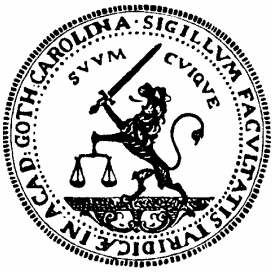

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Dealing with genocide – the judicial responses to the 1994 atrocities in Rwanda

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Contents

Summary

Today, 14 years have gone since the whole world turned their backs on Rwanda, the small country in East Africa, during a time when its population needed us the most. These were the same nations that already after the Second World War had made a promise about ”Never Again”, then meaning that they would never again allow another attempt to exterminate an entire ethnic group. It was not until the harm was done and almost 75 per cent of an entire group had been butchered, that the International Community was able to admit that the promise had been broken. The genocide in Rwanda is lamentably not the first one of its kind, and definitely not the only time the nations of the world have broken their promise, but it is from this tragedy where this study sets off.

After the genocide in 1994 several judicial institutions were created to punish the guilty ones. On an international level the International Criminal Tribunal for Rwanda (ICTR) was established and on a national level new laws were passed and innovative solutions were created to deal with the immense figure of detainees for genocide related crimes.

The ICTR has from the very start wrestled with heavy administrative-, legitimacy- and efficiency issues. It has also been accused of one-sided justice, and the relationship to the Rwandan Government as well as to the Rwandan people has been uneasy from the start. The latter might be of more significance since one of the goals set up by the ICTR is to contribute to national reconciliation. In spite of the reforms and changes the ICTR has gone through during its 14 year- long existence, far from all the problems have been eradicated. Moreover, if the Security Council’s completion plan is followed, and the proceedings in Arusha are to end by 2010, the ICTR might have to close down without having dealt with all criticism it has received.

As for the Rwandan Government, they have too endured a lot of criticism mainly from various Human Rights organisations. Part of the criticism aims at the Rwandan Judicial system’s shortcomings concerning fair trials, independent courts, limited access to defence, the existence of extra-judicial executions and turning the genocidal criminal process into a ‘witch-hunt’ to get rid of political opponents.

The problems and achievements of these institutions will be treated. In addition, a closer look at the personal jurisdictions of the different forums will be taken and the question of whether it is correct or not to end the work of the ICTR in 2010 will be discussed.

Sammanfattning

I år har det gått 14 år sedan hela världen vände ryggen till det lilla landet i östra Afrika i en tid då dess invånare behövde oss som mest. En omvärld som redan efter Andra Världskriget hade utlovat ”Never Again” och syftade då på att man aldrig mer skulle tillåta ett försök till att utplåna ett helt folkslag. Omvärlden fick, först efter att nästan 75 procent av en folkgrupp i Rwanda hade slaktats, till slut ge mig sig och erkänna att löftet om ”Never Again” hade brutits. Folkmordet i Rwanda är tyvärr inte det enda exemplet på omvärldens misslyckande på området, men är den tragedin där detta arbete tar avstamp.

Efter folkmordet 1994 inrättades det judiciella institutioner för att straffa de skyldiga. På internationell nivå skapades den Internationella Brottmålstribunalen för Rwanda och på nationell nivå stiftades lagar och skapades innovativa lösningar för att ta itu med den oerhörda antal människor som varit inblandade i folkmordet på ett eller annat sätt.

Den Internationella Tribunalen har från början har brottats med tunga administrations-, legitimations- och effektivitetsproblem samt problem med ensidig rättvisa och problem i relationen till, inte bara den rwandesiska regeringen, utan även (och kanske allvarligast med tanke på att ett av de mål uppsatta för Tribunalen är att bidra till den försoningsfasen i Rwanda) den rwandesiska befolkningen. Även om reformer har gjorts under Tribunalens snart 14-åriga livstid, har alla problemen ännu inte utplånats. Dessutom, om Säkerthetsrådets plan på att avsluta all verksamhet i Arusha år 2010 fullföljs, verkar det som om Tribunalen kommer att slå igen sina dörrar utan att ha tagit itu med all kritik den har fått.

Den rwandesiska regeringen har å sin sida fått stå ut med mycket kritik från huvudsakligen diverse organisationer som arbetar med mänskliga rättigheter. Kritiken har bestått utav lite eller ingen tillgång till rättvis prövning av sak inför oavhängiga domstolar, brist på tillgång till ordentligt försvar, förekomst utav extrajudiciella avrättningar samt användande utav folkmördarstämpeln för att göra sig av med politiska opponenter.

Samtliga institutioners problem och framgångar kommer att behandlas, därtill ska även en utredning göras utav vilken personlig jurisdiktion de olika forumen och frågan om huruvida det är riktigt att avsluta Tribunalens arbete redan 2010 kommer att diskuteras.

Preface

I would like to thank my family and friends for the support and encouragement they have given me through my entire time at the University of Lund. A special thanks to my friend Claudia, my “partner in trial”, who, working together with me made it easier to harvest through piles of law texts, books and heavy studying for our various six hours long exams.

Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
DRC	Democratic Republic of Congo
ICCPR	International Covenant for Civil and Political Rights
ICG	International Crisis Group
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
HRW	Human Rights Watch
OTP	Office of the Prosecution
MRND	National Revolutionary Movement for Democracy and Development
RAF	Rwandan Armed Forces
RPA	Rwandese Patriotic Army
RPF	Rwandese Patriotic Front
RTLM	Radio-Télévision Libre des Milles Collines
SC	United Nations Security Council
TNA	Transitional National Assembly
UN	United Nations
UNDP	United Nations Development Programme

1 Introduction

Rwanda, with its capital Kigali, is a small country in Eastern Africa with a population of 9,2 million.[1] It borders with the Democratic Republic of Congo (DRC), Tanzania, Burundi and Uganda.[2]

The population of Rwanda is divided into three ethnic groups which in 1994 consisted of 85 per cent Hutu, 14 per cent Tutsi and 1 per cent Twa. The groups share both language and culture but traditionally the Hutu are farmers, whereas the Tutsi are stockbreeders. During the Belgian colonialism and then on, the identity card of every citizen specified the group belonging of that person. After colonization, Rwanda became a Tutsi-led monarchy until 1959.[3]

In 1994, ethnic clashes between the Hutu and Tutsi population, whose violence had started already with the Hutu revolution of 1959,[4] culminated into a well planned and widespread massacre triggered by the mysteriously shooting down of President Habyarimana's plane. The bloodbath resulted in the death of an estimated amount of 800 000 Tutsis and moderate Hutus as well as the mass emigration of 25 per cent of the Rwandan population to neighbouring countries.[5]

This high-scale genocide, directed by the interim government set up after the death of President Habyarimana, went on for a period of a hundred days.[6] Men, women and children were slaughtered. They were killed on the streets, in their homes, in schools, in hospitals and even in churches. There were killed, not only by the hands of military and militias, but also by other men, women and sometimes - even children.

The genocide ended with the victory of one of the militarized Tutsi-dominated opposition parties, the Rwandan Patriotic Front, in July 1994.[7]

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[1] UNDP Report 2007/2008, <http://hdrstats.undp.org/countries/data_sheets/cty_ds_RWA.html>, accessed 29 April 2008.

[2] United Nations Cyberschoolbus, <http://cyberschoolbus.un.org/infonation/index.asp?theme=>, accessed 29 April 2008.

[3] Special Rapporteur B.W. Ndiaye Report, E/CN.4/1994/7/Add.1, pp. 6-7.

[4] Case NO. ICTR-96-14-T, *The Prosecutor* v *Eliezer Niyitegeka*, Annex A, p. 1.

[5] K. Kindiki, "*Prosecuting the perpetrators of the 1994 genocide in Rwanda: Its basis in international law and the implications for the protection of human rights in Africa*", *African Human Rights Law Journal*, Vol.1 No.1 (2001), p. 65.

[6] K. Kumar *et al*, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience – Rebuilding Post-War Rwanda* (Joint Evaluation of Emergency Assistance to Rwanda. Steering Committee, Copenhagen, 1996) p. 27.

[7] O. Dubois, *"Rwanda´s criminal courts and the International Tribunal", International Review of the Red Cross* (1997) <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JNZA>, accessed 30 April 2008.

On November 8, 1994 the Security Council established ICTR through Resolution 955(1994), in its attempt to bring some of the *genocidaires* before justice[8] and thus contributing to the process of national reconciliation in Rwanda.[9]

In Rwanda, laws were created to deal with the numerous part of the population that participated in the atrocities. The Rwandan Government felt that they had to bring an end to impunity and chose therefore the line of criminal indictments of the participants instead of amnesties or any other such alternative.

In 2002 the Rwandese government opened up an old village-based judicial system, Gacaca, to deal with the immense figure of genocide-related cases, which had overwhelmed the national courts.[10]

All of the above mentioned judicial systems have met great criticism from several directions, and the relationship between the ICTR and the Rwandan government has not been without tensions during the Tribunal's entire existence.

1.1 Purpose of the Study

The purpose of this thesis is to take a closer look at the judicial systems set up after the genocide of 1994 in Rwanda. Although I will deal with the Rwandan Judicial system the focus will be the ICTR and the thesis will try to answer the following questions: On which circumstances was the ICTR created? What determines that a case ends up in the ICTR and not the Rwandan Courts? What has been the main criticism towards the ICTR and the Rwandan Courts? Does the need for such an *ad hoc* court as the Tribunal still exist?

1.2 Methodology and material

The methodology used for this thesis is desk research and literature review through textual analysis of the scientific scholarly material such as articles from peer reviewed journals, documents and statistics from the UN and relevant NGOs, the website of the ICTR and Rwandan Organic Laws.

[8] Kumar *et al*, *supra note* 6, p. 73.
[9] S/RES/955 (1994), para. 1.
[10] Website of the National Service of Gacaca Jurisdictions, *Report on trials in pilot Gacaca Courts*, <http://www.inkiko-gacaca.gov.rw/En/EnIntroduction.htm>, accessed 28 May 2008.

In research for credible information, the study involved examining articles that represent opposite opinions of the work of the ICTR as well as more neutral sources.

1.3 Delimitations and structure

As the research focuses on the ICTR, a great part of this work will deal with the Tribunal. Due to limited access to case law from the Gacaca Jurisdictions and the Rwandan Courts in general the study is unable to deal with analysis and comparison of cases between the different forums. Instead I will focus on the limitations in power and jurisdiction of the different type of courts.

This work is divided into six parts. After this short introduction the second chapter examines the circumstances during the establishment of the ICTR pointing out the Rwandan criticism towards the Court during that time as well as the answer to that criticism. The third chapter gives a general overview of the ICTR and the Rwandan judicial system set up after the genocide. Chapter four deals with the problems and criticism of the different forums, but it also lines up the achievements of them as well as it gives a review of the reforms of the very same. The fifth part lays down a few arguments regarding the continued need for an International Criminal Tribunal for Rwanda and the final part tries to give some conclusions and thoughts regarding what has been studied and the questions posed above.

2 Circumstances during the establishment

Although the initiative to establish the Tribunal came from the Rwandan Government,[11] paradoxically, they were in fact the only ones to vote against passing the resolution that instituted the Tribunal.[12] This can be compared with the fact that when creating the ICTY, the States of former Yugoslavia were not involved in the establishment of the very same.[13]

In any case, the reasons Rwanda had to ask for international assistance in punishing the *genocidaires* were to ”allay suspicions of vengeance and summary justice and, above all, to lay hands on criminals who had found refuge abroad” as well as to gain enough support for making their own criminal justice system function.[14]

The reasons the UN and the international community had to establish the Tribunal were to provide justice for international crimes of the immediate past and to spur the development of judicial precedents for the prosecuting genocides of the future.[15]

2.1 Rwandan discontent

The question arises as to what caused the Rwandan Government to vote against Resolution 955? Oliver Dubois[16] discusses this thoroughly in an article written for the International Review of the Red Cross (ICRC). He mentions the reasons being sevenfold:

1. It felt that limiting the Tribunals *ratione temporis* competence to acts committed in 1994 did not consider that most of the actual planning of the genocide was committed prior to this time.
2. The structure of the Tribunal was not ideal to cope with the task setup. In this, the criticism went to the fact that the ICTR had to share Appeals Chamber and Chief Prosecutor with the ICTY.
3. Rwanda lamented that the Statute of the Tribunal did not state clearly that the priority was the crime of genocide, although genocide was the basis of its creation.

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[11] S/1994/1115

[12] J.E. Stromseth, *“Pursuing accountability for atrocities after conflict: What impact on building the rule of law?”, Georgetown Journal of International Law*, Winter 2007, p. 276.

[13] United Nations, *“ICTY/ICTR Twin Tribunals”, ICTY-Bulletin No. 9/10*, <http://www.un.org/icty/BL/09art1e.htm>, accessed 7 June 2008.

[14] Dubois, *supra note* 7.

[15] Dubois, *supra note* 7.

[16] Graduated in law and criminology at the Catholic University of Louvain. He was posted to Kigali from 1994-1996 on a technical assistance mission to help reconstruct Rwanda’s judicial system. In 1997 he was a legal advisor with the ICRC’s Advisory Service on International Humanitarian Law.

4. Nor did Rwanda agree with the fact that countries, which had supported the *genocidal* regime, would participate in the process of nominating judges.
5. Rwanda did not accept that persons sentenced by the Tribunal could be imprisoned in third countries.
6. Rwanda, where capital punishment was still part of the penal code,[17] did not accept that the Tribunal excluded the death sentence from its penalties. Rwanda argued that persons tried in Rwandan Courts, often being lesser criminals than the masterminds that were supposed to be tried by the Tribunal, could be punished with a heavier sentence.
7. Rwanda was not in agreement with the fact that the Tribunal did not have its seat in Rwanda.

2.2 UN justification of their decisions regarding the ICTR

The UN maintained having legitimate reasons for the decisions made regarding the ICTR. Here we will take a glimpse at some of them.

The Security Council chose to seat the Tribunal in Arusha to insulate the Tribunal from political forces that could harm its integrity and impartiality. In addition, there was the matter of poor infrastructure in Kigali as well as lack of appropriate premises.[18]

Regarding the issue of sharing Prosecutor, the main argument was that the Security Council saw an advantage in ensuring a uniform prosecutorial policy for both Tribunals.[19]

As for capital punishment, having in mind the tendency around the globe in the past 70 years that goes towards the abolition of the very same, the possibility of an International Tribunal imposing the death penalty was never an option.[20]

[17] In July 2007 the capital punishment was abolished in Rwanda
[18] Møse, *supra note* 16, p. 921.
[19] Møse, *supra note* 16, p.929.
[20] Website of Amnesty International USA, *Death Penalty and International Human Rights Standards*, <http://www.amnestyusa.org/facts-and-figures/the-death-penalty-and-international-standards/page.do?id=1101089&n1=3&n2=28&n3=99>, accessed 1 June 2008

3 The judicial responses to the genocide

3.1 Introduction

This part of the thesis will give a general view of the ICTR and the Rwandan judicial system set up after the Rwandan genocide. In this part the competence is decisive to answer the question of why certain cases end up in the different forums.

3.2 The International Criminal Tribunal for Rwanda

3.2.1 Competence

The ICTR has the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January and 31 December 1994.[21]

According to the completion strategy set out by the Security Council, the Tribunal is supposed to end all trial activity at first instance by the end of 2008, and all of its work in 2010.[22]

3.2.2 Jurisdiction

The jurisdiction for the Tribunal is stated in its statute.[23] It has the jurisdiction over persons who have committed the crimes of genocide, crimes against humanity and violations of Article 3 common to the 1949 Geneva Conventions and of 1977 Additional Protocol II during 1 January 1994 until 31 December 1994.

Being a body under the Security Council, the ICTR has the power of asking any national jurisdiction to defer to its competence.[24]

Although the jurisdiction is broad, the Prosecution soon concentrated on individuals “in position of leadership in Rwanda in 1994 and bear the

[21] Article 1, Statute of the ICTR
[22] S/RES/1503, para. 7.
[23] Articles 5-7, Statute of the ICTR
[24] Article 8, Statute of the ICTR

gravest responsibility for the crimes committed", later specified by the Security Council in Resolution 1503.[25] Helena Cobban, on the other hand, talks about demonstrative indictments against people who are in the top leadership of different segments of what then was the Hutu-dominated society and government of Rwanda.[26]

Nevertheless, the results have been the trials of, among others, a Prime Minister, several other government ministers, *bourgmestres*, military leaders and members of the clergy.[27]

3.2.3 Sentences

The ICTR Statute limits the punishments imposed by the Tribunal to imprisonment, which in some cases can be handed out in conjunction with an order to return property acquired by criminal conduct. Also, the Statute points out that the Trial Chambers, when deciding the length of the prison sentence, should keep in mind the general practice of the same, which are used by Rwandan courts.[28]

3.2.4 Administration

The Tribunal has got its seat in Arusha, a town on the territory of the United Republic of Tanzania.[29]

The ICTR is composed of three organs

- *The Chambers*. The Chambers comprises of three Trial Chambers and an Appeal Chamber. It is composed out of both permanent and *ad litem* judges.[30]
- *The Prosecutor*. The Prosecutor is nominated by the Secretary General and appointed by the Security Council. The prosecutorial discretion under the ICTR-Statute is quite broad. It includes the request for deferral, the use of a sealed indictment and the decision to withdraw or amend an indictment or to bring cumulative charges based on the same conduct and the decision whether or not to investigate and prosecute. Further, he or she acts independently and shall receive no instructions from any source.[31]

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[25] E. Møse, "*Appraising the Role of the ICTR: Main Achievements of the ICTR*", *Journal of International Criminal Justice*, Vol.3 No.4 (2005) p. 932.
[26] Web-exclusive Frontline Interview with Helena Cobban, *Rwanda Today: The International Criminal Tribunal and the Prospects for Peace and Reconciliation* (24 March 2004), < http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/today/>, accessed 15 May 2008
[27] Møse, *supra note* 16, p.932
[28] Article 23, Statute of the ICTR
[29] S/RES/977 (1995)
[30] Article 11, Statute of the ICTR
[31] Articles 15 and 17, Statute of the ICTR

There have been four Chief Prosecutors; Richard Goldstone, Louise Arbor, Carla del Ponte and the incumbent, as from September 2003 Hassan Bubacar Jallow.[32]

- *The Registry*. The Registry is responsible for the administration of the Tribunal. It includes a Registrar who is appointed by the Secretary-General after consultation with the President of the ICTR.[33]

3.2.5 The ICTR and the ICTY

The ICTR, which is an ad hoc tribunal, is not the first of its kind. In fact, only one year earlier; the Security Council had established the International Criminal Tribunal for the Former Yugoslavia. The two Tribunals are almost identical and initially shared both Chief Prosecutor and Appeals Chamber.[34]

Nevertheless, some differences are worth noting. The first being that the Statute of the ICTR focuses more on the crimes on genocide while the Statute of the ICTY mentions violations of international humanitarian law in general. This is shown by the wording describing the mandate of the two Tribunals as well as in the listing of the crimes within their competence.[35]

A second difference regards the definition of "crimes against humanity". The ICTR requires discrimination on national, political, ethnic, racial or religious grounds. The ICTY does not regard this as a requisite. This implies that the ICTR definition is narrower and more relevant to genocide than the definition in the ICTY.[36]

However, the biggest, and most inexplicable, difference between the two tribunals lies in their temporal jurisdiction. While the ICTY covers violations committed since 1991, the ICTR is limited to the ones committed during 1994.[37]

Reydams[38] believes that by accentuating genocide and limiting the temporal jurisdiction the Security Council screened out the underlying conflict, which after 1994 was exported to neighbouring countries, where it today continues.[39]

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[32] Interview with Helena Cobban, *supra note* 17.
[33] Article 16, Statute of the ICTR
[34] C.M. Peter, *"The International Criminal Tribunal for Rwanda: bringing the killers to book"*, *International Review of the Red Cross* (1997), <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JNZ8>, accessed 13 May 2008.
[35] L. Reydams, "*The ICTR Ten Years on, Back to the Nuremberg Paradigm*?", Journal of International Criminal Justice 3 (2005), p. 980.
[36] Reydams, *ibid.*
[37] Reydams, *ibid.*
[38] Professor in law and political science from the University of Notre Dame.
[39] Reydams, *supra note* 25.

3.3 The Rwandan Judicial System

3.3.1 Introduction

The Rwandan Government's initiative to establish the ICTR was part of a plan, which aimed at ensuring individual criminal responsibility for the perpetrators of the genocide.[40]

To this end Rwanda's Transitional National Assembly enacted and Organic Law[41] which came to effect in September 1996. The main features of this law were:

1. It created chambers to prosecute four levels of offenders ranging from the planners of genocide to those who merely committed offences against property.
2. It had an elaborated plea barging system.

In January 2000 only 2500 people had been tried and 120 000 were still in custody and awaiting trial.

It was calculated that at that pace, it would have taken between two to four centuries to try all suspects.[42] In fact, no judicial system in the world would have been able to cope with the caseload Rwanda was left with. For never in history had there been such a numerous level of involvement from the masses in such serious crime as genocide.

Facing this unheard of challenge, the Rwandan Government suggested bring to life an old Rwanda tradition of solving conflict in the villages known as Gacaca.

3.3.2 The Organic Law of August 1996

The Organic Law of 1996 established the specialised chambers for genocide crimes in the civil and military courts, a confession procedure and guilt plea for genocide suspects and the categorization of genocide defendants.

3.3.2.1 The categorisation of genocide related crimes[43]

First category:

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[40] Kindiki, *supra note* 5, p. 66.
[41] Rwandan Organic Law No 30/08/*1996 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since October 1, 1990.*
[42] Kindiki, *supra note* 5, p. 69.
[43] Organic Law No 30/08/1996, Art. 2

a) *persons whose criminal acts or whose acts of criminal participation place them among the planners, organizers, instigators, supervisors and leaders of the crime of genocide or of a crime against humanity;*
b) *persons who acted in positions of authority at the national, prefectural, communal, sector or cell level, or in a political party, or fostered such crimes;*
c) *notorious murderers who by virtue of the zeal or excessive malice with which they committed atrocities, distinguished themselves in their areas of residence or where they passed;*
d) *persons who committed acts of sexual torture*

Persons convicted under this category are "jointly and severally" liable for all damages caused anywhere in the country and they lose all civic rights for life.

The Chief Prosecutor at the Supreme Court is the one responsible for publishing a list of the persons placed in this category. The first list was published in November 1996 and contained 1946 names.

One example of a category one defendant is a Father Guy Theunis, a Belgian priest arrested on charges of helping incite genocide. His position as a member of Missionaries of Africa and the Catholic Church was the decisive factor to put him in the highest category. He was being accused of having reprinted articles from the anti-Tutsi newspaper Kangura in the church-sponsored magazine Dialogue.[44]

Second category:

Persons whose criminal acts or whose acts of criminal participation place them among perpetrators, conspirators of accomplices of intentional homicide or of serious assault against the person causing death;

Persons convicted under this category may lose the right to vote, to stand for election, to serve as a witness, to carry arms, serve as a member of the armed forces, as a policeman or teacher.

Third category:

Persons whose criminal acts or whose acts of criminal participation make them guilty of other serious assaults against the person;

Persons convicted under this category can lose their civic rights for a period of up to twenty years.

Fourth category:

[44] E. Weinberger, "*Accused Belgian priest's case moved to Rwandan criminal court*", *Catholic News Service* (12 September 2005), <http://www.catholicnews.com/data/stories/cns/0505175.htm>, accessed 28 May

Persons who committed offences against property.

Persons convicted under this category cannot be sentenced to do time in prison, they can only be forced to pay damages to their victims.

3.3.2.2 Sentences and the system of plea-bargain

The sentences available under the Organic Law from 1996 reaches from delivering reparations to imposing the death penalty,[45] the latter being a punishment reserved for persons convicted under category one.

This law also demonstrates an elaborated system of plea-bargain which consists of shortening the sentences if the defendants pleads guilty. The earlier the defendant confesses a crime, the shorter the sentence.

3.3.2.3 The right to appeal

The right to appeal within the Organic Law is very restricted. It is only allowed to appeal on narrow grounds of errors of law or flagrant errors of fact, and only for the brief period of fifteen days after the verdict.

3.3.3 The Gacaca system

The important thing about Gacaca is that it removes most of the genocide trials from the classical judicial system.[46] The system was introduced in 2002. After a pilot phase, where an estimated amount of 700 000 persons where identified as having played a part in the genocide, the trials in Gacaca were initiated all around Rwanda on July 2006.[47]

Originally, Gacaca was a village-level hearing system, where a person accuses and the accused defends him- or her self.[48] Today, it acts as lower level tribunals that attempt to blend traditional and contemporary mechanism to expedite the justice process in a way that it promotes reconciliation.[49] It is a traditional form of justice adapted to try the immense amount of prisoners awaiting trials in genocide related cases in Rwanda.

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[45] However, the death penalty was abolished in July 2007.
[46] S. Gabisirege and S. Babalola, *Perceptions About the Gacaca Law in Rwanda: Evidence from a Multi-Method Study*, Johns Hopkins University School of Public Health, Center for Communication Programs (April 2001), p. 1.
[47] Swedish Department of Foreign Affairs, *Human Rights in Rwanda 2007* (7 April 2008), Report from the Government Secretariat, p. 6.
[48] Helena Cobban Interview, *supra note* 17.
[49] I.T. Gaparayi, *"Justice and social reconstruction in the aftermath of genocide in Rwanda: An evaluation of the possible role of the gacaca tribunals"*, *African Human Rights Law Journal*, Vol.1 No.1 (2001), p. 79.

Gacaca is more victim-centered than the criminal justice system and it emphasizes reconciliation as well as community service.[50]

3.3.3.1 Administration

There are about 11 000 Gacaca Courts available to deal with the genocide trials (compare to 12 specialized classical courts). The courts are divided in four levels of jurisdiction: *cellule-*, *secteur-*, *commune-* and *préfecture* levels.

Each jurisdiction has three organs:

- A *General Assembly*, which at the Cell level, includes all the population of the Cell beyond 18 years of age. The General Assembly of the next higher level consists of delegates from the next lower level. The Cell's General Assembly establishes the list of persons who have been killed in the Cell and the goods damaged; who have participated in the genocide; who left the Cell during the war and settled themselves elsewhere; as well as who have settled themselves in the Cell after the war. The General Assembly also provide proof needed to hand out convictions or acquittals.
- A *Bureau of the Gacaca Jurisdiction* that comprises 19 members elected by the General Assembly.
- A *Coordinating Committee* that is in charge of appointing five of its members to coordinate the Gacaca Court's activities.

The Gacaca courts' work is organized into three steps. Number one is to collect information relating to the genocide, then, they have to categorize the persons accused of genocide related crimes and finally they have to try the cases falling under their competence.[51]

3.3.3.2 Competence

The Gacaca Courts have the competence of trying persons who have been classified as category four, three and two defendants, as stated in the Organic Law from 1996.

The *Cell's* Gacaca Court is competent to try persons in the fourth category. It is also competent for appeals against sentences given in the absence of prisoners.

The *Secteur* level is competent for the trial of category three defendants. It is also competent for appeals against sentences given in the absence of prisoners.

[50] Helena Cobban Interview, *supra note* 17.
[51] Website of the National Service of Gacaca Jurisdiction, *Members and Structure*, <http://www.inkiko-gacaca.gov.rw/En/EnStructure.htm>, accessed 28 May 2008

The *Commune* level is competent to try persons classified in the second category. It also handles the appeals against sentences given by the *Secteur's* courts and against sentences given in the absence of prisoners.

The *Préfecture* level is competent in the hearing of appeals against sentences given out by the Commune level, as well as against sentences given in the absence of prisoners.

All Gacaca courts are fully competent for the trial of genocide cases in activities of their resort. These activities can be to give the identity of the parties or witnesses, to search suspects' houses or to put them into custody.[52]

3.3.3.3 Objectives

According to the National Service of Gacaca Jurisdiction there are five objectives to be reached with the Gacaca system.[53]

1. To reveal the truth about what has happened
2. To speed up the genocide trials
3. To eradicate the culture of impunity
4. To reconcile the Rwandans and reinforce their unity
5. To prove that the Rwandan society has the capacity to settle its own problems through a system of justice based on the Rwandan custom

It is said that when the truth will be know there will be no more suspicion and that this is the responsibility of all Rwandans, with no exception, to contribute to the rebuilding of their own society.

3.3.3.4 The Right to Appeal

The right to appeal is limited in the Gacaca system. However, the order is that cases from the cell level can be appealed to the sector level. Cases from the *secteur* level can be appealed to the *commune* level and cases from the *commune* level can be appealed to the *préfecture* level.[54]

3.3.3.5 Sentences and the plea-bargain system

The National Service of Gacaca Jurisdiction states that the Gacaca system does not only aim at the punishment of infringements but it marks the importance of re-establishing harmony in the society. The system of

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[52] Website of the National Service of Gacaca Jurisdictions, *The Competence*, <http://www.inkiko-gacaca.gov.rw/En/EnCompetence.htm>, accessed 28 May 2008

[53] Website of the National Service of Gacaca Jurisdictions, *The Objectives*, <http:/www.inkiko-gacaca.gov.rw/EnObjectives.htm>, accessed 27 May 2008

[54] Rwandan Organic Law No.40/2000 of 26/01/2001 *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*, Art. 83

encouraging confessions and as well as using community service alternatives plays a grand part in reaching this goal.[55]

Hence, the Gacaca law, just as the Organic Law from 1996, offers a plea-bargain system.

The idea of the plea-bargain system is to reduce the sentences of the accused in relation to his or her co-operation with the prosecutor. The more time, and money, the accused spares the authorities, the shorter will the sentence be. The system also allows for community service to cover half the prison sentence if the accused so wishes.

Sentences for convicts in category two:[56]

- Between seven to eleven years if the person pleads guilty prior to prosecution.
- Between twelve to fifteen years if the person pleads guilty after prosecution is initiated.
- Between twenty-five years to life in the rest of cases.

Sentences for convicts in category three:[57]

- Between one to three years if the person pleads guilty prior to prosecution.
- Between three to five years if the persons pleads guilty after prosecution is initiated.
- Between five to seven years in the rest of cases.

The sentences for convicts in category four can only be sentenced to civil reparations.[58]

[55] Website of the National Service of Gacaca Jurisdictions, *Sentence applicable in the Gacaca courts*, <http://www.inkiko-gacaca.gov.rw/En/EnSentence.htm>, accessed 2 June 2008
[56] Rwandan Organic Law No.40/2000 of 26/01/2001, Art. 69.
[57] Rwandan Organic Law No.40/2000 of 26/01/2001, Art 70.
[58] Rwandan Organic Law No.40/2000 of 26/01/2001, Art 71.

4 Achievements, Problems, Criticism and Reforms

4.1 The International Criminal Tribunal for Rwanda

4.1.1 Achievements

The Tribunal has arrested 75 individuals out of the 90 indicted persons. Out of those, 34 have gotten their judgments in first instance. Out of those tried, 29 of them have been sentenced to prison terms ranging from five years to life, and five persons have been acquitted.[59]

Other accomplishments that should be mentioned is that the ICTR is the first Tribunal after Nuremberg to hand down a judgment against a head of government.[60] Apart from giving a definition of genocide, the *Akayesu* case was groundbreaking for its affirmation of rape as an international crime, as it may form a part of the *actus reus* of genocide. The famous *Media* Case[61] is the first case to examine the role of the media in the context of mass criminality and international humanitarian law.[62]

Yet another thing is that the Rwandan courts will benefit from the experiences of the ICTR as will they be able to use the data gathered by the OTP. The existence of the Tribunal has helped influencing other members of the international community to bring genocide perpetrators before justice.[63] Hopefully, more will follow these examples after the ICTR is closed down in 2010.[64]

4.1.1.1 Dealing with national reconciliation

As mentioned before, one of the purposes of the ICTR is to contribute to the process of national reconciliation. This generates the question as to how far has the Tribunal reached on that area?

First of all, the mere fact of finally recognizing the events in Rwanda as genocide,[65] helped many survivors in retaining some of their lost human

[59] S/2007/676, 20 November 2007, para. 60.
[60] Case No.ICTR-97-23-S, *The Prosecutor* v. *Jean Kambanda* (4 September 1998)
[61] ICTR-99-52-T, *The Prosecutor* v. *Nahimana et al.* Case (3 December 2003)
[62] Møse, *supra note* 16, p. 935.
[63] Today both Belgium and Switzerland have done so.
[64] Nsanzuwera, supra note 37, p.947.
[65] Case No: ICTR-96-4-1, *The Prosecutor v. Jean Paul Akayesu (2 November 1998)*

dignity. As the Tribunal does not offer the victims right to compensation, recognition of their suffering becomes the main source of satisfaction.[66]

Secondly, there is the contribution of the Tribunal's work in arresting many of the genocide leaders that had fled beyond the borders of Rwanda. Had they not been arrested, they would have kept trying to destabilize the country, get rid of witnesses and aggravated the moral suffering for the survivors.[67] However, Cobban points out that there were 200 people in the top leadership, and only around 60 will have been tried when the work of the Tribunal comes to an end. So even though 60 is a great contribution, it must be kept in mind that it is only a partial achievement of the Court.[68]

A third contribution in the matter is that the ICTR made clear that command responsibility could not exonerate perpetrators from responsibility for crimes committed by subordinates.[69] For many Rwandans, the individuals who directly committed atrocities in front of their own eyes matter as much as the more distant masterminds of the genocide. This fact, being profitable regarding the ICTR's contribution to command responsibility, is at the same time the fact that drives a wedge between the Tribunal and Rwandans, since the ICTR only deals with those more distant architects of the genocide. [70]

4.1.2 Problems and criticism

The first case of the Tribunal started in 1997, and the Court would thereafter have a lot of trouble with achieving credibility, especially in Rwanda. Slow pace of trials in relation to the huge amounts of foundation[71] it receives together with Tribunal mismanagement and the Tutsi-led Rwandan government's efforts to control the Tribunals prosecutorial agenda, played a huge role in this. Here the study will go below the surface of some of these problems.[72]

4.1.2.1 The problem of legitimacy

Critics point out that the establishment was made due to a huge wave of guilt, and that the ICTR was a substitute for any real self-evaluation on the part of the International Community.[73] That it was a product of the

[66] F-X. Nsanzuwera, *"The ICTR Contribution to National Reconciliation"*, *Journal of International Criminal Justice* 3 (2005), p. 946.
[67] Nsanzuwera, *ibid*, p. 948.
[68] Helena Cobban Interview, *supra note* 17.
[69] Nsanzuwera, *supra note* 37, p. 948.
[70] Stromseth, *supra note* 29, p. 276
[71] In 2004 1,2 billion had been invested in the Tribunals work.
[72] V. Peskin, *"Courting Rwanda, The Promises and Pitfalls of the ICTR Outreach Programme"*, *Journal of International Criminal Justice* 3 (2005), p. 951.
[73] Helena Cobban Interview, *supra note* 17.

consciousness of the own culpability for turning their back on the Rwandan people during the genocide.[74]

Thus, this questioned the legitimacy of the Court already from the start and left many with the question: Was the establishment of the Tribunal more a political contrivance than an attempt to promote international justice?

Regarding the aforementioned, Møse[75] argues that the failure of the UN should not be held against the ICTR as a whole.[76]

4.1.2.2 The problem of being one-sided

Some experts talk about ”victor’s justice”, as the court evidentially has failed in prosecuting international crimes within the Tribunal’s jurisdiction committed by RPA (the armed wing of the RPF and which nowadays functions as the national army of Rwanda) soldiers.[77] Having an International Tribunal acting on behalf of merely one side of the conflict is a clear obstacle in the path towards achieving the goals set up for it.[78]

Møse replies to this criticism by saying that the Statute is generally formulated to cover alleged crimes on both sides of the conflict and that Resolution 1503 even encourages the investigation of the RPA-crimes.[79] However, this fact gives little consolation when, to this day, the ICTR has prosecuted Hutus only.

4.1.2.3 The problems in the relationship with the Rwandan Government

As noted above, the relationship between the ICTR and Rwanda has been uneasy from the start. This somehow culminated in the summer of 2002 when the Rwandan Government prevented genocide survivors from crossing the border to bear witness in Arusha. The Chief Prosecutor at that time, Carla Del Ponte, condemned these actions and she pointed them out as an act of vengeance for her investigations of crimes committed by the Rwandese Patriotic Army (RPA).[80] She informed the Security Council about this matter, but the Council’s only response was to give Rwanda a mild reminder that it was under the obligation to cooperate.[81]

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[74] HRW, *Ten Years Later* (April 2004), <http://www.hrw.org/reports/1999/rwanda/10years.htm>, accessed 15 May 2008.
[75] Chief Justice of the ICTR 2003-2007.
[76] Møse, *supra note* 16, p. 940.
[77] Reydams, *supra note* 25, p. 977.
[78] Reydams, *supra note* 25, p. 978.
[79] Møse, *supra note* 16, p. 934.
[80] Peskin, *supra note* 49, p. 951
[81] HRW, *Rwanda and the Security Council: Changing the International Tribunal, Letter to Council Members on the International Criminal Tribunal for Rwanda* (August 2003), http://hrw.org/press/2003/08/rwanda080103ltr.htm, accessed 26 May 2008.

Thus, when the Security Council a year later made the decision not to renew Del Ponte's contract as the Chief Prosecutor of the ICTR,[82] she did not step down from her post quietly. On the contrary, she accused the Security Council of falling to the pressure from the Rwandan Government, and that her not holding the post as the Chief Prosecutor of the ICTR had very much to do with her investigating alleged crimes of the RPA.[83]

As stated earlier, the powers of the Prosecution are quite broad. In this context, the power of deciding whether or not to issue indictment becomes of much relevance since the new Chief Prosecutor has chosen not to prosecute RPA-officers. For there is nothing in the Statute that obliges the Prosecution to indict every time there is evidence to support a charge. Thus, if the Prosecutor decides not to initiate an indictment, even though there is proof supporting the charges, not much can be done. This is the case today with the allegations against the RPA-officers. Investigations have been made, but the case has not been prosecuted.[84]

So, what are the reasons for not prosecuting? One explanation given is that considering the temporary nature of the court and the extensive nature of the crimes, the prosecution should only focus on the most serious cases. In Resolution 1503, the Security Council encourages the Tribunal to deal with the crimes made by the members of the RPF.[85] Jallow himself feels that the Prosecution has "dealt" with those cases by investigating and making the decision of not prosecuting.[86] In addition to this, he is supposed to have expressed that some accusations "amount to hearsay" and that they are "of no value in our work".[87]

Another important fact to take into consideration is that although the Prosecutor should not receive instructions from any government or from any other source, one should not forget that the entire ICTR is a subsidiary body of the Security Council and therefore always will remain dependent on it. The Council can amend the ICTR Statute, use Chapter VII-enforcements against non-compliant states and appoints the Prosecutor. It is therefore correct to say that the Council can influence the Tribunals policy and effectiveness if it wishes to do so.[88]

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[82] This happened when the SC decided that the two Tribunals should no longer share Prosecutor in 2003.

[83] S. Edwards, "*Del Ponte Says UN Caved to Rwandan Pressure*", *National Post* (17 September 2003), Global Policy Forum, <http://www.globalpolicy.org/intljustice/tribunals/rwanda/2003/0918ponte.htm>, accessed 27 May 2008.

[84] Reydams, supra note 25, p. 984.

[85] HRW Report, "*Leave none to tell the story*" mentions the number of RPF-victims reaching as high as 45 000 during 1994. <http://www.hrw.org/reports/1999/rwanda/Geno1-3-04.htm#P95_39230>, accessed 15 May 2008.

[86] Reydams, *supra note* 25, p. 983.

[87] Letter from P. Rusesabagina to Secretary General Ban Ki-Moon, "*Rwanda: Recent "Hearsay" statement by ICTR Prosecutor deeply troubling*" (July 2007) <http://www.taylor-report.com/articles/index.php?id=31>, accessed 16 May 2008.

[88] Reydams, *supra note* 25, p. 981.

4.1.2.4 The problem of reaching out to Rwandans

For Rwandans the ICTR system has been out of reach from the start and it was actually not until 1998 when Radio Rwanda started transmitting news to Rwandans from Arusha.

The distance is not the only thing that creates a wedge between the Tribunal and Rwandans. There is also the fact that the Office of Prosecution set in Kigali is heavily guarded. As Rwandans cannot enter the building without a previous appointment they are inhibited from initiating contacts with staff that they have never met and that many times don't even speak their language.

Besides, Rwandans, who by the nature of their legal system are accustomed to fast trials, consider the slow pace in Arusha as a proof of the ineffectiveness of the UN and contributes to the increased distrust against the Tribunal's work. Many victims also feel that the process has very little to do with them and their suffering, since the Tribunal is not focused on the victims.

4.1.2.5 The problem with mistreatment of witnesses

There have also been problems with the treatment of the witnesses brought to the Tribunal. The criticism here has been that the witnesses don't gain enough protection before and after their attendance in Arusha. This has resulted in a lot of witnesses being harassed and threatened, without much support from the Tribunal machinery [89]

A report from Human Rights Watch informs of some cases where persons were killed either before or after their testimonies.[90]

4.1.3 Reforms

The ICTR went through some changes in response, among other things, to the criticism of its inefficiency. In 2003 its functions improved. New judges and a deputy prosecutor were appointed as well as the election of *ad litem* judges. 2003 was also the year the ICTR received its on Chief Prosecutor, embodied in Hassan Bubacar Jallow. Progress has also been made with the appointment of Chief Justice Erik Møse who established a coordination council and a management committee.[91]

Even though some improvements were made, fundamental problems still remained with the management of the Tribunal as well as the issue of

[89] HRW, *supra note* 58.
[90] HRW, *Leave None to Tell the Story: Genocide in Rwanda, Justice and Responsibility* (March 1999), <http://www.hrw.org/reports/1999/rwanda/Geno15-8-05.htm#P1086_338198>, accessed 27 May 2008.
[91] HRW, *supra note* 58.

fulfilling its mandate completely and impartially, as a prosecution against RPA soldiers was never made. In fact, Rwandan government officials have tried to make arrangements with the Prosecutor's office to drop RPA investigations, in return for providing greater cooperation in prosecuting cases of genocide.[92] In May 2003 an agreement was reached where it was decided that Kigali would take responsibility for the trials regarding RPA soldiers, and that the ICTR would only intervene if Rwanda was unable to carry them out satisfactory.[93] However, after Del Pontes removal from the ICTR not much has happened regarding the matter - not in Kigali and not in Arusha.

To deal with the problem concerning the big distance between the ICTR and Rwandans, the ICTR created an Outreach Department in 1998. As part of this program an Outreach Information Centre was established in Kigali two years later. Although the Centre works quite well in Kigali and handles a lot of information to their visitors, it still does not reach out to the majority of Rwandans since they live on the countryside. Moreover, Rwanda has a very high illiteracy rate, which makes the documentation the Centre has to offer useless for many.[94] To deal with this latter issue, the Centre has planned holding discussions in schools throughout Rwanda, town hall meetings, training sessions and seminars for Rwandan legal personnel and for journalists covering the Court's work.[95]

4.2 The Rwandan Judicial System

4.2.1 Achievements

Considering the situation of Rwanda's judiciary system both before, but in particular after the genocide, it must be admitted that Rwanda has come a long way. Numbers show that judicial staff was cut down to just over 25 per cent due to personnel being killed or having participated in the atrocities. However, already two years after the genocide the number of judicial staff increased to a point that went beyond the level before 1994, as a result of the Government's judicial training sessions. Still, it is clear that this was not enough to deal with the great deal of genocide suspects. Hence, the Rwandan Government felt that they had to recourse to another solution, the Gacaca system.[96]

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[92] HRW, *supra note* 58.
[93] International Crisis Group, *The International Criminal Tribunal for Rwanda: Time for Pragmatism*, Africa Report No. 69, 26 September 2003, <http://www.crisisgroup.org/home/index.cfm?l=1&id=2303>, accessed 27 May 2008.
[94] Møse, *supra note* 16, p. 938.
[95] Stromseth, *supra note* 29, p. 278.
[96] Website of the National Service of Gacaca Jurisdictions, *Context or historical background of Gacaca Courts*, <http://www.inkiko-gacaca.gov.rw/En/Generaties.htm>, accessed 2 June 2008

In relation to its objectives, the Gacaca has reached them partly. It has alleviated a huge burden on the courts and it has involved the local population in the process of justice. However, it needs to be noted that the system has also added considerably to the number of suspects. Statistics show that by the end of the pilot phase more than 60 000 names were added to the list of genocide suspects.[97] It has reduced the number of incarcerated people[98] the guilty-plead system has lead to more confessions than in a conventional justice system, thus contribution to the truth being told.[99]

Yet another achievement worth mentioning is that in 1997 the Rwandese Bar Association was created, this is something very important for the judiciary system as Rwanda lacks lawyers able to defend the many suspects.[100]

4.2.2 Problems and criticisms

4.2.2.1 The Organic Law

Before the Organic Law was introduced, the Rwandan Government had to consider not violating the very fundamental principle of non-retroactivity[101] at the same time, as they had to make sure to pass a law that would bring the many participants of the genocide before justice. This turned out to be a very difficult task and fingers have been raised regarding the matter. More specifically because, even though the Organic Law in many cases provides for a lower sentence than the existing Penal Code, some crimes are given a heavier sentence.[102]

Another criticism has to do with the shown eagerness from the Rwandan Government to convict *genocidaires* and the amount of cases it has to handle. For this opens up the opportunity to make false accusations as authorities many times take the "witnesses" word for it when they start pointing fingers, without making further investigations. What is more, the authorities themselves have been accused of putting political opponents in custody to get rid of them. In 1995 the Prosecutor of Kigali estimated that 20 per cent of detained persons were innocent. Also, cases of corruption have been dismantled, as it's been known that some individuals pay off authorities to be freed.[103]

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[97] A. Meyerstein, "*Between Law and Culture: Rwanda's Gacaca and Postcolonial Legality*", *Law & Social Inquiry*, Vol.32, No.2 (Spring 2007), p. 477.

[98] BBC News, *Rwanda starts prisoner releases* (29 July 2005), http://news.bbc.co.uk/2/hi/africa/4726969.stm, accessed 1 June 2008.

[99] B. Oomen, Rwanda's Gacaca: Objectives, Merits and Their Relation to Supranational Criminal Law, www.ceri-sciencespo.com/themes/re-imaginingpeace/va/resources/rwanda_gacaca_oomen.pdf, p. 14, accessed 9 June 2008

[100] Loi No. 3/97 du 19/03/97 *portant creation du Barreau au Rwanda*.

[101] Art.12 Rwandan Constitution and Art. 15 ICCPR

[102] For example crimes in category one, such as sexual torture and genocide through the exercise of authority.

[103] HRW, *supra note* 68.

An additional problem concerns the trials. In the beginning the main problem was that many judges were inexperienced and therefore many flagrant errors were made regarding the right to due process of the defendants. Most of these flaws have been overcome with the experienced gained during the course of action. In spite of this, other problems like getting witnesses to attend trials, to hinder intimidation against them and to provide counsel for alleged *genocidaires*, still remain.

4.2.2.2 The Gacaca system

One problem concerns the categorization of crimes. Namely, that it departs from the fundamental principle of specificity, which requires a criminal rule to be detailed and indicate the various elements of the crime in clear terms.[104] For example terms as "notorious killer", "excessive malice" and "zeal" opens up for arbitrary use resulting in these terms being interpreted differently by judges and prosecutors.[105]

Then there is the question about fair trial, the right to counsel and lack of legal training of members of the Gacaca jurisdictions, which plays a huge role in the questioning of the Gacaca system's competence, independence, impartiality and judicial guarantees.

Some point out, since the Gacaca Courts have the power to try, sentence to prison, compel witnesses to testify and apply criminal state legislation, it should follow the international standards setup for such courts. That is to say Article 14 in the International Covenant on Civil and Political Rights (ICCPR) and Article 7 in the African Charter on Human and Peoples' Rights (ACHPR).

In 2006 and 2007 a number of survivors and judges were murdered and/or suffered property damage. In response to this, government officials began to arbitrarily impose fines and some times even beat people in communities where survivors had been harassed. As this was often done without further investigations and trials, the way of dealing with the problem is found as punishment of a collective since those punished were only held responsible for living in the community where the harassments of survivals had happened. This kind of punishment is not in agreement with a society of the rule of lawn. In addition, extrajudicial executions by National Police officer against prisoners showing "genocidal ideology" have been reported.[106]

The popular trust of the Gacaca system has allegedly decreased due to the problems mentioned. In particular the case of human rights activist Francois-Xavier Byuma brought mistrust. The scandal consisted of Byuma being convicted by a judge that he had previously investigated for

[104] Gaparayi, *supra note* 90, p. 87.
[105] HRW, *supra note* 68, accessed 1 June 2008.
[106] HRW, *World Report 2008, Rwanda – Events of 2007*, <http://hrw.org/englishwr2k8/docs/2008/01/31/rwanda17828.htm>, accessed 28 May 2008.

allegations of rape of a minor. The judge, who due to their conflict should have removed himself from the case, sentenced Byuma to 19 years in prison in the appeal court.[107]

Another case that has caused the attention of human rights advocates is the trial against Dr. Theoneste Niyitegeka. He was acquitted from the charges of complicity in genocide in the first instance, but the appeals court overturned the decision without providing a reason. Critics question the decision since the evidence presented was very vague and contradictory. They present the case as an example that the Rwandan Government is trying to keep political opponents away as Dr. Niyitegeka has criticized, among other things, the Gacaca system. What is more, in 2003 he sought to oppose Paul Kagame in the presidential elections. His candidacy was however refused and instead he was briefly detained for "divisionism" right before the elections in 2003. In 2005 he had to flee the country, and when he returned he was followed, harassed and some soldiers came to his house to make him disown his critical comments of Gacaca.[108]

4.3 Reforms

In 2003 Rwanda adopted a new constitution[109] and a vast reform of the judicial system begun in 2004. The reform aimed at establishing independent courts and a Prosecutor's Office. This plan has partly succeeded - today exists a higher level of independence - but influence of governmental authorities in the work of the courts is still reported.[110]

The situation with lack of legal personnel, and the inexperience of the existing ones has improved with time since the government has invested much money into their further education.[111]

The Gacaca law was changed in 2004 and has later been reviewed and modified both in 2006 and 2007.[112]

The courts on the *cellule*-, *secteur*-, *commune*- and *préfectural* level were replaced by the Gacaca Court of the Cell, the Gacaca Court of the *Secteur* and the Gacaca Court of Appeal.[113]

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[107] HRW, *World Report 2008, Rwanda – Events of 2007*, <http://hrw.org/englishwr2k8/docs/2008/01/31/rwanda17828.htm>, accessed 29 May 2008.
[108] HWR, "*Rwanda: Review Doctor's Genocide Convention*", *Human Rights News* (15 February 2008), <http://hrw.org/english/docs/2008/02/15/rwanda18077.htm>, accessed 29 May 2008.
[109] Constitution of Rwanda 04/06/2003
[110] Report from the Swedish Government Secretariat, *supra note* 88, p. 5
[111] Report from the Swedish Government Secretariat, *supra note* 88, p. 6
[112] Rwandan Organic Laws No.16/2004 of 1919/06/2004, No.28/2006 of 27/06/2006 and No.10/2007 of 01/03/2007
[113] Organic Law No.28/2006 of 27/06/2006 *modifying and complementing Organic Law No.16/2004 of 19/06/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of*

The *rationae materiae* of the different courts is:

Gacaca Court of the Cell: It deals, as only instance, with offences relating to property as well as the objection formed against sentences it has pronounced in the absence of the accused authors. It is also in charge of categorizing alleged offenders.[114]

Gacaca Court of the Secteur: The *Secteur* trials defendants, at the first level, from the second category and opposition made against sentences pronounced in the absence of the accused authors. It also services as an appeal court for certain decisions originating from the Court of the Cell.[115]

Gacaca Court of Appeal: The Court of Appeal deals with appeals originating from the Gacaca Court of the *Secteur*. In addition, it deals with objection formed against sentences pronounced in the absence of the accused authors.[116]

In 2007 the number of persons accused of genocide passed 800 000. The government then decided that changes, again, had to be made to speed up the trials. Apart from prolonging the existence of Gacaca – the earlier plan had been to end the Gacaca trials in 2007 - the result was a modification in the categorization of crimes so that more suspects would be able to be tried in the Gacaca Jurisdictions, instead of the classic courts.[117] According to the Law of 2007 today there are three categories of genocide related crimes and the Gacaca courts have now the power of imposing sentences of life imprisonment. The right to counsel, on the other hand, remains non-existent.[118]

The new categories are as described as followed:

First Category:

The Person whose criminal acts or criminal participation place among planners, organisers, instigators, supervisors and ringleaders of the crime

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genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994 , Art. 1.

[114] Organic Law No.16/2004 of 19/06/2004 *establishing the organisation, 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*, Art. 41

[115] Organic Law No. 16/2004, Art. 42

[116] Organic Law No. 16/2004, Art. 43

[117] Organic Law No.10/2007 of 01/03/07 *modifying and complementing Organic Law No.16/2004 of 19/6/2004 establishing the organisation, 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 as modified and complemented to date*, Art. 11. An earlier modification, made by Organic Law No 16/2004, reduced the former four categories to three.

[118] Report from the Swedish Government Secretariat, *supra note* 88, p. 6-7

of genocide or crimes against humanity, together with his or her accomplices;

1° the person who, at that time, was in the organs of leadership, at national, prefecture, sub-prefecture and commune levels, leaders of political parties, members of the high command of the army and gendarmeri, of communal police, leaders of religious denominations, or illegal militia groups and who committed those offences or encouraged other people to commit them, together with his or her accomplices;

2° the person who committed acts of rape or sexual torture with his or her accomplices

Persons classified in this category are tried at The High Court as a first instance and appeals are made to the Supreme Court.[119]

Second Category:

1° the well known murderer who distinguished himself or herself in the area where he or she lived or wherever he or she passed, because of the zeal which characterized him or her in the killings or excessive wickedness with which they were carried out, together with his or her accomplices;

2° the person who committed acts of torture against others, even though they did not result into death, together with his or her accomplices;

3° the person who committed dehumanising acts on the dead body, together with his or her accomplices.

4° the person whose criminal acts or criminal participation place among the killer or authors of serious attacks against others, causing death, together with his or her accomplices;

5° the person who injured or committed other acts of serious attacks, with intention to kill them, but who did not attain his or her objective, together with his or her accomplices;

6° the person who committed or participated in criminal acts against persons, without any intention of killing them, together with his or her accomplices.

Third Category:

The person who only committed offences against property. However, if the author of the offence and the victim have agreed on an amicable settlement on their own initiative, or before the public authority or witnesses, before this organic law came into force, he or she cannot be prosecuted.

[119] Constitution of Rwanda, Art. 145 and 149

Additional changes that the amendment provided were suspended sentences and more use of community service.

In 2007, Rwanda also created special prison facilities to meet up the demands from the ICTR to have cases transferred to them. Rwanda has, in the same context, assured the ICTR judges that fair trials would be held and in July 2007 Rwanda abolished the death penalty. Now, the most severe sentence handed out by Rwandan courts is life imprisonment, which can be served in solitary confinement in some cases.[120] The latter type of sentence is seen, among others, by Human Rights Watch (HRW), as a punishment that amounts to torture or cruel, inhuman, and degrading treatment and is therefore in violation of article 7 of the ICCPR. [121]

As late as the 29th of May this year a Trial Chamber of the ICTR turned down Prosecutor Jallow's request to transfer an accused from the Tribunal to Kigali, the reason being that a fair trial could not be ensured. In particular the possibility of a convict being held in lifetime isolation, was pointed out as a motive for the decision.[122]

[120] HRW, *supra note* 108, accessed 29 May 2008
[121] Brief of HRW as *amicus curiae* in opposition to Rule 11 *bis* Transfer regarding case no. ICTR-2001-67-I (4 January 2008), p. 4.
[122] Hirondelle News Agency, *UN Court turns down genocide suspect's transfer to Kigali for trial* (29 May 2008), <http://www.hirondelle.org/arusha.nsf/LookupUrlEnglish/CF52F2A9D495F115432574590034C0B3?OpenDocument >, accessed 2 June 2008

5 A continued need for the ICTR?

As earlier mentioned, the Security Council came up with a completion strategy where it decided that the Tribunal's complete work had to come to and end in 2010. In order for that to be possible the trials in the first instance are supposed to be concluded by the end of 2008, effectively meaning already this year at the time of writing.

There are mixed opinions regarding the termination of the Tribunals work in a near future. Some raise voices that it is in fact inappropriate for the Tribunal to end its work when it apparently has not reached the goals set up for it, mainly referring to the non-existing indictments against Rwandese Patriotic Front (RPF) members.[123] The same voices argue that it would be ridiculous to transfer those cases to Kigali, since the result would be that suspected criminals were left to sit in judgment of suspected criminals.[124] Others feel that the Tribunal needs to complete its work as set out in the completion strategy.[125] A valid point in the matter is that witness testimonies lose their power and credibility with every year. Hence, accepting testimonies delivered 14 years after the actual event, might go beyond balancing on the limits for credibility.[126]

[123] Rusesabagina, *supra note* 64, accessed 27 May 2008.
[124] Rusesabagina, *supra note* 64, accessed 27 May 2008.
[125] Statement by H.E. Permanent Representative of Denmark to the United Nations Ambassador Ellen Margrethe Løj to the Security Council, *Debate on ICTY/ICTR Completion Strategies* (15 December 2007), <http://www.sikkerhedsraadet.um.dk/en/menu/DanishStatements/UNSCDebateICTYICTRCompletionStrategies.htm>, accessed 27 May 2008.
[126] Helena Cobban Interview, *supra note* 17.

6 Conclusion

6.1 Under which circumstances was the ICTR created?

It is very important to underline that the initiative to create an international tribunal, was Rwandan. At a time where the country was shattered into pieces the new government made the decision of acknowledging their weaknesses and limitations as much so they had to ask for assistance from the very same parties that had turned their backs on them during the genocide. In comparison, during the creation of the ICTY, the States of the former Yugoslavia did not participate.

However, this does not mean that Rwanda did not have any selfish or ulterior motives for establishing the Tribunal. As noted above Rwanda needed to eliminate suspicions of vengeance and summary justice so that the International Community would be willing to provide assistance to catch the many *genocidaires* that had fled abroad. Rwanda realised that this assistance was crucial if they were to fulfil their aspirations of ending the country's history of impunity for such heinous crimes. Even more so when taking into consideration that their own criminal justice system was basically non-existent due to the death of a majority of the country's legal personnel.

In any case, the International Community welcomed this initiative. The question, whether the decision of establishing the Tribunal was more a strategic political move or if it was indeed a question of ending impunity and finally putting into practice the spirit of the Genocide Convention, then arose.

Nevertheless, the interesting point in this matter is not the hidden or not so hidden agenda of the UN, but how the Rwandan initiative to create the Tribunal ended up in the Rwandan rejection of the establishment of the very same.

As the study shows, this was not a question of a change of heart from the Rwandan Government, but a matter of Rwandan discontent with certain terms of establishment. A very interesting thing to emphasize, taking into consideration Rwanda's sevenfold reasons to vote against UN Security Council Resolution 955, is that many of the problems pointed out by Rwanda in 1994 have been the same problems and the same criticisms that the ICTR has struggled with during its existence.

An analysis of this is at hand. For example, the limited *ratione temporis* of the tribunal has been an issue, and as Reydams puts it, it screened out the

underlying conflict.[127] This fact could be interpreted as another set of proof indicating the international community lack of interest in solving the problem, but only caring for setting up an act that would clean their dirty conscience for not acting when they should have.

The second objection made by Rwanda - regarding the structure of the Tribunal - was later proven to be adequate by the Tribunal's inefficiency as well as by the reforms made of the structure and administration, more notably the fact that the ICTR got its own Chief Prosecutor in 2003.

In the third point, Rwanda felt that the crime of genocide was not accentuated enough; on the other hand the study of the differences between the ICTR and the ICTY does show that genocide is in fact the main focus, but not the only one. One may here wonder whether this Rwandan objection already in 1994 grounded itself in a fear of getting their own RPF-members tried in the Tribunal, as these were suspected being guilty of crimes other than genocide.[128]

Rwanda's fourth point has not been known as a later issue, but the remaining three points have been of a more sensitive matter due to similar reasons. For the subjects of genocide convicts serving their sentence in a third country, the exclusion of capital punishment as a sentence and the distance to the seat of the Tribunal in Arusha have all been factors playing a negative role in establishing a good relationship with the Rwandan population and thus posing a threat to national reconciliation.[129] For Rwandans aware of these facts, it would seem odd that the masterminds of the genocide would receive a "lighter" sentence than the lesser criminals tried at home, since Rwanda until 2007 still had the death penalty in its Penal Code. Moreover, the fact that the convicts could serve their sentence, in for example a European prison, meant for many Rwandans that they were serving time in facilities with better standard than they had in their homes.[130]

As the experience of the ICTR has manifested, it would be easy to say that Rwanda has been vindicated in voting against the Resolution. Had the Security Council been more inclined to listen to Rwandan criticism to begin with maybe some of the problems the ICTR has had could have been avoided. However, the Security Council did not have key in hand in 1994, and it is nothing out of the ordinary, that new type of institutions suffer from teething troubles. Then again, this does not eliminate the UN's responsibility of not putting more effort to investigate the long term effects of their decisions.

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[127] Reydams, *supra note* 25.
[128] F. Reyntjens, *Rwanda ten years on: From genocide to dictatorship*, African Affairs, 103, 2004, p. 201.
[129] Dubois, *supra note* 7.
[130] HRW, *supra note* 71.

6.2 What determines whether a case ends up in the ICTR or in the Rwandan Courts?

The answer to this question lies in the power, mandate of the ICTR jurisdiction compared with the jurisdiction and powers of the Rwandan Courts.

Both the ICTR and the Rwandan Courts have jurisdiction over the same crimes; the ICTR according to its Statute, and Rwandan Courts according to international obligations as well as national law. This, despite that the Organic Law from 1996 and the other laws following it, only explicitly mentions genocide and crimes against humanity.

The first difference arises with the temporal jurisdiction. Whereas the temporal jurisdiction for the Tribunal is limited to crimes committed between 1 January and 31 December 1994, the Rwandan Organic Laws provide for a more ample time frame, more specifically between October 1, 1990 and December 31, 1994.

Here, the Rwandan Government chose to mark their disagreement with the Tribunal's *ratione temporis*, and consequently presenting which time frame it thought as being appropriate taking into consideration the planning of the genocide. Thus, for example, the Rwandan courts have jurisdiction to try persons accused of planning the genocide before 1994, while if the Tribunal wanted to try such a person it would have to prove that the planning done before 1994 had a direct connection to the events of 1994. That connection does not need to be made in the Rwandan courts since the mere act of planning genocide is penalised.

Although, the Tribunal's personal jurisdiction is general, the Prosecutor soon adapted the strategy of focusing on the masterminds of the genocide by handling the cases of, *bourgmestres*, military leaders, high profile businessmen, members of the clergy, government ministers and even the case of the Prime Minister during the genocide. Also, it is important to note that as a body under the Security Council and according to Article 15 of its Statute, the ICTR has the power of asking any national jurisdiction to defer to its competence.

In practice several countries have more or less gladly transferred apprehended alleged criminals to the Tribunal, while very few – like Belgium and Switzerland – have chosen to try them in their own national courts. The problem for the Tribunal has consisted of dealing with case load, and the Prosecutor even applied for the transfer of some accused to Kigali. This plead was, however turned down by the Trial Chamber.

Hence, the personal jurisdiction for both the ICTR and the Rwandan Courts concur, but there is a difference since as the Rwandan Courts do not have the power to ask other countries to defer their jurisdiction *per se*, but they have to deal with it through extradition treaties or similar arrangements.

Besides, one should not forget that the mere fact of being an International Tribunal created on the basis of public international law, makes it easier for other countries - in particular those with huge cultural differences in relation to Rwanda - to cooperate without further suspicions or need to investigate whether human rights standards are upheld.

Consequently, the Rwandan Courts deal mainly with the genocide suspects apprehended within their territory. The innovation of Gacaca divides the personal jurisdiction so that the classical courts, *i.e* The High Court and the Supreme Court, deal only with category one defendants. This, according to the latest reforms, includes planners, organisers, instigators, supervisors and ringleaders who were in the position of leadership down to the *commune* level, such as a political profile, military, police, religious leader or militia men as well as persons who committed rape or sexual torture towards their victims.

Category two - which now includes a group of defendants that earlier belonged to the first category - gathers the killers that distinguish themselves because of the zeal shown in their killings or for using excessive violence, the persons who used torture without actually killing, persons who desecrated dead bodies, persons who killed, persons who attacked others with the intention of killing but without succeeding and persons who committed attacks against others lacking the intention to kill. It is within the competence of the The Gacaca Court of the *Secteur* to try these defendants.

Lastly, the category three defendants are tried by the Gacaca Court of the Cell. These defendants are accused of crimes relating to property damage.

6.3 What has been the main criticism towards the ICTR and the Rwandan Courts?

Both the ICTR and the Rwandan Courts have endured great criticism.

6.3.1 The ICTR

As for the Tribunal, some of these have already been brought up in conjunction with the discussion of the reasons the Rwandan Government had to vote against Resolution 955. Concerning the question of legitimacy, it is not hard to have some sympathy with Møse when he defends the ICTR

saying that the Tribunal itself should not be charged for the failure of the International Community in general.

The inefficiency of the Tribunal in relation to the huge amount of foundation it has received is another criticism. Particularly in Rwanda this is seen as a mayor failure from the UN since both the Government and the Rwandan people feel that had had those funds been invested in Rwanda, they would have been better administrated. Here the number of completed cases plays an enormous role since that is what can be measured and compared easily – and the Rwandan statistics has clearly an advantage when it comes to numbers.

However, after administrative reforms were made a couple of years ago, this problem has being dealt with. Even the tensions with the Rwandan Government have cooled down since the Jallow was appointed as a Chief Prosecutor. The same, however, cannot be said for the rest of the Tribunals problems.

For example, the question about whether "victor's justice" is applied in the Tribunal still remains. Jallow, in his position as Chief Prosecutor, had the power of responding to this criticism. Yet –for some reason – he chose not to and therefore, in a way, proved critics who were questioning the independence of the Office of the Prosecutor (OTP), right. Not to say to revive and confirm Del Ponte's allegations of the Security Council yielding to Rwandan pressure, when they chose to remove her from her position. Jallow has received the criticism of being partial for not wanting to prosecute RPF-soldiers, and for expressing that such allegations could even be "hear-say". This discussion continues until this day, and as a matter of a fact Hirondelle News Agency reported the 6 June[131] this year that Mr. Jallow for the first time openly confirmed that some soldiers from the RPF had committed atrocities during the 1994 genocide, but at the same time informing that Rwandan courts would be the ones in charge of trying these soldiers. Although this is progress made by the Chief Prosecutor, it still does not deal with the fact that no Tutsis have been tried in the Tribunal, and therefore allegations of the ICTR representing only one side of the conflict remains a fervent matter.

Yet another burning matter is the problem the Tribunal has had in reaching out to Rwandans. To begin with, the geographical distance to the Tribunal and the inaccessibility to its organs has always been a problem. The unfamiliar judicial system, the language barrier, the lack of information and knowledge about its work and existence were things that could have been foreseen but instead they were neglected and it is not until the last couple of years that the Tribunal has invested more in playing an active role in the reconciliation process of Rwanda, in Rwanda.

[131] Hirondelle News Agency, ICTR/UN, *UN Prosecutor admits of RPF atrocities during 1994 genocide* (6 June 2008), <http://www.hirondellenews.com/content/view/2087/333/>, accessed 10 June 2008.

Although the project from the Outreach Department to plan town hall meetings and leading discussions in schools throughout Rwanda so they can reach out to the majority of the population on the countryside, has come undebatably too late – the Tribunal's work is soon to reach and end - it is in fact a welcomed initiative. Hopefully, it will help to fulfil part of the main goals set-up by the Security Council 14 years ago, to contribute to national reconciliation. One may wonder how they initially thought that fulfilling this mission would be possible if most Rwandans were unaware of the proceedings in Arusha?

6.3.2 The Rwandan Courts

The primary criticism toward the Rwandan judicial system has to do with the fact that the system does not provide a fair trial for the accused– not in the classic courts since they still are not seen as totally independent from the Government, and not in the Gacaca Courts where the question of lack of competence often is raised.

Rwanda has also had great problems with lack of legal personnel, the biggest problem being to provide for legal counsel to the accused. These problems are something the Rwandan Government still is dealing with. And the progress maid – considering the completely shattered system in 1994 – cannot be denied.

It is also important to remark that the situation Rwanda faced after the genocide was something, which had never been seen before. Nor was it favourable that Rwanda was a poor country on the African continent, with high illiteracy rate, almost non-existing infrastructure and a long history of violence.

Therefore, having all these facts in mind, it is difficult not to admire the development and the solutions the Rwandan Government has come up with. This does not mean that it is in order for the Tutsi-lead Government to use the excuse of dealing with genocide to get rid of political opponents, nor is it acceptable that extrajudicial executions led by authorities occur; but it might be a hint to the International Community - mainly to the Western countries - that "their" formulas are not always the most effective ones. Moreover, that culture and history has to be taken into consideration when trying to create such a formula.

The criticism against Gacaca has been harsh, but what has been the alternative? When the joint forces of the United Nations have only been able to deal with about sixty cases, supposedly then providing all of the accused fair trials, what could be expected from Rwanda? For they could not deal with their 800 000 detainees in the same way. The crucial question raised here is: what amount of "human rights" violations would be acceptable in order to recover from the consequences of a full-scale genocide?

6.4 Does the need for such an *ad hoc* court as the Tribunal still exist?

This year, 2008, the trials in the first instance are to be concluded according to the completion strategy set out by the Security Council. In 2010 the entire work of the Tribunal is to be terminated. As time is closing in, the question about the suitability of the time frame becomes of major importance. As seen in this study, there are mixed opinions regarding the matter.

Some feel that it is wrong to close the doors of the Tribunal when the goals set up for it have not been fulfilled, aiming then at the fact that there have been no indictments against RPF-soldiers. The late acknowledgment concerning the issue made by the Chief Prosecutor gives very little consolation. For, he is in fact admitting that RPF-members will be tried by a Rwandan Courts that, considering the denial from the Trial Chamber to transfer accused to Kigali, does not live up to international standards and is allegedly not fully independent from the Tutsi-lead Rwandan Government.

Others view that 14 years of Tribunal activity is enough. A good point in the matter is that testimonies from witnesses loses credibility when they are telling stories about something that happened such a long time ago.

What is more, just recently, both the President and the Prosecutor of the ICTR pleaded in a report before the Security Council, that the Tribunal be granted an additional year to be able to fulfil its mission. The ICTR Chief Prosecutor argues that more time is needed due to the three latest arrests, and in order to allow smooth conclusions of pending trials.[132]

Taking these valid points into consideration it seems like the Security Council's completion strategy should be reviewed. The main reason being that it would be closing down the Tribunal without having dealt with the serious problems it continues to battle with and this could be seen as yet another failure by the International Community; and it would again seem like it is turning its back on the Rwandan people by not continuing to work for national reconciliation, while having the tools to do so.

< Text >

[132] Hirondelle News Agency, ICTR/Weekly Summary, ICTR *Prosecutor seeks more time to complete trials* (6 June 2008), <http://www.hirondellenews.com/content/view/2087/333/>, accessed 10 June 2008.

Bibliography

Dubois, Olivier — *Rwanda's National Criminal Courts and the International Tribunal*, International Review of the Red Cross no 321, 31-12-1997, pp. 717-731. http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JNZA

Gabisirege, S. and Babalola, S. — *Perceptions About the Gacaca Law in Rwanda: Evidence from a Multi-Method Study*. Special Publication No. 19. Baltimore, Johns Hopkins University School of Public Health, Center for Communication Programs, April 2001

Gaparayi, Idi T — *Justice and social reconstruction in the aftermath of genocide in Rwanda: An evaluation of the possible role of the gacaca tribunals*, African Human Rights Law Journal, Vol. 1 No. 1, 2001, pp. 78-106.

Kindiki, Kithure — *Prosecuting the perpetrators of the 1994 genocide in Rwanda: Its basis in international law and the implications for the protection of human rights in Africa*, African Human Rights Law Journal Vol. 1 No. 1, 2001, pp.64-77.

Kumar, Krishna.
Tardif-Douglin, David.
Maynard, Kim.
Manikas, Peter.
Sheckler, Anette.
Knapp, Carolyn.

The International Response to Conflict and Genocide: Lessons from the Rwanda Experience. Vol. 4,Rebuilding Post-War Rwanda, Joint Evalutation of Emergency

Assistace to Rwanda. Steering Committee, 1996, Copenhagen

Løj, Ellen Margrethe — Statement by H.E. Permanent Representative of Denmark to the United Nations Ambassador Ellen Margrethe Løj to the Security Council, *Debate on ICTY/ICTR Completion Strategie*s http://www.sikkerhedsraadet.um.dk/en/menu/DanishStatements/UNSCDebateICTYICTRCompletionStrategies.htm, 15 December 2008.

Meyerstein, Ariel — *Between Law and Culture: Rwanda's Gacaca and Postcolonial Legality,* Law & Social Inquiry, Vol.32, No.2, Spring 2007, pp. 467-508

Møse, Erik — *Appraising the role of the ICTR: Main Achievements of the ICTR*, Journal of International Criminal Justice Vol.3 No.4 (2005), pp. 920-943.

Nsanzuwera, Francois-Xavier — *The ICTR Contribution to National Reconciliation*, Journal of International Criminal Justice 3 (2005), Oxford University Press, pp. 944-949

Oomen, Barbara — *Rwanda's Gacaca: Objectives, Merits and Their Relation to Supranational Criminal Law*, www.ceri-sciencespo.com/themes/re-imaginingpeace/va/resources/rwanda_gacaca_oomen.pdf, 2006.

Peskin, Victor — *Courting Rwanda, The Promises and Pitfalls of the ICTR Outreach Programme*, Journal of International Criminal Justice 3 (2005), Oxford University Press, pp. 950-961.

Peter, Chris Maina — *The International Criminal Tribunal for Rwanda: bringing the*

killer to book, International Review of the Red Cross no 321, 31-12-1997, pp. 695-704. http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JNZ8

Reydams, Luc — *The ICTR Ten Years On, Back to the Nuremberg Paradigm?*, Journal of International Criminal Justice 3 (2005), Oxford University Press, pp.977-988

Reyntjens, Filip — *Rwanda, Ten years on: From Genocide to Dictatorship,* African Affairs, 103, 2004, pp. 177-210

Rusagara, Frank K. — *Gacaca as a Reconciliation and Nation-building Strategy in Post-genocide Rwanda*

Rusesabagina, Paul — Letter from P. Rusesabagina to Secretary General Ban Ki-Moon, "*Rwanda: Recent "Hearsay" statement by ICTR Prosecutor deeply troubling*", 9 July 2007, The Taylor Report http://www.taylor-report.com/articles/index.php?id=31

Stromseth, Jane E. — *Pursuing accountability for atrocities after conflict: What impact on building the rule of law?* Georgetown Journal of International Law, Vol. 38 (Winter 2007), pp.251-322.

Swedish Department of Foreign Affairs — *Human Rights in Rwanda 2007*, Report from the Government Secretariat (Regeringskansliet), Published 7 April 2008

Weinberger, Evan — *Accused Belgian priest's case moved to Rwandan criminal court,* Catholic News Service http://www.catholicnews.com/data/stories/cns/0505175.htm

Organisations, Websites and Online-newspapers

BBC News — *Rwanda starts prisoner releases*, http://news.bbc.co.uk/2/hi/africa/4726969.stm, 29 July 2005.

Frontline Web-exclusive Interview With Helena Cobban — *Rwanda Today: The International Criminal Tribunal and the Prospects for Peace and Reconciliation*, http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/today/ interview conducted 24 March 2004.

Global Policy Forum — Edwards, Stephen, "*Del Ponte Says UN Caved to Rwandan Pressure*", National Post, http://www.globalpolicy.org/intljustice/tribunals/rwanda/2003/0918ponte.htm, 17 September 2003

Hirondelle News Agency — *UN Court turns down genocide suspect's transfer to Kigali for trial* http://www.hirondelle.org/arusha.nsf/LookupUrlEnglish/CF52F2A9D495F115432574590034C0B3?OpenDocument, 29 May 2008

Human Rights Watch — *Leave none to tell the story: Genocide in Rwanda* http://www.hrw.org/reports/1999/rwanda/, March 1999

Rwanda and the Security Council: Changing the International Tribunal, Letter to Council Members on the International Criminal Tribunal for Rwanda http://hrw.org/press/2003/08/rwanda080103ltr.htm, August 2003

	10 years after http://www.hrw.org/reports/1999/rwanda/10years.htm, April 2004
	World Report 2008, Rwanda – Events of 2007 http://hrw.org/englishwr2k8/docs/2008/01/31/rwanda17828.htm
	Brief of HRW as amicus curiae in opposition to Rule 11 bis Transfer regarding case no. ICTR-2001-67-I, 4 January 2008
	"*Rwanda: Review Doctor's Genocide Convention"*, *Human Rights News* http://hrw.org/english/docs/2008/02/15/rwanda18077.htm, 15 February 2008.
International Crisis Group	*The International Tribunal for Rwanda: Time for Pragmatism*, Africa Report No 69, 26 September 2003 http://www.crisisgroup.org/home/index.cfm?l=&id=2303
Website of the ICTR	www.ictr.org
Website of the National Service for Gacaca Jurisdictions	http://www.inkiko-gacaca.gov.rw/
Website of Amnesty International USA	*Death Penalty and International Human Rights Standards*, http://www.amnestyusa.org/facts-and-figures/the-death-penalty-and-international-standards/page.do?id=1101089&n1=3&n2=28&n3=99

Domestic Legislation

The Constitution of the Republic of Rwanda, 04/06/2003

Rwandan Organic Law No 10/2007 of 01/03/2007 modifying and complementing Organic Law No.16/2004 of 19/6/2004 establishing the organisation, 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 as modified and complemented to date.

Rwandan Organic Law No 28/2006 of 27/06/2006 modifying and complementing Organic Law nº 16/2004 of 19/06/2004 establishing the organisation, 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

Rwandan Organic Law No 16/2004 of 19/6/2004 establishing the organisation, 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.

Rwandan Organic law No 40/2000 of 26/01/2001 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.

Loi No. 3/97 du 19/03/97 portant creation du Barreau au Rwanda

Rwandan Organic Law No 30/08/1996 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since October 1, 1990.

UN Sources

United Nations Economic and Social Council, Fiftieth Session of the Commision on Human Rights, *Extrajudicial, summary or arbitrary executions, Addendum, Report by Mr. B.W. Ndiaye, Special Rapportuer, on his mission to Rwanda from 8 to 17 April 1993*, E/CN.4/1994/7Add.1, 11 August 1993.

Resolution 955, *S/RES/955 (1994)*, adopted by the Security Council at its 3453rd meeting on 8 November 1994.

Statute of the International Criminal Tribunal for Rwanda as annexed to S/RES/955 (1994)

Resolution 977, *S/RES/977 (1995)*, adopted by the Security Council at its 3502nd on 22 February 1995.

Resolution 1503, *S/RES/1503 (2003)*, adopted by the Security Council at its 4817th meeting on 28 August 2003.

United Nations Development Programme, 2007/2008 Report, *Population, 2004*, http://hdrstats.undp.org/countries/data_sheets/cty_ds_RWA.html

S/2007/676 Letter dated 16 November 2007 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 adressed to the President of the Security Council

United Nations, "*ICTY/ICTR Twin Tribunals"*, *ICTY-Bulletin No. 9/10,* http://www.un.org/icty/BL/09art1e.htm

Table of Cases