

STRUGGLING TO SURVIVE: BARRIERS TO JUSTICE FOR RAPE VICTIMS IN RWANDA

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I. SUMMARY

"It makes me sad to hear them call me a 'genocide survivor.' I am not a survivor. I am still struggling [to survive]."

—S.K., Kanzenzi district, February 20, 2004.

"When gacaca begins, it will seriously disturb the survivors. They don't have hope, or security. Now that people have begun to talk about gacaca, the security situation has changed."

—V.B., Ntongwe district, February 23, 2004.

Ten years after the 1994 genocide, many of the tens of thousands of Rwandan women who were victims of sexual violence have remained without legal redress or reparation. Perpetrators of the genocide employed sexual violence against women and girls as a brutally effective tool to humiliate and subjugate Tutsi and politically moderate Hutu. Grieving for lost family members and suffering physical and psychological consequences of the violence, women and girls who were victims of sexual violence are among the most devastated and disadvantaged of genocide survivors.

This report documents the inadequacy of Rwandan government efforts to ensure legal redress and medical assistance and counseling to these victims, including those suffering from HIV/AIDS. The report also examines the continuing problem of sexual violence in Rwanda and shows that victims of these crimes face obstacles to accountability and health care similar to those faced by women and girls who suffered sexual violence during the genocide.

Mechanisms for legal redress have disappointed women who were raped during the genocide. Domestically this includes the regular court system (commonly referred to in Rwanda as the "classic" court system), which has its origins in the colonial period, and the recently instituted *gacaca* system, an adaptation of participatory, community-level truth-telling and accountability intended to handle the overwhelming caseload from the genocide period. Given the massive number of rapes during the genocide, an extraordinarily small number of cases have been prosecuted at the domestic level.

Rape survivors intent on seeing those responsible prosecuted face a two-tiered system, which normally begins with pre-trial *gacaca* proceedings and is expected to end with trial and judgment in the classic courts. Although the laws governing genocide trials and the *gacaca* process give serious attention to sexual violence, deficiencies in the law and in its

implementation greatly discourage reporting and proper investigation and prosecution of these crimes.

Weaknesses in the legal system include gaps in statutory law, insufficient protections for victims and witnesses who wish to report or testify about sexual violence, lack of training for authorities with respect to sexual violence crimes, and poor representation of women among police and judicial authorities. At the time that the research for this report was conducted, the lack of procedural protections in gacaca proceedings seriously impeded legal redress for rape victims.

A new law adopted on June 19, 2004 restructures the gacaca system and appears to provide important safeguards, but at this writing the law was only beginning to be implemented and significant challenges lay ahead. While the testimonies in this report address deficiencies in the gacaca system as it existed prior to the new law, they highlight the depth of the problems still to be overcome and the imperative of effective implementation of the June 19 reforms, something that will require serious and persistent effort.

The deficiencies identified above also continue to hinder redress for women and girls who have suffered sexual violence in Rwanda since the genocide. Recent rape victims, like genocide rape survivors identified in the gacaca system, must seek accountability in the classic courts. Seven years after the genocide, the Rwandan government adopted a child protection law and launched a nationwide campaign against sexual violence. While this law improves protections for child victims of sexual violence, the Rwandan Penal Code is critically flawed with respect to sexual violence: it does not define rape and as a result fails to fully protect adult rape victims. This statutory gap, as well as weaknesses in witness protection, training of medical personnel and judicial authorities, and access to women police officers and judicial personnel, hinder widespread reporting and effective investigation and prosecution of sexual violence crimes, particularly against adult women.

Many rape victims face urgent material needs: food, shelter, health care, and education for their children. Preoccupation with these needs robs them of the time and energy needed to seek legal redress. For rape victims, particularly those living with HIV/AIDS, medical care and counseling are essential, but they—like most Rwandans—face formidable obstacles to obtaining these services. They lack information about access to care. Fearing stigmatization should they be diagnosed with HIV/AIDS, they do not seek HIV testing or treatment. They lack funds to pay for health care and for transport to treatment facilities. They frequently do not have family members to assume nursing,

child-care, and household responsibilities. Many do not have enough to eat, which further impairs their health.

Disappointed with the failure to effectively prosecute and punish perpetrators of sexual violence, Rwandan women raped during the genocide urgently seek and require reparations for past abuse in the form of assistance that would enable them to meet their basic survival needs. The Rwandan government has not met its international obligation to provide adequate remedies for human rights violations during the genocide. Pleading scarce resources, it has not honored its repeated pledges to provide compensation for genocide survivors, including victims of sexual violence.

Rwanda is party to international treaties that oblige it to ensure that victims of human rights violations, including rape survivors, have access to an effective remedy, including compensation, and to the highest attainable standard of health. These treaties include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Rights of the Child, the African Charter on Human and Peoples' Rights, and the African Charter on the Rights and Welfare of the Child.

International donors must address the consequences of their failure to intervene to prevent the genocide. Building on and tailoring their post-genocide foreign aid to the Rwandan government and civil society, they should fund projects to enhance medical care and other assistance to genocide survivors, including victims of sexual violence, whose persistent and worsening economic and health difficulties place them among the most disadvantaged of genocide victims.

This report is based on a five-week research mission to Rwanda by Human Rights Watch in February and March 2004 and on prior and subsequent research. Our team conducted research in the capital, Kigali, and five provinces: Kigali-rural (central Rwanda), Gitarama (central Rwanda), Kibungo (southeastern Rwanda), Butare (southern Rwanda), and Gisenyi (northwestern Rwanda). Human Rights Watch researchers interviewed more than fifty women between the ages of eighteen and fifty, including both victims of sexual violence and others familiar with such crimes perpetrated upon members of their families or their friends. Twenty of these women had been raped during the genocide, and ten were assaulted following the genocide. Seven women were under eighteen at the time of the rape. The women we interviewed resided in towns and rural areas and were located through contacts with nongovernmental organizations (NGOs) and service providers.

We also spoke to government ministers, local and national police, prosecutors, and other government officials; representatives of local and international NGOs with such mandates as women's rights, human rights, and health; health providers; and United Nations (U.N.) officials. Further, we reviewed over 1,000 judgments in genocide trials and eighteen judgments in post-1994 rape cases. We also relied on the accumulated research and experience of local and expatriate staff in the Human Rights Watch field office in Kigali, established in 1995.

II. RECOMMENDATIONS

GOVERNMENT OF RWANDA

Statutory Law

- Amend the Penal Code to define defilement, rape, torture, and sexual torture, ensuring that the definition of rape covers marital rape, acquaintance rape, and similar practices;
- Implement the safeguards established by the 2004 Gacaca Law, which would permit a rape victim to give testimony before a single gacaca judge, confidential testimony in writing, or testimony to staff at the provincial prosecutor's office; and
- Amend the Code of Criminal Procedure to require that all courts withhold from the general public the name, location, and other identifying information of a victim of alleged sexual violence; and
- Adopt the draft law on reparations, with a modification that would ensure the preservation of the National Assistance Fund (Fonds d'assistance aux rescapés du génocide, FARG), a program for genocide survivors who demonstrate financial need and that provides housing and health benefits, as well as school fees for the children of survivors.

Witness Protection

- Appoint additional women as assistant prosecutors to communicate with rape victims in a confidential and secure environment and provide them with specialized training to advise women on their legal rights;

- Provide transportation as necessary for rape victims and witnesses to prosecutors' offices for depositions and to courts for trial or other proceedings;
- Assist rape victims who wish to testify in writing in gacaca courts but who lack the requisite literacy skills;
- Provide trauma counselors for women who report or testify to sexual violence to police, prosecutors, or gacaca judges; and
- Raise public awareness of rights and legal procedures, as well as sponsor public education campaigns by survivors' organizations or other NGOs at the community level, particularly with respect to the 2004 Gacaca Law.

Investigations

- In consultation with medical and legal professionals, develop a standard protocol for medical exams following sexual assault and require that all hospitals and health centers conform to the defined procedure;
- Once such a protocol has been developed, train medical professionals to apply the protocol in conducting medical exams and educate them about Rwandan law on sexual violence;
- Train prosecutors and judges in the use of medicolegal evidence in prosecution and adjudication of sexual violence cases;
- Increase the number of women judicial police officers (OPJ) trained to conduct sexual violence investigations and counsel victims of sexual abuse;
- Establish a sexual violence unit in all twelve prosecutors' offices, composed of judicial personnel trained in the law on sexual violence and counseling of victims, to pursue effective investigations and prosecutions of such cases; and
- Ensure that at least one gacaca judge in each cell-level court has received timely and periodic training in investigation, prosecution, and witness protection in sexual violence cases.

Reparations Fund for Genocide Victims

- Enact the 2002 draft law on reparations, with the modification discussed above;
- Design projects, particularly those aimed at improving access to health care (such as those discussed below), under the scope of the reparations fund; these should not replace FARG but build on its initiatives;

- Seek legal expertise to devise the management structure of the reparations fund; and
- Once a reparations fund is in place, conduct nationwide campaigns to inform victims about the possibility of reparations and the procedures to obtain them.

INTERNATIONAL DONORS

- Commit to providing support should the Rwandan government adopt a reparations law; and
- Provide assistance for projects, whether within or outside the scope of a reparations law, to assist genocide survivors, particularly rape victims, who have special needs. Such assistance should include:
 - Outreach, medical services, and trauma counseling for rape victims, with special attention to dissemination of information on voluntary HIV counseling and testing and access to ARV therapy and treatment for opportunistic infections of AIDS;
 - Provision of resources for public health care facilities and training of medical personnel, with a view to increasing capacity to undertake medicolegal exams for rape victims and implement ARV therapy and treatment for opportunistic infections of AIDS;
 - A fund to sponsor the primary and secondary education of children of HIV-positive genocide rape victims;
 - A fund to defray transport costs of victims who must travel to seek legal, medical, psychological, or other assistance;
 - Funding of economic initiatives for female genocide survivors;
 - Funding for counseling training programs; and
 - Funding for survivors' organizations and counseling organizations to widen the network of legal assistance and counseling for genocide survivors, particularly those in rural areas.

III. BACKGROUND

Sexual Violence during the 1994 Genocide

From April to July 1994, Hutu extremists at the helm of the Rwandan government perpetrated a genocide that cost the lives of at least half a million Tutsi, and moderate Hutu, including men, women, and children.¹ Perpetrators of the genocide sought to exterminate the Tutsi minority, who then represented approximately 10 percent of the Rwandan population. Violence during the genocide assumed gender-specific forms, affecting females differently than males. Members of Hutu militias known as *Interahamwe*, civilians, and the Rwandan Armed Forces (*Forces Armées Rwandaises*, FAR) targeted Rwandan women and girls in a genocidal campaign of mass sexual violence.

A 1996 report by the U.N. Special Rapporteur on Rwanda estimated that at least 250,000 women were raped during the genocide. The forms of gender-based and sexual violence² were varied and included individual rape; gang-rape; rape with sticks, guns, or other objects; sexual enslavement; forced marriage; forced labor; and sexual mutilation.³ Sexual violence was one of many injuries inflicted upon Rwandan women and girls, who were often abused after having witnessed the torture and murder of their family members and the destruction of their homes. According to many personal accounts of the genocide, perpetrators of sexual violence murdered a large number of their victims directly following the sexual assaults.

¹ For a comprehensive account of the genocide, and for a discussion of statistical difficulties in establishing the total number of victims, see Human Rights Watch, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999).

² This report uses the term "sexual violence" to refer collectively to the various forms of sexual abuse perpetrated during and since the genocide. Gender-based violence is violence that targets women because they are women or that disproportionately affects women. "Sexual torture" is employed only with reference to Rwanda's Organic Law of 30 August 1996 on the Organization of the Prosecution of Offences Constituting the Crime of Genocide or Crimes Against Humanity (Genocide Law) and the subsequent laws governing the *gacaca* system. The Rwandan Penal Code prohibits rape and sexual torture, though it does not define either term. Although the term "sexual torture" is not used in the penal code, article 316 may be understood to criminalize sexual torture, because it prohibits "torture or acts of barbarity" that are committed in connection with another crime. The crime, in this case, would be rape or injury to the sexual organs that would rise to the level of a criminal offense under the penal code.

³ For a detailed study of sexual violence against women and girls during 1994 genocide, see Human Rights Watch/Africa and Human Rights Watch/Women's Rights Project, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath* (New York: Human Rights Watch, 1996). In two recent reports, Amnesty International and African Rights have comprehensively documented the enduring health, social, and legal difficulties of genocide rape victims, particularly those living with HIV/AIDS, in the ten years since the genocide. See Amnesty International, *"Marked for Death," Rape Survivors Living with HIV/AIDS in Rwanda* (London: Amnesty International, 2004); African Rights, *Broken Bodies, Torn Spirits: Living with Genocide, Rape and HIV/AIDS* (Kigali: 2004).

Acts of sexual violence wrought devastating medical and psycho-social consequences on Rwandan women. Women and girls contracted sexually transmitted diseases, including HIV/AIDS; faced unwanted pregnancies⁴ and health complications resulting from botched abortions; and suffered sexual mutilation and other injuries, such as fistulas,⁵ uterine problems, vaginal lesions, and scarring. Ten years after the events, victims⁶ of sexual violence, particularly those who bore children from the rape or suffered lasting physical injury, such as infection with HIV/AIDS, are still haunted by the abuse and remain traumatized, stigmatized, and isolated.

Mass sexual violence in Rwanda served strategic and political ends. Prior to and during the genocide, extremist propaganda vilified Tutsi women on the basis of both their gender and their ethnicity.⁷ According to the extremist ideology, Tutsi women sought sexually to manipulate Hutu men as a means to achieve Tutsi domination of the Hutu community. Perpetrators of the genocide thus viewed sexual violence against Tutsi women as an effective method to shame and conquer the Tutsi population. Extremists also sexually assaulted Hutu women who held opposing political views, were married to Tutsi men, or sheltered Tutsi during the genocide. The breakdown of law and order during the violence also led to random sexual assaults against both Tutsi and Hutu women and girls.

There is scarce documentation of sexual violence from the period 1994-1998 that was unrelated to the campaign to exterminate Tutsi and moderate Hutu. However, field research has documented rape and forced marriage by advancing soldiers of the Rwandan Patriotic Army (RPA)—the military arm of the Rwandan Patriotic Front (RPF), the majority Tutsi rebel group that defeated the genocidal government in 1994 and proceeded to form the new Rwandan government—against Tutsi women whom they had “rescued” from perpetrators of the genocide.⁸ Further, there is evidence that

⁴ As of 1996, Rwanda's National Population Office had estimated that 2,000 to 5,000 children were born of rape. See Heather B. Hamilton, “Rwanda's Women: The Key to Reconstruction,” *The Journal of Humanitarian Assistance*, [online] at <http://www.jha.ac/greatlakes/b001.htm> (retrieved April 19, 2004) (citing study by National Population Office).

⁵ A fistula is an abnormal connection that develops between two of the body's organs. Recto-vaginal fistulas connect the rectum and the vagina and result in fecal matter passing through the fistula to the vagina and thus are often accompanied by fecal incontinence and infections; vesico-vaginal fistulas connect the vagina and the bladder and may result in urinary incontinence and infections. Fistulas arise from injury such as trauma or severe inflammation due to disease. Some fistulas will close spontaneously; others require surgical intervention.

⁶ A person who has suffered sexual violence may be viewed as both a victim and a survivor. This report uses the terms interchangeably.

⁷ For further details on the propaganda used to demonize Tutsi, see *Leave None*, pp. 65-96.

⁸ Clotilde Twagiramariya and Meredith Turshen, “‘Favours’ to Give and ‘Consenting’ Victims: The Sexual Politics of Survival in Rwanda,” in Meredith Turshen and Clotilde Twagiramariya, eds., *What Women Do in*

both Hutu extremists and RPA soldiers sexually assaulted Tutsi and Hutu women, respectively, during the protracted conflict between the Rwandan government and militia members who had fled to the Democratic Republic of Congo (DRC) following the RPF victory.⁹

The International Criminal Tribunal for Rwanda (ICTR), established by the U.N. Security Council in 1994, has jurisdiction over genocide, crimes against humanity, and violations of international humanitarian law committed in Rwanda and neighboring states in the period from January 1, 1994 to December 31, 1994. The ICTR has tried twenty-three defendants in its ten-year history. In its landmark decision in *Prosecutor v. Akayesu*, the court recognized that rape can be a constitutive act of genocide under international law,¹⁰ but it has not followed up this decision with vigorous prosecution of rape cases.

The NGO Coalition on Women's Human Rights in Conflict Situations, Rwandan and international NGOs, and others have criticized the court's relative lack of attention to sexual violence crimes.¹¹ NGOs have noted that prosecutorial staff have not effectively investigated sexual violence and therefore neglected to include sexual violence crimes in some past indictments. The Security Council has set a deadline for the ICTR to complete all investigations by the end of 2004, all trials by 2008, and all appeals by 2010. NGOs have also reported that the tribunal's sexual violence investigators have not been properly trained to gain the confidence of and elicit information from rape victims.¹² In May 2004, the ICTR initiated a series of training seminars on gender sensitivity and sexual violence investigations.¹³ With respect to witness protection, NGOs have criticized the absence of confidentiality safeguards and security measures upon the witnesses' return to Rwanda; the failure to provide genocide survivors who serve as witnesses antiretroviral (ARV) therapy and treatment for opportunistic infections of

Wartime: Gender and Conflict in Africa (New York: Zed Books, 1998), pp. 104-109. See also Amnesty International, "Marked for Death," pp. 2, 6, 16.

⁹ Human Rights Watch interview with NGO representative, Kigali, February 22, 2004; Amnesty International, "Marked for Death," p. 2.

¹⁰ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T (Trial Chamber), September 2, 1998.

¹¹ See, for example, Amnesty International, *International Criminal Tribunal for Rwanda: Trials and Tribulations* (London: Amnesty International, 1998); Women's Caucus for Gender Justice, "Summary of Panel Discussions on Victim and Witness Issues, July 27, 1999 and August 4, 1999, [online] at <http://www.iccwomen.org/archive/resources/wicc/intro.htm> (retrieved May 18, 2004).

¹² Connie Walsh (Center for Constitutional Rights, International Centre for Human Rights and Democratic Development, International Women's Law Clinic, and MADRE), "Witness Protection, Gender and the ICTR," October 17, 1997.

¹³ Human Rights Watch telephone interview with ICTR representative, Arusha, Tanzania, August 11, 2004.

AIDS, which are made available to HIV-positive defendants detained by the tribunal;¹⁴ inappropriate and offensive cross-examination of rape victims; lack of access to trauma counseling for rape victims; and finally, the absence of mechanisms to sanction inappropriate conduct by judges.

Rwandan Women in the Post-Genocide Period

In a country where the majority of the population fall below the national poverty line,¹⁵ Rwandan women and girls, approximately 53.3 percent of the population, are at a particular disadvantage.¹⁶ A large proportion of the male population was killed in the genocide or subsequent combat between the RPA and Hutu militias and ex-FAR. Many female genocide survivors and other women have been deprived of family upon whom they and their children depended for economic survival. In addition to those who were killed, tens of thousands of people were detained on genocide charges from July 1994 onward and the prison population reached a peak of more than 130,000 in late 1998.¹⁷ The many women and girls whose male family members have been imprisoned have the additional burden not only of supporting themselves but also of providing food for their relatives in prison.¹⁸ A 2001 survey by the Rwandan Ministry of Health and the National Population Office found that approximately 36 percent of families were headed by women, as compared to 21 percent in 1992, and that 8 percent of women were widows,

¹⁴ The British Department for International Development (DFID) told Human Rights Watch that it seeks to fund a program to provide voluntary HIV counseling and testing and ARV therapy and treatment for opportunistic infections of AIDS to witnesses who testify in ICTR trials. Human Rights Watch telephone interview with DFID representative, Kigali, April 27, 2004. Initial funding would be in the amount of U.S.\$300,000. *Ibid.* As of late July 2004, DFID was pursuing preparatory work to develop the program. Email to Human Rights Watch from DFID representative, Kigali, July 23, 2004.

¹⁵ The Rwandan government has estimated that approximately 60 percent of Rwandans fall below the national poverty line, determined by such indicators as the ability to provide for basic material needs and annual household expenditures (total expenditures per adult below 64,000 Rwandan francs, or U.S.\$108.84, or food expenditures per adult below 45,000 Rwandan francs, or U.S.\$76.53). Government of Rwanda, *Poverty Reduction Strategy Paper*, June 2002, p. 13 [online] at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2002/08/23/000094946_02081004005783/Rendered/PDF/multi0page.pdf (retrieved April 27, 2004).

¹⁶ Republic of Rwanda, *Recensement Général de la Population de l'Habitat Rwanda: 16-30 Août 2002, Rapport sur les Résultats Préliminaires [General Census of Population of Rwanda: 16-30 August 2002, Report on the Initial Findings]* (Kigali: 2003), p. 38. For a discussion of women's situation in post-genocide Rwanda, see Catharine Newbury and Hannah Baldwin, "Aftermath: Women in Postgenocide Rwanda," Working Paper No. 303, July 2000.

¹⁷ Amnesty International, *Annual Report 1999* (London: Amnesty International, 1999), [online] at <http://www.amnesty.org/ailib/aireport/ar99/index.html> (retrieved June 3, 2004). By mid-2004, approximately 77,000 remained in prison and communal lock-ups on genocide charges.

¹⁸ See Martien Schotsmans, "Les Femmes et l'Après Génocide," ["Women in the Aftermath of the Genocide"] in (Jacques Fierens, ed.), *Femmes et génocide: le cas rwandais [Women and Genocide: The Rwandan Case]* (Brussels: Faculté de droit des Facultés universitaires Notre-Dame de la Paix, 2003), p. 120.

as compared to 4 percent in 1992.¹⁹ According to the World Bank, 97 percent of Rwandan women provide for themselves and their families through subsistence agriculture.²⁰

Human Rights Watch interviewed victims of genocide and post-genocide sexual violence who were in desperate economic straits. C.M.,²¹ a young woman who recently gave birth to a child from a rape in late 2003, was evicted by her parents after she revealed that she had been raped. She explained that her economic situation was bleak after she moved to the nearest town: "I didn't have enough to eat, drink, or take care of the baby."²² Several women who earned a living from prostitution pleaded for financial assistance so that they could seek other work. They and social workers who assisted them reported that financial need had obliged many young women to turn to prostitution for survival.

Since 1994, the Rwandan government has adopted important measures to improve the status of women and girls. In particular, national initiatives have contributed to an impressive level of participation of women in political life. The 2003 constitution requires the government to ensure that all decision-making bodies are composed of women at a minimum ratio of 30 percent.²³ Women currently make up 48.8 percent of representatives in the national assembly, the highest percentage of parliamentary participation by women in the world.²⁴ Administrative structures called "women's councils" exist at the cell, district, province, and national levels²⁵ and represent women's positions on a variety of social issues.²⁶

However, serious discrimination and abuse against Rwandan women and girls persist. Despite the adoption of inheritance law reform in 1999, women and girls are denied equal rights to land under strongly rooted Rwandan customary law, which privileges the

¹⁹ Ministry of Health/National Population Office, *Enquête Démographique et de Santé: Rwanda 2000* [Demographic and Health Study: Rwanda 2000], Demographic and Health Surveys – MEASURE DHS+ (Kigali: 2001), p. 13.

²⁰ World Bank, *Rwanda: Country Brief*, January 2004, [online] at http://www.worldbank.org/afri/rw/rw_etry_brief.htm (retrieved March 22, 2004).

²¹ The names of all rape victims have been replaced with different initials in order to respect their privacy. The names of other interviewees have been omitted where necessary to guarantee confidentiality.

²² Human Rights Watch interview with C.M., February 29, 2004.

²³ Constitution of the Republic of Rwanda, *Official Gazette of the Republic of Rwanda*, June 4, 2003, art. 9.

²⁴ Inter-Parliamentary Union, "Rwanda Leads World Ranking of Women in Parliament," Press Release, October 22, 2003, [online] at <http://www.ipu.org/press-e/gen176.htm> (retrieved April 5, 2004).

²⁵ The Rwandan administrative structure is composed of five units, in ascending order: group of ten families; cell; sector; district; and province.

²⁶ Elizabeth Powley, "Women Lead Way to Rwanda's Future Democracy in Africa," *International Herald Tribune*, November 21, 2002.

male head of household.²⁷ The inheritance law established three marital property regimes and granted equal inheritance rights to male and female children of civil marriages.²⁸ Significant textual gaps and obstacles to implementation have diminished the positive impact of this legislation.²⁹ In a society in which subsistence agriculture predominates, access to land often determines survival. Both women and girls are targets of sexual and other forms of gender-based violence, including domestic violence, rape, forced marriage, and polygyny.³⁰ According to UNICEF, orphans and “other vulnerable children” number approximately one million in Rwanda, and many of these children are particularly at risk of sexual assault and sexual exploitation, and resort to survival sex.³¹

Our interviews with victims of sexual violence since the genocide, NGOs, and service providers revealed cases of rape of women and girls by relatives, neighbors, teachers, employers, domestic servants, police, and soldiers in the Rwandan Defense Forces (RDF, formerly the Rwandan Patriotic Army, RPA).³² According to our review of judicial records and research studies by Rwandan NGOs, in every province in 2000-2004, complaints of sexual violence against girls far outnumbered complaints of sexual violence against adult women.³³ In fifteen judgments from the period 2000-2003, the complainant was under the age of sixteen at the time of the rape. Many representatives of human rights and women’s rights organizations and government officials have

²⁷ Jennie E. Burnet and Rwanda Initiative for Sustainable Development (RISD), *Culture, Practice, and Law: Women’s Access to Land in Rwanda* (Kigali: 2001), pp. 8-11. See also Human Rights Watch, *Uprooting the Rural Poor in Rwanda* (New York: Human Rights Watch, 2001).

²⁸ Law to Supplement Book One of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions, *Official Gazette of the Republic of Rwanda*, November 12, 1999; Burnet and RISD, *Culture, Practice, and Law*, p. 14. See also Human Rights Watch, *Double Standards: Women’s Property Rights Violations in Kenya* (New York: Human Rights Watch, 2003).

²⁹ The law’s protections for the property rights of women in marriage and female heirs apply only to civil marriage, whereas religious or customary unions are the prevailing practice among Rwandans. *Ibid.*, pp. 12-14. Further, a 2001 study found that few Rwandans surveyed understood their rights under the law. *Ibid.*, p. 16.

³⁰ Polygyny is a practice whereby a husband has more than one wife. See AVEGA-Agahozo [Association of Widows of the April Genocide], *Survey on Violence against Women in Rwanda* (Kigali: AVEGA, 1999).

³¹ UNICEF, *Rwanda: Facts and Figures*, [online] at http://www.unicef.org/infobycountry/20289_20292.html (retrieved April 23, 2004). For a detailed study of abuses against Rwandan children in the post-genocide period, see Human Rights Watch, *Lasting Wounds: Consequences of Genocide and War on Rwanda’s Children* (New York: Human Rights Watch, 2003).

³² In addition, Rwandan NGOs have documented cases of forced and early marriage, particularly in rural areas. See AVEGA-Agahozo, *Survey on Violence against Women in Rwanda*; LIPRODHOR, *Situation des Droits de la Personne au Rwanda en 2002: Rapport Annuel de la LIPRODHOR*, [Human Rights in Rwanda 2002: Annual Report of LIPRODHOR] (Kigali: LIPRODHOR, 2003), p. 48.

³³ Ligue Rwandaise pour la Promotion et la Défense des Droits de l’Homme (Rwandan League for the Promotion and Defense of Human Rights, LIPRODHOR), *Résultats de l’Enquête-Pilote sur les Actes de Viol et les Violences Faites aux Jeunes Filles et Femmes* [Results of the Pilot Study on Rape and Violence against Young Girls and Women] (Kigali: 2000); p. 4; Haguruka, *Résultats de l’Enquête sur les Cas de Viol et d’Attentat à la Pudeur Commis sur les Femmes et les Enfants de 1995 à 2002* [Results of Study on Incidence of Rape and Defilement against Women and Children in 1995-2002] (Kigali: Haguruka, 2003), pp. 23-24.

pointed to a soaring rate of child rape since 1997-1998.³⁴ However, a representative of the Rwanda National Police, a government minister, and an NGO representative noted that the rising numbers most likely reflect greater community awareness of the issue and increased reporting, rather than a surge in sexual violence against children.³⁵

In the wake of the genocide, numerous NGOs have taken up the cause of women's and girls' rights.³⁶ These include survivors' organizations with general or women's rights mandates that provide legal assistance and medical and counseling services; development organizations that promote the economic empowerment of rural women and girls; organizations that provide legal assistance to women and girls on such issues as violence, property rights, divorce, and custody; and organizations that seek to improve female educational performance or access to health care.

IV. BARRIERS TO JUSTICE FOR SEXUAL VIOLENCE CRIMES

Genocide Prosecutions in the Rwandan Legal System

General Context

The 1994 genocide decimated an already feeble national justice system. By the end of the genocide, Rwanda counted only twenty judicial personnel responsible for criminal investigations and only nineteen lawyers.³⁷ The 448 judges serving in national courts by 1997 were poorly trained and represented roughly half of the number of pre-genocide judges.³⁸ Since 1994, the justice system has faced the overwhelming prospect of trying the more than 120,000 persons accused of genocide-related crimes.

³⁴ See Haguruka, *Résultats de l'Enquête*, p. 49.

³⁵ Human Rights Watch interviews with national police and government officials and NGO representative, Kigali, February 9-March 5, 2004.

³⁶ For a discussion of the rapid evolution of women's organizations in the post-genocide period, see Catharine Newbury and Hannah Baldwin, "Aftermath: Women's Organizations in Postconflict Rwanda," Working Paper No. 304, 2000.

³⁷ International Crisis Group, *Five Years After the Genocide: Justice in Question*, ICG Report Rwanda No. 1, April 7, 1999, p. 34.

³⁸ Human Rights First (formerly The Lawyers' Committee for Human Rights), *Prosecuting Genocide in Rwanda: A Human Rights First Report on the ICTR and National Trials*, July 1997, [online] at <http://www.humanrightsfirst.org/pubs/descriptions/rwanda.htm> (retrieved April 20, 2004).

The twelve provincial courts, known as Tribunals of First Instance, adjudicate most civil and criminal cases, including those involving sexual violence.³⁹ Specialized chambers in the Tribunals of First Instance and the military courts exercise jurisdiction over genocide, crimes against humanity, and other crimes committed in connection with genocide.⁴⁰ While formally dissolved in 2001, these chambers continue to hear genocide cases that were transferred to the Tribunals of First Instance before March 15, 2001.

A 2000 law established a national civilian police force, dismantling the *gendarmerie* and creating the Rwanda National Police (RNP).⁴¹ There are RNP territorial units at the regional and provincial levels. Provincial police units oversee police stations and smaller police posts at the sector level. Judicial police officers attached to a Criminal Investigation Division conduct investigations at headquarters, provincial, and station levels and transfer completed casefiles to the appropriate prosecutor's office for indictment and prosecution.

Legislation Governing Genocide Trials and Gacaca

Two laws have shaped the process of national accountability for the events of 1994. A third law, adopted in June 2004, has recently modified this system. The Organic Law of 30 August 1996 on the Organization of the Prosecution of Offences Constituting the Crime of Genocide or Crimes Against Humanity (Genocide Law) established four categories of offenders subject to prosecution: category one for organizers or leaders of genocide, notorious killers, and persons who committed "acts of sexual torture," category two for murderers or accomplices to murder or serious attacks, category three for persons who committed serious attacks without the intent to cause death, and category four for those responsible for property damage.⁴² Persons convicted of category one crimes are eligible for life imprisonment or the death penalty.⁴³

³⁹ At the next level sit four Courts of Appeal, in Kigali, Nyabisindu, Cyangugu, and Ruhengeri. The Supreme Court, at the highest level, is composed of six sections including the Court of Cassation, the final appeals court for the cases originating in the Tribunals of First Instance. Below the Tribunals of First Instance are the canton courts, with jurisdiction over minor civil and criminal cases.

⁴⁰ Organic Law of 30 August 1996 on the Organization of the Prosecution of Offences Constituting the Crime of Genocide or Crimes Against Humanity (Genocide Law), *Official Gazette of the Republic of Rwanda*, September 1, 1996, art. 19.

⁴¹ Law N° 09/2000 of 16/06/2000 on the Establishment, General Organization and Jurisdiction of the National Police, *Official Gazette of the Republic of Rwanda*, June 29, 2000.

⁴² Genocide Law, art. 2.

⁴³ Human Rights Watch opposes capital punishment in all circumstances as inherently cruel and as a violation of the right to life and of the fundamental dignity of all human beings.

Faced in 2001 with a backlog of court cases against more than 100,000 persons detained on genocide charges,⁴⁴ the Rwandan government adapted a community conflict resolution mechanism, known as gacaca, to the pursuit of genocide prosecutions. The process aims to enlist active popular participation in public hearings as a means to facilitate truth-telling, accountability, and national reconciliation.⁴⁵ The Organic Law of January 26, 2001 Setting Up "Gacaca Jurisdictions" and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed between October 1, 1990 and December 31, 1994 (2001 Gacaca Law) replaced the Genocide Law. The 2001 law expanded category one, the most serious category of crimes, to include the crime of rape⁴⁶ and established approximately 11,000 gacaca courts at different administrative levels—the cell, sector, district, and province levels.⁴⁷

Gacaca courts adjudicate those genocide cases that were not transferred by prosecutors' offices to the Tribunals of First Instance before March 15, 2001. There are seven pre-trial stages undertaken by gacaca courts at the cell level.⁴⁸ During the sixth stage, witnesses may testify publicly before the assembly, or in camera before the accused and the panel of gacaca judges.

At the conclusion of the seventh stage, gacaca courts will transfer category one offenders, including perpetrators of rape or sexual torture, to the Tribunals of First Instance for trial. All other offenders will be tried in gacaca courts. In June 2002, proceedings began in eighty cell-level gacaca courts covering twelve sectors, one in each of twelve pilot districts.⁴⁹ In November 2002, the pilot program was expanded to 118 sectors in Rwanda's 106 districts districts.⁵⁰ The pilot program encountered numerous

⁴⁴ Amnesty International, *Gacaca: A Question of Justice* (London: Amnesty International, 2002), p. 1.

⁴⁵ The present gacaca courts, with comprehensive procedural powers to prosecute and punish genocide crimes, substantially depart from traditional gacaca, a more informal dispute resolution mechanism. Penal Reform International (PRI), *Interim Report on Research on Gacaca Jurisdictions and its Preparations (July-December 2001)*, Kigali, 2001, p. 8.

⁴⁶ This alteration, discussed further in a later section of this report, violates the norm of non-retroactivity of the law. Rwandan law does not define the terms "rape," "sexual torture," or "torture." Organic Law N°40/2000 of 26/01/2001 Setting Up "Gacaca Jurisdictions" and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed between October 1, 1990 and December 31, 1994 [2001 Gacaca Law], *Official Gazette of the Republic of Rwanda*, March 15, 2001, art. 51.

⁴⁷ *Ibid.* See also PRI, *Gacaca Courts in Rwanda*, [online] at http://www.penalreform.org/english/theme_gacaca.htm (retrieved April 20, 2004).

⁴⁸ For a description of these stages, see Amnesty International, *Gacaca: A Question of Justice* (London: Amnesty International, 2002), p. 27.

⁴⁹ PRI, *PRI Research Team on Gacaca, Report III: April-June 2002*, p. 6.

⁵⁰ National Gacaca Office, *Document sur l'Etat d'Avancement des Activités des Juridictions Gacaca des cellules opérationnelles et programmes d'activités à venir [Progress Report of Gacaca Court Proceedings in Operational Cells and Program for Forthcoming Activities]*, January 2004, p. 1.

difficulties, including inadequate participation of community members;⁵¹ absenteeism and lack of commitment on the part of gacaca judges; and reluctance of potential witnesses, who feared retaliation.⁵² In mid-June 2004, gacaca was implemented nationwide with the launch of pre-trial proceedings in all 9,201 cell-level courts, to be followed by trials in Tribunals of First Instance and gacaca courts at the cell and sector levels.⁵³ Trials have not yet commenced.

Under the Genocide Law and the 2001 Gacaca Law, persons accused of genocide or related crimes in categories two, three, and four are eligible for considerable reduction of their sentences through plea-bargaining in accordance with the provisions of the gacaca law. Under reforms introduced in 2004 (see discussion of the 2004 Gacaca Law, below), category one offenders who confess may also have their sentences reduced.⁵⁴ Since 1997, the government has sought to ease the burden on the overcrowded prison system by provisionally releasing some of those who confessed to their crimes. A January 2003 presidential directive led to the provisional release of more than 20,000 detainees in May 2003, specifically: non-category one detainees who confessed to crimes, detainees who were minors at the time of the genocide, those who were aged seventy years or older, or those who were gravely ill and, additionally, had served more than half the sentences applicable to the crimes in question.⁵⁵ Authorities have released these detainees subject

⁵¹ Factors include the priority given to cultivation, household, and other responsibilities; lack of faith or interest in the gacaca process, particularly on the part of those who were victims of RPA crimes, which the Rwandan government has excluded from the mandate of gacaca courts; or fear that participation in gacaca will lead to reprisals by the accused or his or her family.

⁵² See National Gacaca Office, *Les Problèmes Constatés dans le Fonctionnement des Juridictions Gacaca Qui Ont Terminé Leur 7ème Réunion* [Difficulties Observed in the Operation of Gacaca Courts Having Completed the Seventh Stage], January 21, 2004; LIPRODHOR, *Situation des Droits de la Personne au Rwanda en 2002: Rapport Annuel de la LIPRODHOR* [Situation of Human Rights in Rwanda in 2002: Annual Report of LIPRODHOR] (Kigali: June 2003), p. 64. Three people were killed in Gikongoro province in October-December 2003. As of late May 2004, one of the three cases had been confirmed to be an attack against a gacaca witness. "Rwanda: Genocide Survivor Group Denounces Killings, Harassment," U.N. Integrated Regional Information Networks (IRIN), December 16, 2003; Collectif des Ligues et Associations de Défense des Droits de l'Homme (CLADHO), "Déclaration du Collectif des Ligues et Associations de Défense des Droits de l'Homme (CLADHO) sur la Sécurité des Témoins dans le Processus Gacaca," ["Statement of CLADHO on the Security of Witnesses in the Gacaca Process"], Press Release, January 12, 2004, [online] at <http://survie67.free.fr/Rwanda/CLADHO/Kaduha.htm> (retrieved April 5, 2004).

⁵³ PRI, *Interim Report*, p. 6.

⁵⁴ Organic Law N°16/2004 of 19/6/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed Between October 1, 1990 and December 31, 1994, *Official Gazette of the Republic of Rwanda*, June 19, 2004 [2004 Gacaca Law], arts. 55 and 72.

⁵⁵ Office of the Prosecutor, Supreme Court of Rwanda, *Instruction concernant l'exécution du communiqué présidentiel du 01 janvier 2003 venant de la présidence de la république qui concerne la libération provisoire des détenus des différentes catégories* [Directive Concerning Implementation of the Presidential Statement of 1 January 2003 on the Provisional Release of Different Categories of Prisoners], January 9, 2003; PRI, *Research on the Gacaca: Report V* (Kigali: PRI, 2003), p. 12. The deadline for submission of confessions was most recently extended from March 15, 2004 to March 15, 2005]. Arther Asiimwe, "Genocide Confession Deadline

to certain conditions, including the possibility of re-accusation in cell-level gacaca courts for crimes to which they did not confess. As of June 2004, Rwandan prisons and communal lock-ups housed approximately 83,800 persons. Approximately 77,000 of these detainees were held on charges of genocide. At the time research for this report was conducted, authorities had announced that another 15,000 to 25,000 detainees would be released under the provisional release program in August 2004, but by the end of August, no prisoners had been released.

For the many persons who were detained on genocide charges on the basis of little or no evidence, the provisional release policy may end the longstanding violation of their due process rights. Sexual violence survivors have reacted differently to the release or prospective release of detainees who allegedly raped them during the genocide.⁵⁶ Some women feel additional pressure to report the rape. Others report that seeing the alleged perpetrators, who have since returned to their communities, has further traumatized them and inhibited them from taking action. B.R., of Gitarama province, reported that two of her alleged attackers were released from prison and reintegrated in her community in May 2003.⁵⁷ Traumatized and frightened by her encounters with the men, who visited her with the purpose of bribing her to remain silent about the rape, B.R. subsequently abandoned her mother and siblings and moved to another district. Some victims told Human Rights Watch that the provisional release policy has eroded their faith in the justice system.⁵⁸

Various developments—including training of gacaca judges, revision of the gacaca law, and organization of community service work for detainees with commuted sentences—delayed nationwide implementation of the gacaca process until mid-June 2004.⁵⁹ These long delays led to a loss of faith in the justice system and a sense of resignation on the part of many victims of sexual violence. In mid-June 2004, a new law (2004 Gacaca Law) restructured the gacaca system by eliminating district and province-level gacaca courts; reducing the number of gacaca judges in each court from nineteen to nine; suppressing category four and enlarging the scope of categories one, two, and three; and establishing

Extended," East African, March 29, 2004, [online] at <http://allafrica.com/stories/200403300841.html> (retrieved April 5, 2004).

⁵⁶ In principle, persons accused of rape, as category one offenders, are not eligible for provisional release. However, such individuals may be released if they were never formally accused of, and did not subsequently confess to rape or sexual torture. In certain cases in which sexual violence survivors did report the crime, alleged rapists were freed because authorities failed to file rape charges in response to victims' reports. Human Rights Watch was unable to determine why authorities did not register the rape charges in these cases.

⁵⁷ Human Rights Watch interview with B.R., Kigali, February 24, 2004.

⁵⁸ Human Rights Watch interview with I.B., Ntongwe district, Gitarama province, February 23, 2004.

⁵⁹ Human Rights Watch interview with NGO representative, Kigali, February 18, 2004.

new safeguards for rape victims. Under the new law, rape victims now have three options for private testimony in gacaca courts; these mechanisms are discussed in a later section of this report. The law also prohibits individuals from publicly confessing to rape, in order to protect the identity of the alleged victim.

Cases of Sexual Violence in Genocide Trials and Gacaca Proceedings

Due to the high prevalence of rape and other sexual violence during the 1994 genocide, Rwanda illustrates well both the prospects and limits of efforts to achieve post-conflict accountability at the national level for sexual violence crimes. The Rwandan experience with post-conflict justice for sexual violence will provide a useful point of comparison with other countries in the region where combatants have commonly used rape and other gender-based violence as a weapon of war, namely Sierra Leone, Liberia, Ivory Coast, the DRC, Sudan, and Burundi. In Rwanda as in other countries, the main avenue for prosecution and punishment of perpetrators of rape, as well as other crimes, is the national judicial system. The vast majority of those who directly perpetrated sexual violence, murder, and other offenses were lower-level actors, rather than ringleaders of the genocide who would come under the purview of the ICTR.

Genocide Trials Involving Rape

Human Rights Watch interviewed women⁶⁰ of varying ages and backgrounds who had suffered sexual violence during or since the genocide and reviewed judgments in trials from both periods. An extraordinarily small number of cases of genocide sexual violence have been prosecuted at the domestic level. From December 1996 to December 2003, the Tribunals of First Instance and military courts tried 9,728 persons⁶¹ accused of genocide, crimes against humanity, or related crimes. Human Rights Watch consulted numerous sources⁶² for information on genocide prosecutions and judgments and examined over 1,000 judgments covering a wide range of crimes. Of these cases, only thirty-two included charges of rape or sexual torture. In addition to the judgments, three

⁶⁰ Six of our interviewees were below the age of eighteen at the time of the rape. Only one case involved a victim who, at the age of seven, was still a child at the time of our research. We interviewed the mother of the victim.

⁶¹ Human Rights Watch interview with NGO representative, Kigali, March 30, 2004. This figure refers to the number of accused persons that have been tried rather than the total number of trials. Most trials involve multiple defendants.

⁶² These sources include: more than two hundred decisions in genocide trials (December 1996-December 2003) conducted in the specialized chambers of the Tribunals of First Instance of Butare, Gitarama, and the city of Kigali, reviewed by Human Rights Watch researchers during visits to the Tribunals of First Instance in Butare and Gitarama and the Office of the Prosecutor in Kigali; 853 decisions in genocide trials (December 1996-March 2003) conducted in the Tribunals of First Instance in all provinces and the city of Kigali and in military courts, a collection compiled by Lawyers without Borders-Belgium and generously shared with the Human Rights Watch research team; and information on specific cases from local NGO colleagues.

cases remained under investigation at the prosecutorial level, a preliminary step before transfer to the Tribunal of First Instance for the commencement of trial.⁶³ Though not exhaustive, this survey provides a fair illustration of genocide cases that have come before the provincial and military courts. Human Rights Watch also reviewed eighteen judgments in rape cases from the period 2000-2003 in the provinces of Butare, Gitarama, and Nyamata. These decisions are discussed in a later section of the report.

The review of genocide judgments reveals the paucity of genocide sexual violence prosecutions and an onerous caseload that has delayed genocide trials and subjected those accused of genocide—including rape—to extended pre-trial detention. Thirty-two of the judgments across ten of eleven provinces and the city of Kigali included charges of sexual violence against a total of fifty-one defendants.⁶⁴ Thirty-one defendants were convicted of rape or sexual torture.⁶⁵

Seven women residing in Gitarama province who were raped during the genocide told Human Rights Watch that they had reported the rapes in the period 1994-2003. However, we recorded only four judgments in the province, none corresponding to their cases, which included charges of rape or sexual torture against a total of four defendants.⁶⁶ In addition, eight ongoing trials in Gitarama involve charges of rape or sexual torture.⁶⁷ The lack of legal process for the seven cases relates to a systemic problem, the fact that the majority of detainees suspected of genocide crimes, including

⁶³ Human Rights Watch interview, Gitarama town, March 5, 2004; Human Rights Watch interview, Butare town, March 2, 2004.

⁶⁴ One indictment did not specify whether one or both defendants were charged with rape. If both were in fact charged with rape, the number of defendants would rise to fifty-two. In all sexual violence cases reviewed by Human Rights Watch, the indictments combined rape or sexual torture with other charges, such as murder or looting. An NGO representative described attending a trial in December 2003 at the Tribunal of First Instance of Nyamata in which the defendant was charged solely with sexual violence. Human Rights Watch interview with NGO representative, Kigali, February 19, 2004. This was the sole such case we documented in the course of our research. Mixed indictments make it even more difficult to identify the rare cases involving sexual violence.

⁶⁵ In 2000, Lawyers without Borders, a Belgian NGO, reviewed the cases of 1,051 persons tried on charges of genocide or related crimes in 1999, including approximately 176 cases shared with and later examined by Human Rights Watch, and found that forty-nine persons were prosecuted for rape or sexual torture, nine of whom were convicted of some form of sexual violence.

⁶⁶ Tribunal de Première Instance de Gitarama [Tribunal of First Instance of Gitarama], *Ministère Public contre Musonera* [Prosecutor v. Musonera], R.P. 09/GIT/CH.S/1/97, August 4, 1998; Tribunal de Première Instance de Gitarama [Tribunal of First Instance of Gitarama], *Ministère Public contre Ndahayo* [Prosecutor v. Ndahayo], R.P. 42/GIT/CH.S/1/98, March 31, 1999; Tribunal de Première Instance de Gitarama [Tribunal of First Instance of Gitarama], *Ministère Public contre Ndahimana* [Prosecutor v. Ndahimana], R.P. 133/GIT/5/2001, July 5, 2002; Conseil de Guerre de la République Rwandaise Siégeant à Mugina (Gitarama) [Military Council of the Republic of Rwanda Presiding at Mugina (Gitarama)], *Ministère Public contre le Caporal Kayitsinga* [Prosecutor v. Corporal Kayitsinga], R.P. 0051/CG/00, September 24, 2001.

⁶⁷ Human Rights Watch interview, Gitarama town, March 5, 2004.

rape or sexual torture, remain in prison and await trial. Thus, while none of the seven cases had yet come to trial, five Gitarama residents who had filed rape charges reported that at least one of the men they had named in their rape complaints was still in prison. By contrast, the Tribunal of First Instance of Nyamata, in Kigali-rural province, has held a far greater number of genocide rape trials. From 1996 to December 2003, forty-four completed trials have included charges of sexual violence.⁶⁸ Despite these local variations in the number of rape prosecutions, based on historical and demographic differences, genocide trials involving rape fall far short of the estimated tens of thousands of acts of sexual violence during the genocide.

To explain the rarity of rape prosecutions, prosecutors mainly have cited victims' failure to come forward to report rape. The Rwandan justice system, however, has hindered such reporting because it lacks appropriate protections for rape victims. As discussed in a later section, rape victims are more likely to confide in women police officers, prosecutors, and gacaca judges, but women are poorly represented in these groups. Prosecutorial staff and judges have not been trained to handle sexual violence cases. The classic courts do not guarantee rape victims privacy and confidentiality. Further, in a few cases documented by Human Rights Watch, authorities failed to file complaints in response to genocide survivors' reports of rape. According to NGO representatives and victims, in the initial period after the genocide investigators often did not consider rape to be as serious an offense as other accusations, such as murder, against the same suspect.⁶⁹

Gacaca Procedure and Sexual Violence

There have been similarly few reports of rape in the pilot gacaca courts. Gacaca courts will hold pre-trial proceedings for all genocide cases, whether they involve sexual violence or other crimes, which were not transferred by prosecutors' offices to the Tribunals of First Instance or military courts before March 15, 2001. In drawing up the list of defendants, cell-level gacaca courts are not bound by past complaints against persons imprisoned on genocide or related charges.⁷⁰ Therefore, all genocide survivors, including victims of sexual violence, whose cases were not transferred to the classic courts before the 2001 deadline must renew their accusations in gacaca courts. Given the nature of the crime of sexual violence and the stigma that attaches to victims, this

⁶⁸ Human Rights Watch interview with NGO representative, Kigali, March 3, 2004.

⁶⁹ Human Rights Watch interview with Y.K., Ntongwe district, Gitarama province, February 23, 2004; Human Rights Watch interview with F.N., Kigali, February 18, 2004; and Human Rights Watch interview with NGO representative, Kigali, February 16, 2004.

⁷⁰ *Manuel explicatif sur la loi organique portant création des juridictions gacaca*, p. 16.

procedure is particularly difficult for rape victims who previously filed rape or sexual torture complaints against the same detainees in the early post-genocide period.

The case of B.R., a victim of rape during the genocide, highlights this difficulty as well as the larger problem of genocide survivors' lack of faith in prospects for legal redress. When Human Rights Watch researchers spoke to B.R. in late February 2004, she awaited word from the prosecutor's office following her new complaint against two men with a view to seeking their rearrest, but she seemed to have lost interest in her case. She was frustrated and also fearful, following altercations between her mother and the alleged rapists who had returned to the community after their release.⁷¹ When asked whether she would participate in gacaca, she replied:

I don't think it will achieve much of anything. I think of my family, which was large, with many children Everyone was killed. Try to understand, there are only three children and my mother who remain alive. Do you think we have the strength to come forward in gacaca? They will say, "Look how you are dressed" . . . I think we will all go mad. . . . There are times when my mother, older sister, brother, and I sit together and just cry.⁷²

Testimonies collected by Human Rights Watch researchers demonstrated that gacaca procedures under the 2001 Gacaca Law discouraged women from testifying about their experiences of sexual violence. Under the 2001 Gacaca Law, a rape victim who chose to report rape to a gacaca court could testify orally or in writing before the general assembly, which is composed of a minimum of 100 community members. At the time, gacaca rules required the gacaca president (the chief judge at the cell level) to read written testimony aloud to the assembly.⁷³ Alternatively, the complainant could testify in camera before the panel of nineteen gacaca judges and the accused.⁷⁴ The presence of twenty people denied the victim privacy and confidentiality. While the 2004 Gacaca Law has modified in camera procedure to allow a rape victim to testify privately to a single gacaca judge, in camera testimony in the Rwandan context would still afford limited protections to witnesses. Cell-level gacaca proceedings occur in a small community

⁷¹ According to B.R., one of the released detainees whom she alleges raped her during the genocide frequently quarrels with her mother, who has accused him of stealing her crops. Human Rights Watch interview with B.R., Kigali, February 24, 2004. B.R. also expressed fear in relation to the killings in Gikongoro province, which she understood to be attacks against gacaca witnesses.

⁷² *Ibid.*

⁷³ *Manuel explicatif sur la loi organique portant création des juridictions gacaca*, p. 55.

⁷⁴ *Ibid.*, pp. 88-89.

setting, where closed-door testimony is likely to be an open secret and could suggest to community members that the witness's testimony concerns sexual violence.

According to government officials and NGO representatives, cell-level gacaca courts have encountered few cases of sexual violence, due in part to insufficient procedural protections under the 2001 law that discouraged women from coming forward.⁷⁵ A representative of a Rwandan NGO described to Human Rights Watch a gacaca hearing she had attended in 2002 in Gitarama province, where B.U., a female genocide survivor, testified before the assembly.⁷⁶ Upon completion of her testimony, B.U. said, "There are other things that I do not wish to say in public." The representative interviewed B.U. privately, and she reported that she had been raped. Fearful of the reaction of the assembly, she expressed a desire to speak privately with the gacaca judges. Since the launch of the pilot program in June 2002, 581 gacaca courts in ten provinces had registered approximately 134 cases of rape or sexual torture, as compared to approximately 3,308 cases of non-sexual violence crimes, such as murder, assault, or looting, brought before the same courts.⁷⁷

Obstacles to Reporting Sexual Violence

We who have suffered rape, we are afraid that the person we tell will reveal our story to others. If I go before the court, who will I speak to? If there is a way for someone to punish them [through prosecution], I hope that they are punished, but if not, it is for God [to judge them]."

—S.K., Kanzenzi district, February 20, 2004.

Serious obstacles to reporting, investigating, and prosecuting sexual violence cases remain. Our research found that some of the barriers to justice for genocide rape stem from the particular context of April-July 1994, one of mass violence and social disorder, and its impact on national accountability mechanisms. Other more general difficulties that persist with respect to recent rape cases reflect the failure to define rape and other gaps in statutory law; systemic weaknesses within the police, prosecutors' offices, and

⁷⁵ Human Rights Watch interviews with NGO representatives, Kigali, February 9-19, 2004; Human Rights Watch interviews with local and national gacaca officials, Kigali and Butare town, February 6-26, 2004.

⁷⁶ Human Rights Watch interview with NGO representative, Kigali, February 23, 2004.

⁷⁷ Human Rights Watch interviews with local and national gacaca officials, Kigali, March 1-3, 2004. By January 2004, a total of 758 cell-level gacaca courts had commenced proceedings. National Gacaca Office, *Document sur l'Etat d'Avancement des Activités des Juridictions Gacaca*, p. 1. The figure cited above, 581, excludes courts in the provinces of Kibungo and Kigali-rural, for which statistics on rape cases were unavailable. *Ibid.*, p. 4.

judiciary; and cultural and social obstacles. This section focuses on barriers to reporting rape, chief among which are evidentiary issues and inadequate procedural protections to mitigate stigmatization and retraumatization of rape victims.

Victims' Concerns Regarding Lack of Evidence

In the case of rape or other criminal offenses, authorities are required to investigate complaints and bear the burden of proving the guilt of the accused. However, some Rwandan women believed that they shouldered this responsibility. Women who were raped during the genocide explained that they had not initially reported the abuse or did not plan to testify to rape in gacaca courts because they could not identify or locate the alleged rapists, they believed that one or more of the men had since died, or feared their claims would be rejected for lack of physical evidence or eyewitness testimony of the attack.⁷⁸ As J.B., a resident of Gitarama province who was raped by two men during the genocide in the presence of her three children, told Human Rights Watch: "My greatest sorrow is that I don't know who they were . . . If I did, they would be known, and they would be punished. . . . I would have had the courage to accuse them."⁷⁹ W.K., another Gitarama resident who was raped by several Interahamwe at a roadblock, told us: "I haven't reported the rape because I don't know the names of those who did it. If I had known, I would have accused them."⁸⁰ A report by the international NGO Penal Reform International cites the statement of a rape survivor on the issue of gacaca testimony: "Rape did not necessarily occur in public. How can one accept the testimony of the victim without there having been a witness? What will happen when the accused pleads not guilty?"⁸¹ Further, several rape victims and representatives of survivors' organizations and other NGOs explained to Human Rights Watch that a large number of rapes were never reported because the victims were killed during the genocide or have since died of HIV/AIDS.

Similarly, with respect to post-1994 sexual violence, certain rape victims had not reported the rape because they could not identify their attackers or knew their attackers but lacked physical evidence or eyewitness testimony. One of these women, C.M., was first raped in the cell where she resided with her family and then moved to the nearest town, where she entered prostitution. She did not know the first attacker and reported that she has since been raped six times over several months by unknown men at night

⁷⁸ Similarly, several victims of genocide sexual violence interviewed by a lawyer in Kibuye province reported that one or more of their rapists were unidentifiable, unable to be located, or had since died. Email message from lawyer, Kigali, to Human Rights Watch, April 8, 2004.

⁷⁹ Human Rights Watch interview with J.B., Ntongwe district, Gitarama province, February 23, 2004.

⁸⁰ Human Rights Watch interview with W.K., Ntongwe district, Gitarama province, February 23, 2004.

⁸¹ PRI, *Interim Report*, p. 39.

on the streets. She explained that several of her colleagues had also often been attacked in this way.⁸² Another woman, J.T., was abducted in 2000 and held captive by a man who raped her repeatedly. She told Human Rights Watch, "I didn't go to the police because I didn't know his name, or where he was from. If I had known, I would have gone to the authorities."⁸³

Stigmatization, Retraumatization, and Inadequate Procedural Protections for Witnesses

Societal Context of Stigmatization of Rape Victims

Nearly all the rape victims we interviewed recognized the importance of justice and accountability for sexual violence but were daunted by social and procedural obstacles they faced in reporting the crime to the police, prosecutors' offices, or, more recently, gacaca courts. Persons who have experienced sexual violence are vulnerable to feelings of shame, depression, and stigmatization. Human Rights Watch interviews with women who were raped during the genocide, NGO representatives, government officials, and counselors point to various concerns that relate to isolation, stigmatization of rape victims and people living with HIV/AIDS, and persistent trauma. This section focuses on the situation of women raped during the genocide and then compares their experiences to those of recent victims.

S.I., a resident of Kigali-rural province, was raped during the genocide by four Interahamwe. Her interview with Human Rights Watch researchers was the second time that she had discussed the experience (the first having been with a counselor and representative of a survivors' organization). She had not told her husband, who survived the genocide. This fact is partially explained by her persistent feelings of shame, evident during our interview and demonstrated by her tendency to blame herself for the attack: "For a very long time, I have despised the sin of adultery. The fact that it happened to me, it disturbed me very much. I don't think that talking about it would achieve anything."⁸⁴

Some victims of genocide sexual violence explained that feelings of shame and fear of community rejection had prevented them from reporting the assaults to police or prosecutors immediately after the genocide. A few of these women had accused their

⁸² Human Rights Watch interview with C.M., February 29, 2004.

⁸³ Human Rights Watch interview with J.T., February 28, 2004.

⁸⁴ Human Rights Watch interview with S.I., Kanzenzi district, February 22, 2004.

alleged rapists of murder, but preferred not to reveal the rape. Others had never filed rape or other charges due to stigma or lack of awareness of their rights, and most had experienced persistent trauma and feared that disclosure would lead to rejection by family or community members. One woman, who was raped by and forced to marry an RPA soldier, said that she did not blame him for the abuse because he acted out of love and did not abandon her.⁸⁵ As the above cases of S.I. and other victims illustrate, victims who seek to report the abuse require trained, sympathetic interlocutors, effective procedural protections, and education about the availability of these protections.

Public Nature of the Gacaca Process

The gacaca process to date has heightened women's fears of stigmatization, community rejection, and retraumatization. As described above, witnesses may testify in writing or in camera to gacaca courts, but these protections are inadequate and do not ensure their privacy in the context of the small communities in which they live. Further, many of the women whom Human Rights Watch interviewed did not know that they had the option of testifying to rape in camera. C.H., who lives in Kibungo province, in a cell close to the Tanzanian border, told Human Rights Watch that she had been unaware of the option to testify in camera at the time she publicly accused her alleged rapist at a gacaca hearing in late 2002.⁸⁶ Interahamwe murdered her husband in the early days of the genocide. Claiming that he was "protecting" her and her children, a neighbor repeatedly raped her over a period of several weeks. His son also raped C.H.'s daughter. After C.H. renewed her accusation before the gacaca assembly, the president of the gacaca court read a letter written by the alleged rapist, who was in prison on charges of rape, murder, and looting. The letter accused C.H. and another woman of conspiring to bring false charges against him. C.H. told Human Rights Watch that after the letter was read, there was whispering and debate among the assembly members. Some accused her of lying; others supported her version of events. C.H. told Human Rights Watch, "I would have preferred to testify in private because after I spoke in front of the assembly, [community members] snickered and whispered."⁸⁷

Similarly, W.K., a Gitarama resident who was raped during the genocide, described community members' behavior at local gacaca hearings she attended where other women had testified to rape: "Some people in the crowd were whispering that the women were lying, but I know it's true."⁸⁸ In the context of societal stigmatization of

⁸⁵ Human Rights Watch interview with E.T., Gitarama town, February 19, 2004.

⁸⁶ Human Rights Watch interview with C.H., Kigarama district, Kibungo province, March 3, 2004.

⁸⁷ Ibid.

⁸⁸ Human Rights Watch interview with W.K., Ntongwe district, Gitarama province, February 23, 2004.

victims of sexual violence, the public debate that exemplifies the participatory gacaca process exposes victims who testify to public humiliation and may discourage reporting of sexual violence.

Unaware or dismissive of the protections afforded by written or in camera gacaca testimony, the majority of women Human Rights Watch interviewed appeared to view the process as necessarily public and expressed fears that disclosure within the present system would expose them to stigma, blame, or public ridicule by members of their communities, particularly the cell-level gacaca general assembly.⁸⁹ As illustrated by the attitude of E.G., a resident of Gitarama province, chronic trauma afflicts some women and discourages them from testifying. E.G., who is HIV-positive, was gang-raped by several Interahamwe and bore a child from rape after she fled to Congo (then Zaire).⁹⁰ When asked whether she would testify about the rape at the gacaca hearings, E.G. explained:

Will we even be capable of testifying? To have the strength to walk up in front of people and say that so-and-so has raped me? . . . It's hard to confront the person who has raped you when he has a family and you are alone, without anyone to support you.⁹¹

By contrast, another woman spoke positively about her experience of publicly testifying to rape before a gacaca court. The case of Y.K., of Gitarama province, demonstrates that some women overcome their concerns about community attitudes because they desire accountability for the abuses they suffered.⁹² Y.K. was raped on two occasions and filed a rape complaint soon after the genocide. When she renewed her testimony at a recent gacaca hearing, one of the alleged rapists was present. She described the scene:

There were about 2,000 people there. When I testified, people kept quiet. I also said a lot of other things, including about other people. The judges said nothing. I said it all without shame. Immediately after the war, I was ashamed and always crying. But since then, it is better. People

⁸⁹ Representatives of survivors' organizations maintain regular contact with a large number of genocide rape victims and confirmed that these concerns discourage genocide rape victims from reporting the abuse. Human Rights Watch interview with NGO representative, Kigali, February 9, 2004. Judicial and gacaca officials echoed these views. Human Rights Watch interview with senior and local government officials, Kigali and Gitarama town, February 6, 2004-March 3, 2004.

⁹⁰ Human Rights Watch interview with E.G., Kigali, February 18, 2004.

⁹¹ Ibid.

⁹² Human Rights Watch interview with Y.K., Ntongwe district, Gitarama province, February 23, 2004.

encouraged me and the women in the group [a support group for rape survivors] have helped me too.⁹³

Beyond the debilitating effects of trauma, there are social risks to reporting rape to gacaca courts. A provincial prosecutor who has spoken to many women who were raped during the genocide told Human Rights Watch that some of them, particularly young women, consider themselves “fortunate” if they escaped injuries beyond the attack itself, such as contracting HIV from their attackers.⁹⁴ Because they wish to lead full and normal lives, they hesitate to testify to rape for fear that the revelation will lead their husbands to reject them or, if they are unmarried, make them unmarriageable. The same official described the cases of three women who were raped during the genocide and are now married with children. They had privately recounted their experiences to her but refused to testify in gacaca courts for fear that their husbands would abandon them. According to a former rape counselor, many women also fear that disclosure will lead others to assume they are HIV-positive.⁹⁵ Consequently, those more likely to testify are those who may consider that they have nothing to lose: widows, women whose communities already know them to be rape victims, or women who are dying of HIV/AIDS.⁹⁶ Several of the women Human Rights Watch interviewed who had testified in the past or plan to testify to rape at prosecutors’ office or in gacaca courts were widows or identified themselves as HIV-positive.⁹⁷

Conversely, other human rights advocates told Human Rights Watch that some women who are gravely ill suffer from depression and have lost the will to pursue accountability for the abuse.⁹⁸ The case of D.K., a widow and resident of Gitarama province who is frail due to AIDS, is illustrative.⁹⁹ In 1994, she and her daughter were fleeing an attack when they stumbled into a group of armed men and were raped. Both were HIV-positive, and D.K.’s daughter bore a child who died soon after birth. Her daughter refused to marry because she feared that she would transmit the disease to others. Her voice breaking, D.K. told Human Rights Watch that she had decided not to participate in gacaca: “They [members of the gacaca assembly] cry out and you become traumatized, you begin to cry. If you remember what happened, you feel that something has changed

⁹³ Ibid.

⁹⁴ Human Rights Watch interview with Espérance Nyirasafari, prosecutor for Gitarama province, Gitarama town, February 19, 2004.

⁹⁵ Human Rights Watch interview with counselor, Kigali, February 10, 2004.

⁹⁶ Human Rights Watch interview with NGO representative, Kigali, February 15, 2004.

⁹⁷ Human Rights Watch interviews, Kigali, Ntongwe district, Gitarama province, and Kigarama district, Kibungo province, February 18-March 3, 2004.

⁹⁸ Human Rights Watch interview with NGO representative, Kigali, February 9, 2004.

⁹⁹ Human Rights Watch interview with D.K., Kamonyi district, Gitarama province, February 13, 2004.

inside. An old woman like me, how can I stand before people and tell them everything?⁹⁹¹⁰⁰

Absence of Security and Confidentiality Protections for Witnesses

The 2001 Gacaca Law and the 2004 Gacaca Law prohibit tampering with or intimidating gacaca witnesses and judges. Despite this protection, reassuring statements by gacaca officials, and the presence of Local Defense Forces, a volunteer militia, at gacaca hearings, many witnesses remain fearful of retaliation by accused persons or their families.¹⁰¹ Some female genocide survivors, including those who were raped during the genocide, told Human Rights Watch that they were afraid to testify in gacaca courts and alluded to reported violence against gacaca witnesses in 2003. Penal Reform International has emphasized that rape victims, whose gacaca testimony may lead to life imprisonment or the death penalty for their alleged rapists, commonly face threats by fellow community members.¹⁰²

Further, the 2001 Gacaca Law and its procedural guidelines did not expressly require gacaca judges and authorities to safeguard the confidentiality and identifying information of witnesses, including rape victims, who testify in writing or in camera.¹⁰³ By contrast, the 2004 Gacaca Law requires gacaca judges “secretly” to transfer rape testimony to the appropriate prosecutor’s office.¹⁰⁴ It is essential that gacaca judges properly implement this provision.

The Code of Criminal Procedure similarly does not require court judgments to redact the names and identifying information of rape complainants. In fifty genocide and ordinary criminal law judgments from the period 1997-2003, nearly all the transcripts cited the names of the women or girls whom the defendant was charged with having assaulted. The lack of confidentiality protections may discourage post-1994 rape victims, as well as women raped during the genocide whose cases will eventually be tried in the Tribunals of First Instance, from reporting the crime and pursuing the case through trial.

¹⁰⁰ Ibid.

¹⁰¹ PRI, *Research on the Gacaca: Report V* (Kigali: September 2003), p. 9; LIPRODHOR, *Juridictions Gacaca: Potentialités et Lacunes Révélées par les Débuts* (Kigali: July 2003), pp. 40-42.

¹⁰² PRI, *Interim Report*, July p. 51.

¹⁰³ *Manuel explicatif sur la loi organique portant création des juridictions Gacaca*, pp. 88-89.

¹⁰⁴ 2004 Gacaca Law, art. 38.

Post-1994 Rape Victims: Persistent Stigma and a Cycle of Violence

Although Rwandan society has become more sensitive to the issue of sexual violence since the genocide, stigmatization and rejection of rape victims by family and community members continue to deter reporting of rape. Human Rights Watch interviewed a woman whose family rejected her after she admitted to having been raped. The family of C.M., who is twenty-two years old, rejected her after admitted to having been raped as a college student in 2003.¹⁰⁵ The attack occurred on the street, in the cell in western Rwanda where she resided with her family. She told Human Rights Watch that when she told her parents of the rape, "They decided to throw me out immediately." She has since attempted to return home but her family continues to reject her.

Other women did not report the crime for fear that they would be ridiculed or blamed for not having resisted the attack. D.T., a resident of Butare town, was an eighteen-year-old genocide orphan. She was taken in by a family who employed her in their shop. In 1999, she was raped by a customer, who was employed by D.T.'s employer in another capacity. D.T. never discusses the rape: "I know it wasn't my fault but I'm still ashamed because if I told people, they would ridicule me."¹⁰⁶ Another woman, A.G., is a 30-year-old Kigali resident who was raped by a neighbor in 1999.¹⁰⁷ At the time, her husband was in prison. She did not report the attack to the authorities. As she explained to Human Rights Watch:

I don't think the man [who raped me] would recognize that what he did was a sin. . . . Even the other neighbors might not think that he committed a sin. Here in Rwanda, if you don't cry out [for help during an attack], you can't complain later, because people will say you don't have a witness. . . . The man [who raped me] will say, "Why didn't you shout for help?"¹⁰⁸

When victims are at or beyond the age of adolescence, the societal tendency to blame the victim opens the door to a cycle of violence, a pattern we documented in our interviews with young female prostitutes. Several prostitutes reported that their experiences of rape had led them to enter prostitution, where they became further vulnerable to sexual, physical, and other violence. G.N. is a twenty-year-old prostitute who was raped in 2002 by a police officer. She recounted having entered prostitution

¹⁰⁵ Human Rights Watch interview with C.M., February 29, 2004.

¹⁰⁶ Human Rights Watch interview with D.T., Butare town, March 2, 2004.

¹⁰⁷ Human Rights Watch interview with A.G., Kigali, February 24, 2004.

¹⁰⁸ Ibid.

after the rape: "I was a good girl who stayed at home. It's because of this [the rape] that I became 'loose.'"¹⁰⁹ As described above, another woman, C.M., was evicted from her family home after her parents learned of the rape. She moved to town, where she gave birth to a child from the rape, and entered prostitution. She estimates that she has been raped six times in the past year and told Human Rights Watch that sexual violence "happens to lots of other girls."¹¹⁰ J.T. is a twenty-year-old former prostitute.¹¹¹ In 2000, when she was seventeen, a soldier abducted her from the street, imprisoned her in a house, and raped her several times; he held her captive for one week before she was able to escape. Her older sister rejected her when J.T. told her she was HIV-positive, and J.T. subsequently entered prostitution. With the support of a women's rights organization, she has since abandoned prostitution. Prostitutes face not only sexual but also other physical violence. Several prostitutes complained that police, military, and civilians routinely beat them, sometimes with batons, when they are on the streets.

Obstacles to Investigation and Prosecution of Sexual Violence

Lack of Testimonial and Medicolegal Evidence

Lack of testimonial and medicolegal evidence has seriously impeded investigation and prosecution of sexual violence. As discussed earlier, many women raped during the genocide did not survive the genocide or have since died of HIV/AIDS or other causes without ever have lodged formal complaints. Other victims hesitate to report rape because they mistakenly believe they have the burden to provide eyewitness testimony or physical proof of the attack. The lack of evidence similarly hampers authorities' efforts to pursue accountability.

During the genocide, Interahamwe or soldiers very frequently raped women and girls after they had killed in their presence their family members.¹¹² Therefore, there are few eyewitnesses to acts of sexual violence. Citing this lack of concrete evidence, several women we interviewed doubted they would be able to prove that the assault occurred. I.B. told Human Rights Watch that she considered and then dismissed the idea of testifying to rape in gacaca: "I thought about it, but in gacaca, it is easy to deny sexual abuse because there are no witnesses."¹¹³

¹⁰⁹ Human Rights Watch interview with G.N., February 28, 2004.

¹¹⁰ Human Rights Watch interview with C.M., February 29, 2004.

¹¹¹ Human Rights Watch interview with J.T., February 28, 2004.

¹¹² See *Shattered Lives*, p. 39.

¹¹³ Human Rights Watch interview with I.B., Ntongwe district, Gitarama province, February 23, 2004.

During the genocide, G.R. was fleeing in the direction of her residence when she encountered a young neighbor, who raped her. When asked whether she would testify at gacaca about the rape, she told Human Rights Watch: "The problem is that they ask for concrete evidence from people who claim they were raped. . . . But how can you give them concrete evidence when you were alone with the person [who raped you]?"¹¹⁴

Judicial Proceedings

There are no evidentiary rules in gacaca, such as a requirement for tangible proof of sexual assault. But G.R.'s testimony correctly pinpoints the problem of easy deniability of genocide sexual violence, given the disappearance of medical and other concrete evidence since the genocide and the fact that the gacaca process relies almost exclusively on prior evidence gathered by prosecutors' offices and the testimony of the victim, the accused, and other community members. In rape investigations and prosecutions, physical evidence suggestive of forced sexual relations, such as bruising, is transitory and must be collected immediately following the sexual assault. Further, in the context of the Rwandan genocide, where women and girls were frequently raped after witnessing the murder of their family members, there are few eyewitnesses to sexual violence, as to other genocide crimes. In thirty-two judgments handed down from 1997-2002 involving rape during the genocide, courts acquitted several defendants accused of rape due to insufficient evidence. The court dismissed rape charges against six defendants due to lack of direct testimony from the victims, who had died following the rape. With respect to seven other defendants, the court held that the testimony of the victim and other witnesses alone did not adequately prove that the accused committed rape.

In a standard rape investigation, the absence of eyewitnesses could be overcome by medicolegal evidence indicating that the victim was raped and linking the attack to the defendant through biological proof. Clearly, medical examination of rape victims and preservation of evidence were not possible in the aftermath of the genocide. Compared to genocide sexual violence, post-1994 rape cases benefit from greater testimonial and medical evidence. However, Human Rights Watch's review of post-1994 rape judgments from the period 2000-2003 found that judges either rely on weak medical findings to convict defendants, or find such proof to be inconclusive.

A women's and children's rights lawyer told Human Rights Watch that most medical professionals who conduct medical exams in rape cases do not have special training.¹¹⁵ As a result, she explained, medical reports in rape cases often lack sufficient information,

¹¹⁴ Human Rights Watch interview with G.R., Kigali, February 19, 2004.

¹¹⁵ Email message from NGO representative, Kigali, to Human Rights Watch, March 31, 2004.

making it difficult for judges properly to evaluate them. A human rights activist with expertise in medical issues reported that Rwandan hospitals and health centers lack a uniform protocol on the procedure for rape exams, to ensure that doctors gather the necessary proof for sexual violence investigations.¹¹⁶

Inconsistent Verdicts Due to Lack of Definition of Rape or Sexual Torture under the Law

The failure to define rape or sexual torture in the penal code has led to inconsistent verdicts in rape trials. The majority of genocide and criminal law judgments involving rape that Human Rights Watch reviewed resulted in conviction of the alleged rapists. The genocide judgments applied the terms "rape" and "sexual torture" inconsistently, indicating confusion among prosecutors and judges. Similarly, none of the post-1994 judgments invoke a definition of rape or defilement.

The Rwandan Penal Code of 1977 prohibits defilement, rape, torture, and sexual torture but fails to define these acts. Certain provisions provide for a longer term of imprisonment for the rape of a child below age sixteen and the death penalty if the victim dies as a result of the rape.¹¹⁷ With respect to "sexual torture," the applicable provision appears to be article 316, which provides that a person who commits "torture or acts of barbarity" during the commission of a crime incurs the same punishment as one who commits murder.¹¹⁸ An examination of judgments in genocide trials reveals that the failure to define rape in the Penal Code has contributed to considerable confusion among witnesses, accused, prosecutors, and judges. The reliance on judicial discretion to characterize an act of sexual violence has produced inconsistent guilty verdicts and punishments.¹¹⁹ Thus, some judgments categorize an act of rape as "sexual torture."¹²⁰ Other judgments we examined reserved this term for acts of sexual mutilation or gang rape.¹²¹

¹¹⁶ Human Rights Watch telephone interview with NGO representative, Kigali, April 15, 2004.

¹¹⁷ Code pénal [Rwandan Penal Code], art. 360.

¹¹⁸ Ibid., art. 316.

¹¹⁹ Martien Schotsmans also highlighted this problem in her review of genocide rape judgments. See Schotsmans (Lawyers without Borders), *Le Droit à la Réparation des Victimes de Violences Sexuelles*, pp. 8, 13-14.

¹²⁰ See Florence Mukamugema, "La Femme rwandaise et les événements de 1994," in (Jacques Fierens, ed.), *Femmes et génocide: le cas rwandais* (Bruxelles: Faculté de droit des Facultés universitaires Notre-Dame de la Paix, 2003) (discussing judgments of the Tribunal of First Instance of Byumba), pp. 96-98.

¹²¹ See Tribunal de Première Instance de Butare [Tribunal of First Instance of Butare], *Ministère Public contre Harindintwali et consorts* [Prosecutor v. Harindintwali et al.], R.P. 40.254/S8/G.L.J./R.L., Octobre 22, 1997; Tribunal de Première Instance de Kibuye [Tribunal of First Instance of Kibuye], *Ministère Public contre Ntibimenya et consorts* [Prosecutor v. Ntibimenya et al.], R.P. Ch. Sp. A6/01/98, June 30, 1999; Tribunal de

With respect to women and girls who were raped outside the context of the genocide, NGO representatives and health services providers told Human Rights Watch that women often reported that their husbands forced or coerced them into having sex and that many wives did not know of their right to refuse sex with their husbands. Human Rights Watch is concerned that the absence of a definition of rape in the Penal Code has contributed to lack of awareness and reporting of abuse against adult women and girls, whether by their partners or husbands, acquaintances, or strangers, and against those in marginalized groups, such as street children or prostitutes. A counselor Human Rights Watch interviewed reported that she treats many victims of marital rape.¹²² Many of the victims' partners use physical violence or coercion to force them to have sex without protection. Forms of coercion include threats to deprive them of food or withhold school fees for their children.

Interviews with a number of NGO representatives and government officials suggest a general societal tendency to minimize the incidence of sexual violence against adult women. Several people Human Rights Watch interviewed cited the rarity of formal complaints, said there are good reasons to disbelieve adult women when they report rape, or blamed the women themselves for assaults that are reported.¹²³ In a judgment Human Rights Watch reviewed, a court incorrectly based its decision on the fact that the sixteen-year-old victim, a child under the Rwandan child protection law,¹²⁴ the Rwandan Civil Code,¹²⁵ and the CRC, was an "adult." The court acquitted the defendant of rape on the grounds that the victim, who "is of age and, unlike children, cannot be misled [about her employer's desire to have sex with her]," consented to sexual relations.¹²⁶

Première Instance de Byumba [Tribunal of First Instance of Byumba], *Ministère Public contre Rwiyegeura et consorts* [Prosecutor v. Rwiyegeura et al.], R.P. 050/I/CSP/99/By (cited in Mukamugema, p. 96).

¹²² Human Rights Watch interview with HIV/AIDS counselor, Kigali, February 24, 2004.

¹²³ Rwandan human rights advocates reacted differently to the issue of sexual violence against adult women. Several acknowledged its incidence and even drew attention to the problem of marital rape. Human Rights Watch interview with NGO representative, Gisenyi town, February 28, 2004; Human Rights Watch interview with NGO representative, Butare town, February 25, 2004. Others tended to downplay the victimization of adult women. Human Rights Watch interview with local NGO coordinators, Gisenyi town, February 28, 2004. One prominent women's rights activist in Kigali highlighted the rape of very young girls, while noting that "adolescent girls can take care of themselves." Human Rights Watch interview with NGO representative, Kigali, February 27, 2004.

¹²⁴ Article 1 of the Child Protection Law defines a child for purposes of the law as a person under the age of eighteen. Law N° 27/2001 of 28/04/2001 Relating to Rights and Protection of the Child against Violence [Child Protection Law], *Official Gazette of the Republic of Rwanda*, December 1, 2001, art. 1.

¹²⁵ The Rwandan Civil Code sets the age of majority at twenty-one. Civil Code, *Official Gazette of the Republic of Rwanda*, October 27, 1988, art. 431.

¹²⁶ Tribunal de Première Instance de Butare [Tribunal of First Instance of Butare], *Ministère Public contre Habarugira* [Prosecutor v. Habarugira], R.P. 29295/70, October 27, 2000.

While some authorities Human Rights Watch interviewed clearly recognized the problem of sexual violence against adult women,¹²⁷ two government officials, who otherwise stated their commitment to the elimination of sexual violence, suggested that sexual relations are usually consensual between a man and an adult woman, or that adult women, unlike girls, can readily defend themselves from attacks. The prosecutor of Gisenyi province told Human Rights Watch that rape of adult women is rare because “an adult woman often participates in her own victimization” and that, in such cases, “there are two perpetrators [the attacker and his victim].”¹²⁸ As illustrations, he cited the cases of women who were intoxicated at the time of the attack or who had spoken to their rapists before the assault. Similarly, the prosecutor for the city of Kigali explained the few complaints of adult female rapes by noting that in such cases, “there is often consent.”¹²⁹ It is particularly troubling that these comments, which demonstrate a lack of understanding of the nature of sexual violence, were made by senior officials responsible for the prosecution of sexual violence and other crimes.

Failure of Authorities to File Rape Charges Pursuant to Reports of Rape

Some women we interviewed who had been raped during the genocide had filed rape charges between 1998 and 2003 against one or more of their attackers.¹³⁰ Half of this group, as well as one woman who had been raped after 1994, reported that authorities had never registered their rape complaints. In a 1998 report, the international NGO Lawyers without Borders also found that officials had failed to indict some defendants on rape charges, despite rape complaints filed by victims.¹³¹ The women who complained of authorities’ failure to record the charges of genocide sexual violence reported that their alleged rapists were imprisoned for crimes other than sexual violence and had since been granted provisional release.¹³² B.R., a resident of Gitarama province, was gang-raped during the genocide and was a refugee in the Democratic Republic of Congo (then Zaire) until 1997. She explained to Human Rights Watch that she had filed two rape complaints in 1997, to the local police and the mayor of her district. The police officer had repeatedly rebuffed her efforts, but she persevered: “I went there several times,

¹²⁷ Human Rights Watch interview with the attorney general of Rwanda, police officials, and a provincial prosecutor, Kigali and Gitarama town, February 9-March 5, 2004.

¹²⁸ Human Rights Watch interview with Straton Nsengiyumva, prosecutor for Gisenyi province, Gisenyi town, March 1, 2004.

¹²⁹ Human Rights Watch interview with Sylvère Gatambiye, prosecutor for city of Kigali, Kigali, February 24, 2004.

¹³⁰ This is in reference to the Tribunaux de Première Instance. Interviewees filed these complaints prior to the commencement of gacaca.

¹³¹ Lawyers without Borders, *Justice Pour Tous au Rwanda: Rapport Annuel 1998* [Justice for All in Rwanda: Annual Report 1998], p. 6 [online] at <http://www.asf.be/FR/Texte/Terrain/Rwanda/ASF.terrain.RWA.rapport%201998.pdf> (retrieved May 14, 2004).

¹³² Human Rights Watch interviews, Kigali and Ntongwe district, Gitarama province, February 18-24, 2004.

several times, I never stopped going.”¹³³ In her complaints, she named two of the men who she says gang-raped her in 1994. She attended their trial in 2000 and told Human Rights Watch that the assistant prosecutor never mentioned the assault against her during the proceedings. Human Rights Watch’s copy of the final judgment reveals that the prosecutor’s office indicted the two men for murder and other offenses, but not sexual violence. The court sentenced them to twelve years of imprisonment after they confessed to crimes that did not include sexual violence. B.R. did not take further action in response to the prosecutorial lapse, and in 2003, the two men won provisional release from prison. They returned to live in B.R.’s community and offered to pay her in exchange for her silence. Since then, she has complained to a survivors’ organization and met with the prosecutor’s office in the hope that the two men will be rearrested and charged with rape.

Human Rights Watch’s review of genocide judgments also reveals that some authorities neglected rape complaints once they had reached the trial stage. Three judgments cited witness testimonies that referred either directly to rape or sexual torture, or to the “abduction” of women by male defendants or their “imprisonment” in homes.¹³⁴ However, according to the transcripts, the assistant prosecutor or the presiding judge failed to pursue this line of inquiry, and the final rulings did not include references to sexual violence.¹³⁵

Health Care and Other Assistance for Victims of Sexual Violence

“This war in Rwanda, if only they had exterminated us all . . . The way we live now, we live with the knowledge that our neighbors do not like us.”

—D.K., a woman who was raped during the genocide and now suffers from trauma and HIV/AIDS, Kamonyi district, February 13, 2004.

¹³³ Human Rights Watch interview with B.R., Kigali, February 24, 2004.

¹³⁴ Tribunal de Première Instance de Byumba [Tribunal of First Instance of Byumba], *Ministère Public contre Karangwa et consorts* [Prosecutor v. Karangwa et al.], R.P. 025/IC.SP/98/BY, June 5, 1998; Cour Militaire de la République Rwandaise [Military Court of the Republic of Rwanda], *Chambre Spécialisée Siégeant à Nyamirambo* [Specialized Chamber Presiding at Nyamirambo], *Auditorat Militaire Général contre Adjudant Chef Rekeraho et Caporal Kamanayo* [Military Prosecutor v. Chief Officer Rekeraho and Corporal Kamanayo], RPA 0012/CM-CS/KGL/2000, November 15, 2000; *Chambre Spécialisée du Conseil de Guerre Siégeant à Gisenyi* [Specialized Chamber of the Military Council Presiding at Gisenyi], *Auditorat Militaire contre Sous-lieutenant Eustache Dusabeyezu* [Military Prosecutor v. Second Lieutenant Eustache Dusabeyezu], December 22, 1998.

¹³⁵ Ibid.

Failures of Justice

Victims of sexual violence during and since the genocide whom Human Rights Watch interviewed believed that mechanisms for legal redress—investigation, prosecution, punishment, and reparations—at the national and international levels have failed them. Even those who had testified or planned to testify to rape in gacaca proceedings, discussed in a later section of this report, focused less on what they may gain from pursuing their legal cases than on what they have lost from the justice denied them since 1994. In particular, victims of genocide sexual violence were indignant at what they perceive as impunity for their attackers.

M.K.'s account captures the ambivalence of genocide survivors, who are simultaneously hopeful and dubious about prospects for justice. M.K. was raped by several Interahamwe during the genocide. In 1995, she filed charges with the local police, accusing the one attacker she had been able to identify of murder, but not rape. She told Human Rights Watch that she was ashamed to admit she had been raped and that, prior to the adoption of the 1996 Genocide Law, she did not believe that authorities would prosecute the crime of rape. He was detained after being accused of murder, but not of sexual violence. After he was released in 2003, she returned to the police and reported that he had also committed rape. Authorities did not update her on the status of her complaint, and absent any response, she did not return to follow up the case. While M.K. planned to testify in the gacaca court, the earlier failures of justice have disheartened her:

We think that justice is very important, but at the moment, it is meaningless. What is the use of justice if [the authorities] are releasing people [from prison]? . . . They tell us that gacaca will solve our problems, but they are releasing them even before gacaca starts. . . . We had put all that happened out of our minds, but when we see [the released detainees], it traumatizes us once again.¹³⁶

Many genocide rape survivors understandably viewed accountability for the killing of their families as at least as important as punishing those who sexually assaulted them. Contrary to international standards on the right to reparations, discussed in a later section, the Rwandan government has not adopted a reparations policy that would provide assistance to genocide survivors for the human rights abuses of 1994.

¹³⁶ Human Rights Watch interview with M.K., Kigali, February 19, 2004.

Disappointed and frustrated over the failures of mechanisms for legal redress, and faced with socioeconomic difficulties, victims of genocide and post-genocide sexual violence we interviewed were constrained by acute material needs that both directly hindered accountability in the form of criminal prosecution and punishment and heightened their desire for justice in the form of compensation for past abuse that would enable them to meet basic survival needs. The poverty and obstacles to health care faced by genocide survivors in particular underscore the urgency of reparations for the human rights abuses they suffered in 1994. Victims of more recent cases of sexual violence face similar obstacles. For example, M.G., a twenty-year-old student, was raped in late 2003 by a teacher. She filed charges and the alleged rapist was imprisoned for two months, then released. M.G. was pregnant when she spoke to Human Rights Watch and feared that she may be HIV-positive. The nearest HIV testing center is not within walking distance of her home. She cares for a three-year-old sibling and is too weak to farm. Her mother's death and her own pregnancy led her to drop out of school in February 2004, a decision that was very difficult for her because she was eager to pursue her studies. She had also chosen to abandon her legal case. She explained her decision:

I decided to deal with the problems I [now] have . . . I thought about going to [a legal assistance center], but I wanted to be at peace. And that meant sitting for my exams, making sure I don't have HIV/AIDS, and having the baby. And when I think about what happened to me, I'm not at peace. It disturbs me.¹³⁷

She also feared that the stigma of rape would isolate her: "I'm afraid that the people in the community will think I'm a 'loose' girl and that that will cause problems between me and my [older] brother." Although M.G. told Human Rights Watch that she wishes that her rapist be brought to justice, her multiple problems—physical health, trauma, stigmatization, poverty, burdensome child-care responsibilities, and abandonment of her dreams of an education—have led her to prioritize her basic survival needs. Another woman, E.G. was gang-raped during the genocide, is now HIV-positive, and cares for six children including one born of the rape and an orphan. Universally, rape victims describe their constant battle to provide for their own and their families' material needs, including food, shelter, health care, and education for their children. For rape victims, chief among these needs is access to medical care—particularly voluntary HIV counseling and testing, antiretroviral (ARV) therapy,¹³⁸ and treatment for opportunistic

¹³⁷ Human Rights Watch interview with M.G., Nyamure district, Butare province, February 26, 2004.

¹³⁸ Antiretroviral (ARV) medication, which delays the replication of HIV and weakening of the immune system of a person living with HIV/AIDS, prolongs survival and enhances quality of life. World Health Organization, "Antiretroviral therapy," [online] at <http://www.who.int/hiv/topics/arv/en/#what> (retrieved April 24, 2004).

infections of AIDS—and counseling for the sequelae of abuse. As E.G. told Human Rights Watch: “I have little children who don’t even know that I am sick. . . . It would be good to have drugs, if you could give us drugs.”¹³⁹

Rape victims also suffer the debilitating effects of trauma. Many say that memories of their past lives, and the violence they experienced during the genocide, overwhelm them. In one case, Human Rights Watch interviewed B.R. in the presence of her friend, E.G. Although each woman knew that the other was also a rape victim, they had never related their experiences to each other. Both women cried during long periods of the interview. B.R. told Human Rights Watch, “This is our daily existence.”¹⁴⁰ Weeping, E.G. told Human Rights Watch, “We talk of little things when we are together. We aren’t capable of speaking of [the rape].”

Barriers to Access to Health Care

Access to appropriate health care is a primary concern for victims of genocide and post-genocide sexual violence.¹⁴¹ Although conditions were not ideal prior to 1994, the period of genocide and conflict destroyed many existing medical facilities and left serious shortages of medical personnel. Access to care is particularly difficult for the majority rural population, approximately 90 percent of the total population.¹⁴² Rwanda’s twelve provinces count 365 health centers, thirty-three hospitals at the health district level, and five national referral hospitals for more advanced medical care.¹⁴³ Existing health care centers serve large geographic areas, with an average distance of four miles of rough, hilly terrain separating each site and the population it serves, estimated to be 25,000 people.¹⁴⁴ UNICEF estimates that 88 percent of women in Rwanda must walk more than one hour to reach a health care center.¹⁴⁵ These limited facilities also have human and material resource deficiencies. According to a May 2003 Rwandan government estimate,

¹³⁹ Human Rights Watch interview with E.G., Kigali, February 18, 2004.

¹⁴⁰ Human Rights Watch interview with B.R., Kigali, February 24, 2004.

¹⁴¹ For a comprehensive examination of the health, social, and legal situation of genocide rape survivors, particularly those living with HIV/AIDS, see Amnesty International, *Marked for Death* and African Rights, *Broken Bodies, Torn Spirits*.

¹⁴² World Bank, *Rwanda Country Assistance Evaluation*, Report No. 27568-RW, January 5, 2004, p. 4 [online] at http://www-wds.worldbank.org/serivet/WDSCContentServer/WDSP/IB/2004/01/30/000012009_20040130101822/Rendered/PDF/275680RW.pdf (retrieved April 27, 2004).

¹⁴³ Government of Rwanda/William J. Clinton Foundation, *HIV/AIDS Treatment and Care Plan, 2003-2007, Developed with the William J. Clinton Foundation [Clinton Plan]* (May 2003), pp. 8-9, [online] at <http://www.usaid-rwanda.rw/SO2/RwandaDoc05.07.03.pdf> (retrieved April 27, 2004).

¹⁴⁴ *Ibid.*; *Clinton Plan*, p. 9.

¹⁴⁵ UNICEF, “Rwanda: Facts and Figures,” [online] at http://www.unicef.org/infobycountry/20289_20292.html (retrieved April 23, 2004).

there are 300 doctors in the country.¹⁴⁶ Nurses and medical assistants, in the absence of doctors, operate most health centers.¹⁴⁷ Health centers dispense basic medication, such as aspirin, which is frequently in short supply.¹⁴⁸ Those who require medication for more serious conditions must travel to a district or national hospital.¹⁴⁹

The case of S.K., who is HIV-positive and lives near Nyamata town, in Kigali-rural province, illustrates the barriers to access to health care. The nearest health center to Nyamata that provides ARV therapy is in Kigali, but the road from Kigali to Nyamata is rutted with holes. For a person who is weak or ill, it is practically impassable by foot. S.K., who was gang-raped in the presence of her infant son, suffered continuous vaginal bleeding in the months after the attack. She continues to have acute pain due to an apparent uterine prolapse.¹⁵⁰ She did not have the means to obtain medical treatment until 1997. Upon discovering that she was HIV-positive, doctors refused to operate to remove her uterus, on the basis that her HIV status would not allow her "to heal." She has repeatedly asked a survivors' organization of which she is a member to provide her with ARV medication. She told Human Rights Watch, "Every day, I tell them, but they say to me, 'We haven't found any drugs yet,' . . . So I tell them, 'By the time you get them, I will be dead.'"¹⁵¹ F.N., another rural resident, suffered individual and gang-rapes on multiple occasions, at times under the direction of the mayor of Taba commune Jean-Paul Akayesu, who was convicted of genocide and other crimes by the International Criminal Tribunal for Rwanda (ICTR) in 1998.¹⁵² She bore and kept a child from the rape. When asked about her access to trauma counseling, she explained to Human Rights Watch: "Before, AVEGA [Association of Widows of the April Genocide] was able to help us, but now we have to travel to Kigali to meet with counselors. Now, there is none where we live."

¹⁴⁶ *Clinton Plan*, p. 9.

¹⁴⁷ *Ibid.*, p. 9.

¹⁴⁸ *Ibid.*, p. 10.

¹⁴⁹ *Ibid.*, p. 9.

¹⁵⁰ The uterus is supported by connective tissue, muscle, and special ligaments. In a uterine prolapse, trauma that weakens these ligaments causes the uterus to descend into the vaginal canal.

¹⁵¹ Human Rights Watch interview with S.K., Kanzenzi district, Kigali-rural province, February 20, 2004.

¹⁵² Human Rights Watch interview with F.N., Kigali, February 18, 2004. In 1998, the International Criminal Tribunal for Rwanda (ICTR) convicted Akayesu of nine counts of genocide, incitement to genocide, and crimes against humanity, including rape as genocide and as a crime against humanity, on the grounds that he directed and encouraged widespread acts of sexual violence in Taba district, Gitarama province. The Akayesu decision was the first verdict handed down by the ICTR, the first conviction for genocide by an international court, the first time an international court has punished sexual violence in a civil war, and the first time that rape was found to be an act of genocide to destroy a group.

In addition to insufficient and underresourced facilities, poverty is a major barrier to access to health care in Rwanda. Genocide survivors who demonstrate financial need may qualify for health, education, and housing benefits from the National Assistance Fund (Fonds d'assistance aux rescapés du génocide, FARG), established in 1998 and funded by 5 percent of the state budget.¹⁵³ However, to seek medical care, women and girls must sacrifice time from subsistence agriculture or other work, as well as household and child-care responsibilities. Moreover, they must pay for public transportation to reach a health care center, and once they arrive, they must pay for the necessary services and medication, unless they qualify for assistance under the FARG program. D.K., who was extremely weak with AIDS and visibly traumatized at the time of our interview, is a widow who lost most of her family in the genocide. She lives with one daughter and her grandchildren. She told Human Rights Watch:

[A social worker]. . . gave us tickets [for bus service to a health facility]. But at one point, we couldn't get any more tickets. They told us that once we start taking the [ARV medication], we shouldn't stop, but the place where we get them, it's far away, and we couldn't keep going.¹⁵⁴

As the director of social services at a survivors' organization pointed out, "There are more gaps than there are opportunities because . . . those in need of assistance are spread out. While there are many programs available to city residents, those in distant districts suffer."¹⁵⁵ Additionally, even if a person is able to afford medication and consultation fees, poverty hampers proper treatment because those who are ill require adequate nourishment to be able to tolerate medication, particularly potent ARV therapy.

Further, dire economic conditions impede recovery from the psychological scars of rape. A former rape counselor, who left counseling to found an agricultural cooperative for women, described to Human Rights Watch the desperate situation of most sexual violence victims: "I realized that poverty was the underlying problem. You can't counsel someone who has not eaten."¹⁵⁶ With respect to rape victims' attitudes toward legal

¹⁵³ Human Rights Watch interview with Adonata Ukundagusaba, representative of FARG, Kigali, February 13, 2004; Law N°11/98 of 2 November 1998 Amending and Completing the Law N°02/98 of 22/01/98 Establishing a National Assistance Fund for the Neediest Victims of Genocide and Massacres Committed in Rwanda between October 1, 1990 and December 31, 1994, *Official Gazette of the Republic of Rwanda*, November 2, 1998, art. 1.

¹⁵⁴ Human Rights Watch interview with D.K., Kamonyi district, Gitarama province, February 13, 2004.

¹⁵⁵ Human Rights Watch interview with NGO representative, Kigali, February 9, 2004.

¹⁵⁶ Human Rights Watch interview with former trauma counselor, Kigali, February 10, 2004. Men have since joined the farming cooperative, which has expanded its mandate to counsel members on such issues as: sexual violence, including polygyny; HIV/AIDS; participation in gacaca; and the release of detainees. *Ibid.*

redress, she acknowledged that criminal prosecution and punishment of the perpetrators is important to them but said:

Even in counseling work, the counseling itself is the last part. [You] must start by sensitizing, educating people about their rights, their problems. They want other needs met first before counseling. People have priorities.¹⁵⁷

Special Needs of Women Who Contracted HIV from Genocide Sexual Violence

The health care situation is most dire for people living with HIV/AIDS, such as women and girls who now face certain death because they contracted HIV as a result of rape that occurred during or since the genocide. Like others living with HIV, women suffer physical weakness, susceptibility to a wide range of illnesses, and depression.¹⁵⁸ The stigma associated with the disease affects HIV-positive women more acutely than men. During the genocide, O.H., a resident of Gitarama province, was abducted by eight neighbors, who then raped her.¹⁵⁹ She is now HIV-positive and has been rejected by her brother and sister, who blamed her for the rape and refuse to touch her for fear they will contract HIV. O.H. complained to Human Rights Watch that she had little to eat and that she had been evicted from fourteen houses, each time after the owner learned that she was HIV-positive. As she explained to Human Rights Watch, "My only wish . . . is to have a place to leave my children when I die, to find someone to take care of them."¹⁶⁰ Similarly, D.K. told Human Rights Watch, "The drugs have not reached us, so people look only to God. But if only there was a way for my child to continue school after I am gone . . ."¹⁶¹

Although it is rarely possible to confirm a clear causal link between the abuse and the transmission of the virus, it is likely that many cases of HIV infection resulted from sexual violence. Several women whom Human Rights Watch interviewed who were raped during and since the genocide identified themselves as HIV-positive.¹⁶² In addition, numerous NGO representatives described cases of HIV-positive victims of

¹⁵⁷ Ibid.

¹⁵⁸ The African Rights report documents in detail the daily trials of rape survivors who are now HIV-positive or suffering from other medical problems. See African Rights, *Broken Bodies, Torn Spirits*, pp. 30-46.

¹⁵⁹ Human Rights Watch interview with O.H., Gitarama town, February 19, 2004.

¹⁶⁰ Ibid.

¹⁶¹ Human Rights Watch interview with D.K., Kamonyi district, Gitarama, February 13, 2004.

¹⁶² Several victims of genocide sexual violence interviewed by a lawyer in Kibuye province also reported that they were HIV-positive. Email message from lawyer, Kigali, to Human Rights Watch, April 8, 2004.

genocide sexual violence to whom they provided counseling or other assistance, emphasizing that a large number of these women were gravely ill or had died in the years since the genocide.¹⁶³ Many of the women struggle desperately to feed themselves and their children, who may include children from the rape as well as genocide or AIDS orphans they have adopted.

There are multiple obstacles to medical or psychological assistance for persons living with HIV/AIDS. The profound stigma attached to HIV/AIDS, fear that they will test positive, and lasting trauma resulting from the sexual violence discourage women and girls from being tested for HIV and seeking help.¹⁶⁴ Many NGO representatives further underscored that HIV-positive women and girls are ill-informed and rightly confused about how to obtain access to ARV therapy and treatment for opportunistic infections of AIDS. They added that NGOs are unable to meet the demand for treatment.¹⁶⁵ FARG finances treatment for ordinary illnesses, including opportunistic infections resulting from HIV/AIDS, but does not subsidize ARV therapy. Government officials explained to Human Rights Watch that another government program provides free or subsidized ARV therapy and treatment for opportunistic infections of AIDS for indigent or low-income Rwandans,¹⁶⁶ but many HIV-positive women Human Rights Watch interviewed were not aware of the existence of the plan or the procedure for obtaining assistance.

The case of E.M. is illustrative. A resident of Gitarama province who was raped repeatedly by a group of Interahamwe in April 1994, she has four children and has tested HIV-positive. She told Human Rights Watch, "HIV-positive women who have money simply pay for ARV drugs, but other women can't."¹⁶⁷ In a new public-private extension of the government's existing HIV/AIDS-treatment program, five Rwandan NGOs,

¹⁶³ Human Rights Watch interview with NGO representatives and trauma counselor, Kigali, February 6-10, 2004.

¹⁶⁴ See African Rights, *Broken Bodies, Torn Spirits*, pp. 47-50.

¹⁶⁵ Human Rights Watch interview with NGO representative, Kigali, February 24, 2004; Human Rights Watch with HIV/AIDS counselor, Kigali, February 24, 2004; Human Rights Watch interview with NGO representative, Kigali, February 9, 2004.

¹⁶⁶ Under this plan the government fully funds medication, including ARV therapy, and medical exams for persons with a CD4 count below 250 and whose income falls below 50,000 Rwandan francs (U.S.\$85.03) per month and per family. Human Rights Watch interview with Dr. Agnès Binagwaho, executive secretary, National AIDS Commission, Kigali, March 3, 2004. Persons earning higher income must pay a proportion of treatment fees, with the smallest contribution being 5,000 Rwandan francs (U.S.\$8.50) per month. There is a sizeable gap, however, between those who require ARV therapy and those who are currently receiving it. The Rwandan government estimates that approximately 75,000 Rwandans are in need of ARV therapy. Email from international NGO representative to Human Rights Watch, Kigali, June 1, 2004. According to an international NGO representative, however, approximately 3,524 Rwandans were being treated with ARV medication as of early June 2004. *Ibid.*

¹⁶⁷ Human Rights Watch interview with E.M., Ntongwe district, February 23, 2004.

advised by foreign experts and supported by the Rwandan government, plan to provide on-site voluntary HIV counseling and testing, ARV treatment, and trauma counseling.¹⁶⁸ The aim is to encourage women, particularly survivors of sexual violence, to seek HIV testing and care. A pilot program in public health centers was launched in late June 2004, and on-site treatment in the NGOs will begin in October 2004.¹⁶⁹

The desperate economic and health conditions of rape survivors must be considered in conjunction with the barriers to legal redress, the focus of this report. Women and girls face further stigma and trauma when they seek accountability for sexual violence through the criminal justice process. Moreover, persistent poverty and ill-health not only distract from rape victims' desire for legal remedy in the form of criminal prosecution and punishment, but also clearly contribute to the twin challenges of social marginalization and emotional distress. The urgency of rape victims' physical and mental health situation highlight the importance of reparations, an equally essential aspect of legal redress, for the human rights abuse suffered by genocide survivors.

V. GOVERNMENT RESPONSE

National and local authorities in Rwanda have professed their commitment to the investigation and prosecution of genocide and post-genocide sexual violence. Many government officials we interviewed were receptive to the particular circumstances and needs of women and girls who were raped during and since the genocide. Since 1998, the government and several NGOs have joined forces in a nationwide campaign against sexual violence. Key aspects of the campaign have included community sensitization programs,¹⁷⁰ police training, and the adoption in 2001 of the Law Relating to Rights and

¹⁶⁸ Women's Equity in Access to Care and Treatment: A Global HIV/AIDS Initiative (WE-ACTx), "Rwandan Widows' Treatment Access Initiative: Proposal for Multipart Access and Research Programs," Executive Summary, April 2004; Email message from Anne-Christine d'Adesky, executive director, WE-ACTx, San Francisco, to Human Rights Watch, June 14, 2004; Email message from Celina Schocken, Country Director in Rwanda for the Center for Global Health and Economic Development (Columbia University) and advisor to the Rwandan government on HIV/AIDS, Kigali, to Human Rights Watch, May 3, 2004. See also WE-ACTx, available at www.we-actx.org.

¹⁶⁹ The pilot program will operate in public health centers in Kigali, Butare, and Gitarama until on-site facilities in the five organizations have been appropriately equipped for service delivery. The organizations have various mandates (namely to assist female genocide survivors, provide trauma counseling, and facilitate access to care for people living with HIV/AIDS) but were selected for the project because they interact with and provide care to women who were raped during the genocide. The Rwandan Ministry of Health's Treatment and Research in AIDS Center (TRAC) will train participating physicians, nurses, trauma counselors, and social workers. In the first two years, Rwandan health providers and foreign physicians will work together to deliver services. HIV-positive women who are members of the women's organizations will be trained as peer counselors to undertake treatment education, literacy, and outreach.

¹⁷⁰ Authorities have sought to raise awareness about sexual violence through media outlets, conferences, and direct intervention in schools. In June 2002, then Minister of Gender and Women's Development Angelina

Protection of the Child against Violence (Child Protection Law), which criminalizes child rape. However, despite government steps to improve legal procedures with respect to sexual violence cases, serious obstacles to accountability persist, in the form of significant legal gaps and programmatic deficiencies in witness protection, investigations, and prosecutions.

Statutory Law

As discussed earlier, gaps in the Penal Code hinder effective and uniform investigation and prosecution of genocide and post-genocide sexual violence cases. Human Rights Watch's review of genocide judgments found that different courts characterize similar acts of sexual violence variously as rape or sexual torture. While the 2001 and 2004 Gacaca Laws have set a uniform penalty for rape and sexual torture, Human Rights Watch believes that the lack of a statutory definition for either term raises both substantive and due process concerns. Thus, absent a clear definition, Rwandan courts may not consider certain violent acts to be rape or sexual torture even though such acts would constitute sexual violence under international law.¹⁷¹ Further, judges within one Tribunal of First Instance and across the provincial court system may reach different verdicts with respect to similar acts of sexual violence.

With respect to post-genocide rape cases, it is significant that a senior government official as well as a prominent women's rights activist Human Rights Watch interviewed both confused the Penal Code with the Child Protection Law, believing that the 2001 law's definition of rape applies to victims of all ages.¹⁷² Human Rights Watch is concerned that, absent a clear definition in the Penal Code that enumerates the legal elements of rape, police officers and assistant prosecutors cannot properly question or elicit necessary information from complainants, the accused, or other witnesses.

Muganza announced an eighteen-month project targeting violence against women and girls. Components included a media campaign, a study of the incidence of violence, and gender training of health care personnel, police and gacaca judges. "Government Launches Programme to Curb Gender, Sexual Violence," BBC News, June 2, 2002.

Further, the Ministry of Education and the Ministry of Gender and Family Promotion have supported efforts of the Rwanda chapter of the Forum on African Women Educationalists (FAWE-Rwanda) to establish "Speak Out Clubs" in secondary schools in thirty-five secondary schools. These clubs have become a forum for disclosure and action against sexual abuse perpetrated by teachers and school administrators. Human Rights Watch interview with Anne Gahongayire, secretary general, Ministry of Gender and Family Promotion, Kigali, March 5, 2004; Human Rights Watch interview with NGO representative, Kigali, February 5, 2004.

¹⁷¹ The Rome Statute for the International Criminal Court and the *Akayesu* judgment reflect the prevailing international legal standard for the criminalization of sexual violence.

¹⁷² Human Rights Watch interview with Jean de Dieu Mucyo, attorney general, Kigali, February 12, 2004; Human Rights Watch interview with NGO representative, Kigali, February 27, 2004.

The 2001 Child Protection Law is one component of a larger government and NGO campaign against sexual violence since 1998, with a primary focus on sexual abuse of children.¹⁷³ Government officials we interviewed were sensitive to and committed to the issue of child rape. However, at least one provision of the Child Protection Law requires amendment. Article 37 fails to define the “dehumanizing crime” that it prohibits.¹⁷⁴

Training and Resources for Effective Investigation, Prosecution, and Protection

Insufficient resources and inadequate training of judicial and medical personnel present further obstacles to effective investigation, prosecution, and protection of rape victims. Areas of particular concern include: technology and training of medical professionals for the provision of medicolegal services to rape victims, and training of prosecutors and judges in the use of medicolegal evidence and prosecution and adjudication of sexual violence cases.

Medicolegal Training

A critical weakness of current sexual violence investigations is inadequate medicolegal training of medical personnel and facilities for the collection of evidence to establish nonconsensual sexual relations. In 2002, the Rwanda chapter of Forum of Activists against Torture (FACT) provided a four-day training to forty-two medical doctors in communication with sexual violence victims, rape exams, and Rwandan law on sexual violence.¹⁷⁵ Similar, more intensive training in this area, particularly on the application of a standard protocol, is required in hospitals, community health centers, prosecutors’ offices, and courts across Rwanda.

Progress in Police Training

The Rwanda National Police (RNP) has devoted considerable effort to improving its capacity to address sexual violence cases. National and local police and NGOs reported that such cases are given priority and transferred rapidly to prosecutors’ offices.¹⁷⁶ The deputy police commissioner told Human Rights Watch, “We have also sensitized policemen and women to understand the seriousness of the problem and give it the due

¹⁷³ Human Rights Watch interview with Anne Gahongayire, secretary general, Ministry of Gender and Family Promotion, Kigali, March 5, 2004.

¹⁷⁴ Child Protection Law, art. 37.

¹⁷⁵ Human Rights Watch telephone interview with NGO representative, Kigali, April 15, 2004.

¹⁷⁶ Human Rights Watch interviews with national police representatives, a local police officer, and an NGO representative, February 9-March 5, 2004.

attention it deserves.”¹⁷⁷ In particular, police and medical personnel Human Rights Watch interviewed were well aware of the need to coordinate their efforts in order to collect and preserve medical evidence in rape cases. An RNP representative told us that in their contact with actual complainants or in the context of community sensitization campaigns, police officers encourage rape victims immediately to visit the nearest health clinic.¹⁷⁸ Hospital personnel in one district hospital further explained to Human Rights Watch that they immediately examine a rape victim who first seeks medical help and then encourage her to report the case to the police.¹⁷⁹ The examination, which is free of charge for rape victims, includes gathering of medicolegal evidence and voluntary HIV counseling and testing.¹⁸⁰ However, victims are obligated to pay out of pocket for post-rape medical and psychological assistance.

The RNP’s 2004-2008 strategic plan includes: campaigns to raise awareness of sexual violence; full implementation of the Child and Family Protection Unit, described below; implementation of a training program on sexual and gender-based violence; preparation of a training manual on sexual and gender-based violence; measures to enhance the collection of forensic medical evidence; and improvement of victim and witness protection in gacaca courts.¹⁸¹

In 2002, the Rwanda field office of the International Rescue Committee (IRC-Rwanda) and FACT, a Rwandan NGO, held a training session for police commanders, officers, and cadets in sexual and gender-based violence crimes.¹⁸² The government-sponsored program trained 34 percent of the police force as well as “trainers” for the benefit of the remainder of the force.¹⁸³ The training addressed communication with rape victims and witnesses, investigations, confidentiality, and interaction with health care providers, gacaca courts, and other institutions with respect to sexual violence victims. The deputy

¹⁷⁷ Human Rights Watch interview with Mary Gahonzire, deputy commissioner, Rwanda National Police, Kigali, February 9, 2004.

¹⁷⁸ Human Rights Watch interview with Damas Gatare, director, Division of Community Policing and Human Rights, Rwanda National Police, Kigali, March 5, 2004.

¹⁷⁹ Human Rights Watch interview with hospital staff person, February 11, 2004.

¹⁸⁰ *Ibid.*

¹⁸¹ Human Rights Watch interview with Damas Gatare, director, Division of Community Policing and Human Rights, Rwanda National Police, Kigali, March 5, 2004. The RNP announced the five-year plan on February 26, 2004.

¹⁸² *Ibid.*

¹⁸³ A local police officer confirmed to Human Rights Watch that a “trainer” based in his station had trained his fellow officers in sexual violence investigations. Human Rights Watch interview with police officer, Muhazi, Kibungo province, February 11, 2004.

commissioner of police noted that since the training there has been increased reporting of sexual violence and improved relations with the female population.¹⁸⁴

In 2002, the RNP established the Child and Family Protection Unit, with jurisdiction over sexual and gender-based violence against men, women, and children.¹⁸⁵ As of mid-2004, the unit was based at headquarters in Kigali and had a staff of eight persons. At the time of Human Rights Watch interviews with RNP representatives, the office still lacked transportation and other material resources necessary to conduct field investigations of sexual violence cases. The RNP strategic plan includes funding to equip the unit and establish local offices at the community level. Local police stations are similarly in need of resources, particularly means of transport, to conduct on-site investigations.¹⁸⁶

Training of Prosecutors and Judges

Human Rights Watch is concerned that the lack of training of prosecutors and judges in the area of sexual violence ten years after the genocide may compromise the prosecution and punishment of sexual violence offenders. Prosecutorial personnel and judges presiding over the Tribunals of First Instance have not received instruction in techniques for communicating with rape victims and prosecuting and adjudicating rape cases.¹⁸⁷ In particular, prosecutors and judges require training in the incidence, investigation, and prosecution of sexual violence against adults, including marital and acquaintance rape.

One provincial prosecutor reported that only two out of nineteen assistant prosecutors in his office had received a one-week course of training on sexual violence.¹⁸⁸ Another prosecutor stated that her staff was not specially trained to handle sexual assault cases.¹⁸⁹

¹⁸⁴ Human Rights Watch interview with Mary Gahonzire, deputy commissioner, Rwanda National Police, Kigali, February 9, 2004.

¹⁸⁵ Human Rights Watch interview with Damas Gatare, director, Division of Community Policing and Human Rights, Rwanda National Police, Kigali, March 5, 2004.

¹⁸⁶ See Haguruka, *Résultats de l'enquête sur les cas de viol et d'attentat à la pudeur*, p. 57.

¹⁸⁷ In July 2004, the Rwandan government appointed a new staff of judges and prosecutors throughout the country. Many are recent university graduates without experience. In August 2004, they were being trained and are expected to begin dealing with cases in October. In at least one jurisdiction, the city of Kigali, authorities have said that one prosecutor will be specially designated to handle accusations of sexual violence. But this may be limited to only those dating to the period after the genocide. Human Rights Watch interview with Jean de Dieu Mucyo, attorney general, Kigali, August 19, 2004.

¹⁸⁸ Human Rights Watch interview with Straton Nsengiyumva, prosecutor for Gisenyi province, Gisenyi town, March 1, 2004.

¹⁸⁹ Human Rights Watch interview with Espérance Nyirasafari, prosecutor for Gitarama province, Gitarama town, February 19, 2004.

A representative of the Ministry of Justice reported that the training curriculum for prosecutorial staff is being revised to include instruction on sexual violence.¹⁹⁰

Past judicial training programs have been limited to gacaca judges and, with the exception of some small-scale initiatives, have focused on basic gacaca procedure, without specific attention to sexual violence crimes. In April and May 2002, national gacaca authorities organized the training of 254,152 gacaca judges by 781 “trainers” in such areas as the gacaca law, dispute resolution, judicial ethics, management of trauma, and logistical matters.¹⁹¹ Gacaca judges received only six days of training.¹⁹² Legal experts noted programmatic weaknesses in the training, particularly that different trainers were given inconsistent instructions on how to define genocide crimes under the gacaca law. A joint program by IRC-Rwanda and the Ministry of Gender and Family Promotion (MIGEPROF) in March 2002 trained higher-level gacaca judges in sexual and gender-based violence training but could not reach the more than 150,000 cell-level gacaca judges due to resource and logistical constraints.¹⁹³ IRC-Rwanda has planned a similar training initiative for gacaca judges, to be held in 2004.¹⁹⁴

Counseling and Legal Education Services for Victims

Human Rights Watch interviews with women raped during and since the genocide indicate that many are traumatized by the abuse and ill-informed about their legal rights. While the Ministry of Health and NGOs have provided limited on-site counseling for gacaca participants, there are insufficient counselors to meet the needs of victims and witnesses, especially in rural areas.¹⁹⁵ Genocide survivors we interviewed were particularly anxious that the gacaca process will reopen wounds. B.R., a genocide survivor and victim of sexual violence, told Human Rights Watch, “I think that gacaca will ruin everything this time. It will traumatize everyone, drive us mad.”¹⁹⁶ V.B. also spoke of attacks against gacaca witnesses, direct threats against her by a released detainee, and the likelihood of retraumatization: “When gacaca begins, it will seriously

¹⁹⁰ Human Rights Watch interview with Busingye Johnston, secretary general, Ministry of Justice, Kigali, March 2, 2004.

¹⁹¹ Amnesty International, *Gacaca: A Question of Justice*, December 2002, p. 26, [online] at [http://news.amnesty.org/aidoc/aidoc_pdf.nsf/Index/AFR470072002ENGLISH/\\$File/AFR4700702.pdf](http://news.amnesty.org/aidoc/aidoc_pdf.nsf/Index/AFR470072002ENGLISH/$File/AFR4700702.pdf) (retrieved April 21, 2004); PRI, *PRI Research Team on Gacaca: Report III, April-June 2002*, p. 2.

¹⁹² LIPRODHOR, *Juridictions Gacaca*, p. 19.

¹⁹³ Human Rights Watch interview with NGO representative, Kigali, February 5, 2004; Human Rights Watch interview with Isabelle Kalihangabo, representative, National Gacaca Office, Kigali, February 20, 2004.

¹⁹⁴ Human Rights Watch interview with NGO representative, Kigali, February 5, 2004.

¹⁹⁵ PRI, *PRI Research Team on Gacaca: Report III, April-June 2002*, pp. 13, 16; Human Rights Watch interview with local gacaca official, Kigali, February 6, 2004.

¹⁹⁶ Human Rights Watch interview with B.R., Kigali, February 24, 2004.

disturb the survivors. They don't have hope, or security. Now that people have begun to talk about gacaca, the security situation has changed."¹⁹⁷

Rape victims also lack information about the legal process. Among women raped during the genocide whom Human Rights Watch interviewed, only one who had previously testified or planned to testify to sexual violence in gacaca courts mentioned the option of in camera testimony, despite the fact that nearly all women interviewed voiced concerns about the public nature of the gacaca process.¹⁹⁸ A few other women stated that before the interview they had been unaware of the possibility of closed-door testimony.¹⁹⁹

Number of Women Serving as Police, Prosecutors, and Judges

Women are underrepresented among police officers, prosecutors, and judges. Persons who have suffered sexual violence continue to experience trauma for a long period after the assault, and female victims are more willing to confide in other women.²⁰⁰ Increased representation of women in the justice system is therefore essential to enhanced investigation and prosecution of sexual violence crimes. Women officers constitute 4 percent of the Rwanda National Police, in addition to over 100 women officers in training schools and police academies.²⁰¹ In recent years, the Rwanda National Police has vigorously recruited women officers, both through general recruitment and a special recruitment program for women. Damas Gatare, director of the Division Community Policing and Human Rights of the Rwanda National Police, noted that there has been "a very encouraging response from women applicants" to the police force.²⁰² He explained that the police force aims to increase representation of women country-wide in order to provide all female rape victims with the option of reporting to a woman police officer. On March 16, 2004, Prime Minister Bernard Makuza announced that the RNP would aim to raise representation of women to 30 percent, at minimum, as part of its 2004-2008 strategic plan.²⁰³

¹⁹⁷ Human Rights Watch interview with V.B., Ntongwe district, Gitarama province, February 23, 2004.

¹⁹⁸ Human Rights Watch interview with V.B., Ntongwe district, Gitarama province, February 23, 2004.

¹⁹⁹ Human Rights Watch interviews with F.N., E.G., and C.H., Kigali and Kigarama district, Kibungo province, February 19 and March 3, 2004.

²⁰⁰ The female prosecutor of Gitarama province expressed doubts that female rape victims would have confided in her had she been a man. Human Rights Watch interview with Espérance Nyirasafari, prosecutor for Gitarama province, Gitarama town, February 19, 2004.

²⁰¹ Human Rights Watch interview with Damas Gatare, director, Division of Community Policing and Human Rights, Rwanda National Police, Kigali, March 5, 2004.

²⁰² Ibid.

²⁰³ James Munyaneza and Belinda Murerwa, "Police to recruit more women," *The New Times*, March 3-4, p. 4.

By contrast, the scarcity of women among prosecutors and judges has not benefited from sustained attention. Only two out of twelve provincial prosecutors, or 16.6 percent, are women.²⁰⁴ There are no women among judicial personnel in the office of the attorney general.²⁰⁵ The prosecutor for the city of Kigali estimated women made up approximately 25 percent of the thirty-two assistant prosecutors in his office.²⁰⁶ His attempt to set up a sexual crimes unit in his office had failed due to high staff turnover and insufficient resources to retrain new personnel. There are also very few women judges. The Tribunal of First Instance in Gisenyi province, for example, lacks a single woman judge, and in Gitarama province, there is one woman among twenty judges.²⁰⁷ In early March, a representative of the Ministry of Justice reported that “[i]n the next two to three months there will be a recruitment drive and strategy to attract women,” with the aim of raising the proportion of women in the justice system to 30 percent.²⁰⁸

Women are better represented in gacaca courts. Government figures estimated that women constituted 36 percent of gacaca judges in pilot courts at the cell level.²⁰⁹ The number of women judges varied in the different pilot gacaca courts, from a minority of judges to, in some localities, a majority of judges.²¹⁰ A gacaca official for the city of Kigali noted that women judges and community members participate more actively in gacaca, particularly in urban areas.²¹¹

Reform of the Gacaca System

Presently, the gacaca system represents the main avenue for legal redress for genocide and related crimes. Even victims of category one crimes, like sexual violence, face the

²⁰⁴ Human Rights Watch interview with Jean de Dieu Mucyo, attorney general, Kigali, March 2, 2004.

²⁰⁵ Human Rights Watch interview with Busingye Johnston, secretary general, Ministry of Justice, March 2, 2004.

²⁰⁶ Human Rights Watch interview with Sylvère Gatambiye, prosecutor for the city of Kigali, Kigali, February 24, 2004.

²⁰⁷ Human Rights Watch interview with Straton Nsengiyumva, prosecutor for Gisenyi province, Gisenyi town, March 1, 2004; Human Rights Watch interview with Espérance Nyirasafari, prosecutor for Gitarama province, Gitarama town, February 19, 2004.

²⁰⁸ Human Rights Watch interview with Busingye Johnston, secretary general, Ministry of Justice, March 2, 2004.

²⁰⁹ Above cell-level pilot gacaca courts, representation of women among gacaca judges was as follows: 24 percent at the sector level, 28 percent at the district level, and 20 percent at the provincial level. Email message from Isabelle Kalihangabo, representative, National Gacaca Office, Kigali, to Human Rights Watch, April 21, 2004.

²¹⁰ Human Rights interview with local gacaca coordinators for the city of Kigali, Butare province, and Gisenyi province, February 26-March 1, 2004.

²¹¹ Human Rights interview with Célestin Rwirangira, gacaca coordinator for the city of Kigali, Kigali, March 1, 2004. He attributed this level of participation to the fact that women represent the majority of genocide survivors and to the large number of men who are in prison. *Ibid.*

pre-trial gacaca process before their cases are transferred to and adjudicated in the classic courts. The attorney general, Ministry of Justice, minister of gender and family promotion, gacaca officials, and provincial prosecutors have recognized the deficiencies of the gacaca process with respect to protection of sexual violence victims and witnesses. A revised gacaca law adopted in June 2004 enhances protections for victims of sexual violence in order to facilitate reporting and testimony. Under the new law, a rape or sexual torture victim may choose among three alternatives: testimony before a single gacaca judge of her choosing; testimony in writing; or testimony to a judicial police officer or prosecutorial personnel, to be followed by complete processing of the rape case by the prosecutor's office.²¹² By providing that gacaca judges will "secretly" transmit rape testimony to public prosecutors, the 2004 law implies, but does not explicitly require, that identifying information of rape victims will be kept confidential. In particular, a gacaca representative told Human Rights Watch that gacaca judges would not be required to read written rape testimony aloud to the gacaca assembly, contrary to existing gacaca regulations for written testimony in general.²¹³ Given this ambiguity, it is essential that the new gacaca law be implemented so as to protect the privacy and confidentiality of rape victims who testify in writing.

VI. INTERNATIONAL LEGAL STANDARDS

During the genocide, lower-level perpetrators—including Interahamwe, soldiers, and others—were directly responsible for most acts of sexual violence. The smaller group of leaders of the genocide often exercised command responsibility in the perpetration of these offenses and directly incited rape. In addition to being acts of genocide under the Genocide Convention, such offenses violated other international treaties, notably the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child. While some of the high-level perpetrators have come before the ICTR, the national justice system is responsible for the prosecution of the majority of

²¹² Human Rights Watch telephone interview with Isabelle Kalihangabo, representative, National Gacaca Office, Kigali, April 14, 2004. Under the 2001 law, genocide rape victims, like all genocide survivors, could report genocide crimes to prosecutorial personnel, who would transfer the depositions to the relevant gacaca courts for further processing. Under the new gacaca law, rape victims who testify to prosecutorial staff would not be required to participate in related gacaca hearings. The prosecutor's office itself would interview and categorize the suspect and transfer the file to the gacaca court for record-keeping. *Ibid.*; Human Rights Watch telephone interview with Célestin Rwirangira, gacaca coordinator for the city of Kigali, Kigali, April 14, 2004.

²¹³ *Manuel explicatif sur la loi organique portant création des juridictions Gacaca*, pp. 27, 55; Human Rights Watch telephone interview with Isabelle Kalihangabo, representative, National Gacaca Office, Kigali, April 14, 2004. Under the 2001 law, gacaca courts permitted rape victims to testify in writing, but in the absence of binding procedural rules to ensure confidentiality, the president of the court could proceed with a public reading of the testimony.

offenders. Therefore, most Rwandan victims of genocide sexual violence who seek accountability must rely on national justice mechanisms. The Rwandan government is obliged to uphold international standards in this respect. Rwanda is additionally obligated to implement the International Covenant on Economic, Social and Cultural Rights on behalf of its population. Of particular importance to rape survivors of the genocide and their families is the right to the highest obtainable standard of health.

Violence against Women

International human rights law requires states to adopt effective measures for the prevention, investigation, prosecution, and punishment of sexual violence; to ensure its citizens the highest attainable standard of health; and to provide reparations to victims of serious human rights violations. Rwanda has ratified international and regional treaties containing the above protections.²¹⁴ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Rwanda is a party, obliges states parties "to pursue by all appropriate means and without delay a policy of eliminating discrimination against women," whether such discrimination is perpetrated by state laws or institutions, or by state or private actors.²¹⁵ Specifically, international human rights law requires states to provide an effective remedy for human rights abuses²¹⁶ and renders states responsible for their failure to prevent, investigate, prosecute, and punish recurrent violations by private actors.²¹⁷

²¹⁴ Rwanda has ratified or acceded to the following instruments: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. Res. 34/180, U.N. Doc. A/34/46, entered into force September 3, 1981; International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, entered into force March 23, 1976; International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (no. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976; the Convention on the Rights of the Child (CRC), G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force February 23, 1991; the African (Banjul) Charter on Human and Peoples' Rights (African Charter), adopted June 26, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986; African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9 (1990), entered into force Nov. 29, 1999. Rwanda has signed but not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

²¹⁵ CEDAW, art. 2. The ICESCR (arts. 2, 3); ICCPR (arts. 2(1), 3, 26); CRC (art. 2(1)); and the African Charter (art. 18(3)) also guarantee equality and nondiscrimination on the basis of sex.

²¹⁶ CEDAW, art. 2(c), and ICCPR, art. 2(3).

²¹⁷ In the 1988 *Velásquez Rodríguez* case, the Inter-American Court of Human Rights held that a state must take "reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation." *Velásquez Rodríguez* case, Judgment of July 29, 1988, Inter-American Court of Human Rights (series C), no. 4, paras. 174.

The CEDAW Committee²¹⁸ has affirmed that violence against women constitutes a form of discrimination under CEDAW and identified key steps that states parties should take to combat the practice:

- (a) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including *inter alia* violence and abuse in the family, sexual assault and sexual harassment in the workplace;
- (b) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
- (c) Protective measures, including refuges, counseling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.²¹⁹

In its Declaration on the Elimination of Violence against Women, the U.N. General Assembly similarly calls upon states to take decisive action against gender-based violence.²²⁰

Beyond its status as sex-based discrimination under international human rights law, sexual violence infringes upon sexual rights and the right to bodily integrity. The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to bodily integrity through its protections for liberty and security of person.²²¹ The Committee on Economic, Social, and Cultural Rights²²² (ESCR Committee) has recognized the right of a woman to make decisions with respect to her sexuality under the International Covenant on Economic, Social, and Cultural Rights (ICESCR).²²³ Similar protections appear in such documents as the International Conference on

²¹⁸ The Committee on the Elimination of Violence against Women (CEDAW Committee) authoritatively interprets and monitors state compliance with the Convention on the Elimination of All Forms of Discrimination against Women.

²¹⁹ CEDAW Committee, General Recommendation 19, Violence against Women (Eleventh session, 1992), U.N. Doc. A/47/38, para. 24 (t).

²²⁰ United Nations General Assembly, Declaration on the Elimination of Violence against Women, A/RES/48/104, December 20, 1993 (issued on February 23, 1994).

²²¹ ICCPR, art. 9. The CEDAW Committee's General Recommendation 19 on gender-based violence invokes the right to liberty and security of person. CEDAW Committee, General Recommendation 19, para. 7.

²²² The Committee on Economic, Social, and Cultural Rights authoritatively interprets and monitors state compliance with the International Covenant on Economic, Social, and Cultural Rights.

²²³ Committee on Economic, Social and Cultural Rights (ESCR Committee), General Comment 14, The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para. 8.

Population and Development (ICPD) Programme of Action 1 and the Beijing Platform of Action 2.²²⁴

International legal protections against sexual violence also apply to persons under eighteen. States party to the Convention on the Rights of the Child (CRC) must protect children from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse” and ensure that victims of such acts receive legal and psycho-social redress.²²⁵ The ICCPR grants every child the right to “such measures of protection as are required by his status as a minor.”²²⁶ Under the African Charter on the Rights and Welfare of the Child, states must take preventive and remedial measures against child abuse and torture, particularly sexual abuse.²²⁷

Right to Reparations

International human rights law obliges states to provide reparations to victims of serious human rights violations. The Universal Declaration of Human Rights provides for a right to remedy for violations of rights protected “by the constitution or by law.”²²⁸ The ICCPR requires states to provide an “effective remedy” for violations of rights and freedoms and to enforce such remedies.²²⁹ The U.N. Human Rights Committee, which authoritatively interprets and monitors adherence to the ICCPR, has affirmed the state obligation to provide reparations under the ICCPR:

Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without [such reparation]. . . the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. . . . The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes

²²⁴ United Nations, Programme of Action of the United Nations International Conference on Population and Development (New York: United Nations Publications, 1994), A/CONF.171/13, October 18, 1994; United Nations, *Beijing Declaration and Platform for Action* (New York: United Nations Publications, 1995), U.N. Doc. A/CONF.177/20, October 17, 1995, para. 96.

²²⁵ CRC, art. 19.

²²⁶ ICCPR, art. 24(1).

²²⁷ African Charter on the Rights and Welfare of the Child, arts. 16, 27.

²²⁸ Universal Declaration of Human Rights, General Assembly Resolution 217A (III), December 10, 1948, art. 8.

²²⁹ ICCPR, arts. 2(3), 9(5).

in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.²³⁰

The draft Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law (Basic Principles and Guidelines) reaffirms and elaborates on these international legal obligations.²³¹ Endorsing this draft document, the U.N. Commission on Human Rights has noted that a state must grant or facilitate reparation in accordance with its duty to respect and ensure human rights.²³² The Basic Principles and Guidelines enumerate the main forms of reparation: (a) restitution, meaning the restoration of circumstances that existed prior to the violation; (b) compensation for resulting material losses, as well as physical and emotional pain and suffering; (c) rehabilitation, meaning legal, medical, psychological, and other assistance to the victim; and (d) redress and measures to prevent future violations, through such means as truth-seeking, public acknowledgment, investigation and prosecution of responsible individuals, apology, commemorations and memorials dedicated to the victims, and revision of the historical record.²³³ The current government of Rwanda, although not responsible for the genocide, must nonetheless fulfill the human rights law obligations of the predecessor regime, including providing an effective remedy and reparations to victims of past violations.²³⁴

²³⁰ U.N. Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/74/CRP.4/Rev.6 (2004), para. 16. Likewise, the ICESCR General Comment on the Right to Highest Obtainable Standard of Health provides similar language concerning remedies and reparations:

Any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both national and international levels... All victims of such violations should be entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition.

ESCR Committee, General Comment 14, paras. 29-30.

²³¹ M. Cherif Bassiouni, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law* [Basic Principles and Guidelines], (Fifty-sixth Session), U.N. Doc. E/CN.4/2000/62, January 18, 2000, annex, preamble. Excerpts of the draft appear in Appendix I of this report.

²³² See U.N. Commission on Human Rights, *The Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms*, Res. 2002/44, (51st meeting), April 23, 2002; U.N. Commission on Human Rights, *The Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms*, Res. 2003/34, (57th meeting), April 23, 2003.

²³³ *Basic Principles and Guidelines*, paras. 21-25.

²³⁴ The Human Rights Committee, which authoritatively interprets the ICCPR, has affirmed the continuity of legal obligations when there is a change of government:

The rights enshrined in the Covenant belong to the people living in the territory of the State party. The Human Rights Committee has consistently taken the view, as evidenced by its long-standing practice, that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the

In the case of the Rwandan genocide, the issue of reparations relates to both criminal accountability for murder, sexual violence, and other crimes, and the material needs of the victims, including health care for rape victims. Compensation for victims of human rights abuse, such as mass rape, is an important component of legal redress and may contribute to improving the health and standard of living of the victims. Since 1996, the Tribunals of First Instance and military courts have ordered persons convicted of genocide or related crimes to pay damages to the victims, but, due mainly to the insolvency of the defendants, none of these awards has been executed.²³⁵

Since early 2001, government officials have endorsed versions of a draft law on reparations and made assurances of its imminent adoption, but have not taken any further action since.²³⁶ Articles 32 and 90 of the 1996 Genocide Law and the 2001 Gacaca Law, respectively, affirmatively state that a third law will be adopted to create and govern a reparations fund for genocide victims.²³⁷ Both laws include other provisions that presuppose the existence of such a fund.²³⁸ Article 96 of the 2004 Gacaca Law states simply that "[o]ther forms of compensation the victims receive shall be determined by a particular law."²³⁹

State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the Covenant.

U.N. Human Rights Committee, General Comment No. 26: Continuity of Legal Obligations, U.N. Doc. CCPR/C/21/Rev.1/Add.8/Rev.1 (1997), para. 4.

²³⁵ Penal Reform International, *Research on the Gacaca: Report V* (September 2003), p. 15; Human Rights Watch telephone interview with NGO representative, Kigali, June 10, 2004.

²³⁶ See Jean de Dieu Mucyo, minister of justice (presently attorney general), "Des juridictions gacaca et de la réparation des dommages," ["Gacaca Courts and Compensation for Damages"], *Le Verdict*, N°17, August 2000, p. 10; Dr. Vincent Biruta, president, National Assembly, "Discours d'ouverture du Séminaire sur l'indemnisation des victimes du génocide par son Excellence le Dr. Vincent Biruta, Président de l'Assemblée Nationale," ["Opening Statement of Conference on Compensation of Genocide Victims by His Excellency Dr. Vincent Biruta, President of the National Assembly"], *Séminaire sur la réparation pour les victimes du génocide et des crimes contre l'humanité commis au Rwanda entre le 1er octobre 1990 et le 31 décembre 1994* [Conference on Reparations for Victims of Genocide and Crimes against Humanity in Rwanda from 1 October 1990 to 31 December 1994], (Kigali: June 7-9, 2000), Annex I.

²³⁷ Genocide Law, art. 32; 2001 Gacaca Law, arts. 90, 91.

²³⁸ Article 32 of the Genocide Law provides:

Damages awarded to victims who have not yet been identified shall be deposited in a Victims Compensation Fund, whose creation and operations shall be determined by a separate law.

Prior to the adoption of the law creating the Fund, damages awarded shall be deposited in account at the National Bank of Rwanda opened for this purpose by the Minister responsible for Social Affairs and the fund shall be used only after the adoption of the law.

²³⁹ 2004 Gacaca Law, art. 96.

The August 2002 version of the draft reparations law outlines a comprehensive reparations policy. Notably, it would grant financial compensation to genocide victims, with particular attention to health care, educational expenses, treatment for trauma, and the legal and social problems of the most needy persons; truth-seeking; proper burial of the relatives of the victims; and the preservation of the memory of the victims through memorials and programs.²⁴⁰ Proposed sources of funding for the reparations fund include: a proportion of the national budget; awards of damages to unidentified victims in the course of genocide trials; revenue from detainees' community work; public taxation; and voluntary contributions by foreign states, charity organizations, and private persons or organizations.²⁴¹

VII. CONCLUSION

Ten years after the Rwandan genocide, the horrific sexual violence that shattered the lives of tens of thousands of women and girls remains hidden from view, impunity is still accorded to its perpetrators, and the suffering of its victims goes unacknowledged. Rwandan women and girls who suffered sexual violence during or after 1994 face persistent barriers to legal redress as well as to health care for the consequences of the abuse. Certain obstacles, such as the lack of medicolegal evidence, may be insurmountable for women raped during the genocide but can be overcome in the cases of future victims of sexual violence. Other barriers to legal redress are more easily remedied, and these remedies will facilitate accountability for past and present rape survivors.

As a priority, the Rwandan government should act immediately to implement protections under the 2004 Gacaca Law for genocide survivors who wish to testify about rape to gacaca judges or prosecutorial officials, and for post-1994 victims who wish to report to the police. Such measures should include intensive training for authorities to make them knowledgeable and effective interlocutors for rape victims. The government should further ensure that medical professionals who examine rape victims have been trained in medicolegal procedure, specifically for sexual violence investigations. The government should ensure the confidentiality of rape victims, with respect to their conversations with police and other authorities and their testimony at trial. It is essential

²⁴⁰ *Projet de loi N° . . . du . . . portant création, organisation et fonctionnement du fonds de réparation en faveur des rescapés du génocide ou des crimes contre l'humanité commis entre le 1er octobre 1990 et le 31 décembre 1994* [Draft Law on the Establishment, Organization, and Operation of the Reparations Fund to Benefit Survivors of Genocide and Crimes against Humanity Committed from 1 October 1990 to 31 December 1994], 2002, art. 2 (copy on file at Human Rights Watch).

²⁴¹ Draft reparations law, art. 14.

that the government adopt a reparations law to compensate genocide survivors, including rape victims, for human rights abuses they suffered by ensuring them their fundamental rights to the highest attainable standard of health and to an adequate standard of living.

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