RWANDA

The troubled course of justice

CONTENTS

I INTRODUCTION 1

I.1 Justice and human rights in the aftermath of the genocide 1
I.2 The genocide trials 3

I.1_ PATTERNS OF ARREST AND DETENTION 5

II.1 Legalizing unlawful detentions 5
II.2 Cases of detainees held for several years without trial 7
II.3 Arbitrary and political arrests 8
II.4 Conditions of detention 11
II.5 Torture and ill-treatment of detainees 12
II.6 Detention of civilians in military custody 15

III PATTERNS OF RELEASES AND RE-ARRESTS 19

III.1 Context of releases 19
III.2 Children 21
III.3 The elderly 22
III.4 After release 23
III.5 Re-arrests 25
III.6 Re-arrests after trial and acquittal 27
III.7 Killings of released detainees and their relatives 29

IV THE IMPOSITION OF THE DEATH PENALTY 30

V THE *GACACA* PROPOSALS 33

VI RECOMMENDATIONS 38

VI.1 Arrests, detention and releases 38
VI.2 Torture, ill-treatment and prison conditions 39
VI.3 Military detention 40
VI.4 Fair trials and imposition of the death penalty 40
VI.5 The *gacaca* jurisdictions 41

RWANDA
The troubled course of justice

II. INTRODUCTION

I.1 Justice and human rights in the aftermath of the genocide

Six years after the genocide and other massacres which claimed as many as one million lives in Rwanda between April and July 1994, around 125,000 detainees are still languishing in inhuman conditions in detention centres and prisons around the country. The vast majority are accused of participation in the genocide. Many have been held for years without trial and without any evidence against them. A large number have been arbitrarily and unlawfully arrested. Some have been released, only to be rearrested within days or weeks; others have been kept in prison after being formally acquitted by courts of law. Many detainees have been ill-treated, others have been tortured. An unknown number of civilians are unlawfully held in military custody.

The Rwandese authorities have taken some steps to tackle the huge number of cases awaiting trial and to reduce the prison population. Several thousand people have been released - a politically-charged move in the aftermath of the genocide. However, the government has still not fulfilled its pledges to release all those against whom there is no evidence, the very young, the old and the sick. Instead, it has repeatedly extended the period of pre-trial detention in clear breach of international law. The government has proposed the introduction of a new system known as *gacaca* - based in theory on a traditional model of participative justice - to deal with the bulk of genocide cases, raising fears that standards of justice may be further undermined.

The present report focuses on human rights concerns relating to patterns of arrest, detention, treatment of detainees, releases, the death penalty and the justice system in Rwanda. These concerns are based on information collected during an Amnesty International visit to Rwanda in October and November 1999, as well as information received before and since that visit. While the situation of detainees has evolved in some respects over the last few years, in other respects it has barely changed at all.

Some of the long-term concerns and cases described in the report therefore date back to 1994 or 1995, but remain in need of urgent attention.

Since July 1994, Rwanda has faced the enormous challenge of trying to deliver justice in relation to the genocide while rebuilding an already weak judicial system which had been completely destroyed during the war. The scale of the genocide and the extent to which it affected the entire country and almost the entire population - whether as victims or as perpetrators - have presented Rwanda with obstacles of a virtually unprecedented magnitude. Significant efforts have been made, with some assistance from the international community, to begin to address these challenges. However, a country which has undergone such massive bloodshed, trauma and misery cannot be expected to recover within a short period.

In this context, the question of human rights takes on even greater importance. Since 1994, Amnesty International has consistently called for the perpetrators of the genocide to be brought to justice, whether by the Rwandese courts or by the International Criminal Tribunal for Rwanda (ICTR) set up by the United Nations, and has appealed to foreign governments and intergovernmental organizations to fulfill their responsibilities in this regard. The organization has also appealed to the government of Rwanda to respect human rights itself, both by delivering fair justice in relation to the genocide and by refraining from carrying out further human rights violations.[1]

Most of the detainees in Rwanda whose basic human rights are currently being denied are accused of participation in the genocide. Amnesty International takes no position on whether particular individuals are guilty or innocent; the organization's concerns are that victims of the genocide and their families should see justice done, that the rights of defendants and detainees should be respected and that the independence of the judiciary should be upheld.

Mass arrests of people suspected of participating in the genocide began as soon as the Rwandese Patriotic Front (RPF) formed a government in Rwanda in July 1994 and have continued ever since, at varying rates. The largest number of arrests took place in the period immediately after the genocide, causing dramatic increases in the prison population in 1994 and 1995 and thousands of deaths resulting from inhumane prison conditions. Although the rate of arrests has decreased more recently, regular arrests based on accusations of participation in the genocide are continuing.

In addition to the estimated 125,000 detainees held in officially-recognized prisons and detention centres, an unknown number of detainees - civilians as well as military - are held in military detention centres. Conditions in many prisons and detention centres in Rwanda still constitute cruel, inhuman or degrading treatment. Gross overcrowding, poor hygiene and medical care, and insufficient food continue to cause widespread disease and thousands of deaths. Ill-treatment of detainees is common, especially in the *cachots communaux* (local detention centres) and military sites.

[1] Amnesty International has published many reports on Rwanda since 1992, covering the human rights situation before, during and after the genocide. These are available from Amnesty International's International Secretariat in London and from Amnesty International's national sections.

Amnesty International is publishing this report to highlight the plight of these tens of thousands of detainees, as well as the negative impact of long delays in bringing suspects to trial on the process of delivering justice to the victims and survivors of the genocide. This report aims to encourage the Rwandese authorities to implement measures and reforms which would ensure real progress in trying those against whom there is solid evidence of participation in the genocide and other criminal acts and in releasing without delay those against whom there is no evidence or who have been arbitrarily or unlawfully arrested and detained.

I.2 The genocide trials

Trials of people accused of participation in the genocide began in Rwanda in December 1996. By January 2000, more than 2,500 people have been tried. Of these, around 370 have been sentenced to death, around 800 sentenced to life imprisonment, around 500 acquitted, and the rest sentenced to various terms of imprisonment.[2] Twenty-two people found guilty of participation in the genocide were executed in public on 24 April 1998.[3]

The standard of trials in Rwanda has varied greatly over time and across different parts of the country. While the first wave of genocide trials - from December 1996 into most of 1997 - were characterized by gross violations of international standards of fairness[4], the conduct of many trials improved from 1998 onwards: for example a greater proportion of defendants have had access to a defence lawyer; a larger number of defence as well as prosecution witnesses have testified in court; and judges have made a visible effort to demonstrate and exercise impartiality.
However, overall, a number of fundamental problems remain, stemming from the highly charged political context after the genocide, the overwhelming number of cases and the dramatic shortage of qualified and experienced judicial officials and lawyers. Among the main problems are the fact that defendants only benefit from legal assistance once their trial has been announced - they are not assisted by a lawyer in any of the pre-trial stages; incidents

[2] These figures are based on several sources, in particular statistics gathered by the Rwandese human rights organization LIPRODHOR, whose *Centre de documentation et d'information sur les procès de génocide* (CDIPG), Documentation and Information Centre on the Genocide Trials, has been monitoring and reporting on the genocide trials in Rwanda since they began.

[3] For details, see Amnesty International news releases "Rwanda: 23 public executions will harm hope of reconciliation", 22 April 1998 (AI Index AFR 47/12/98), "Rwanda: Major step back for human rights as Rwanda stages 22 public executions", 24 April 1998, (AI Index AFR 47/14/98) and Urgent Action UA 126/98 of 22 April 1998, and update of 27 April 1998.

[4] For details, see Amnesty International report "Rwanda - Unfair trials: Justice denied" (8 April 1997, AI Index AFR 47/08/97). Several of the defendants whose cases are described in that report were among those executed in April 1998.

of pressure and intimidation on prosecution and defence witnesses are regularly reported; trials are repeatedly delayed; the process for appeals is often especially lengthy; and survivors of the genocide and families of victims have still not obtained the compensation which the state has promised them repeatedly. Feelings of dissatisfaction and frustration in the face of the perceived slow pace of trials have been expressed both by survivors of the genocide and by defendants.

One of the most prominent trials to date has been that of Augustin Misago, Roman Catholic bishop of Gikongoro. He was arrested on 14 April 1999 after former President Pasteur Bizimungu publicly accused him of participation in the genocide. Augustin Misago is the most senior member of the Roman Catholic Church to have been arrested in Rwanda. His trial began in August 1999 and has not yet been concluded. Most procedures appear to have been respected in the trial of Augustin Misago, unlike in several other trials described in this and previous Amnesty International reports. However, Augustin Misago would almost certainly face a death sentence if found guilty and the adverse political context could influence the outcome of the trial, in particular the fact that Augustin Misago was publicly denounced by the head of state - a measure likely to undermine the presumption of innocence and to put pressure on the trial judges to convict him.[5]

Amnesty International recognizes that Rwanda has made significant progress in terms of the number of genocide trials, especially in view of the enormous practical, financial and political obstacles which needed - and still need - to be overcome. Nevertheless, the number of people tried so far - even when coupled with the few thousand released - has made only a small dent in the overall population of pre-trial detainees. Further wide-ranging measures are needed as a matter of urgency to address these problems. This report includes a number of recommendations which, if implemented rapidly and systematically, would go some way towards reducing the backlog of cases, primarily by releasing those who should never have been arrested in the first place and preventing further arbitrary arrests and detentions. The Rwandese Government itself has made several other proposals, including the introduction of the "*gacaca* jurisdictions" to relieve the burden on the existing courts (see section V below). Amnesty International urges the government to ensure that these and any other reforms conform to international standards for fair trial and do not sacrifice the basic rights of either the defendants or the victims of the genocide.

[5] The trial of Augustin Misago is taking place in the broader context of the negative image of the Roman Catholic Church in relation to the genocide. Many senior members of the Roman Catholic Church were close to the government of former President Juvénal Habyarimana and are widely accused of having taken part in or encouraged massacres in 1994. Relations between the Roman Catholic Church and the current government of Rwanda have been very strained. The trial of a Church member as senior as Augustin Misago is viewed by some as the trial of the Roman Catholic Church, leading to fears that the determination of his individual responsibility in the crimes of which he is accused may be over-ridden by the political objective of seeking to discredit and pin guilt on the Catholic Church as an institution.

Rwanda is required to act in accordance with obligations it has voluntarily undertaken by ratifying international human rights treaties. Both Rwandese national legislation and the application of such legislation have to be in conformity with international human rights law. The human rights treaties ratified by Rwanda include the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and the African Charter on Human and Peoples' Rights (African Charter).

While the ICCPR allows for derogations during states of emergency or in situations of war, certain core rights, laid out in Article 4 of the ICCPR, are non-derogable even in emergency or war situations. The right to a fair trial, although not listed in Article 4, may be considered a non-derogable right, especially as it is protected under Common Article 3 of the Geneva Conventions. Rwanda has not derogated from the rights in the ICCPR and is therefore required to implement all its provisions. Furthermore, the African Charter permits no derogation from its provisions, even in situations of emergency or war.

In parallel to trials by Rwandese national courts, the International Criminal Tribunal for Rwanda (ICTR), set up by the UN in November 1994, has been holding trials in Arusha, Tanzania, of people suspected of having played a leading role in the genocide. In February 2000, there were 38 people detained in the ICTR's detention centre in Arusha - including several senior members of the former government and security forces - and several others detained in other countries - including Belgium, Denmark, France, the UK and the USA - awaiting a decision on their transfer to the ICTR. Seven trials have been completed in Arusha: five defendants have been sentenced to life imprisonment and two others sentenced to 15 and 25 years' imprisonment.

In November 1999, in a highly controversial ruling, the ICTR's Appeals Chamber ordered the release of Jean-Bosco Barayagwiza, a former political advisor in the Ministry of Foreign Affairs, who was a founding member of the *Radio télévision libre des Mille Collines*, a radio station that incited ethnic hatred against Tutsi, and leader of the *Coalition pour la défense de la République* (CDR), Coalition for the Defence of the Republic, an extremist party whose supporters participated actively in the genocide. The Appeals Chamber ruled that procedural irregularities during his pre-trial detention violated his rights to a fair trial. Amnesty International expressed concern that his release was ordered without any assurance that the serious charges against him would be considered by a national court.[6] On 31 March 2000, the Appeals Chamber reversed its decision to release him, on the basis of the presentation of new facts. The court stated that he should be tried by the ICTR but that the violation of his rights should be taken into account.

II PATTERNS OF ARREST AND DETENTION

[6] See Amnesty International public statement "ICTR: Jean-Bosco Barayagwiza must not escape justice", 24 November 1999 (AI Index AFR 47/20/99).

II.1 Legalizing unlawful detentions

On three occasions - most recently in December 1999 - Rwanda has adopted laws or amendments (modifications to the *Code de procédure pénale*, Code of Criminal Procedure) governing the length of pre-trial detention. In response to the overwhelming task of processing tens of thousands of cases of genocide suspects, a law was adopted on 8 September 1996 stating that the detention of all those in prison at that time had to be legalized by the end of 1997. This was further amended on 26 December 1997 to extend the period of "legal" preventive detention until the end of 1999. On 31 December 1999, it was amended again to allow preventive detention for a further 18 months, until 30 June 2001.

These successive laws and amendments which have effectively legalized pre-trial detention for up to seven years represent a blatant violation of international treaty obligations. Article 9(3) of the ICCPR affirms the presumption of release pending trial: "*It shall not be the general rule that persons awaiting trial shall be detained in custody*". The Human Rights Committee, in its General Comment 8, has reiterated that "*pre-trial detention should be an exception and as short as possible*". Furthermore, Article 9(3) of the ICCPR provides for the right to a trial within a reasonable time or to be released from detention: "*Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release*".

The African Charter has a similar provision in Article 7(1)(d), stating that every individual has "*the right to be tried within a reasonable time by an impartial court or tribunal*". Furthermore, the Resolution on the Right to Recourse Procedure and Fair Trial, adopted in 1992 by the African Commission on Human and Peoples' Rights, provides that "*persons arrested or detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or be released*" (Paragraph 2(C)). The reasonableness of a period of pre-trial detention has to be assessed on a case by case basis. The African Commission found that a

delay of two years without a hearing or projected trial date constituted a violation of the requirement in Article 7 of the African Charter. [7]

Even though the circumstances of the genocide and its aftermath in Rwanda can be considered exceptional, delays of several years in processing cases of pre-trial detention are clearly excessive. The legalization of preventive detention in Rwanda is particularly serious in view of the large number of arbitrary arrests and the significant proportion of detainees who have been arrested on the basis of unsubstantiated denunciations. It has also negatively affected other mechanisms for processing cases of pre-trial detainees and regulating arrests. As long as the legal framework permits - and even justifies - long-term preventive detention, there is little sense of urgency for those sitting on the *Chambres du conseil* (boards which review cases of pre-trial detention, see section III.1 below) or other mechanisms to deal with detainees' cases efficiently. For example, pressure to process cases eased off after the period of pre-trial detention was extended until the end of 1999, leading to a noticeable decrease in the activity of the *Chambres du conseil* in 1997. The knowledge that there is unlikely to be a prompt judicial review of cases of pre-trial detention may also encourage further arbitrary arrests.

II.2 Cases of detainees held for several years without trial

The number of detainees held without trial - and often without charge - for several years remains overwhelming. The cases below are merely an illustrative sample. The repeated extension of the legal period for preventive detention cannot be viewed as a solution to the problem. The cases of the individuals below - and thousands more like them - should be reviewed without delay with a view to either releasing them, if there is insufficient evidence against them, or bringing them to trial as soon as possible.

When Amnesty International delegates visited Cyangugu central prison in November 1999, many prisoners there who had been arrested in 1994 claimed that they had never even been questioned. They included **Samuel Rekeraho, Félicien Nkurunziza, Ezekias Gashema, Jonas Sumba, Philippe Nsanzumuhire** and **Marc Ngendahayo. Claude Ndayisabye** has been detained in Cyangugu central prison since February 1995. He did not receive a copy of his arrest warrant until 9 October 1999. He was then questioned by the judicial authorities, given a preventive detention order and told he had to remain in prison until the authorities had completed their investigations.

[7] Annette Pagnoulle, on behalf of Abdoulaye Mazou v. Cameroon 39/90, 10th Annual Report of the African Commission, 1996-1997.

Athanase Semana, aged 37, a former employee of the Ministry of Post and Communications, was first arrested in Kigali in July 1994. He was released in August 1994 and re-arrested in February 1995 when he went to the *commune* (local government office) to reclaim his two houses which had been unlawfully occupied. He was first detained in Kigali central prison, then in Gikondo prison, then in Kimironko prison, where he remains to date. He is accused of participation in the genocide. By early 2000, his case-file was not known to have progressed and he had not been given any indication as to when his trial might begin.

Léon Nsengimana, a former employee of the Ministry of Health, has been detained in Kigali Central Prison since 19 September 1994. In October 1999 he claimed he had not been informed of any progress on his file since 1995.

Camille Nzabonimana, aged 46, a university researcher who later set up his own business, has been detained in Butare central prison since September 1994. Relatives believe that a neighbour who was jealous of his successful business was behind accusations that he participated in the genocide. For almost five years, there were no developments in Camille Nzabonimana's case at all; in July 1999, he was called for a hearing, only to find that it was postponed. By early 2000 he had still not been informed of any new date for a hearing or for his trial.

Sylvestre Kamali, a former diplomat and former president of the Gisenyi branch of the *Mouvement démocratique républicain* (MDR), Republican Democratic Movement, has been detained in Kigali Central Prison since 14 July 1994. After several years of absence of any progress on his case file, he was questioned by judicial officials in July 1999. He was told on several occasions that he would be conditionally released in the subsequent weeks (in September, then in October 1999) after his case file had been sent to the prosecutor's office. During 1999 it was confirmed that one of the people he was accused of killing during the genocide was alive; the man reported personally to the prosecutor's office in Kigali. On 14 January 2000, in response to appeals from Sylvestre Kamali's family, the Minister of Justice wrote to the prosecutor asking for details of the progress of the case and calling for Sylvestre Kamali to be either released or brought to trial. However, by March 2000, he was still detained in Kigali Central Prison, five and a half years since his arrest.

Repeated but unfulfilled promises of release, as in the case of Sylvestre Kamali, cause psychological suffering for the detainees as well as their families. Distress is also caused when detainees are informed of their trial dates which are then repeatedly postponed, sometimes without notice and without explanation to the detainee. For example, the trial of **André Bimenyimana**, a lawyer detained since 23 September 1997 on accusations of participation in the genocide - who himself had acted as a defence lawyer in genocide trials prior to his arrest - has been postponed at least four times since 9 August 1999. When Amnesty International met him in Kigali Central Prison on 25 October 1999, he had been expecting to be called for the hearing that day but no one had come to inform him why it had not taken place. Trials of other defendants have been postponed even more times. Such

cases are clear violations of the right to be tried within a reasonable time provided for in international law.

II.3 Arbitrary and political arrests

For several years Amnesty International has documented a pattern of arbitrary arrests in Rwanda. Many detainees claim that they have not even been officially informed of the reason for their arrest. Such practices are in clear violation of Article 9(2) of the ICCPR which states: "*anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him*".

Accusations of participation in the genocide are frequently levelled at people without evidence of their individual involvement in massacres. Most typically such accusations have been used as a way of ensuring the arrest of people who own property or land, to prevent them from reclaiming their property in cases where it has been unlawfully taken from them, or as a way of settling scores. Amnesty International is not in a position to judge whether specific individuals are guilty or innocent of the accusations against them in relation to the genocide. However, testimonies from a range of sources confirm that in many cases, arrests have taken place without supporting evidence and that individuals or families who own property are especially targeted. The authorities have taken a number of measures to try to restore property to their rightful owners. However, arrests in this context have continued and many families are too afraid of reclaiming illegally occupied property for fear of being arrested.

Joseph Munyagisenyi and his wife **Domitile Nyirahabimana,** both in their 50s, from Kanama *commune*, Gisenyi *préfecture*, were arrested in October 1999, apparently in connection with a dispute over their property. On 10 October, Domitile Nyirahabimana, her daughter **Josepha Uwera**, aged 22, and another relative, **Goretti Nyirabavakure**, went to Kigali to reclaim the houses the family owned there, which had been illegally occupied. One of the people occupying their houses - a *nyumbakumi* (head of ten households) - and several members of the Local Defence Force[8] reportedly intimidated and insulted the three women when they arrived at the house. Members of the Local Defence Forces beat them, told them to forget about their houses and threatened to kill them. The three women were taken to the *brigade* (detention centre of the gendarmerie) of Nyamirambo in Kigali. When the commander asked why they had been arrested, the men replied that Domitile Nyirahabimana's husband had participated in the genocide. All three women were detained at the *brigade*. Josepha Uwera and Goretti Nyirabavakure were released three days later, on

[8] Local Defence Forces have been set up by the authorities throughout Rwanda for the official purpose of ensuring the security of the population. They are made up of local civilians, who have been given arms and very brief training. They do not have any official status as part of the state security forces. Amnesty International has received reports of human rights abuses carried out by Local Defence Forces - sometimes in collaboration with members of the RPA - including killings of civilians and arbitrary arrests as well as looting and other crimes.

13 October. However, Domitile Nyirahabimana was held for more than two months. She was eventually released without charge on 22 December 1999. In the meantime, Joseph Munyagisenyi was arrested on 19 October, in his home area of Kanama, in Gisenyi. He was initially detained at the *cachot communal* of Kanama, then in the *brigade* of Gisenyi, then transferred to Gisenyi central prison. On 7 February 2000 he was reportedly transferred to Kigali. He is accused of participation in the genocide. The occupiers of the family's houses in Kigali have since been evicted by the authorities, but the family has not dared return to reclaim them.

Denys Rwamuhizi, aged around 50, from Karago *commune*, Gisenyi *préfecture*, who had previously worked in the intelligence services of the former Rwandese army, was arrested on 27 October 1999 by a local security official in Kanombe, on the outskirts of Kigali, when he went to reclaim his house there. He was detained for several days, initially in the *cachot communal*, then in Kanombe military camp. He was subsequently released without charge. He claimed that while he was in detention, the people who had occupied his property offered him a large sum of money for his house, but he refused.

Arbitrary arrests have also frequently taken place on the basis of accusations not related to the genocide. For example on 1 November 1999, the local authorities of Mukingo *commune*, in Ruhengeri *préfecture*, called a public meeting in response to a spate of illnesses or deaths believed by some of the local population to have been caused by poisoning. The *bourgmestre* (local government official) asked those attending the meeting to write down the names of individuals they suspected of being responsible for the poisoning. On the basis of their denunciations, and apparently without any further investigation, more than 15 people were arrested and detained in the *cachot communal* of Mukingo. Many of them were women, including **Nyiraruhengeri**, **Mukamana**, **Ntagahinguka**, **Bangiriyeyo**, **Uwimana**, **Nibagwire** and her daughter **Tenesi**. Some of those arrested were reportedly beaten in the *cachot*. They were all released in mid November without charge.

In a number of other cases, individuals appear to have been arrested for political reasons, especially those perceived as opponents or critics of the government. For example, **Bonaventure Ubalijoro**, former president of the MDR and an outspoken critic of the government, was arrested on 27 February 1999. More than one year later, he remains in detention in Kimironko prison in Kigali awaiting trial. On several occasions, it was announced that his trial was due to begin, but the hearings have repeatedly been postponed, most recently in early April 2000. The accusations levelled against him have varied, ranging from involvement in massacres in the 1960s, when he was head of the national intelligence services, to sympathies with armed opposition groups and embezzlement. Amnesty International is not in a position to judge whether these accusations are well-founded. However, the organization is concerned that his arrest may have been motivated by political considerations, in particular by his frequent public criticism of the government. For example he had called for elections and had criticized government policies and actions, including in the context of debates on democracy and reconciliation.

Soon after the arrest of Bonaventure Ubalijoro, on 9 March 1999, several MDR members of the National Assembly were ousted from the National Assembly, after a number of public political disagreements with members of the government.[9] One of them, **Eustache Nkerinka**, was held under house arrest from 22 March to 24 September 1999. He was released without charge but was threatened repeatedly by members of the Rwandese Patriotic Army (RPA) following his release; he was ordered to give up his political activities and was told he would be killed if he did not cooperate with the government.

[9] Details of the cases of Bonaventure Ubalijoro and the MDR parliamentarians can also be found in Amnesty International's Urgent Action 52/99 (22 March 1999, AI Index AFR 47/08/99) and updates of 22 March, 8 April, 12 April, 18 August, 31 August and 28 September 1999.

Another MDR parliamentarian, **Jean-Léonard Bizimana**, who was suspended from the National Assembly at the same time as Eustache Nkerinka, was arrested in June 1999 on accusations of participation in the genocide. In May 1999 he had initiated legal proceedings against three individuals - including the *bourgmestre* of Rutongo *commune*, in Kigali Rural - who he claimed had wrongfully accused him of participation in the genocide.[10] On 24 June, Jean-Léonard Bizimana was arrested at home, briefly questioned, then taken straight to Kigali central prison, where he remained in March 2000. Proceedings in relation to his own complaint about the accusations against him began in early 2000. Jean-Léonard Bizimana's own trial in relation to his alleged participation in the genocide has not yet begun.

II.4 Conditions of detention

Conditions in most prisons and detention centres in Rwanda amount to cruel, inhuman or degrading treatment, in clear violation of international law and standards, including Article 7 of the ICCPR, Article 5 of the African Charter and the UN Standard Minimum Rules for the Treatment of Prisoners.

In 1995 the inhumanity of prison conditions in Rwanda caused many foreign journalists to visit the prisons; the images they broadcast at the time shocked the international community. Five years on, Rwandese prisons no longer feature on television screens or newspapers around the world. Yet the official prison population has risen to around 125,000; tens of thousands of detainees continue to suffer from extreme overcrowding, lack of hygiene facilities, insufficient food and inadequate medical care. The stronger ones survive against the odds from day to day, while many of the weak and sick die silently as international outrage has faded into resignation.

Gross overcrowding continues to be the overwhelming concern as virtually all the prisons and detention centres are filled to several times their capacity. Despite some recent, relative improvements - for example detainees are now taken out of the detention centres regularly to carry out work outside - the level of overcrowding and resulting conditions remain unacceptable by any standards and continue to cause thousands of deaths.

In its Resolution 1999/20, the UN Commission on Human Rights "*reiterates its concern at the conditions of detention in many communal detention centres and some prisons in Rwanda, calls on the Government of Rwanda to continue in its efforts to ensure that persons in detention are treated in a manner which respects their human rights and emphasizes the need for greater attention and resources to be directed to this problem, and again urges the international community to assist the Government of Rwanda in this area*".

[10] Jean-Léonard Bizimana claims that he had been subjected to slanderous accusations, as well as threats, on many occasions since 1995. He reported these to the authorities but no action was taken.

In many prisons and detention centres, detainees barely have space to sleep; in some *cachots communaux*, they have to sleep in turns, with some sleeping during the day and others sleeping at night. The *cachots communaux* in Gitarama *préfecture* have been among the most overcrowded. For example, in Musambira *cachot*, overcrowding was such that in October 1999 a number of detainees were having to sleep in a makeshift false ceiling made of wood. In Cyangugu central prison, in November 1999, some detainees had to crawl under the lowest bunk, in an extremely narrow space known as *la mine* (the mine) where they could hardly move, to find a place to lie down, on the ground. Others were having to share planks of wood on which to sleep, which were too narrow for even one person.

Conditions are especially serious in the *cachots communaux*, where the state does not provide any food to detainees and where assistance by international humanitarian organizations is extremely limited. Detainees in the *cachots* are wholly dependent on their families to bring them food. However, in many cases this is not possible, either because the detainees' relatives are dead or are in prison themselves, or because the families cannot even afford to feed themselves. Detainees are therefore obliged to rely on other detainees to share out their food. For example in Musambira *cachot*, in Gitarama *préfecture*, **Jean-Chrysotome Nsanzurwimo**, a peasant aged 47, has had to rely on other detainees to provide him with food ever since his arrest on 1 November 1995. He claimed that following his arrest, the people who had accused him of participating in the genocide had chased his wife and five children out of their home. He had heard that his family was now living about 22 km away. **Pantaléon Gasigwa**, aged 49, did not have any relatives to bring him food either. He has been detained since 15 October 1996; his wife was arrested in April 1999. Similarly, **Augustin Mugaragu**, aged 64, detained since 28 December 1995, had not received any food from outside since the one visitor who used to bring him food was arrested.

Members of the security forces guarding the *cachots* have sometimes deprived detainees of food brought by their families. In some cases they have taken the food delivered by the families but not given it to the detainees.

II.5 Torture and ill-treatment of detainees

Many detainees in the *cachots communaux*, in military detention centres and in some *brigades* have been subjected to torture or other forms of ill-treatment - most commonly beatings. Beatings - usually inflicted during arrest or in the initial period of detention - were considered virtually "normal" by detainees due to their frequency. The physical condition of victims of torture or ill-treatment was aggravated by the extremely poor prison conditions and inadequate access to medical care. Detainees confirmed that the torture or ill-treatment usually stopped after they were transferred to the central prisons. Torture and other forms of cruel, inhuman or degrading treatment or punishment are prohibited under human rights treaties which Rwanda has ratified, in particular Article 7 of the ICCPR and Article 3 of the African Charter.

Some detainees interviewed by Amnesty International in late 1999 reported that they were still suffering the physical after-effects of ill-treatment or torture which had been inflicted several years earlier. For example, **Jean Baligira**, aged 68, had been in Musambira *cachot*, Gitarama *préfecture*, since 1 October 1996. Three years on, in October 1999, he still had scars on his back from beatings sustained at the time of his arrest. He claimed he had been beaten every day after his arrest until the local *inspecteur de police judiciaire* (judicial police inspector) intervened. He said he had been thrown into a ditch and bricks were thrown at him; later he was beaten with sticks in the *cachot*. At first he could hardly walk. He subsequently received medical attention but three years later, he still could not move properly and his spine was deformed as a result of the torture.

Many other more recent cases of ill-treatment were reported in Musambira *cachot* in 1999. Several detainees there were tortured or ill-treated when taken outside the cells to work. On 24 October 1999 **Emmanuel Hakizimana**, aged 26, was severely beaten with a big stick and a hoe on his chest, legs, arms and back by a soldier when he was taken outside to work. The soldier reportedly beat him because he was walking too slowly. As a result of the beatings, he had scars on his chest, was vomiting blood and was unable to eat. He tried to obtain treatment at the local health centre but was told that they did not have the right medicines. **François Kanamugire**, aged 43, was hit with a hammer on his back by a policeman on duty at the *cachot*. The policeman allegedly accused him of buying alcohol while he was working outside, whereas he claimed he had just gone to buy soap.

At Musambira *cachot*, in October 1999, there was a separate block where detainees who had "misbehaved" were locked up for several days or weeks as a punishment. As many as 30 or 40 detainees were held there at times, in a very small space. During their period of "punishment" they were not allowed outside the cell at all. Among those held there in October 1999 were three men who had been beaten by policemen. **Innocent Musoni** had been slapped and beaten with sticks and a rifle butt and had wounds on his ear and knees; **Védaste Kabeza** had scars on his shoulders, knees and elbows. **Jean-Marie Vianney Sakindi** was kicked and hit with a rifle butt on his back and jaw. All three were being "punished" because they were accused of being absent when detainees were taken out for construction work; the three detainees claimed they had gone to fetch water and other materials for the work.

In an unrelated case, **Révérien Nyabyenda**, aged 26, was held in a nearby separate cell, in isolation, since 22 October. On 26 October he was in very poor physical condition, with visible wounds on his shoulder and face, after being beaten all over by the *responsable de cellule* (local official) of Gatagara, Birambo *secteur*, following a fight between Révérien Nyabyenda and his brother. He was reportedly naked when he was beaten. The *responsable de cellule* had then taken him straight to the *cachot* where he had remained in isolation for four days. Because of his physical state resulting from the beatings, he had been almost unable to eat for several days. The local *inspecteur de police judiciaire* of Musambira claimed not to know about his case.

Torture and ill-treatment were also reported in some *brigades* of the gendarmerie. For example a detainee held in Muhima brigade in Kigali in mid November 1999 described hearing detainees being beaten and screams of pain during the night.

Deaths resulting from torture or ill-treatment

In some cases, the torture or ill-treatment was so severe that detainees have died. For example, **Félicien Gasana**, aged 35, a worker at a construction company, died on 10 August 1999 as a result of ill-treatment in the *brigade* of Nyamirambo, in Kigali.[11] He was arrested on 6 August at his workplace, by a group of five people including a policeman and a civilian official responsible for local security, and taken to the *brigade* of Nyamirambo. He was beaten along the way and was seen limping. On 10 August, relatives who tried to visit him at the *brigade* were told that he had been taken to Kigali hospital (*Centre hospitalier de Kigali*). When they inquired at the hospital, they were told that he had died the previous day. His body, which was in the morgue, bore visible wounds indicating severe blows to his head and face. On 9 August, medical staff on a routine visit to the *brigade* to treat sick detainees reported that Félicien Gasana was in a very serious condition; they requested for him to be immediately transferred to the hospital. At least two hours later, he had still not been transferred and a military official in the *brigade* wanted to take him back into the cell. He was eventually transferred to the hospital that evening, but according to witnesses - including medical staff - it was too late to save his life.

The commander of the *brigade* of Nyamirambo claimed that Félicien Gasana had been taken ill but was still alive when transferred to the hospital. However, other sources have indicated that he may have been dead on arrival at the hospital. His family claimed that he had been in good health before his arrest. Eye-witnesses reported that his injuries were clearly caused by blows. To Amnesty International's knowledge, the family's request for an autopsy was not granted.

Félicien Gasana's wife, **Epiphanie Uwitakiye**, was arrested on the same day as her husband, as she and her friend, **Suzanne Mukamusoni**, were trying to reclaim their houses which had been illegally occupied. They were arrested by a group of men who included civilians and a soldier. Both women were beaten and slapped in the street. Epiphanie Uwitakiye was beaten on the feet; as the men beat her, they asked her where her husband was and told her she would not get her house back. The two women were taken first to the *bureau de secteur* (local government office) at Nyamirambo, then to the *brigade*. Suzanne Mukamusoni's husband, **Blaise Barankoreho -** another construction worker - was also arrested, detained in the *brigade* and beaten.

[11] Also see Amnesty International Urgent Action 108/99, 13 August 1999 (AI Index AFR 47/12/99).

Epiphanie Uwitakiye saw her husband in a coma in the *brigade*, just before he was transferred to hospital. The authorities refused to allow her to attend his funeral on 11 August, even though she had agreed to be accompanied by security officials. On 20 August 1999 Epiphanie Uwitakiye, Suzanne Mukamusoni and Blaise Barankoreho were transferred to Kigali Central Prison. All three are accused of participation in the genocide. However, some believe that their arrest and the death of Félicien Gasana were linked to the two couples' attempts to claim back their property. More than two months after her husband died, the authorities had still not given Epiphanie Uwitakiye any explanation as to the cause of his death and were not known to have launched an investigation or judicial inquiry.

Frodouald Ngaboyisonga, a driver and mechanic in his late 30s who worked at Nyabihu tea factory in Karago *commune*, Gisenyi *préfecture*, died on 11 November 1999, apparently as a result of the torture he had suffered during his detention in Mukamira military camp. Frodouald Ngaboyisonga and four other workers at Nyabihu factory - **Jean de Dieu Hakizimana**, an assistant driver; **Gakezi**, a factory guard; **Jean-Bosco Byiringiru**, a machine operator; and **Thomas Ngarambe**, a driver and mechanic - were arbitrarily arrested by an RPA soldier on 28 September 1999 in connection with a reported theft at the factory. A sixth, **Cyridion Hakuzimana**, a driver for the director of the factory, was arrested the following day. All six workers were detained unlawfully at Mukamira military camp. Jean-Bosco Byiringiru was released on 30 September, but the five others were detained for a month, without charge, until 25 October. Frodouald Ngaboyisonga and several of his co-workers were severely beaten by RPA soldiers in Mukamira camp. Upon his release, Frodouald Ngaboyisonga was taken to Ruhengeri hospital, where he stayed until 8 November. On 11 November, he died at his home in Byumba. Despite promises by senior military officials to investigate the case, by early 2000 no investigation is known to have been carried out into the death of Frodouald Ngaboyisonga or the torture of his colleagues.[12]

Michel Ngirumpatse, aged 72, was detained in the *cachot communal* of Huye, in the southern *préfecture* of Butare, since 1996. He had suffered ill-health in detention and at the end of November 1999, he was conditionally released so that he could obtain medical treatment. However, on 12 December 1999 he was re-arrested and taken back to the *cachot communal*, where he was reportedly beaten so badly by policemen, including the chief of the police at the *commune* level, that he died the same day.

II.6 Detention of civilians in military custody

The practice of unlawfully detaining civilians in military detention centres remains a serious concern in Rwanda. There is no provision in national law permitting the detention of civilians arrested for criminal offences in military detention centres. In addition to the cases of

[12] For a more detailed account of the detention and ill-treatment of the Nyabihu tea factory workers, please see the separate Amnesty International report entitled *Rwanda: No business of the military: unlawful, arbitrary detentions and ill-treatment of civilians in Mukamira army camp*, January 2000 (AI Index AFR 47/01/00).

the Nyabihu tea factory workers cited above, many others have been reported to Amnesty International, often involving torture or ill-treatment.

The situation of both civilian and military detainees held in military detention centres is especially alarming as in most cases, access is denied to their relatives, lawyers, doctors and human rights and humanitarian organizations. In addition to those held in recognized military camps, an unknown number are detained in unofficial or secret detention centres. This practice is in violation of the 1992 UN General Assembly Declaration on the Protection of All Persons from Enforced Disappearances. In particular, Article 10 states that "any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention". [13]

Only through the testimonies of a very small proportion who have been released from unofficial detention centres has it been possible to gather information about the conditions of detention, treatment of detainees and the identity of some of them. Often this information has only been revealed months after the detention, as those released have been afraid of testifying.

Throughout 1997 and 1998, hundreds if not thousands of people "disappeared" in Rwanda.[14] Most are presumed dead, but some are believed to be alive, held in military detention centres. Success in identifying the whereabouts of a small number may provide hope for locating others.

One former detainee arrested on 20 September 1998 was among several hundred detained by the military in containers at Remera, in Kigali, at the end of 1998. They had been arbitrarily rounded up in Kigali, on the pretext of an identity check. They were beaten at the time of their arrest, told to take their shirts off and were tied up to each other with their shirts. Initially they were detained in what appeared to be a school building. The following day, on the orders of a military official, they were forced onto trucks and taken to Remera. There they were beaten again on arrival and their identity cards were torn up or burnt in front of them. They were then forced into containers and beaten again as they went in. The former detainee estimated that there were 100 containers, with about 80 detainees in each container.

[13] See also Principle 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

[14] For details of patterns of "disappearances" in Rwanda during this period, see the Amnesty International report *Rwanda: The hidden violence: "disappearances" and killings continue*", 23 June 1998 (AI Index AFR 47/23/98).

The former detainee described the extreme heat inside the containers. He said it was like being "cooked alive". He described how the military made fires in barrels which they placed next or underneath the containers which were slightly raised above the ground. He believed that many people as a result of this form of torture. Others are thought to have died as a result of severe beatings, including at least five of a group of around 45 students. The bodies of those who died were reportedly thrown into a ditch into which chemicals had been poured to burn or decompose the bodies.

A large hole had been dug outside for detainees to go to the toilet. Stakes had been planted around the hole, and the detainees had to hold on the stakes while they went to the toilet, otherwise they would fall inside. An elderly detainee reportedly fell in the hole on one occasion.

Usually the detainees were fed only once every three days. Some detainees were forced to work - for example building houses - for military officers. Others were rounded up and sent to fight alongside RPA troops in the Democratic Republic of Congo (DRC)[15]. They were reportedly taken to the border not on military trucks but in minibuses without seats where they were told to sit on the floor of the vehicles so that they would not be seen. One detainee was reportedly shot dead as he tried to escape from one of the containers; according to a co-detainee, he had preferred to run the risk of being killed on the spot rather than be sent to the battlefield in the DRC.

Another unofficial military detention centre used more recently is a site known as MULPOC in the town of Gisenyi, northwestern Rwanda. Scores of people, many of them civilians, have been detained there, in reportedly very poor conditions. Detainees claimed that they were often not given food, that some of them were beaten, that the centre was overcrowded and dirty and that they were not allowed to go outside. One of the rooms was described as very dark; the windows were boarded up and only a small amount of light came in through the ceiling.

Those detained in MULPOC include Rwandese refugees who had been in the DRC and Congolese arrested across the border on suspicion of "collaborating with the enemy". For example, **Francine Ngoy**, a 22 year-old woman from Goma, eastern DRC, was arrested on 27

[15] Thousands of Rwandese troops have been fighting in the DRC alongside the *Rassemblement congolais pour la démocratie* (RCD), Congolese Rally for Democracy, against the Congolese forces of President Laurent-Désiré Kabila since the current armed conflict began there in August 1998. Rwanda continued sending reinforcements to the DRC throughout 1999. Some of those sent to the DRC have been forcibly recruited, including detainees from various prisons and detention centres in Rwanda. For details of the human rights situation in the context of the armed conflict in the DRC, see a new Amnesty International report on the DRC due to be published at the end of May 2000, as well as the Amnesty International news service "DRC: Massacres of civilians continue unabated in the east", 17 January 2000 (AI Index AFR 62/04/00) and the Amnesty International report "DRC: War against unarmed civilians", 23 November 1998 (AI Index AFR 62/36/98).

May 1999 in Goma, on suspicion of collaborating with the Congolese Government, and tortured in military custody. In November 1999 she was transferred to Rwanda. She was detained in the *brigade* in Gisenyi for about one week, then she was released, sent back to Goma, re-arrested after three days, detained for about one week in Goma then transferred to Rwanda again. This time she was detained in MULPOC, for several weeks. She did not know where she was being taken, as she was transferred to MULPOC at night. Her whereabouts in Rwanda were not known until she was eventually released in early January 2000.[16]

A 64-year-old Rwandese woman from Rubavu *commune*, Gisenyi *préfecture*, had also been detained at MULPOC some months earlier. At the time she too did not know where she was being held as she was driven to and from the site at night. A number of civilians were detained there with her, including several women, one of whom was detained with her baby. The soldiers beat them with wires, including the mother of the baby who was beaten when the baby cried. The women were accused of collaboration with an armed opposition group.

From January 2000 onwards, detainees in MULPOC were gradually transferred to a "solidarity camp" at Mudende, in Gisenyi, where they were able to receive visits from their families; the Congolese detainees were apparently sent back to the DRC. However, in February there were reportedly still around 30 people detained in MULPOC and an additional 17 in another unofficial detention centre in Gisenyi town.

In addition to the case of Francine Ngoy, Amnesty International has received numerous reports of arrests of Congolese and Rwandese civilians in eastern DRC who were subsequently transferred to Rwanda. It is presumed that at least some of them are detained in military custody; however, in most cases it has been very difficult to verify their whereabouts and some are considered "disappeared".

Some Congolese have been arrested in Rwanda itself and detained there. For example **Emile Mutanga**, a doctor from the DRC who was passing through Rwanda on his way back to the Congolese capital Kinshasa, was arrested by RPA soldiers in June 1999 and detained incommunicado in a military camp in Gikongoro, in southern Rwanda, for more than five months. During the first month he was handcuffed night and day and kept in isolation. He was repeatedly questioned about his relations with the Congolese President Laurent-Désiré Kabila and was accused of being an opponent of the Rwandese government. He was released from the military camp in Gikongoro on 20 October, taken to Cyangugu, near the Congolese border, then back to Bukavu in eastern DRC where he was finally released. During the entire period of his detention, he was not allowed to send any letters to his family, who believed he was probably dead. He is not known to have been charged with any criminal offence.

[16] For details of this case, see Amnesty International Urgent Action 317/99, 13 December 1999 (AI Index 02/02/99) and update of 21 January 2000 (AI Index AFR 02/01/00).

Fidèle Uwizeye is one of a small number of civilians transferred from a military detention centre to a civilian prison. An employee of the Ministry of the Interior, who had been *préfet* of Gitarama under the previous government, he was arrested on 1 May 1998 in Kigali and initially detained at the gendarmerie in Remera, in Kigali. A few days later, he was moved to an undisclosed location. His fate remained unknown until he was transferred to the civilian prison of Kimironko on 17 July 1998. It was then revealed that he had been detained incommunicado for more than two months in harsh conditions in a military detention centre of the *Garde présidentielle* (Presidential Guard) at Kimihurura, in Kigali. Throughout his detention there, he was held in isolation but could hear other detainees in a nearby building; sometimes he heard them being beaten. The cell in which he was held was very cold, with an electrified ceiling; he had to sleep on the concrete floor. He was given very little food for the first few days. Whenever he was moved from his cell, including for interrogation, the soldiers put a sack over his head and drove him to an unknown location, at night. During his detention, he did not know where he was being held, or where he was taken for these interrogations.

His family was not able to see him until he was transferred to Kimironko prison in July 1998. Initially he was in poor physical condition and could hardly walk because of insufficient food and inadequate light during his period in military custody; his health later improved. On 31 January 2000, he was provisionally released, though not as a result of any court hearing or trial; he has been asked to report to the Supreme Court once a week.

Fidèle Uwizeye was not accused of participation in the genocide but of "endangering state security". When he was interrogated in military custody, he was asked repeatedly about armed opposition groups and politicians suspected of collaboration with these groups. He was also criticized for testifying in the trial of Jean-Paul Akayesu by the ICTR in Arusha.[17] After his transfer to Kimironko, one of the individuals who had reportedly been behind the accusations against him was said to have withdrawn his testimony, claiming that it was false and had been extracted by force.

III PATTERNS OF RELEASES AND RE-ARRESTS

III.1 Context of releases

Releases of individuals accused of participation in the genocide have been surrounded by controversy in Rwanda. The memories of the massacres of 1994 are still very fresh. Both

[17] Fidèle Uwizeye had been called upon by Jean-Paul Akayesu, former *bourgmestre* of Taba *commune* in Gitarama, to testify about the role of *bourgmestres* during the genocide. The trial of Jean-Paul Akayesu was one of the first to be concluded by the ICTR in Arusha. In September 1998, he was found guilty of the nine counts for which he was indicted, including genocide and crimes against humanity; he was sentenced to life imprisonment.

on an emotional and a political level, releases of genocide suspects were bound to cause hostility and distress among survivors of the genocide and families of victims.

The most vocal protests have come from organizations representing survivors of the genocide. Over the last few years, some - including Ibuka, the main group of organizations of genocide survivors - have organized demonstrations and complaints when the authorities have announced or carried out releases. These protests have tended to be highly politicized. In response, some government officials have made efforts to explain that justice must take its course and that laws and the decisions of courts must be respected.

Individual survivors with whom Amnesty International has spoken in Rwanda expressed a strong wish for those they know to be responsible for massacres to be brought to justice, but did not object to the release of individuals against whom there was no evidence or who had been acquitted. Indeed, several stated that they were living side by side with released detainees without difficulty and shared their limited resources with them. However, they felt bitter that other individuals - whom they had specifically identified to the authorities as participants in the genocide - continue to walk free.

Despite the political difficulty of implementing a program of releases, the government has recognized that a significant number of releases would be inevitable to reduce the enormous backlog of cases. In October 1998, the government announced that around 10,000 detainees would be released - primarily those without a case-file or against whom there was insufficient evidence; the announcement was made by the former Minister of Justice, Faustin Ntezilyayo[18]. Previously the government had announced on several occasions that children, the elderly and detainees who were very sick would also be released. Releases of people in these different categories have taken place sporadically since the latter part of 1997. By the end of 1999, the number of those released was estimated at around 5,700 - a small proportion of the total prison population of around 125,000.

As far as Amnesty International has been able to establish, the system for processing or reviewing cases of pre-trial detention and for releasing those who are unlawfully detained does not appear to follow any clear criteria. Indeed it would appear that the decisions as to whom to release and when are often arbitrary. For example the cases of detainees arrested in the last two years have sometimes been reviewed more quickly than those of detainees arrested in 1994 or 1995. The efficiency of the system for processing these cases and the order in which they are dealt with would appear to depend to a large extent on the goodwill, capabilities or sometimes the whims of local judicial officials. In addition, pressure is known to have been exerted on these officials to either release or maintain in detention individual prisoners.

[18] Faustin Ntezilyayo, who was Minister of Justice in Rwanda from October 1996, resigned and fled the country in January 1999. He denounced constant interferences in the independence of the judiciary and obstructions to the course of justice by government and military officials.

The case review boards of the *tribunaux de première instance* (high courts) known as ***Chambres du conseil*** - which, in accordance with Article 40 of the *Code de procédure pénale*, hold hearings to review the legality of pre-trial detentions and recommend the release of those against whom there is insufficient evidence or who are unlawfully detained - have functioned erratically.[19] Their performance and effectiveness have varied from region to region. Even when they have been seen to be processing cases regularly, their work has had at best a small impact on the overall caseload. Towards the end of 1997 and throughout most of 1998 their work appeared to come to an almost complete standstill. Because of a failure to respect the right to legal representation in the hearings of the *Chambres du conseil*, Avocats sans frontières (Lawyers without Borders - a non-governmental organization through whom most defence lawyers are provided to defendants in genocide trials in Rwanda) decided to suspend its interventions with the *Chambres du conseil* in May 1999.[20]

III.2 Children

The authorities have still not fulfilled their promise to release all children from detention. More than 4,400 children who were under 18 - and in some cases under 14 - at the time of the crime of which they are accused remain imprisoned in early 2000.[21] Around 300 have been transferred to a "re-education centre" at Gitagata, outside Kigali, since 1995.

When Amnesty International delegates visited Kigali central prison at the end of October 1999, there were 302 prisoners aged 18 or under (276 boys and 26 girls). In Butare central prison (Karubanda), in mid November 1999, there were 221 children (210 boys and 11 girls). In November 1999, three children were detained in Kimironko prison in Kigali: **Théoneste Niyonziza**, aged 16, accused of genocide (he was only 11 in 1994) and detained since 26 December 1996; and two accused of common crimes - **Vénuste Vuguziga**, aged 15, detained since 27 October 1998 and **Ayabagabo**, aged 15, detained since 20 August 1998. Children

[19] Previously, two other mechanisms had been set up to sift through the cases of pre-trial detainees accused of genocide: first the *commissions de triage* (screening committees), then the *groupes mobiles* (mobile groups). The *commissions de triage* largely failed to fulfill their role, primarily because of a lack of political will and a lack of independence (they included members of the security forces, some of whom had been responsible themselves for arbitrary and unlawful arrests). The *groupes mobiles* visited several prisons to review the case-files of pre-trial detainees. A number of releases were recommended as a result of their work, but not all the recommendations for release were implemented; there were also reports of new arrests carried out by the *groupes mobiles.*

[20] For details, see Annex 1 of Avocats sans frontières report "*Justice pour tous au Rwanda: rapport semestriel, 1er semestre 1999*" ("Justice for all in Rwanda: Biannual report 1999").

[21] The age of criminal responsibility in Rwanda is 14. The Penal Code provides for reduced sentences for children between the ages of 14 and 18.

are also detained in the *cachots communaux*. For example **Marie Uwimana**, aged 17, arrested on 13 July 1995, was still detained in Masango *cachot*, in Gitarama, in 1999.

Jean-Yves Ngabo Bizimungu, son of Casimir Bizimungu, Minister of Health in the former government[22], was only 15 when he was released in March 1999, and only 10 when he was arrested in the southern *préfecture* of Butare in December 1994. He had been held in several different prisons and detention centres across Rwanda, including for the last few months in a military detention centre at the *Garde présidentielle* in Kimihurura, in Kigali. His whereabouts were not known until his release. It would appear that the only reason for his arrest was that his father had been a minister in the former government.[23] He was never charged or tried.

One of the reasons given by the authorities for the continued detention of children is the difficulty in ascertaining their exact age. However, this reason has been advanced for more than two years without significant progress in numbers of releases. Furthermore, it does not explain why those who were clearly children at the time of their alleged crime - even though their exact date of birth may be difficult to verify - remain in prison, in contravention of Article 37 (b) of the UN Convention on the Rights of the Child (CRC)

According to Article 37 (b) of the CRC, "*the arrest, detention or imprisonment of a child shall be in conformity of the law and shall be used only as a measure of last resort and for the shortest appropriate period of time*". This is in accordance with the principle stated in Article 3 of the CRC that "*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*".

Rule 17 of the UN Rules for the Protection of Juveniles Deprived of their Liberty provides: "*Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative*

[22] Casimir Bizimungu is currently in detention in Arusha, Tanzania, awaiting trial by the ICTR.

[23] Since the end of the genocide, Amnesty International has received reports of many other cases of individuals who have been arrested and detained simply because of their family links with members of the former government.

measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention.''

III.3 The elderly

The question of whether elderly prisoners accused of genocide should be released has attracted controversy in Rwanda, with some organizations of survivors of the genocide disagreeing strongly with this measure and claiming that the elderly, in particular, played a leading role in organizing the genocide in 1994. Nevertheless, the government has announced on several occasions that elderly detainees would be released. Some have been, but others remain in detention, with no apparently logical explanation as to why some have been released and not others: for example, some of those released on the grounds of old age are younger than some of those still in detention.

When Amnesty International delegates visited Cyangugu central prison, in November 1999, some but not all elderly prisoners had been released. There were at least 50 male prisoners who claimed to be older than 70. Some had been detained since 1994 or 1995. Among the elderly female prisoners, several who claimed that their names were on the list of those due to be released because of their age were still in the prison in November 1999. They included **Anastasie Mukanhagara** and **Stéphanie Mukangango**, both in their sixties.

The *cachot communal* at Taba, Gitarama *préfecture* - one of the larger *cachots*, holding more than 1,000 detainees in 1999 - held more than 20 detainees over the age of 70 in October 1999. One, **Evariste Munyakazi**, aged 96, was held in a cell with more than 50 people. In the first half of 1999, in the *cachot communal* at Ntongwe, in Gitarama, there were several female detainees over the age of 80 who had been detained since 1995, including **Gaudence Nyirabagenzi**, aged 90, and **Vérédiana Zaninka** and **Athanasie Uwicayeneza**, both aged 80; all three women are partially blind.

III.4 After release

In October and November 1999, Amnesty International delegates met a number of detainees who had been released in the previous weeks or months, in different parts of the country. Several said that they had not been threatened or intimidated since their release and had not experienced difficulties reintegrating into their community. However, some were still suffering the physical after-effects of ill-treatment in detention. Many reported serious economic problems, particularly in the search for employment. Others appeared to have been traumatized by their period in detention and lived in fear of being re-arrested or killed.

Several whose property had been occupied before or during their detention had not dared reclaim it for fear of reprisals. For example, **Dorothée Mukangaramba**, aged 70, was arrested in May 1995; she was accused of genocide but believes that the real reason for her arrest was a dispute over her property. She was detained in the *cachot communal* of Muhazi, in Kibungo, for more than four years, until her release in July 1999. A plot of land which belonged to her had been taken over by other families during her detention. Several months after her release, she still did not feel she could begin the procedure to reclaim it as she was afraid of being seen as a trouble-maker, and risking arrest again.

Innocent Bizimana, a potter aged 37, was detained for three years and four months without charge or trial in the *cachot communal* of Muhazi, Kibungo *préfecture*. He was never questioned and claimed he did not know the reason for his arrest. At the time of his arrest in March 1996 he was beaten by a local official and by a policeman. He was released on 6 July 1999 without any explanation. Following his release he found that his house had been destroyed during his detention: his family had been forced by the authorities to destroy their house themselves, in September 1997, as part of the national policy of villagization.[24] Several months after his release he was still suffering from respiratory problems which he believes were caused by his ill-treatment during arrest and the conditions of detention. He claimed he no longer had the physical strength to resume his work as a potter.

Pierre Byingingo, a trader aged 72, was arrested on 2 July 1997 in the town of Gisenyi, in northwestern Rwanda, on accusations of participation in the genocide. He was detained in the *brigade* until 17 April 1998 when he was transferred to Gisenyi central prison. On 14 October 1999 his case was studied by the *Chambre du conseil* who ordered his conditional release. He was released a week later, on 21 October 1999. One of the conditions of his release is that he is not allowed to leave his home area. He has not been authorized to travel to the capital Kigali to receive medical treatment which he requires, which is unavailable in Gisenyi.

Another man[25] in Gisenyi, who was detained without charge or trial from May 1997 to March 1999 also experienced problems as a result of the conditions of his release. He has been unable to find work as a result of not being allowed to leave his home area. More than eight months after his release, he was also unable to reclaim his house which had been occupied by relatives of military officials.

[24] The government has introduced a national policy which requires many people to abandon their homes in order to be housed in new "villages" or settlements known as *imidugudu*. In some parts of the country, families have been forced to move, sometimes under threat and intimidation. Some have been made to destroy their old homes but have not been provided with assistance to construct new ones. The policy is officially designed to improve security and ensure greater facilities and infrastructure, but living conditions for thousands of families remain very poor.

[25] The names of some individuals are not cited for reasons of security.

The conditionality of releases has also affected individuals accused of crimes other than genocide. Two journalists who had been detained in connection with articles published in their newspapers were released conditionally in 1999 but are in theory still awaiting trial. **Amiel Nkuliza**, editor of the newspaper *Le Partisan*, was arrested on 13 May 1997; he was accused of endangering state security and detained without trial in Kimironko prison in Kigali for more than two years. He was only questioned once, in June 1997, by someone believed to be a military intelligence officer. He was released without explanation on 18 August 1999. Following his release, he was told repeatedly by officials in the Prosecutor's Office that he would be tried "soon", but it was not clear whether and when his trial would really take place.[26] Similarly, **John Mugabi**, news editor of *Rwanda Newsline*, was conditionally released on 21 May 1999; he had been arrested on 26 February 1999 on accusations of libel in connection with an article alleging corruption by a senior Ministry of Defence official. In the case of both journalists, the conditions of their release - including having to report regularly to the authorities and not being allowed to travel - apply for an unspecified period.

Practices of corruption relating to releases have been reported frequently. Local officials commonly accepted or demanded money from detainees or their families in exchange for promising their release. However, in a number of cases, the payment of sometimes large sums failed to secure their release. For example, in Nyarutovu *commune*, Ruhengeri *préfecture*, in December 1999, several detainees had paid money to a local policeman who had promised to organize their release. However, instead of being released, the detainees were transferred to Ruhengeri central prison. The policeman who had extorted the money was arrested on 17 December; however, on 24 December, he was reportedly released without charge.

III.5 Re-arrests

Many detainees against whom there is insufficient evidence or who do not have a case-file have benefited from a conditional release (*mise en liberté provisoire*), on the understanding that they could be re-arrested should fresh, substantial evidence against them come to light. Around 90% of those released to date have been released conditionally.[27]

[26] For details of the case of Amiel Nkuliza and other journalists targeted in connection with their professional activities, see the Amnesty International publication "Rwanda: 'No one is talking about it anymore'", October 1997 (AI Index AFR 47/31/97).

[27] These figures are based on information collected by the human rights organization LIPRODHOR, which has set up a project to monitor the situation of released detainees, known as *Programme de suivi des accusés de génocide mis en liberté* (PSAG), Program of Follow-up of Released Genocide Suspects. The PSAG team has produced several reports which describe the problems facing released detainees in various parts of the country. It has also intervened with local authorities in several cases where released individuals were under threat.

Amnesty International is concerned about a number of cases in different parts of the country where such people have been re-arrested within a very short time after their release, in some cases within just a few days. Some individuals have been arrested, released and re-arrested on a number of occasions over several months or years, sometimes apparently on the basis of the same accusations.

For example, 12 people from Muhazi *commune*, in Kibungo *préfecture*, who were released from Nsinda prison on 3 June 1999 because of a lack of evidence or because they did not have a case-file were re-arrested within weeks or even days of their release, following protests by the local population. One of them, **Khamis Nsabimana**, was re-arrested just four days later, on 7 June. Six others - **Jean-Bosco Purani, Augustin Gatare, Faustin Habimana, Maurice Musonera, Augustin Nkuranga** and **Jean-Bosco Mbarushimana** - were re-arrested on 28 June; **André Gakumba** was re-arrested on 28 July; and four others - **Théoneste Mushimiyimana, Jean-Bosco Cyirima, Marc Mujyambere and Augustin Nsengiyumva** - were re-arrested on 26 August. The local *inspecteur de police judiciaire* claimed that further investigations had taken place and new case-files compiled before their re-arrest, but it is difficult to imagine how these complex procedures could be completed within such a short period. According to local authorities, some of those re-arrested had been in prison for at least three years.

Charles Bitotori, aged 68, from Kirambo *commune* in Cyangugu *préfecture*, and **Thomas Nayihoranye**, aged 69, from Gatare *commune*, also in Cyangugu, were both released from Cyangugu central prison on 10 August 1998. They were re-arrested respectively on 10 and 20 September 1998 as they were signing their *billet d'élargissement* (release note). They were still in prison in November 1999.

Manassé Nyilindekwe, from Masango *commune* in Gitarama *préfecture*, was detained from 1997 to 1999, without trial. In December 1999 he was released, then re-arrested on 4 January 2000. In February 2000 he remained in Gitarama central prison.

Venant Rwakana, aged 49, an agricultural assistant and former president of the MRND party[28] in Gishoma *commune*, Cyangugu *préfecture*, was first arrested on 3 January 1997, the day after he returned from the former Zaire (now DRC) where he had been a refugee. He was arrested by military officials and detained in the *cachot communal* until 17 December 1997. He was then transferred to Cyangugu central prison. He was accused of participation in the genocide as he had been a leader of the MRND. On 23 July 1999, following a hearing by the *Chambre du conseil*, he was provisionally released because of a lack of evidence. However, on 15 September 1999, he was re-arrested at home by gendarmes, taken to the

[28] The *Mouvement républicain national pour la démocratie et le développement* (MRND), Republican National Movement for Democracy and Development, was the ruling party under the former government of President Juvénal Habyarimana. Many massacres during the genocide in 1994 were carried out by members and supporters of the MRND.

Prosecutor's Office, questioned briefly then taken back to the central prison. After about three weeks, he was called to the *Chambre du conseil* again. He was reportedly asked to sign a *mise en arrestation provisoire* (provisional detention order) but he refused on the grounds that he had only recently received a *mise en liberté provisoire* (conditional release). He claimed he had been re-arrested on the basis of the same accusations and with the same case-file. By the end of 1999 he remained in Cyangugu central prison.

Callixte Kabalira, a teacher aged 48, was first arrested on 18 April 1997 following his return from the former Zaire. He was initially detained in the *cachot communal* of Gikomero, in Kigali Rural *préfecture*, then transferred to Kigali central prison on 28 February 1998. On 8 September 1999 he was provisionally released. However, on 10 September, he was re-arrested and taken to the gendarmerie at Muhima, in Kigali. His wife, who claimed she had been threatened herself following his release, was not informed about his re-arrest until a month later.

In a number of other cases, local authorities have failed to implement release orders and have maintained individuals in detention. For example, in December 1999, an order was issued for the provisional release of **François-Xavier Niyongira** in Masango *commune*, Gitarama *préfecture*. However, local gendarmes reportedly tore up the document ordering his release. By mid February 2000, François-Xavier Niyonzima remained in detention.

III.6 Re-arrests after trial and acquittal

Among the cases of greatest concern to Amnesty International are a number of individuals who have been re-arrested after being tried and acquitted. Article 14 (7) of the ICCPR states: "*no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country*".

Ignace Banyaga, aged 46, former *sous-préfet* (local government official) of the western *préfecture* of Kibuye, was first arrested on 14 March 1997 after being denounced in two public meetings for alleged participation in the genocide. His trial began in November 1998. After further investigations, he was found not guilty and acquitted on 26 April 1999. He was released on 27 April, then re-arrested the next day, following a protest at his acquittal and release. Judicial officials claimed that they had uncovered new evidence about his participation in the genocide. In May 1999 an order for his preventive detention was issued, based - at least in part - on a claim that he should be detained "for his own security". By early 2000 he was still detained in Kibuye central prison.

Pierre Rwakayigamba, second deputy governor of the *Banque nationale du Rwanda* (National Bank of Rwanda) and an advisor in the President's Office under the former government, was arrested on 1 October 1994 on accusations of participation in the genocide. After four years of detention without trial, his trial finally began in Kibungo on 6 October

1998. On 30 August 1999, he was acquitted. In early September 1999, just a few days after his release, he was re-arrested on the order of the prosecutor of Kigali (a different regional jurisdiction from that which tried him). At the end of 1999, he was still detained in the *brigade* of Remera, in Kigali.

Théodore Munyangabe, *sous-préfet* in the southwestern *préfecture* of Cyangugu, was arrested on 10 March 1995 on accusations of participation in the genocide. His trial began in Cyangugu in February 1997. He was denied access to a defence lawyer and the defence witnesses he had called for were not heard by the court. On 26 February 1997, the *tribunal de première instance* sentenced him to death. On 6 July 1999 he was acquitted by the court of appeal, on the basis that there had been blatant errors of fact and procedures in his trial and that there was insufficient evidence against him. He was released on 8 July and almost immediately placed under house arrest, apparently on the orders of the *conseil de sécurité* of Cyangugu (a committee made up of civilian and military officials of the *préfecture*, normally responsible for law and order, not for judicial matters). It would appear that the *conseil de sécurité* had recommended that special security measures be taken, supposedly to protect Théodore Munyangabe from threats following his release. Yet Théodore Munyangabe himself claimed that he had not been threatened and he had not asked for special protection. For several weeks he was kept under military guard. On 17 September 1999, he was re-arrested, on the basis of new accusations relating to the killing of three Tutsi in 1992 who had been caught allegedly trying to smuggle a land mine into the country. By January 2000 he was still detained at Cyangugu central prison, awaiting trial on the new accusations.

Déogratias Bazabazwa, aged 51, a schoolteacher in Cyangugu, was first arrested on 20 August 1996. He was detained for more than a year without trial - for six months in the *brigade* at Kamembe, then for eight months in Cyangugu central prison. In October 1997 the *Chambre du conseil* ordered his provisional release. In May 1998, he was re-arrested. He was detained for a month in the *cachot communal* of Gishoma, then transferred to the *brigade* of Kamembe. He was transferred back to Cyangugu central prison in July 1998. In his trial, he was accused not only of participation in the genocide, but also of collaboration with armed opposition groups. In August 1998, he was found not guilty, acquitted by the *tribunal de première instance* in Cyangugu, and released. A second defendant in the same trial, Jean-Pierre Uwibambe, was found guilty and sentenced to death.

On 7 October 1999, Déogratias Bazabazwa was re-arrested at the school where he worked in Gishoma *commune*. He was informed that the prosecutor had appealed against the judgement of the *tribunal de première instance*, asking for him to be classed as Category 1 (accused of playing a leading role during the genocide) and requesting the death penalty. The appeal court hearing had taken place on 30 September; the verdict was announced on 7 October 1999. Déogratias Bazabazwa was found guilty and sentenced to death by the court of appeal, and Jean-Pierre Uwibambe, his co-defendant who had been sentenced to death by the *tribunal de première instance*, was acquitted by the court of appeal.

There were serious violations of Déogratias Bazabazwa's right to a fair trial. As he had not been given advance notice of the date of the hearing, neither he nor his lawyer were present at the appeal court and therefore did not have an opportunity to defend his case. By the end of November 1999, he still had not received an explanation as to why the verdict of the *tribunal de première instance* had been completely overturned by the court of appeal. By the end of the year the text of the judgement of the court of appeal was reportedly still not available. At the time of writing, Déogratias Bazabazwa remains in detention in Cyangugu central prison and intends to file an appeal before the Court of Cassation.

Canisius Shyirambere and Aloys Havugimana, both former employees of the *Office rwandais du tourisme et des parc nationaux* (ORTPN), Rwandese Office of Tourism and National Parks, at the Birunga National Park in Kinigi, Ruhengeri *préfecture*, northwestern Rwanda, were first arrested on 24 November 1996 by military officials and detained in a military detention centre in Kinigi. They were released on 6 December 1996 and re-arrested, again by military officials, on 4 January 1997. They were held in the same detention centre until 8 January 1997 when they were transferred to the *brigade* of Ruhengeri, then to the central prison on 6 March 1997. They were accused of participating in massacres of Tutsi of the Bagogwe clan in 1991. On 28 October 1998, they were sentenced to death by the *tribunal de première instance* of Ruhengeri. They had not had access to a defence lawyer. They appealed, with the assistance of a lawyer, and on 18 August 1999, they were acquitted by the appeal court.

Despite their acquittal, they were not released. In September 1999, following protests at their acquittal, they were kept in detention, supposedly for their own protection. When Amnesty International delegates visited Ruhengeri in October 1999, they were informed that earlier that month, there had been a meeting between the regional authorities and members of the National Human Rights Commission at which it had been agreed that the two men should be released and that this principle had to be explained clearly to those who had tried to prevent their release. The *préfet* of Ruhengeri told Amnesty International that the authorities were trying to defend the course of justice, but that it was a delicate situation. Despite these assurances, in February 2000, Canisius Shyirambere and Aloys Havugimana were still held in Ruhengeri central prison.

Cases such as these demonstrate an absence of respect for the decisions of the courts and a willingness on the part of some authorities to disregard or arbitrarily over-rule decisions of the courts. They also seriously undermine the independence of the judiciary. This is a particularly regrettable development because since genocide trials started in Rwanda in December 1996, a number of improvements had been noted in terms of the fairness of trials and the independence of the courts. The trend towards re-arresting detainees who have been acquitted could discourage some of the judges and other officials who have so far demonstrated good faith and a willingness to act fairly; in the current political climate in Rwanda, the acquittal of an individual accused of genocide - even when there is a clear lack of evidence - is a courageous decision and significant progress has been made in this area, as

illustrated by the number of acquittals. However, these judgements may be rendered worthless if they are so easily over-ruled.

III.7 Killings of released detainees and their relatives

In a few cases, released detainees or members of their family have been killed soon after their release. In some instances, RPA soldiers were said to be responsible for these killings, apparently motivated by personal vengeance.[29] In other cases, the victims appear to have been killed as a result of disputes with private individuals. Detainees in some *cachots communaux* have expressed fears for their safety in the light of persistent rumours that some of them might be targeted if released.

Several killings of released detainees were reported in 1997, 1998 and 1999. For example, on 16 August 1998, 14 people were killed in Nyamagana, near Ruhango, in Gitarama *préfecture*, including the wife and children of **Emmanuel Gasana**, an Anglican pastor who had recently been released. To Amnesty International's knowledge, the perpetrators of the attack have not been brought to justice.

More recently, on 5 February 2000, **Aloys Rurangangabo** - one of several people acquitted by a court in Byumba on 14 January 2000 - was shot dead in Gakoni *secteur*, Murambi *commune*, in Umutara *préfecture*; his wife **Aima Ntagorama**, four year-old child **Ishimwe** and servant **Mbabajende, known as Buzoyo,** were also injured when a grenade was thrown into their house. Three individuals suspected of involvement in the attack were reportedly arrested. However, two others believed to have been responsible for the attack - an RPA soldier and a demobilized RPA soldier - remain at liberty; they had both reportedly expressed displeasure at the acquittals. The RPA soldier who is still in active service had apparently accused Aloys Rurangangabo of killing his father during the genocide. About two weeks earlier, in the same *secteur* of Gakoni, **Claver Sekaziga**, a defendant in the same trial who had also been released, narrowly escaped death when his house was set on fire.

Such killings have been used by some authorities to justify holding people in detention "for their own security". Amnesty International strongly condemns these killings and threats to the security of released individuals; however, the information available to the organization does not amount to evidence of a pattern of killings of released detainees. Furthermore, such cases can never be a justification for prolonging the detention of individuals who should be released. Instead, the authorities should persevere with their ongoing efforts to raise public awareness of the need to respect the decisions of the courts and other judicial bodies, as well as the principle of presumption of innocence, and should ensure that the individuals found responsible for such killings are brought to justice.

[29] Amnesty International is not aware of any evidence that these killings were ordered at government level. Nevertheless the state has an obligation to investigate and bring to justice members of its security forces who are alleged to have carried out these killings.

IV THE IMPOSITION OF THE DEATH PENALTY

Amnesty International opposes the death penalty in all cases, on the grounds that it is the ultimate cruel, inhuman or degrading punishment and violates the right to life. Under international human rights standards, people charged with crimes punishable by the death penalty are entitled to the strictest observance of all fair trial guarantees and to certain additional safeguards.

According to the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, the death penalty may be imposed only when the guilt of the accused person "*is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts*". Among the minimum safeguards in death penalty cases, the accused persons shall have the right to effective legal counsel during detention, at trial and on appeal and the right to adequate time and facilities to prepare a defence (Article 14(3) of the ICCPR and Paragraph 2(E)(1) of the African Commission Resolution).

Amnesty International remains concerned at the extensive imposition of the death penalty by the courts in Rwanda, particularly after unfair trials. Scores of death sentences continue to be handed, amounting to a total of around 370 by early 2000. The overall percentage of death sentences - compared to prison sentences and acquittals - has decreased since the genocide trials first started; however, the number of death sentences increased in 1999 in correspondence with an increase in the number of people tried. Approximately 184 people were sentenced to death in 1999, compared to 74 in 1998[30] and 111 in 1997. According to the Organic law no.8/96 of 30 August 1996, defendants accused of genocide who are classed as Category 1 (those accused of playing a leading role in the genocide) are sentenced to death if found guilty.

Although there have not been any judicial executions of people since April 1998, the government has not announced a moratorium on executions nor made any official statement on whether it intends to proceed with further executions. Therefore, those under sentence of death could be executed at any time once they have exhausted the possibilities for appeal. The appeal courts have confirmed many - though not all - of the death sentences handed down by the *tribunaux de première instance*. Defendants can appeal for presidential clemency as a last recourse. Amnesty International is not aware of any cases where presidential clemency has been granted or where death sentences have been commuted.

Many defendants who have been sentenced to death have had an unfair trial. One example is **Moïse Niyonshuti**, former *bourgmestre* of Rukira *commune* in Kibungo *préfecture*, whose

[30] This figure refers to those sentenced to death in genocide trials in 1998. In the same year, at least 12 other people were sentenced to death for other crimes and at least two were summarily executed without trial.

trial began in February 1998. On 23 September 1998, he was sentenced to death. There are strong indications that the judgement was based at least in part on falsified statements. For example the written statement of the testimony of one prosecution witness claimed that the witness had seen Moïse Niyonshuti in a meeting; however, in court the same witness had denied ever seeing the defendant in a meeting. Moïse Niyonshuti himself was not heard by the court. He complained about this, but the court rejected his complaint and the trial continued. The defendant also claimed that one of his main defence witnesses was not questioned. Furthermore, Emmanuel Rukiramakuba, a co-defendant in the same trial, confessed to having killed people himself but testified in the defence of Moïse Niyonshuti. His confession was rejected as incomplete. Moïse Niyonshuti was preparing his appeal at the end of 1999.

When Amnesty International visited Cyangugu central prison in November 1999, they spoke to several female detainees who had been sentenced to death in unfair trials. **Marceline Musabyemariya**, aged 23, was arrested on 14 February 1997, accused of being a member of an armed opposition group. She was tried on 26 June 1998 and sentenced to death. On 6 July 1999 the appeal court confirmed the death sentence. She did not have a lawyer at any stage, although she claimed the prosecutor had promised to obtain one for her. **Faina Nyabyenda**, aged 49, and **Damase Nyanzira**, aged 67, were both arrested in 1995, accused of killing by poisoning. They were sentenced to death on 26 January 1999. They did not have a lawyer. They claimed that prosecution and defence witnesses were present at the trial but that the defence witnesses were not questioned. The women have both appealed. **Astérie Nyirarusatsi** was arrested on 25 December 1995, accused of killing her husband. She was tried on 23 February 1999, without a lawyer, and sentenced to death.

Many defendants sentenced to death by the *tribunaux de première instance* have had to wait months - sometimes years - for their appeals to be heard. Hearings and judgements by the courts of appeal are frequently postponed.

For example, **Callixte Gakwaya**, a teacher and former *bourgmestre* in Gisuma *commune*, Cyangugu *préfecture*, was arrested on 8 February 1995, on accusations of involvement in massacres in Cyangugu stadium in 1994. His trial began two years later, on 8 February 1997. He claimed that he only had three days in which to read his case-file; he complained to the court but his complaint was rejected. He did not have access to a lawyer and the defence witnesses he had called were not present at the trial. However, the authorities reportedly sent a vehicle to fetch several prosecution witnesses, who were present at the trial. On 5 March 1997 he was sentenced to death. He appealed, with the assistance of a lawyer. The appeal hearing was then postponed several times, until June 1999, when the prosecution eventually presented its case. The judgement of the court of appeal was due to be announced at the end of June. On the morning of 30 June Callixte Gakwaya went to court and was told to return in the afternoon. In the afternoon he was told the hearing could not take place as one of the judges was absent. He was not given a new date. On 6 July 1999 he received a summons for the judgement hearing for 5 July. When he went to court he was told that the

judgment had been announced that same morning, on 6 July. The court of appeal had confirmed the death sentence. Neither the defendant nor his lawyer had been formally notified. Callixte Gakwaya claimed that only one of the four defence witnesses he had named had been questioned by the court of appeal.

V THE *GACACA* PROPOSALS

In 1999, in an attempt to address the huge number of outstanding cases, the Rwandese Government formulated plans to transfer many genocide cases to a system known as *gacaca*. At the time of writing, these proposals have yet to be formally adopted by the government and the National Assembly. According to the Minister of Justice Jean de Dieu Mucyo, the proposals are expected to be finalized in around June 2000. However, in practice, the adoption of the laws on *gacaca* and especially the implementation of the system is likely to take many months.

In summary [31], the draft law on *gacaca* proposes a system which would be loosely based on what the authorities describe as a traditional system of justice, involving ordinary citizens in trying their peers suspected of participation in the genocide.[32] Local *gacaca* tribunals would be set up throughout the country, from Rwanda's lowest administrative level of the *cellule*, to that of the *secteur*, *commune* and *préfecture*. All but Category 1 genocide cases (those accused of playing a leading role in the genocide) would be tried by the *gacaca* jurisdictions. Individuals tried by the *gacaca* jurisdictions would therefore include those accused of

[31] Amnesty International's comments on the proposed *gacaca* jurisdictions in this report are based on the version of the government's draft law which was being debated in January 2000 (there have been several earlier drafts, notably one which was made available by the government in June 1999). For a more detailed description of the proposals for the *gacaca* jurisdictions, please refer to these draft laws.

[32] Historically, *gacaca* has been used in Rwanda to resolve mostly civil, rather than criminal, offences. Its application to crimes as grave as genocide therefore represents a significant departure from its traditional use.

homicide, physical assault, destruction of property and other offences committed during the genocide, corresponding to Categories 2, 3 and 4[33]. The *gacaca* jurisdictions at the *cellule* level would try Category 4 cases; the *gacaca* jurisdictions at the *secteur* level would try Category 3 cases; and the *gacaca* jurisdictions at the *commune* level would try Category 2 cases, while the *gacaca* jurisdictions at the *préfecture* level would hear appeals from the Category 2 cases tried at the *commune* level. Category 1 defendants would continue to be tried by the ordinary courts.

Pending the adoption of the law setting up the *gacaca* jurisdictions, the Rwandese Government has undertaken various programs to prepare the ground, including visits by senior government officials to different parts of the country and a campaign to inform the public about the new proposals. The government has also sought international support and funding for the system.

[33] The categorization of defendants is explained in Organic law no.8/96 of 30 August 1996 on the organization of prosecutions for offences constituting the crime of genocide or crimes against humanity committed since 1 October 1990. This law has been used as the framework for the genocide trials in Rwanda to date. The new draft law on the *gacaca* jurisdictions contains some slight modifications to the original definition of the categories of defendants.

Amnesty International delegates who visited Rwanda in late 1999 received both positive and negative reactions to the proposals from Rwandese of various backgrounds. Many people expressed a general sense of hope and optimism for the proposals. However, some families of victims of the genocide expressed fears that the *gacaca* jurisdictions would result in excessively light sentences for those who may have committed terrible crimes.[34] Some of the accused, on the other hand, viewed the proposals as a way of legitimizing popular retribution on those presumed to be guilty for the genocide. Both groups expressed fears that the *gacaca* jurisdictions would be used as a way of settling personal scores, rather than extracting the truth or delivering justice. Some people raised the question as to why the *gacaca* jurisdictions would only be used to try genocide cases, while defendants accused of other crimes would continue to be tried under the existing system.[35] Unfortunately, a more systematic survey of public opinion about *gacaca* planned by the independent Rwandese human rights organization LIPRODHOR was not allowed to take place: in October 1999 the Minister of Justice wrote to LIPRODHOR prohibiting them from carrying out their survey until the government's own campaign on *gacaca* had come to an end.

In view of the fact that the existing justice system is still seriously overwhelmed and under-resourced, Amnesty International believes that a range of alternatives - which conform to international standards for fair trial - must be considered if Rwanda is ever to emerge from the impasse in relation to delivering justice for the genocide. Provided that fair trial standards are not compromised, the introduction of the *gacaca* jurisdictions might go some way towards alleviating the huge burden on the courts; it could also represent a positive development in terms of involving the local population in the process of justice. Holding trials at the local, grassroots level could encourage people to testify to events they witnessed personally during the genocide. However, Amnesty International is concerned about a number of fundamental aspects of the proposals which do not conform to basic international standards for fair trial.

Right to legal defence

The draft law on the *gacaca* jurisdictions does not make any explicit reference to the right of the accused to have access to legal representation. In view of existing safeguards of this right in national and international law, the accused should automatically enjoy this right in the *gacaca* trials. However, several senior Rwandese government officials, including the Minister of Justice, have stated explicitly and publicly that the accused in the *gacaca* trials

[34] In some cases, the draft law provides for lighter prison sentences or reduced penalties under the *gacaca* jurisdictions than under existing legislation. It also provides for considerable use of community service.

[35] This question has been raised in particular in relation to the prosecution of human rights abuses and other crimes committed by members of the RPF between 1990 and 1994 and by the RPA in more recent years. The creation of two parallel systems of justice has been described by some as "*deux poids deux mesures*" (double standards), with fair trial guarantees being granted selectively.

would not be allowed representation by a defence lawyer. This would result in a serious disadvantage for the accused, especially as the majority are likely to have little or no formal education, limited awareness of their rights or knowledge of how to defend themselves in a formal or semi-formal context. The question of the right of defendants to legal assistance in the pre-trial period has not been addressed either. In the proposals, the defendants themselves would not even be present at the hearing where their categorization would be decided - a hearing which will fundamentally affect the nature of their sentence if found guilty and could lead to life imprisonment for those classed as Category 2.

Amnesty International believes that the *gacaca* jurisdictions would not respect the principle of "equality of arms" - an essential criterion of a fair hearing which ensures that both parties have a procedurally equal position during the trial and are in an equal position to make their case. In response to this criticism, the government has denied that the prosecution would have an unfair advantage, as it would not participate in the *gacaca* trials. However, cases would clearly be judged on the basis of case-files prepared and passed on by the prosecution. It would be extremely difficult for defendants without the assistance of a lawyer to counter in an effective manner the accusations already contained in these case-files. Furthermore, those presiding over the *gacaca* tribunals, having little or no legal training (see below), are unlikely to challenge the information in the official case-file or the very basis for the case-file.

Concerns relating to competence, independence and impartiality

Amnesty International is seriously concerned about the lack of legal training of members of the *gacaca* jurisdictions. The individuals who would be asked to try the cases which come before the *gacaca* jurisdictions would be elected into this role by the local population. They would have no prior legal background or training, and yet will be expected to hand down judgments in extremely complex and sensitive cases, with sentences as heavy as life imprisonment. They would also be responsible for determining the categorization of the defendants which sets the framework for sentences - including classing defendants in Category 1, where those found guilty are sentenced to death. Even if these individuals are conscientious and striving to act in good faith, it is likely that they will be subjected to considerable pressures both from the accused and the complainants. The trials which have taken place to date in the ordinary courts in Rwanda have already revealed significant difficulties and controversies; they have illustrated the absolute need for judges to be able to resist political and psychological pressures, to know how to distinguish genuine from false testimonies and to respect at all times the equal rights of the defence and the prosecution. Many of the judges in the ordinary courts have only had a few months' training. The individuals trying the cases in the *gacaca* jurisdictions would not have benefited from any professional training, yet would presumably be expected to immediately exercise independence and impartiality. Government authorities have indicated that they would receive some "basic" training and have appealed for international assistance for this task, but have stressed that the rules governing the *gacaca* trials must be kept simple.

The draft law provides for advice to those sitting on the *gacaca* jurisdictions in the form of assistance by *conseillers juridiques* (legal advisers) designated by a special *gacaca* department in the Supreme Court. No further information is provided on the criteria for appointing these legal advisers, nor are there any guarantees of their independence. In terms of capacity and resources, it will be unrealistic to expect these advisers to provide assistance at every stage of the proceedings. In cases where they do advise on specific trials, they may be able to exert considerable influence, as the lay judges in the *gacaca* jurisdictions would find it difficult to challenge or reject guidance from advisers in the Supreme Court who have a legal professional background.

Concerns about appeal procedures

The draft law provides only limited recourse to appeal for defendants tried by the *gacaca* jurisdictions and no guarantees of fair trial at the appeal stage. Defendants tried at the level of the *cellule* can appeal to the *gacaca* jurisdiction at the *secteur* level - the next level up. Likewise, those tried at the *secteur* level can appeal to the level of the *commune*, and those tried at the *commune* level can appeal to the level of the *préfecture.* Amnesty International has the same fair trial concerns in relation to the appeal level as in relation to the trials in the first instance by the *gacaca* jurisdictions. Concerns about competence, independence, impartiality and denial of the right to legal defence all also apply to the appeal procedures. Amnesty International therefore believes that defendants may be denied a fair trial at the appeal stage too.

The search for the truth

One of the main hopes pinned on the *gacaca* jurisdictions is that they will succeed in revealing the truth - in a manner which the ordinary courts fail to do - by holding hearings at the grassroots level and encouraging people to testify to events they witnessed in their own community. However, it will not be sufficient to instruct people to tell the truth. The search for the truth is extremely important but should not be undertaken at the expense of justice. Safeguards in international standards are intended to prevent injustice and to uphold the fairness of trials. Safeguards must therefore be set up against convictions based on false denunciations and efforts must be made to respect the presumption of innocence. Both represent significant challenges in the Rwandese context: over the last few years, patterns of unsubstantiated denunciations have become entrenched and it has become almost habitual to accuse people of participation in the genocide as a way of settling scores. Furthermore, the principle of presumption of innocence is still not widely accepted in Rwanda.

International obligations

If the *gacaca* jurisdictions are set up as outlined in the draft law, the trials would clearly fail to meet basic international standards for fair trial. Amnesty International's main concerns about the draft law relate to the right to be tried by a competent, independent and impartial

tribunal; the right to a fair hearing; and the right of the accused to defend themselves through counsel. All these rights are guaranteed by the ICCPR and the African Charter.

A primary guarantee of a fair trial is that decisions will be made by competent, independent and impartial courts. This is reflected in Article 14(1) of ICCPR as well as Article 7 of the African Charter. Principle 2 of the Basic Principles on the Independence of the Judiciary states that "*the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason*". Judges should have legal training and experience (Principle 10 of the Basic Principles states "*Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law*") and should be impartial: they should not have any interest or stake in a particular case and should not have pre-formed opinions about it.

Among the minimum guarantees for a fair trial, Article 14(3) of the ICCPR includes the right to defend oneself through legal counsel and to be informed of such a right, and the right to examine and call witnesses.

Some advocates of the new *gacaca* system have argued that it is not appropriate to apply international standards of fair trial in this context, claiming that the *gacaca* jurisdictions are traditional methods of resolving conflicts, not a formal court system bound by international obligations. In practice, however, they would be the equivalent of criminal tribunals, but with few or no procedural safeguards against error or abuse. In many respects they would mirror the ordinary courts at the local level, with the principal difference that the judges would be lay people, not legal professionals. The *gacaca* tribunals would have many of the same powers as ordinary courts: the power to try defendants for crimes as serious as murder, to sentence them to lengthy prison sentences, including life imprisonment, and to compel witnesses to testify. They would also be applying criminal state legislation - all features which require them to conform to minimum international standards. Furthermore, the *gacaca* proposals have been conceived and promoted - and ultimately will be enforced - by the state. They will be introduced and administered through state legislation, and a special department in the Supreme Court will be created to supervise the activities of the *gacaca* jurisdictions.

In any case, the description of the *gacaca* jurisdictions as a traditional system does not mean that international standards of fair trial can be set aside. Rwanda has ratified international human rights treaties which provide for the right to a fair trial. Under international law, it has an obligation to adopt legislative and other measures to give effect to the rights guaranteed in these treaties (see Article 2 of the ICCPR; a similar provision can be found in Article 1 of the African Charter). According to the Human Rights Committee (General Comment 13), the provisions of Article 14 of the ICCPR apply to trials in all courts and tribunals .

Furthermore, the declaration of the Seminar on the Right to a Fair Trial in Africa, organized by the African Commission on Human and Peoples' Rights in Dakar, Senegal, on 9-11

September 1999, reaffirms that "*The right to a fair trial is a fundamental right, the non-observance of which undermines all other human rights. Therefore the right to fair trial is a non-derogable right, especially as the African Charter does not expressly allow for any derogations from the rights it enshrines*." It goes on to state: "*Traditional courts are not exempt from the provisions of the African Charter relating to fair trial*".

VI RECOMMENDATIONS

Amnesty International recognizes the many complex issues which still surround the process of justice in Rwanda six years after the genocide, as well as the continuing challenges to the judicial system in terms of the inadequacy of resources for dealing with such an enormous caseload. The organization urges the Rwandese Government to rectify past abuses, to accelerate trials without sacrificing standards of fairness, and to continue raising awareness and encouraging debate among the population on issues of justice and human rights.

Below is a series of recommendations relating to the main concerns described in this report. Amnesty International acknowledges that it may not be possible to resolve immediately some of the deeper problems which persist in the aftermath of the genocide; however, the organization believes that the implementation of these recommendations would already have a significant impact in ensuring respect for the rights of detainees, defendants and victims of the genocide, and in contributing to a longer-term culture of respect for justice and human rights in Rwanda.
Many of these recommendations are inter-related. For example, steps to prevent further arbitrary arrests and to release all those unlawfully detained would have an immediate positive effect on prison conditions; they would also benefit the proposed *gacaca* jurisdictions, as they would reduce the number of cases and ensure that those cases which would come before the *gacaca* jurisdictions would be based on substantial evidence.

In the case of all the recommendations below, Amnesty International urges national-level authorities to exercise greater control over local government, security and judicial officials to ensure that human rights are respected throughout the country.

VI.1 Arrests, detention and releases

I.4_ Prevent further arbitrary arrests and ensure that arrests are only carried out on the basis of substantial evidence and by competent authorities who have legal powers of arrest.

I.5_ Respect the right of detainees to be tried within a reasonable time or be released pending trial.

I.6_ Ensure that all pre-trial detainees have the opportunity to challenge the basis and legality of their detention.

- Release without delay detainees without a case-file and those unlawfully arrested or detained.

- Proceed with a systematic, accelerated review of cases of pre-trial detention. Establish clear and objective criteria to determine the order in which cases are processed; priority should be accorded to cases of individuals who have been detained for longer periods, to children and the very elderly.

- Ensure that the *Chambres du conseil* function fully and effectively across the country.

- Instruct local judicial officials that individuals released from detention should only be re-arrested if substantial fresh evidence comes to light and only after thorough and independent investigations have been carried out. In no circumstances should individuals who have been acquitted be re-arrested on the basis of the same accusations.

- In cases where the authorities are aware of possible threats against released individuals, measures should be taken to ensure their protection. The existence of such threats should not be used as a justification to maintain the individuals in detention.

- Make clear to all judicial authorities that the continued detention of individuals whose release has been ordered by the *Chambres du conseil* and especially by the courts after acquittal is illegal and unacceptable. Those suspected to be responsible for unlawful detentions should be brought to justice and if found guilty, prevented from carrying out functions which allow them to violate the rights of detainees.

- The government should continue and intensify its campaign to raise awareness among the population of the importance of respecting the decisions of the courts and the rights of detainees and those who are released.

- Provide compensation to those detained unlawfully for prolonged periods.

VI.2 Torture, ill-treatment and prison conditions

- Ensure that members of the security forces and guards in detention centres are aware that torture and ill-treatment of detainees will not be tolerated and that those suspected of torture or ill-treatment will be removed from their positions and brought to justice.
- Investigate all reported cases of ill-treatment and torture - particularly cases of deaths as a result of such treatment - and ensure that those suspected of torture or ill-treatment are brought to justice, in accordance with international standards for fair trial and without recourse to the death penalty.

- Ensure that an autopsy and an impartial and independent judicial inquiry are carried out in all cases of deaths in custody and that the results are communicated to the family of the deceased.

- Provide compensation to victims of torture and ill-treatment by state agents, or to their families in cases of death as a result of ill-treatment or torture.

- Ensure that detainees who have been tortured or ill-treated and those who are suffering ill-health as a result of prison conditions are immediately transferred to a hospital or medical centre for appropriate treatment and have regular access to medical care.

- Ensure that detainees held in the *cachots communaux* are provided with food by the state and are not obliged to depend entirely on their families.

VI.3 Military detention

- Disclose the identity of all those held in military detention centres.

- Ensure that no detainees are held in secret or unofficial detention centres and immediately transfer detainees to officially recognized places of detention.

- Allow immediate and unrestricted access to detainees in military custody to relatives of detainees, doctors, lawyers and human rights and humanitarian organizations

- End the practice of detaining civilians in military custody.

VI.4 Fair trials and imposition of the death penalty

- Defendants who have been convicted after an unfair trial, especially those sentenced to death, should have the opportunity to be re-tried by the court with their full rights respected. Persons charged with crimes punishable by death are entitled to the strictest observance of all fair trial guarantees.

- All defendants should have access to a defence lawyer in the investigation and pre-trial stages, as well as throughout their trial and appeal. Defence lawyers should have access to files throughout the investigation period and they and their clients should be given adequate time to prepare a defence and advance notice of hearings, including appeal hearings.

- The government should take measures to protect the independence of the judiciary at the national and local levels and ensure that all judicial officials are able to carry out their functions independently, without interference, and with the confidence and knowledge that decisions will be respected.

- Every effort should be made to minimize delays and postponements of trials, including hearings in the appeal courts, unless there is a lawful basis for such postponements.

- Speed up the process of compensation for victims of the genocide and their families, including payment of damages awarded as an outcome of trials, and set up without further delay the state fund for compensation for victims of the genocide.

- Institute a moratorium on executions pending further discussion on the abolition of the death penalty in Rwanda. Meanwhile, the government should initiate and promote debate on the death penalty among the population and involve independent human rights organizations to help raise awareness of the human rights issues at stake.

VI.5 The *gacaca* jurisdictions

Amnesty International believes that for the *gacaca* jurisdictions to be effective, they should not be viewed in isolation, as their performance will depend to a large extent on whether other judicial mechanisms and institutions are functioning properly. While it may be appropriate for the government to devote considerable resources to ensuring that the *gacaca* jurisdictions are efficient and fair, this should not be done to the detriment of other parts of the judiciary. In particular, the impetus around the *gacaca* jurisdictions should not detract from efforts to improve the functioning of the ordinary courts, especially as these will still try Category 1 defendants accused of genocide. Furthermore, the time that it takes to set up the *gacaca* jurisdictions should not be allowed to slow down the pace of trials in the ordinary courts. The process of setting up the *gacaca* jurisdictions should include an evaluation of the genocide trials which have taken place to date in the ordinary courts and apply the lessons learnt.

- The draft law on the *gacaca* jurisdictions should be amended to ensure that these trials conform to international standards for fair trial. In particular:

  - defendants should be explicitly granted the right to legal representation.
  - measures should be taken to ensure the competence, independence and impartiality of those elected to the *gacaca* jurisdictions, at all levels.

- Before the *gacaca* jurisdictions begin considering cases of genocide, significant resources should be devoted to ensuring training for those elected for the *gacaca* jurisdictions, including training in international standards for fair trial.