

AMNESTY INTERNATIONAL

PRESS RELEASE

AI Index: AFR 47/003/2002 (Public)
News Service No: 103
19 June 2002

Rwanda: Gacaca - gambling with justice

"The gacaca system of community tribunals may represent an opportunity for genocide survivors, defendants and witnesses to present their cases in an open and participatory environment. This could be an important step towards national reconciliation and resolving Rwanda's prison crisis," Amnesty International said today, in reaction to Rwanda's inauguration of a new community-based tribunal system designed to address the backlog of cases from the 1994 genocide.

"However, the extrajudicial nature of *gacaca* and the inadequate preparation for its start, coupled with the present government's intolerance of dissent and unwillingness to address its own poor human rights record, risk subverting the new system," the organization added. "It is therefore imperative that both the Rwandese government and the international community take steps to ensure that *gacaca* complies with minimum international standards of fair trial."

The huge number of detainees charged with genocide-related offences has proved an impossible task for the country's formal judicial system. The new system, loosely based on a traditional mode of settling disagreements within local communities, will try tens of thousands of detainees accused of offences in categories 2, 3 and 4 of Rwanda's genocide legislation.

While Amnesty International sees the pressing need to bring to justice people accused of participation in the genocide, the organization fears that if key shortcomings in *gacaca* are not promptly addressed, the new system will fail to provide the justice, truth or reconciliation promised by the Rwandese government. "*Gacaca* may become a vehicle for summary and arbitrary justice that fails defendants and genocide survivors alike," it added.

Rwandese government leaders readily admit that *gacaca* is flawed but argue that there is no alternative. The international donor community, which is funding *gacaca*, has largely concurred with this assessment.

Amnesty International is principally concerned with the extrajudicial nature of the *gacaca* tribunals. The *gacaca* legislation does not incorporate international standards of fair trial. Defendants appearing before the tribunals are not afforded applicable judicial guarantees so as to ensure that the proceedings are fair, even though some could face maximum sentences of life imprisonment.

For the most part, those who will serve as *gacaca* magistrates have no legal or human rights background. The abbreviated training they have received is grossly inadequate to the task at hand, given the complex nature and context of the crimes committed during the genocide.

Amnesty International also questions whether there will be an open and free flow of information during the hearings, whether all parties will be heard impartially, and whether the presumption of innocence until proven guilty will be respected. Pre-*gacaca* trial sessions observed by Amnesty International delegates in 2001 were marked by intimidation and haranguing by officials of defendants, defence witnesses and local populations.

The recent human rights record of the Rwandese government is characterized by the denial of freedom of expression and association, arbitrary arrests, illegal detentions and other violations of human rights. "The Rwandese government's unwillingness to curb ongoing human rights violations, or investigate past abuses by its own state agents undermines the credibility of its pronouncements on the need for accountability, truth-telling and justice in relation to *gacaca*."

Implementing *gacaca* also entails huge logistical problems. Tens of thousands of detainees will have to be transferred from central prisons to their home communities for the *gacaca* hearings. The Rwandese government has not clarified how and in what conditions the detainees will be transported, accommodated, fed and treated at the local level. The government's failure to address these issues could deepen the cruel and inhumane conditions faced by Rwanda's prison population.

Recommendations

There is room for the Rwandese government and the international community to improve *gacaca* and establish accountability for all past and ongoing human rights abuses in Rwanda. For this to be achieved, the Rwandese government must:

- ensure that *gacaca* complies with internationally recognized fair trial standards, including the presumption of innocence and the right to adequate time and facilities to prepare a defence;

- ensure that *gacaca* defendants, especially those facing long terms of imprisonment, have the right to appeal to the formal court system;

- ensure that defendants are present when the *gacaca* magistrates categorize their offences;

- put in place an independent and effective program of monitoring the *gacaca* hearings, with the findings made public;
- provide adequate protection to magistrates, defendants and witnesses and promptly investigate any allegations of intimidation;

- provide assurances that conditions of detention will respect international minimum standards, including the right to human conditions of detention and freedom from torture; and

- open investigations into human rights violations committed by their own forces before and since coming to power.

Amnesty International is also calling on the international community to support the Rwandese government in establishing a monitoring program for *gacaca*, ensuring that it is independent, effective and transparent; to ensure that the Rwandese authorities take prompt action to address violations of fair trial standards arising during *gacaca*; and to provide all necessary support to enable the Rwandese government to meet its obligations under international standards regarding conditions of detention.

Background

As many as one million Rwandese were brutally killed by their fellow Rwandese during the 1994 genocide and its aftermath. These killings were accompanied by numerous acts of torture, including rape.

The *gacaca* system will try detainees accused of offences in categories 2 through 4 of Rwanda's

genocide legislation. Category 2 includes alleged perpetrators of or accomplices to intentional homicides or serious assaults that led to death. Category 2 defendants who do not confess face maximum terms of imprisonment of between 25 years and life if convicted. Category 3 contains persons accused of other serious assaults against individuals. Category 4 covers persons who committed property crimes. Category 1 relates to the most serious genocide offences and includes individuals who allegedly organized, instigated, led or took a particularly zealous role in the violence. Category 1 defendants will continue to be tried by the formal court system.

The burdens faced by the post-genocide judicial system in Rwanda have proved insurmountable. Rwanda's special genocide chambers have tried less than six percent of those detained for suspected genocide offences. There are now approximately 110,000 Rwandese in the country's detention facilities, the vast majority of them still awaiting trial. Many were arbitrarily arrested and have been unlawfully held for years with minimal or no investigation of the accusations lodged against them. The overcrowding and unsanitary conditions within detention facilities amount to cruel, inhuman and degrading treatment with deaths resulting from preventable diseases, malnutrition and the debilitating effects of overcrowding.

Legislation establishing the *gacaca* tribunals was enacted in early 2001. In late 2001, 260,000 adults of "integrity, honesty and good conduct" were selected by local communities to serve as magistrates on the more than 10,000 *gacaca* tribunals. These magistrates received limited training in early 2002.

Public Document

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