

Prosecuting Genocide in Rwanda

The Gacaca system and the International Criminal Tribunal for Rwanda



The Norwegian Helsinki Committee

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Preface

The Norwegian Helsinki Committee for Human Rights was founded in 1977. It is a member of the International Helsinki Federation for Human Rights (IHF) whose aim is to monitor state compliance with the standards of the Helsinki Act, subsequent Organization for Security and Cooperation in Europe (OSCE, previously CSCE) human rights related documents and international human rights standards. The IHF has a consultative status with the UN.

Although Rwanda is outside of the geographical scope of the Norwegian Helsinki Committee, the organisation decided to send a fact-finding mission to study the efforts of the government of Rwanda to promote reconciliation after the 1994 genocide. A second aim of the mission was to evaluate the functioning of the International Criminal Tribunal for Rwanda (ICTR), which was established by the UN Security Council in 1994.

The Norwegian Helsinki Committee has since early 1990s promoted accountability for crimes against humanity and war crimes in the wars of the former

Yugoslavia and in other conflict areas within the OSCE region. Since 1997 it has been involved in international NGO work to campaign for the establishment of a permanent international criminal court. As a supplement to these efforts, the Committee decided to study national and international efforts to facilitate prosecution of the 1994 genocide and promote reconciliation in Rwanda.

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I Introduction

Legal settlements after massive abuses of human rights are regarded as means to achieve peace and reconciliation. Even if international legal settlements are a relatively new phenomenon, national settlements have existed throughout history. Justice has not always been the main goal. Traditionally, the states have chosen different ways to handle a traumatic past. Strategies include legal settlements, truth commissions, compensation, amnesty, or simply not doing anything at all.

With approximately one million people killed during three months in April-July 1994, the genocide in Rwanda was one of the most extensive of the 20th century. The international community did too little to prevent the genocide, but wanted through establishing the International Criminal Tribunal for Rwanda (the Arusha Tribunal), to prosecute the main architects of the genocide and thereby contribute to the revival of peace and reconciliation. The Tribunal may also contribute to the development of international legal practice for the prosecution of individuals for crimes against international humanitarian law.

At the same time, the Rwandan authorities are conducting a much more extensive legal settlement. More than one hundred thousand suspects are held in overloaded prisons in Rwanda waiting for trials. In order to face this great challenge, the authorities have introduced “popular courts”, called “Gacaca”. This process is also a part of the country’s strategy to achieve national unity and reconciliation.

This report focuses on the two parallel legal settlements of Rwanda and their challenges. The report is based on the Norwegian Helsinki Committee’s study trip to Rwanda and Tanzania in February 2002. The trip included interviews with representatives of Rwandan authorities, non-governmental organisations (NGOs), religious leaders, academics, students, journalists, people accused of genocide, representatives of international organizations, and ordinary people. The delegation from the Helsinki Committee followed, in short sequences, several ongoing cases at the Arusha Tribunal and interviewed representatives from the three units of the Tribunal: the court chambers, the prosecution and the administration, as well as independent observers. In addition, the report is based upon a variety of relevant international reports and studies.

II Historical Background

Rwanda is among the most densely populated and poorest countries in Africa. Approximately eight million people inhabit an area of 26,338 square kilometres.

Rwanda remained relatively inconspicuous until the country in 1994 suffered one of the most atrocious genocides of the 20th century. In the course of three months from April to July approximately one million people were killed and tens of thousands of women were raped.

To discover the reasons for what happened in 1994 and to understand the background of today's settlement in Rwanda, both on a national and on an international level, we need to take a closer look at the country and its earlier and recent history.

Who are the Rwandans?

"Banyarwanda", which means "the people of Rwanda", traditionally consists of three "population groups": Bahutu, Batutsi, and Batwa, simplified in the West as Hutu, Tutsi and Twa.¹ Traditionally all of them belong to 18 different clans, unrelated to whether they are Hutu, Tutsi or Twa.² Banyarwandans have lived together for hundreds of years, but despite a common language and shared religious traditions, there exist tiny cultural differences that reflect historical rather than ethnic or genetic divides.

¹ According to several sources, the distribution is as follows: Hutu 84%, Tutsi 12%, Twa 3%, but these figures vary. Today, all citizens are registered as Rwandans, and there are no official statistics about ethnicity.

² The 18 clans are: Abasinga; Abasindi; Abazigaba; Abagesera; Ababanda; Abanyiginya; Abega; Abacyaba; Abungura; Abashambo; Abatsobe; Abakono; Abaha; Abashingo; Abanyakarama; Abasita; Abongera; and Abenengwe

In Rwanda it is usually said that the Tutsis were nomadic cattle herders from the Nile delta, who during the 15th century moved southwest with their cattle. The explanations differ. A common version has it that Tutsi clans settled between Lake Victoria to the east and the Sea of Kivu to the west. They were militarily, economically and culturally strong. The Hutus wandered southwards from the west of the African continent at the beginning of the second millennium AD. They established an agricultural base.

The Twas are the aboriginals of Rwanda and traditionally have lived from hunting and gathering. In more recent times they represent about one per cent of the population. For some time, there was some mobility between the groups. Every Rwandan would be called a Tutsi, provided only that he owned more than a certain number of cattle. A poor Tutsi could fall back into the position of a small peasant and be called Hutu. Due to mixed marriages it is sometimes difficult to see the difference between a Hutu and a Tutsi. In Rwanda, people born from mixed marriages were often called "Hutsi", and several cases are known where Hutus were killed during the genocide because they looked like Tutsis, or where Tutsis survived because they looked like Hutus.³

The early history of Rwanda is hard to document because there are no written sources. All history has been passed on through a rich oral tradition at the royal court. From the year 1506 Rwanda was a kingdom and the king, or *Mwami*, was a Tutsi.

³ Interview with "Peace", Kigali, 2. February 2002.

At the Berlin Conference in 1885, Rwanda-Urundi was given to Germany as a part of German East Africa. For tactical reasons, the Germans chose to govern through the existing administrative structures. In 1916, during World War I, Belgium invaded Rwanda-Urundi and formally took over the administration of the country through a mandate from the League of Nations in 1923.

The Colonial Period and the Divide

The social divide between the Hutu majority and the Tutsi minority was strengthened during the period of Belgian colonialism. The colonial power brought in the concept of two races and ethnic population groups. Every person was registered according to his ethnicity. The Belgians governed the country through the Tutsis who represented the social elite. But following claims for independence from the Tutsis at the end of the 50s, the Belgians turned and supported Hutu rebels against the Tutsis.

The Hutu rebellion of 1959 led to thousands of Tutsis being killed and forced hundreds of thousands to flee, the greater part to the neighbouring country Uganda. Some call this “the Hutu Revolution”, while others think this was when the genocide against the Tutsis started. In certain periods between 1959 and 1994 Tutsis were systematically discriminated against, and several massacres and expulsions of Tutsis took place.⁴

In the 1960 elections the Hutu party PARMEHUTU (Parti du Mouvement de l'Émancipation) won an unexpected victory, and shortly after which the King was

removed from power. Rwanda was proclaimed a Republic on 28 January 1961.

Rwanda won its independence in 1962, and Grégoire Kayibanda (one of the founders of PARMEHUTU) headed its first government. He lost power in 1973 when general Juvénal Habyarimana proclaimed himself president following a military coup.

Habyarimana governed the country for 21 years to his death in 1994. He concentrated on building a tough dictatorship, based on a one-party system. Habyarimana himself led the only permitted party, i.e. The National Revolutionary Movement for Development (MRND). Party membership was obligatory for all citizens of the country from birth. International pressure led to Habyarimana's opening up for a multi-party system in 1990, which resulted in the establishment of several opposition parties.

The Civil War

In the same year, the Rwandan Patriotic Front, RPF,⁵ launched attacks on the regime and civil war broke out. The organization had with increasing strength claimed the right of return to Rwanda for Tutsi refugees. The Ugandan rebel leader Yoweri Museveni had trained many young Rwandan refugees, who helped him take power in Kampala in 1986. In this way, the RPF developed an army ready for battle, which was probably stronger than the army of the regime in Kigali. The quick advance of the RPF in 1990 was halted due to the French intervention and support for Habyarimana's regime.⁶

⁴ The largest massacres and expulsions took place in 1963, 1967 and 1973. Fergal Keane's *Season of Blood* and Alain Destexhe's *Rwanda and Genocide in the Twentieth Century*.

⁵ RPF had its military branch, called the *Rwandan Patriotic Army* (RPA). For the sake of simplicity, we do not separate the RPA from the RPF.

⁶ Des Forges, Alise (1999): *Leave none to tell the story*, Washington: Human Rights Watch.

Following several failed attempts to secure a cease-fire, an attempt to end the civil war was made through the Arusha agreement of 4 August 1993 between the government of Rwanda and RPF. According to the agreement, an interim government consisting of members of the President's party, the opposition parties and RPF should be established within 37 days and stay in power until free elections were to be held at the end of 1995. Parts of RPF should be incorporated into the regular army of Rwanda.⁷ The Tutsi refugees should be allowed to return home. The agreement foresaw the presence of a neutral international force of 2 500 men, who were to observe the implementation of the agreement. However, the agreement was never implemented, probably because extreme powers within the regime in Kigali disliked the idea of sharing power. Instead of implementing the Arusha agreement, the regime worked at full force on preparations for "the final solution"⁸ of the conflict with the Tutsis.

⁷ The Arusha Accords can be downloaded at <http://www.incore.ulst.ac.uk/cds/agreements/africa.html>

⁸ "The final solution" was proposed by some intellectuals, among them Ferdinand Nahimana, who is now charged at the Arusha Tribunal.

III The 1994 Genocide

On 6 April 1994, “unknown perpetrators” shot down the plane carrying President Juvénal Habyarimana. This episode was used as an excuse for starting the killing of Tutsis and moderate Hutus. The mass murders lasted for three months, until RPF established control over the entire country and put the genocide-regime to flight. Approximately one million people were killed and tens of thousands of women were raped during the genocide. Most of them were slaughtered with machetes and clubs in their homes, on the street, in churches and in work places. Death lists were being used, and many neighbours took part in the killing. The genocide was planned and organized by the government party, the army (the Rwandan Armed Forces - FAR) and the militia Interhamwe⁹, together with mayors and leaders of sectors and cells. The purpose was to exterminate the Tutsis and opponents of the government among the Hutus. But the genocide regime also received help from several church leaders, intellectuals and the media, while at the same time the international community acted passively and did too little to stop the madness.

The Role of the Media

It is agreed that the media must bear a heavy responsibility in relation to the genocide. One of the most central and infamous participants was the radio station RLTM (Radio Télévision Libre des Mille Collines). This radio station told all “true Rwandans” to murder the Tutsis of the

⁹ *Interhamwe* means “those who stand together in fight”. Some interpret this in the actual situation as “together to kill”. *Interhamwe* was the most infamous killing machine during the genocide, but also other militia groups operated in 1994.

country. The station, which was established in 1993 by members of the Akazu clan, called the Tutsis “inyenzi”, cockroaches, which were to be killed, and played Hutu-nationalistic pop music. “Make sure the cockroaches don’t get through”, “the graves are only half full, who are going to fill them?” the radio station asked its listeners in spring 1994.¹⁰

The media’s role in the genocide is having a legal aftermath both in Rwanda and at the Arusha Tribunal. The case against one of the founders of RTLTM, the former state secretary Jean Bosco Barayagwiza, the assisting director of the station, Ferdinand Nahimana, and Hassan Ngeze, editor-in-chief of the propagandistic hate-newspaper *Kangura*¹¹ started in Arusha on 11 April 2002. One of the most well known voices of the RTLTM was Valerie Bemeriki. Today she is in jail in Kigali and rejects all accusations of complicity in the genocide: “We had to use the radio station to protect our people.”¹²

The Role of the Church

The religious community of Rwanda does not escape responsibility for the genocide – this is particularly true when it comes to the dominating Catholic Church. In certain cases, priests did try to protect Tutsi civilians, but all in all, the Church has deceived the Tutsis, and in many cases it

¹⁰ Article 19 (1996): “Broadcasting Genocide - Censorship, Propaganda & State-Sponsored Violence in Rwanda 1990 – 1994.” Article 19, report, XIX, International Centre against Censorship.

¹¹ *Kangura* literally means “the voice which seeks to awaken and defend the ‘majority people’” (Hutu)

¹² Interview with Valérie Bémériki, Kigali Central Prison, 8 February 2002.

also has participated in the genocide.¹³ How was this possible? Reverend Eustache Amani Karangua thinks that the participating priests were not “real” Christians.

Quite a lot of people accepted Christianity to achieve advantages, not because they had actually turned to Christianity. You had to be a Catholic to get an education or a good job. Christian faith opened doors. In a poor country it is easy to manipulate people the way the Church wants to. In this way one became a Catholic – a living of lies.¹⁴

Several priests have been arrested and charged with participating in the genocide. Two nuns (Gertrude Mukangango and Kisito Mukabutera) have been sentenced for genocide by a Belgian court on 8 June 2001.¹⁵ A suspected priest was under protection of the Vatican, but after heavy pressure that he would be evicted he later surrendered “voluntarily” to the Arusha Tribunal.

Why Genocide?

There are no simple explanations to this complex question. Many factors have made the genocide possible, and this is in itself worth a study. Now we know a lot about what really happened, thanks to human rights reports from the organisations Africa Rights, “Rwanda: Death and Despair”¹⁶ and Human Rights Watch’ “Leave none to tell the story” (published in 1999), with a number of empirical facts. The Arusha Tribunal has also contributed with many facts through

¹³ Interview with John Gunnar Rae, representative of The Norwegian Church Aid in Rwanda, 4 February 2002.

¹⁴ Interview with Eustache Amani Karangua, Kigali 8 February 2002.

¹⁵ Catholic World News and BBC 11 June, 2001.

¹⁶ The book was first published in 1995, but was later published in a new edition with more than 700 pages: *Rwanda: Death, Despair and Defiance*.

its rulings. There are fewer theoretical analyses on a macro level. Peter Uvin in his article “Reading the Rwandan Genocide” explores three popular paradigms that try to explain the genocide:

1. Elite manipulation
2. Scarcity of ecological resources
3. Socio-psychological features of the perpetrators.

They focus respectively on political leaders and macro level political trends, on macro level ecological and demographic trends, and on macro level socio-cultural features of Rwandan society.

1. Elite Manipulation

The most common explanation in Rwanda is the desire of Rwanda’s elite to stay in power. The birth of political opposition, RPF invasion in 1990 and subsequent civil war, and international pressure for power sharing and democratisation are among the factors that threatened the power and the privileges of Rwanda’s elite. This elite consisting of powerful people around president Habyarimana (the so called Akazu-clan), as well as other cronies in the administration and the army – used all means at its disposal, including racism and violence, to fend off threats to its survival and privileges.

2. Ecological Resource Scarcity

Rwanda’s scarcity of ecological resources – with the highest population density in Africa for an almost entirely rural country, coupled with one of Africa’s highest population growth rates – constitutes the root cause of the genocide.

3. Socio-Psychological Features of the Perpetrators

Another set of explanations refers to socio-psychological and cultural dynamics. The most commonly heard argument is that the

“unquestioning”, “obedient” or “conformist” nature of the Rwandan “traditional” mentality made Rwandans especially inclined to follow orders from above, including orders to slaughter their neighbours.¹⁷ The famous Rwandan anthropologist Philibert Kagabo sees the genocide as politically, not ethnically founded, because Rwandans are one people.¹⁸

¹⁷ Uvin, Peter (2001): *Reading the Rwandan Genocide*, International Studies Review, Vol, 3, Issue 3, s. 75-99.

¹⁸ Interview with Philibert Kagabo. Kigali 7 February 2002.

IV The International (Non-) Intervention in Rwanda

Rwanda's tragedy was the world's tragedy. All of us who cared about Rwanda, all of us who witnessed its suffering, fervently wish that we could have prevented the genocide. Looking back now, we see the signs, which then were not recognised. Now we know that what we did was not nearly enough--not enough to save Rwanda from itself, not enough to honour the ideals for which the United Nations exists. We will not deny that, in their greatest hour of need, the world failed the people of Rwanda.

(Kofi Annan, Kigali, 7 May 1998.)

The international community was not able to prevent genocide and crimes against the people of Rwanda, but later showed the will to prosecute those responsible. The Rwandan regime together with its supporters must bear the main responsibility for the 1994 Rwandan genocide, but the international community must take some of the blame for not interfering in accordance with the Genocide Convention.¹⁹ Both the UN and the countries that may have had influence over what happened, carry a great responsibility for letting the genocide happen before their eyes. This especially concerns France, Belgium and, not least, the USA.

The genocide regime with its militia managed unhindered to carry out their genocide plans although the UN already had an international peace force in Rwanda – United Nations Assistance Mission for Rwanda (UNAMIR) – which was placed there in accordance with Security Council

¹⁹ The 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Article I, states that “genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish”.

resolution 872 of October 1993 with the aim of helping the parties implement the Arusha Accords.²⁰

The UN has later admitted its mistakes in connection with the 1994 genocide in Rwanda. A UN investigating committee was established in April 1999, five years after the genocide. The commission, headed by former Swedish prime minister Ingvar Carlsson,²¹ concluded in its report on December 15th 1999 that the UN had betrayed the genocide victims in Rwanda and therefore had to apologise to the survivors: “This (UN) failure has left deep wounds within Rwandan society (...) these are wounds which need to be healed, for the sake of the people of Rwanda and for the sake of the United Nations”.²²

The investigation concludes that the main mistake of the international community was the lack of resources and political will, including misjudging the extent of the events in Rwanda. Another unfortunate circumstance mentioned in the report is that perpetrators of genocide in Kigali were members of the Security Council and took part in the discussion on the actions towards Rwanda.

In addition to the UN, Belgium and France have also started investigations to map

²⁰ UNAMIR had a far more limited mandate than the UN force in Somalia. It could not use force, except in self-defence, but even for that purpose it was poorly equipped. General Romeo Dallaire of Canada, who led UNAMIR, informed and warned the UN in New York about what was happening and would happen, but met with only limited understanding. His requests for a stronger mandate and more resources were not met.

²¹ In addition to Carlsson, the team consisted of former Korean prime minister Han Sung-Joo and General Rufus M. Kupolati of Nigeria.

²² *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda*, New York, 15 December 1999.

their own part and responsibilities in connection with the genocide. The USA has not done that, but the American president at the time, Bill Clinton, apologised to the surviving Rwandans for USA's failure to take action to prevent the genocide. Belgium has done the same thing. A responsibility rests on Belgium for having pulled out its own forces and having led a total withdrawal of the UN forces when Rwanda needed international intervention most.²³

In the USA an intervention was not even seriously debated. The killing of Belgian soldiers reminded the Americans of the fiasco in Somalia and intervention became a non-subject – in resemblance to an eventual participation in a UN-operation.²⁴

France also carries responsibility having militarily and politically supported the genocide regime in Kigali for a long time and for not having put enough pressure on the regime to stop the genocide – even when the French knew, with their contacts and intelligence information, what might happen to Tutsis and government opponents among the Hutus.²⁵

A French parliamentary commission closed in December 1998 a nine-month investigation on France's part before and during the genocide in Rwanda.

The commission concluded that the main responsibility lies with “the international community”, especially the UN and the USA. Even if it was noted that France made some errors of judgement, the French government takes no responsibility for the genocide in Rwanda.

The UN's mistakes in Rwanda have left deep marks in the world organisation. In a statement of December 16th 1999, the UN Secretary General Kofi Annan welcomed the recommendations of the UN investigation report on how the UN can prevent a repetition of “Rwanda” in the future.

²³ Belgium withdrew its forces after ten Belgian soldiers were killed while trying to protect the Rwandan prime minister.

²⁴ Samantha Power: *Bystanders to Genocide*, The Atlantic Monthly, September 2001.

²⁵ Philip Gourevitch: *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families*, Farrar Straus & Giroux, 1998.

V Post-Genocide Rwanda

When RPF brought the genocide to a halt during summer 1994, most of the social structure was reduced to a state of ruin. Practically everything had to be rebuilt from scratch. Public offices were abandoned, stripped of equipment and documents. The situation was chaotic. A great number of public servants had been killed. A lot of the people, who worked for the old regime, were urged to come back to work. It was necessary in order to get the country back on tracks.²⁶ The genocide left 500,000 orphans and 400,000 widows.

National Unity?

The situation in Rwanda right after the genocide was characterised by trauma, need and chaos. The RPF leadership and Paul Kagame's closest associates declared that reconciliation was of the highest priority. It was stressed as a first step that the RPF leadership would not take a leading position, excluding other parties, when they vanquished the Hutu regime in 1994. With the Arusha Agreement as a starting point, the RPF, together with other political parties, formed a coalition government – The Government of National Unity – with the Hutu Pasteur Bizimungu as President. In spring 2002, eight political parties were represented in Parliament with a total of 74 representatives. Only 13 of these were from RPF. The government consists of six parties. Dr Charles Murigande, secretary general of RPF said: "Everybody expected that we would establish a regime by ourselves. We

²⁶ Interview with Patrick Mazihmaka, personal advisor of the President Paul Kagame, Kigali 4. February 2002.

refused to fall into that trap. We wish to unite the country."²⁷

The National Unity and Reconciliation Commission (URC), which was established by the Parliamentary Law in 1999, plays an important role in building national unity. The Commission's role in the process of creating a Rwanda for everybody is to create a well-functioning education system, to fight poverty and to develop a common identity without differences. "Rwanda has learnt its lesson. From now on everybody is a Rwandan, nothing more, nothing less", says Patrick Mazihmaka, President Paul Kagame's personal adviser.

In order to create unity a new set of symbols have been made, an example is the new flag, the new national anthem²⁸ and the annual "Heroes Day" which sheds light on the national heroes.²⁹

Democratisation

On 6 and 7 March 2001 more than four million Rwandans took part in the first local elections for 37 years. The Rwandan National Commission (NEC) reported that

²⁷ Interview with Charles Murigande, Kigali, 7 February 2002.

²⁸ Surprisingly, a suspected perpetrator of genocide won the lyrics competition and had to be brought from prison to receive the prize. A military officer wrote the melody.

²⁹ The "Heros Day" of Rwanda was established in 1995. The heroes' prizes are divided into three categories. On the 7th award ceremony, on 1 February 2002, prizes were awarded to the unknown soldiers who lost their lives on the battlefield, an officer, a former king who fought against colonial rule, and named massacred Rwandans. The New Times, Kigali 4 February 2002.

more than 90% of registered voters took part in the elections in which 112 district councils were elected.

No political parties contested the elections, and the voters could cross out candidates; hence self-appointed former leaders were not automatically elected. There were three lists of candidates, one with youths, one with women and one with mayor candidates. Hence, youths and women were elected to the local councils on a quota basis.

Although several political parties exist, the law forbids political campaigning. The process of drafting a new constitution is ongoing. The Constitutional Commission was elected by the National Assembly and is regularly consulting with the population about different issues concerning the Constitution. The people will take their stand on the final draft of the new Constitution in a referendum in 2003. It has been announced that the same year an election for a new national assembly will be held and also a presidential election. Tito Rutaremara, leader of the Constitutional Commission, says that the new Constitution is one of the aims to reach unity and reconciliation. "What we want is a democracy that does not promote conflicts. But our country is poor and this is a difficult and time-consuming process."³⁰

Human Rights

Even if the human rights situation in Rwanda has drastically improved for the last years, the country is still facing severe challenges. Ruben Niybizi, secretary of the human rights organization LIPRODHOR, claims that freedom of speech is the civil-political right facing the biggest challenge.

³⁰ Interview with Tito Rutaremara, leader of The Constitutional Commission, Kigali 7 February 2002.

Intellectuals may criticize current events, but, according to Niybizi, individuals neither have the opportunity nor dare to express themselves, because people are still frightened after the genocide.

Representatives of FACT, a youth organization working against torture, confirm this. They also say that torture happens in Rwandan prisons, even though it is not widespread. FACT urges the authorities to ratify the Torture Convention.

There are several human rights groups and NGOs in Rwanda today, among these an organization working for the rights of widows. In addition, the Parliament has established a Human Rights Commission that monitors human rights. Even though the Commission is governmental, its reports contain amounts of criticism of the authorities. In addition to the freedom of speech, major problems include public security, prison conditions, mistreatment and political killings.

The Educational System

The educational system has gone through extensive reforms, and weighs heavily in the reconciliation process. The primary school is now obligatory and free for everybody. Racist elements in schools have been removed to promote national unity. New history books are being written, but there is a considerable amount of tension attached to the problem of establishing a common history that everybody can agree upon.³¹ The authorities have declared that the children are not supposed to learn the history of the conquerors.

A doubling of the population is expected in the next 20 years, to an estimated 16

³¹ Interview with Emile Rwamasirabo, Rector of The National University of Butare, Butare 6 February 2002.

million people. Considering the rapid growth of the population, the efforts towards building a proper educational system seem especially important. Good schools are important to fight poverty, but the country needs international help to be able to handle this challenge.

The tragic past is still present in Rwanda, but conspicuously toned down. Everybody has relatives that were either killed or who joined the mob. According to the Rector at the University of Butare, Dr. Emile Rwamasirabo it is naive to believe that the hatred is gone as if by magic after the genocide, and points out that all students must attend a six week course on reconciliation before starting their studies.

National Legal Settlement

One of the greatest challenges faced by the new authorities after the 1994 genocide was to stabilise the situation. One of the most urgent questions was how to deal with the perpetrators of genocide. The police force and the judicial system were completely put out of action during the genocide. Investigators, police lawyers, defenders and judges were eliminated or fled, and only a few stayed behind. About 130.000 suspects were imprisoned, a lot of them without being charged. The intent was criminal prosecution, but the massive arrests were also meant to prevent new assaults and to quench the thirst of revenge. The situation became critical. Overcrowded prisons led to the neglect of the most vital human rights, even the right to life. An unknown number of people died, most likely from torture, diseases or lack of food.³² But the absence of a proper

³² Our sources cannot state numbers but think many people disappeared in the prisons. Representatives of the UN High Commissioner for Human Rights that wished to be anonymous said that as recently as 1998 they discovered prisons in which human rights were completely neglected. Rwandan authorities do not deny that human rights violations took place in prisons, but claim that those were not

legal system made the needed prosecutions difficult.

The Judicial System

Rwanda is divided into 12 counties, further divided into municipalities. A report written by The Norwegian People's Aid describes the court system as follows:

Tribunal de Canton: In every municipality. A stipendiary magistrate judges the civil cases and smaller cases without prosecutor and defender.

Tribunals de première Instance: Judicial authority on the county level. After the genocide it took several years to restore all these tribunals. Judges in civil cases which appeals from court of the first instance and in larger criminal cases. Prosecutor, but not defender in every case.

Cour d'Appel: There are four of these courts of appeal in Rwanda, each of which covers several counties.

Cour Suprême: The country's Supreme Court, which sits in Kigali.

In addition: **Chambre Speciale:** Special Court for the genocide in every county.³³

A court of appeal was absent for a long time in several areas, leaving genocide sentences unfinished. The Norwegian People's Aid is one of many international organisations that have contributed with expertise to rebuild the judicial system. Rwanda only had a small number of lawyers before the genocide, almost none in 1994, and as late as the middle of 1997 there were only 50 lawyers. In the Cyangugu County where The Norwegian

widespread and systematic violations, as some human rights organisations have reported.

³³ Report on a project to rebuild the judicial system in Rwanda, initiated by Norwegian People's Aid, Oslo, June 1998.

People's Aid contributed, there were no lawyers at the time.

To meet the precarious shortage of lawyers, the University of Butare produced lawyers with the speed of lightening. The genocide cases gradually started: 346 were sentenced in 1997, 1318 in 1999 and 600 in the first quarter of 2000, something Rwandan authorities describes as extraordinary, but it was far from satisfactory considering the great number of cases.

As of February 2002, approximately 15.000 of the about 130.000 people imprisoned after the genocide, have been released. About 6000 have been put on trial so far, of which 20-25 per cent have been released.³⁴ The high number of releases indicates that many of the remaining 110.000 also will go free.³⁵

Death penalty

23 people have been executed so far. This has relieved some of the pressure from popular demands for the most extreme kind of revenge. The Prosecution estimates that 3.000 or maybe as many as 5.000-10.000 people will be sentenced to death, but the death sentence will only be used for the most serious cases. Public Prosecutor Gerhald Gahima thinks that the worst perpetrators deserve the law's maximum penalty – death, but it may hurt the reconciliation process if all the people sentenced to death are actually executed. In addition Rwanda runs the risk of massive international criticism.³⁶

³⁴ Those acquitted are not offered compensation, because the Rwandan state lacks the necessary funds.

³⁵ Interview with The Rwandan Public Prosecutor, Gerald Gahima, Kigali, 8 February 2002.

³⁶ Public Prosecutor Gerald Gahima says that far from all those sentenced to death will be executed, although capital punishment will be enforced for those sentenced of very serious crimes.

Rwanda is already subject to heavy criticism concerning prison conditions. But Tito Rutaremara of the RPF reckons that Rwanda's current legal system is not able to handle the large number of cases and that a delayed legal settlement may hurt the reconciliation process. He replies to the criticism in this way:

Rwanda is a poor country. The human rights in our prisons are nothing to brag about. The prisoners are suffering, but what is the alternative? We cannot let them out, but we cannot really keep them in now either. To follow the western trial process would take far too long time and therefore be a violation of the human rights itself. We had to do something.³⁷

³⁷ Interview with Tito Rutaremara, leader of the Constitutional Commission, Kigali 7 February 2002.

VI The Gacaca System

The legal system in Rwanda was not designed to respond to the massive violence during the genocide in 1994. The country did not have the capacity to prosecute the enormous number of suspects; it would have taken several hundred years to finish all the trials. "Justice delayed is justice denied" it is said. As a consequence the authorities formed the popular tribunals, the Gacaca.³⁸

The Gacaca has traditionally been a conflict-solving council used for centuries before the colonial times, to solve local and regional conflicts. A modernised version has from mid-2002 started to relieve the ordinary legal settlement. Gacaca will involve perpetrators, victims and the whole local population in the legal process. The goal is not only to assist the ordinary justice system to finish all the cases but also to heal wounds, to bring forth the truth, to create justice, and to contribute in the reconciliation process.

An election was held in October 2001 in which the people elected about 250.000 Gacaca-judges, men and women. They are the "Inyangamugayo", the people of integrity. 781 Gacaca instructors, judges and last year's law students, trained them. The three-month training finished in July 2002, when the Gacaca processes started.

Previously around 300 pilot trials have been held, so called "gaca-cases", around the country, which have resulted in several releases. Considerable amounts of people were held imprisoned without

documentation about their imprisonment. These prisoners were taken before the people through hearings similar to the Gacaca. If they were accused of anything worth consideration of suspicion, they were returned to prison to be tried in front of the Gacaca. In cases without any accusations, the prisoners could walk into the crowd as free persons after years of imprisonment.³⁹

Structure and Jurisdiction

The Gacaca will operate on four levels: from cell, sector, municipality and county. A cell is the smallest administrative unit of the country. In Rwanda, there are approximately 9000 such cells. On the cell level, all citizens over the age of 18 constitute a general assembly. If a cell has more than 200 members, it has to be split in two, but no cell can have less than 50 members. The main task of the assembly is to make a list of which members of the cell who were killed as a result of the genocide, but also of the killers, and in the same way both the raped and the rapists. In addition, the cell shall prepare a list of who has moved away from the cell. The general assembly elects a council of 19 members. The "Secteur", "District" and "Province"-levels in the Gacaca system are organized in the same way, with general assemblies consisting of members from the level below. Here a council of 19 members is also elected.

An Organic Law of 1996 categorises the prisoners into four categories based on the seriousness of the crimes they have been

³⁸ The Government assigned a group of researchers with the task of assessing various ways to reconcile the people. The work to develop the Gacaca system started in 1995 with judicial and practical planning of the legal processes. The law was put before the interim national assembly (L'Assemblée Nationale de Transition) on 12 October 2000.

³⁹ Interview with Wanda Hall from Hirondele news agency, Kigali, 10 February 2002.

accused of (chapter 2),⁴⁰ and decides on which levels their cases are going to be held. Gacaca is going to handle the cases connected to the genocide in the period October 1st 1990 to December 31st, 1994. The four categories are:

Category one: Those who planned, organised and led the genocide, together with mass murderers, rapists and torturers. These people will be dealt with by the ordinary judicial system. Only the ones belonging to this first category can be sentenced to death. A confession may reduce the sentence.

Category two: Those who did not take part in the planning, only in the actions, which have resulted in manslaughter. These will be judged by the Gacaca on municipality level and may be sentenced to life in prison. A confession before conviction reduces the sentence from lifetime to 7-11 years in prison (art. 15a) while a later confession reduces the sentence to 12-15 years in prison (art. 16a). Eight years must be served in prison, the rest as community service.

Category three: Those who participated in serious infringements against people, without killing. The Gacacas on sector-level will treat these cases, which will be punished with a shorter sentence, half in prison and half as community service.

Category four: Those who participated in the destruction or plundering of property. These cases will be treated by the lowest Gacaca tribunal on cell-level and may be punished by paying compensation to the victims (art. 14d).

Gacaca on the county level is the instance of appeal for all the three lower instances.

As already noted, the Gacaca judges will not be able to sentence people to death, and confessing pays off. The strategy of the prosecutors is to first handle the cases of those who confess.⁴¹ They are of first priority in the Gacaca process, as a nail bar on those who do not confess. These will later be important witnesses against those who claim not guilty. The authorities expect more prisoners to see the advantage of confessing and avoid death penalty, something that will make the legal process easier.

Legal Protection

The Gacaca judges are supposed to judge by consensus, attached to traditions from before the colonisation. Centuries before the colonisation the wise men of the village had gathered in the Gacaca councils, without prosecutor or defender. Women were not allowed to participate, but were to be consulted before decisions were made. By consensus they solved cases involving everything from marital problems to violence and theft. The suspect was allowed to speak, so were villagers who could contribute to solving the case. Incompetence was not an issue, like when the suspect was the son of one of the council members. The council had to discuss their way to consensus anyway. This way, his own father could judge the son.⁴² In the Gacaca today, women are elected as judges.

The Gacaca tribunals and the ordinary judiciary have a close co-operation. The Gacaca are guided and supervised by a co-ordination committee (Comité de Coordination) in addition to national and international NGOs to prevent abuse of the system. An information programme has

⁴⁰ Organic Law No. 08/96 of August 30, 1996 on the organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since October 1, 1990.

⁴¹ According to the annual report of Human Rights Watch (2001-2002), 15.000 (April 2002) have confessed.

⁴² Interview with Philibert Kagabo, Kigali, 7 February 2002.

been established to inform the people about the system and its function. According to the plan, Internews Foundation will do some of the work. The organisation is also involved in informing the people about the work of the Arusha Tribunal and the ordinary court processes in Rwanda.

Many people fear that the Gacaca can be a source of new unrest, because there are many family and social ties among witnesses, victims and judges. Most Gacaca judges are Hutus, who form the majority of the population. Therefore, the relatives fear unjust releases when the suspects are neighbours or from the judges' families. Many relatives are also worried that the Gacaca process will result in too mild sentences for perpetrators who have committed terrible crimes. Recent sentences are relatively low, the strictest being 17 years of imprisonment.

Because Gacaca shall be done in openness, by consensus and with the participation of a large crowd, Kagabo says that with the historical experiences of the Gacaca in the background, this cannot be considered a great danger.

The criticism from human rights organizations has focused the lack of legal protection. Amnesty International criticises the legal process, pointing that suspects do not have the right to a defender and that judges lack sufficient competence.⁴³ But one of the reasons the Gacaca was chosen was exactly the lack of defenders and judges. The majority of the few lawyers in Rwanda do not wish to defend genocide suspects. In the Gacaca processes, the prosecutor's office will state its accusation, and then the people who have showed up will speak for or against the accused.

⁴³ Amnesty International report: *Rwanda: The troubled course of justice*, AI-index: AFR 47/010/2000 (26/04/2000).

The accused has the right of appeal to a higher court (Gacaca on county level). But it is still important that independent observers follow the legal process to monitor it and give it more legitimacy. Rwandan authorities answers the criticism by pointing out that the human rights organisations do not give any alternatives and that the country do not see any other solutions.⁴⁴

The Norwegian Helsinki Committee sees the Gacaca-process as promising, provided that it is carried through in a way that is perceived as fair both by Hutus and Tutsis.

Reintegration of Released Prisoners

Because many already have been imprisoned for more than seven years and because half of the sentence can be converted into community service, a large number of inmates will probably be released relatively soon. Many express a deep concern for the hatred innocent prisoners will carry with them. It is described as an unpredictable volcano that can erupt when the prisoners are let out. They are the poorest of the poor, and many will come back to broken family structures, they may be met with hatred from the villagers and may have trouble finding work.⁴⁵ Another problem will be eventual conflicts concerning the right to land and property. Still there are many optimists who work to prevent problems attached to these circumstances. The Norwegian Church Aid has been among the initiators of the project Interfaith, which is established to use the congregation's power in the service of reconciliation. A total of

⁴⁴ *Republic of Rwanda: Reply to Amnesty International's report: "Rwanda: The troubled Course of Justice"*. (<http://www.rwanda1.com/government/>)

⁴⁵ Interview with John Gunnar Rae, representative of The Norwegian Church Aid in Rwanda, 4 February 2002.

28 religious communities – both Christian and Muslim – have joined the project for released prisoners and survivors. Released prisoners learn how to meet survivors and ask for forgiveness. They have also been offered classes on how to easier get a job. There seems to have been a change of climate behind the walls as the Gacaca process has started rolling. It has given hope, noticed both by volunteers, inmates and the prison management in the Kigali central prison. The inmates have not known if or when they will be released. Now the time has come for a lot of them. Eustache Amani Karungua, president of the Interfaith, says:

“More than seven years have passed since the genocide. It has been a learning process both for the ones inside and the ones outside the prisons.”

The authorities have prepared the Gacaca by giving information programmes to both the villagers and the prisoners. In addition several private organisations, including religious ones, have run projects in the prisons to prepare the prisoners for their reintegration to society. The Gacaca has given the prisoners hope that their fate soon will be decided.⁴⁶

Far from all the participants in the manslaughter are imprisoned. New names on perpetrators are expected to appear in connection with testimonies in the Gacaca processes. It has been estimated that as many as 50.000 of those guilty were never arrested. Many of them will risk arrest as the inmates are released from prisons.⁴⁷

⁴⁶ Interview with Eustache Amani Karungua, Kigali 8 February 2002.

⁴⁷ Interview with The Rwandan Public Prosecutor Gerald Gahima, Kigali, 8 February 2002.

The Psychosocial Aspect

The Gacaca process will strain society, because it will open wounds and represent both great possibilities, but also great dangers, say researchers Ervin Staub and Laurie Perlman who are working on psychosocial problems and reconciliation in Rwanda.⁴⁸ A large part of the population is traumatised physically and psychologically, both among the victims and the assaulters. In addition, many people, especially from the generation who were small children during the genocide, may get to know the horrible truth of what happened to their parents. The Gacaca has the potential to contribute to healing wounds and reconciliation, but also to provoke and renew feelings of grief, pain, anger and hatred. It is crucial that an adequate psychosocial groundwork is done, if the process shall have a positive effect.⁴⁹ Non-governmental organisations has in co-operation with the authorities made a programme where experts are leading trauma groups, among other things by use of radio, to follow these problems.

Compensation

Compensation as a means to reach a settlement can contribute to create a feeling of justice through repairing the emotional and physical losses and encroachments the victims have been experiencing.

⁴⁸ They are working on a project supported by John Templeton Foundation in co-operation with the local organisation MUSECCORE. The works spans healing processes, forgiveness and reconciliation. The conclusions were also expressed at a conference in August 2001 on psychosocial aspects of reconciliation. Several prominent people from Rwanda attended the conference.

⁴⁹ Laurie Anne Pearlman and Ervin Staub: “The Gacaca Process as an Avenue toward Healing and Reconciliation”, 2001.

The compensation for victims of genocide in Rwanda is a major challenge. Those who participated in the killings are usually poor and unable to pay compensation to their victims. The earlier regime is out of the country, leaving only ruins, while the new regime is unable to pay compensation to such a large number of victims.

Still, it is arranged that the victims can receive compensation, which is going to be paid by the perpetrators, but also through a state fund – “The National Fund for Assistance to the Survivors of Genocide and Massacres.” According to the authorities, 5% of the national budget is being earmarked to this fund. The fund is helping victims with shelter, medical care, education and other needs. But it is unrealistic to believe that this will work satisfactory in Rwanda without assistance from outside. The released prisoners on the other hand, as it looks today, will not be paid compensation. This is something that can cause new tension.

The Gacaca and the Reconciliation Process

Even if the legal settlement cannot be viewed isolated from other conditions that influence the reconciliation process, there is a general attitude among central government officials that a lot of things depend on a successful Gacaca process. It is emphasised that the Gacaca is a kind of mixture of a truth commission and a judicial authority. Amnesty, as in South Africa, would not be accepted in Rwanda.⁵⁰ In Rwanda the opinion is that an offer of a severe reduction of the sentence will make the prisoners tell the truth and maybe also apologise. This way one avoids amnesty, which may seem unjust to the victims, especially in Rwanda

were the assaults were so serious. In conformity with the Truth Commission in South Africa, The Gacaca will give the victims and the perpetrators the possibility of meeting each other. In addition to bring forth the truth through the Gacaca, the legal settlement will contribute to put an end to the impunity culture that has characterised Rwanda.

Gacaca gives the legal settlement a connection to the local communities, something the Arusha Tribunal is unable to do. For the people, it is important to see that also mayors may have to stand handcuffed in front of the local judges. Everybody whom the Norwegian Helsinki Committee has spoken with in Rwanda supports the Gacaca, sometimes enthusiastically. This also includes human rights organisations, both national and international. The Gacaca concept is well received also by the population, including prisoners, provided it works as planned.

Some scepticism towards the project still exists. This is partly because of the time it has taken to put the system in place. Many have been imprisoned for 7 years without sentence, and thus have accumulated lots of bitterness and anger during that time. Both Rwandan and international lawyers are concerned about public security. Some fear that the Gacaca will bias crimes committed by Hutus, and to a lesser extent address Tutsi crimes in the same period.

It is important that the reconciliation process includes the same people and the same levels in society that were involved in the conflict. A related problem can be that many people have resettled in order to avoid punishment. Rwanda's extensive reconstruction and settlement programme has to a large degree contributed to this, because housing offered through the project is not necessarily in the same cell, sector or district as the recipient lived before the genocide. The Gacaca cell has lesser opportunities to find out if a person

⁵⁰ Mazihmaka, Gahima, Murigande and several others whom we interviewed stressed this.

is guilty of crimes if he or she has resettled from elsewhere. Thus, resettlement is a challenge for the Gacaca.

At the same time it is important that the programme of reconciliation and trauma treatment reaches the people, when wounds again are exposed in this extensive legal process.

The Gacaca is an answer first and foremost to a capacity problem in the Rwandan legal system. "Gacaca is maybe not the most perfect process, but over time we may achieve good results. This is a choice we have made," president Paul Kagame said during a meeting with the press in April 2002 in Kigali.⁵¹

The president's words reach the heart of the Gacaca and Rwanda's dilemma. Since the "Hutu-revolution" in 1959, a series of massacres took place without punishment until the real Armageddon in 1994. Rwanda has decided to reverse this trend. Paul Nantulya in the South-African non-governmental organisation ACCORD⁵² describes the Gacaca as an African solution to an African problem.⁵³ In addition to the Gacaca solving a legal state of emergency, Nantulya also sees other advantages. As a contrast to the complexity of the ordinary legal system, the Gacaca will to a wider extent include the locals and as a consequence have a greater chance of healing wounds and contribute to reconciliation.

To succeed with a legal settlement, it is important that the legal process is being regarded as fair among the majority of the people. Everyone The Norwegian Helsinki Committee have talked to in Rwanda,

including prisoners,⁵⁴ has been fundamentally positive to the Gacaca. The Rwandans seem to be proud of having found a solution in their own cultural heritage. This may in itself be a contribution to reconciliation because it gives a feeling of community and a common identity.

The legal settlement is a big challenge for the country in addition to education, poverty, and HIV/AIDS. A successful legal settlement is necessary to stabilise the country and to focus on development and democratisation. Gacaca may face many problems, but it has a great potential in contributing to the reconciliation process. Rwanda's Public Prosecutor only views one possibility for the Gacaca to fail, namely the lack of resources for a qualitative implementation. Victor Mugarura says optimistically: "The Gacaca will solve far more problems than it will create".⁵⁵ This far, the Gacaca tribunals seem to work generally well.

⁵¹ Hindorelle Press Agency: www.hindorelle.org

⁵² ACCORD: African Centre for Constructive Resolution of Disputes.

⁵³ Interview with Paul Nantulya, Drammen, Norway, December 2001. He also wrote an essay about Gacaca: "*The Gacaca-system*". Conflict Trends. No 4/2001, Durban, South Africa.

⁵⁴ The prisoners in Category 1, who are facing the most serious charges, have no advantage of the Gacaca, except that the legal settlement will be faster. In this group we met inmates who criticised the Gacaca but who still recognised the advantages compared to if everyone had to go through an ordinary legal process.

⁵⁵ Victor K. Mugarura: *Restorative Justice through Gacaca*, Kigali: The New Times, 11. October 2001.

VII The International Criminal Tribunal for Rwanda (ICTR)

The UN Security Council was for a long time reluctant to acknowledge that genocide had taken place in Rwanda, probably to avoid the commitments following from such an acknowledgement. Only close to the end of the genocide, on 1 July 1994, the Security Council appointed an expert commission to investigate the claims of genocide.⁵⁶ Exactly three months later the first report was released, which concluded that a systematic and planned genocide had happened. The commission recommended that an international tribunal similar to the one for the former Yugoslavia in The Hague should be established.

The UN Security Council established “The International Criminal Tribunal for Rwanda” (ICTR) on 8 October 1994, four months after the fall of the genocide regime. The establishment was historical. This was the first international institution established to prosecute perpetrators in a solely internal conflict. Both the Nuremberg- and Tokyo processes involved international conflicts. Also the wars of the former Yugoslavian Republics in the 1990s had an international character.

Rwanda was one of the initiators of the Arusha Tribunal, but voted against the resolution because the country did not agree on the jurisdiction. The decision to limit the Tribunal's jurisdiction to the period 1 January to 31 December 1994 was among the most controversial. Rwanda claimed that the genocide had taken place and had been planned since 1990. This was also the conclusion of the UN Special Rapporteur shortly before the large-scale killings started on 6 April 1994. It was ascertained that murders of Rwandan

Tutsis in the period 1990-93 constituted genocide in a judicial sense.⁵⁷

Another complaint was that the Tribunal did not have the possibility to sentence people to death penalty, something Rwanda wished to do in line with its own penal law. Rwanda's third and important complaint was that the Tribunal was to be placed outside the country's borders.⁵⁸ There were also other, less serious complaints.

Mandate and Structures

The Tribunal's mandate is to investigate and prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994 or by Rwandan citizens in one of the neighbouring countries in the same period (art. 2-4 in the statutes of the Tribunal). Article 8 gives the Tribunal the right to take on the legal prosecution of crimes under its jurisdiction from any state. Article 9 states that the Tribunal may retry a case that has been conducted before a national court of law. A sentence in the Tribunal is on the other hand final and cannot be brought before a national court.

Security Council resolution 955 of 8 November 1994 stresses that the Rwanda Tribunal shall “contribute to the national reconciliation process and to the maintenance of peace.” The Tribunal is

⁵⁷ UN Doc. E/CN.4.1994/7/Add.1 (1993). Report reviewed by the UN Commission for Human Rights in April 2002.

⁵⁸ Security Council Resolution 997, 22 January 1995 – the decision to locate the Tribunal in neighbouring Tanzania.

⁵⁶ UN Doc. S/RES/935(1994).

built on the same model as the Yugoslavia tribunal (ICTY) with common Prosecutor and Chamber of appeal in The Hague in the Netherlands.

The Rwanda Tribunal has been described as a “three-headed monster” consisting of the following units independent of each other: the Tribunal Chambers,⁵⁹ the Prosecutor's Office,⁶⁰ and the Registry.⁶¹ The Tribunal has a total number of approximately 800 employees in Tanzania and Rwanda. By the turn of the millennium the Tribunal had collectively spent about 400 million dollars since its establishment. The 2001 budget was 100 million dollars, while the 2002 budget is nearly doubled to 192 million dollars.⁶²

Results

It is generally agreed that the Rwanda Tribunal had a difficult start. Opinions about the reasons for this vary. Sources in the Tribunal give the following explanation to the fact that the Tribunal took a long time to establish: The placement of the actual building in Arusha was problematic.

⁵⁹ The Tribunal Chambers: There are currently nine judges in three chambers, headed by a president and a vice- president. In addition there are translators and a large number of other employees. The UN General Assembly elects the judges.

⁶⁰ The Prosecutors Office has an investigation unit in Kigali that gathers evidence against the suspects. In Arusha the office has the powers to prosecute suspects, with prosecutors that lead the offence in court, and an evidence unit. The Chief Prosecutor is common for the Rwanda and Yugoslavia tribunals.

⁶¹ The Registrar: As Assistant Secretary General, the Registrar reports directly to UN Secretary General Kofi Annan. An administrative unit heads the bureaucratic apparatus, but the Registrar also has five units in a judicial and legal service section, of which two assist and protect witnesses of the prosecution and the defence.

⁶² For more information about the Arusha Tribunal's budgets, see the following article from 5 April 2002, in *Internews: Expensive Justice: Cost of Running the Rwanda Tribunal*.
http://allafrica.com/publishers.html?passed_name=Internews&passed_location=Arusha

The town lacked necessary infrastructure. Everything had to be constructed from scratch, which was time-consuming and expensive.

Others claim that incompetence, laziness and corruption are more important reasons. Many sources admit that a lot has gone wrong and claim that big challenges still remain before the Tribunal can function satisfactorily.

As of August 2002 the Arusha Tribunal has indicted nine persons. Eight have been convicted, of whom three on the basis of personal confessions, while one has been acquitted. Another 17 are now on trial in the Tribunal in cases that run parallel in the three Tribunal chambers with sentence at the latest next year. Another 30 or so prominent accused are in custody pending trial.

The Arusha Tribunal has to a large extent managed to get arrested and judge central architects behind the genocide. It is the first international tribunal to indict, arrest and convict a head of government for genocide. On 4 September 1998, the Tribunal convicted and sentenced Jean Kambanda, former Prime Minister of Rwanda, to life imprisonment for genocide and crimes against humanity. Kambanda was one of those who pleaded guilty. In addition, ministers, top politicians, prominent clericals, military leaders, bureaucrats, media bosses and intellectuals are waiting for criminal proceedings and sentence in the Tribunal's prison in Arusha. Without the Tribunal's existence these would probably be free men.

The Chief Prosecutor Carla Del Ponte has declared that another 111 genocide suspects will be arrested, most of them Rwandans on the run in other countries. Among the suspects there are also supposedly members of the RPF.

By punishing some of the central persons behind the 1994 genocide, the Arusha Tribunal has sent a strong signal that also top leaders will be held personally responsible for serious violations of international humanitarian law.

Despite the limited number of judges, the Tribunal has contributed considerably to the development of a legal practice for the enforcement of humanitarian law. The Tribunal applied for the first time the Genocide convention of 1948. It has also applied Protocol II of the Geneva Convention of 1977 in its ruling, i.e. rules for internally armed conflicts.

Until the Tribunal's 2 October 1998 conviction of mayor Jean-Paul Akayesu, the Genocide convention had been a sleeping document for 40 years. This way the Tribunal confirmed that genocide had taken place in Rwanda. This judicial decision was also pioneering in that it defined systematic rape as genocide.⁶³ The Tribunal has adopted about 600 different decisions in connection with the ongoing genocide cases. This has contributed to form a foundation for a uniform legal process in international criminal law. Gradually the sentences become shorter and the proceedings run faster. The judgments and legal practice of the Tribunal are also of great importance for the future work of the new permanent International Criminal Court (ICC). The judgements of the Tribunal have also given a considerable contribution in describing what actually happened in 1994.

Finally, the Tribunal is an example of increasing willingness of the international

⁶³ In the case of Jean-Paul Akayesu (Decision of 2 September 1998, Case No. ICTR-96-4-T) the sentence concluded that sexual violence constitutes genocide insofar as it is committed "with the specific intent to destroy, in whole or in part, a particular group, targeted as such". ICTR further asserts, "sexual violence was a step in the process of destruction of the Tutsi group – destruction of the spirit, of the will to live, and of life itself".

community to fight impunity for grave abuses. This may have a deterrent effect on despotic leaders around the world. However, since the jurisdiction is restricted to 1994, the legal process has had a limited deterrent effect for perpetrators after 1994. This especially concerns the ongoing conflict in Congo where the parties from Rwanda are involved.

The Rwandan army fights inside of neighbouring Congo against the former army and the Interhamwe guerrillas who have regrouped there after being forced to flee by RPF in July 1994. According to the peace treaty between the presidents of Congo and Rwanda, which was signed in South Africa in July 2002, the Rwandan army will withdraw from Congo, while the Kinshasa government will demilitarise guerrilla groups that threaten Rwanda. Another important development is that The Democratic Republic of Congo has ratified the Rome Statute of the ICC, meaning that this court will have complementary jurisdiction to legal authorities in Congo and Rwanda. If Rwandan citizens commit crimes within the jurisdiction of the ICC, and neither authorities in Congo nor Rwanda prosecute them, the ICC could do it.

The Arusha Tribunal and Rwanda

The Tribunal was established according to Security Council resolution 955 to deliver justice and contribute to peace and the reconciliation process in Rwanda. An important question is therefore how the work of Tribunal influences the situation within Rwanda and development of peace of stability in the region.

Despite Rwanda's dissatisfaction with the mandate and the slow legal process in Arusha, the government has as a general principle been willing to co-operate with the Tribunal. Most of the Rwandans that The Norwegian Helsinki Committee

interviewed underlined the importance of the Tribunal.

From a Rwandan perspective the Tribunal is important since it may try suspects that have escaped to other countries. Rwanda is still practising death penalty and several countries are therefore reluctant to extradite genocide suspects to the country.⁶⁴

But generally, the Arusha Tribunal has so far not satisfied the Rwandans' need for justice, and neither the authorities nor Rwandan organizations save their criticism about the Tribunal. There are several very serious challenges to improve the relationship between the Tribunal and Rwanda.

Recognition and the Truth

It is an important recognition of the sufferings of the victims that an independent international tribunal states that genocide has taken place in Rwanda and prosecutes some of the main perpetrators. A documented description of "the truth" is an important part of the reconciliation process, but it is limited how much the Arusha Tribunal has managed to contribute to bring forth the whole truth about several key questions. Who committed the genocide, and how was it organised and financed?⁶⁵ And who shot down the president's airplane on 6 July

⁶⁴ Public Prosecutor Gerald Gahima says to The Norwegian Helsinki Committee that Rwanda may give guarantees that the country is not going to use the death penalty in specific cases. This way, extraditions may be obtained in the future, after the Arusha Tribunal is closed down.

⁶⁵ International Crisis Group has criticised the Tribunal's lack of ability to disclose the truth. In its report "The Rwanda Tribunal: Justice Delayed" from June 2001, ICG states: "Seven years on it has still not been able to shed light on the design, mechanism, chronology, organisation and financing of the genocide, nor has it answered the key question: who committed the genocide?"

1994 – an important trigger of the genocide.

Both sides in the conflict have their own "truth"⁶⁶ and a clarification of this question may be an important contribution to the establishment of a common truth. Even if we see that some of these questions lie outside the Arusha Tribunal's mandate, it should perhaps be given priority because of the great value such a clarification may have in Rwanda.

The Big Distance and (Lack of) Information

The legal process takes place far from the people in Rwanda. Many claims that what happens in Arusha do not concern them and they do not get acquainted with it. The long distance also hampers logistics and makes the work slower. A few of the problems are:

- Many people have never before been abroad or travelled by airplane
- The need for protection of witnesses
- Acquisition of travel documents

The Rwandan government has from the beginning wanted the Tribunal in Kigali, and has on several occasions demanded that the Tribunal be moved there, or at least that some trials be held there. The Tribunal has shown the will to hold some sessions in Kigali, but so far little progress has been made.

To the extent that the Tribunal has managed to document parts of the truth on the genocide, it may seem as though it has failed to pass this on in a sufficient way to the people. It is important that the victims see and experience that justice is taking

⁶⁶ The genocide regime claimed that RPF shot down the plane, and used that for all it was worth. RPF claim that the architects of genocide themselves ordered the shooting down of the plane.

place, but this seems to have had low priority at the Tribunal.⁶⁷ However, after massive criticism there was after some time established an information centre in Kigali and the Tribunal supports some information programmes around the country. The American foundation Internews Network co-operates with the Tribunal in producing videos showing its work. Until now, four videos have been made. One of the reasons for producing the videos is that it is difficult to reach people in the countryside with information.

There are no daily newspapers, but two papers are published two-three times a week, one of them "The New Times" only in English. These are mainly distributed in the cities. In the real countryside there are no papers at all, and illiteracy is widespread. Rwanda has no national network of television, and television sets are found only in larger cities. In addition, the countryside is suffering from a poor and unstable power supply; this is of course also making it impossible to use TV to inform the people.

The radio is very important and radio broadcasts can have great leverage, both for the good and for the bad (as was seen during the genocide, with RTLM). The authorities use large public gatherings to inform and discuss various issues with the people, for example the Gacaca or the new Constitution. In addition, information videos and even drama, theatre, art and comics have been used.

It is important that organisations outside of Rwanda take part in the information work, so that the information is perceived as neutral. Internews provides a large

⁶⁷ As an illustration, the media was originally not offered space at the Tribunal. The organisation Hirondele granted 35.000 US dollars to the Tribunal for a press centre in 1995, but only after strong pressure were premises set up in 1997. All equipment was later obtained through other sources of funding. Hirondele never made an inquiry into what happened to the original grant.

contribution to meet this challenge. Internews has so far managed to show the four videos about the work of the Arusha Tribunal in various locations in Rwanda. The same kind of work is also taking place to inform people about the national legal process and the Gacaca.

Inefficiency

The general attitude in Rwanda is that the Tribunal has not delivered good enough results. Some, even central politicians, claim the Tribunal's work so far has been scandalous. As an example it has been pointed out that the large spending does not stand in proportion to the results. The expenses are enormous and the results meagre. The money could have been spent more successfully on a faster implementation of the legal process in Rwanda.

Critics describe the legal process as far too slow. Public Prosecutor Gerhald Gahima points out that in three of the nine Tribunal cases where there is sentence in the first instance, there were confessions which made these easier to carry out. He points to Rwanda, which with only a fraction of the Tribunal's budget has passed 6000 genocide sentences.

The Arusha Tribunal has joint Chief Prosecutor with the Yugoslavia Tribunal, which may make progress slower. The fact that the Chief Prosecutor spends more time in The Hague than in Arusha and Kigali creates much frustration in Rwanda. The position as Deputy Chief Prosecutor at the Arusha Tribunal, with office in Kigali, has been unfilled since spring 2001.⁶⁸ The Government of Rwanda has several times proposed to divide the Prosecution Office

⁶⁸ According to Florence Hartmann, Spokesperson for Arusha tribunal, the position hopefully will be filled by September 2002. Internews, ARUSHA 31 July 2002.

in order to have a Chief Prosecutor who can work on a daily basis in Kigali and Arusha. Now the Chief Prosecutor must lead the work in several locations: The Hague, Former Yugoslavia, Arusha and Kigali. Obviously, this may be a difficult task for one person.

Inequality

The Arusha Tribunal has to follow international standards for convict treatment. Prisoners in Rwanda suffer from much worse conditions. It is a common saying in Rwanda, that the Arusha prisoners “enjoy luxury conditions”. They have access to telephones, the Internet, good food, Medical treatment, their own garden, etc. something most Rwandans can only dream of. All these factors are perceived as unfair among ordinary Rwandans.

Also when it comes to sentences, there is great inequality. Masterminds of the genocide and other key perpetrators get a maximum of life sentence in Arusha, while the subordinates arrested in Rwanda risk death penalty. So far 23 out of 1000 death sentences have been carried out.

Mismanagement and Mistrust

Another problem that has marked the Arusha Tribunal from the start is incompetent employees at all levels of the Tribunal’s hierarchy. An illustrating example is that eight lawyers given on a loan to Rwanda from another African country were not found to have the necessary qualifications to work in Rwanda, but several of them later got well-paid jobs at the Tribunal.

Many are offered a job even though they lack the relevant background from their own country. We have been given

examples of investigators who cannot use a computer and therefore do not themselves question suspects and witnesses. In court there are examples of judges who do not have experience in penal law, for example a Russian former diplomat, or a central person in the prosecution who has his background in business law. Furthermore, a key person in the prosecution is not fluent in the official languages of the Tribunal. One reason for problems in recruiting competent employees might be that it is not attractive to work in Kigali or Arusha. There is however a lot of criticism that the Tribunal does not have a professional recruitment strategy. Some measures have however been taken. In May 2001 the Chief Prosecutor fired seven senior attorneys, citing “professional incompetence”.

One of the scandals related to the Tribunal was the fact that genocide suspects indirectly were on the Tribunal's payroll. They had been recruited to work for the defence, which is financed by the Tribunal. Two of these assistants were later themselves prosecuted, while two others were fired.

Anonymous sources at the Tribunal also confirm that people with ties to the old regime are paid by investigators to find witnesses. In the view of Rwandan authorities, the Tribunal in this way supports the old regime that was responsible for the genocide.

One of the prisoners has even established his own website⁶⁹ and Rwandan governments are worried that the prisoners can keep in touch with the Interhamwe in Congo from the Arusha prison.

Another episode that has contributed to weaken the Rwandans’ faith in the Tribunal was when three judges laughed

⁶⁹ This was confirmed by representatives of the Tribunal, but it was claimed that the inmate received external assistance to update the website.

out loud when a rape victim in the so-called Reverend Case of Butare was in the witness box in January 2002. It happened when the witness, a mass rape-victim, was cross-examined by a defender. The witness felt humiliated and left the Tribunal in protest. This led to a sharpened atmosphere between Rwanda and the Tribunal. The organisation Ibuka, which represents genocide victims, ended its co-operation with the Tribunal and recommended that victims (witnesses) boycott the Tribunal.

The judges have later denied that they laughed at the woman, but claim that they laughed at the defenders “hopeless” questions.⁷⁰ Attempts to reconcile Ibuka and the Tribunal have so far failed.

The Registrar of the Tribunal on 4 March 2002 proposed to the Government of Rwanda to establish a joint commission to investigate the allegations. But because of an inability to agree on certain fundamental points, the Registrar decided to withdraw the proposal. The Registrar reassured that witnesses “will not suffer any mistreatment, and that their welfare and security will continue to be ensured in the interest of the proper administration of justice.”⁷¹

In Rwanda all critical events attached to the Arusha Tribunal have a tendency to attract much attention. The positive sides of its work barely tend to show. One of the reasons may be the lack of an offensive media strategy by the Tribunal, but there is also a general lack of confidence towards the world community and international institutions. In particular the betrayal in 1994 has left deep marks. This adds to the

⁷⁰ This stirred great emotions in Rwanda, and most of our interviewees, even high in the Rwandan administration, stressed this. The explanations by the judges were not accepted.

⁷¹ Statement, Arusha, 17 April 2002 “The Registrar decides to withdraw his proposal to establish Joint Commission to investigate allegations of mistreatment of witnesses from Rwanda.”

scepticism towards the Tribunal based on specific episodes.

As already noted, if the international legal settlement is to contribute to reconciliation it is crucial that it is positively received in Rwanda. This is a great challenge to the Arusha Tribunal. Many Rwandans the Norwegian Helsinki Committee talked with felt that the Tribunal is not for them but for the world community.

The Co-operation Between Rwanda and the Arusha Tribunal

The co-operation between Rwanda and the Arusha Tribunal has lately become even more difficult. The case of the suspected perpetrators of genocide hired by defence team financed by the Tribunal and the “laughing episode” has led to boycott by the association for victims of genocide, Ibuka.

Three month ago, the Government of Rwanda imposed new travel regulations for witnesses to the Tribunal. The Tribunal considers the new regulations, which provides that witnesses must declare their identity and reason for travel to the authorities before they can be granted travel documents, as “dangerous and strenuous to protected witnesses”. Rwanda maintains that the new requirements are “regular procedures required of any Rwandan applying for travel documents”. Witnesses leaving Rwanda to testify in Arusha were previously not required to go through the procedures.⁷²

Prosecutor Carla Del Ponte, in her July 23, 2002 report to the Security Council, criticised Rwanda for several other obstructions, like “failure to provide government records” and “failure to co-

⁷² Arusha, August 12th, 2002 (Foundation Hindorelle) “ICTR is still cautious of Rwanda's co-operation, says spokesperson”. www.hirondelle.org

operate in investigations of violations of the international law by the RPF in 1994”.

The Rwandan government quickly denied all accusations. In a nine-page response to the Prosecutor's charges, of 2 August 2002, the government accused the Arusha Tribunal of undergoing “a crisis of management, incompetence and corruption of its own making”. It wished “to challenge the attempt by the prosecutor to point to Rwanda as the cause of the crisis and not to the Tribunal itself.”

The government presented its own version of the problems and their causes. The allegation that the Government of Rwanda “failed to provide government records” required by the Office of the Prosecutor, useful to the prosecution’s case against those charged, is characterised as “most absurd”.

With regard to the co-operation on investigation of alleged violations committed by RPF, the government states “the Tribunal should try only genocide cases and leave any possible prosecution of RPA members to Rwandan courts.” This is explained by the fact that Rwanda “has a functioning judicial system” and that “the international accountability is intended only in the cases of the absence of a state that is able and willing to bring perpetrators of human rights violations to justice.” According to the government “Rwanda has already brought members of the RPF who committed abuses to justice and sentencing, which included capital punishment.”⁷³

Victor’s Justice?

The Tribunal has also been criticised for providing the victor's justice, because no

⁷³ “Reply of the Government of Rwanda to the report of the Prosecutor of the International Criminal Tribunal for Rwanda to the Security Council”. New York, 26 July 2002. www.rwanda1.com/

one from the RPF so far have been charged. The Prosecutor has assured that they look at this type of cases and that charges against RPF members may appear during the Tribunal's existence.

The Government of Rwanda strongly dislikes this. It thinks that the investigation of RPF is politically motivated and argues that Prosecutor Carla Del Ponte herself has admitted that she is under pressure from certain states to indict RPF members.

From a legal point of view, there is no doubt about the obligation of Rwandan authorities to co-operate fully with the Tribunal. The Security Council has provided the Tribunal with a mandate to overrule decisions by national courts, and to take up cases irrespective of whether there have been national investigation and prosecution.

The Norwegian Helsinki Committee believes that the investigation and possible indictments of RPF members is based on reasonable suspicions of violations of international humanitarian law, as defined in mandate of the Arusha Tribunal.

Rwanda is under a legal obligation to co-operate with the Arusha Tribunal also when it indicts RPF members. Although RPF cannot be held responsible for the genocide, Rwandan authorities have themselves admitted that RPF members have committed serious crimes. The Arusha Tribunal prosecute individuals only, not organisations, institutions or states. The Rwandan authorities can therefore not use as an excuse the fear that “RPF crimes are compared with the genocide.”

In the view of the Norwegian Helsinki Committee, it is important for reconciliation and future peace in Rwanda that the Tribunal investigates accusations of serious crimes by RPF members.

VIII Conclusions

Prosecution on national and international level of those responsible for grave abuses in the 1994 genocide is an important condition to achieve peace and reconciliation in Rwanda. Much depends, however, on how it is carried out and how it is perceived.

Traditionally, states have chosen different approaches to handle traumatic pasts. Usually it has been a choice between amnesty, truth commissions, legal settlements and compensation, or combinations of these. Rwanda has chosen legal settlements. There are no amnesties, but sentences are reduced if you confess and give information.

The legal settlement is first and foremost an answer to the need for justice. In Rwanda, with traumatic events still present in the memory of the people, amnesty arrangements would be destabilising. And to end the culture of impunity and deter future atrocities, legal and quasi-legal procedures to settle responsibilities and impose punishments are necessary.

The Gacaca trials are a risky project that may strike both ways. The process will re-expose wounds and may cause conflicts to surface. But it may also contribute to heal wounds and settle conflicts. In contrast to the court-based national and international legal settlement, the Gacaca will include deep involvement by the local population. The Gacaca process contains elements of both justice and healing, which is important in order to achieve reconciliation.

In contrast to the Arusha Tribunal, which seems distant to many Rwandans, the

Gacaca process will mobilise the people and revitalise parts of the Rwandan cultural heritage. Gacaca is a unique judicial experiment, which may provide a good example also for other African courtiers.

The Gacaca may be criticised for the lack of sufficient legal protection of the accused, but in the current situation it is hard to see realistic alternatives. A precondition for the success of Gacaca is that it is handled professionally and is perceived as just by everyone who is involved.

The Norwegian Helsinki Committee recommends the authorities of Rwanda to invite independent international monitors to overlook the process. International donors should on their part give financial support to the authorities, to ensure proper technical implementation of the process.

The Arusha Tribunal functions as an important supplement to the national legal settlement. In the short term the Tribunal may have limited impact on the reconciliation processes. However, in the long term the work of the Tribunal has the potential of contributing to consensus on a common historic understanding of the genocide and to ending the culture of impunity.

From an international perspective the Tribunal gives effect to the principle that serious international crimes cannot go unpunished. And the Tribunal contributes to the development of an international legal practice for the enforcement of the international humanitarian law.

It is however very unfortunate that the Tribunal eight years after its establishment has passed only nine judgements, even if important leaders behind the genocide are among those indicted and sentenced. It is a serious limitation of its functioning that it does not have a mandate to provide compensation to victims, something Rwandan authorities wish to implement in the national legal settlement, but cannot afford.

There are serious challenges to improve the functioning of the Tribunal. Rwandan officials seem to have lost respect for the Tribunal and in some cases misuse the failures of the Tribunal for their own benefit.

The Arusha Tribunal has a long way to go to improve professionalism and efficiency. In particular, the recruitment policy of the Tribunal must be improved. It is simply too much at stake to let business continue the way it has done so far. The well functioning of the Tribunal is important for many reasons. To improve the credibility of the international community in the

region, to promote reconciliation and rebuilding of Rwanda and as a deterrent of future plans of mass atrocities to solve political conflicts. The Tribunal is also important as a step towards establishing a credible permanent international system of fighting impunity.

Rwandans, including the organisation Ibuka that represents genocide victims, has of course a right to criticise the Tribunal. Yet co-operation is in everyone's interest. Both the Government of Rwanda and the Tribunal must contribute to improve relations. Authorities in Rwanda must improve their assistance to the Tribunal and fulfil their legal obligations.

The people of Rwanda were betrayed in 1994. Genocide and crimes against humanity (that is, crimes against you and me) were allowed to happen. The international community can never make up for that injustice. It is important that the Rwandans are not betrayed again. Rwanda must therefore be assisted in its efforts to carry out an extensive legal settlement, to strengthen the reconciliation process within the country and to improve its human rights conducts.

Reconciliation cannot be imposed from outside. Yet the road to reconciliation can be less strenuous if the international community helps Rwanda with development aid, supports funds that pay compensation to genocide victims and help building a society respecting the dignity and rights of everyone.