TRANSITIONAL JUSTICE IN RWANDA
A CASE STUDY OF FAIR TRIAL PROCESS

Submitted in partial fulfilment of the requirements of the degree

LLM (Human Rights and Democratisation in Africa)

by

JULIUS OSEGA

Student No.2155643

prepared under the supervision of

PROFESSOR JEREMY SARKIN

at the

FACULTY OF LAW, UNIVERSITY OF THE WESTERN CAPE

23 November 2001

DECLARATION

I, **OSEGA Julius**, do hereby declare that this work is an original dissertation and that where other materials and textbooks have been used, verbatim or otherwise, it is clearly indicated. That the work presented in this dissertation has not been submitted before in any University for any degree course whatsoever to the best of my knowledge.

Signed..... Osega J.

OSEGA JULIUS

Date..... 23 November 2001

ACKNOWLEDGEMENT

I sincerely thank my Lord Jesus Christ for the provisions made available to me at the time of need, and above all the good health throughout the course of the programme.

Special thanks go to my supervisor, Professor Jeremy Sarkin for his tolerance, patience and guidance in putting together this work.

I am indebted to my colleagues and friends particularly Danwood Chirwa, for the relentless support in the course of programme.

I further extend my gratitude to the Centre for Human Rights for granting me the opportunity to participate in this course. I look forward to fulfil the aspirations of the centre.

ABBREVIATIONS

APROSOMA	*l' Association Pour La Promotion Sociale De La Masse.*
ARUN	*Alliance Rwandaise pour l ' Unite Nationale.*
ICCPR	International Covenant on Civil and Political Rights.
MRND	National Revolutionary Movement for Development.
MSM	*Muhutu Social Movement.*
NGO's	Non -Governmental Organisations.
NURP	National Unity and Reconciliation Commission.
PARMEHUTU	*Parti du Movement de l' Emanicipation Hutu.*
PSAG	The Rwandan League for the Promotion and Defence of Human Rights.
RPA	Rwanda Patriotic Army.
RPF	Rwanda Patriotic Front.
RWN	Rwanda Women's Net.
TRC	Truth and Reconciliation Commission.
U.N	United Nations.
UNA	*Union Nationale Rwandaise.*

TABLE OF CONTENTS

CHAPTER 1: GENERAL INTRODUCTION

In countries undergoing a shift from a repression to democracy, the question of transitional justice presents, in a very conspicuous manner, the first test for the establishment of a real democracy with the rule of law. Rwanda too is caught up in this web and the way forward is being sought.[1] After ousting a regime that organized genocidal killings of at least a million people[2], if the new government were to undertake prosecution of every person who participated in this heinous butcher, more than 120,000 Rwandan citizens could be placed in the dock – a situation that would be wholly unmanageable and extremely destabilizing of the transition.[3]

While each country's experience is not only dramatic but unique, and however relative the mechanisms of accountability and their outcomes may be, that in itself does not and cannot exclude the application of existing international norms and standards which represent the threshold of international legality.[4] It is therefore important that Rwanda should adopt unifying themes common to nations moving from despotism to democracy and lessons that each nation might bring to the others.

1.1 Statement of the Problem

During three months in 1994, genocide was committed in the central African republic of Rwanda.[5] As the Rwandan Patriotic Army (RPA) forces progressed through the country, soldiers simply identified those who appeared to them to be suspects of genocide, and locked them up in detention centres.[6] There was no systematic collection of evidence; most prisoners were not formally charged; and for many, no file was prepared.[7]

---

1 Jeremy Sarkin (1999) 21 Human Rights Quarterly 767.

2 See Annual Report of the activities by the national Unity and Reconciliation Commission: Feb. 1999 – June 2000.

3 See News Analysis/Rwanda's Dilemma: striking a balance between justice and reconciliation. <http://www.internews.org/activities/ICTR_reports/ICTR_reportsMay2001.htm> [accessed on 15.8.2001]

4 "In a world order based on the rule of law and not on the rule of might, the attainment of peace to end conflicts cannot be totally severed from the pursuit of justice whenever that may be required in the aftermath of violence." See MC Bassiouni 1996 59 Law and Contemporary Problems 13.

5 See UN Doc E/CN.4/1994 paragraph 24.

6 Carla J. Ferstman, (1997) 9 No.4 African Journal of International Comparative Law 861.

7 Four of such suspects who had been detained in Gitarama prison for more than four years were released on Thursday 24.5.2001 by the community in a preliminary session of a justice system known as Gacaca. Source <http://wwww.internews.org/activities/ICTR_reports/ICTR_reports_May 2001.htm> [accessed on 15.8.2001].

Along with the overall destruction of Rwanda came the devastation of Rwanda's judicial structures.[8] The great majority of judicial and law enforcement personnel were killed or fled the country.[9] Moreover the basic resources needed to run a legal system such as books; vehicles and even paper were unavailable.[10] It was in this context that Rwanda confronted the question of how to pursue justice in the wake of genocide.

Rwanda is faced with the enormous problem of how to handle about 120,000 detainees in prisons around the country.[11] The majority of the suspects are accused of participating in the genocide. Specialized legislation to facilitate handling of the genocide related cases was designed and drafted over the cause of several months in 1995 – 96.[12] Drafting that legislation required finding a path through array of profoundly problematic options. The Rwandan criminal justice system had never been equipped to handle a large volume of cases, and it had entirely been disabled during the violence. It tried no cases in 1995.[13]

The Rwandan government has because of the overwhelming number of suspects of genocide developed a new procedure called the *gacaca*; lower level tribunals that attempt to blend traditional and contemporary mechanisms to expedite the justice process. This process allows communities to establish the facts and decide the fate of the majority of those accused of lesser offences, while at the same time addressing reconciliation.[14] An approach such as that adopted in Rwanda offers a benefit of expediency in handling enormous volume of cases. However, there is a reason of concern about the potential of miscarriage of justice under such a system.

The question to ask in designing legal responses to complex situations surrounding crimes of mass violence is: What action will do the most good and the least harm under the circumstances? A full trial of about 120,000 accused persons is appallingly a high figure, more so in a country where the judicial system lacks resources and untrained personnel.[15] The Van Lierop Report notes that there are about 700 judges and magistrates, very few of who have legal background.[16] In an urgent attempt to increase the number of the judicial personnel, large-scale training

---

8 n 6 above 859.

9 See Madeline H. Morris, (1997) 7 Duke Journal of Comparative & international law 349.

10 See Ferstman (n 6 above) 859; also Morris (n 9 above) 59.

11 Organic law no. 08/96. The organic law purports on its face, to preserve the rights guaranteed by the Rwandan Constitution, Code of Criminal Procedure, and other international agreements to which Rwanda is a party. See Ferstman (n 6 above) 865.

12 See Morris (n 9 above) 573.

13 See Morris (n 12 above).

14 Organic law No. 40/2000 of 26/01/2001 sets up the *gacaca* jurisdictions.

15 See Amnesty International, Rwanda Unfair Trials: Justice denied 1 (1997) at 5.

16 Robert F. Van Lierop, Rwanda Evaluation: Report and Recommendations, 31 Int' l Law.887, 890. (1997) The Van Lierop Report was written by Robert Van Lierop, the Chair of the Association of the Bar of the City of New York's Committee on African Affairs.

programmes with one to five months courses began in January 1995. According to Magnarella[17], by 1999, 750 police inspectors, 200 deputy prosecutors, 300 magistrates, 150 court clerks and 150 prosecutor's secretaries had received training.[18] Unfortunately, low salaries, difficult working conditions, and general insecurity have discouraged more people from applying and have caused some officials to abandon their posts.[19]

A few magistrates, police inspectors, and deputy prosecutors have themselves been arrested as suspects in the genocide; armed Hutu bands seeking to perpetuate the genocide have killed others.[20] Since 1996 when trials began, fewer than 6,000 cases have been heard.[21] Where prosecutions are undertaken, how widely should the net be cast? There is a growing consensus in international law that, at least for the most heinous violations of human rights and international humanitarian law, a sweeping amnesty is impermissible.[22]Moving the nation forward toward both justice and reconciliation plainly precludes an absolutist approach to the chain of responsibility.

1.2 Scope of the study

This study is centred on a right to a fair trial, the focus being on the justice system in Rwanda. The period considered is 19 July 1994[23] to date. Inspiration is drawn from various international human rights instruments.

1.3 Objectives of the study

1. To point out that the fair trial process has not yet been heeded to in Rwanda. The line of argument being that judicial service personnel are yet to refine judicial procedures and ensure that each and every suspect receives a fair trial;
2. To stress the need for Rwanda to address past human rights abuses, the obligations which flow from the Constitution, Arusha Accords, and Code of

---

17 See Justice in Africa, Rwanda's Genocide, its courts, and the UN Criminal Tribunal 75.

18 See Paul J Magnarella (1999) Justice in Africa – Rwanda's Genocide, its Courts, and the UN Criminal Tribunal at 75.

19 n 18 above.

20 n 18 above.

21 n 3 above.

22 Neil J.Kritz, (ed) The Dilemmas of Transitional Justice (1995), in its preface at p.xxii.

23 By mid July 1994, the RPF/A had taken over all of Rwanda except for the French held zone and announced the formation of its government. On July 21, a new government was formally installed. See Ravinder Joshi, 'Genocide in Rwanda: The Root Causes', *East African Journal of Peace and Human Rights* vol.3, No.1 1997 at 81.

Criminal Procedure, and International obligations derived from the International Covenant on Civil and Political Rights (ICCPR)[24], as well as international guidelines when dealing with crimes punishable by death, such as the Safeguards Guaranteeing Protection of the Rights of Those facing the death Penalty[25];

3. To suggest ways that may be used to handle the overwhelming numbers of suspects of genocide in Rwandan prisons.

1.4 Usefulness of the study

There is need for Rwanda to achieve healing. This however can occur if the new regime becomes committed to upholding human rights and the rule of the law. A policy to deal with past human rights abuses should in all cases be centred on preventing the recurrence of human rights abuses and repairing the damage caused. How to strike the proper balance between a white – wash on the one hand and a witch – hunt on the other. Above all how to achieve authentic reconciliation and prevent the future recurrence of abuses of the sort inflicted by the old regime.

1.5 Literature Review

As the world is grappling with problems of governance, legitimacy, democracy, and human rights; a number of scholars too have published in the area of transitional justice.

According to Zalaquett[26], dealing with transitional political situations is a new area of human rights practice that poses some complex ethical, legal and practical questions. He suggests some of the critical normative and practical issues among others being the following;

That it is the responsibility of a government to promote and protect human rights within its purview and during its watch, what exact are its responsibilities, according to international law with respect to past human rights violations? More specifically under what circumstances, if any, can a government excuse itself from fulfilling such obligations on the grounds that it is not its power to do so? Thus the tendency is: to

---

24 Rwanda is a State party to ICCPR; it acceded to it on 16 April 1975. Rwanda has not ratified any of the Optional Protocols to ICCPR. Source <http://www.unhchr.ch/html/menu3/b/a_CCPR.htm> [accessed on 10.9.2001].

25 Approved by Economic and Social Council resolution 1984/50 of 25 May 1984.

26 Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints, in *state Crimes*: *Punishment or Pardon* Aspen Institute, 1989 at 205.

emphasize the responsibility of governments, regardless of whether they in fact have real power or are merely the titular holders of power; to insist on the continuity of the obligations of the state, despite changes of government, particularly concerning the promotion of and respect of human rights.

Zalaquett in his paper goes further to say that, following a period of systematic human rights violations, whatever human rights policy a new government puts in practice will necessary be subsumed within a larger objective that aims at among others achieving the following:

To achieve a measure of national unity and reconciliation, particularly when the human rights violations of the past took place in a context of extreme political polarization and civil strife, including forms of armed struggle. Zalaquett goes further to say that if punishment is taken to be a way forward for a given policy, for it to serve a preventive function, both the trial and the penalties applied should fully conform to international human rights standards. It is in this spirit that I approach the question of transitional justice in Rwanda and particularly a question of fair trials.

According to Sarkin[27], in countries emerging from periods of great political, turmoil, particularly turmoil associated with gross violations of human rights, the question of how to deal with the past has been a crucial part of the transformation process. He alludes that violence has not ceased in Rwanda, as both sides engage in acts of retribution. There are victims and perpetrators of abuses on both sides and that there is no outlet for the anger and pain behind the abuse. To Sarkin, Rwanda's criminal justice system is wholly inadequate to handle the large number of detainees. He is of opinion that the establishment of a truth and reconciliation commission in Rwanda would end the cycle of killing and the ongoing strife. His argument for a truth and reconciliation commission is that it creates a record of human rights abuses that is complete as possible, including the nature and extent of the crimes and a full record of the names and fates of victims. Sarkin advocates the establishment of a commission in Rwanda as a means of beginning reconciliation and rebuilding a unified country. He recommends the truth and reconciliation commission for a number of reasons.

Firstly, the ongoing animosity and retributive violence between the current and former governments and their respective followers is evidence that the status quo is not working. If a new method for addressing the problems is not implemented, the violence will continue.

---

27 The Necessity and the Challenges of Establishing a Truth and Reconciliation Commission in Rwanda, Human Rights Quarterly 21 (1999).

Secondly, the Rwandan Government is not equipped to channel all responsible parties through the traditional legal systems. Thus far, attempts to do so have led to increased human rights violations, anger, and distrust of the system among both victims and accused. Even if the system could accommodate the tremendous number of accused, it does not provide victims with a means of telling their stories and venting their hostilities in a controlled and non-violent manner. They are not participants in the process and therefore do not receive the kind of psychological benefits achieved by a truth and reconciliation commission.

Sarkin suggests that a properly constituted commission would generate public awareness of what really happened. This is necessary to counter the extensive propaganda being circulated by the displaced Hutu leadership that denies the genocide and places the blame for all past violence on the genocide victims. He further suggests that any measure to deal with past human rights abuses must be adopted in full knowledge of the truth; a policy that leans towards severity would tantamount to arbitrariness or revenge. It is along those lines that I view the policy of punishment as adopted by the Rwandan Government with scepticism in that a mixed human rights policy to deal with past abuses would have served better.

According to Ferstman,[28] the path of bringing perpetrators of genocide to justice that Rwanda is embarking on is difficult if not impossible. The reason for this according to Ferstman is that the Rwandan traditional justice as it existed prior to the genocide would not be adequate to deal procedurally or substantively with the large numbers of the accused persons who would undoubtedly flood the system of justice. To Ferstman, the shorter term problems Rwanda is encountering in their attempt to institute the rule of law have already got manifest. In the report of 8 May 1997 to Amnesty International, entitled "Rwanda: Unfair Trials – Justice Denied," the Government of Rwanda acknowledged that some of the cases have had shortcomings. The immensity of the task, coupled with the dearth of human and material resources arguably prevents accused persons from receiving a trial without "undue" delay. Ferstman in his paper highlights the rights to fair trial process and is of the opinion that the suspects of genocide in Rwanda have not benefited from these rights hence an element of unfair trials. Ferstman goes short of suggesting a way forward for the realization of this rights.

According to Benomar,[29] human rights have been at the centre of the democratic revolution that has touched every part of the globe over the last few

---

28 Domestic Trials for Genocide and Crimes against Humanity: The example of Rwanda, 9 *RADIC* (1997).

29 Confronting the past: Justice After Transitions, *J.Democ.* , Jan 1993, at 32.

years. Benomar alludes that emerging democracies still face formidable challenges in establishing the rule of the law and creating solid guarantees for human rights. Benomar cites the African countries approach to peaceful transition to democratic rule as being among others the granting of former rulers immunity from prosecution in an attempt to reduce the opposition to rapid transfer of power to new civilian administrations. In his paper, he points out that there are no hard and fast rules or easy answers about how to resolve the dilemma of bringing violators to justice.
I concur with Benomar on the issue of absence of hard and fast rules bearing in mind that the policies on this issue are dictated not only by strict principles of justice, but also by the need to balance ethical and legal concerns with the hard realities of politics. Nonetheless, a country like Rwanda can learn from other countries such as Chile, on how to organize an independent, impartial, and systematic investigation and how a truth telling operation can help to exorcise the ghosts of the dark past.

1.6 Hypotheses

This study will be based on some tentative proposition that a state of emergency does not exist in Rwanda to justify any possible measure the state might choose that may be understood to be a derogation from the State party obligation under the I CCPR.[30] With this background, the following hypotheses is formulated:

1. The policy to deal with past human rights abuses has not taken into account the objectives of preventing the recurrence of human rights abuses and repairing the damage, which has been caused.
2. Since the occurrence of genocide, Rwanda has not developed the capacity or the legitimacy to properly deal with those crimes.
3. The resort to the use of the *gacaca* courts will fall short of a political process that will achieve justice as well as social stability and reconciliation.

1.7 Research Methodology

A critical analytical approach will be adopted as already pointed out. Lessons from Rwanda's past will be captured. Consequently analysis of the domestic legislations of Rwanda relevant to the prosecution of the genocide suspects shall be done. An inspiration shall be drawn from the provisions of the international instruments relating to fair trial process.

---

30 See Art 4 (1) ICCPR.

Basically, the sources for information taken good use of in the course of the research among others are the following;

- Field research: Information obtained in the course of a field trip to Rwanda will be used. Places of reference being Kibungo prison, the central registry of the gacaca courts (Gacaca department of Rwanda's Supreme Court), and the various scenes were genocide was committed.
- Internet: Internet is used extensively. The reason for relying so much on it is that it is relevant in regard to the international perspective of the study;
- Library: The available literature on the subject helped in making an analytical study.
- Literature review: Admittedly, there is a lot of literature available as concerns the developments in Rwanda. It is therefore important that as I attempt to add my voice to the many that have gone forth, the already available literature will be taken advantage of in an attempt to come up with an ideal approach to the problem the Rwandan Government is faced with in its transition.
- In this study, experience from other countries shall be sought as concerns transitional justice, so that their pathway will be used as a model for emerging democracies such as Rwanda.
- Rwanda is bound by the international norms, basing on the fact that Rwanda is a State party to ICCPR. The provisions touching fair trial process in international law shall be used as a yardstick in evaluating the trial process of the genocide suspects for purposes of coming up with constructive criticism.

CHAPTER 2: THE HISTORIC LEGACY

2.1 Introduction

In order to understand, how a culture of impunity gradually became entrenched in Rwanda, a good historic analysis of the developments in Rwanda is thus necessary bearing in mind that since decades, Rwanda has been the stage of cyclic ethnic violence culminating into the 1994 genocide.[31] Periodically, the structural violence embedded in the Rwandan society since the end of the 19th century evolved into acute violence against the Tutsi minority.[32] The ethnic imagery and concepts developed during colonial times served as a basis for the conflict that existed between Hutus and Tutsis for many years.[33] The Rwandan Revolution of 1959, during which Hutu counter elites succeeded with the help of the Belgian colonial administration to oust the Tutsi monarchy from power did not solve the social and economic antagonisms which emerged during the colonial period. Instead it resulted into the genocide against the Tutsi in Rwanda during 1963 and 1964 as a vengeful response to the political, social and cultural domination by Tutsis that preceded the 1959 Hutu revolution.[34]

But also and more importantly, economic and social exclusion led to a polarization of society between the political and military elites who controlled the country's major economic assets and the bulk of the impoverishing peasant masses. This evolution was conditioned by over population, land shortage and the dramatic decrease in agrarian income resulting from the collapse of the price of export crops such as coffee on the international markets.[35]

Inequality, exclusion on social or regional grounds as well as institutionalised disdain towards the poor led the rural masses and the urban poor to anger, cynicism and despair while normlessness spread across the country. In this social context, Hutu authorities to counter challenges against their power exploited age-old racial or ethnic prejudice.[36] In other words, a history of repression may help to explain why many Hutu still refuse to see the mass killings of Tutsis in 1994 as a genocide,

---

31 See Catharine Newbury 'The Cohension of Oppression, Clientship And Ethnicity in Rwanda, 1860 – 1960 at 195.

32 n 31 above.

33 See Sarkin, (1999) 21 Human Rights Quarterly 772.

34 Joshi (n 23 above) 62.

35 See E Gasana *et al* 'Rwanda' in ACDESS (ed) (1999) 159.

36 See Joshi (n 23 above) 66

perceiving the events as either part of the on going civil war or as self defence, hence the retributive nature of ethnic strife between the Hutu and Tutsi.[37]

2.2 Pre – colonial Rwanda

The first inhabitants of Rwanda were the Twa (hunter – gatherers), later the Hutu (cultivators) and the Tutsi (cattle herders).[38] From the 16th until the beginning of the 19th century, Rwanda consisted of a patchwork of small chiefdoms and principalities. Mwami Ruganzu Ndoori (1600 – 1624) who had a new dynastic dream is credited with re - organising the Rwandese kingdom both administratively and through the introduction of new dynastic ceremony.[39] His successor mwami Mutara (Ngoro) Ssemugeshi (1624 – 1648) expanded the kingdom by conquering the kingdoms of Busenza, Bufundu, and Bungure in Astride territory,[40] reformed the *abirru*,[41] and gave it the authority to interpret the king's last Will and testament with respect to succession.[42] In 1850, a series of independent Tutsi states were developed within the kingdom of Gisaka in the eastern part of the country.[43] In 1885, the *mwami* Kigeri Rwabugiri (1860 - 1895) institutionalised *corvee*,[44] food prestations and *igikinyi*[45] on the central plateau. He also eliminated the right of hereditary succession of chief and chiefdoms among the Tutsi notables and lineages.[46] The development of the Rwandese state which started in the 16th century reached the height of its powers in the 19th century.[47]

Relationships in early Rwandese society were governed by the clientele system (*umuheto and ubukunde*)[48], which formed the basis of political, economic and cultural interaction.[49] Prior to colonisation, Tutsi ('cattle – herders') were understood by Hutu to be descendants of pastoral people who immigrated to the northern region

---

37 The view held amongst the Hutu is that there was no genocide but rather killings by both sides in the context of a war and that there was no extermination of Tutsi by Hutus. See Sarkin (1999) 21 Human Rights Quarterly at 772.

38 See Joshi (n 23 above) 51

39 n 38 above.

40 Currently Butare Prefecture. n 38 above.

41 The royal clan or lineage, in charge of the esoteric code called *ubwiru*, and which exercised strong influence in the succession matters of the kingdom. See Joshi (n 23 above) 52.

42 See Joshi (n 23 above) 52.

43 See Joshi (n 23 above) 52.

44 Customary work obligation existing under traditional society, performed by Hutu farmers for Tutsi notables. See Joshi (n 43 above).

45 Igikinyi (plural) stands for the smallest units of command granted by the Royal Court, which included land and pasture rights over a territory or hills.

46 Joshi (n 43 above).

47 See Rwanda: Who is killing; who is dying; what is to be done? , African Rights at 7 (May 1994).

48 *Umuheto* means cattle based clientele relationship, and Ubukonde denotes a clientele system based on land and agricultural products, mostly prevalent in Northern Rwanda.

49 See Joshi (n 23 above) 52.

of Rwanda in the fifteenth century and subjugated the more numerous Hutu farmers ('cultivators'). Thus, economics rather than ethnicity originally distiquished Hutu from Tutsi. However assimilation did occur between the two groups.[50] This distinction was entrenched by the Belgians who followed the Germans.[51] It was the Belgian colonisers who, in the 1930s, conducted a census, formally classifying Rwandans as Tutsi, Hutu, or Twa,[52] and issued ethnic identity cards to all Rwandans noting their 'racial identity'.[53] These cards were used during the 1994 genocide to identify the Tutsi individuals to be murdered.[54]

The racial distinction was based on height and skin colour differences and may have been an attempt to identify and give preference to those Rwandans perceived as having a 'more European look'.[55] The shorter darker Hutu were classified as Bantu, analogues to the 'serfs' of medieval European feudalism. The Twa were relegated to the status of pigmies.[56] The lighter skinned Tutsi were earmarked for leadership positions because the Belgians ascribed to them a greater intelligence and ability of leadership.[57] Lineages that were wealthy in cattle and had links to powerful chiefs were regarded as Tutsi, and lineages lacking these characteristics were relegated to non-Tutsi status.[58] At this point in time, the Hutu, the Tutsi and Twa were merely occupational categories with a single heterogeneous Banyarwanda[59] group of people. Through this process about twenty generations back, one Tutsi clan, the *Nyiginya*,[60] achieved political dominance in Central Rwanda.[61] Subsequently, over several centuries, this clan was able to expand by assimilating pre- existing Hutu kingdoms into the ruling Tutsi elite. Although there was no known violence between the Tutsi and Hutu during those pre - colonial years, the explicit domination of one group and the subordination of the other could hardly have failed to create antagonism between the two.[62]

---

50 Newbury (n 31above) 11.

51 See Sarkin (1999) 21 Human Rights Quarterly 772.

52 n 51 above.

53 African Rights, Rwanda: Death, Despair and Defiance rev. ed. (1995) at 6, 47.

54 n 51 above.

55 n 51 above.

56 n 51 above 773.

57 The Hamitic tribes, into which the Belgians placed the Tutsis, ruled Rwanda via a monarchy and a system of chiefs that can be compared to the lords of medieval European feudalism. See Sarkin (n 51 above) 773.

58 Hutu and Tutsi are in no sense 'tribes', nor even distinct 'ethnic groups', see, JP Chretien in JL Amselle and E M' Bokolo (eds) (1985); see also A de Wall (1994) 10(3) Anthropology today 1.

59 The *Banyarwanda* (plural) in the indigenous language refers to all three groups. *Munyarwanda* describes a single person. See Ravinder Joshi (n 23 above) 53.

60 Nyiginya is a royal clan to which the mwami belonged because he is credited with the establishment of the original kingdom. The name means "prince of royal blood". See Newbury (n 31 above) 26.

61 n 60 above.

62 Newbury (n 31 above) 48; also Gerard Prunier "The Rwanda Crisis History of a Genocide" at 39.

2.3 Pre – independence Period

The Berlin Conference of 1884 – 5, carved Rwanda out as a German zone.[63] Formal contact between the white fathers and *mwami* Musinga's court was in 1900.[64] New hierarchical levels were defined in both the Hutu and Tutsi groups, depending upon their association with and proximity to the central court.[65] Through superior force, prestige and wealth, the colonial authorities persuaded, and often coerced, the incumbent (Tutsi) elite to serve as intermediaries for the colonial administration.[66] This established a form of indirect colonial rule in Rwanda and the European colonizers adopted this politically shrewd strategy of 'indirect rule' and started using the existing traditional administrative set up for the purpose of colonization.[67] By this time Tutsi dominance was a reality for the colonizers, and they opted to utilize Tutsi chiefs as tools of their power.[68] The support needed to justify their strategy was found in catholic missionaries, who introduced the 'Hamitic theory'[69] of racial superiority in Rwanda. In this way, a handful Europeans were able to run Rwanda to suit their interests and knowingly or unknowingly hatred was being sown by the colonizers to the people of Rwanda.[70]

Following the First World War, the main European powers entered into an agreement to divide the colonies of the defeated powers and control them through the mandate system of the League of Nations.[71] In 1919, the Supreme Council of Allied powers assigned the Rwanda - Urundi[72] mandate to Belgium. From the mid – 1920s the Belgium administration concentrated on consolidating its power in Rwanda and this was done based on rule by Tutsi chiefs.[73] Structures such as that of the Hutu

---

63 Following the signature of the Anglo – German treaty of 1880 disposing of the eastern part of Africa as a possession of Germany, Rwanda fell under the influence of Germany. See generally JM Mackenzie (1983) The Partition of Africa 1880 – 1900 and European Imperialism in the Nineteenth Century.

64 See Newbury (n 31 above) 53.

65 See Newbury (n 31 above) 59.

66 See Newbury (n 31 above) 53.

67 See Joshi (n 23 above) 54.

68 (n 67 above) 54.

69 The explorer – missionary John Speke travelled in Central Africa in the late 19th century, and developed racial conjecture into a new form he described as the "Hamitic Hypothesis." This theory held that all forms of civilization in Negroid Africa were introduced by the Hamitic race – the lowest branch of the Aryan or Caucasoid race. Further, more the term "Hamitic" originally derived from the hypothesis that black people are descendants of the Biblical Ham, son of Noah. See African Rights (n 47 above) 7.

70 The colonizers and the Tutsi aristocracy were in close collaboration, each party looking after its own interests. See E Gasana (n 35 above) 146 – 47.

71 See Newbury (n 31 above) 128 –29.

72 The term Ruanda – Urundi was used to refer to the joint Trust Territory of Rwanda and Burundi respectively before independence. See Joshi (n 23 above) 55.

73 Joshi (n 23 above) 55.

land chiefs were abolished.[74] In addition, the discrimination against the Hutu in Rwanda's Catholic Schools from the late 1920s meant that it was primarily children of the Tutsi who attended secondary school, entered the priesthood, and worked for the colonial administration.[75]

In 1931,the colonial administration introduced a programme to increase the coffee crop for export. The chiefs and sub chiefs were to be the principle planters. The introduction of coffee cultivation and other measures exacerbated the burden on Hutu cultivators who were expected to care for their own fields while the chiefs made increasing demands for labour.[76]

In the early 1950's tensions in the rural areas begun to intensify. By the middle of the decade, conflicts became even more severe, and localised violent incidents became more frequent.[77] Hutu leadership begun to take an increasingly assertive public stance demanding political, economic and cultural changes, and the democratisation of the political system. Tutsi monarchists reacted vociferously in defence of established privileges and the king often sided with Tutsi chiefs instead of serving as an impartial mediator.[78]Aspiring Hutu leadership began to link up with simmering rural discontent that had begun to be overtly expressed after World War II. It was this rural anger that gave energy to the emergent nationalist Hutu leadership and party organization.[79] In the national political arena, increasing polarization into groups based on ethnic appellation gave the conflict of the late 1950s the appearance of ethnic revolution.[80]Hutu leaders demanded political reforms, but neither the king nor the Belgians responded to Hutu demands. The monarchy and colonial rulers were not even willing to appreciate the fact of discrimination against the Hutu. Hutu leaders came out with an exhaustive statement called the 'Manifesto of the Bahutu.'[81] Noting that they could have included signatories of a million other Hutu did assert the centrality of the 'Hutu and Tutsi' problem and demanded its recognition and resolution by the Belgian government.[82] In mid 1957, the Muhutu[83] Social Movement (MSM) was formed to promote the objectives articulated in the

---

74 Members of the traditional administrative structures created during the reign of Kigeri Rwabugiri (1860 – 1895). The creation of this office was aimed to extend royal control into local areas. In addition the land chiefs used to collect prestations. They were authorised to requision labour and Tribute from cultivators under their control, and also acted as judges in land disputes. See Ravinder Joshi (n 23 above) 56.

75 Newbury (n 31 above) 146.

76 Newbury (n 31 above) 142.

77 See Joshi (n 23 above) 54.

78 n 77 above 54.

79 Newbury (n 50 above) 181.

80 n 79 above.

81 The term Bahutu (plural) means several Hutu. See Catherine Newbury (n 50 above) 191 – 192.

82 Joshi (n 23 above) 59.

83 Muhutu (singular) means a single individual. (n 82 above).

Hutu manifesto. In the same year, another party called *l' Association pour la Promotion Sociale de la Masse* (APROSOMA) was founded.[84] For both groups, the monopoly of power and wealth held by Tutsi chiefs and abuse perpetrated by them were central issues.[85] In 1959, the MSM was transformed into the *Parti du Movement de l' Emancipation Hutu* (PARMEHUTU) which stressed the liberation of the Hutu and took a strong anti – Tutsi stance.[86]

On the other hand, feeling their position threatened by the growing Hutu political awareness and their stance, the Tutsi monarchists formed a party called *Union Nationale Rwandaise* (UNAR) on August 15, 1959 and demanded independence from Belgian rule.[87]

November 1959 witnessed a Hutu uprising, which quietly spread to the rural areas.[88] There was widespread violence against the Tutsi in the PARMEHUTU strongholds, while areas under the control of APROSOMA experienced relatively low levels. The Hutu protests also provoked a more selective and a more brutal Tutsi counter attack specifically focussed on Hutu leadership.[89] As a result of anti – Tutsi violence, 25,000 Tutsi were internally displaced by January 1960.[90]

Rwanda's first local elections were held in the month of July 1960 amidst violence and coercion.[91] PARMEHUTU emerged victorious winning 2,390 out of the 3,125 legislative seats, taking 210 out of 229 newly created administrative units.[92] Rwanda was finally formally declared independent from European rule, the monarchy abolished and the first republic established on July 1, 1962.[93] Immediately after the end of the colonial rule, rural violence spread from the north to south. The mobs were targeting rural Tutsi without differentiating between the monarchist and ordinary Tutsi. Hutu leadership failed in its historic and moral duty to stop this anti –Tutsi progrons at that critical juncture. Instead of taking a stance against indiscriminate violence, they sanctioned and supported it. Many Tutsi were internally displaced while others left for neighbouring countries such as Uganda, Tanzania and the Belgian Congo (now Democratic Republic of Congo).[94] In Rwanda, where the internal conflict between Hutu and Tutsi tended to over ride the conflict between the colonized society and the colonizer, nationalism, as a cohesive force, has never been

---

84 See Joshi (n 23 above) 59.
85 Newbury (n 31 above) 192.
86 See Joshi (n 23 above) 59.
87 See Joshi (n 23 above) 60.
88 See Joshi (n 23 above) 60.
89 See Joshi (n 23 above) 60.
90 Joshi (n 23 above) 61.
91 See Newbury (n 31 above) 197.
92 See Newbury (n 31 above) 198.
93 Newbury (n 31 above) 197.
94 See Joshi (n 23 above) 61.

more than an epiphenomenon.[95] In somewhat a tragic fashion, the current developments in Rwanda are somewhat a repeat of part of this history.

2.4 Post – Colonial Period

After independence in 1962, PARMEHUTU ruled Rwanda on an explicitly ethnic political platform.[96] The discriminatory regime increased the departure of Tutsi to neighbouring countries from where Tutsi exiles made incursions in Rwanda.[97]Another outbreak of Tutsi killings took place in 1967, and the UN Commission of inquiry visited the country the following year only to find the rural areas still in a state of high tension, a barely suppressed collective panic.[98] The dissensions that soon surfaced among the ruling Hutu led the regime to strengthen the authority of President Grégoire Kayibanda as well as the influence of his entourage, most of whom came from the same region as him, that is the Gitarama region in the centre of the country.[99] The drift towards ethnic and regional power became obvious. From then onwards, a rift took root within the political establishment, between its key figures from the centre and those from the north and south who showed great frustration.[100]

In 1973, a further round of violence ensued against the Tutsi. Ostensibly, to restore order, Major General Juvenile Habyarimana, a Hutu, then defence minister and chief of staff, staged a *coup d'état.*[101] Many Rwandese believed that Habyarimana instigated violence in order to justify a coup he had long planned.[102] In 1975, President Habyarimana formed his political party, the National Revolutionary Movement for Development (MRND) and imposed single party rule. In the same year he concluded a bilateral defence treaty with France to strengthen his support outside the country.[103] In the 1970s and 80s, Rwanda remained an authoritarian and a one party state under the leadership of President Habyarimana. The Hutu government

---

95 See Rene Lemarchand, 22 (1970) 167- 68.

96 See Joshi (n 23 above) 62.

97 See G Prunier (1997) 56 – 62. Before these incursions ceased, 20,000 Tutsi had been killed and another 300,000 had fled to the Congo, Burundi, Uganda and what was then called Tanganyika now Tanzania.

98 See African Rights (n 53 above) 12.

99 See Gaparayi I.Tuzinde (2000) Justice and Social Reconstruction in the Aftermath of Genocide in Rwanda: An Evaluation of the Possible Role of the Gacaca Tribunals – unpublished LLM Dissertation Paper 8.

100 E. Gasana (n 35 above) 157.

101 See Joshi (n 23 above) 62.

102 African Rights (n 53 above) 13.

103 See Joshi (n 23 above) 63.

capitalised on Hutu peasant fears by scapegoating the Tutsi minority[104] through propaganda designed to incite hatred against them.

According to Sarkin, "Economics and scarce resources also played apart in creating a situation ripe for strife. Prior to April 1994, Rwanda was experiencing a desperate land pressure."[105] The land locked, over populated country could not fairly allocate its land resources to its inhabitants,[106] and population density placed chronic pressure on arable land.[107] Moreover, a collapse in the international coffee price crippled many small holders,[108] and co –operatives involved in processing coffee; one of the country's principal exports came to a near stop.

On a political level, life in Rwanda was endlessly tense. On 1 October 1990, an attack was launched from Uganda by the Rwandese Patriotic Front (RPF), a political organization whose forebear, the *Alliance Rwandaise pour l'Unite Nationale* ('ARUN'), was formed in 1979 by Tutsi exiles based in neighbouring countries and elsewhere in the world.[109] By the end of November, government forces, with the help of the Belgian, Zairean, and French soldiers, succeeded in repelling the RPF/A invasion.[110] Undeterred, the RPF/A continued its incursions into the northern Rwanda throughout 1991 and 1992. This provided an excuse for the Rwandan government to increase its hate propaganda against the Tutsi along with intensifying military preparations.[111]

The civil war launched on October 1, 1990, lasted for close to four years. Several weeks after the invasion, the Habyarimana regime organized the four mini massacres (November 1990, January to February 1991, March 1992, and December 1992 to January1993) each of which took several hundred lives.[112]The massacres were dress rehearsals for the grand genocide, testing out the organizational methods and preparing participants.[113] The report of a fact-finding mission of the International Federation of Human Rights and other NGOs of February 1993 recognized the massive and systematic human rights violations carried out against Tutsi individuals. The facts were corroborated by other sources such as Amnesty International and a

---

104 See Sarkin (1999) 21 Human Rights Quarterly 774.

105 n 104 above 775.

106 n 104 above.

107 Rwanda has a total area of 26,340 sq.km. with 24,950 sq. km.of land and 1390 sq. km. of water. Its population was estimated in July 1997 to be 7,737,537 with a population growth rate of 8.24 per cent. See Sarkin (n 104 above).

108 n 104 above.

109 The Rwandese Patriotic Front demanded the implementation of the rule of law, the abolition of the policy of ethnic and regional discrimination as well as the right for refugees to return to their motherland. See G Prunier (n 97 above) 74.

110 See Joshi (n 23 above) 65.

111 n 110 above.

112 See Joshi (n 23 above) 67.

113 see Joshi (n 23 above) 68.

Special Commission of Experts set up by the Security Council.[114] In Rwanda, the culture of human rights abuse is therefore not anything new. The current developments reflect the perpetuations of the past. A number of human rights abuses such as massacres did occur in 1959, 1963, 1966, 1973, 1990, 1991, 1992 and 1993.[115]

Despite the cease - fire between the RPF and the Government forces resulting from the signing of the Arusha Accords on 4 August, 1993, extremists elements continued to push for less amicable solutions.[116]

2.5 Assassinations of April 6, 1994

President Habyarimana was on his way back to Rwanda after attending the sub – regional summit in Tanzania when the plane he was travelling in was shot down and crashed near the presidential palace on April 6,1994. All on board including President Habyarimana were killed.[117] The crash marked the commencement of the genocide, and the end to the tenuous ceasefire.[118] Roadblocks were set up to prevent escape. Leaders viewed as moderate or 'pro –Tutsi' were singled out to be killed first, and then the campaign of exterminating all Tutsi begun. The events that unfolded in Rwanda clearly appear to have been pre – planned.[119] Although the Rwandan genocide occurred in 1994[120] it is important to note that the country's cycle of woes still continue.[121] The perception of many of those awaiting trial, and their families, is that the process is a Tutsi version of victor's justice.[122]

2.6 Conclusion

The government of Rwanda has an uphill task. By far, the most divisive question is how to balance the demands of justice against the many, mainly political, social and

---

114 n 113 above.

115 See Joshi (n 23 above) 71.

116 See Ferstman, (1997) 9 African Journal of International Comparative Law at 858.

117 n 116 above.

118 n 116 above .

119 Accordingly, the assassination of President Habyarimana on April 6,1994, was simply "the spark to the power keg which set off the massacre of civilians" and not the root cause of the genocide as some seem to suggest. See, *Report of the situation of the situation of Human Rights in Rwanda submitted by Degni – Sequi, Special Rapporteur of the Commission on Human Rights*, U.N ESCOR Commission on Human Rights, 51st sess., Prov. Agenda Item 12, para.19, U.N.DOC.E/CN.4/1995/7 (1994); For a detailed description of these events, see African Rights (1995) 35 – 36; see also OAU Panel Report (2000).

120 See Sarkin (2000) 2 International Law Forum 112.

121 n 120 above.

122 Stef Vandeginste "Justice, Reconciliation and reparation after Genocide and Crimes Against Humanity: The Proposed Establishment of Gacaca Tribunals in Rwanda" Paper to all Africa conference on Principles of Conflict Resolution and Reconciliation, Addis Ababa, November 1999.

economic constraints. The government is determined to bring the architects of the 1994 genocide to trial in line with the obligation as set out by the Convention on the Prevention and Punishment of the Crime of Genocide.[123]

This enormous task is being approached by Rwanda with hardly a viable and fair judicial system. An examination of the approaches to justice that have been employed so far in Rwanda will provide the necessary background to understanding the magnitude of the problem.

123 Rwanda acceded to the Convention on April 16, 1975. Source <http://www.unhchr.ch/html/menu3/b/treaty1gen.htm> [accessed on 13 November 2001].

3.3.1 **Channels of appeal**

The Organic Law modifies the appeal procedure provided for under Rwanda's Code of Criminal Procedure. Under article 24, only appeals based on questions of law or flagrant errors of fact are admissible. No appeal may be lodged against decisions based on acceptance of the confession and guilty plea procedure. The right to appeal is therefore sharply reduced.

Trials of suspects' accused of participating in the genocide in Rwanda began in December 1996.[143] By January 2001,notwithstanding the mechanism of the Organic Law, no more than 2, 500 people had been tried and no fewer than 125,000 are still detained and awaiting trial, often in deplorable conditions.[144] A decision has been made in Rwanda to establish a program, which it is hoped, will accomplish three crucial purposes of criminal justice and contribute to reconciliation while also respecting resource limitations. These are the *gacaca* courts.[145]

3.4 ***Gacaca* courts**

The *gacaca* courts[146] are lower level tribunals that attempt to blend traditional and contemporary mechanisms to expedite the justice process in a way that promotes reconciliation. This process is expected to allow communities to establish the facts and decide the fate of the majority of those accused of lesser offences, while at the same time addressing reconciliation objectives.[147]

3.4.1 ***Gacaca* jurisdictions**

The courts will be set up throughout out the country, from the lowest political and administrative level of the Cell, to that of the Sector, District and Province.[148] Each *gacaca* jurisdiction includes a General Assembly, a Seat and a Co-ordinating Committee.[149] The General Assembly chooses within itself 24 honest persons, five of whom are delegated to the Sector's *gacaca* jurisdiction, while the remaining 19 form the Seat for the Cell's *gacaca* jurisdiction.[150] All but Category One genocide cases

---

143 Amnesty International Report 1997 at 272.
144 Amnesty International Report at 203.
145 Amnesty International 2001 at 203.
146 Set up by Organic Law No 40/2000 of January 26,2001 as modified by Organic Law No 33/2001 of 22/6/2001.
147 See Art 2 (n 146 above).
148 See Art 4 (n 146 above).
149 Art 5 (n 146 above).
150 Art 9 (n 146 above).

will be tried by the *gacaca* jurisdictions.[151] The *gacaca* jurisdictions at the Cell level will try Category Four cases.[152] The *gacaca* jurisdictions at the Sector level would try Category Three cases;[153] and the *gacaca* at the District level will try category two cases.[154] The Province level would hear appeals from the Category Two cases tried at the district level.[155] Category One defendants will continue to be tried by ordinary courts.[156]

Following the pattern established by the Organic Law,[157] the specialized criminal justice programme will rely on a system of plea agreements. Persons who fall within Category One are, in principle not eligible for any reduction in penalty upon confession.[158] A pre – set, fixed reduction in penalty is available to all perpetrators in return for an accurate and complete confession, a plea of guilty to the crimes committed, and an apology to the victims.[159] A greater penalty reduction is made available to perpetrators who come forward only after prosecution has begun.[160]

The sentences provided under Organic Law[161] stipulate that:[162] Category Two perpetrators will receive a sentence of seven to eleven years' imprisonment if they plead guilty prior to prosecution, a sentence of twelve to fifteen years' imprisonment if they plead guilty after prosecution has begun, or a sentence of twenty – five years to life imprisonment if convicted at the trial.[163] Category Three perpetrators will receive a penalty of one to three years' imprisonment if they plead guilty before prosecution, a sentence of three to five years if they plead guilty after prosecution has begun, and five to seven years if convicted at the trial.[164] All Category Four defendants convicted are sentenced only to civil reparations of damage caused to other people's property.[165]

---

151 Art 2 (n 146 above) adopts the same classification as Organic Law 08/96.
152 Art 39 (n 146 above).
153 Art 40 (n 146 above).
154 Art 41 (n 146 above).
155 Art 42 (n 146 above).
156 Art 2 (n 146 above).
157 08/96.
158 Art 55 and 56. See, however, art 56 which has a proviso and that applies only to persons who will have offered confessions and guilty plea without their names being previously published on the list of persons of the first category referred to in article 51 of the Organic Law 40/2000, will be classified to fall under Category Two.
159 Art 54 and 68 (n 146 above).
160 Art 55 (n 146 above).
161 40/2000.
162 Ordinary courts will try Category One defendants. However, if these defendants give a complete and accurate confession and, in addition, plead guilty prior to prosecution, they are classified in the Second Category.
163 Art 9 (n 146 above).
164 Art 70 (n 146 above).
165 Art 71 (n 146 above).

A substantial reduction in sentence is provided where a category One, Two or Three defendants submits a guilty before prosecution. This leniency aims to encourage perpetrators to come forward before prosecution

3.5 **A critique of the justice system in Rwanda**

Genocide falls within the category of offences known as international crimes.[166] International law requires states to punish international crimes committed within their territorial jurisdictions.[167] The term 'international crimes' in its broadest sense comprises offences which conventional or customary international law either authorizes or requires states to criminalize prosecute and punish.[168] International law imposes a duty to prosecute these crimes, thus failure to prosecute is owed *erga omnes* (to all the world), and those accused of international crimes may be punished by any state, not just the state where the crime was committed. Commission of such crimes renders one *hostis humanis generis* (enemy of all mankind).

Measures of punishment must conform to international standards related to trials, treatment of offenders and penalties. If any reforms are introduced either constitutionally or otherwise, such reforms should not be geared to undermine the rights of accused persons as laid out in article 14 of the ICCPR. Thus procedural changes to the extent that they conform to such provisions, can be put into effect at any time, without such measures contradicting the principle of non – retroactive application of substantive criminal law. These changes may include modifications of the laws of evidence, provided they do not have the effect of undermining basic principles such as presumption of innocence and the right not to be compelled to testify against oneself or to confess guilt.

Under the Genocide Convention, it would appear that indeed punishment must always be applied to those found guilty of such crimes. Article VI specifies the tribunals that should try cases of genocide:

> Persons charged with genocide or any other acts enumerated in article 111 shall be tried by a competent tribunal of the state of which the act was committed, or by such international Penal tribunal as may have jurisdiction with respect to those contracting parties, which shall have accepted its jurisdiction.

---

166 See Convention on the Prevention and Punishment of the Crime of genocide, adopted by United Nations General Assembly on 9. December 1948, Entry into force 12 January 1951.

167 DF. Orentlicher 'settling accounts: The duty to prosecute human rights violations of a prior regime' (1991) 100 *Yale Law Journal* at 2551.

168 As above.

Since the 'international penal tribunal' contemplated was never created, the duty established by article VI devolves upon the state in which the crimes occurred. It is within this spirit that a specialized legislation to facilitate handling of the genocide related caseload was designed and drafted in 1995 – 96,[169] and subsequently Organic Law No. 40/2000 of 26 January 2001 as amended by Organic Law No. 33/2001 of 22 June 2001,had too to be invoked.

In these pieces of legislation, areas of weakness where the potential of miscarriage of justice is bound to happen lies in areas highlighted below:

3.5.1 **Right to defence**

A right to defence is enshrined in Article 36 of the Organic Law. However that law rules out the possibility of legal aid. The first trials based on the Organic Law opened on 27 December 1996. The right to defence had not been respected in several cases. Such rights included among others denial to consult a lawyer.[170]

Article 3 of ICCPR provides that an accused person is entitled to have adequate time and facilities for the preparation of his defence and to communicate to counsel of his own choice. The Constitution of the Republic of Rwanda[171] states that; 'defence shall be an absolute right at any state or level of the proceedings.' On the other hand, Organic Law[172] does not make an explicit reference to the rights of the accused persons. In view of existing safeguards in national and international law, the accused should automatically enjoy the right to defence.[173]

The right to defence includes the right to defend oneself in person or through a lawyer.[174] This right assures the accused of a right to participate in his or her defence, including directing and conducting his or her defence. The Organic Law establishing the *gacaca* courts states that 'the session's chairperson invites the defendant to present his/her defence.[175] The law setting up the *gacaca* courts appears to be closing doors as concerns the assistance by defence counsel. The matter of access to counsel is clearly covered by both articles 14(3)(b) and (d) of the

---

169 Organic Law on the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Since October 1, 1990, Organic Law No.08/96.

170 By January 1997, genocide courts in Kigali, Byumba, Gikongoro, Kibuye, Nyamata and Kibungo were trying cases and applying the organic Law. By 20 January, the courts had convicted nine persons (all Hutu) of genocide and had sentenced them to death by firing squad. The trials were generally brief...Most if not all, of those convicted could not find a lawyer willing to represent them; See Paul J. Magnarella (n 18 above).

171 Article 14 [As adopted on 30th May 1991, original text French and Kinyarwanda].

172 Organic Law No. 40/2000 as modified by Organic Law No. 33/2001.

173 Article 11(1) UDHR; Article 14(3)(d) ICCPR; Article 7(1) African Charter.

174 Article 14(3)(d) ICCPR; Article 7(1)(c) African Charter.

175 Art 65(7) of the Organic Law 40/2000.

ICCPR. In *Perdomo and de Lanza v Uruguay*[176] the human rights committee, expressed the view that there was a violation of article 14(3) on the ground *interalia*, that Perdomo and de Lanza had no effective access to legal assistance.

Under article 14(3)(d) of the ICCPR the right to have counsel assigned is conditional upon the conclusion that the interests of justice so require it. The determination of whether the interests of justice require appointment of counsel is based primarily on the seriousness of the offence, the issue at stake, including the potential sentence, and the complexity of the issues.[177] In *Bangidawo and Others v Head of the Nyanda Regional Authority and Another*[178], on the issue of scope and armpit of the right to legal representation, Madlanga, J observed that:

> "Even though there be no specific mention of the right to legal representation, the right of access to court and of having cases settled by courts would be rendered entirely nugatory if, it were to be held that there is no constitutional right to legal representation"

The court was of opinion that even the best educated lay people need the assistance of professional legal representation to exercise their right of access to court in a meaningful way. That even applies with more force in respect of the uneducated and illiterate persons.

Gacaca courts are traditional courts adjudicating on criminal matters, and have the power to impose substantially robust terms ranging from civil reparations[179], to life imprisonment.[180] As the substantive law applicable to this courts is not purely customary law and as the penal provisions applicable to such non customary substantive law may be quite drastic, prohibiting legal representation will definitely lead to unfair trials.

A report on the mission to Rwanda by the High Commissioner for Human Rights stresses the positive effects that the presence of a lawyer has on the proceedings.[181] According to the report, by 30 June 1997, 142 judgments had been handed down by the specialized chambers of the countries trial courts. This included six acquittals and 61 death sentences, 13 of them against persons on the list of the Category One criminals as defined in Article 9 of the Organic Law.

It is particularly interesting to note that of those 142 decisions, 25 were delivered after acceptance of a confession and a guilty plea. Here again the positive

---

176 Doc.A/35/40,P.111

177 Communication 571/1994, *Henry v Jamaica* (26 July 1996), UN Doc CCPR/C/57/D/571/1994,para 9.2.

178 1998(3) BCLR 330 (TK).

179 See Art 71 Organic Law No. 40/2000.

180 See Art 69.

181 See Human Rights Field Operation in Rwanda (ed), Genocide trials to 30 June 1997 – status report as of 15 July 1997, Doc.FRFOR/STRPT/52/1/15 JULY 1997/E, p.3.

role of the lawyer becomes pertinent, for he can explain to his clients the advantages available to them under the new procedure.

3.5.2 **A right to trial by a competent, independent and impartial tribunal established by Law**

Most international standards do not prohibit *per se* the establishment of special courts.[182] What is required, however, is that such courts are competent, independent, and impartial and that they afford applicable judicial guarantees so as to ensure that the proceedings are fair.[183]

Clearly, one of the striking features and the main area of concern when looking at the *gacaca* proposals is the lack of legal training of members of the *gacaca* jurisdictions. The local population will elect the individuals who will be asked to try the cases that come before the *gacaca* jurisdictions.[184] All 'honest' persons, even though non-educated, can apply to be elected to preside over *gacaca* courts in the various Cells.[185] Prior legal background or training is not a prerequisite for one to fill the position of judge in the *gacaca* court, and yet will be expected to hand down judgments in extremely complex and sensitive cases, with sentences as heavy as life imprisonment.[186]

The primary institutional guarantees of a fair trial is that decisions will not be made by political institutions, but by competent, independent and impartial tribunals established by law.[187] The individuals right to trial in court with guarantees for the accused in criminal proceedings, lies at the heart of due process of the law.[188]

The right to trial by an independent and impartial court is so basic that the Human Rights Committee has stated that it 'is an absolute right that may suffer no exception.'[189]

The Human Rights Committee has made clear, however, that the provisions of Article 14 of the ICCPR apply to trials in all Courts, whether ordinary or special.[190] Amnesty international has noted that most international standards do not prohibit *per se* the establishment of special courts. What is required, however, is that such courts are

---

182 Fair Trial Manual, amnesty international at 151.
183 Fair Trial Manual at 151.
184 Art 13 Organic Law 40/2000. The election of Judges for the *Gacaca* Courts is from 4 October and expected to end on 8 October 2001.See a report by AFP news agency Kigali, 10 August 2001.
185 n 184 above
186 Art 69 (Defendants coming within the second category).
187 Art 10 of the UDHR, Article 14(1) ICCPR.
188 Fair Trials Manual – amnesty international Publications 1998.
189 See *Gonzáles del Río v Peru* (263/1987).
190 Human Rights Committee General Comment 13 para 4.

competent, independent, and impartial, and that they afford applicable judicial guarantees so as to ensure that proceedings are fair.[191] Trials which have taken place to date in the ordinary courts in Rwanda have already revealed significant difficulties and controversies; they have illustrated the absolute need for judges to be able to resist political and psychological pressures, to know how to distinguish genuine from false testimonies, and to respect at all times the equal rights of the defence and the prosecution.[192]

The individuals trying the cases in the *gacaca* courts would not have benefited from any professional training, yet would presumably be expected immediately to exercise independence and impartiality. Government authorities have indicated that persons elected to handle cases in the *gacaca* courts will receive some basic training as to how to accomplish their delicate mission.[193] However, the task of imparting knowledge to these persons may not easily be achieved. This is because of a number of reasons among others is the following:

It is estimated that at the end of the exercise of election of persons to preside over the *gacaca* courts, the number will lie between 250,000 – 260, 000 persons[194], which number is fairly large for government to meet the training needs within the shortest time.[195] A part from the question of resources, there is apparently no time for imparting knowledge to the people who will preside over the *gacaca* courts, this is because there is an urgent need to cause the *gacaca* courts to become operational so that the country may legitimately address the question of about 120,000 prisoners, 90 percent of them being accused of genocide.[196]

The concept of the independence of the tribunal must also be considered. Appearance of independence relates to the question of whether litigants have a legitimate doubt about the tribunal's independence, thus affecting the confidence that the courts must inspire in a democratic society.[197] The tribunal's independence should be given more consideration, because in a country like Rwanda, the criminal justice system is based on an inquisitorial procedure, under which judges question witnesses and defendants and make findings of fact. Their role and integrity are

---

191 Fair Trials Manual at 151.

192 See Amnesty International Rwanda unfair trials: justice denied (1997).

193 Art circulated by AFP news agency to the personnel of ICTR at Arusha on the election of judges to the *gacaca* courts. It was forwarded by Samuel Akorimo/ICTR/UNO on 08/July /01 at 01:31PM.

194 See article *Gacaca*: Rwanda begins training Judges for new Justice System In December. Source; <http://www.internews.org/activities/ICTR_reports_current.htm#1025a> [accessed on 26.November.2001].

195 See United Nations High Commissioner for Human Rights Field Operation in Rwanda, The (Administration of Justice in Post Genocide Rwanda, at 3 para.18 UN Doc. HRFOR/JUSTICE/June 1996/E 1996).

196 n 3 above.

197 *Sramek v Autriche*, ECHR (22 October 1984) Ser A 84.

therefore crucial to a fair trial. Reports available are to the effect that some prosecution and defence witnesses are subjected to pressure and intimidation. Also cited are instances when false testimonies have been led before court.[198]

3.5.3 **Right to Review**

Article 14(5) ICCPR states that 'everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law'. The Human Rights Committee considers that the expression 'according to law' in article 14(5) of the Covenant is not intended to leave the very existence of the right to review to the discretion of the States parties, since the rights are those recognised by the Covenant and not merely those recognised by the domestic law. According to the committee, the question about how serious the sentence imposed is in all circumstances irrelevant.[199]

Looking at the Organic Law establishing the *gacaca* courts, there is no modality by which the review by a higher tribunal is to be carried out. Besides this, and as earlier on mentioned, the right to appeal is not absolute. Article 24[200] is to the effect that appeals shall be based solely on questions of law or flagrant errors of fact. Article 83 of the Organic Law[201] provides that appeal for judgements passed at face value or upon objection by the Sector's *gacaca* jurisdictions is brought before the District jurisdiction, which passes a final verdict.

Appeal against judgements by the District *gacaca* jurisdiction is brought before the province's *gacaca* jurisdiction, which gives a ruling in the last resort.[202] Given the fact that the *gacaca* jurisdictions exercise extended competences similar to those of ordinary criminal courts[203], it would be more helpful if the question of appeals was left open to the Court of Appeal, which in this case would rightly take its position as an appellate court.

3.6 **Conclusion**

Crimes that have risen to the level of *jus cogens* such as crimes against humanity, genocide, to mention but a few, give obligations under international law considered to

---

198 Amnesty International report 2000 at 203.

199 See Dominic Mc Goldrick (1994) The Human Rights Committee, its Role in the Development of International Covenant on Civil and Political Rights, Clarendon Press. Oxford 431.

200 Organic law No.08/96.

201 No. 40/2000.

202 Art 84 Organic law 40/2000.

203 See Art 37 Organic law 40/2000.

be *obligatio ergo omnes*, the consequences of which is that impunity cannot be granted[204], thus recognising certain international crimes as *jus cogens* carries with it the duty to prosecute or extradite and the duty of states to co – operate with other states in the investigation, prosecution and adjudication of those charged with such crimes, and the punishment of those who are convicted of such crimes.[205] Prosecuting genocide suspects that are in various prisons in Rwanda will be in line with the international norm; however the observance of the set international standards is a must. Non-compliance of the government of Rwanda to the already set international standards will be a draw back to its commitment to end the culture of impunity that has reigned for years.

204 See Naomi Roht – Arriaza, (1990) 78 California Law Review 449.

205 See M. Cheriff Bassiouni (1998) International Criminal Law 9.

CHAPTER 4: FINDINGS AND RECOMMENDATIONS

4.1 FINDINGS

The Rwandan government is confronted with a number of issues; the most immediate of which is how to handle the genocide suspects locked up in its prisons without infringing on their rights.

It is clearly set out in this thesis that what Rwanda is grappling with today has its genesis from the colonial period.

For purposes of finding a solution to Rwanda's problems, the exercise requires putting the truth of what happened in 1994 in a historical context; for this kind of approach will go along way in an attempt to realise a healing for a society which has been ravaged by human rights abuses. Points of reference being the following;

First, to trace the developments right from the time of *mwami* Kigeri Rwabugiri's reign (1860 – 1895)[206] bearing in mind that customary work obligation existing under traditional society, performed by Hutu farmers for Tutsi notables became institutionalised at this period.[207] To understand the extent and impact of Tutsi power in Rwanda, there is need to explore how client ship relations were transformed in the context of an evolving colonial state. This requires a move away from the exclusive concentration on cattle client ship, but also to inquire on other types of patron – client ties as well as changes in client ship over time.[208]

Also of interest is the arrival of the colonialists and their role in Rwanda, which clearly appears to have aggravated the ethnicity problem, and issue that had been down played by the Rwandans themselves.[209] The entrenchment of Belgians who followed the Germans of the distinction between Hutu, Tutsi, and Twa followed by the issuance of identity cards to all Rwandans for purposes of noting their racial identity which cards were being used for identifying the victims in the 1994 genocide too, needs to inquired into; and the truth unveiled.[210]

Of relevance also are the social inequalities that manifested as a result of decline in the land tenure and increasing demands made on the rural people, which

---

206 Joshi (n 23 above) 51.
207 n 206 above.
208 See Newbury (n 31 above) 74.
209 See Sarkin (1999) 21 Human Rights Quarterly 772.
210 n 209 above.

understood as being a strategy that the government has put in place to ensure that all its judiciary is staffed with people who are sympathetic to its cause but not necessarily impartial[220].

Genocide falls within the category of offences known as international crimes.[221] By virtue of the principle of Universal Jurisdiction[222], any State is competent to try irrespective of the place where such a crime is committed or the nationality of the perpetrator.[223] With this advantage therefore, insisting in the suspects to be extradited to already burdened judiciary is not called for, since other countries are also bound by law to prosecute such persons.

African countries could too emulate Belgium in taking up a step to bring genocide suspects within their territories to justice other than giving priority to extradition arrangements.[224] Trials like the one in Belgium are indispensable complement to the genocide trials taking place in Rwanda and at the International Criminal Tribunal for Rwanda. The effective exercise of universal jurisdiction is one important tool in the struggle to end impunity for international crimes.[225]

4.2.2 **To grant victims the right to truth;**

In a situation such as the one existing in Rwanda, there are more pressing priorities in an attempt to realise a healing and reconciliation and these among others include finding out the truth about what ended up as a genocide of 1994.

Because the people of Rwanda are still ignorant of their past, violence still characterises Rwanda today.[226]

According to Magnarella[227], nearly two thousand prisoners were released between October 1998 and March 1999. The Rwandan League for the Promotion and

---

220 See Exiled Opposition Protests Against Use of Informal Courts in Rwanda. Source <http://www.afrol.com/News/rwa009_gacaca_courts.htm> [accessed on 7 November 2001]

221 See the Convention on the Prevention and the Punishment of the Crime of Genocide.

222 Swiss Courts have already invoked the principle of Universal jurisdiction to prosecute Rwandans accused of involvement in the 1994 genocide. See <www.hirondelle.org: Belgium/Justice> [accessed on 24 October 2001]

223 See John Dugard, International Law, A South African Perspective 2nd edition, Juta & Co, Ltd 2000 at p.141

224 Belgium Court has handed down its verdict and sentence on four Rwandans. The four include the former minister and factory director Alphonse Higaniro (sentenced to 20 years in prison), former professor at Butare University Vincent Ntenzimana (12 years), and Benedictine nuns Sister Gertrude Consolata Mukangango (15 years), Sister Kizito Julienne Mukabutera (12 years). Source <http://www.allafrica.com/stories/200107270532.htm> [accessed on 24.10.2001]

225 See <http://www.redress.org/whatis.html> [accessed on 26 October 2001]

226 See Sarkin n 27 above 769

227 (n 17 above) 81.

number of victims have contracted HIV/AIDS as a result of the rape that was committed to them.[231]

Seven years is not long enough for many of the survivors of the genocide to come to terms with what happened. There is need therefore to strengthen associations such as Rwanda Women's Net (RWN), an organisation currently providing counselling to women that were victims of rape and related sexual violence. society still views seizure, and subpoena. Other key issues are: who sponsors the commission, what access to information is it given, and the ability of the commission to operate without fear of intervention by the state. No single model of a truth commission can be applied to every country. The ad hoc nature of a truth commission dictates that any model or standard be sufficiently pliable to be moulded to fit the specific situation that it must address.[232] One cannot take the truth issue forward without addressing the wider political context. The question is how does one produce a commission that also moves toward national reconciliation? Exploration of previous truth and reconciliation commissions and recommendations for universal minimum standards help illuminate the proper path for a Rwandan commission.

In January 1997, A Rwandan delegation, including the Labour and Social Affairs Minister, visited South Africa to inquire about the policies and the operations of the truth and reconciliation commission with a mind of learning from the South African experience and see whether the same could apply to the situation standing in Rwanda.[233] The Rwandan government, however, was of opinion that such an approach would be in appropriate in a drive to achieve justice and that it will be unacceptable to the survivors of the genocide[234]

On a turn of events, the Rwandan Government has by law[235], set up the National Unity and Reconciliation Commission (NURC). The key objective of NURC is to provide Rwandans an appropriate forum to discuss and look into real causes of differences that now exist among the Rwandan people and which were instrumental to the 1994 genocide; so that a solution is arrived at which shall reinforce sustainable unity and reconciliation in Rwanda.

Establishing institutions such as NURC is a manifestation of the fact that the government is committed to find a lasting solution to Rwanda's problems. However

---

231 See Rwandans back People's courts. Source <http://news.bbc.co.uk/hi/english/world/africa/newsid_1581000/1581236.stm> [accessed on 15.November 2001].

232 See Priscilla B. Hayner, International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal, 59 L. & Contemporary Problems, Autumn 1996, at 173.

233 (AFP, 1997a).

234 See Magnarella (n 17 above).

235 Law No. 03/99 of 12 March 1999.

an institution such as NURC cannot avail much as compared to a truth and reconciliation commission established on the following lines:

4.2.2.1 **Legitimacy**

It is, of course, vital that such a process be administered by a credible and legitimate authority;[236] otherwise it will not be accepted by all parties and whatever results it arrives at will be questioned. In other words, it is crucial to ensure that the commission has political legitimacy. In the absence of such legitimacy, whatever record of past human rights abuses the commission produces will be contested and reconciliation will remain a vain hope.[237]

A truth and reconciliation commission (TRC) that enjoys legitimacy if established would bring about an enabling political climate for refugees to return from exile, since the legitimacy might mean that its established has been done in cooperation with those who were vanquished.

According to Sarkin, for a TRC to attain legitimacy, it must be an officially designated non-partisan entity.[238] This means that the government should not be seen both locally and internationally to have a hand in the manner the appointments are carried out. NURP doesn't portray the above-mentioned character. Its apex organ, The National Summit is headed by the Head of State of Rwanda.

4.2.2.2 **Establishment of Commission & Appointment of Commissioners**

The state, not the government, must establish the commission by law.[239]A commission established must be vested with some powers that allow it greater access to information, greater authority to inquire into sensitive issues and a greater impact with its report.

As alluded to, government should keep its hands off in the appointment of Commissioners, so that the results that will be produced will not be contested. Thus a neutral process is critical to ensure that commissioners have obtained public confidence and trust.[240] In Argentina, persons appointed as commissioners came from a variety of different social and political backgrounds so that all sectors of

---

236 See Sarkin, International Law Forum 2000(2) at 117.
237 See Sarkin (n 236 above) 118.
238 See Sarkin (1999) 21 Human Rights Quarterly 803.
239 See Sarkin (n 238 above) 805.
240 As in above.

society could feel represented by the commission.[241] Rwanda too could put a commission in place incorporating all sectors of the Rwandan community, so that the Commission would represent a broad and a fair range of perspectives, backgrounds, or affiliations.

In Chile,[242] President Aylwin appointed eight commissioners, carefully balancing opposite sides of the political spectrum.[243] The balance gave the commission credibility. Rwanda must have a balanced commission, which is non-partisan as well.

4.2.2.3 A Panel to appoint Commissioners?

It is important that, the Commission be established by an Act of Parliament, as was the case with South Africa.[244] By virtue of the Commission being established by law, it will also follow suit that the process of appointing Commissioners will too be clearly spelt out. This kind of approach ensures transparency and public participation while preventing political horse-trading.[245] As in the case of South Africa, for example, President Mandela, who in terms of the Act was to appoint commissioners in consultation with the cabinet, announced a process along the lines of NGO proposals.[246] The criteria for selection were: impartiality, moral integrity, known commitment to human rights, reconciliation and disclosure of the truth, absence of a high party political profile, and lack of intention to apply for amnesty.

In Rwanda, a similar approach would ensure a truth and reconciliation commission's legitimacy. International involvement would help to give the commission further credibility.[247] In a highly polarized society with strong ethnic, religious, or political divides, international involvement in a truth and reconciliation commission is often necessary for the commission to function, let alone appear credible.[248] El Salvador provides a case in point.

Rwandan society is afflicted by collective ills as a result of the genocide. However, this kind of experience is not an isolated one. Salvador had gone through

---

241 See Priscilla B. Hayner, *Fifteen Truth Commission* – 1974 to 1994: A Comparative Study, 16 Human Rights Quarterly 597,629 (1994).

242 The Chileans studied the Argentine and Uruguayan models and felt that they reflected the opposite ends of the spectrum. Chileans thus opted for a modified approach. They were of opinion that Uruguay did not go far enough and that the Argentine model went too far as it did not appear to provide any incentives, merely punishment. See Sarkin (1999) 21 Human Rights Quarterly 806.

243 As above.

244 Promotion of National Unity and Reconciliation Act, No.34 of 1995, available in <www.truth.org.za/legal/act9534.htm> (accessed on 18 October 2001).

245 See Sarkin, (1999) 21 Human Rights Quarterly 807;

246 As in above.

247 As in above.

248 As above.

a difficult past too. Salvadoran society was completely polarized and the level of fear and intimidation among out groups was intense. As a result, the United Nations formed the Salvadoran Commission with the entire staff being foreign.[249] This international approach was highly successful in establishing the commission as a credible, independent, and legitimate institution. Its international nature also allowed the Salvadoran Commission to broadly interpret its mandate and carry out in-depth investigations.[250] A case such as the one Rwanda is faced with would require the panel to be composed of a reputed church leader, some Rwandan nationals who are not in active politics but knowledgeable in human rights issues, and some persons from the international community.

4.2.2.4 **Setting terms of reference**

(i) Duration of commission and time period of study

TRC's are not permanent institutions, to ensure efficacy and completion of the task and also to enable healing to begin swiftly after old wounds are opened.[251] The terms of reference should determine a certain period of time and resources for laying the administrative and logistical foundations of the commission.[252] Otherwise commissions lose precious operating time out of their limited life span. In Rwanda where a number of human rights abuses occurred; the time period that a TRC should investigate will be particularly a contested terrain.[253] This issue is of importance because the commission must interest all parts of the Rwandan society.[254]

The duration for a commission in Rwanda if instituted shall preferably be for a term of three years. Argument in favour of it running for a shorter period is largely based on grounds that commissions need a lot of human, financial, and technical resources. Keeping a commission in place for a longer period would mean a heavy price tag to borne by those sustaining it, which in this case is not feasible in the circumstances currently Rwanda is faced with.

4.2.2.5 **Assistance and Resources**

According to Hayner[255], truth commissions are usually sponsored by executive branch of government; less commonly by the legislative branch and in the alternative

---

249 See Sarkin (1999) 21 Human Rights Quarterly 808.
250 As above.
251 See Sarkin (1999) 21 Human Rights Quarterly 810.
252 As above.
253 See Sarkin, (1999) 21 Human Rights Quarterly 811.
254 As above.
255 Hayner (n 241 above) 225.

may be sponsored internationally, by the U.N or by N.G.O's. Most Commissions end up reporting only a narrow slice of the "truth" as a result of lack of resources. For a commission therefore to fulfil its obligation successfully, it must have sufficient resources for investigating, researching, establishing a database, and examining the use of repatriation.[256]

4.2.2.6 **Process of the Commission**

TRC's need careful planning and preparation for it to achieve the desired goal. If the process is not managed well, as in South Africa,[257] the danger is that it will open old wounds, renewing resentment and hostility against perceived perpetrators. Truth commissions take on a victim – cantered approach[258] in that they acknowledge the humanity and loss of the victims by listening to their stories and incorporating them into the official truth (the final report).[259]

A commission must make counselling available to victims both before and after they testify. It is vital to consider what happens when victims go home: many must live along side perpetrators.[260] The process must allow for the victim/perpetrator relationship to be dealt with thoroughly. An initiative such as the one Internews Network has come up with is helpful in that it will help one to gauge the feelings of the people in Rwanda as concerns what transpired in 1994 and its aftermath.[261]

4.2.2.7 **Final Report**

The most straightforward reason to set up a truth commission is that of sanctioned fact finding: to establish an accurate record of a country's past, and thus help to provide a fair record of a country's history and its government much disputed acts.[262] According to Sarkin, a final report "is the raison *d'être* of a truth commission: a statement encapsulating as completely as possible a picture of events in the country during the investigated time period".[263] It is the formal acknowledgement of what has occurred – what has been done to people.[264] It will become the definitive history,

---

256 See Sarkin, (1999) Human Rights Quarterly 21 at 815.
257 As above.
258 As above.
259 As above.
260 Sarkin 2000(2) International Law Forum 118
261 Award filmmaker Mandy Jacobson of South Africa is directing Internews Network. Through its works, the people of Rwanda across the board are getting the opportunity to watch a documentary film portraying the genocide and the subsequent trial of key suspects by ICTR. Source <http://www.internews.org/activities/ICTR> [accessed on 24.October 2001].
262 See Hayner (n 243 above) 226.
263 See Sarkin (1999) 21 Human Rights Quarterly 817.
264 As above.

provided it is viewed as legitimate. The report would avail much if released within a time period of three years in the case of Rwanda, reason being that its findings would be useful, as it would address the aspects of power sharing as envisaged by article 88 of the Arusha Protocol on Power sharing.

4.2.2.8 **Relationship to Criminal Justice System**

Truth commissions must be distinguished from the formal legal accountability achieved through the prosecution of individuals responsible for abuses. In order for a commission to maintain its legitimacy, it must be independent of the national criminal justice system. However, truth commissions and criminal prosecutions need not be mutually exclusive.[265] A truth commission may exist where criminal trials are being pursued, however the judicial system must always adhere to international human rights norms such as due process and assignment of individual responsibility, not collective. In Rwanda, while the commission will need to work with the criminal justice system, it will have to preserve its independence. If it is seen to be simply an arm of criminal justice system, its credibility will be questioned.[266]

265 See Sarkin (1999) 21 Human Rights Quarterly 819.
266 See Sarkin, (1999) 21Human Rights Quarterly 821.

CHAPTER 5: CONCLUSION

The Rwandan government is faced with an uphill task. This arises from a complex set of social, economic, governmental, and judicial challenges. The government of national unity must find a way in which the distrustful Hutu and Tutsi, including hundreds of thousands of newly arrived Tutsi who were born and raised abroad can co-exist amicably. The government's commitment to impunity is an essential condition for national reconciliation and reconstruction. However, it is important that such an undertaking be made in line with the principles of natural justice and the law should reign supreme in all decisions reached.

Fighting impunity by preferring criminal trials in isolation of other mechanisms which have been proven to be a successful way forward for governments on a path way of transition, may not augur well with the intended results of a healing and reconciliation.

5.1 Accountability mechanisms

Accountability must be recognised as an indispensable component of peace and eventual reconciliation. Perpetrators of abuses ought to be punished for the brutal acts committed against the people. Punishment has a retributive element and so may prevent the future recurrence of abuses of the sort inflicted by the old regime. Accountability measures, which achieve justice, range from the prosecution of all potential violators to the establishment of the truth.[267]

Unless an independent institution is developed that provides the opportunity for victims to tell their stories and for those who are guilty of human rights violations to confess, Rwandan society will continue to live under the shadow of division, tension, and violence. Even after defeating the old guard, and with all the overwhelming evidence of mass killings that were generally directed at the Tutsi and the moderate Hutu; some of those suspected to have been instrumental in such murders still deny the existence of a genocide and, or do claim that the killings were justified by exigent circumstances. If such a matter is left uncontested, these claims may undermine the new government and strengthen the hand of those determined to return the former regime to power.[268] It is therefore along this conflicting ideology's

---

267 See Neil J Kritz (1995) The Dilemmas of Transitional justice – How emerging Democracies Reckon with former Regimes, at its preface p. xxvi.

268 See testimonies of some of the genocide suspects that are currently in prison in Rwanda, as reported by a team working with Internews Network. Source <http://www.internews.org/activities/ICTR> [accessed on 24 October 2001].

strife.[272] A Constitutional reform process could be set up, possibly outside the country, so that all political representatives could meet to negotiate a way forward.

A clear mechanism of how one can accede to a leadership position of whatever nature must be made clear and equal opportunities must be afforded to all Rwandans in any field. An office such as that of the President, a term of holding such an office should be limited to five years and open only for a second term if the people so wish. Paving the way to an inclusive democracy will be a critical step in dealing with the past and halting the continuing violence and division that haunts Rwanda.

5.3 *Gacaca* courts

The gacaca community courts, a traditional community – based mechanism could as an interim measure at local level help to ease some of the pressures and problems in Rwanda.[273] This is so because, traditionally this system of justice was voluntarily used by two parties who agree on the person who will hear their case and reconcile them by settling their civil disputes out of ordinary courts.[274]

By giving the community courts jurisdiction as spelt out by the organic law[275], and going by the fact that the major consideration when nominating the judges who shall preside over this courts is the aspect of honesty of the candidate[276], but having a legal background is not taken to be a prerequisite for the persons to preside over the gacaca courts; this kind of consideration is going to go short of the international standards set out by international instruments of carrying out justice. The concern of the Rwandese government at the moment is speeding up trials of genocide suspects.[277] This is obviously necessary, as the detention facilities are not equipped to handle the number of suspects awaiting trial. Indeed, not dealing with the large number more quickly is serving only to create additional problems.[278] But the question to ask is, will gacaca courts fulfil the expectations of government of delivering a collective therapy as well as national reconciliation to a country still traumatised by the events of 1994.

An appeal by the President of Rwanda to the international community that the situation in Rwanda be weighed on a different basis as far as concerns compliance

---

272 See Exiled Opposition Protests Against Use of Informal Courts in Rwanda. Source <http://www.afrol.com/news/rwa009_gacaca_courts.htm> [accessed on 7 November 2001].

273 See Sarkin 2000(2) at 118.

274 See <http://www.afrol.com/News/rwa018_gacaca_courts3htm> [accessed on 31 October 01].

275 See article 2 of organic law no. 40/2000.

276 See article 10 organic law no 40/2000.

277 See Rwanda Implementing Controversial *gacaca* courts. Source <http://www.afrol.com/News/rwa018_gacaca_courts3htm/> [accessed on 31 October 2001].

278 See Sarkin (1999) 21 Human Rights Quarterly 788.

with the international standards of carrying out justice, will later turn out to be a problem that too will haunt Rwanda throughout history if suspects to the genocide are not afforded a fair trial.[279]

The Rwandese society is desirous of the truth.[280] However putting all reliance on the *gacaca* courts as a suitable forum for getting the truth about what caused the 1994 genocide is certainly not going to yield positive results, if it is not subject to the internationally accepted for fair trial. To the justice minister of Rwanda, *Gacaca* courts shall find out the truth of what happened and subsequently punish those responsible according to their degree of responsibility.[281] But such hopes may be dashed down because trials by their very nature do not establish the broader context of a given conflict hence *gacaca* courts, though community based form of justice may go short of fostering reconciliation between perpetrators of genocide and the families of their victims since the substantive law applicable to this courts is not necessarily civil in nature but encompasses criminal matters too.[282] *Gacaca* courts should not be looked at as the best alternative because the suspects that will appear before this courts may not necessarily tell the truth for fear of reprisals. This is because according to the organic law,[283] persons found guilty of the crime of genocide or crimes against humanity are liable to loss of civil liberties such as a right to vote. This purging process may hinder suspects from giving confessions and so defeat the goal of achieving reconciliation by the use of *gacaca* courts.

5.4 Policy consideration

To develop a policy that is appropriate in light of the circumstances such as exist in Rwanda is a task that posses challenge. To realise it however, legal, moral, and ethical considerations must be put in the forefront. Accountability is among these considerations. Accountability mechanisms described in this thesis are not mutually exclusive, but are complementary. There is no clear-cut formula that can be applied

---

279 See<http://news.bbc.co.uk/hi/english/world/Africa/newsid_1581000/1581236.stm> [accessed on 1 November 2001]

280 Antoine Mugesera, the chairman of the genocide survivors association, Ibuka, reckons that, "even if one quarter of the truth of what happened in 1994 could come out in gacaca, it would be a big step forward." Source <http://news.bbc.co.uk/hi/english/world/Africa/newsid_1581000/1581236.stm> [accessed on 31 October 2001].

281 See art Rwanda gets new judicial system. Source <http://www.news24.co.za/news24/Africa/central_Africa/0,1113,2-11-39_1088593,00.html> [accessed on 8 November 2001].

282 Traditionally, the *gacaca* courts in Rwanda were voluntarily used by two parties to agree on the person who will hear their case and reconcile them by settling their civil dispute out of ordinary courts. Source <http://www.afrol.com/News/rwa018_gacaca_courts3htm> [accessed on 31 October 2001].

283 See Art 72 of organic law 40/2000.

that can achieve all the desired outcomes. The guidelines as discussed in this thesis could act as a foundation stone in building peace and reconciliation.

Word count

Excluding footnotes: 14, 182

Including footnotes: 17, 764

BIBLIOGRAPHY

Books

Amnesty International Report 2001

Amnesty International (1998) *Fair Trial Manual* London: Amnesty International.

Amnesty International (1997) Rwanda Unfair Trials: Justice Denied London; Amnesty International.

Annual Report of the activities by the National Unity and Reconciliation Commission: February 1999 – June 2000.

Amselle J. L and Bokolo E.M (eds.) (1985) *Au Coeur de l'Ethnie*: *Ethnies, Tribalisme et Etat en Afrique Editions La Découverte*.

Bassiouni C.M (ed.) (1999) International Criminal Law, 2nd edition: Transnational Publishers, Inc.

Dugard J. (ed) (2000) International Law, A South African Perspective, 2nd edition, Juta, &Co, Ltd.

Gaparayi T.I (2000) Justice and Social Reconstruction in the Aftermath of Genocide in Rwanda: An Evaluation of the Possible Role of the Gacaca Tribunals – Unpublished LLM Dissertation Paper, University of Pretoria.

Gasana E *et al* "Rwanda" in ACDESS (ed.) (1999) *Comprehending and Mastering African Conflicts*, *The Search for Sustainable Peace* and Good Governance London: Zed Books.

Kritz N.J (ed.) (1985) *Transitional Justice – How emerging Democracies Reckon with former Regimes*, Vol 1: *General Considerations*.

Lemarchand R. (ed) (1970) Rwanda and Burundi New York: Praeger 131.

Mackenzie J.M (ed) (1983) The Partition of Africa 1880 – 1900 and European Imperialism In the Nineteenth Century. London: Methuen.

Magnarella P. J (ed) (1999) Justice in Africa, Rwanda's Genocide, Its Courts, and the U.N Criminal Tribunal: *University of Florida Gainesville*, Florida, USA.

Newbury C. (ed) (1988) The Cohesion of Oppression, Clientship And Ethnicity in Rwanda, 1860 – 1960. Columbia University Press. New York.

Prunier G. (ed) (1995) The Rwanda Crisis History of a Genocide Columbia University Press New York.

Roht – Arriaza N. (ed) (1995) Combating Impunity, In Impunity, In Impunity and Human Rights In International Law and Practice.

Articles

A de Wall "Genocide in Rwanda" (1994) 10 (3) Anthropology Today 1.

African Rights (rev. ed. 1995) Rwanda: Death, Despair and Defiance London: African Rights 6 47.

African Rights (Sept 1994) Rwanda: Death, Despair and Defiance London 4.

African Rights (May 1994) Rwanda: Who is killing; who is dying; what is to be done? London

Bassiouni C. M "Searching for Peace and Achieving Justice: The Need for Accountability" (1996) 59 *Law & Contemporary Problems* 13.

Bassiouni C.M "The Need for International Accountability (1996) 59 *Duke University Journal of Law and Contemporary Problems.*

Benomar J. "Confronting the past: Justice After Transitions" (1993) *Journal of Democracy* 32.

Carla J. Ferstman, Domestic Trials For Genocide and Crimes Against Humanity: The example of Rwanda (1997) 9 No.4 *African Journal of International Comparative Law* 861.

Hayner B. Priscilla, International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal, 59 *Law & Contemporary Problems*, Autumn 1996.

Hayner B.Priscilla, *Fifteen Truth Commissions* – 1974 to 1994: A Comparative Study, 16 *Human Rights Quarterly* 597, 607 (1994).

Madeline H.Morris, The Trials of Concurrent Jurisdiction: The Case of Rwanda (1997) 7 *Duke Journal of Comparative & international law* 349.

Mc Adams J. "Transitional Justice and the Rule of Law in New Democracies" (1999) vol.15 Part 1 *South African Journal of Human Rights.*

McGoldrick D. (1994) The Human Rights Committee: Its Role in the Development of International Covenant on Civil and Political Rights Oxford, New York: Calderon Press.

Orentlicher D.F " Settling Accounts: The Duty to Prosecute Human Rights Violations of Prior Regime" (1991) 100 *Yale Law Journal* 2551.

Ravinder Joshi "Genocide in Rwanda: The Root Causes" (1997) vol.3, No.1 *East African Journal of Peace & Human Rights* Published by Makerere University Human Rights and Peace Centre.

Roht – Arriaza N. "States Responsibility to Investigate and Prosecute Human Rights Violations in International Law" (1990) 78 *California Law Review* 449.

United Nations High Commissioner for Human Rights Field Operation in Rwanda, The Administration of Justice in Post Genocide Rwanda. U.N Doc.HRFOR/JUSTICE/June 1996/E (1996).
Universal Declaration of Human Rights, Adopted by the General Assembly of the United Nations resolution 217(111) of 10 December 1948.

DOMESTIC LEGISLATION

Constitution of the Republic of Rwanda [As adopted on 30 May 1991. Original text French and Kinyarwanda].

Organic Law No. 40/2000 of 26. Jan. 2001 setting up Gacaca jurisdictions and organising prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1, 1990 and December 31, 1994.

Organic Law No. 08/96 of 30 August 1996 on the organization of prosecutions for offences constituting the crime of genocide or crimes against humanity committed since 01 October 1990.

Presidential Order No. 12/01 of 26/6 2001 establishing modalities for organising elections of members of Gacaca jurisdiction organs.

CASES

Bangidawo and Others v Head of the Nyanda Regional Authority and Another 1998 (3) BCLR 330 (TK).

Delcourt v Belgium ECHR (17 January 1970) Ser A 11 para 31

Gonzáles del Rio v Peru (263/1987)

Henry v Jamaica communications 571/1994 (26 July 1996), U.N Doc CCPR/C/57/D/571/1994.

Perdomo and de Lanza v Uruguay Doc. A/35/40

Sramek v Autriche, ECHR (22 October 1984) Ser A 84

APPENDICES

- 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.

- PRESIDENTIAL ORDER No 12/01 OF 26/6/2001 ESTABLISHING MODALITIES FOR ORGANIZING ELECTIONS OF MEMBERS OF GACACA JURISDICTIONS.

PRESIDENTIAL ORDER N° 12/01 OF 26/6/2001 ESTABLISHING MODALITIES FOR ORGANIZING ELECTIONS OF MEMBERS OF "GACACA JURISDICTIONS" ORGANS.

We, Paul KAGAME,
President of the Republic,

Given the Fundamental Law of the Republic of Rwanda as modified and complemented to date, especially the Constitution of June 10, 1991 in its Article 97, and the Arusha Peace Protocol on Power Sharing, especially its Articles 9, 10 and 11,4°;

Given Organic Law n° 40/2000 of 26/01/2001 establishing "Gacaca Jurisdictions" and organizing prosecutions for offences of genocide crime or crimes against humanity committed between October 1, 1990 and December 31, 1994, especially its Article 9;

After consideration and adoption by Cabinet, in its session of May 2, 2001.;

HAVE ORDERED AND HEREBY DO ORDER

CHAPTER ONE: GENERAL PROVISIONS

Article One:

This order shall govern elections of members of "Gacaca Jurisdictions" at the Cell, Sector, District, Town and Province level.

CHAPTER II: VOTERS

Article 2:

Can elect members of the Seat for the Cell's "Gacaca Jurisdiction" and delegates of that jurisdiction at the level of the Sector's "Gacaca Jurisdiction" any person of Rwandese nationality, who is at least eighteen years old and lives in the concerned Cell.

However, foreigners now living in Rwanda for at least one year and are holding a residence permit may also elect.

Article 3:

Can elect members of the Seat for the Sector's "Gacaca Jurisdiction" and delegates of that jurisdiction at the level of the District's or the Town's "Gacaca Jurisdiction", members of the General Assembly for the Sector's "Gacaca Jurisdiction".

Can elect members of the Seat for the District's or the Town's "Gacaca Jurisdiction" and delegates of that jurisdiction at the level of "Gacaca Jurisdiction" for the Province or Kigali

City, members of the General Assembly for the District's or the Town's "Gacaca Jurisdiction".

Can elect members of the Seat for "Gacaca Jurisdiction" for the Province or Kigali City, members of the General Assembly for that jurisdiction.

Article 4:

Can elect members of the coordinating committee for the Cell's "Gacaca Jurisdiction", members of the Seat for that jurisdiction.

Can elect members of the coordinating committee for the Sector's "Gacaca Jurisdiction", members of the Seat for that jurisdiction.

Can elect members of the coordinating committee for the District's or the Town's "Gacaca Jurisdiction", members of the Seat for that jurisdiction.

Can elect members of the coordinating committee for "Gacaca Jurisdiction" for the Province or Kigali City, members of the Seat for that jurisdiction.

Article 5:

Are excluded from voters:

1° those who have been definitively convicted of rapt, or of rapt committed on a minor, of murder, assassination, genocide crime or crimes against humanity and who have not been rehabilitated.

2° those who are liable to the penalty of loss of civil rights;

3° persons whose names figure on the list of persons prosecuted for or accused of having committed acts placing them in the first category.

Article 6:

The exercise of the right to vote is suspended for:

1° detainees;

2° people who are interned or hospitalized because of mental alienation or by virtue of another social protection measure.

CHAPTER III: ELIGIBLE PERSONS AND NUMBER OF PERSONS TO BE ELECTED.

SECTION 1: ELIGIBLE PERSONS

Article 7:

Can be elected at the level of the Cell's "Gacaca Jurisdiction", any person recognized by people as fulfilling the following conditions:

1° to be of Rwandese nationality;

2° to be living in the Cell where he wants to stand for elections;

3° to be at least 21 years old;

4° to be recognized as having a good behaviour and morals;

5° to be characterized by honesty and a spirit of sharing speech,

6° not having been sentenced, during five years starting from the beginning of elections, by a trial emanating from the tried case to a penalty of 6 months or more;

7° not having participated in perpetrating offences of the genocide crime or crimes against humanity;

8° to be free from the spirit of sectarianism and discrimination;

9° not having been the subject of dismissal for lack of discipline.

However, persons mentioned in Articles 5 and 6 of this order are not eligible.

Article 8:

Can be elected at the level of the Sector's, District's, Town's or Province's "Gacaca Jurisdiction", persons who are members of the General Assembly for the concerned jurisdiction.

Article 9:

Can be elected as members of the coordinating committee, persons who:

1° are members of the seat for the concerned "Gacaca Jurisdiction";

2° know at least how to read and write Kinyarwanda.

Article 10:

Cannot be elected as members of "Gacaca Jurisdictions" organs:

1° political appointees;

2° persons in charge of centralized or decentralized government administrations;

3° soldiers who are still in active service;

4° members of the National Police who are still in active service;

5° career magistrates;

6° members of political parties' steering organs at national level.

This incompatibility disappears once the concerned person secures his resignation.

Article 11:

Persons in charge of Government administrations referred to in point 2° of the previous Article are the Prefect for the Province, members of the Executive Committee, of the Town or the District and members of the Sector's and the Cell's political and administrative Committee.

SECTION 2: NUMBER OF PERSONS TO BE ELECTED

Article 12:

Apart from the General Assembly for the Cell's "Gacaca Jurisdiction" which is made up of all the Cell's inhabitants who are at least 18 years old, the General Assembly for each "Gacaca Jurisdiction" for the Sector, the District, the Town, the Province or Kigali City is made up of at least 50 honest persons, elected by its jurisdiction's immediately lower "Gacaca Jurisdictions", excluding those who will be sent to the higher level "Gacaca Jurisdiction".

Article 13:

Every Cell, Sector, District and Town is represented within the General Assembly for the immediately higher "Gacaca Jurisdiction".

Article 14:

The number of honest persons to be elected by every General Assembly for "Gacaca Jurisdiction" is fixed by the Chairman of the Supreme Court within 60 days latest before holding the first elections.

CHAPTER IV: THE ELECTORAL CONSTITUENCIES, THE COMMISSION IN CHARGE OF PREPARING AND ORGANIZING ELECTIONS AND THE POLLING STATION.

SECTION 1: THE ELECTORAL CONSTITUENCIES

Article 15:

Subject to the provision of the following Article, every Cell, Sector, District, Town, Province and Kigali City is an electoral constituency.

Article 16:

Where it appears that within a given Cell the number of people of voting age is less than 200 people, that Cell may be combined with one of the neighbouring Cells in the same Sector. These combined Cells shall form one single electoral constituency.

Article 17:

Before holding elections, all Executive Committees for Cells shall forward to Mayors, by usual means of transmission, reports and figures, which are not dated from more than 2 months, on their respective Cells' inhabitants who are 18 years old and above.

SECTION II: COMMISSION IN CHARGE OF PREPARING AND ORGANIZING ELECTIONS

Article 18 :

Hereby established, at national level, is a Commission in charge of preparing and organizing elections hereinafter referred to as "the Commission".

The Commission shall appoint its representatives at the level of every Province, Kigali City, and every District and at the level of every town.

Article 19:

The Commission is made up of 6 persons to be appointed by a Presidential Order, including one Chairman and one Vice-Chairman.

Article 20:

In its activities, the Commission shall be assisted by the Permanent Secretariat for the Electoral Commission referred to in Law n° 39/2000 of November 28, 2000 on the establishment, organization and functioning of the National Electoral Commission and by the Department for «Gacaca Jurisdictions» within the Supreme Court.

An Advisor in the Department for «Gacaca Jurisdictions» within the Supreme Court to be nominated by the Chairman of the Department shall be the Secretary for the Commission.

The Chairman of «Gacaca Jurisdictions» within the Supreme Court may attend meetings of the Commission but shall not have the right to vote in decision making.

Article 21:

Representatives of the Commission at the level of Province, Kigali City, Districts and Towns are four in number including one Chairman, to be appointed by the Commission.

Article 22:

For their term of office, Commission members shall suspend their usual activities. They shall receive, during that period, a salary equal to the one given to the Electoral Commission Commissioners.

Commission representatives at the level of Provinces, Kigali City, Districts and Towns shall suspend their usual activities while remaining attached to their respectives departments. They only get an allowance for services rendered.

Article 23:

Commission Members have a three-year mandate. A Presidential Order shall determine the commencement of their activities.

Article 24:

On the voting day, Commission representatives at the level of District or Town shall be assisted by members of the Political and Administrative Committee of the Sector in monitoring elections at Cell level.

Article 25:

The Commission shall submit a report at the beginning of elections and a final report whenever so required. Reports by the Commission are forwarded to the President of the Republic with a copy to the Chairman of the Supreme Court and to the Ministry holding Justice within his remit.

Article 26:

To hold a session validly, the Commission must at least have 2/3 of its total members.

Decisions made by the Commission shall be on consensus; where no consensus is reached, decisions are taken on the 2/3 majority of members of the Commission in attendance.

SECTION III: POLLING STATION

Article 27:

Voting operations at the level of Province, Kigali City, District and Town shall take place under the responsibility of representatives of the Commission at their respective levels.

Voting operations at Cell and Sector levels shall take place under the responsibility of members of the Political and Administrative Committee of those entities.

Article 28:

The Commission shall be assisted by administrative authorities.

CHAPTER V: HOLDING ELECTIONS

SECTION ONE: COMMON PROVISIONS

Article 29:

It is forbidden to campaign for the election of members of the «Gacaca Jurisdictions» organs, subject to the provisions of Article 40 of this Order.

Article 30:

At least 60 days before holding the first elections at Cell level, the Chairman of the Commission shall specify, by means of instruction, the starting date for these elections.

Article 31:

The Executive Committee of the administrative entity in which elections are to be held shall choose the place where these elections will take place.

Article 32:

Voting shall begin at 7 hours to close at 18 hours.

Where necessary, the polling station shall decide on either carrying on with elections after that latter time or on the following day at the same hours and shall notify its decision to voters. This decision must be justified and recorded in the minutes to be signed by the voting station members.

Article 33:

Voting at the level of the General Assembly for the Cell's Gacaca Jurisdictions shall be made on consensus or by lining up behind the candidate of one's choice for those candidates not accepted on consensus.

Article 34:

Voting for delegates of the Gacaca Jurisdictions at a higher level, members of the seat and members of the Coordinating Committee shall be done in writing and shall be done by secret ballot.

Any person who does not know how to write shall be assisted by a person of his/her choice.

Article 35:

The model of the voting ballot shall be specified by the Chairman of the Commission.

Article 36:

In case of equal votes, there shall be a drawing of lots.

This drawing shall be made in such manner as specified by the Chairman of the Commission.

Article 37:

Members of the voting station shall take minutes of the voting process.

The model in which as well as the time when minutes shall be taken shall be specified by the Chairman of the Commission.

SECTION II ELECTING MEMBERS OF THE SEAT FOR THE CELL JURISDICTION AND DELEGATES OF THAT JURISDICTION AT A HIGHER LEVEL

SUB-SECTION ONE: ELECTION OF HONEST PEOPLE

Article 38:

On the day of electing honest people at the Cell level, voting shall begin only when at least half the people having the right to vote are already present. Voters shall be grouped by «Nyumbakumi's» -ten households-that make up the Cell.

Every «Nyumbakumi» shall designate a number of honest people at least equal to the number required to be submitted by every «Nyumbakumi». This figure shall be obtained by dividing the number of honest people to be elected in every Cell by the number of «Nyumbakumi» that make it up.

Article 39:

After election in «Nyumbakumi», the General Assembly shall assemble, candidates chosen are introduced to the Assembly which takes this opportunity to introduce other honest people of the Cell.

Candidates introduced to the General Assembly must be at the place where voting takes place and accept to be proposed. Candidates who refuse to be chosen as candidates will indicate their reasons. When the Cell does not reach the adequate number of candidates, it shall be combined with another Cell in conformity with the provisions of Article 40 of this Order.

Article 40:

Before voting begins, every candidate shall give his full identity.

Article 41:

A member of the polling station shall call names of the candidates one by one, asking the General Assembly whether they recognize each one as an honest person or whether they have any criticism against him and the candidate against whom the General Assembly has not made any criticism shall thereby be declared elected.

Article 42:

When people elected in conformity with the above article exceed the required number of honest people, there shall be a drawing of lots on those persons elected to determine those to be members of the «Gacaca Jurisdictions» organs and those to be put on the waiting list.

Article 43:

Where the number of persons elected on consensus is equal to the required number of honest persons, the vote shall stop.

Article 44:

Where the number of persons elected on consensus is lower than the required number, elections shall be carried over to complete that number.

Candidates who have not been elected on consensus by the General Assembly will line up and every voter lines up behind the candidate of his choice.

Article 45:

A candidate to be declared elected shall come in good position in the number of honest persons to be elected and with votes equal at least to 1/5 of the voting persons.

The vote shall stop where the number is reached or where no candidate gets votes equal at least to 1/5 of the voting persons.

Persons who have got equal votes or votes higher than 1/5 of the voting persons but who have not been retained will be put on a reserve list according to the obtained votes.

Where the required number is not reached, the election shall be repeated only on those candidates who got votes equal at least to 1/5 of the voting persons.

Article 46:

Where, at the end of the elections, the number of honest persons referred to in Article 14 of this Order is not reached, the Cell shall be combined with one of the neighbouring Cells in the same Sector and the combined Cells shall vote together.

Article 47:

The decision for combining Cells shall be taken by the Chairman of the Supreme Court or by the person to whom he has delegated that competence.

This decision shall specify the number of persons to be elected and that of persons to be delegated to the higher level.

Sub-section 2: Procedure for electing delegates from the Cell's "Gacaca Jurisdiction" to the sector's "Gacaca Jurisdiction".

Article 48:

At the end of the elections referred to in the previous sub-section, the elected honest persons shall elect delegates to the higher level and among themselves, and the remaining 19 persons will form the Seat for the jurisdiction.

These elections are to be carried out immediately after the first ones or where impossible, on the following day.

Article 49:

Every voter shall establish, on the voting ballot issued by the polling station, a list of persons equal to the number of persons to be delegated to the higher level.

All honest persons elected at the Cell level are candidates.

Article 50:

Candidates who have got a bigger number of votes and which corresponds to the number referred to in Article 14 of this Order shall be declared delegates of the Cell "Gacaca Jurisdiction" to "the Sector Gacaca Jurisdiction".

SECTION 3: ELECTIONS OF MEMBERS OF THE SEAT FOR "GACACA JURISDICTION" OF THE SECTOR, DISTRICT, TOWN, PROVINCE AND KIGALI CITY AND DELEGATES OF THESE JURISDICTIONS TO THE HIGHER LEVEL

Article 51:

Elections of members of the Seat for «Gacaca Jurisdiction» of the Sector, District, Town, Province and Kigali City and of these jurisdictions' delegates to the higher level shall take place on the day following the one on which elections at the lower level ended.

Article 52:

Before voting begins, the polling station shall check that the quorum is reached.

This quorum is 2/3 of the number of persons to be delegated by the lower level to one for which elections are organized.

Article 53:

Every voter shall establish on the voting ballot issued by the polling station, a list of persons equal to the number of persons to be elected, including persons to be delegated to the higher level and persons who are to make up the jurisdiction's seat.

Members of the General Assembly, which is to carry out elections, are all candidates.

Article 54:

For «Gacaca Jurisdictions» of Sectors, Districts or Towns, candidates who have got the largest number of votes shall be declared, up to the limit of the required number, delegates to the higher level; the 19 consecutive candidates shall be declared members of the Seat for «Gacaca Jurisdiction» for which elections were organized.

SECTION 4: ELECTIONS OF COORDINATING COMMITTEES OF GACACA JURISDICTIONS

Article 55:

Soon after their election or latest on the following day, the concerned members of the Seat for «Gacaca Jurisdiction» shall meet to elect 5 members of the coordinating committee of this jurisdiction.

Article 56:

The polling station shall receive applications for the post of Chairman and for the posts of Secretary.

Article 57:

For the post of Chairman, the first 3 candidates with most votes shall be declared respectively Chairman, 1st Vice-Chairman and 2nd Vice-Chairman.

For the post of Secretary, the first 2 candidates with most votes for the post of secretary shall be declared Secretaries of the coordinating committee.

CHAPTER VI: PETITIONING ELECTION RESULTS

Article 58:

Any querry relating to the results of elections of members of «Gacaca Jurisdictions» shall, under pain of being declared null and void, be raised immediately after the publication of the results disputed by the person who considers himself prejudiced.
This petition shall be notified to the polling station which shall decide immediately.

CHAPTER VII: FINAL PROVISIONS

Article 59:

Elections to replace an honest person who can no longer continue his activities for whatever reason shall be organized by the jurisdiction's coordinating committee which is to carry out the replacement.

However, where honest persons are still on the reserve list, those whose names come first shall be de facto be qualified for this replacement.

Article 60:

Without prejudice to legal and regulatory provisions relating to these elections, the Chairman of the Commission shall take all necessary measures for elections to take place normally and in transparency.

Article 61:

This Presidential Order shall come into force on the day of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on 26/6/2001

The President of the Republic
Paul KAGAME
(sé)

The Prime Minister
Bernard MAKUZA
(sé)

The Minister of Local Government and Social Affairs
Désiré NYANDWI
(sé)

The Minister of Justice and Institutional Relations
Jean de Dieu MUCYO
(sé)

Seen and Sealed with the Seal of the Republic

The Minister of Justice and Institutional Relations
Jean de Dieu MUCYO
(sé)

ORGANIC LAW N° 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.

We, Paul KAGAME,
President of the Republic,

THE TRANSITIONAL NATIONAL ASSEMBLY HAS ADOPTED AND WE SANCTION, PROMULGATE THE FOLLOWING ORGANIC LAW DECLARED TO BE IN HARMONY WITH THE FUNDAMENTAL LAW BY THE SUPREME COURT IN ITS RULING N° 44/11.03/CS PASSED IN ITS HEARING OF 18/01/2001 AND ORDER THAT IT BE PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA.

The Transitional National Assembly, meeting in its session of 12th October 2000;

Given the Fundamental Law of the Republic of Rwanda as modified and complemented to date, especially the Constitution of June 10, 1991 in its Articles 12, 33, 69, 91 and 97 as well as the Arusha Peace Protocol of Agreement on Power Sharing, especially in its Articles 3, 6-d, 16-3°, 26, 28, 39-c, 40, 72 and 73;

Given the revision of the Fundamental Law of October 5, 2000;

Revisited law-decree n° 09/80 of July 7, 1980 on the code of judicial organization and competence as modified to date;

Revisited organic law n° 08/96 of August 30, 1996 organizing prosecutions for offences constituting the crime of genocide or crimes against humanity committed since October 1, 1990;

Revisited the law of February 23, 1963 on the code of criminal procedure, as modified and complemented to date;

Revisited law-decree n° 21/77 of August 18, 1977 instituting the penal code as modified and complemented to date;

Considering the genocide and the crimes against humanity committed in Rwanda from October 1, 1990 to December 31, 1994;

Considering that such offences were publicly committed before the very eyes of the population, which thus must recount the facts, disclose the truth and participate in prosecuting and trying the alleged perpetrators;

Considering that the duty to testify is a moral obligation, nobody having the right to get out of it for whatever reason it may be;

Considering that the committed acts are both constituting offences provided for and punished by the Penal Code, and crimes of genocide or crimes against humanity;

Considering that the genocide and the crimes against humanity are notably provided for by the convention of December 9, 1948 preventing and punishing the crime of genocide, by the Geneva convention of August 12, 1949 relating to protecting civil persons in wartime and the additional Protocols, as well as the convention of November 26, 1968 on imprescriptibility of war crimes and crimes against humanity.

Considering that Rwanda has ratified those three conventions and published them in the Official Gazette of the Republic of Rwanda, without however providing for sanctions for such crimes;

Considering, consequently, that prosecutions must be based on the penal code;

Considering the necessity, in order to achieve reconciliation and justice in Rwanda, to eradicate for good the culture of impunity and to adopt provisions enabling to ensure prosecutions and trials of perpetrators and accomplices without only aiming for simple punishment, but also for the reconstitution of the Rwandese society made decaying by bad leaders who prompted the population to exterminate one part of that society;

Considering that it is important to provide for penalties allowing convicted prisoners to amend themselves and to favour their reintegration into the Rwandese society without hindrance to the people's normal life;

ADOPTS:

TITLE ONE : APPLICATION FIELD

Article One:

The purpose of this organic law is to organize the putting in trial of persons prosecuted for having, between October 1, 1990 and December 31, 1994, committed acts qualified and punished by the penal code and which constitute:

a) either crimes of genocide or crimes against humanity as defined by the Convention of December 9, 1948 preventing and punishing the crime of genocide, by the Geneva Convention of August 12, 1949 relating to protecting civil persons in wartime and the additional protocols, as well as in the Convention of November 26, 1968 on imprescriptibility of war crimes and crimes against humanity;

b) or offences aimed at in the penal code which, according to the charges by the Public prosecution or the evidences for the prosecution or even what admits the defendant, were committed with the intention of perpetrating genocide or crimes against humanity.

Article 2:

The persons whose committed acts or criminal participation acts put in categories 2, 3 and 4 as defined by Article 51 of this organic law are answerable to « Gacaca Jurisdictions » referred to in Title II of this organic law. « Gacaca Jurisdictions » exclusively apply the provisions of this organic law.

Persons coming under category 1 are answerable to ordinary jurisdictions which apply the common law content and procedure rules subject to exceptions provided for by this organic law.

Persons benefiting from the prosecution and jurisdiction privileges in accordance with the laws in force are, when they are suspected of having committed offences constituting the crime of genocide or crimes against humanity, prosecuted according to the procedure organised by this law and are answerable to jurisdictions which it provides for.

TITLE II: SETTING UP, ORGANIZATION AND COMPETENCE OF « GACACA JURISDICTIONS »

CHAPTER ONE: SETTING UP AND ORGANIZING « GACACA JURISDICTIONS »

SECTION ONE: GENERAL PROVISIONS

Sub-section One: Set up and jurisdiction

Article 3:

It is hereby set up, in each Cell, Sector, District and Province of the Republic of Rwanda, one « Gacaca Jurisdiction » in charge of knowing, within the limits established by this organic law, the offences constituting the crime of genocide and crimes against humanity committed in Rwanda between October 1, 1990 and December 31, 1994.

Article 4:

Without prejudice to paragraph 3 of Article 6 of this organic law,
The jurisdiction for the Cell's « Gacaca Jurisdiction » is the Cell;
The jurisdiction for the Sector's « Gacaca Jurisdiction » is the Sector;
The jurisdiction for the District's « Gacaca Jurisdiction » is the District;
The jurisdiction for the Province's « Gacaca Jurisdiction » is the Province.

Sub-section 2: Organs for « Gacaca Jurisdictions »

Article 5:

Each « Gacaca Jurisdictions » is made up of a General Assembly, a Seat and a Coordinating Committee.

The competent instance to appoint the Seat's and Coordinating Committee's members is also competent for their replacement.

Paragraph 1: The General Assembly

Article 6:

The General Assembly for the Cell's « Gacaca Jurisdiction » is made up of all the Cell's inhabitants aged 18 years and above.

But a Cell of which the population counts more than 200 persons aged 18 years at least may be divided into as many Cells as none exceeds that figure.

When it appears that within a given Cell the number of 24 honest persons in question in Article 9 of this organic law is not reached or when the Cell of which a majority of inhabitants aged 18 years and above have family relation with persons prosecuted for the crimes provided for by this organic law, the Cell is put within the jurisdiction for the neighbouring Cell's « Gacaca Jurisdiction » in the same Sector. In such a case, the merged Cells proceed to new elections for appointing honest persons.

The decision for subdividing or merging Cells is taken by the Department for « Gacaca Jurisdictions » within the Supreme Court, on submission of the case before the District administrator of the concerned District or any other relevant person.

Article 7:

The General Assembly for a Sector's, District's or Province's « Gacaca Jurisdiction » is made up of at least 50 honest persons, delegated by its jurisdiction's immediately lower « Gacaca Jurisdictions », in accordance with the following Articles of this organic law.

Article 8:

Each Cell, Sector or District is represented by a same number of delegates within the General Assembly for the immediately higher « Gacaca Jurisdiction ».
The surplus of vacancies are distributed according to the number of the inhabitants in each Cell, Sector or District.

Article 9:

The General Assembly for the Cell's "Gacaca Jurisdiction"chooses within itself 24 honest persons, 5 of whom are delegated to the Sector's « Gacaca Jurisdiction », while the remaining 19 form the Seat for the Cell's « Gacaca Jurisdiction ».

Honest persons delegated to form the Sector's «Gacaca Jurisdiction» appoint among themselves 5 to delegate to the District's « Gacaca Jurisdiction »; others constituting the General Assembly for the Sector's « Gacaca Jurisdiction ».

Honest persons delegated to form the District's "Gacaca Jurisdiction" appoint among themselves 5 to delegate to the Province's "Gacaca Jurisdiction"; others constitute the General Assembly for the District's "Gacaca Jurisdiction"

When the number of honest persons who must constitute the General Assembly for the Sector's, the District's or the Province's « Gacaca Jurisdiction » is less than 50, general assemblies for lower « Gacaca Jurisdictions » in its jurisdiction proceed to appointing, within themselves, a sufficient number of other honest people in order to reach the one required, according to the procedure established by paragraph 2 of article 14 of this organic law.

The President of the Republic determines by means of order, the modalities of organizing elections for members of "Gacaca Jurisdiction's" organs.

Article 10:

Members of the Seats for the Cells' « Gacaca Jurisdictions » and of the general assemblies for the Sectors, the Districts' and the Provinces' « Gacaca Jurisdictions » are honest Rwandans elected by general assemblies for the Cells in which they are residing.

Is honest, any Rwandan meeting the following conditions:

a) to have a good behaviour and morals;

b) to always say the truth;

organisation may be elected member of « Gacaca Jurisdictions » but, once elected, he/she must immediately resign from his/her post.

Article 12:

Any person appointed member of a « Gacaca Jurisdiction » shall be replaced for one of the following reasons:

a) three unjustified successive absences in the sessions for the organs of « Gacaca Jurisdictions »;

b) sentence to a penalty of at least a 6 month imprisonment;

c) culture of divisionism;

d) exercising one of the activities provided for in Article 11 of this organic law or occupying a post which is likely to impede participation in the sessions for the organs of « Gacaca Jurisdictions »;

e) effects of a disease likely to prevent him from participating in the sessions for the organs of « Gacaca Jurisdictions »;

f) fulfilling any act incompatible with the quality of a honest person;

g) non-residence in the Cell, in the Sector, in the District or in the Province of work;

h) resignation;

i) death

Loss of the quality of member of « Gacaca Jurisdiction » for three unjustified successive absences in the sessions for the jurisdictions, for culture of divisionism and for any act incompatible with the quality of a honest person, is decided in writing by the members of the Seat of « Gacaca Jurisdiction ». The member so relieved is subject to an official warning before the General Assembly and cannot be elected as an honest persons in any organ.

Other reasons for replacement enumerated in this Article are ascertained by the organ of « Gacaca Jurisdiction » of which was part the person to be replaced .

Paragraph 2: The Seat for « Gacaca Jurisdiction »

Article 13:

Each Seat for « Gacaca Jurisdiction » is made up of 19 honest people.

Honest people forming the Seat for the Cell's "GACACA Jurisdiction" are elected by and from among the Cell's inhabitants.

As regards honest people forming the Seat for the Sector's, the District's and the Province's "GACACA Jurisdiction", they are elected by the members of the General Assembly for "GACACA Jurisdiction", in accordance with Article 9 of this organic law.

Each Cell, Sector or District is represented by an equal number of delegates within the Seat for the immediately higher "GACACA Jurisdiction", with the exception of what is provided for in Article 8 of this organic law.

The surplus of vacancies which cannot ensure representation for each concerned administrative entity is distributed according to the number of inhabitants for each relevant Cell, Sector or District.

Article 14:

When the number of matters is justifying it, "GACACA Jurisdiction" constitutes within itself, as many Seats as needed. Each new Seat appoints within itself members for the Coordinating Committee referred to in Article 17 of this organic law.

If it is necessary to constitute more than two Seats, the General Assembly for the concerned "GACACA Jurisdiction" invites General Assemblies for the immediately lower "GACACA Jurisdictions" of its jurisdiction to choose within themselves and delegate people in sufficient number in order to form the new Seats.

If need be, the Cell's "GACACA Jurisdictions" appeal to the candidates not retained at the time of elections to appoint members of "GACACA Jurisdictions", following the decreasing order of the obtained votes.

Article 15:

Before exercising his ministry, every member of the Seat for "GACACA Jurisdiction" takes the following oath: "I, ..., in the name of God Almighty, solemnly swear to the Nation, to honestly fulfil the mission entrusted to me by complying with the law, to be always guided by the spirit of impartiality and search for the truth, and to make Justice triumph".

The oath is taken before the General Assembly for " GACACA Jurisdiction". Its act is immediately drawn up in the register kept for that purpose and is signed or marked with the fingerprint of the "GACACA Jurisdiction's" concerned member.

Article 16:

A honest person member of a Seat for "GACACA Jurisdiction" cannot seat in a matter in which is prosecuted:

- the defendant with whom himself or his wife is relative or related by direct marriage or up to the 2nd degree;
- the defendant with whom it was already existing a serious enmity;
- the defendant with whom he/she had deep friendship relations;
- the defendant for whom he/she was guardian.

In one of those hypotheses, the member of the concerned Seat must decline to act in the case. Otherwise, any person who knows about the existence of one of those causes informs, before the plea as to the content, the Seat which decides all matters ceasing. This decision is appealed against together with the judgement it refers to.
However, the concerned person so objected to is admitted to give evidence for the prosecution or the defence.

Paragraph 3: The Coordinating Committee

Article 17:

The Coordinating Committee for each "GACACA Jurisdiction" is made up of 5 honest people elected with a simple majority by the members of the Seat within itself and who know how to read and write Kinyarwanda.

It chooses within itself, this with a simple majority, one chairperson and two secretaries having completed at least six years of the primary cycle of education. The other members of the committee become respectively 1st and 2nd vice-chairperson, taking into account the number of votes obtained by each of them.

The chairperson for the Coordinating Committee and the vice-chairpersons are elected every three months.

The secretaries are elected for a renewable one-year mandate. They ensure, in addition to the secretariat for the organs of " GACACA Jurisdictions", the functions of secretaries for "GACACA Jurisdiction".

Article 18:

The Coordinating Committee for each "GACACA Jurisdiction" shall carry out the following functions:

a) to elect among its members, one chairperson and two secretaries;

b) to convene, to preside over the meetings and coordinate activities of the Seat and the General Assembly for "GACACA Jurisdiction";

c) to register complaints and denunciations, evidences and offers of proof given by the people;

d) to receive and register files for answerable defendants of "GACACA Jurisdiction";

e) to register declarations of appeal formed against trials by "GACACA Jurisdictions";

f) to send to the immediately higher "GACACA Jurisdiction" the files of which trials are affected by appeal;

g) to write decisions taken by the organs of "GACACA Jurisdictions";

h) to prepare and send activity reports for "GACACA Jurisdiction";

i) to implement the decisions of the General Assembly and those of the Seat for "GACACA Jurisdiction";

j) to send to the immediately higher "GACACA Jurisdiction" the activity report adopted by the General Assembly for "GACACA Jurisdiction". However, the report from the Province's "GACACA Jurisdiction" is sent to the Department of "GACACA Jurisdictions" within the Supreme Court.

Article 19:

When a "GACACA Jurisdiction" has, in accordance with Article 14 of this organic law, constituted within itself several Seats, Coordinating Committees for those Seats set up a commission made up of 3 of their members of whom a chairperson, a vice-chairperson and a secretary, in charge of distributing the tasks enumerated in the previous Article or resulting from the provisions which follow, between different Coordinating Committees.

Sub-Section 3: The functioning of "GACACA Jurisdictions"

Article 20:

Leaders for administrative entities in which are established "GACACA Jurisdictions" put at the disposal of these ones the infrastructures necessary for their functioning.
They convene and lead, each one at his district's level, the very first meeting during which the General Assembly for "GACACA Jurisdiction" must constitute the Seat.
In case of unforeseen difficulties, those leaders are replaced according to the rules in force governing their respective districts.

Article 21:

The General Assembly for each "GACACA Jurisdiction" holds an ordinary meeting once a month and extraordinary sessions wherever it is required by the good functioning of "GACACA Jurisdiction".

It is convened and led by the Chairperson for the Coordinating Committee, on his/her own initiative or at the request of at least one third of the members of the Seat for " GACACA Jurisdiction".

When the chairperson has a legitimate reason which prevents him/her from convening the General Assembly, this one is convened by one of the vice-chairpersons.

When the chairperson refuses to convene the General Assembly, the Seat for the jurisdiction meets at the request from at least 7 of its members.
The quorum to seat is 14 members who appoint within themselves the members who will convene the General Assembly.

However, when a "GACACA Jurisdiction" has constituted several Seats within itself, its General Assembly is convened by the person in charge of that commission referred to in Article 19 of this organic law or his assistant. When the person in charge of that commission refuses to convene the General Assembly, members of the Coordinating Committees constituted by the Seats for jurisdictions representing at lest 2/3 of the committees for all the Seats for "GACACA Jurisdiction" meet, in order to appoint within themselves new members of the commission. The new person in charge of the commission immediately convenes the General Assembly.

Article 22:

The purpose of the monthly meeting referred to in Article 21 is to evaluate the Seat's and Coordinating Committee's activities.

Article 23:

The General Assembly for any "GACACA Jurisdiction" only sits legitimately if at least 2/3 of its members are present.

When the quorum of 2/3 of the members of the General Assembly is not reached, the latter is convened again, and the present members deliberate legitimately if they represent more than half the members of the General Assembly.

Decision of the General Assembly are taken by consensus or otherwise at the absolute majority of its members.

Article 24:

Hearings for "GACACA Jurisdiction" are public, except the hearing in camera requested by any interested person and pronounced by judgement for reasons of public order or good morals.

Deliberation is secret.

Article 25:

The seat for any Gacaca jurisdiction holds its hearings at least once a week, upon convening by the chairperson, on his/her own initiative or at the request from at least three members of the Coordinating committee.

Hearings take place from 8.30 a.m. to 4 o'clock p.m. at the latest. The days for hearing are fixed by the General Assembly for "GACACA Jurisdiction" by consensus or failing this, with the absolute majority of effective members.

Whenever there is a reason to postpone the date of hearing, the president and other members of Gacaca jurisdiction decide on a different day.

Article 26:

The Seat for "GACACA Jurisdiction" can only meet legitimately if at least 15 of its members are present. When this quorum is not reached, the General Assembly appoints within itself other honest people in a sufficient number to complete the quorum.

It will be the same when the quorum is not reached following objection from the members or the whole Seat for "GACACA Jurisdiction".

Article 27:

The Seat for "GACACA Jurisdiction" shall decide by consensus and failing this, with the absolute majority of its members.

If such a majority is not reached, it is proceeded to a new vote; each member of the Seat for "GACACA Jurisdiction" having however to choose between the 2 positions having previously obtained more votes.

Article 28:

Judgement is given and passed by "GACACA Jurisdiction" in public on the day which is fixed by the Seat for the jurisdiction.

Judgements must be motivated. They are signed or marked with the fingerprint by all members of the jurisdiction who have seated and participated in deliberation.

Article 29 :

Whenever need be, « Gacaca Jurisdictions » can be assisted by judicial advisers appointed by « Gacaca Jurisdictions" Department of the Supreme Court.

Article 30:

The Coordinating Committee of the "Gacaca Jurisdiction" meets as often as necessary on summons of its Chairperson, by his initiative or on request of at least two of its members.

When the Chairperson justifies with a legitimate motive that he/she is hindered to summon the Committee, the latter is summoned by one of the deputy chairpersons.

Article 31:

To sit conclusively, the Coordination Committee shall bring together at least three of its members of whom a secretary.

Its decisions are taken by consensus. Failing which, the issue in discussion is submitted to the "Gacaca Jurisdiction" Seat.

Article 32:

Any person who omits or refuses to testify on what he/she has seen or on what he/she knows, or who makes a false or slanderous denunciation, is prosecuted by the "Gacaca Jurisdiction" which makes a statement on it.
He/she risks a prison sentence from 1 to 3 years maximum, but on the pronounced sentence, he/she spends half of it with no remission whilst what is left is commuted into services of general interest works.

SECTION 2 : PARTICULAR PROVISIONS

Sub-Section one : Remit of the "Gacaca Jurisdiction" of the Cell

Article 33:

The general Assembly of the "Gacaca Jurisdiction" of the Cell exercises the following remit:

a) Contributing to preparing a list of persons who lived in the Cell before the genocide and massacres and the list of victims of these offences and those of their perpetrators;
b) Presenting means of evidence against or in favour in the trials of genocide or crimes against humanity;
c) For no members of Seat, attend and speak whenever they so request, but without voting powers, in hearings of the "Gacaca Jurisdiction" of the Cell;
d) Electing Seat members of the "Gacaca Jurisdiction" of the Cell and their deputies;
e) Constituting, if necessary, additional Seats within the "Gacaca Jurisdiction" of the Cell;
f) Electing members of higher 'Gacaca Jurisdictions";
g) Examining and adopting activity report established by the Coordinating Committee.

All Cell inhabitants shall tell the facts which were produced in their village and give evidence on them. They denounce their authors and identify their victims.
Every inhabitant of the Cell shall indicate the place where he lived before and during the genocide and massacres.

Article 34:

The Seat of the "Gacaca Jurisdiction" of the Cell exercises the following remit:

a) Establishing lists of:

- All persons who were staying in the cell before the genocide and massacres;
- Persons who have been, in the Cell, victims of crime of genocide or crimes against humanity;
- Alleged authors of the offences referred to in this organic law;
- Persons who lived in the Cell but who were killed in other places;
- Persons who were hunted and whose whereabouts remain unknown;
- Persons who still live in the Cell;
- Persons who lived in the Cell but who have changed residence; this list having, if possible, to be completed by indications on the locations where the concerned persons have moved to;
- Damaged assets.

b) bring together the files forwarded by the Prosecution;
c) taking cognizance of evidence and testimony offers;
d) making investigations on given testimonies;
e) making categorisation of defendants as per organic law n°08/96 August 30, 1996;
f) knowing offences committed by defendants classified in the fourth category;
g) giving a ruling on objection to Seat members of the "Gacaca Jurisdiction" of the Cell;
h) receiving the procedure of confession and guilt speech for defence;
i) forwarding to the "Gacaca Jurisdiction" of the Sector, the files of the defendants classified in the third category;
j) forwarding to the "Gacaca Jurisdiction" of the District and Province the files of the defendants classified in the first and second categories;
k) electing members of the Coordinating Committee.

Sub-Section 2: Remit of the "Gacaca Jurisdiction" of the Sector, District and Province

Article 35 :

The General Assembly of the "Gacaca Jurisdiction" of the Sector, District and Province exercises the following remit:

a) electing Seat members of the jurisdiction and, for the "Gacaca Jurisdictions" of the Sectors and District, appoint among themselves, persons to delegate to immediately higher "Gacaca Jurisdiction";

b) electing deputies of held back members of the "Gacaca Jurisdiction" Seat;
c) Constituting, if necessary, additional Seats within the "Gacaca Jurisdiction";
d) Providing for evidence means against or in favour in the trials of genocide or crimes against humanity;
e) For non members of the Seat, attending and speaking whenever they request it, but without voting powers, in hearings of the Seat of the "Gacaca Jurisdiction";
f) Examining and adopting the activity report established by the Coordinating Committee.

Article 36:

The "Gacaca Jurisdiction" Seat of the Sector, District or Province exercises the following remit:

a) Making investigations, if necessary, on given testimonies;
b) Receiving the procedure of confession and guilt speech for defence.
c) Giving a ruling on objection to members of the "Gacaca Jurisdiction" Seat
d) Knowing, after being ensured of the qualification correctness, offences of its competence in conformity with this organic law and, if need be, forward to competent 'Gacaca Jurisdictions", the files relating to defendants coming into their respective competence. However, the first category defendants' files are forwarded to the 'Gacaca Jurisdiction of the District" which in turn will forward them to the Public Prosecution;
e) Having recognizance of judgements appeal pronounced by the immediately lower "Gacaca Jurisdiction" of its jurisdiction;
f) Electing Coordination Committee members.
g) Receiving and examining activity reports of immediately lower "Gacaca Jurisdiction" of its jurisdiction.

CHAPTER 2 : COMPETENCE OF GACACA JURISDICTIONS.

Article 37:

The "Gacaca Jurisdictions" exercise extended competences similar to those ordinary criminal jurisdictions have, to try defendants on basis of testimonies against or in favour.

They may in particular:

- Summon to appear before court any person they consider that his contribution should be necessary;
- Order or carry out themselves search of or to the defendant's. This search shall however respect the defendant's private property and basic human rights;
- Take protective measures;
- Pronounce sentences and fix damages to grant;
- Order the withdrawal of the distraint of acquitted persons' property;
- Order, if necessary, appearance before prosecution for information complement on files it has investigated on.
- Issue justice warrants to alleged authors of offences and order detention in prevention, whenever necessary.

The "Gacaca Jurisdiction" prosecutes and sentences to the same penalties as persons who refuse to testify or make false denunciations, any person who exercises or attempts to exercise pressures on witnesses or members of the seat of the "Gacaca Jurisdiction".

Article 38:

Any demarcation competence is settled by the "Gacaca Jurisdiction" Department of the Supreme Court on its initiative or on the request of the concerned "Gacaca Jurisdiction" Seat or of any other interested person.

The President of the Supreme Court takes necessary measures for easy implementation of this Article.

SECTION ONE : REMIT COMPETENCE

Sub-section one : "Gacaca Jurisdiction" of the Cell

Article 39 :

The "Gacaca Jurisdiction" of the Cell deals at the first level, with the 4th category offences . It deals also with the appeal formed against the sentences it has pronounced in the absence of accused authors.

In addition, it proceeds to defendants categorisation alleged authors of offences defined in Article One and Article 51 of this organic law.

Article 44 :

When prosecutions are taken against a person suspected of having committed offences in different places, the judgement of the case is suspended. The jurisdiction referred to informs immediately about it the Department of "Gacaca Jurisdictions" of the Supreme Court. The latter communicates the information to various "Gacaca jurisdictions" of the concerned cells which it invites to give evidence elements for or against.

At the request of "Gacaca Jurisdiction" of the concerned Cell, the defendant is taken to the spots.

The Department of Gacaca Jurisdictions of the Supreme Court forwards the files constituted in this way to the jurisdiction referred to. The latter proceeds to a new categorisation of the dependant following collected additional elements and, if need be, forwards the file to the jurisdiction it considers competent.

Article 45:

When it is shown from the file to communicate to "Gacaca Jurisdiction" in conformity with Article 48 of this organic law that the defendant has committed offences in different places, the Prosecution forwards it to the "Gacaca Jurisdiction" of the Cell of its choice, giving priority to the one where the most serious crimes were committed.

Article 46:

The "Gacaca Jurisdictions" of the Cells the services of which are called upon in conformity with Article 44 of this organic law are informed by the "Gacaca Jurisdiction" Department of hearing dates. They can delegate some of their members who speak whenever they request it.

CHAPTER 3 : RELATIONSHIP BETWEEN THE "GACACA JURISDICTIONS" AND THE PUBLIC PROSECUTION.

Article 47 :

The prosecutions and military courts will proceed to their mission of receiving denunciations and complaints, searching for offences and performing investigation duties dealing with offences provided for by this organic law.

However, before beginning an investigation, they will have to make sure that the "Gacaca Jurisdiction" of the Cells have not yet tried or have not begun to study these cases.

The files investigated by the prosecutions and military courts in conformity with the paragraph one of this Article, are forwarded to "Gacaca Jurisdictions" of the Cells.

Article 48:

The files investigated by the prosecutions and military courts but which are not yet forwarded to competent jurisdictions on the date of this organic law enforcement, shall immediately be forwarded to "Gacaca Jurisdictions" of the Cells for categorisation.

The prosecutions and military courts communicate to "Gacaca Jurisdictions" of the Cells or to the jurisdiction called to recognisance of the case, evidences collected against persons prosecuted in the files it has investigated.

When the "Gacaca Jurisdictions" of the Cell which has made categorisation has already forwarded the file to the competent jurisdiction to have recognisance of it, the prosecution or the concerned military court keep for it a copy of collected evidences.

Article 49:

The General Prosecutor to the Supreme Court supervises the Prosecutions, the General Prosecutions and the Military Courts for the prosecution of offences coming into their competence provided for by this organic law.

CHAPTER 4: INSPECTION AND COORDINATION OF ACTIVITIES OF "GACACA JURISDICTIONS"

Article 50:

The "Gacaca Jurisdictions" Department of the Supreme Court is in charge of control, inspection and Coordination of "Gacaca Jurisdictions" activities at the national level.

TITLE III : OFFENCES PROSECUTION AND TRIAL

CHAPTER ONE : PROSECUTED PERSONS

Article 51:

Following acts of participation in offences in question in Article one of this organic law and committed between 1 October 1990 and 31 December 1994, the prosecuted person can be classified in one of the following categories:

Category 1 :

a) The person whose criminal acts or criminal participation place among planners, organisers, incitators, supervisors of the crime of genocide or crime against humanity;
b) The person who, acting in a position of authority at the national, provincial or district level, within political parties, army, religious denominations or militia, has committed these offences or encouraged others to commit them;
c) The well-known murderer who distinguished himself in the location where he lived or wherever he passed, because of zeal which has characterised him in killings or excessive wickedness with which they were carried out;
d) The person who has committed rape or acts of torture against person's sexual parts.

As investigations are going along, a list of persons prosecuted or convicted of having committed acts putting them in the first category is established and updated by the General Prosecutor to the Supreme Court. This list will be published in the Official Gazette of the Republic of Rwanda twice a year, in June and December.

Category 2:

a) The person whose criminal acts or criminal participation place among authors, co-authors or accomplices of deliberate homicides or serious attacks against persons which caused death.
b) The person who, with intention of giving death, has caused injuries or committed other serious violences, but from which the victims have not died.

Category 3:

The person who has committed criminal acts or has become accomplice of serious attacks, without the intention of causing death to victims.

Category 4 :

The person having committed offences against assets.

However, the author of the mentioned offences who, on the date of this organic law enforcement, has agreed either with the victim, or before the public authority or in arbitration, for an amicable settlement, cannot be prosecuted for the same facts.

Article 52:

The persons in the position of authority at the level of Sector or Cell at the time of genocide are classified in the category corresponding to offences they have committed, but their quality of leaders expose them to the most severe penalty for the defendants who are in the same category.

Article 53 :

For the implementation of this organic law, the accomplice is the person who will have, by any means, assisted to commit offences to persons referred to in Article 51 of this organic law.

The fact that any of the acts aimed at by this organic law has been committed by a subordinate does not free his superior from his criminal responsibility if he knew or could know that his subordinate was getting ready to commit this act or had done it and that the superior has not taken necessary

and reasonable measures to punish the authors or prevent that the mentioned act be not committed when he had means.

CHAPTER 2 : CONFESSION PROCEDURE AND GUILT PLEA

SECTION ONE : ACCEPTANCE, CONDITIONS AND DURATION

Article 54:

Any person who has committed offences aimed at in Article one of this organic law has right to have recourse to confession procedure and guilt plea.

To be received as confession in the context of this chapter, the defendant's declarations shall contain:

a) The detailed description on everything relating to the confessed offence, in particular the location where it has been committed, the date, the witnesses, the names of the victims and the damaged assets;
b) The enquiries relating to co-authors and accomplices as well as any other enquiry useful to the exercise of public action;
c) The apologies offered for the offences that he petitioner has committed.

Article 55 :

Shall enjoy commutation of penalties in the way provided for by this organic law persons of categories 2, 3 and 4:

- Who offer their confessions and guilt plea before the "Gacaca Jurisdiction" of the Cell draws up a list of authors of offences of genocide and massacres;
- Who already appear on this list, recourse to the procedure of confession and guilt plea after prosecution in a trial.

The persons who have not wanted to have recourse to confession procedure and guilt plea, do no enjoy this commutation.

Article 56:

The persons whose criminal acts or criminal participation place in the first category do not enjoy penalty commutation.

However, the persons who will have offered confessions and guilt plea without their names being previously published on the list of persons of the first category referred to in Article 51 of this organic law will be classified in the second category.

Article 57 :

If it is found out subsequently offences that a person has not confessed, he will be prosecuted, any time, for these offences and shall be classified in the category in which the committed offences place him/her in which case, he risks the maximum penalty provided for for this category.

Article 58:

The procedure of confession and speech for defence for guilt will end after two years from the date of publication in the Official Gazette of the Republic of Rwanda of this organic law.

This duration can be renewable, if necessary, by a Decree of the Minister having Justice in his remit.

SECTION 2 : PROCEDURE

Article 59 :

The procedure of confession and guilt plea is proposed before the "Gacaca Jurisdiction" Seat or before the Officer of the Public Prosecution Department in charge of the investigation in accordance with Article 47 of this organic law.

The Seat of "Gacaca Jurisdiction" or the public prosecutor in charge of the investigation are bound to inform the defendant of his right and his interest to have recourse to the procedure of confession and guilt plea.

Subsection one: Procedure of confession and guilt plea before the Public Prosecution

Article 60:

For files which are not forwarded yet before the "Gacaca Jurisdiction", the Public Prosecution receives the confessions and the offer of guilty plea. The

confessions and the offer of guilty plea shall be received and transcribed by a public prosecutor. If the confessions are forwarded in writing, the public prosecutor Department requests its confirmation to the petitioner.

The petitioner signs or marks with a fingerprint the minute containing the confessions or the confirmation and, if there is any, the document containing the confessions forwarded in writing by the petitioner before the public prosecutor who has received them.
The public prosecutor signs them with him/her.

Article 61:

If the Public Prosecution Department realises that the confessions are correct and in conformity with the declaration made by the petitioner, it closes the file by establishing a note of investigation end containing the prevention's established by the confession and forwards the file to the "Gacaca Jurisdiction" of the competent Cell.

In case of refusing the confession procedure failing to meet conditions required by the law or when the request has revealed that the defendant has not told the truth, the public prosecutor states it in an explanatory note, closes the file that he/she forwards to the "Gacaca Jurisdiction" of the competent Cell.

Sub-section 2 : Confession Procedure and guilt plea before the "Gacaca Jurisdiction"

Article 62:

The persons depending on the 2nd , the 3rd and 4th category can have recourse to the procedure of confession and guilt plea before the Seat of the "Gacaca Jurisdiction" before which they appear.

They can do it orally or by means of written declarations signed or marked with their fingerprint.

Article 63:

The confession and the guilt plea are subject to a minute established by the secretary of the "Gacaca Jurisdiction" and signed or marked with a fingerprint of the defendant and by members of the jurisdiction Seat.

The Seat of the "Gacaca Jurisdiction" checks if the confessions and the speech for defence for guilt fulfil the conditions set by this organic law and if the petitioner's declarations are correct.

CHAPTER 3: HEARING AND JUDGMENT

Article 64:

In case of procedure of confession and guilt plea in the files established by the Public Prosecution Department, the hearing is organised as follows:

1. The chairperson of the session calls the case and invites defendants to the bar;
2. Each defendant establishes his/her identity;
3. The chairperson of the session requests the plaintiff to establish his identity
4. The jurisdiction secretary states detention on suspicion and reads the minute of confession and of guilt plea;
5. The chairperson of the session invites each defendant to speak;
6. The members of the General Assembly of the "Gacaca Jurisdiction" and any person who want to do so, take the floor to testify in favour or against the defendant who, in his/her turn, answers to questions which are possibly asked to him.
   Any person intervening as witness must take the oath of telling the truth in raising his right hand to the sky and saying : "I take God as witness to tell the truth";
7. the plaintiff takes his/her conclusions;
8. the defendant and, if need be, the person responsible under civil law, present successively their defence on the civil action or any other declaration relating to their responsibility;
9. the "Gacaca Jurisdiction" Seat establishes the identity of persons having suffered material damages and the inventory of damages caused to their assets as well as the list of victims and the inventory of suffered body damages; the defendant is invited to react on it;
10. the jurisdiction secretary reads the statement of offence; the Seat checks the conformity of its content with the intervening parties' declarations, and, if need be, the statement of offence is corrected;
11. the "Gacaca Jurisdiction" Seat successively requests the plaintiff, the defendant or the person responsible under civil law, if they have anything to add to the debates;

12. the parties to the trial and the members of the "Gacaca Jurisdiction" Seat put their signatures or fingerprints on the statement of offence containing the defendant's guilt plea;
13. the debates are declared closed, unless the Seat orders any measure of complementary investigation it considers necessary to show the truth.

Article 65 :

In the files which do not contain the confession and the guilt plea or when the Public Prosecution Department has refused the procedure, the hearing is organised as follows:

1. the session's chairperson calls the case and invites the defendants to the bar.
2. each defendant establishes his identity;
3. The session's chairperson requests the plaintiff to establish their identities;
4. The jurisdiction's secretary states detention on suspicion;
5. The session's chairperson reads, to the defendants' attention Articles 54, 55 and 57 of this organic law so that they understand the advantages they can draw from the procedure of confession and guilt plea, and ask them if they want to have recourse to it.
   Those who wish to have recourse to the procedure of confession and guilty plea are immediately invited to speak. The hearing proceeds in the order described in the preceding Article.

   For those who do not want to have recourse to the procedure of confession or guilt plea, the hearing proceeds in the following way:

6. the session's chairperson summarises the case. He/she reads the collected cases establishing the defendant's guilt;
7. the session's chairperson invites the defendant to present his/her defence;
8. the floor is given to persons who wish to testify for or against and, if need be, probably summoned Public Prosecution Department is heard.
   Any person intervening as a witness must swear an oath of telling the truth in raising the right hand to the sky and saying: "I take God as witness to tell the truth";
9. the dependant presents his means of defence;

10. the members of the General Assembly of the "Gacaca Jurisdiction" and any other person who so wish, speak, and the defendant answers to questions put to him/her;
11. the plaintiff takes their conclusions;
12. the defendant and, otherwise, the person responsible under civil law, successively present their defence on the civil action or any other statement relating to their responsibility;
13. the Seat of the "Gacaca Jurisdiction" establishes the identity of persons having suffered material damages and the inventory of damages caused to their property, as well as the list of victims and the suffered body damages; the defendant is invited to react;
14. the jurisdiction secretary reads the hearing's statement of offence; the Seat checks the conformity of its content with the intervening parties' declarations and, if need be, the statement of offence is corrected.
15. the Seat of the "Gacaca Jurisdiction" successively asks the plaintiff, the person responsible under civil law and the defendant, if they have anything to add to the debates;
16. the present parties and members of the "Gacaca Jurisdiction" Seat put their signatures or their fingerprints on the hearing's statement of offence;
17. the debates are declared closed, unless the Seat orders any further instruction measure which it deems necessary to show the truth.

Article 66:

In the files of defendants with neither known address nor residence in Rwanda referred to in Article 93 of this organic law, the hearing shall proceed as follows:

1. the chairperson of the session calls the case and invites defendants to the bar. When defendants are present, the hearing proceeds in conformity with Article 66 of this organic law. In case of non-appearance, the hearing continues in the following order:

2. the chairperson of the session requests the plaintiff to give his/her identity;

3. the jurisdiction's secretary states detention on suspicion;

4. the chairperson of the session summarises the case. He states collected evidence establishing the defendant's guilt;

5. the floor is given to persons who have made statements and, where necessary, the Officer of the Public Prosecution who may have been summoned, is heard.

6. the members of the General Assembly for « Gacaca jurisdiction and any person who want to do so, take the floor;

7. the plaintiff takes their conclusions;

8. the person responsible under civil law, if there is any, presents his/her defence on the civil action or any other declaration relating to his/her responsibility;

9. the Seat for « Gacaca Jurisdiction » establishes the identity of persons having suffered material losses and the inventory of damages caused to their property as well as the list of victims and the inventory of suffered body damages;

10. the jurisdiction's secretary reads the hearing 's statement of offence; the Seat checks the conformity of its content with the intervening parties' declarations and, if need be, the statement of offence is corrected.

11. the Seat for « Gacaca Jurisdiction » successively asks the plaintiffs and the person responsible under civil law, whether they have anything to add to the debates;

12. the parties to the trial and members of the Seat for « Gacaca Jurisdictions » put their signatures or fingerprints on the hearing's statement of offence;

13. the debates are declared closed, unless the Seat orders any further instruction measure which it deems necessary to show the truth.

As regards pronouncement, notification and objection to the judgement passed within such circumstances, provisions applying to judgements by default are implemented.

Article 67:

Any judgement passed by "GACACA Jurisdiction" mentions the following:

1. The Jurisdiction that has passed it;

2. The names of the Seat members who participated in deliberation;

3. The identity of parties to the trial;

4. Detention on suspicion against the defendant;

5. The summary of resources presented by parties to the case;

6. The motives for judgement;

7. The offence of which the defendant is found guilty;

8. The penalties pronounced;

9. The identity of persons who suffered material losses and the inventory of damages caused to their property, the list of victims and the inventory of suffered body damages as well as the allocated damages;

10. The presence or absence of the parties;

11. If the hearings and the pronouncement of judgement were made public;

12. Venue and date for judgement;

13. The provisions of this organic law which have been applied;

14. The mention of the legal period for appeal.

CHAPTER 4: SANCTIONS

Article 68:

Defendants coming within the first category who did not want to have recourse to the confession and guilt plea procedure within conditions set in Article 56 of this organic law or whose confession and guilt plea have been rejected, incur a death penalty or life imprisonment.

Defendants who have made recourse to the confession and guilt plea procedure within conditions provided for in Article 56 of this organic law are sentenced to imprisonment ranging from 25 years to life imprisonment.

Article 69:

Defendants coming within the second category who:

a) did not want to have recourse to the confession and guilt plea procedure or whose confession and guilt plea have been rejected incur a prison sentence ranging from 25 years to life imprisonment;

b) already appearing on the list of perpetrators of offences of genocide and massacres drawn up by the Cell's « GACACA Jurisdiction », have recourse to the confession and guilt plea procedure after being indicted in the trial, incur a reduced prison sentence ranging from 12 to 15 years to the maximum, but out of the pronounced sentence, they serve half of the sentence in custody and the rest is commuted into community services;

c) present their confession and guilt plea before the Cell's « Gacaca Jurisdiction » makes a list of perpetrators of offences of genocide and massacres, incur a reduced prison sentence ranging from 7 to 12 years to the maximum, but out of the pronounced sentence, they only serve half the sentence in custody and the rest is commuted into community services.

Article 70:

Defendants coming within the third category who:

a) did not want to have recourse to the confession and guilt plea procedure or whose confession and guilt plea have been rejected incur a prison sentence ranging from 5 to 7 years but they only serve only half the pronounced sentence in custody and the other half is commuted into community services;

b) already appearing on the list of perpetrators of offences of genocide and massacres drawn up made by the Cell's "Gacaca Jurisdiction", have recourse to the confession and guilt plea procedure after being indicted in the trial, incur a reduced prison sentence ranging from 3 to 5 years to the maximum, but out of the pronounced sentence, they serve only half in custody and the rest is commuted into community services;

c) present their confession and guilt plea before the Cell's "Gacaca Jurisdiction" makes the list of perpetrators of offences of genocide and massacres, incur a reduced prison sentence ranging from one year to 3 years to the maximum, but out of the pronounced sentence, they only serve only half in custody and the rest is commuted into community services.

Article 71:

Defendants coming within the fourth category are sentenced to the only civil reparation of damages caused to other people's property. The Seat for "GACACA Jurisdiction" works out modalities for implementing such an obligation.
This provision does not apply where an amicable settlement is reached either between the perpetrator and the victim or before a public authority or in arbitration before this organic law comes into force.

Article 72:

Persons found guilty of the crime of genocide or crimes against humanity in pursuance of this organic law are liable to the loss of civil rights in the following manner:

a) perpetual and total loss of civil rights, in conformity with the Penal Code, for persons in the first category;
b) persons coming under the second category are reliable to permanent deprivation of the right:

- to vote;
- to eligibility;
- to be expert, witness in the proceedings and to testify only by giving simple information;
- to possess and carry firearms;
- to serve in the armed forces.

However, they may be rehabilitated in conformity with prescriptions of the legislation in force.

Article 73:

When there is ideal or material combination of offences each of which ranks the defendant in the same category, the maximum sentence provided for the said category will be pronounced.

Article 74:

Children convicted of the crime of genocide and crimes against humanity who, at the time of events, were more than fourteen years old and less than eighteen years old are sentenced:

a) to a reduced prison sentence of ten to twenty years when they come under the first category;

b) when they come under the 2nd or 3rd category, the reduced prison sentence is equal to half the sentence provided for by this organic law for mature defendants of the same category.

Persons (under 18) who, at the time of the charges against them, were less than 14 years old, cannot be prosecuted but can be placed in rehabilitation centres.

Article 75:

In case of a prison sentence with commutation of half the sentence into community services, the convicted prisoner may choose either to carry out the said community services or to serve the full sentence in prison.

The convicted prisoner who chooses to serve the full pronounced sentence in prison shall notify the community services managing board within three months before the date of his release. However, he is free to request later from the same board, to carry out of community services for the remaining period.

In case of default by the convicted person released in order to carry out community services, the concerned person is rearrested so as to serve the full pronounced prison sentence.

A presidential order fixes modalities for carrying out of community services.

CHAPTER VI: DEFENDANT'S SUMMONS AND NOTIFICATION OF HEARING

Article 76:

Gacaca jurisdiction summons are issued at its secretary's behest and secretary' notified to the defendant through the basic organs or those from the administration of the detention place.
The summoned person who refuses to appear is subject to a warrant of arrest.

Article 77:

At the closing of the hearing, parties to the trial and persons present in the hearing are informed about the day and the hour for the sentence pronouncement.

Article 78:

When judgement is pronounced, parties present in the trial affix their signatures or their fingerprints in the register for attendance to the pronouncement.

Judgement passed by default or pronounced in the defendant's absence is validly notified by a notification act which the jurisdiction's secretary forwards to the defaulting party through basic organs or those from the administration of the centre where he/she is detained.

The sentence passed against a person who has neither known address nor residence in Rwanda is notified according to the way provided for the summons referred to in Article 94 of this organic law.

CHAPTER VII: WAYS OF APPEAL

Article 79:

The ways of appeal recognized by this organic law are the following : objection, appeal and appeal to the court of cassation which can only be made within hypotheses provided for in Articles 89 and 90 of this organic law.

SECTION ONE: OBJECTION

Article 80:

The court orders concerned by this organic law which have been passed by default, may be objected to.

The objection is brought before the jurisdiction which has passed judgement by default. The plaintiff has his action recorded to the secretary of the "GACACA Jurisdiction".

The objection is only admissible when the defaulting party pleads a serious and legitimate reason which has impeded them from appearing in the trial concerned by the decision contested by that way of appeal. The "GACACA Jurisdiction" shall assess beyond appeal the admissibility of reasons justifying the objection.

Article 81:

The objection period is 15 calendar days starting from the day of the notification of judgement passed by default.

Article 82:

Objection upon objection is not valid.

SECTION 2 : APPEAL

Article 83 :

Appeal for judgements passed at face value or upon objection by the Sector's "GACACA Juridictions" is brought before the Districts " Juridictions" which gives a ruling in the last ressort.

Appeal for judgements passed at face value or upon objection by the District's "GACACA Jurisdiction" is brought before the Province's "GACACA Jurisdiction" which gives a ruling in the last resort.

Article 84:

Only parties to the trial are entitled to lodge an appeal against a judgement passed by a "GACACA Jurisdiction".

Article 85:

The time for lodging an appeal is 15 calendar days starting from the judgement's contradictory pronouncement or starting from the day following the notification of judgement passed by default which has not been objected to or pronounced in the absence of a party. The case is judged within the same forms as at face value.

Article 86:

Appeal for decisions classifying defendants within different categories may be filed before the jurisdiction to which the case has been referred.

Judgements passed upon confession and guilt plea and confession cannot be subject to appeal.

Article 87:

If the "GACACA Jurisdiction" to which appeal is referred feels that the appellant has been classified in an inaccurate category, it classifies him in the category corresponding to offences of which he is accused and forwards the file to the competent jurisdiction which will try the defendant at face value.
The penalty already administered and executed is deducted from the incurred penalty.

SECTION 3: APPEAL TO THE COURT OF CASSATION

Article 88:

Except in the hypothesis provided for by Article 89 of this organic law, verdicts given by "GACACA Jurisdictions" cannot be subject to appeal to the court of cassation.

Rulings passed by the courts of appeal against persons in the first category may be subject to appeal to the court of cassation. The period for

appeal to the court of cassation is 15 calendar days starting from the pronouncement or, in case of a ruling passed by default, starting from the day of the notification of the ruling. Appeal to the court of cassation is filed and judged following the rules of common law.

Article 89:

Without prejudice to the provisions of the law on the criminal procedure code, the Prosecutor General to the Supreme Court may, on his initiative or on request, within a six month's period following the pronouncement, inform the Court of Cassation and this, within the sole interest of a law that may have been infringed.

CHAPTER 7: DAMAGES

Article 90:

Ordinary jurisdictions and "GACACA Jurisdictions" forward to the Compensation Fund for Victims of the Genocide and Crimes against humanity copies of rulings and judgements they have passed, which shall indicate the following:

- the identity of persons who have suffered material losses and the inventory of damages to their property;
- the list of victims and the inventory of suffered body damages;
- as well as related damages fixed in conformity with the scale provided for by law.

The Fund, based on the damages fixed by jurisdictions, fixes the modalities for granting compensation.

Article 91:

Criminal liability for persons of the first category takes both personal liability and liability binding on all parties for all losses caused in the country, due to the acts committed, or criminal participation whatever the place where offences were committed.

Persons of the second, third or fourth category incur personal liability for the criminal acts they have committed.

Any civil action lodged against the State before the ordinary jurisdictions or before "Gacaca jurisdictions" shall be declared inadmissible on account of its having acknowledged its role in the genocide and that in compensation it pays each year a percentage of its annual budget to the Compensation Fund. This percentage is set by the financial law.

The provisions of the previous paragraph only apply to legal actions lodged after the enforcement of this organic law, to cases currently pending before jurisdictions and to court orders not yet executed for the heard case. As for the court orders which have acquired the authority of the heard case, their enforcement will, as regards damages to be paid by the State, comply with the scale fixed by the law governing the Compensation Fund.

TITLE IV: DIVERSE, TRANSITIONAL AND FINAL PROVISIONS

Article 92:

The public action and penalties related to offences of the crime of genocide or crimes against humanity are imprescriptible.

Article 93:

Jurisdictions called on to try, by virtue of this organic law, offences of genocide and massacres, may try public actions filed against persons who have neither had address nor residence in Rwanda or who are outside Rwanda, when there are conclusive evidences or serious guilt clues, whether they may have previously been or not been cross-examined.

Article 94:

When the defendant has neither known address nor residence in Rwanda, the summons' period is one (1) month.

The secretary of GACACA Jurisdiction's or the clerk of the competent jurisdiction, in person or through other organs, has a copy of the writ displayed on the wall of the facility housing the jurisdiction which must try the case and on the walls of District and provincial offices within their province.

The copy of the writ may also be displayed only in places intended for that purpose.

Preparation of a case to the hearing for persons so summoned is made, before "GACACA Jurisdictions", in the order established in Article 66 of this organic law and, before the jurisdictions of common law, according to the order followed in the cases to be judged by default.

Article 95:

Testimony made on offences of the crime of genocide and crimes against humanity committed between October 1, 1990 and December 31, 1994 can never serve as a basis to take proceedings against its author charging him with the offence of failure to render assistance.

Article 96:

Specialised Chambers for the Courts of First Instance and military courts and the public prosecution governing them as per organic law n°08/96 of August 30, 1996 organizing proceedings for offences of the crime of genocide and crimes against humanity committed from October 1, 1990 are repealed.

However, all cases forwarded to these specialised chambers by the public prosecution shall remain handled by the same courts which these chambers belonged to.

Organic Law n°08/96 of August 30,1996 organising proceedings for offences of the crime of Genocide or crimes against humanity committed from October 1, 1990 remains applicable for the aforesaid cases.

However, should anyone be involved in this case, is accomplice of defendants tried by Gacaca jurisdictions, the case is automatically dealt with by the relevant Gacaca jurisdiction.

Article 97:

Pending publication of a law governing in general the proceedings for offences of the crime of genocide or crimes against humanity, whoever commits, after December 31, 1994, one of the acts constituting such crimes, shall be punished with penalties provided for by the criminal code and cannot benefit from reduction of penalties as provided for by this organic law.

Article 98:

The President of the Supreme Court shall formulate internal regulations for "GACACA Jurisdictions".

Article 99:

All previous provisions contrary to this law are hereby abrogated.

Article 100:

This organic law comes into force on the day of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on 26/01/2001

The President of the Republic
Paul KAGAME

The Prime Minister
Bernard MAKUZA

The Minister of Justice and
Institutional Relations
Jean de Dieu MUCYO

Seen and sealed with the Seal of the Republic:

The Minister of Justice and
Institutional Relations
Jean de Dieu MUCYO