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LEGAL AID BOARD

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Information on Gacaca courts; General, Laws, Tribunals, Punishments handed down, Death penalty, Criminal prosecutions

The *United States Department of State* 2010 Country Report for Rwanda notes:

“By law detainees are allowed access to lawyers, although they are not allowed formal representation in the gacaca process.” (United States Department of State (11 March 2010) *2009 Country Reports on Human Rights Practices – Rwanda*)

The same report continues adding:

“There were serious problems of lengthy pretrial detention, including the detention of persons whose unresolved cases dated from 1994, a consequence of the large number of persons suspected of committing genocide who continued to be held in prisons and detention centers. The law permits the continued detention of genocide suspects long enough to allow them to face trial either in an ordinary court or in the gacaca system. The government made significant progress in reducing the gacaca case backlog. Authorities permitted the majority of convicted prisoners (those who had confessed their genocide crimes) to return to their families, with actual prison time to be served after the suspended and community service portions of their sentences had expired.” (Ibid)

It also states:

“Gacaca courts served as the government's primary judicial process for adjudicating hundreds of thousands of genocide cases. (The government estimated that adjudicating the caseload in ordinary courts would have taken decades.) Gacaca defendants are presumed innocent until proven guilty, and gacaca courts normally decide a case the day of the trial. There is no bail in the gacaca system, and defendants are informed of the charges against them during the trial, not before it. Defendants in gacaca courts can present witnesses and evidence on their own behalf, although witnesses were sometimes reluctant to testify for fear of reprisals, mainly in the form of accusations of complicity in the alleged crimes at issue. Defendants can appeal gacaca proceedings at sector-level courts. Lawyers are not permitted to participate officially in gacaca, but they can testify as private citizens.” (Ibid)

The June 2010 *Freedom House* Freedom in the World report for Rwanda notes:

“In 2009, the grassroots gacaca courts officially completed their work of adjudicating genocide cases, though plans for a continuation of the gacaca system were under way. Separately, by year's end the International Criminal Tribunal for Rwanda (ICTR) had arrested a total of 81 individuals and completed cases against 48 since its inception in

1994. Cases against 26 individuals were ongoing. Genocide trials for Rwandans also took place in Belgium, Canada, and Finland. Meanwhile, charges against RPF officials have been leveled in both Spain and France for war crimes allegedly committed during the genocide. Rose Kabuye, a key Kagame ally who had been arrested in Germany in 2008 and extradited to France, remained there awaiting trial in 2009.” (Freedom House (24 June 2010) *Freedom in the World 2010 – Rwanda*)

The January 2011 *Human Rights Watch* annual report for Rwanda, states:

“Gacaca courts were due to end their genocide trials in 2010, but the definitive completion of the process was repeatedly delayed. The government is developing mechanisms to handle outstanding genocide cases and to adjudicate alleged miscarriages of justice by gacaca jurisdictions.

Gacaca courts have prosecuted around 1.5 million cases with involvement from local communities across the country. The conduct of trials before gacaca courts has been mixed. Some judges delivered fair and objective judgments. Others handed down heavy sentences, including life imprisonment in isolation, on the basis of very little evidence. A number of witnesses and judges proved vulnerable to corruption and outside influence, affecting the outcome of trials and undermining confidence in the courts. Some defense witnesses were afraid to testify for fear of being accused of genocide themselves, and there were numerous allegations that gacaca courts sacrificed the truth to satisfy political interests.” (Human Rights Watch (January 2011) *World Report 2011 – Rwanda*)

A July 2010 *Immigration and Refugee Board of Canada* response notes:

“Two other sources consulted by the Research Directorate state that, according to official sources, the closure of the gacaca courts has been reported on many occasions (Agence Hironnelle 12 Apr. 2010; *ibid.* 31 Mar. 2010; RFI 6 Apr. 2010). A 6 April 2010 article by Radio France Internationale (RFI) states that the closure of the gacaca courts had been initially planned [translation] “for late 2007, then December 2009, February 2010 and finally for 31 March 2010.” Still according to the RFI article, since August 2009, the gacaca courts have not been receiving any new cases, which are reportedly since being sent to the regular courts (RFI 6 Apr. 2010). The 419 cases not yet settled are reportedly proceedings that are being appealed or reviewed (*ibid.*). A 14 July 2010 Agence Hironnelle article cites the head of the SNJG legal department, who claimed that [translation] “415 of the 416 sectors of the country have already ended the work of their gacaca courts and filed their reports; the only case outstanding is a case under review.” Additional information about this topic or any specific reasons for the closure of the gacaca courts could not be found among the sources consulted by the Research Directorate.” (Immigration and Refugee Board of Canada (30 July 2010) *Rwanda: Whether the gacaca courts are still operational; if not, the reasons that led to the courts being closed, including key dates; whether individuals are still summoned to appear before these courts RWA103550.FE*)

An *IRIN News* article from June 2009 states:

“Most [survivors] who have testified in these courts are traumatized because genocide suspects and convicts single them out for revenge,” said Theodore Simburudari, president of IBUKA.

Gacaca means “grass”, and trials are designed to take place in the open, where survivors point to suspects. This makes them vulnerable to reprisal attacks, Simburudari added.” (IRIN News (23 June 2009) *RWANDA: Jury still out on effectiveness of ‘Gacaca’ courts*)

The same article continues stating:

“Aid organizations have hailed the Gacaca system for reducing prison congestion through non-custodial sentences. The government has also so far released over 1,400 prisoners, requiring that they do community work instead of being locked up.” (Ibid)

In a section titled 'Gacaca proceedings', the May 2010 *Amnesty International* annual report for Rwanda, notes:

“Gacaca trials, whose procedures fail to meet international fair trial standards, were expedited with the objective of completing all outstanding cases by December. The 31 July deadline for new accusations before gacaca was extended in some areas. Some gacaca trials were reportedly marred by false accusations, corruption, and difficulties in calling defence witnesses. In December, with several appeals and revisions pending, the deadline to end gacaca was extended to the end of February 2010. After the closure of gacaca, new accusations were to be presented before conventional courts.” (Amnesty International (28 May 2010) *Amnesty International Report 2010 – Rwanda*)

The January 2010 *Human Rights Watch* annual report for Rwanda states:

“Community-based gacaca courts and national conventional courts continued to try individuals for crimes committed during the 1994 genocide. Gacaca courts were expected to close in June 2009, but the National Service of Gacaca Jurisdictions (SNJG) unexpectedly began gathering new allegations in parts of the country and extended the deadline to December. While some Rwandans feel the gacaca process has helped reconciliation, others point to corruption and argue that the accused receive sentences that are too lenient, or are convicted on flimsy evidence. The government increasingly but unsuccessfully called for foreign jurisdictions, including the International Criminal Tribunal for Rwanda (ICTR) in Tanzania, and several European countries, to return genocide suspects to Rwanda. It vehemently rejected calls for the ICTR to prosecute crimes committed by the Rwandan Patriotic Front in 1994.

Gacaca Jurisdictions

Corruption and undue influence by local authorities and other prominent community members marred gacaca proceedings, undermining trust among victims and the accused. According to the SNJG, gacaca courts have decided nearly 1.6 million genocide cases since their start in 2002. Recent cases increasingly related to government silencing of political dissent and private grievances, rather than events from 1994, led many Rwandans to flee the country to escape condemnation or perceived threats of renewed prosecution.

Gacaca courts spent much of the year trying thousands of sexual violence and other particularly serious cases, and imposed mandatory lifetime solitary confinement for convicted persons. In the absence of legislation setting out the implementation of this

punishment, prison authorities did not isolate prisoners. Rape victims uniformly expressed disappointment at having to appear in gacaca rather than conventional courts, as gacaca proceedings-even behind closed doors-failed to protect their privacy." (Human Rights Watch (20 January 2010) *Rwanda: "World Report 2010"*)

In its 2009 annual report on Rwanda, *Amnesty International* notes:

"In October, an estimated 10,000 category one cases were pending before gacaca courts, whose procedures fail to meet international standards of fair trial. Category one cases involve the planners, organizers, instigators and supervisors of the genocide. Of these, at least 6,000 were rape cases which were transferred to category one in May 2008.

Gacaca trials were reportedly marred by false accusations and corruption. In addition, defence witnesses were reluctant to come forward because they feared that the authorities would level false accusations against them.

On 21 January, a gacaca judge in Karana sector was accused of trying to bribe a prosecution witness. The case was at the appeal stage and the accused had been sentenced to 27 years' imprisonment." (Amnesty International (28 May 2009) *Rwanda: "Annual Report 2009"*)

A July 2008 *Human Rights Watch* report on judicial reform in Rwanda, states:

"When gacaca jurisdictions were established in 2001, they were meant to judge all but the most serious crimes of genocide (those of category one), which were left to the conventional courts. It was hoped that the gacaca process would speed the resolution of the huge backlog of cases, reduce the prison population, and contribute to reconciliation. Gacaca jurisdictions brought together modified elements of customary practices for resolving conflicts and aspects of a conventional state-run punitive justice system.[23] In essence it involved popularly elected judges deciding cases related to the genocide before a gathering of the local population. The judges, who were to guide the hearings and then finally to deliver the verdict of the community, were chosen on the basis of their integrity rather than their formal learning. Some did not read or write, although all received several days of training on the relevant laws and procedures. The transparency of the process and participation of the entire community was supposed to assure the legitimacy of the proceedings and to protect the rights of all participants, making unnecessary the kinds of fair trial guarantees provided by Rwandan law and international conventions. The accused had no access to counsel in gacaca jurisdictions, for example, although that right is guaranteed by the Rwandan constitution and by the International Convention on Civil and Political Rights to which Rwanda is party.[24]" (Human Rights Watch (July 2008) *Rwanda: "Law and Reality: Progress in Judicial Reform in Rwanda"*)

This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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