of law were not released from prison, or were released only to be

²⁰⁶ Human Rights Watch interview, lawyer, Kigali, September 11, 2007.

²⁰⁷ Human Rights Watch interviews, Kigali, ministry of justice officials, September 10, 2007; lawyers, September 10 and 11, 2007; by telephone, August 16, 2007.

²⁰⁸ Constitution of Rwanda, 2003, article 140;

²⁰⁹ Constitution of 2003, article 140; Republic of Rwanda, Official Journal of July 30, 2004, Law no. 13/2004 of 17/5/2004 concerning the Code of Criminal Procedure, article 89 and Law no. 20/2006 of 22/4/2006 modifiant et completant la loi no. 13/2004 du 17/5/2004 portant code de procedure penale, article 19; High Court, Kigali, Case No.RP.0161/05/HC/KIG., May 26, 2005.

re-arrested shortly thereafter, in violation of a court order.²¹⁰ One person interviewed by Human Rights Watch researchers was arrested and detained three times on a single arrest warrant, and held in prison for an additional twenty months after he was declared innocent. Others remain in prison despite having been acquitted at trial, including some for as long as five years.²¹¹ In May 2005, a defendant ordered to be released by the court was immediately handcuffed as he left the courtroom and was returned to prison. “The audience was shocked,” said the court clerk who witnessed the incident. “But,” he continued “it would seem the police still have more power than the judges.”²¹²

Nearly all judges, lawyers and court clerks interviewed by Human Rights Watch recognized the continued problem of unlawful arrests and detentions, and the reluctance of many authorities to respect court orders despite implementation of the judicial reforms.²¹³ In late 2005 Martin Ngoga, then Deputy Prosecutor General told a meeting of prosecutors that failure to follow appropriate procedures, such as in cases of detentions, represented a real problem.²¹⁴ The National Human Rights Commission criticized illegal detentions in both its 2005 and 2006 reports.²¹⁵

Judges themselves sometimes treat police or prosecutors too leniently when they violate legal procedures. In one criminal case brought to court in February and March 2005, the judge recognized that the 18 months the defendant had spent in pretrial detention far exceeded the maximum permitted by law. He nonetheless excused the violation without penalty or remedy, as “the prosecutor explained that it was due to

²¹⁰ Constitution of 2003, article 140; Republic of Rwanda, Official Journal of July 30, 2004, Law no. 13/2004 of 17/5/2004 concerning the Code of Criminal Procedure, article 89 and Law no. 20/2006 of 22/4/2006 modifiant et completant la loi no. 13/2004 du 17/5/2004 portant code de procedure penale, article 19.

²¹¹ Human Rights Watch interviews, December 17, 2004, May 28, 2005 and May 30, 2005.

²¹² Human Rights Watch interview, court clerk, Kigali, May 26, 2005.

²¹³ Human Rights Watch interviews, judges, May 26, 27, 28, 2005; former prosecutor May 28, 2005; court clerks, April 27 and May 26, 2005; former police officer, May 30, 2005; lawyer, May 30, 2005.

²¹⁴ Integrated Regional Information Network (IRIN), “Rwanda: Prosecutors meet on search warrant, arrest procedures,” November 7, 2005.

²¹⁵ National Human Rights Commission, Annual Report 2006 (September 2007), pp. 43-58, Annual Report 2005, pp. 31-40.

many reasons, including the fact that he [the detainee] was arrested close to the weekend, the fact that there were holidays, and the judicial reforms.”²¹⁶

²¹⁶ High Court , Kigali, RP 0004/05/HC/KIG-RP 41.934/KIG, at p.6, translated from the French: “Le tribunal constate que la police judiciaire n’a effectivement pas respecté le délai de détention préventive, mais que le ministère public explique que cela a été dû à plusieurs raisons dont notamment le fait qu’il a été arrêté vers le week-end, le fait qu’il y a eu plusieurs congés et la réforme judiciaire [...].” Respect for due process rights should certainly not be dependent on the day of the week or time of year an individual is arrested, as is here suggested by the court.

IX. Challenges to Fair Trial Standards

As has been described, judicial authorities operate in a political context where the executive continues to dominate the judiciary and where there is an official antipathy to views diverging from those of the government and the dominant party, the Rwandan Patriotic Front (RPF). The campaign against “divisionism” and “genocide ideology” imposes the risk of serious consequences on persons who question official interpretations of the past and who would prefer other than the official vision for the future.

In this context, as the examples cited above demonstrate, basic fair trial standards are not fully assured. These include the presumption of innocence, the right of equal access to justice, the right to present witnesses in one’s own defense, the right to humane conditions of detention, the right to freedom from torture, and the right to protection from double jeopardy.

The Presumption of Innocence

In Rwanda the presumption of innocence is most at issue in cases of genocide or in cases involving expressions of ethnic hostility, such as those where “divisionism” or “genocide ideology” are charged. The widespread involvement of many—though certainly not all—Hutu in the genocide has led many public officials to speak as if all Hutu are guilty of this crime. When officials responsible for the administration of justice and the police make such statements they promote an atmosphere where it is difficult to assure judicial processes that are impartial and free of bias.

In an address to legal professionals at The Hague in 2006, the president of the High Court said that “the architects of the genocide literally made every one a direct or indirect participant.”²¹⁷ Under Rwandan law, “indirect participants,” that is,

²¹⁷ The president of the Rwandan High Court, paper delivered at the Centre for International Legal Cooperation, Seminar on Legal and Judicial Reform in Post Conflict Situations and the Role of the International Community, Dec 7, 2006 and published as “Reality and challenges of legal and judicial reconstruction in Rwanda,” *The New Times*, December 31, 2006.

accomplices to the crime, are equally guilty and receive the same punishment as the principal perpetrators.²¹⁸

In a May 2007 statement about the killings of 20 detainees by police officers, the Commissioner General of the Rwandan National Police Andrew Rwigamba (formerly chief prosecutor in the military justice system) said that the “suspects involved in these cases were of extreme criminal character ready to die for their genocide ideology.” The detainees, all recently arrested, had not been tried for any crimes and none had been convicted of holding “genocide ideology.”²¹⁹

Officials, including judicial officials, discount acquittals with which they do not agree and continue to speak of the acquitted as if they were guilty. After ICTR judges found former Cyangugu governor Emmanuel Bagambiki not guilty, Prosecutor General Jean de Dieu Mucyo said, “There was clear evidence that the two [Bagambiki and codefendant André Ntagerura] were among the leaders of the genocide and that many people are dead because of their actions.”²²⁰

Court cases

In one case in 2006 three judges of the High Court appear to have neglected the presumption of innocence in the case of Nyirimanzi, a defendant who appeared before them charged with complicity in genocide. In upholding a lower court finding of guilt, the judges shifted the burden of proof to the defendant and concluded that he had failed to prove that he had not been in the company of the victim, as was alleged by others. They also seemed to be endorsing the idea of guilt by association by remarking that the defendant had been seen in the company of his brothers, allegedly members of the *Interahamwe* militia.²²¹

²¹⁸ Organic Law of June 19, 2004 Establishing the Organization, Competence and Functioning of Gacaca Courts. Article 53.

²¹⁹ Human Rights Watch, “There will be no Trial” – Police Killings of Detainees and the Imposition of Collective Punishments Volume 19, No. 10 (A), July 2007, pp.25-26; pp. 34-37, <http://hrw.org/reports/2007/rwanda0707/> (accessed October 29, 2007).

²²⁰ Fondation Hironnelle, “La Ville des acquittés du TPIR reste divisée,” February 10, 2006.

²²¹ High Court, Kigali, RPA/Gen/0016/05/HC/KIG, July 7, 2006.

Treatment of Detainees and Prisoners

Officials in charge of the Kigali city prison on at least one occasion on October 20, 2005 showed their tolerance of—if not open support for—the position that “All Hutu are *Interahamwe*.” They permitted a representative of Esther Vision Ministries, an evangelical Christian group, to use the public address system of the prison to harangue prisoners for two hours and then to distribute printed tracts carrying this message.²²²

In some prisons, pre-trial detainees are housed together with convicted criminals and they are subject to the same requirements regarding the wearing of prison uniforms and, in at least one prison, to the mandatory shaving of their heads.²²³ They ordinarily appear in court in their prison uniforms.

The failure to uphold the presumption of innocence for detainees also appears in the electoral law of 2003 that specifically denies voting rights to those in pretrial detention, some 80,000 people at the time of the last national elections.²²⁴ Under Rwandan criminal law, persons convicted of a crime may be deprived of the right to vote as part of their punishment, but the 2003 election law denied voting rights to persons who had not yet been tried. With legislative elections scheduled for September 2008 and presidential elections for 2010, detainees still remain deprived of the right to vote.

Impact of the campaign against “divisionism” and “genocide ideology”

The campaign against “divisionism” and “genocide ideology” further undermines the presumption of innocence as officials accuse and encourage others to accuse persons said to hold these prohibited ideas. With no judicial process whatsoever,

²²² Copy of tract in possession of Human Rights Watch.

²²³ Human Rights Watch, field observation notes of visits to prisons in Butare, Gikongoro, Gitarama, and Kigali in 2005 through 2007; electronic communication, former detainee, October 30, 2007. Rule 8 (b) of the Standard Minimum Rules for the Treatment of Prisoners specifies that convicted prisoners shall be kept apart from untried persons. Standard Minimum Rules for the Treatment of Prisoners Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, (accessed May 17, 2008) http://www.unhcr.ch/html/menu3/b/h_comp34.htm.

²²⁴ Loi Organique relative aux élections présidentielle et législatives, article 10. The law also held that people who had confessed to, or been convicted of, Category 3 genocide crimes (manslaughter or bodily injury) would be deprived of their right to vote, in contrast to the 1996 Genocide Law and 2001 Gacaca law.

many of those so accused have suffered the loss of employment and educational opportunities as well as ostracism.

The Right to Present Witnesses

Most prosecutions of genocide, like many other court proceedings in Rwanda, depend on testimony from witnesses, both for the prosecution and the defense. The willingness of witnesses to participate in judicial proceedings and to testify openly and truthfully depends in part upon the state's ability and willingness to guarantee their safety. The protection of witnesses for the prosecution, some of whom have been murdered, has rightfully aroused substantial concern,²²⁵ but the security of defense witnesses has drawn less attention, in part because there have been no confirmed reports of killings of defense witnesses.

Agents of the state have on occasion interfered with the right to present a defense by detaining and intimidating witnesses or potential witnesses or by failing to protect them from non-state actors. Unless witnesses can rely upon officials not to harm them and to protect them from harm by others, they are unlikely to testify and accused persons will be unable to avail themselves of their right under Rwandan and international law to present witnesses in their own defense.

State Protection of Witnesses

According to the Rwandan law on evidence, Rwandan prosecutors and judges may take any measure necessary to protect witnesses needed for the prosecution.²²⁶ Only one of some 15 lawyers, prosecutors, and judges questioned by Human Rights Watch researchers about witness protection mentioned this provision and one judge, then president of a higher instance court, specifically said that the law on evidence provided no protection for witnesses. None of the jurists mentioned any instance of this law having been invoked to protect witnesses.²²⁷

²²⁵ Human Rights Watch, *Killings in Eastern Rwanda*, January 2006.

²²⁶ Loi N° 15/2004 du 12/6/2004 portant modes et administration de la preuve, article 128. There is no similar provision for protecting defense witnesses. Protection for all witnesses is proposed in a draft amendment of the code of criminal procedure now before the legislature.

²²⁷ Human Rights Watch interviews, May 26, 28, and 30, 2005; November 1, 2, 3, 6, 7, and 8 2006; September 11 and November 14, 2007. A proposed revision to the code of criminal procedure, now before the Rwandan parliament, would make it a crime to tamper with witnesses or judicial personnel.

Despite this general lack of recourse to legal safeguards for protecting witnesses, the government did establish a witness protection service that has offered assistance to more than 900 people since its creation in 2005. Even those engaged in delivering this assistance said they were unaware of the article in the law on evidence providing protection for witnesses.²²⁸

As presently constituted, the witness protection service is under the national prosecutor's office, making it unlikely that witnesses for the defense who encounter problems would seek its assistance. In one recent case where nine defense witnesses were harassed after testifying at the ICTR and sought assistance from the witness protection service, they were threatened with harm rather than receiving help (see below).

They Shut their Mouths

The difficulty of presenting a defense through witness testimony remains one of the chief obstacles to the delivery of justice, particularly in cases that have attracted considerable attention. Asked about the right to defense, a former prosecutor said:

People are scared to defend any accused. When certain people are accused, you can see the shock on others' faces, but then they shut their mouths because they're afraid. And many judges have a tendency to listen to accusations more than to arguments in defense—there is no equilibrium between the defense and the prosecution.²²⁹

Several lawyers expressed the same opinion to Human Rights Watch researchers, one going so far as to say that there had been no persons willing to speak as defense witnesses in the cases in which he had defended persons accused of genocide.²³⁰ In cases known to Human Rights Watch, it is more typical for a small

²²⁸ Human Rights Watch interviews, official of the witness protection service, Kigali, November 8, 2006 and November 12, 2007.

²²⁹ Human Rights Watch interview, former prosecutor, Kigali, May 28, 2005.

²³⁰ Human Rights Watch interviews, Rwandan lawyers, September 19, 2006 and Kigali September 10 and 11, 2007; judge, August 17, 2007

number of witnesses to appear for the defense than none at all. It also appears that the greater the public attention to the case, the greater the difficulty in securing witnesses for the defense. A lawyer summed up the problem saying that Rwandans were well aware that “any statement can bring misfortune.”²³¹

Official Interference with Witnesses

Police officers, security agents, and other officials have sought on occasion to influence the testimony of witnesses through the promise of rewards or through intimidation, mistreatment, detention or threat of prosecution. In several cases, officials hoped to obtain testimony for the prosecution, as in the case of Pasteur Bizimungu and his co-defendants,²³² but in others they sought to prevent or alter testimony for the defense.

In one bitterly contested case, a *gacaca* official summoned several genocide survivors and asked them to explain why they had given testimony for the defense. Local police reinforced the impact of the intimidation by arresting three defense witnesses and holding them in jail for more than a week on unspecified charges. When one of these persons was released, he was warned that if he persisted in giving testimony, he could be charged with “genocide ideology.”²³³

On at least one occasion a judicial official threatened to arrest a defense witness in conventional court. In a trial for genocide in Nyamirambo, Kigali in 2002, one of two defense witnesses sought to establish the credibility of her testimony by saying that she had been present at a barrier with the defendant during the genocide. The prosecutor immediately threatened to prosecute her for that admission.²³⁴

In at least two cases before the ICTR, Rwandan authorities have failed to assist the ICTR in ensuring the right of the defense to present witnesses. Counsel for Col.

²³¹ Human Rights Watch interview, lawyer, Kigali, September 10, 2007.

²³² In a second case, high ranking police officials kept witnesses in an irregular place of detention (a residence) in order to ensure they testified as the prosecution wished. Human Rights Watch interview, by telephone, former high ranking judicial official, February 11, 2006.

²³³ Human Rights Watch interviews by telephone and electronic communications, October 8, 16, 19, 30 and November 6, 2007.

²³⁴ Jean Baptiste Uwarugira, “Ils ont été à la barrière,” *Le Verdict*, no 35, février 2002, p. 15.

Bagosora were unable to obtain the presence of Gen. Marcel Gatsinzi, even after Chamber I issued a subpoena compelling his appearance.²³⁵ In a second case, Rwandan authorities refused for months to permit Agnes Ntamabyaliro to travel to Arusha to testify in defense of Justin Mugenzi. The order of Trial Chamber II, issued April 13, 2006 and directing the Rwandan government to permit her travel to Arusha finally resulted in her appearance, but only on August 21, 2006.²³⁶

Among other cases reported to Human Rights Watch of persons who encountered problems after having testified for the defense at the ICTR, one witness disappeared, two fled Rwanda after having been threatened, at least three were arrested, and at least one was re-arrested.²³⁷ The arrests and re-arrest took place soon after the witnesses testified in Arusha, suggesting that the fact of having testified or the information provided during testimony was important in triggering the arrests.

“Genocide Ideology” and the Risks of Testifying for the Defense

Many persons who have valuable testimony to offer refuse to speak for the defense because they fear being perceived as making common cause with accused persons and thus opening themselves to accusations of harboring or propagating “genocide ideology.” As indicated above, the 2006 Senate commission report mentioned statements about Hutu being wrongly detained as one manifestation of genocide ideology.²³⁸

In the case of Father Theunis only one person, a Human Rights Watch researcher, spoke in Theunis’ defense. At least three other persons in attendance possessed information helpful to the defense but dared not speak. As crowds were departing at the conclusion of the session, they furtively expressed regret about their silence to

²³⁵ Prosecutor v. Bagosora et al., Decision on Bagosora Motion for Additional Time for Closing Brief and Related Matters (TC), 2 May 2007; Human Rights Watch interview, November 12 2007.

²³⁶ Fondation Hirondelle, “Le TPIR demande au Rwanda de laisser une ex-ministre venir temoigner,” April 18 2006.

²³⁷ Human Rights Watch, electronic communication, 28 August 2007; Human Rights Watch interviews, November 9, 11, 12, 13, 15, 16 ,2007.

²³⁸ Rwandan Senate, Rwanda, Genocide Ideology and Strategies for Its Eradication, 2006, p. 18, notes 5-7.

Human Rights Watch researchers.²³⁹ All had been colleagues of Theunis in the human rights movement.

General Frank Rusagara, known for his role as an ideological spokesman for the armed forces, also present that day, later published an article in the government-linked *The New Times* denouncing the witness who testified for Theunis as a “negationist,” guilty of “trivializing” the genocide and “being an apologist of the génocidaires’ forces.”²⁴⁰

Popular Pressure and Official Threats

Human Rights Watch researchers have recorded many instances where witnesses or potential witnesses for prosecution and for the defense have been harassed or threatened. Some of the saddest such cases involve survivors causing problems for other survivors who are willing to testify in defense of persons accused of genocide.

In one such case, nine defense witnesses who had testified in a genocide trial at the ICTR were expelled from Ibuka, the association of genocide survivors, as a result of their testimony. In documents filed as part of a motion by defense counsel, they said they had been harshly criticized at a local meeting of Ibuka in April 2008 and had then been expelled from the association, a decision that was transmitted in writing to the mayor of the district. They were told that they would receive no further benefits meant for survivors of the genocide, such as health care or school fees, and one person said she was threatened with expulsion from her home. Although the benefits are provided by a government fund rather than by Ibuka, a non-governmental association, expulsion from Ibuka might well complicate receiving the benefits. In any case, the threatened persons believed that their expulsion had cost them their benefits.

After their plight became known at the ICTR, tribunal staff referred the problem to the office of the Rwandan prosecutor, who sent a representative of the Rwandan witness protection service to talk with the witnesses. According to the defense witnesses,

²³⁹ Human Rights Watch conversations, September 11, 2005.

²⁴⁰ Brig. Gen. Frank K. Rusagara, “The continued négationisme of the Rwandan Genocide, *The New Times*, January 11, 2006.

the representative of the witness protection service threatened them with harm rather than providing them with assistance. According to a report filed by an ICTR staff member who investigated the case, the Rwandan deputy prosecutor general promised to meet the witnesses himself to assure them that their benefits would continue and undertook to see that the representative of the Rwandan witness protection service would be made aware that her conduct had been inappropriate.²⁴¹

In several cases noted by Human Rights Watch researchers, persons who chose to keep silent later apologized either to the accused or to his family. In one dramatic instance, a genocide survivor broke down in tears as he admitted how ashamed he was at having refused to testify for a man who had saved his own life and that of more than a dozen members of his family. In at least some of these cases, the accused or his relatives have excused the silence of those who might have helped mount a defense, saying they understood the fear that dictated the choice.²⁴²

The Right to Legal Counsel

The 2003 Constitution guarantees the right to legal counsel, as does a 2004 amendment to the code of criminal procedure.²⁴³ Many lawyers named the 2004 provision guaranteeing right to counsel at all stages of judicial proceedings as one of the most important changes brought by the legal reforms.²⁴⁴ *Gacaca* jurisdictions, however, remain the one dramatic exception to the exercise of that right with accused persons having no access to counsel at any stage of the proceedings.

The state has no obligation to assist indigent persons in obtaining counsel nor does any law provide remedies for accused persons unable to obtain counsel.²⁴⁵

²⁴¹ Prosper Mugiraneza's First Amended Emergency Motion to Institute Proceedings Pursuant to Rule 77 and appended exhibits, ICTR case no. ICTR-99-5-T, June 6, 2008.

²⁴² Human Rights Watch interviews with accused and family members of accused, Kigali, September 9, 2007 and December 2, 2007.

²⁴³ Republic of Rwanda, Official Journal of July 30, 2004, Law no. 13/2004 of 17/5/2004 concerning the Code of Criminal Procedure, articles 64 and 96.

²⁴⁴ Human Rights Watch interviews, lawyers, May 30, 2005, November 1 and 6, 2006.

²⁴⁵ Constitution of 2003, article 18, provides: "The right to be informed of the nature and cause of charges and the right to defence are absolute in accordance with the law in a public and fair hearing in which all the necessary guarantees for defence have been made available." The 1996 Genocide Law, article 36, provided that defendants had the right to defense, but "not at government expense." Many view the removal of the provision "not at government expense" in the Constitution of 2003 as an improvement in the guarantee to a defense. Human Rights Watch interview, Kigali, May 31, 2005.

According to one informed estimate, only 10 percent of Rwandans can afford to pay for legal assistance.²⁴⁶ In principle, the bar association provides assistance to indigent persons who request help, but the fund to reimburse lawyers for expenses incurred in such efforts is more often than not empty with the result that lawyers are unwilling to undertake the work. According to one former officer of the bar association, the Rwandan government has promised to provide funds to help assure the defense of indigent persons but has not done so.²⁴⁷ An international non-governmental organization, *Avocats sans Frontières* (Lawyers without borders) offers assistance to some, but it too can respond to only a small number of the many needy persons requiring counsel.²⁴⁸

The Rwandan bar association counts 84 lawyers and 149 *stagiaires*, or apprentice lawyers,²⁴⁹ but many of them focus largely, if not exclusively, on civil cases. In addition, virtually all of the lawyers are based in Kigali, meaning that persons living elsewhere find it hard to engage a lawyer, far less to have frequent access to him.²⁵⁰ This poses a particular hardship for detainees who must wait for their lawyers to come to them. Judges and prosecutors working outside Kigali said that most of the defendants appearing in court—one judge estimated 80 percent of the defendants—had no legal assistance.²⁵¹ All see scarcity of lawyers as a “huge problem” and “catastrophic,” particularly for poor persons charged with serious crimes that carry heavy penalties.²⁵² Recognizing the extent to which ignorance of procedure constitutes a grave disadvantage for many defendants, one prosecutor said that he believed defendants without legal representation ordinarily received longer sentences than comparable defendants who had lawyers assisting them.²⁵³

²⁴⁶ Human Rights Watch interview, Kigali, jurist working with international NGO in field of justice, April 28, 2007.

²⁴⁷ Human Rights Watch interview, lawyer, Kigali, November 1, 2006.

²⁴⁸ Human Rights Watch interviews, lawyers, Kigali, November 1, 2006; September 11, 2007; Brussels, May 2, 2008.

²⁴⁹ Statement by Gatera Gashabana, President of the Kigali Bar Association, Transcript, Oral Hearing on 11 bis motion, ICTR case ICTR-97-36A-I, chamber III, ICTR, April 24, 2008, p. 20.

²⁵⁰ Human Rights Watch interview, lawyer knowledgeable about the state of the bar, Kigali, October 8, 2007.

²⁵¹ Human Rights Watch interview, judge, November 3, 2006.

²⁵² Human Rights Watch interviews, judges, November 3, 6, 7, 2006; prosecutor, November 8, 2006.

²⁵³ Human Rights Watch interview, prosecutor, November 8, 2006.

The shortage of lawyers particularly affects minors, that is persons under the age of 18 years, who by law must have legal assistance for court appearances. This requirement, introduced as part of the legal reforms, should work to the advantage of underage defendants. But because minors, most of them poor, must wait their turn to receive free assistance, many spend long periods waiting in jail.²⁵⁴

Defendants appearing in court without counsel often request postponements. But even if they are granted a delay in which to find counsel, as many are, their chance of finding a lawyer is so small that many in the end prefer to continue without representation.²⁵⁵

Taking the Difficult Cases

Persons seeking legal assistance in several “sensitive” or highly visible cases have found that some lawyers prefer not to represent them for fear of possible political or economic consequences.²⁵⁶

One lawyer who defended a client in a case of political importance in 2004 and 2005 said that he had been followed and that his mail had been read by security agents during the time of the trial.²⁵⁷ He also saw the number of his clients decline, a result, he believes, of pressure brought upon them by political leaders to take their business elsewhere. In two other cases where lawyers defended well-known persons accused of genocide, one lawyer was subject to interrogation by political leaders about his motives for representing such a client and another was threatened with prosecution for genocide. Both decided to take no more such cases in the future.²⁵⁸

In the Bizimungu trial, as mentioned above, his counsel was jailed for one night for contempt of court. In a genocide trial in September 2007, another lawyer apparently

²⁵⁴ Human Rights Watch interviews, judges, November 3, November 6, and 7, 2006; prosecutor, November 8, 2006.

²⁵⁵ Human Rights Watch interviews, judges November 3, 6, 2006; representative of non-governmental organization working in the judicial field, May 31, 2005.

²⁵⁶ Cyiza Davidson, “Le Barreau des Avocats du Rwanda est persecute,” *Rushashya*, July 2007; Human Rights Watch, electronic communications, October 7, 2005.

²⁵⁷ Human Rights Watch interview, lawyer, September 10, 2007.

²⁵⁸ Human Rights Watch interviews, lawyers, September 21, 2006 and October 9, 2007.

angered the judge when he asked her to instruct the witness to stop referring to him as a génocidaire, or perpetrator of genocide. Without bothering with a trial, the judge immediately found him guilty of “indiscipline,” sentenced him to one year in prison, and ordered him taken from the courtroom directly to jail. He appealed the decision and it was annulled the following day by the High Court.²⁵⁹

Professional Solidarity

In 2007 Rwandan lawyers stepped forward on at least two occasions to defend the integrity of their profession and the rights of their colleagues against attack by the state.

In the first instance they successfully resisted an effort by the state to give judges authority to order lawyers to divulge the contents of conversations with clients. They mobilized assistance from colleagues abroad in this effort.²⁶⁰

While concern was still high about the proposed amendment, President Kagame met with leaders of the judicial sector. The head of the bar association used the opportunity to raise continued illegal and arbitrary detentions by police and other state agents. Other lawyers welcomed this initiative, but—according to the press and to another lawyer present at the session—many officials reacted angrily to his statement.²⁶¹

According to one well-placed jurist, a judge with strong ties to the RPF suggested to his colleagues that it might be appropriate to curb the growing assertiveness of the bar. This suggestion was said to have influenced the judge who sentenced a lawyer to a year in jail, as described above. Once the news of the lawyer’s arrest became known, other lawyers rallied to his defense. Several supported his successful appeal

²⁵⁹ High Court ,Nyanza, Jugement RPA 0786/07/HC/NYA, 27 September 2007; Godwin Agaba and Felly Kimenyi, “Lawyer released after colleagues’ protest,” *The New Times*, <http://www.newtimes.co.rw/index.php?issue=1301&article=1234> (accessed September 27, 2007)

²⁶⁰ Human Rights Watch interviews, lawyers, September 11 and October 8, 2007; Fondation Hirondelle, “Les Avocats Rwandais dénoncent une ingérence dans leur pratique professionnelle,” March 17, 2006.

²⁶¹ Cyiza Davidson , “Le Barreau des Avocats du Rwanda est persécuté,” *Rushashya*, July 2007; “President Kagame opens justice sector retreat,” *The New Times*, http://www.newtimes.co.rw/index.php?option=com_content&task=view&id=319&Itemid=54 (accessed June 2, 2007)

to the High Court while others engaged in a joint action that the press described as a “strike,” a term eschewed by the lawyers themselves.²⁶²

Flight of Lawyers

According to Human Rights Watch information, as well as to press accounts, several lawyers have felt so threatened after having defended clients in “sensitive” cases that they have left Rwanda to seek asylum abroad. In one case documented by Human Rights Watch, the lawyer had represented a client accused of “genocide ideology” in 2006.²⁶³ According to US State Department reports, three lawyers have fled Rwanda in the last two years.²⁶⁴ At the time of this writing, another lawyer has just decided to leave Rwanda because of threats that resulted from his having defended persons accused of genocide.²⁶⁵

The Right to Humane conditions of Detention and Freedom from Torture

Detainees in the hands of Rwandan police and security agents are not assured of humane treatment. Extra-judicial executions by police, miserable prison conditions, and the practice of torture have threatened and continue to threaten the lives and well-being of persons in custody.

Extrajudicial Execution and Excessive Use of Force

Police officers shot and killed at least 20 detainees, most of whom had just been arrested, in the six months from November 2006 through May 2007. Official investigations concluded that the officers had shot in self-defense, conclusions belied by information gathered independently by Human Rights Watch researchers. In December 2005, military police shot and killed at least five prisoners at Mulindi prison. As in the case of the detainees shot in 2007, an official characterized some of these victims as persons with “notorious criminal records.”²⁶⁶

²⁶² Human Rights Watch interview, lawyers, Kigali, September 10 and 11, 2007.

²⁶³ Human Rights Watch electronic communications, April 14 and 16, 2008; Cyiza Davidson, “Le Barreau des Avocats du Rwanda est persécuté,” *Rushashya*, July 2007

²⁶⁴ U.S. State Department, “Country Reports on Human Rights Practices, Rwanda 2007” (accessed March 29, 2008) <http://www.state.gov/g/drl/rls/hrrpt/2007/100499.htm>.

²⁶⁵ Human Rights Watch electronic communication, June 11, 2007.

²⁶⁶ Human Rights Watch, electronic communication from a diplomat, February 28, 2006;

In November 2007 police officials dismissed 127 police officers. According to one press account some were charged with murder, but the announcement made no link between the dismissals and the killings described above.²⁶⁷ In April 2008, a prosecutor sought to begin the trial of three police officers accused of having shot and killed a civilian in their custody in Rwamagana, eastern Rwanda.²⁶⁸ The three officers did not appear at the trial and the proceedings were postponed to an undetermined date.²⁶⁹

Prison Conditions

Conditions are always harsh in Rwandan prisons and at times when overcrowding has been most severe, conditions have been inhumane. Conditions in irregular places of detention are often worse than those in the prisons.²⁷⁰

When *gacaca* jurisdictions began holding pilot trials in 2005, the prison population was about 67,000 and was expected to decline as detainees were tried and some were liberated.²⁷¹ Contrary to official expectations, the prison population rose steadily after trials began on a nationwide basis in 2006. One reason for the increase was that the jurisdictions, which were expected to accept most confessions and order reduced terms of punishment, rejected large numbers of confessions and sentenced the defendants to long prison terms. The number of inmates peaked at about 98,000 in July 2007 but then began to decline as a new policy adopted by the ministry of justice permitted the release of persons sentenced to both jail terms and unpaid public labor. Instead of earlier arrangements requiring convicts to serve their prison terms before being eligible for the public labor part of their sentence, some

James Munyaneza and Patrick Bigabo, "Army Regrets Mulindi Killings," *The New Times*, February 6, 2006

²⁶⁷ Arthur Asiimwe, "Rwanda fires 127 police officers over misconduct," Reuters, <http://africa.reuters.com/wire/news/usnLo6191056.html> (accessed November 6, 2007); the account published by the government-linked press spoke only of charges of corruption, not of murder. Felly Kimenyi, "129 policemen fired," *The New Times* <http://www.newtimes.co.rw/index.php?issue=1341&article=2147> (accessed Nov 7, 2007)

²⁶⁸ Human Rights Watch, *Killings in Eastern Rwanda*, January 2006.

²⁶⁹ High Court, Rwamagana, April 2, 2008, case No. RP 0105/08/HCR/RG, with three police officers accused of having killed Alphonse Nshikiri, hearing suspended with no new trial date set.

²⁷⁰ Human Rights Watch briefing paper, "Swept Away: Street Children Illegally Detained in Kigali, Rwanda," May 2006.

²⁷¹ R. Mukombozi and F. Kimenyi, "Top officials in retreat over prison conditions," *The New Times*, http://www.newtimes.co.rw/index.php?option=com_content&task=view&id=253&Itemid=54 (accessed May 29, 2007).

were now permitted to go home to do the labor first. By the end of the year 58,560 persons were in prison.²⁷²

In many prisons inmates, whether detainees or convicted prisoners, suffer from inadequate sanitary facilities and shortages of food. Until recently more fortunate prisoners received additional food delivered by family or friends but prison authorities recently proposed banning such additional food supplies. They said that the containers used to transport the food were unhygienic and could harm the health of prisoners. In local lockups and irregular places of detention, detainees receive no food other than that brought by family, friends, or charitable organizations.²⁷³ The ban on food deliveries apparently is meant to apply only to prisons and not to lockups.²⁷⁴

Torture and Cruel Treatment

In several cases in 2005, 2006, and 2007 police and other security agents severely beat detainees, including children, in police lockups and irregular places of detention.²⁷⁵ In addition, in three cases detainees reported being handcuffed twenty-four hours a day while held in places of detention or prisons in 2005 and 2007, one detainee for three days, several detainees for three weeks, and another detainee for five weeks.²⁷⁶

In a number of cases, including the above-mentioned cases of Bizimungu and his co-defendants and the case of Kavutse, witnesses complained in Rwandan court of having been tortured, either to force them to confess to alleged crimes or to force

²⁷² Paulus Kayiggwa and James Buvinza, *The New Times*, "As Senators Show Discontent, Gov't Sets to Upgrade Prison Conditions," Kigali, October 18, 2007. Human Rights Watch interviews, December 17, 2004, and May 27 and 30, 2005; U.S. State Department, "Country Reports on Human Rights Practices, Rwanda 2007" (accessed March 29, 2008) <http://www.state.gov/g/drl/rls/hrrpt/2007/100499.htm>.

²⁷³ Human Rights Watch briefing paper, "Swept Away: Street Children Illegally Detained in Kigali, Rwanda," May 2006.

²⁷⁴ Innocent Gahigana, "Bill to Outlaw Carrying Food to Prisons", *New Times*, June 14, 2008 (accessed June 14, 2008) <http://www.newtimes.co.rw/index.php?issue=13543&article=6648>

²⁷⁵ Human Rights Watch electronic communications, September 26 and October 2, 2007; U.S. State Department, "Country Reports on Human Rights Practices, Rwanda 2007" (accessed March 29, 2008) <http://www.state.gov/g/drl/rls/hrrpt/2007/100499.htm>.

²⁷⁶ Human Rights Watch, written communication November 8, 2005; interviews with victims and family members, Kigali, September 5 and September 8, 2007.

them to testify against other people.²⁷⁷ The most recent such case recorded by Human Rights Watch researchers dates to 2007.²⁷⁸

One case of torture involving Rwandan civilian police, military officers and other security agents was documented extensively in a US District Court hearing charges against three Rwandans accused of having murdered US citizens in Uganda. In a 160 page decision, the judge set out a detailed account of the testimony, including that of medical experts, which caused her to conclude that the Rwandans had been tortured by Rwandan state agents.²⁷⁹ She refused to admit the confessions as proof of guilt and the U.S. prosecutor dropped the case. The Rwandan minister of justice, the prosecutor general, and the head of the military justice system were all made aware of this decision by May 2007, but to our knowledge at the time of this writing, no Rwandan judicial authority has investigated these abuses. Two of these three judicial authorities actually made light of the case, both saying that the scars of the victims proved nothing since all Rwandans had scars.²⁸⁰

Given the scarcity of information, it is impossible to assess the extent of torture by state agents, but it does appear clear that whatever torture does take place is not likely to be prosecuted and punished by judicial authorities.

Protection from Double Jeopardy

Protection from double jeopardy is meant to provide accused persons with the assurance that an affair once judged is finished. This assurance is generally seen as important not just for the rights of the individual but also for confidence in the judicial system and for overall social stability.

The multi-faceted nature of the charge of genocide and the number of acts that a single accused person may have committed at different times and places can make

²⁷⁷ High Court ,Kigali, Case No. RP 0004/05/HC/KIG-RP 41.934/KIG.

²⁷⁸ Human Rights Watch interview, electronic communication, April 6, 2007; September 10, 2007.

²⁷⁹ United States District Court for the District of Columbia, United States of America v. Francois Karake, et al., Criminal Action No. 02-0256 (ESH) p. 135, https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2002cro256-325 (accessed October 29, 2007).

²⁸⁰ Human Rights Watch interviews, prosecutor, May 2, 2007; exchange with the prosecutor general, The Hague, May 7, 2007.

it difficult to separate legitimate prosecutions from others that violate the accused's right to protection from double jeopardy. According to Minister of Justice Karugarama, however, dozens of accused persons have suffered violation of this right since 2005.²⁸¹

Legal Loophole

Under law, appeals to verdicts delivered in *gacaca* jurisdictions and in conventional courts take place within the same judicial domain where the first trial was held. The 2004 *gacaca* law, however, provides an unexplained exception to that general rule. It assumes that *gacaca* jurisdictions may try persons again for the same crimes for which they had been tried—and either acquitted or convicted—in conventional courts. Without providing any elaboration or guidance, the law simply states that any discrepancy in judgments between the two courts in the same case would be resolved by the *gacaca* appeal court.²⁸² This provision led one Supreme Court judge to comment caustically that the *gacaca* jurisdictions had become the new Supreme Court.²⁸³

Judges and others became aware of the risks of violations of the protection against double jeopardy as early as 2005 when *gacaca* courts began to investigate and prosecute persons already judged for the same crimes. Supreme Court judges asked the minister of justice to deal with the problem in 2006, either by legislative reform or some other means.²⁸⁴ A provision of the law to amend the *gacaca* jurisdictions, passed by the legislature and awaiting presidential signature, would resolve the problem.

Cases of Violation of the Protection from Double Jeopardy

A man spent five years in prison and then was acquitted of charges of genocide. Several years later, he was called before *gacaca* on the same charges, lodged by the same people who had originally accused him with no new evidence introduced. The

²⁸¹ Human Rights Watch interview with Minister of Justice Tharcisse Karugarama, Kigali, September 10, 2007.

²⁸² Organic Law n^o 16/2004 of 19/6/2004, article 93. The 2006 law repeats the same provision, but allows anyone to ask for revision of the judgment, not just the parties to the case as specified in the 2004 law. Gacaca law, 2006, article 20.

²⁸³ Human Rights Watch interview, judge, November 8, 2006.

²⁸⁴ Human Rights Watch interview, judge, November 8, 2006.

gacaca judges declared they were not competent to hear the case but told the accusers that they could appeal the case to the *gacaca* appeals jurisdiction.²⁸⁵

In a similar case a man arrested in 1997 spent four years in prison before being brought to trial and acquitted of genocide charges. In 2007 he was called before *gacaca* accused, he believed, by the same persons who had originally charged him and for the same crimes, but the judges in this court found him guilty and sentenced him to 19 years in prison.²⁸⁶

In a third case, a man was arrested by a soldier in 1997 on the basis of a single accusation. No investigation was done of the charges. He spent seven years in prison and then was acquitted by a conventional court on the grounds that he had been mistaken for another person of the same name. In August 2006, he was called to *gacaca*, supposedly to appear as a witness but was immediately tried, found guilty of the charges for which he had been originally accused, and sentenced to 30 years in prison. He spent four more months in prison until his appeal was heard and he was again acquitted. He spent two weeks in prison before he was released.²⁸⁷

A case challenging the 2004 law is now pending before the Supreme Court. Joseph Mulindangabo, acquitted in conventional court on genocide charges, was then called to *gacaca* on the same charges. He appealed to the High Court in Nyanza to prevent the *gacaca* proceedings. The High Court ruled that it lacked jurisdiction in the case, which is now before the Supreme Court.²⁸⁸

Monitoring Trials

When conventional courts were hearing cases of genocide on a regular basis before the judicial reforms, trial observers representing the Rwandan Human Rights League (LIPRODHOR) monitored the proceedings and reported on them in widely-distributed publications. LIPRODHOR was the civil society organization most harshly criticized by

²⁸⁵ Human Rights Watch interviews, person knowledgeable about the case, October 11 and 12, 2007.

²⁸⁶ Human Rights Watch interview, October 17, 2007; *gacaca* observation notes, November 7, 2007.

²⁸⁷ Human Rights Watch interview, Kigali, September 13, 2007.

²⁸⁸ Human Rights Watch interview, person acquainted with the case, Kigali, March 22, 2008.

government officials in the course of the 2004 campaign against genocide ideology. At that time 12 of its leaders, including some of the most experienced trial observers, fled the country. LIPRODHOR has since resumed some of its activities but no longer provides systematic trial observations in conventional courts.

Fair and effective trial monitoring can be a useful means to helping improve the performance of the courts. As the judicial system seeks to move towards fairer and more effective delivery of justice, LIPRODHOR or another credible human rights organization should be encouraged to establish a regular program of trial monitoring throughout the country.

X. Equal Access to Justice: Prosecuting Crimes by RPA Soldiers

Equal access to justice requires that all citizens have the same rights to bring their claims before the courts. At least four UN bodies and numerous NGOs have established that some soldiers of the RPA committed serious violations of international humanitarian law by killing and otherwise abusing civilians in Rwanda since 1990. A Commission of Experts established by the Security Council in July 1994 concluded, for example, that in addition to the genocide of the Tutsi, war crimes and crimes against humanity had been committed by soldiers of the RPA, as well as by forces of the Rwandan government. The Commission, whose report was the catalyst for the establishment of the ICTR, “strongly recommend[ed]” that the Security Council ensure that the persons responsible for these crimes be brought to justice before an independent and impartial tribunal.²⁸⁹

According to estimates from experts working for the UN High Commissioner for Refugees between 25,000 and 45,000 persons were killed by RPA soldiers between April and August 1994.²⁹⁰ A former Rwandan minister of the interior in 1994 and 1995 has estimated that some 60,000 persons were killed by RPA soldiers between April 1994 and August 1995.²⁹¹

According to information from the Rwandan military justice system, it has prosecuted RPA soldiers responsible for killing approximately 100 civilians.²⁹² On June 12, 2008 the Rwandan government arrested four military officers in connection with the murder of 15 civilians, 13 of them clergy, in June 1994 (see below).²⁹³ If these officers

²⁸⁹ UN Secretary-General, “Letter dated 1 October 1994 from the Secretary-General to the President of the Security Council transmitting the interim report of the Commission of Experts on the evidence of grave violations of international humanitarian law in Rwanda, including possible acts of genocide,” paragraphs 146-150 of the Commission report, United Nations, *The United Nations and Rwanda, 1993-1996, Blue Books Series, volume X*, (New York: United Nations, 1996), p. 361. See also Security Council Resolution 1503, August 28, 2003, S/RES/1503 (2003) and Security Council 1534, August 26, 2004, S/RES/1534 (2004); Final Report of the Commission of Experts established pursuant to Security Council Resolution 935 (1994), UNSC, UN Doc. S/1994/1405 (1994), at para.146 and para.147.

²⁹⁰ UN High Commissioner for Refugees, “Note, la Situation au Rwanda,” confidential, September 23, 1994; notes from briefing given by Robert Gersony, UNHCR, Geneva.

²⁹¹ Human Rights Watch interview, Nairobi, March 7, 1998.

²⁹² See annex 2.

²⁹³ Kennedy Ndahiro, “Four RDF officers arrested,” *The New Times*, (accessed June 12, 2008), <http://www.newtimes.co.rw/index.php?issue=13559&article=7042>.

are convicted, then about 115 Rwandan victims of crimes by RPA soldiers in 1994 would have received justice in Rwandan courts. Tens of thousands of other Rwandans who suffered from crimes by RPA soldiers in 1994 would still have had no access to justice. To insist on the right to justice for all victims, as did the UN Commission of Experts, is not to deny the genocide, nor does such an insistence equate war crimes with genocide; it simply asserts that all victims, regardless of their affiliation, regardless of the nature of the crime committed against them, and regardless of the affiliation of the perpetrator, must have equal opportunity to seek redress for the wrongs done them.

In the four years after taking power, the RPF-led government prosecuted 32 soldiers accused of killing or otherwise violating the rights of civilians during the year 1994, of whom 14 were tried, convicted, and sentenced to prison.²⁹⁴ Most of those convicted were of lower ranks or were ordinary soldiers and they received punishments that were not proportional to the gravity of the crime. In government documents listing these cases, the crimes were called “crimes of revenge” or “human rights violations,” not war crimes or crimes against humanity. They were prosecuted as violations of the Rwandan penal code, not as violations of international humanitarian law.²⁹⁵

After 1998, Rwandan military courts prosecuted no soldiers accused of crimes allegedly committed in 1994. When the *gacaca* jurisdictions were organized, the first law (2001) included war crimes in the jurisdiction of the *gacaca* courts, but the 2004 law eliminated that provision. A public information campaign then insisted that RPA crimes were not to be talked about in *gacaca*.²⁹⁶ As one Rwandan commented,

²⁹⁴ See annex 2 for a summary of the information provided by the Rwandan military justice system. In a press release reported June 12 by Fondation Hirondelle, Rwandan military spokesperson Major Jill Rutaremara said the government has prosecuted 43 soldiers for “war crimes and revenge crimes.” The discrepancy from the number cited above may result from the army spokesperson including prosecutions of crimes that were committed after 1994. Fondation Hirondelle, “Quatre Officiers Rwandais Arretes pour le meurtre de treize responsables religieux en 1994,” June 12, 2008.

²⁹⁵ Documents provided by the Military Justice service, Kigali: “Capital Offences, a two page list, dated November 1994; one page untitled document, dated June 3, 1998; “Soldiers Who Committed Crimes of Revenge During and After 1994 Genocide and Were Prosecuted Before Rwandan Military Courts, April 2007; Military Law Reports, vols I and II, undated, but probably 1998 or 1999. See also Fédération International des Ligues des Droits de l’Homme (FIDH), “Victims in the Balance, Challenges ahead for the International Criminal Tribunal for Rwanda,” found at <http://www.fidh.org/afriq/rapport/2002/rw34a.pdf>, particularly pp. 16-17 and annexes.

²⁹⁶ Human Rights Watch interviews, Kigali, May 28 and 31, 2005. Top level government authorities regularly reinforce the restriction on *gacaca*’s jurisdiction during public radio broadcasts as well. For example, Servilien Sebasoni, Spokesperson for

The biggest problem with *gacaca* is the crimes we can't discuss. We're told that certain crimes, those killings by the RPF, cannot be discussed in *gacaca* even though the families need to talk. We're told to be quiet on these matters. It's a big problem. It's not justice.²⁹⁷

Government officials have frequently said that anyone who suffered at the hands of a soldier should report him or her for prosecution. Given that discussing RPA war crimes has been and continues to be equated with holding "genocide ideology," no Rwandan was ever likely to file a complaint.

Prosecution of RPA Soldiers outside Rwanda

After 1998 Rwandan authorities also sought to block the prosecution of RPA soldiers by jurisdictions outside Rwanda. In 2001 when ICTR prosecutor Carla del Ponte began investigating RPA crimes, Rwandan authorities brought political and diplomatic pressure on her to halt the investigations. When the prosecutor did not respond immediately to pressure, the Rwandan government imposed new regulations on the travel of witnesses to the ICTR in Arusha, Tanzania, forcing the ICTR to suspend three genocide trials.²⁹⁸

In June and July 2003 Rwandan authorities made use of the good offices of the United States to broker an agreement with the prosecutor concerning the timing and nature of investigations and prosecutions in RPA cases.²⁹⁹ When the agreement failed to materialize, Rwanda supported a division of the mandate of the office of the prosecutor, an office that until 2003 carried out prosecutions for the ICTR as well as for the ICTY. The division of the office in effect removed Del Ponte from work on Rwandan cases and led to the naming of Hassan Bubacar Jallow as prosecutor of the ICTR. As of April 2008 Prosecutor Jallow had not committed himself to prosecuting any RPA soldiers at the ICTR although he had not foreclosed that possibility.³⁰⁰

the RPF, has blamed local authorities at the community level for failing to make the population understand that RPF crimes are not within the jurisdiction of the *gacaca* courts (Voice of America, morning edition, 31/05/2005).

²⁹⁷ For example, Human Rights Watch interview, Kigali, former police officer, May 30, 2004.

²⁹⁸ Human Rights Watch, "Rwanda and the Security Council: Changing the International Tribunal, August 1, 2003 (accessed March 29, 2008) <http://hrw.org/press/2003/08/rwandao80103ltr.htm>

²⁹⁹ Human Rights Watch interviews, U.S. diplomat, Washington, January 21, 2003 and Arusha, ICTR official, May 20, 2003.

³⁰⁰ Human Rights Watch interview with ICTR Prosecutor Hassan Bubakar Jallow, Arusha, April 24, 2008.

In November 2006 French judge Jean-Louis Bruguière issued international arrest warrants for nine RPA officers, several of them highly placed, on accusations of having shot down President Habyarimana's plane in April 1994. The Rwandan government immediately broke diplomatic relations with France and expelled some French organizations from the country. In March 2008, Rwanda was still requiring the withdrawal of the warrants as a condition for resuming diplomatic relations with France.³⁰¹

In addition, the Rwandan government appealed for relief from the International Court of Justice (ICJ) on the grounds that the French order violated Rwandan sovereignty and the diplomatic immunity of three of the officers being sought (one an ambassador, another the army chief of staff, and a third the chief of protocol). In order for the ICJ to take on a case, both parties must agree to accept its jurisdiction. Thus far France has refused ICJ jurisdiction in this matter, so no further action has been taken by the court.³⁰² Two other officers named by the French judge also sued in Belgian court seeking to prevent Belgium from executing the arrest warrants; that case will not be heard until 2009.³⁰³

In February 2008 Spanish judge Fernando Andreu Merelles issued international arrest warrants for 40 high-ranking RPA officers. In his judicial decision Judge Merelles said that he had tried without success to obtain cooperation from Rwandan authorities in investigating at least two of the crimes. Rwandan authorities have not begun any judicial action in reaction to Judge Melles order although some have proposed prosecuting the Spanish judge for "genocide ideology."³⁰⁴ High-ranking officials began denouncing the judge and his order in the press and at diplomatic gatherings, putting into effect their announced intention to deal with the Spanish order through political and diplomatic means. President Kagame reportedly told a journalist, "He has no moral authority in doing that. ... If I met him, I would tell him to

³⁰¹ Human Rights Watch interview, Paris, French officials, March 12, 2008.

³⁰² International Court of Justice, "The Republic of Rwanda applies to the International Court of Justice in a dispute with France" (accessed June 13, 2008) <http://www.icj-cij.org/presscom/index.php?pr=1909&p1=6&p2=1>.

³⁰³ Presentation of Minister of Justice Tharcisse Karugrama before the Rwandan Parliament, May 16, 2008; Fondation Hirondelle, "The Complaint for two Rwandan General[s] against France Delayed to May 24," (accessed June 13, 2008) <http://www.hirondellenews.com/content/view/374/26/>

³⁰⁴ Felly Kimenyi, "Rwanda Ponders suing Spanish Judge Merelles," *The New Times*, (accessed May 1, 2008) <http://www.newtimes.co.rw/index.php?issue=13517&article=5992>

go to hell—they have no jurisdiction over Rwanda, over me or over anybody.”³⁰⁵ The ministry of foreign affairs called on other governments to ignore the arrest warrants.³⁰⁶ The minister of justice described the judicial order as “racist and negationist,” and asked African Union ministers of justice to condemn what he characterized as a neo-colonial attempt to reassert control over African states by a judicial coup d’etat.³⁰⁷ Showing again the link made by some Rwandan officials between discussion of RPF crimes and “genocide ideology,” Rwandan authorities said they were exploring the possibility of prosecuting the Spanish judge for “genocide ideology.”³⁰⁸

Parts of the French and the Spanish orders appear to be based on serious investigations and to have merit. Other parts of each are not fully substantiated by the information presented. Some information in the Spanish order, such as the figure of some 40,000 civilians killed by RPA soldiers in February 1993, seems to be inaccurate.³⁰⁹ Judges in both cases are continuing their inquiries and must evaluate further information in the most systematic and critical way possible.

A New Effort at RPA Prosecutions

In June 2008 ICTR Prosecutor Jallow and Rwandan Prosecutor General Martin Ngoga told the UN Security Council that Rwanda would prosecute four military officers on charges of having killed fifteen civilians, thirteen of them clergy, in June 1994. Jallow said that the ICTR had investigated the crimes but would entrust the actual prosecution to the Rwandan judicial system.³¹⁰ At the time of the announcement, two

³⁰⁵ Arthur Asiimwe, “Rwanda’s Kagame blasts Spanish genocide indictments,” Reuters, April 1, 2008

³⁰⁶ Republic of Rwanda, Rwandan Embassy, The Hague, to the embassies and international organizations accredited to the Kingdom of the Netherlands, no. 256, February 11, 2008 enclosing a communiqué from the Ministry of Foreign Affairs and Cooperation.

³⁰⁷ James Munyaneza, “Karugarama says the document is racist and negationist,” *The New Times*, (accessed February 20, 2008), <http://www.newtimes.co.rw/index.php?issue=13435&article=4069>; Tharcisse Karugarama, Statement of Rwanda to the meeting of Ministers of Justice and Attorneys General on legal matters – Addis Ababa, Ethiopia, April 18, 2008.

³⁰⁸ Felly Kimenyi, “Rwanda Ponders suing Spanish Judge Merelles,” *The New Times*, (accessed May 1, 2008) <http://www.newtimes.co.rw/index.php?issue=13517&article=5992>

³⁰⁹ Human Rights Watch researchers first questioned this figure in 1993 when it was cited by the Rwandan ambassador to the U.S. Africa Watch [later to become Human Rights Watch Africa Division], “Beyond the Rhetoric: Continuing Human Rights Abuses in Rwanda, vol. 5, no. 7, June 1993, p. 23.

³¹⁰ ICTR Prosecutor’s speech to U.N. Security Council, New York, June 4, 2008, found at <http://69.94.11.53/ENGLISH/speeches/jallowo8o6o4.htm>.

ICTR courts had just refused to transfer cases to Rwandan courts on the grounds that they did not provide adequate guarantees of a fair trial (see below).³¹¹ Faced with questions about how he could nonetheless entrust prosecution of RPA cases to a Rwandan jurisdiction, Jallow said the ICTR would monitor proceedings and would recall the cases to ICTR jurisdiction if they were not properly prosecuted.³¹²

It is not clear whether Rwandan authorities intend to prosecute more than this one case, apparently undertaken at least in part because of renewed international pressure as a result of the French and Spanish judicial action. Even if they were to continue this welcome initiative and prosecute others, this would not absolve the ICTR of responsibility for completing its mandate by also trying RPA soldiers accused of war crimes and crimes against humanity.

Interface with Other Judicial Systems

Rwandan police and prosecutors have called on the international police network, Interpol, and other national judicial systems to assist in tracking and arresting persons accused of genocide as well as at least one person accused of “divisionism.” They seek to have most of these persons extradited although they have also assisted judicial authorities in Belgium, Switzerland, and Canada in prosecuting Rwandans accused of genocide and related crimes in their own national jurisdictions. In April 2008 a French court ruled that Clavier Kamana should be extradited to Rwanda to stand trial for genocide. This decision was overturned on appeal.³¹³ In June, a court in the United Kingdom ruled that four Rwandans sought on charges of genocide could be sent back to Rwanda for trial, a decision that has been

³¹¹ *Prosecutor v. Munyakazi*, Case No. ICTR-96-36-R11bis, Decision on the Prosecutor’s Request for Referral of the Case to the Republic of Rwanda (TC), May 25, 2008; *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-R11bis, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda (TC), June 6, 2008. A third trial chamber at the ICTR also recently ruled against the transfer of a case to Rwanda, *Prosecutor v. Hategekimana*, Case No. ICTR-00-55B-R11bis, Decision on the Prosecutor’s Request for Referral of the Case to the Republic of Rwanda (TC), June 19, 2008.

³¹² Fondation Hirondelle, “La Justice Rwandaise peut être dessaisie si le process des quatre officiers est mal conduit (Jallow),” June 12, 2008. Unlike the transfer of cases in which an indictment has been issued and which require approval of an ICTR chamber, the prosecutor has the authority to transfer a case that has been investigated but which has not resulted in any indictments without court examination of the issue.

³¹³ Fondation Hirondelle, “Rwanda: French Final Court of Appeal Annuls Kamana’s Extradition”, July 9, 2008, <http://allafrica.com/stories/200807110015.html> (accessed July 14, 2008).

appealed.³¹⁴ If the decision is upheld, they would be the first individuals to be extradited to Rwanda for prosecution on genocide charges.

Rwandan cooperation with the ICTR has been inconsistent, but certainly on many occasions Rwandan officials have assisted the prosecution. Judicial officials have praised ICTR decisions that pleased them and been equally quick to condemn those with which they disagreed.

As the ICTR drew near the end of its operations, plans called for the court to transfer some of its remaining cases to national jurisdictions for prosecution. Rwanda has showed the greatest interest in receiving such cases, adopting a special law to govern the transfers and building special prison and detention facilities in order to meet international standards. Such transfers, involving persons indicted by the court, require approval by a panel of judges who must determine whether the defendant will receive a fair trial in the proposed jurisdiction. In 2007 and 2008, the ICTR prosecutor proposed the transfer of five cases to Rwanda. In the first two cases decided, the ICTR chambers held that defendants could not be assured of trials that would meet international standards and denied the prosecutor's motions. The other three cases are pending.

Based on the research presented in this report, Human Rights Watch took the position that Rwandan courts were not certain to be able to provide fair trials, a position presented in *amicus curiae* briefs submitted to the ICTR chambers deciding on the transfers.³¹⁵

³¹⁴ The Government of the Republic of Rwanda v. Vincent Bajinya, Charles Munyaneza, Emmanuel Nteziryayo and Celestin Ugirashebuja, City of Westminster Magistrates Court, 6 June 2008.

³¹⁵ HRW Amicus Brief to the International Criminal Tribunal for Rwanda in the case of Fulgence Kayishema in Opposition to Rule 11bis Transfer <http://hrw.org/pub/2008/africa/rwanda0108amicus.pdf>

XI. Future Plans for Justice

Fourteen years after the genocide, the challenge of delivering justice for the genocide remains a burdensome responsibility for the State and the judiciary. It appears that officials are now seeking to finish with this task as soon as possible, giving priority to speed rather than to the fairness or thoroughness of the judicial process.

With President Kagame having signed the recently adopted law amending the *gacaca* system, virtually all genocide prosecutions will be moved from conventional court to those jurisdictions, including those in mid-trial or awaiting appeal.

In addition, judicial authorities also appear intent on emptying the prisons as soon as possible of everyone detained for or convicted of genocide. A reduced set of penalties, provided for in the March 1, 2007 *gacaca* law, as well as the ministry order directing that public labor be done before time in prison, will no doubt make it easier to achieve this objective. Several justice officials have suggested that persons who begin by serving the public labor phase of their sentence may not be obliged to spend any time—or any further time—in prison.³¹⁶ The one exception to emptying the prisons would be for persons sentenced to life imprisonment or to life imprisonment in solitary confinement.

Judicial authorities will, however, prosecute in conventional court any cases transferred from the ICTR or from foreign jurisdictions. In addition, prosecutors may be designated to prosecute in conventional court any new charges of genocide raised after the end of *gacaca* jurisdictions.

Once remaining genocide cases are handed over to *gacaca* jurisdictions, judicial authorities expect that conventional courts will be able to reduce the remaining backlog of civil and common criminal cases and to provide the necessary judicial support for the commercial and financial development envisioned for the future.

³¹⁶ Human Rights Watch interview, Kigali, Minister of Justice Tharcisse Karugarama, December 4, 2007.

The balance sheet on justice for the genocide will show about nine years of trials in conventional courts—three years of that with very limited activity—and some two years of nationwide trials in *gacaca* jurisdictions. The decision to end justice for the genocide, like many others throughout the process, will have been made largely for political reasons. Whatever the satisfaction or resentments felt by individuals at the way justice was delivered, the primacy of political considerations in the process will remain a potent legacy.

XII. International Support

Belgium, the Netherlands, and the European Union have been the most generous donors to the judicial system but others including the United States, the United Kingdom, Canada, Germany, Norway, South Africa and Sweden have contributed as well. They have supported the building and rebuilding of courts, improvements in information technology, the writing of new legislation and training of judicial personnel.

Many diplomats representing donor countries understand the difficulties involved in improving the delivery of justice. The European Union has on several occasions criticized abuses, such as those connected to the “genocide ideology” campaign and those remarked in Bizimungu trial.³¹⁷ Several diplomatic representatives have intervened promptly and successfully in cases of flagrant miscarriage of justice and in one exceptional case in 2007, donors expressed serious concern about the killings of detainees by police officers. After their intervention those killings stopped.

Donors have rarely, however, used their considerable influence effectively to address more fundamental and systemic problems, like those described above. Given the extent of financial and political support for the judicial system, donors should be in a position to press the Rwandan government more vigorously for action.

With the issuance of arrest warrants against important Rwandan officers, governments in Africa, as elsewhere in the world, now face a challenge to their commitment to the rule of law and their respect for obligations under the Interpol or European Arrest Warrant systems. Some of the persons being sought under the arrest warrants issued by Judge Bruguière and Judge Merelles continue to travel outside Rwanda. In April and May 2008 protocol chief Rose Kabuye was allowed to visit Germany and the United Kingdom and on another occasion, she was able to visit the United States. But when Lt. Col. Joseph Nzamabwita tried to go to Belgium in May, he was refused a visa or he was warned that he would be arrested if he came.

³¹⁷ Talking points, EU-troika demarche on the Parliamentary Report on Genocidal Ideology, 23 August, 2004; Déclaration de la présidence au nom de l’Union européenne sur la déclaration du gouvernement du Rwanda concernant le rapport parlementaire consacré à l’idéologie génocidaire, October 8, 2004.

He, and the delegation headed by the Rwandan Foreign Minister with whom he was to travel, cancelled the visit.³¹⁸ Col. Gacinya, at the time military attaché at the Rwandan embassy in Washington, was recalled to Rwanda soon after the issuance of the Spanish arrest warrant, thus sparing the US the need to react to his presence.³¹⁹

The United Nations and the African Union face the serious problem of having several of the officers now under arrest warrants serving as participants in the joint UN/AU peacekeeping force in Darfur, one as the deputy force commander.

Strengthening the Rwandan judicial system by offering funds and technical assistance may be easier than taking the decision to respect the orders, however flawed, of legitimate judicial authorities, but arguably the most important contribution other nations can make now to justice in Rwanda may be to set the example of upholding the rule of law in the complex problems that have resulted from the Rwandan genocide and other crimes of 1994.

³¹⁸ Human Rights Watch interviews, diplomatic sources, May 30, 2008.

³¹⁹ Human Rights Watch interview, US government official, June 4, 2008.

XIII. Acknowledgments

This report was prepared by Sarah Wells, Maria Burnett, Christopher Huggins, Leslie Haskell, and Alison Des Forges. Sarah Jackson provided assistance with research as well as production. Human Rights Watch General Counsel Dinah PoKempner and Deputy Program Director Andrew Mawson reviewed the report.

We wish to thank the many officials of the ministry of justice, judges, prosecutors, and other court personnel who met with us and answered our questions. We thank also the lawyers and other Rwandans who shared their personal experiences, positive and negative, with the judicial system.

XIV. Annex 1: Number of Genocide Cases Judged

2005

Court	1 st quarter	2 nd quarter	3 rd quarter	4 th quarter	Total
Supreme Court	0	3	15	18	36
High Court	0	0	4	4	8
Higher Instance	4	4	3	7	18
TOTAL	4	7	22	29	62

2006

Court	1 st quarter	2 nd quarter	3 rd quarter	4 th quarter	Total
Supreme Court	Unspecified	Unspecified	Unspecified	Unspecified	31
High Court	9	0	0	0	9
Higher Instance	33	0	0	0	33
TOTAL	42	0	0	0	73

2007

Court	1 st quarter	2 nd quarter	3 rd quarter	4 th quarter	Total
Supreme Court	5	10	4	2	21
High Court	1	3	2	2	8
Higher Instance	10	14	21	9	54
TOTAL	16	27	27	13	83

January – March 2008

Court	January	February	March	Total
Supreme Court	0	1	0	1
High Court	0	0	0	0
Higher Instance	1	0	2	3
TOTAL	1	1	2	4

Total January 2005-March 2008 : 222 cases

Source : Republic of Rwanda, Supreme Court, « Raporo y'urwego rw'ubucamanza 2006 » and other tables provided by the Inspectorate of Courts.

XV. Annex 2: Analysis of RPA prosecutions by the Rwandan government for crimes committed in the year 1994

Information about prosecutions by the military justice service of crimes allegedly committed by RPA soldiers in 1994 is incomplete and sometimes contradictory. The table below summarizes that information and notes possible inconsistencies.

Total number of crimes prosecuted:	21
Total number of persons prosecuted:	32
Total number of victims listed	92
(or 91, see no. 5)	
Total convicted and sentenced to prison:	14
Terms of imprisonment:	
Life, reduced on appeal to 6 years	1
Terms between 3 and 4 years	5
Term of 2 years	7
Indeterminate term	1
(no 4: 5 years or 18 months?)	
Total apparently not brought to trial:	11
Total acquitted	4
(no. 9: died before judgment?)	
Total trials with no judgment:	3
(1 died, 2 no appearance)	

RPA Soldiers Prosecuted in Rwanda for Crimes Committed in 1994

Name	1994 list	1998 list	2002 List	2007 List
1. Lt Arthur Butare	Murder (revenge)		Inflicting Grievous Harm Acquitted	Murder Acquitted
2. Cpl Abubakar Safari	Murder of civilian Gamaliere			
3. Pte Frank Sekubumba	Murder of civilian Gamaliere (as above)	Sentence: 5 years (12/8/97)	Assassination of Gamaliyeri Sentence: 2 years	Murder of Gamaliyeri Sentence: 2 years (22/7/97)
4. Pte Rurisa Kizito	Murder (revenge) of 5 neighbors	Sentence: 5 years (12/8/97)	Murder of 6 people armed with pangas in the forest Sentence: 18 months (12/8/97)	Murder of 6 people armed with pangas in a deserted area whom he thought were militia Sentence: 18 months (12/8/97)
5. Pte Kabera Augustin	Murder of 2 alleged militia; he admitted the killings Extrajudicial act			
6. Cpl Ngarambe Joseph	Murder of 4 civilians and children; he admits killing militia			
7. Cpl Jean de Dieu Safari	Murder of 2 alleged militia who had intent to poison another person Extrajudicial act			

8. Cpl Hikirukwayo Thomas	Murder of 2 alleged militia who had intent to poison another person (as above)			
9. Sgt. Rubimbura Jean-Baptiste	Murder of 10 people fleeing to Tanzania who had killed his family (revenge)		Assassination in Murambi (Mutara) Died before court appearance	Murder of 10 armed militia who killed his family Acquitted (self-defense)
10. Cpl Niyonsenga Innocent	Murder of 15 persons who had killed his family	Sentence: 3 years in prison (12/8/97)	Murder of 15 militia Sentence: 3 years in prison	Murder of 15 alleged militia who had supposedly killed his family Sentence: 2 years (12/8/97)
11. Pte Karegeya Boniface	Murder Killed one of a group armed with sticks/stones	Sentence: 2 years in prison (24/7/97)	Murder of Nyirabagenzi (n.b. name of a woman) Sentence: 2 years in prison	Shot at a group armed with spears at night, killed Nyirabagenzi Mitigating factors: time of insecurity and his inexperience Sentence: 2 years
12. Sgt. Higirot Claude	Murder Kidnapping of Rukara Pleads innocent			
13. Karangwa Appolinaire no rank given	Murder of 3 Revenge killing			
14. Cpl. Ndanga	Murder beat Munyaneza, suspected militia to death			

15. Pte Kanyangoga Jean Bosco	Murder beat Munyaneza, suspected Interahamwe, to death (as above)			
16. Sgt. Rwitare Sam [later lists spell name: Rwitatira]	Murder of Musa, a businessman		Assassination of Rwamuhama Musa and Tharcisse Acquitted	Heard Musa and Tharcisse saying RPF no better than previous govt. and killed them. Acquitted claimed to have been tortured to confess and no other evidence
17. Cpl. Nzigiyе Augustine	Murder of Musa, a businessman (as above)		Assassination of Rwamuhama Musa and Tharcisse Acquitted	Heard 2 men in a bar saying RPF no better than previous govt. and killed them Acquitted claimed to have been tortured to Confess and no other evidence
18. Pte Mushumba	Murder of 7 militia			
19. Pte Mwumvaneza Vincent	Murder of alleged militia			
20. Pte Girukwayo (no other name given)	Murder of alleged militia	Pte Thomas Igirukwavo Sentence: 3 years (6/8/97)		

21. Mjr Bigabiro Sam	Handwritten Name and rank only at end of typed list; no other details	Sentence: life in prison (30/1/98)		Murder of 30 civilians Ordered his guard to kill alleged militia Sentence: life in prison reduced to 6 years by Supreme Court (unspecified mitigating factors)
22. Cpl Gato Denis				Murder of 30 noncombatant civilians on orders of Bigabiro; pleaded guilty (mitigating circumstances, following orders Sentence: 3 years, 9 months)
23. Sgt. Muhirwa Albert				Murder of unidentified suspected genocide perpetrator who tried to escape Pleaded guilty (mitigating factors: time of war; only military could establish justice) Sentence: 2 years

24. Sgt. Mugabo John			Murder Aiding and Abetting criminals Sentence: 3 years and 3 months	Murder of unidentified armed person Pleaded guilty to having ordered escaping prisoner shot Sentence: 3 years and 3 months
25. Cpl. Africa Damascene			Murder Aiding and Abetting criminals Sentence: 3 years and 3 months	Murder of unidentified armed person Not guilty of murder; guilty of failure to report crime Sentence: 3 years and 3 months (as above)
26. Pte Giseka Byagatonda			Murder Aiding and Abetting criminals Sentence: 3 years and 3 months	Murder of unidentified armed man Pleaded guilty (mitigating factors: obeying orders) Sentence 3 years and 3 months (as above)
27. Sgt. Rujugiro Innocent				Murder of suspected militia Did not appear in court
28. Sgt. Ngamije Pie				Murder of suspected militia Sentence: 2 years (as above)

29. Cpl Uwamungu Jacques				Murder of suspected militia Died before court appearance (as above)
30. Pte Rutsindura Epimaque				Murder of suspected militia Did not appear in court (as above)
31. Pte Havugimana Emmanuel				Murder of suspected militia Sentence: 2 years (as above)
32. Cpl Kamugunga Innocent				Murder (with Cpl Uwamungu (no. 29) of suspected killer of Uwamungu's family Pleaded not guilty to murder but guilty of non assistance (mitigating factors) Sentence 2 years

Sources:

1. Two page document entitled "Capital Offences" and listing 21 accused persons (the last added in script at the end of the list), provided by Rwandan authorities in November 1994.
2. One page document, untitled, provided by the Auditorat Militaire, dated 3 June 1998.
3. International Federation of Human Rights Leagues (FIDH), "Victims in the Balance, Challenges ahead for the International Criminal Tribunal for Rwanda," found at <http://www.fidh.org/afriq/rapport/2002/rw34a.pdf>, (accessed November 18, 2006), particularly pp. 16-17 and annexes.
4. Rwanda Military Prosecution, "RPA Soldiers Who Committed Crimes of Revenge During and After 1994 Genocide and Were Prosecuted Before Rwandan Military Courts," April 2007.

Law and Reality

Progress in Judicial Reform in Rwanda

The Rwandan authorities have improved the delivery of justice in the last five years, a noteworthy achievement given the problems they faced. But the technical and formal improvements in laws and administrative structure have not been matched by gains in independence in the judiciary and assurance of rights to fair trial.

This report, the result of research conducted between 2005 and 2008, assesses recent changes in the conventional courts, including the provision of greater administrative autonomy for the judicial system, the reduction in number of courts and judges, and the establishment of higher educational criteria for judicial appointments.

The report notes some improvements in human rights, including the abolition of the death penalty, but points out the simultaneous establishment of the new penalty of life imprisonment in solitary confinement, which appears tantamount to torture.

The report also shows that some judges remain subject to pressure from members of the executive branch and other powerful persons and that basic fair trial rights are not fully assured—including the presumption of innocence, the right of equal access to justice, the right to present witnesses in one's own defense, the right to humane conditions of detention, the right to freedom from torture, and the right to protection from double jeopardy.

*Detainees on their way to the Muhanga
Higher Instance Court.*

© 2008 Human Rights Watch

