

ORGANIC LAW N° 33/2001 OF 22/6/2001 MODIFYING AND COMPLETING ORGANIC LAW N° 40/2000 OF JANUARY 26, 2001 SETTING UP "GACACA JURISDICTIONS" AND ORGANISING PROSECUTIONS FOR OFFENCES CONSTITUTING THE CRIME OF GENOCIDE OR CRIMES AGAINST HUMANITY, COMMITTED BETWEEN OCTOBER 1, 1990 AND DECEMBER 31, 1994.

We, Paul KAGAME,
President of the Republic,

THE TRANSITIONAL NATIONAL ASSEMBLY HAS ADOPTED AND WE SANCTION, PROMULGATE THE ORGANIC LAW, AS DECLARED TO BE IN HARMONY WITH THE FUNDAMENTAL LAW BY THE SUPREME COURT, SECTION OF THE CONSTITUTIONAL COURT, IN ITS RULING N°032/11.02/01 PASSED ON 15/06/2001, AND ORDER THAT IT BE PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA.

The Transitional National Assembly, meeting in its session of May 29, 2001;

Given the Fundamental Law of the Republic of Rwanda, as modified and completed to date, especially the Constitution of June 10, 1991, in its Articles 12, 33, 69, 91 and 97 and the Arusha Peace Agreement on Power Sharing, especially in its Articles 3,6-d, 16-3°; 26, 39-c, 40, 72 and 73;

Given the review of the Fundamental Law of October 5, 2000;

Having reviewed Organic Law n° 40/2000 of January 26, 2001 setting up Gacaca Jurisdictions and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 in its Articles 2, 6, 7, 8, 9, 11, 13, 17, 18, 20, 23, 34, 50, 68, 69 and 96;

ADOPTS :

Article One :

In Organic Law n° 40/2000 of January 26, 2001 setting up "Gacaca Jurisdictions" and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994, where "District" is mentioned one should understand that it is the District or the Municipality, and where "Province" is mentioned one should understand that it is the Province or the City of Kigali.

Article 2 :

To Article 2 of Organic Law n° 40/2000 of January 26, 2001 setting up "Gacaca Jurisdictions" and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is added a 4th paragraph which reads as follows:

" Persons mentioned in preceding paragraphs are tried by courts referred to in those paragraphs even if their accomplices are being prosecuted by courts different from the ones judging them. In such a case, rather, their accomplices can instead, be summoned as witnesses in their trial"

Article 3:

Article 6 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is modified as follows :

"The General Assembly of the Cell's “Gacaca Jurisdiction” is made up of all people aged at least 18 living in the Cell.

However, where it is clearly established that the number of the people aged 18 or older living in the Cell is less than 200, that Cell may be attached to another Cell in the same Sector, and form one Cell’s “Gacaca Jurisdiction”. The same applies where it becomes clear that the number of honest persons mentioned in the first paragraph of Article 9 cannot be reached. Cells that have been attached to each other repeat the voting of honest persons.

In case Cells are joined together but still the required number of honest persons is not reached and in case there are no other Cells in that Sector to which they can be joined, these Cells are joined to a Cell of the neighbouring Sector. The Sector which those Cells were part of, is also joined to the Sector which the Cell attached to those ones belonged to.

The decision to attach a Cell to the jurisdiction of the “Gacaca Jurisdiction” of another Cell is taken by the Chairman of the Supreme Court or by a person mandated by him, at the request of the Mayor of the concerned District or Municipality or by any other interested person."

Article 4 :

To Article 7 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is added a 2nd paragraph which reads as follows:

"Where the number of at least 50 honest persons mentioned in the preceding paragraph is no longer reached, the Coordinating Committee requests “Gacaca Jurisdictions” at a lower level to send honest persons to complete the missing number, according to the number of honest persons making up the General Assembly of each Jurisdiction"

Article 5:

Article 8 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is modified as follows:

"Each Cell, each Sector, and each District is represented in the General Assembly of the immediately higher Gacaca Jurisdiction."

Article 6:

Article 9 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is modified as follows :

"The General Assembly of the Cell's “Gacaca Jurisdiction” elects from among its members enough honest persons including those who are made part of the Sector's “Gacaca Jurisdiction” and 19 who are members of the Seat of Cell's “Gacaca Jurisdiction”.

Honest persons who are made part of Sector's “Gacaca Jurisdiction” elect from among themselves those who are sent to District's “Gacaca Jurisdiction”, while the remaining ones form the General Assembly of Sector's “Gacaca Jurisdiction”.

Honest persons who are made part of District's “Gacaca Jurisdiction” elect from among themselves those who are sent to Province's “Gacaca Jurisdiction” while the remaining ones form the General Assembly of District's “Gacaca Jurisdiction”.

The number of honest persons who have to be sent by the “Gacaca Jurisdiction” of the Cell, of the Sector, or of the District to be part of the immediately higher “Gacaca Jurisdiction” is determined by the Chairperson of the Supreme Court.

The President of the Republic issues orders determining, the modalities for organising the elections of members of “Gacaca Jurisdictions ”.

Article 7:

Article 11 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is modified as follows:

" However, the following people cannot be elected member of the Seat for the “Gacaca Jurisdiction” of the Cell or member of the General Assembly of the “Gacaca Jurisdiction” of the Sector, of the District or of the Province:

1. persons fulfilling a political mandate;
2. persons in charge of Government administrations, whether centralised or decentralised;
3. soldiers who are still in active service;
4. members of the national police still in active service;
5. professional magistrates;
6. members of leading organs of a political party at national level.

The incompatibility disappears as soon as the concerned person's resignation has been accepted.

Persons in charge of Government administrations mentioned in point 2 of the first paragraph of this Article are : the Prefect of the Province, the Mayor of the City of Kigali, members of the Executive Committee of a Municipality or a District, members of the administrative and political committees at Sector and Cell levels.

Any persons listed among persons prosecuted or accused of having committed offences constituting the crime of genocide classifying them in the first category can not elect or be elected.

Article 8:

Paragraphs 4 and 5 of Article 13 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 are hereby repealed.

Article 9:

The first paragraph of Article 17 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is modified as follows:

"The Seat for each “Gacaca Jurisdiction” elects from among its members, by the simple majority of votes, the Coordinating Committee made up of the Chairperson, the first Vice-Chairperson, the second Vice-Chairperson and two Secretaries who can at least read and write Kinyarwanda".

Article 10:

The line a) of Article 18 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is hereby repealed.

Article 11:

Article 20 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is modified as follows:

"Leaders of administrative entities in which “Gacaca Jurisdictions” are established put working offices at their disposal. They convene and chair, each one at the administrative level he/she is in charge of, the very first meeting of the General Assembly which is due to elect members of the Seat for the “Gacaca Jurisdiction” and honest persons to be sent to the immediately higher “Gacaca Jurisdiction” and the very first meeting of the Seat for “Gacaca Jurisdiction” due to elect members of the Coordinating Committee."

Article 12:

The first paragraph of Article 23 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is modified as follows:

" Apart from the General Assembly for the Cell's “Gacaca Jurisdiction” which can only sit legitimately if at least a hundred persons of its members are present, the General Assemblies of other Gacaca Jurisdictions can only sit legitimately when at least 2/3 of their members are present.

Article 13:

The line e) of Article 34 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is modified as follows :

" e) classifying defendants into categories as per this Organic Law."

Article 14:

To Article 50 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is added a second paragraph which reads as follows :

"It can give them instructions regarding the good functioning, but is not allowed to instruct those courts on trial dealings."

Article 15:

The second paragraph of Article 68 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is modified as follows:

"Defendants falling within the first category who have had recourse to the confession and guilt plea procedure as provided for in Article 56 of this Organic Law are sentenced to a 25 year imprisonment or life imprisonment".

Article 16:

Line a) of Article 69 of Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is modified as follows:

“ a) who did not have recourse to the confession and guilt plea procedure, or whose confessions and guilt plea were not acknowledged, are sentenced to a 25 year imprisonment or life imprisonment”.

Article 17:

The 4th paragraph of Article 96 of the Organic Law n° 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organising prosecutions of offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994 is modified as follows:

"However, where it is proved that the defendant being prosecuted in that way is accomplice of defendants being prosecuted by “Gacaca Jurisdiction” and that they come within the same category, the provisions of Article 2 of this organic Law are applied".

Article 18:

All previous provisions contrary to this Organic Law are hereby abrogated.

Article 19:

This Organic Law comes into force on the day of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on 22/6/2001

**The President of the Republic
Paul KAGAME
(sé)**

**The Prime Minister
Bernard MAKUZA
(sé)**

**The Minister of Justice and Institutional Relations
Jean de Dieu MUCYO
(sé)**

Seen and sealed with the Seal of the Republic:

**The Minister of Justice and Institutional Relations
Jean de Dieu MUCYO
(sé)**