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[Embargoed for: 06 April 2004]

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Rwanda

The enduring legacy of the genocide and war

Summary

AI Index: AFR 47/008/2004

On 7 April 2004 Rwanda commemorates the ten year anniversary of the 1994 genocide. The ensuing events constitute one of the worst humanitarian catastrophes in recent times. For 100 days, between April and July 1994, as many as one million Rwandese – approximately 15 percent of the population were killed by their fellow Rwandese, in many cases by their own neighbours. These killings of unarmed civilians were accompanied by widespread torture and rape. Rwandese labelled “Tutsi” were the principal victims of the government-orchestrated mass killings that occurred within the context of the October 1990 to July 1994 armed conflict between Rwandese government forces and the then armed political group known as the Rwandese Patriotic Front (RPF). In addition to the ongoing genocide, both parties to the armed conflict committed war crimes and crimes against humanity. After the RPF captured power in July 1994, its armed wing, the Rwandese Patriotic Army (RPA), that constituted the bulk of Rwanda’s new army continued to commit extrajudicial executions and other human rights violations against unarmed civilians.

In this summary of concerns, Amnesty International examines the extent to which the current government has over the past decade addressed points of tension that led to the heinous crime of genocide. The summary of concerns focuses on the issues of criminal justice, the rights to freedom of expression and association, violence against women, refugee rights and human rights abuse in the DRC because the legacy of the Rwandese genocide has spread beyond its borders.

There are the 80,000 detainees in Rwanda’s overcrowded prisons, some of whom are allegedly innocent, who await a fair trial. In some cases, they, their families and their home communities remain unconvinced that they will get one. Victims and survivors of the genocide also wait justice and compensation for the human rights abuses they have suffered. Women and girls, in particular, were left infected with HIV or were left with permanent health complications and disease as a result of the brutal sexual violence they suffered. There are the hundreds of thousands of Rwandese refugees who returned home involuntarily in the aftermath of the genocide to an unknown future. another 60,000 remain outside Rwanda unsure if they want to return and afraid that their return may be forced. There is also the vast majority of Rwandese who witnessed and suffered the nightmare of genocide who want to be sure that it never happens again.

The Rwandese government justified these arbitrary arrests and unlawful detentions, arguing that it needed to eradicate a culture of impunity. It argued that individuals suspected of involvement in the genocide had to be detained even though the state lacked the infrastructure and personnel to investigate the validity of the allegations made against them or try their cases in a court of law. Impunity cannot be eradicated, however, through arbitrary arrests and unlawful detentions.

With the re-opening of Rwandese courts in September 1996, the Rwandese government attempted to temporarily legalize arbitrary arrests and unlawful detentions. A fixed-term two-year law was passed, retroactive to 6 April 1994, suspending provisions in the Rwandese Code of Criminal Procedures (CCP) that guaranteed the pre-trial rights of individuals. The law was extended in December 1997 and again in December 1999 through to 16 July 2001. The Rwandese government's suspension of legal safeguards, however, did not absolve it from international human rights obligations that the government had undertaken through its ratification of the International Covenant of Civil and Political Rights and the African Charter on Human and Peoples' Rights. Rwandese human rights organizations and legal practitioners estimate that as many as one-third of current arrests and detentions still violate legal safeguards contained in the CCP.

The Rwandese government has consistently stated that resolving the conditions that led to the genocide and armed conflict is its number one priority. It maintains that it is addressing these conditions through programs and policies that ensure good governance, justice, economic development and above all a respect for human rights. Despite these assurances, the government has not created a credible system of criminal justice that is perceived to be fair and equitable by the majority of Rwandese; to respect and promote the full range of civil liberties within Rwanda; to ensure legal recourse, medical care and compensation for the victims of genocide, specifically women who were raped and suffer from sexually transmitted diseases along with women who are the victims of sexual abuse committed by Rwandese security forces; breached its obligations under the 1951 Refugee Convention to ensure "*that no refugee should be returned to a place where his or her life or freedom is under threat,*" and has committed massive human rights violations in the DRC.

This report summarizes a 19-page document (8,094 words), **Rwanda: The enduring legacy of the genocide**, (AI Index: AFR 47/008/2004) issued by Amnesty International on 6 April 2004. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

<http://web.amnesty.org/ai.nsf/news>

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amnesty international

Rwanda

The enduring legacy of the genocide and war



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RWANDA

The enduring legacy of the genocide and war

On 7 April 2004 Rwanda commemorates the ten year anniversary of the 1994 genocide. The ensuing events constitute one of the worst humanitarian catastrophes in recent times. For 100 days, between April and July 1994, as many as one million Rwandese – approximately 15 percent of the population were killed by their fellow Rwandese, in many cases by their own neighbours. These killings of unarmed civilians were accompanied by widespread torture and rape. Rwandese labelled “Tutsi” were the principal victims of the government-orchestrated mass killings that occurred within the context of the October 1990 to July 1994 armed conflict between Rwandese government forces and the then armed political group known as the Rwandese Patriotic Front (RPF). In addition to the ongoing genocide, both parties to the armed conflict committed war crimes and crimes against humanity. After the RPF captured power in July 1994, its armed wing, the Rwandese Patriotic Army (RPA), that constituted the bulk of Rwanda’s new army continued to commit extrajudicial executions and other human rights violations against unarmed civilians.

Ten years later, the enduring legacy of the genocide and armed conflict continues for most Rwandese. There are the 80,000 detainees in Rwanda’s overcrowded prisons, some of whom are allegedly innocent, who await a fair trial. In some cases, they, their families and their home communities remain unconvinced that they will get one. Victims and survivors of the genocide also wait justice and compensation for the human rights abuses they have suffered. Women and girls, in particular, were left infected with HIV or were left with permanent health complications and disease as a result of the brutal sexual violence they suffered. There are the hundreds of thousands of Rwandese refugees who returned home involuntarily in the aftermath of the genocide to an unknown future, another 60,000 remain outside Rwanda unsure if they want to return and afraid that their return may be forced. There is also the vast majority of Rwandese who witnessed and suffered the nightmare of genocide who want to be sure that it never happens again.

After coming to power, the RPF-dominated new government attributed the genocide and armed conflict to an abuse of power, injustice and poverty. The government stated its commitment to eradicate these root causes through programs and policies that focused on achieving good governance, justice and economic development. In commemorating the victims and survivors of the genocide, time must also be taken to examine the extent to which the current Rwandese government has effectively resolved the conditions that led to the 1990 to 1994 genocide and armed conflict.

The Rwandese government in 2003 celebrated the end of the transition period established in the Arusha accords and extended by the Rwandese government. A new constitution was adopted by referendum on 26 May 2003; Rwanda’s fifth constitution since independence in 1962. Presidential elections were held on 25 August and parliamentary

elections between 29 September and 3 October. The new constitution guarantees a number of fundamental human rights. It also contains provisions that limit these rights through vague wording open to abusive interpretation by those in power. In other cases, rights are limited in corollary legislation with similarly vague wording open to abuse. The constitution also seemingly lays the legal foundation for democratic institutions. Again, provisions exist which contradict or effectively supersede the independence of these institutions. Though the government maintains that the 2003 elections were the first democratic elections in the country's history, opposition party members and leaders were intimidated by repeated interrogations at police stations, unlawful detentions, bribes and death threats. There were also consistent reports of voter intimidation before and on polling day by supporters of the governing party.

Regarding justice, the Rwanda Law Reform Commission has over the last two and a half years, drafted legislation reform proposals seeking to address the erosion of public confidence in the criminal justice system; continuing problems with arbitrary arrests and unlawful detentions; questions concerning the competence, impartiality and independence of judicial personnel; corruption within the judiciary and inequality before the law. While not minimizing the work of the Commission, its creation and work acknowledges the gravity of problems that exist within the criminal justice system. In addition, reform proposals have to be enacted and implemented.

In this summary of concerns, Amnesty International examines the extent to which the current government has over the past decade addressed points of tension that led to the heinous crime of genocide. The summary of concerns focuses on the issues of criminal justice, the rights to freedom of expression and association, violence against women, refugee rights and human rights abuse in the DRC because the legacy of the Rwandese genocide has spread beyond its borders.

FALTERING JUSTICE ARBITRARY ARRESTS AND UNLAWFUL DETENTION

Arbitrary arrests and unlawful detentions in Rwanda have risen and fallen over the last decade dependent on the level of political tension and real or perceived threats to internal security. Massive arrests combined with a non-functioning judicial system characterized the first two years of the RPF-dominated Government of National Unity. In the months immediately following the installation of the new government in July 1994, primarily soldiers, but also local authorities (sometimes issued with blank warrants by their public prosecutor's offices), unlawfully detained thousands of individuals on the basis of uninvestigated allegations. Soldiers repeatedly interfered with the work of judicial officials, sometimes re-arresting individuals released by the courts. The case files of most detainees either did not exist or did not contain *prima facie* evidence regarding their alleged offence(s).

The Rwandese government justified these arbitrary arrests and unlawful detentions, arguing that it needed to eradicate a culture of impunity. It argued that individuals suspected of involvement in the genocide had to be detained even though the state lacked the infrastructure and personnel to investigate the validity of the allegations made against them or try their cases in a court of law. Impunity cannot be eradicated, however, through arbitrary arrests and unlawful detentions.

With the re-opening of Rwandese courts in September 1996, the Rwandese government attempted to temporarily legalize arbitrary arrests and unlawful detentions. A fixed-term two-year law was passed, retroactive to 6 April 1994, suspending provisions in the Rwandese Code of Criminal Procedures (CCP) that guaranteed the pre-trial rights of individuals. The law was extended in December 1997 and again in December 1999 through to 16 July 2001. The Rwandese government's suspension of legal safeguards, however, did not absolve it from international human rights obligations that the government had undertaken through its ratification of the International Covenant of Civil and Political Rights and the African Charter on Human and Peoples' Rights. Rwandese human rights organizations and legal practitioners estimate that as many as one-third of current arrests and detentions still violate legal safeguards contained in the CCP.

PRISON CONDITIONS

Prior to 1994, the capacity of Rwandese prisons was 18,000. New prisons and extensions to existing prisons could not keep up with the tens of thousands of new arrests and detentions. Between mid-1994 and mid-1996, the population in Rwandese detention facilities rose to more than 90,000. This population peaked at around 124,000 in 1997 and 1998 with approximately 70 percent held in the country's 19 prisons and the remaining 30 percent in district detention facilities (*cachots*).¹ The prison population has remained high, despite significant reductions in the arrest and detention of alleged genocide perpetrators – from a high of 4,100 a month in 1995 – and a functioning criminal justice system, because of the transfer of tens of thousands of detainees from district detention facilities to prisons. Rwanda today has a prison population of slightly fewer than 80,000. Approximately 5,000 are still held in district detention facilities. In early 2003, the Rwandese government announced that it would close four of its 18 prisons because of the environmental and health problems they posed to inmates and surrounding populations. It will be able to do this because of the provisional release of detainees, approximately 20,000 detainees in early 2003 and a projected release of 30,000 detainees in April 2004, and the construction of a new model prison.

¹ District detention facilities are rudimentary structures constructed to temporarily hold detainees for up to 48 hours before their transfer to prison. Because they are temporary holding facilities, local districts have no budget to maintain detainees who are dependent on their families for their support. In addition, physical conditions are far worse in the district detention facilities than those in the prisons with physical abuse, even torture, more prevalent.

Preventable diseases, malnutrition and the debilitating effects of overcrowding resulted in a reported 11,000 deaths between 1994 and 2001. There have also been reports of deaths in custody resulting from the physical abuse of detainees by prison officials. At the end of 1999, 17 out of 19 prison directors were dismissed, 15 of them were jailed for corruption and ill-treatment of prisoners. While there has been a consistent amelioration of prison conditions in the last few years, the severe overcrowding and unsanitary conditions within Rwandese prisons continue to constitute cruel, inhuman and degrading treatment.

ACCELERATING THE PREPARATION OF DETAINEES CASE FILES

The situation in Rwandese detention facilities, combined with an ever increasing judicial backlog, led the Rwandese government to experiment with a number of measures designed to release detainees for whom *prima facie* cases could not be established. From late 1994 until 1995 there were Screening Commissions (*Commissions de triage*) and from early 1997 until 1999 there were *Groupes mobiles*, itinerant judicial investigative units deployed by the Ministry of Justice to collect evidence for detainees who did not have case files. The screening commissions were authorized to screen the case files of detainees and release those for whom there was no substantiating evidence. These commissions failed largely because representatives from the security forces who sat on these commissions were opposed to the release of detainees regardless of the lack of evidence against them. The work of the *Groupes mobiles* was hampered due to the lack of qualified personnel, transport and communication facilities. Their review of 60,000 cases through 1998 led to the release of only 1,000 detainees.

Beginning in 2000, representatives of the Public Prosecutor Office (OMP) began bringing detainees before their local communities and asking community members to provide evidence for or against them. Representatives from the OMP conduct these sessions in a manner which frequently violates both the detainee's right to be presumed innocent and the burden of proof obligation that there is sufficient evidence regarding the allegations against the individual. They frequently make it clear to the assembled community members that the principle objective of the exercise is to collect incriminating evidence against the detainees. Defence witnesses are cross-examined in an intimidating manner that suggests they share in the victim's guilt. Conversely, witnesses for the prosecution frequently give no evidence at all or evidence that is hearsay or circumstantial. Even under these conditions, 40 percent of the nearly 3,500 detainees that were brought before their communities from October 2001 to October 2002 were released. In the latter half of 2003, 80 of the 750 detainees presented were released due to lack of credible evidence.

Between November 1996 and October 1998, the government announced that it would release detainees whose case files did not contain *prima facie* evidence regarding their alleged offence(s). Elements within the government and genocide survivor groups were usually successful in drastically reducing the number of detainees released or ensured the re-arrest of many. The Rwandese government consistently argued that released detainees faced reprisals

in their home communities even though studies by Rwandese human rights organizations indicated that this was not necessarily the case.

The Rwandese government has recently reversed its policy on releases. Rather than focusing on the release of the *sans dossiers*, detainees against whom no formal charges have been brought, whose charges have been dropped or for whom *prima facie* cases have not been established, the government is now focusing on the provisional release of detainees who have confessed to the crime of genocide and / or crimes against humanity. Close to 20,000 detainees were provisionally released in early 2003 and there is another projected release of 30,000 detainees in April 2004. According to the presidential communiqué and Ministry of Justice instructions, these individuals will still stand trial in the community-based and participatory *gacaca* tribunals.² Amnesty International has consistently urged the Rwandese government to re-examine the basis of these provisional releases as a matter of priority. Focused principally on those who have confessed, the government-ordered releases ignore the continued detention of the estimated seven thousand *sans dossiers*.

TRIALS OF GENOCIDE SUSPECTS

The International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda (ICTR), created in November 1994, was established for the prosecution of 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. The Tribunal has been plagued by a number of problems. It took two years to establish ICTR offices in The Hague, Arusha and Kigali and another year to address management and funding problems. In April 1996, a team of investigators and auditors from the United Nations Office of Internal Oversight (OIOS) documented charges of mismanagement. It also found considerable evidence that administrative support functions did not operate or operated poorly. OIOS investigations in 2001 and 2002 found evidence that some former or current defence counsel has either been solicited and / or had accepted requests for fee-splitting made to them by their respective clients. Other related findings included the hiring of detainees' friends and relatives as defence investigators, expensive gifts given to the detainees by their counsel and other forms of indirect support and maintenance. In May 2001, Carla Del Ponte, the Prosecutor of the ICTR, terminated the employment of seven senior attorneys citing "professional incompetence" as her reason. The ICTR has further experienced difficulties in recruiting suitably qualified and experienced judicial investigators. Amnesty International noted that the Tribunal broke its own Rules of Procedure and violated international human rights standards

² See Amnesty International's Report "Rwanda *Gacaca*: A question of justice," December 2002 (AI Index AFR 47/007/2002).

regarding the fair trial rights of defendants.³ Amnesty International noted seven cases in which defendants were not brought to trial within a reasonable time and there were inexcusable delays in their initial appearance and the hearing of their motions.

The Tribunal is also dependent on the Rwandese state because of the latter's control of Rwandese witnesses and crime sites. The Rwandese government voted against the Tribunal's establishment and has actively campaigned against successive ICTR Chief Prosecutors. The Rwandese government has also denied the Tribunal's investigative units access to Rwanda, sometimes by refusing to guarantee their safety. It has also blocked the prosecution's access to witnesses during trials. Three trials were adjourned on several occasions in 2002 due to the lack of witnesses caused by the government's change of travel regulations, which followed an announcement by ICTR Prosecutor Carla Del Ponte regarding investigations against RPA soldiers,⁴ and the government's influence over genocide groups that urged witnesses not to testify before the Tribunal. The Security Council issued a presidential statement in December 2002 reaffirming its support for the ICTR as "impartial and independent" and reminding Rwanda of its obligations to cooperate with it.

As of 1 March 2004, the ICTR had arrested 66 individuals, tried 21 individuals, rendering eight convictions and one acquittal. Twelve appeals are pending. There are seven ongoing trials with 20 defendants.

Rwandese ordinary jurisdictions

The pre-genocide Rwandese judicial system was weak, possessing limited resources, insufficiently trained personnel and a lack of judicial independence. This flawed judicial system was destroyed during the genocide: court buildings were ruined and the few qualified professionals were either killed, had participated in the genocide or had fled the country. The Rwandese government, with considerable assistance from various United Nations agencies, foreign governments and non-governmental organizations (NGOs) implemented provisions contained in the Arusha accords dealing with the reorganization of the judiciary. The principle objective was to materially reconstruct the judicial system's infrastructures and train the requisite judicial personnel. Courts hearing civil and criminal cases not related to the genocide became operational in September 1996. Special genocide chambers established within each of the Tribunals of First Instance began hearing cases involving the crime of genocide and crimes against humanity in December of that year.

The establishment of the special genocide chambers marked a significant step towards attaining justice and ending the culture of impunity though serious problems remain. Amnesty International, along with a number of human rights organizations and legal experts

³ See Amnesty International's Report "*International Criminal Tribunal for Rwanda: Trials and Tribulations*," April 1998 (AI Index: IOR 42/03/98).

⁴ Prosecutor, Carla Del Ponte on several occasions announced investigations against RPA soldiers. She suspended them after receiving strong opposition from the RPF-based Rwandese government.

expressed grave doubts regarding the fairness of these early trials.⁵ Amnesty International's concerns focused on four issues: the lack of defence counsel and witnesses for the vast majority of defendants; the lack of time and adequate facilities for defendants to prepare their defence; the competence, impartiality and independence of criminal justice officials; and the conduct of the trials in which it was frequently clear that those accused of genocide and other crimes against humanity were already considered guilty by both judge and prosecutor. Defendants were even jeered by spectators.

Amnesty International acknowledged an overall improvement in the quality of trials in April 2000 along with the persistence of fundamental problems.⁶ These problems stemmed from the hostile socio-political environment in which the courts were functioning, the overwhelming number of cases before the courts and the dramatic shortage of qualified and experienced judicial officials and lawyers. Public statements and actions by some government officials and the popular pressure exerted by genocide survivor groups against detainees sustained a climate of fear that continued to affect judicial personnel, defendants and witnesses. There continued to be numerous instances of alleged interference by the government in court decisions and the non-respect of court decisions by government officials, witnessed in the re-arrest of individuals after their trial and acquittal. Defence counsel and witnesses continued to be intimidated causing the former to withdraw from trials and the latter to refuse to testify aware that prosecutorial staff would use their testimony to implicate them in the crimes committed by defendants. The shortage of qualified and experienced judicial personnel continued to raise serious doubts about the fairness of the Rwandese criminal justice system.

During the October 2003 Amnesty International High-Level Mission to Rwanda, Amnesty International delegates re-iterated our concerns regarding the criminal justice system with justice officials. Our concerns largely re-iterated those of the past: a continuing high number of arbitrary arrests and unlawful detention in violation of Rwandese law and the international covenants to which the Rwandese government is signatory; the non-respect for court decisions by government officials witnessed in several re-arrests of individuals tried and acquitted by the courts; corruption at all levels of the criminal justice system and continuing concerns regarding the competence, independence and impartiality of the Rwandese magistracy.

Between December 1996 and June 2003, ordinary jurisdictions tried 8,820 genocide suspects, less than ten percent of detainees. Over this period, the percentage of those who were sentenced to death has continually dropped from 30.8 percent in 1997 to 3.6 percent in 2002. Nonetheless, 70 individuals were sentenced to death in 2002 and 18 individuals in the

⁵ See Amnesty International's Report "*Rwanda: Unfair Trials-Justice Denied*," April 1997 (AI Index: AFR 47/08/97).

⁶ See Amnesty International's Report "*Rwanda: The Troubled Court of Justice*," April 1997 (AI Index: AFR 47/10/00).

first six months of 2003. There have been no executions since April 1998 when 22 prisoners found guilty of crimes related to genocide were publicly executed.

The Rwandese judiciary has consistently focused on human rights abuses committed under the auspices of the former government during the 1990 to 1994 armed conflict and genocide. It has undertaken no systematic impartial investigation of RPA human rights abuses during this period despite credible information that they occurred on a large scale. Moreover, abuses by Rwandese security forces have continued since the RPF came to power. Amnesty International reports have repeatedly documented these abuses despite the government's deliberate attempts to obstruct independent investigations.⁷ During the Insurgency in the Northwest (1996 to 1998), for example, the government attributed the majority of human rights abuses to "infiltrators" (*infiltrés*) - members of armed political groups operating from the DRC - even though testimonies received by Amnesty International delegates confirm that the majority of killings of unarmed civilians were carried out by the RPA.⁸

Amnesty International delegates have repeatedly met with senior government officials and members of the security forces to discuss persistent impunity enjoyed by the security forces which committed countless unlawful killings, "disappearances", torture and other serious human rights abuses before and after the RPF came to power. In October 2003, high level justice officials told Amnesty International delegates that 1,800 members of the RPA were now serving sentences for human rights abuses; 1,500 of these were for abuses committed during the 1994 genocide. Evidence obtained from the *Auditorat militaire* (Military Prosecutor's Office) suggests that only a few dozen RPA soldiers have been prosecuted and that those found guilty served minimal sentences. Tackling impunity requires that justice is seen to be fair, transparent and non-discriminatory. All individuals responsible for human rights abuses must be brought to trial in accordance with international fair trial standards and without recourse to the death penalty.

Rwandese *gacaca* jurisdictions

The *gacaca* jurisdictions are a community-based, participatory form of justice established by the government in June 2002.⁹ In *gacaca*, community members select judges from amongst themselves, based on their honesty and integrity, and assist the bench in listing community victims of genocide, evaluating property damage and listing the suspected perpetrators. In the initial information gathering sessions and later during the trials all community members share

⁷ See Amnesty International's Reports "*Rwanda: Alarming resurgence of killings*," August 1996 (AI Index AFR 47/13/96), "*Rwanda: Ending the Silence*," September 1997 (AI Index AFR 47/32/97), "*Rwanda: Civilians trapped in armed conflict*," December 1997 (AI Index AFR 47/43/97) and "*Rwanda: The hidden violence*," June 1998 (AI Index AFR 47/23/98), "*Fear for Safety/ Possible 'disappearance'/incommunicado detention*," (AI Index AFR 47/003/2003), "*It's in our hands: Stop violence against women*," 2004 (AI Index ACT 77/001/2004).

⁸ See Amnesty International's Report "*Rwanda: The hidden violence*" cited above.

⁹ See Amnesty International's Report "*Rwanda Gacaca: A question of justice*" cited above.

a responsibility in providing a truthful accounting of what they know regarding the genocidal crimes committed in their communities. Thus far, there have been problems with the active participation of community members, including the selected judges. During the first two phases, *gacaca* jurisdictions are to meet once a week between the hours of 8h30 and 16h. There must be a quorum of community members present. *Gacaca* sessions regularly start late and are frequently cancelled because a quorum has not been reached. More important, there is minimal participation during *gacaca* sessions. Community members appear to be afraid of providing a truth account of what they know about the genocidal crimes committed. This is the result of intimidation faced by both survivors and defence witnesses, corruption, the lack of support from local elites and authorities and a general lack of trust and confidence in the Rwandese criminal justice system.¹⁰ Reasons for the latter include: continued arbitrary arrests, the non-release of long-term detainees considered by the local population to be innocent and the release by public prosecutor's offices or the courts of individuals that the local population considers to be guilty.

Gacaca has also failed to expedite the trials of detainees. The Rwandese government projected that *gacaca* tribunals would try genocide suspects in categories two to four within a three to five year timeframe.¹¹ Since their establishment on 18 June 2002, less than ten percent of the projected tribunals have become operational: 80 in June 2002 and 741 in November 2002. These 821 tribunals have only managed to work on the first and second of the three phases within their mandate. The first phase consists of recording the names and addresses of individuals who were living in the cell¹² on 6 April 1994, recording the names of genocide victims who died within the cell (both cell residents and individuals who resided in other cells), compiling an inventory of property damage and recording the names of genocide suspects and investigating the charges against them. The second phase involves the creation of individual case files and their categorization into one of the four legally defined categories. The government anticipated that the completion of the first and second phases would take four months. It has taken over one and a half years in the cells where the *gacaca* tribunals have become operational. Operating tribunals which were temporarily suspended during the 2003 election period will resume in May 2004. The more than nine thousand projected *gacaca* tribunals will also become operational at this time. After one-and-a-half years of operation, there have been no actual trials (phase 3), although a few dozens of detainees have been released due to a lack of evidence.

¹⁰ See Penal reform Initiative Reports "*Report III: April-June 2002*" and "*Report V*," September 2003.

¹¹ Rwanda's Genocide Law creates four categories of genocide and crimes against humanity offences. Individuals in the first category led or organized the genocide, abused positions of authority, distinguished themselves by their ferocity or excessive cruelty and perpetrated sexual torture. Individuals in category 2 are perpetrators or accomplices to intentional homicides or serious assaults that caused the death of individuals. Individuals in category 3 are guilty of other serious assaults against individuals while category 4 persons committed property crimes.

¹² Cells are the lowest administrative unit in Rwanda. The number of individuals within each cell varies from 200 to 1,000 individuals. *Gacaca* jurisdictions at this level are primarily responsible for the first two phases of *gacaca*. Actual trials and their appeals will principally occur at the sector, district and provincial levels.

A further problem arises from the fact that the 32,000 confessions that had been received by the Ministry of Justice by the end of 2002, incriminated an additional 250,000 individuals. The Ministry of Justice has received another 32,000 confessions since the 2003 provisional release and prior to the 15 March deadline for the projected April 2004 provisional release. It is not yet known how many additional people have been implicated in these confessions but it is probably close to last year's figure. Even if the number of incriminated individuals is greatly exaggerated or if the "accomplices" denounced are not all arrested, the number will be sufficiently large to cause further prison overcrowding and judicial backlog. The relatively few *gacaca* tribunals that have been meeting have also identified thousands of new genocide suspects. This number will undoubtedly grow when the remaining *gacaca* tribunals become operational. These numbers pose a logistical nightmare that *gacaca* as it now exists cannot handle.

Two programs vital to the reconciliation objective of *gacaca*, and ancillary to it, are compensation for the victims of genocide and the implementation of a Community Service program in which those who have confessed to the crime of genocide or crimes against humanity can serve a portion of their sentence. There is still not a genocide victim compensation law in Rwanda. A draft bill instituting the *Fonds d'Indemnisation* (FIND) was debated within the Rwandese cabinet in August 2002 but it has yet to be debated or voted on in the National Assembly. The establishment of a compensation fund is critical since reparations awarded by courts are purely theoretical, as most of those who are ordered to pay are insolvent. National courts have imposed sentences that include compensating survivors and victims for both material and moral damages. None of these decisions have been enforced. Legislation establishing the Community Service Program has been passed and the Ministry of Justice approved a plan of action in August 2002 but nothing has been implemented. Both cases demonstrate a failure by the Rwandese government to prioritise justice, despite significant financial and other resources contributed by the international community.

FAILURE TO RESPECT OTHER HUMAN RIGHTS

The Rwandese government is unwilling to support the full range of human rights, including the rights to freedom of expression and association. A number of steps are taken to silence individuals opposed or critical of the government. The government sometimes alleges that political opponents of the government, and those perceived as such by the government, local human rights organizations and the staff of independent newspapers have committed illegal offences. Frequently, these allegations by the government are sufficient to silence the alleged offender or compel the individual to seek asylum outside of Rwanda. In addition, such allegations seriously affect the work and membership or supporters of the parties or organizations against whom the allegations have been made. Rwandese are generally afraid to be associated with political parties or organizations that the government opposes. The government can also restrict what human rights organizations, or certain individuals within them, are allowed to do and apply pressure on economic enterprises to not advertise in

independent newspapers. The government also relies on intimidation. This can take the form of bribes, repeated interrogations at police stations, unlawful detention and death threats. Finally, there is judicial action itself. Since December 2001, Rwanda has a criminal law (Law N° 47/2001 of 18/12/2001) that punishes any speech or action considered to promote discrimination or sectarianism. Courts can dissolve political parties or nongovernmental organizations (NGOs) found guilty of sectarianism, and can annul election results if a candidate employs discrimination or sectarianism. Sectarianism is defined in part as “the use of speech, written statement or action that divides people...” The “divisionist” allegation, frequently employed by the government but rarely pursued in the courts, is clearly non-specific and open to interpretation and abuse. It violates the rights to freedom of expression and association as enshrined in the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples’ Rights, to which Rwanda is party. While the constitution seemingly guarantees the rights to freedom of expression and association, the articles that guarantee these rights states that these rights cannot prejudice public order. Corollary legislation will further restrict these rights through the delineation of the conditions under which these rights can be exercised.

Within Rwanda, the government reacted to former President Pasteur Bizimungu’s launch of a new political party, *Parti démocratique pour le Renouveau* (PDR-*Ubuyanja*), Democratic Party for Revival by arresting and detaining top leaders and alleged PDR-*Ubuyanja* adherents. Both Pasteur Bizimungu and Charles Ntakirutinka, a close political ally, were arrested in April 2002 and remain in custody. At least 25 other individuals were detained in April and May 2002 for allegedly organizing and / or participating in clandestine PDR-*Ubuyanja* meetings. Four of these individuals are still in detention. The trial of the six individuals began 31 March 2004 but the hearing was quickly adjourned to 20 April. Pasteur Bizimungu is charged with trying to set up an armed militia viewed as a threat to state security. The trial has been repeatedly postponed and delayed, in part by Pasteur Bizimungu’s unsuccessful appeal to the Supreme Court to have the charges, which have changed in the two-year period, dismissed.

Existing political parties, legitimized by the Arusha Accords have also been targeted, particularly the leading opposition party, the *Mouvement Démocratique Républicain* (MDR), Democratic Republican Movement. A parliamentary commission was established in late 2002 to examine divisions within the MDR and the historic role the party had played in “divisions which characterized Rwandese society.” Forty-six individuals were named in the Commission’s report as supporters of the MDR divisionist ideology. The Transitional National Assembly voted unanimously to recommend the dissolution of the MDR, which the government promptly executed. Two high-ranking military officials singled out as “divisionist” fled the country before the report’s release while others named in the report or somehow linked to those named in the report “disappeared” or were arrested. The arrested individuals have been charged: one for “spreading divisive and segregative propaganda” (Law N° 47/2001 of 18/12/2001), another for violating the organic law governing presidential and parliamentary elections (N° 17/2003) and another for violations of the Rwandese Penal Code. The Rwandese government alleged that the *Parti libéral*, Liberal Party, and the *Parti*

sociale démocrate, Social Democratic Party, were divisionist after they ran independent slates for the parliamentary elections. Both parties had supported Kagame's presidential candidacy.

In addition to the government's efforts to exclude individuals from participating in the political arena, it continues its ongoing campaign to infiltrate, divide, co-opt and/or shut down human rights organizations and associations within civil society, a fact which reduces the scrutiny of ongoing human rights violations. The country's leading independent human rights organizations, LIPRODHOR, was named in the commission report as a financial supporter of the MDR. No legal action has been taken against LIPRODHOR. The human rights organization was not permitted by the government, however, to engage in a civic education program prior to the elections. Awaiting further government action, the organization itself restricted its monitoring of human rights abuses for several weeks after the allegation. Some international non-governmental organizations have been asked to leave Rwanda; others have reduced their activities due to government harassment and intimidation.

Freedom of the press is very limited in Rwanda. In part this is the result of the murderous role played by the media during the genocide. The Rwandese government, as evidenced in the July 2002 Press law, is unwilling to guarantee complete freedom of the press. The government responds to criticism or views contrary to official views in the press through intimidation, harassment, arrest and detention. This frequently takes the form of repeated interrogations at police stations, denouncement by government authorities in the government-controlled media and death threats. Self-censorship is rife, with journalists, unwilling to cover certain subjects and / or cover other subjects objectively in fear of government reprisals. Many independent journalists have sought asylum abroad in recent years.

VIOLENCE AGAINST WOMEN ¹³

The 1990 to 1994 genocide and armed conflict took a heavy toll on all segments of Rwandese society. It placed a particularly difficult burden on women and girls. The genocide and war left many widows and orphans to fend for themselves, both the widows of genocide victims and the widows of those killed by the RPF/A in the months and years after the genocide. Customary law dictated that widows return their husbands' land to their husbands' families, often forcing families of men who had been killed to live in destitution. The written law was changed after the genocide, in an attempt to protect women from poverty if their husbands died, but customary law is largely still practised and still dictates that widowed women lose their land.

Many women who survived the genocide with their lives did not escape unscathed—one NGO that supports genocide widows estimates that 67 percent of those who were raped

¹³ See Amnesty International report "*Marked for Death: Rape Survivors Living with HIV/AIDs in Rwanda*," April 2004 (AI Index AFR 47/007/2004).

were infected with HIV. Many women were left with permanent health complications such as fistula¹⁴ and diseases as a result of brutal sexual violence.

Sexual violence remains a problem in Rwanda. The current national police force constitutes only a small percentage of the nation's internal security mechanism. In rural Rwanda, young men with minimal training are given uniforms and guns and sent to patrol the communities. These paramilitary forces known as Local Defence Forces (LDF) are accused of raping women in many of the local communities they are supposed to serve. Members of the LDF who are accused of sexual violence are rarely prosecuted. In the few instances in which they have been tried, convicted, and imprisoned, they were invariably released in a few days. They act with near-total impunity. For example, one member of the LDF who raped a woman in 2001 was briefly detained by local authorities and released. He raped and killed a 14 year-old girl ten days later. This time he was again briefly detained by police and released without charge. There are also many cases of forced marriage, where women are forced by LDF members into marriage, and are either raped before or after the "marriage".

A journalist from Rwanda's only truly independent newspaper described the instances of rape perpetrated by LDF as "common"; another human rights defender describes LDF abuses against women as occurring "with disturbing frequency". However, this issue is politically sensitive, and local human rights organizations were not permitted to disseminate research about these LDF abuses. They had planned a "day of reflection" about LDF abuses in March 2003, but the government told them to indefinitely postpone the meeting. The government did not invoke either the law or regulations that govern NGOs to prohibit them from doing. It simply told them that it could not be done.

VIOLATING THE RIGHTS OF REFUGEES AND DISPLACED PERSONS RWANDESE REFUGEES AND INTERNALLY DISPLACED PERSONS

In the aftermath of genocide and armed conflict, the new RPF-dominated government was faced with 390,000 internally displaced persons (IDPs) in 33 camps spread throughout south-western Rwanda and approximately one million refugees in Zaïre, now known as the Democratic Republic of Congo (DRC), 600,000 in Tanzania and 150,000 in Burundi. These individuals had fled the fighting and perceived future in terror. Some were forced to flee, serving as shields for leaders who had planned and executed the genocide. Among those who fled were many genocidaires who had participated in the genocide. The majority had played no role in it.

Elements of the former government, members of its army (ex-FAR) and militia members, responsible for the genocide, were harboured in the IDP camps within Rwanda and used the refugee camps outside Rwanda to launch armed group incursions into Rwanda. The

¹⁴ A fistula occurs when the wall between the vagina and the bladder or bowel is ruptured and women lose control of the bladder or bowel functions. They become isolated as a result of their incontinence. The problem can be resolved by surgery.

Rwandese government forcibly closed camps for internally displaced persons (IDPs) between October 1994 and May 1995. Thousands of civilians were killed by Rwandese security forces in the closure of the Kibeho IDP camp.

Forced repatriation of Rwandese refugees in the Zaïrean camps first occurred in August 1995. This was followed by a variety of other measures such as travel restrictions and the prohibition of all economic activities to pressure refugees to return. Nonetheless, only 78,000 Rwandese voluntarily registered to return in 1995. Refugees expressed fears of arbitrary arrest, unlawful detention in prisons where conditions amounted to cruel, inhuman or degrading treatment and continuing human rights violations as their reasons for not returning to Rwanda.¹⁵ By November 1996 the civil war that had broken out in eastern Zaïre between the *Alliance des Forces Démocratiques pour la Libération du Congo (Zaïre)* (AFDL), Alliance of Democratic Forces for the Liberation of Congo-Zaïre, Zaïrean government forces, ex-FAR and militia members engulfed the refugee camps. As a result, 600,000 refugees repatriated to Rwanda in a five-day period. Another 480,000 Rwandese refugees fled deeper into Zaïre and to other central African countries. From this group another 234,000 refugees were repatriated to Rwanda in July 1997. As many as 200,000 refugees are missing, presumed to have been killed by the RPA and its Congolese allies.

In early December 1996, the Tanzanian government and the United Nations High Commissioner for Refugees (UNHCR) issued a joint statement that established an arbitrary deadline for the repatriation of the estimated 600,000 Rwandese refugees in Tanzania. They claimed that refugees could return to their country in safety. Most were returned by the deadline.

These are examples of how the human rights of the Rwandese refugees were overlooked by the international community, intergovernmental organizations (IGOs) such as UNHCR and host countries.¹⁶ The well-established principle of “*non-refoulement*” in international refugee law states that no person should be returned to a country where he or she is at risk of serious human rights violations.¹⁷ The countries in the Great Lakes region are all signatories to the relevant conventions. Refugees may choose to return voluntarily to their country of origin but it is a matter to be decided by the individual refugee, free from pressure of any kind and on the basis of objective information about the situation in their country of origin. Article V (1) of the 1969 OAU Refugee Convention states that, “The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.” The massive repatriation of 1996 did not protect refugees

¹⁵ See Amnesty International report “*Rwanda and Burundi The return home: rumours and realities*,” February 1996 (AI Index AFR 02/01/96).

¹⁶ See Amnesty International report “*Rwanda Human rights overlooked in mass repatriation*,” January 1997 (AI Index AFR 47/02/97).

¹⁷ This principle is set out in Article 33 of the 1951 Convention relating to the Status of Refugees and is reaffirmed in Article II (3) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

against *non-refoulement* and were not voluntary. The repatriations occurred in an environment characterized by widespread fear, confusion and the absence of information. There were no screening processes in place that would enable refugees to explain the risk of human rights violations they might face in Rwanda. There was no registration of returnees which would have enabled UNHCR to monitor human rights abuses that could arise with their re-integration into Rwandese society. Host country government and Rwandese authorities effectively wrested control over the repatriation from UNHCR.

SITUATION OF RWANDESE REFUGEES TODAY

Since the end of 2002, the UNHCR has been promoting the repatriation of the remaining 60,000 Rwandese refugees in other African countries. Rwanda, UNHCR and 10 host African countries have signed Tripartite agreements that are supposed to guarantee a voluntary, safe and dignified return. However, fewer than five percent of Rwandese refugees have voluntarily registered for repatriation in most of those countries. As in the past, refugees express concerns about continuing human rights abuses in Rwanda and their lack of confidence in Rwanda's criminal justice system.

The one significant recent repatriation that has occurred is the return of almost 24,000 Rwandese refugees from Tanzania. In light of improved security in Rwanda, increased numbers of returning refugees, and other indicators, the Tanzanian government announced in early October 2002 that it, and UNHCR would actively begin promoting the voluntary repatriation of Rwandan refugees living in Tanzania. It also stated that the repatriation of the entire Rwandese refugee population still living in Tanzania had to begin in mid-November and conclude by December 31, 2002. Despite the lack of adequate financial resources, personnel or full screening process enabling refugees to explain their reasons for leaving Rwanda, the repatriation was largely completed by the assigned deadline. In June 2003, the Tanzanian government rejected the applications of 931 Rwandese refugees who had asked to stay in the country because of fears that the security situation in Rwanda was not conducive to their return and were forcefully returned from Tanzania in October 2003.

Though the numbers are smaller than those in 1996, the human rights of Rwandese repatriated from Tanzania in the last six weeks of 2002 and in the final trimester of 2003 were violated in much the same way. The combination of arbitrary deadlines, host country pressures and lack of adequate resources undermined the voluntariness of these returns. Neither UNHCR nor the Rwandese government have effective institutionalized mechanisms in place to guarantee that returning refugees are successfully reintegrated into Rwandese society and are not deprived of their fundamental human rights.

In August 2002, the Rwandese government began to forcibly repatriate some of the more than 30,000 Congolese refugees in Rwanda. Some 10,000 refugees were repatriated in the first three weeks of September 2002. The majority of these refugees were of Rwandese descent and had fled the DRC in 1995 and 1996 to escape persecution by *Interahamwe* militias. UNHCR protested against returns which it argued were neither voluntary nor sustainable. The majority of these refugees have returned to Rwanda.

HUMAN RIGHTS ABUSES IN THE DRC

The Rwandese government is a principle party of the DRC conflict which led to the deaths of approximately 3.3 million The Rwandese people between August 1998 and August 2002. The Rwandese government gave two principle reasons for their 1996 and 1998 invasions of the DRC: to close down the refugee camps that served as a base for armed incursions into Rwanda and to protect the Congolese Tutsi living in the DRC.

The Rwandese government has ensured a degree of internal security; there have been no armed group incursions into Rwanda since mid-2001, through its invasions of the DRC. The cost to the DRC has been massive unlawful killings of civilians, mass rapes, extrajudicial executions of those suspected of political or criminal offences, the extensive use of child soldiers, torture, "disappearances," and mutilation. Despite these grave human rights abuses, Rwandese remnants of the armed groups, that threatened its borders in the four years that it occupied large parts of the eastern DRC, remain.

Clashes with the Rwandese army convinced many Congolese Tutsi that the Rwandese government was effectively using their valid security concerns as a cover-up for its own economic and political objectives. In February 2002, Banyamulenge (Congolese Tutsi of Rwandese descent in South-Kivu province) troops under former RCD-Goma Commander Patrick Masunzu launched an insurgency against the *Rassemblement congolais pour la démocratie* (RCD-Goma), Congolese Rally for Democracy, which is supported by Rwanda. Between January and June 2002, Rwandese forces occupied parts of the Minembwe/Itombwe Plateau region, the homeland of the Banyamulenge, to suppress the revolt. They used excessive, indiscriminate violence against civilian populations. Large numbers were killed and up to 30,000 were displaced.

Despite the 10 July 1999 Lusaka Ceasefire agreement, the July 2002 Pretoria agreement between Rwanda and the DRC or the "Global and All-Inclusive Agreement on the Transition in the DRC" in December 2002 that supported power-sharing and concomitantly the establishment of a transitional government in the DRC in July 2003, the Rwandese government has maintained its role in the ongoing conflict. Despite their official withdrawal in late 2002, the Rwandese army continues to be militarily active in some areas of the DRC and the Rwandese government continued to provide arms, training and other forms of military support to different militia and players in the DRC, including Ituri, North-Kivu and South-

Kivu provinces throughout 2003. These actors all commit massive human rights violations against civilians in the DRC.

CONCLUSION AND RECOMMENDATIONS

Few nations have been faced with the situation confronting the new Rwandese government in 1994 following the genocide and armed conflict. The magnitude and gravity of human rights abuses, the level of civilian participation in them, the massive dislocation of Rwandese and the nearly complete destruction of the country's infrastructure are virtually unparalleled in human history.

The Rwandese government has consistently stated that resolving the conditions that led to the genocide and armed conflict is its number one priority. It maintains that it is addressing these conditions through programs and policies that ensure good governance, justice, economic development and above all a respect for human rights. Despite these assurances, the government has not created a credible system of criminal justice that is perceived to be fair and equitable by the majority of Rwandese; to respect and promote the full range of civil liberties within Rwanda; to ensure legal recourse, medical care and compensation for the victims of genocide, specifically women who were raped and suffer from sexually transmitted diseases along with women who are the victims of sexual abuse committed by Rwandese security forces; breached its' obligations under the 1951 Refugee Convention to ensure *"that no refugee should be returned to a place where his or her life or freedom is under threat,"* and has committed massive human rights violations in the DRC.

Recommendation for the Rwandese government:

- ensure respect for the right to be presumed innocent until and unless proved guilty according to law after a fair trial;
- take measures to protect the independence of the judiciary at all levels and ensure that judicial officials are able to carry out their functions independently and without interference;
- scrupulously observe legal safeguards contained within its Code of Criminal Procedure (CCP). This means an end to arbitrary arrests and unlawful detentions;
- implement all international human rights treaties ratified by the Rwandese government;
- ratify the following United Nations human rights treaties: the First and Second Optional Protocols to the International Covenant on Civil and Political Rights, the optional Protocol to the Convention on the Elimination of all Forms of Discrimination

against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- ratify the African Union's Protocol on the Rights of Women in Africa;
- investigate all reports of human rights violations committed by agents of the state. If warranted, the perpetrators must be prosecuted in fair trials, which exclude the death penalty. The government must regularly provide public information on the circumstances of the human rights violations in question, including the number of violations, the identity of the perpetrators, the status of investigations and the actions taken against those found responsible;
- investigate and prosecute all human rights abuses, including those committed by the RPF, during the periods covered by Rwanda's genocide legislation.
- publicly denounce all human rights abuses whenever they occur - including when committed by government authorities and state security forces - to help restore faith in the government's will to respect human rights. It needs to make clear to all sectors of society, but particularly government authorities and state security forces, that human rights abuses will not be tolerated;
- fully cooperate with the International Criminal Tribunal for Rwanda;
- pass the law compensating the victims of genocide;
- ensure that all Rwandese can express their non-violent opinions without fear of human rights abuses;
- equitably enhance the provision of medical care to survivors of sexual violence;
- ensure that women and girls who have been the victims of sexual violence have access on a voluntary basis to counselling and testing for HIV/AIDS and other sexually transmitted diseases, post-exposure prophylactic drugs to prevent HIV infection and other measures to protect the health of women.
- strengthen education programs aimed at the general public, law enforcement officials and the judiciary concerning existing legislation on inheritance, marriage and land, that protects the rights of women;
- continue investing in long-term and in-depth training of the members of all security personnel, including the armed forces and Local Defence Forces, in all ranks including those in positions of authority over others to ensure that they do not commit, condone or acquiesce in rape and other crimes of sexual violence;

- fulfil all its obligations under the 1951 Refugee Convention and the 1969 OAU Refugee Convention, including, but not limited to, the principle of *non-refoulement* which prohibits the return of persons to territories where they could be at risk of serious human rights abuse;
- ensure unfettered access of UNHCR and other human rights monitors to areas to which refugees are returning
- investigate all human rights violations reported by returning refugees and take the necessary legal action;
- play a leadership role in the Great Lakes region to promote human rights and international humanitarian law;
- end the supply of equipment, weaponry, personnel, training, financial or other assistance to all armed groups operating in the eastern DRC;
- undertake the prompt, thorough, independent and impartial criminal investigations of alleged human rights abuses committed by members of the Rwandese armed forces with the objective of bringing the perpetrators to justice.

