

Rule of Law Quick Scan Rwanda



The Rule of Law in Rwanda:
Prospects and Challenges

Rule of Law Quick Scan

Rwanda

Prospects and Challenges

HiiL Rule of Law Quick Scan Series

This document is part of HiiL's Rule of Law Quick Scan Series. Each Quick Scan provides a brief overview of the status of rule of law in a country.

April 2012

The main text of the Quick Scan was finalized 1 November 2011

Foreword

This document is part of Hiil's *Rule of Law Quick Scan Series*. Each Quick Scan provides a brief overview of the status of rule of law in a country.

The Quick Scan Series is primarily meant for busy practitioners and academics who want to have a snapshot of the rule of law in a country, particularly with a view to understanding what the main trends and challenges regarding the rule of law are and where local and international stakeholders can possibly make a positive difference.

Each Quick Scan is written by a reputable rule of law expert from academia and/ or practice, who is either from the concerned country or has spent many years living and working there.

The Quick Scan Series aims to be neutral and balanced. To achieve this aim, the authors have consulted sources from a wide range of stakeholders, including the government, (inter)national NGOs, academia, and international organizations. They present differences of opinion or analysis, but do not pronounce judgment on which view is correct. In the context of their work on the Quick Scan they have visited the country and talked to different stakeholders, presented drafts and revised in view of the comments they received.

All Quick Scans have the same format. Part A describes relevant historical, social, political and economic context. Part B analyses positive trends and challenges. Part C is an overview of relevant indicators on rule of law. To identify relevant trends and challenges in rule of law, the Quick Scans are guided by the conception of the rule of law developed by the World Justice Project Rule of Law Index.

The Series is made possible by generous funding of the Dutch Ministry of Economic Affairs for the Innovative Rule of Law Initiative.

The Hague,

Ronald Janse
Hague Institute for the Internationalisation of Law

April 2012

The main text of the Quick Scan was finalized 1 November 2011

The HiIL Rule of Law Quick Scan Series is published by HiIL.

Content & realisation Quick Scan on the rule of law in Rwanda:

- HiIL, The Hague, The Netherlands

Editor in chief:

- Ronald Janse, HiIL, The Hague, The Netherlands

Author:

- Roelof H. Haverman, free-lance Rule of Law consultant

Published April 2012

Feedback, comments and suggestions: info@hiil.org

© 2012 HiIL

All reports, publications and other communication materials are subject to HiIL's Intellectual Property Policy Document, which can be found at www.hiil.org

About the author | Roelof H. Haverman

Roelof H. Haverman (LLM Erasmus University Rotterdam, 1983; PhD Utrecht University, 1998) works as free-lance Rule of Law consultant, mainly in Africa: Rwanda, Uganda, South Sudan and Côte d'Ivoire.

From June 2010 until March 2011 he worked as a Field Programme Manager for IDLO/International Law Development Organization in Juba, South Sudan, *inter alia* supporting the Judiciary of South Sudan in organising training, developing a capacity building strategy and bench books, and assisting the Ministry of Justice in the establishment of a Legal Training Institute.

Roelof Haverman lived and worked in Rwanda from 2005 until 2010, initially for the Dutch Center for International Legal Cooperation (CILC), supporting the law faculties of the Université Nationale du Rwanda (UNR, Butare) and the Université Libre de Kigali (ULK, Kigali) in strengthening their academic and managerial capacity and quality, and revising the national law curriculum.

Since its start early 2008 until May 2010 he was the Vice Rector in charge of Academic Affairs and Research of the ILPD/Institute of Legal Practice and Development in Rwanda, the post-graduate training institute for the justice sector. As such he was among other things responsible for the development of the Diploma in Legal Practice programme, an initial training programme for judges, prosecutors and members of the Bar, as well as a Continuing Legal Education programme for the entire justice sector. In addition, in 2007-2008 Roelof Haverman provided technical assistance in organisational reform for the Law Development Centre in Uganda.

Since 1986 Roelof Haverman worked at various universities in the Netherlands; lastly – from 1996 until 2005 – as an associate professor of (international) criminal law and criminal procedure at Leiden University and fellow of the E.M. Meijers Institute of Legal Studies of the Faculty of Law, Leiden University. Since its establishment in 2002 and until 2005, he was the programme-director of the Grotius Centre for International Legal Studies at Leiden University's Campus in The Hague.

In 1998 he defended his PhD-dissertation on the 'Conditions for Criminalizing Trafficking in Women' (in Dutch) at Utrecht University, in the Netherlands.

Over the past 20 years, he has published many articles and a number of books on gender-related crimes, trafficking in persons and prostitution, the principle of legality. His scholarship currently concentrates on all kinds of issues related to international criminal law, covering such topics as customary law (Indonesian *adat*, Rwandan *gacaca*), prosecutorial discretion, gender crimes, legality, fair trial, supranational criminology and victimology, comparative criminal law, and the *sui generis* character of the supranational penal system. He is the editor-in-chief of the series: Supranational Criminal Law, *Capita Selecta*, Intersentia, Antwerp, and co-editor of the electronic Newsletter Criminology and International Crimes.

Table of Content

Executive Summary	7
Methodology	8
Part A: Overview of the Rule of Law in Rwanda	10
1. Introduction	11
2. Main institutions and actors in the justice sector (formal and informal)	13
2.1 General	13
2.2 JRLO-Sector	13
2.3 Justice Sector Civil Society	15
2.4 The Judiciary	15
2.4.1 Organisation, Functioning and Jurisdiction	15
2.4.2 Judges	16
2.4.3 The Superior Council of the Judiciary	17
2.4.4 The General Inspectorate	18
3. The Context	19
3.1 History	19
3.2 The Genocide	22
3.3 Politics	23
3.3.1 Parliament	24
3.3.2 Political Parties	24
3.3.3 The Consultative Forum of Political Organisations	24
3.4 Religion	25
3.5 Economics	26
4. Home grown initiatives	29
4.1 Gacaca	29
4.2 Abunzi	32
Part B: Positive Trends and Challenges Regarding the Rule of Law	35
1. Introduction	36
2. Positive trends	38
2.1 Corruption	38
2.2 Judiciary	40
2.2.1 Professionalism	40
2.2.2 Mandate	41
2.2.3 Specialised Courts and Chambers	41
2.3 Fair trial	41
2.4 Access to Justice	43
3. Challenges	46
3.1 Genocide Ideology, Divisionism, Negationism	46
3.1.1 The Law	46
3.1.1.1 Negationism	46
3.1.1.2 Genocide Ideology	46
3.1.1.3 Discrimination and Sectarianism/Divisionism	47
3.1.2 Concerns	48
3.1.2.1 Introduction	48
3.1.2.2 Vague Crime Definitions	49
3.1.2.3 Freedom of Expression	49
3.1.2.4 Legal Practice	50

Table of Content

3.1.3	Response	50
3.1.3.1	New Legislation	50
3.1.3.2	Free Spaces	51
3.1.3.3	Public Policy Dialogue	51
3.2	Freedom of Press	52
3.2.1	Concerns	52
3.2.1.1	Defamation, Genocide Ideology	53
3.2.1.2	2009 Media Law	54
3.2.1.3	Harassment of Journalists	55
3.2.2	Response	55
3.2.2.1	Government Response	55
3.2.2.2	New Legislation	58
3.2.2.3	Access to Internet	58
3.3	Political Space	59
3.3.1	Concerns	59
3.3.1.1	Registration	59
3.3.1.2	Genocide Ideology	59
3.3.1.3	Harassment of Opposition Politicians	60
3.3.2	Response	61
3.3.2.1	Government Response	61
3.3.2.2	New Legislation	63
3.4	Independence of the Judiciary	63
3.4.1	Concerns	64
3.4.2	Response	65
3.5	Fairness of Gacaca	67
3.5.1	Concerns	67
3.5.2	Response	68
Part C: Relevant Indicators in Rule of Law		72
1.	Freedom House, 'Countries at the Crossroads: Country Report Rwanda'	73
2.	Bertelsmann Transformation Index	74
3.	Transparency International: Corruption Perceptions Index	75
4.	Failed States Index	76
5.	World Bank Governance Indicators	78
6.	Ibrahim Index of African Governance	79
7.	World Bank (Doing Business)	80
8.	Cingranelli-Richards (CIRI) Human Rights Dataset	81
General Conclusion		84

Executive Summary

The Rule of Law in Rwanda is a contentious topic. As many issues in Rwanda, the debate on the Rule of Law is highly polarised. It seems hard to find a middle-way between outright believers pro or against Rwanda. This report describes the discussion about the Rule of Law in Rwanda in 2011, based on recent publications, including policy documents and reports from within and outside the Government of Rwanda. The various conflicting opinions and statements give an impression of the main discussions, and should enable the reader to form his or her own opinion.

After a description of the main institutions of the justice sector, including some home grown initiatives, and the context in which they operate – history, the 1994 genocide, politics, religion and economics – this report highlights some major positive trends as well as some concerns.

The positive trends mentioned are: the low level of corruption, the way the judiciary developed from almost non-existent into a more professional and efficient power within the state, the efforts made in order to create a fair justice system, and the great strides forward made with respect to access to justice through legal aid.

Challenges for Rwanda with respect to the Rule of Law include: the way genocide ideology has been criminalised in the law and is implemented in practice, the curtailment of the freedom of press, restricted political space, independence of the judiciary in particular in high profile cases, and the fairness of the *gacaca*.

For both positive trends and challenges it should be noted that these are not absolute. A positive trend does not mean that no further steps could be taken to further improve the situation, for some topics more than for others, working towards an ideal world. An area being marked as a concern does not mean that no positive developments could be mentioned. However, for that area, in the opinion of observers, the concerns overshadow the positive aspects.

The general picture that emerges is that of a government that builds institutions, such as the Public Procurement Authority, the Office of the Auditor General, the Ombudsman's Office, the Anti-Corruption Unit in the Rwanda Revenue Authority, Maisons d'Accès à la Justice, Commercial Courts, among others. These institutions' tasks and responsibilities are well defined by the law. At the same time, the government is hesitant to open up political space and freedom of expression, referring, *inter alia*, to the history of the country where the unrestricted speech led to the 1994-genocide.

Most of the sources that formed the basis of this assessment are policy documents and reports of all kinds of organisations that are active in Rwanda. Only a small number of in-depth studies are available regarding rule of law issues in Rwanda, for instance in the form of thorough base-line studies and academic analyses. The sole exception may be the *gacaca*, but regarding this topic it is very difficult to find a common ground among scholars; polarisation has also entered the academic arena. This shows the dire need of thorough, neutral, and in-depth studies regarding the Rule of Law in Rwanda.

Methodology

This report is the reflection of existing publications rather than new research on the rule of law in Rwanda. It does not aim to take a position in the debate about the rule of law in Rwanda, nor does it represent the opinions of individual participants in the discussion about the rule of law in Rwanda.

The first part (Part A) gives a short overview over the justice sector in Rwanda, its main institutions and actors, including some home-grown initiatives, as well as an impression of the context in which the justice sector has to be considered: history, politics, religion, and economics.

The third part (Part C) presents an overview of how Rwanda scores on various Rule of Law Indicators, trying to answer the question what these rule of law indicators tell us about the state of the justice sector and the rule of law in Rwanda. The results of this analysis should be read with some caution, in the sense that experts involved with rule of law indicators reject the notion that results generated by indicators are in themselves sufficient reasons for policy decisions or decisions to allocate funds, in part because indicators say nothing about causes.

Part B of the report – positive trends and challenges – is, in comparison to Part C, a more qualitative description of some of these indicators, highlighting major topics that are generally considered as positive trends as well as issues that raise concerns. The report does not pretend to cover all aspects of the rule of law, let alone to cover them in depth. The report aims to identify the main positive trends and the main concerns in the rule of law as perceived by different stakeholders.

The selection of the main positive trends and concerns has been based on existing publications, as well as on a five-years experience of the author of the report working in the justice sector in Rwanda. As a final safeguard to see whether this selection indeed reflects the current state of the discussion, formal interviews have been held with about fifteen stakeholders with various backgrounds: national and international human rights organisations, diplomats, academicians, and many more informal discussions with a multitude of actors within the justice sector of Rwanda.

Because the report aims to describe the discussion in the year 2011 about the rule of law in Rwanda, as much as possible, recent publications have been used (in general, not from before 2007) which refer to the current state of the rule of law rather than the past. Moreover, where possible, reports have been used that are based on first-hand knowledge and information, rather than reports quoting other documentation.

These publications include:

- Documents of the Rwandan Government, for instance:
 - The national report of Rwanda submitted to the Human Rights Council, Working Group on the Universal Periodic Review, January–February 2011; the presentation of the Rwandan Minister of Justice/Attorney General on that occasion and the response of the government to issues raised during the review;
 - The 2010-Rwanda Governance Scorecard of the Rwanda Governance Advisory Council, first published in 2010, which is a governance assessment tool constructed from data for over 200 questions structured around a set of 8 indicators, 37 sub-indicators and 139 sub-sub-indicators;
 - The 2008-Joint Governance Assessment of the Government of Rwanda together with its development partners;

- Strategic Plans and other documents from Rwandan governmental institutions, such as the Justice, Reconciliation, Law and Order-Sector (JRLOS); the Supreme Court; the Consultative Forum of Political Organisations in Rwanda; the Rwanda Governance Advisory Council; the National Unity and Reconciliation Commission; the Rwandan Human Rights Commission; the Institute of Legal Practice and Development; the Service National des Juridictions Gacaca; and the Senate;
- The Rwandan Constitution and various laws and regulations;
- Reports and documents of Rwandan institutions and organisations, such as the Institut de Recherche et de Dialogue pour la Paix (IRDP), Transparency Rwanda, and civil society organisations, including the Legal Aid Forum, the Ligue de Droit de la Personne dans la Région des Grands Lacs (LDGL), and the Rwanda Civil Society Platform;
- Reports and publications of third governments and intergovernmental organisations, such as the African Union, the European Union, the Commonwealth, the Dutch Public Prosecution Authority, and the annual human rights reports of the US Department of State;
- Reports, press releases, and other publications of international non-governmental organisations, such as Amnesty International, Human Rights Watch, Commonwealth Human Rights Initiative, Penal Reform International, Avocats sans Frontières, RCN Justice & Démocratie; as well as Transparency International, Freedom House, Committee to Protect Journalists (CPJ), Reporters without Borders, World Bank/Brookings Institution;
- Decisions of the ICTR-International Criminal Tribunal for Rwanda, and of courts of third countries such as the UK.

At various places, these reports and publications have been quoted extensively in order to do justice to the content of a report. In case various organisations mention the same issue, often a quote has been selected from one organisation which best reflects the joint message. The confrontation of various opinions and statements gives an impression of the main discussions, and should enable the reader to form his or her own opinion, when possible. Again, the aim of this report is not to take a position in the discussion.

It should be noted that most of the sources mentioned are policy documents and reports from organisations that are active in Rwanda. Only a very small number of thorough base-line studies and academic analyses regarding rule of law issues in Rwanda are available. The sole exception may be the *gacaca*, which is widely discussed in academic literature. However, also regarding the *gacaca* it is very difficult to find a common ground among scholars. This shows again the dire need of thorough in-depth studies regarding the rule of law in Rwanda.

The Minister of Justice/Attorney General of Rwanda was able to comment on the final draft of parts A and B of the report before publication.

Parts A and B of the Quick Scan were finalized 1 November 2011.

Part A: Overview of the Rule of Law in Rwanda



1. Introduction

“The country is committed to being a capable state, characterised by the rule of law that supports and protects all its citizens without discrimination. The state is dedicated to the rights, unity and well-being of its people and will ensure the consolidation of the nation and its security.

[...]

The State will ensure good governance, which can be understood as accountability, transparency and efficiency in deploying scarce resources. But it also means a State respectful of democratic structures and processes and committed to the rule of law and the protection of human rights in particular.”

Rwanda Vision 2020, July 2001, first pillar

In this report the rule of law in Rwanda is analysed, in particular with regard to the main positive trends as well as the main challenges. This means that this report focuses on the current state of affairs as well as the near future, instead of on the past, without denying that the past colours the present. Four considerations have been leading in writing this report.

First and foremost, the sources for this report on the rule of law in Rwanda are public reports, not the opinions of individuals. Although individual opinions may be interesting in order to demonstrate perceptions of particular issues in a country, these opinions have to be considered too subjective to be seen as facts. Rwanda is a country of many rumours, some totally unbelievable, others without doubt true, and with a large area of grey stories in between. At the same time, it should not be forgotten that what people think is true is true in its consequences, meaning that perceptions direct people in what they are doing.¹

Many reports have been written about Rwanda. And even more have been published on the internet. In particular, with internet publications, it should be noted that a substantive part of those publications are driven by political intentions, either for or against the current Government of Rwanda, and it is not always clear what the factual basis of these reports are. Therefore only official publications and websites have been taken into account of which in principle agreement exists that they are serious; that does not mean, however, that all stakeholders agree with their contents.

The second consideration that guides the writing of this report is that events change very fast in Rwanda, much faster than in stable societies like in Europe where one is inclined to think in time periods of 20 to 30 years. In Rwanda, even a four-year period may be too long as a sound and solid basis for drawing conclusions. This means that, as far as possible, this report is based on recent information.

Thirdly, it should be mentioned that Rwanda has made huge steps forward since it came out of the war and the genocide in 1994. For a long time, Rwanda was regarded as a post-conflict society, struggling to overcome the aftermath of the genocide. This implies that policy measures by the government have to be evaluated in this specific context.

At the same time, it should be noted that increasingly one can hear government officials say that Rwanda has grown beyond the post-conflict state of affairs, and as a consequence, should be assessed – and should be willing to be assessed – as an ordinary state.

¹ When, e.g., as was the case in 2005, thousands of people fled the country as a result of rumours that the government was in the process of buying a huge grinding machine in order to kill all the Hutu involved in the genocide, this may objectively be a rumour without basis, but for those people it was apparently true and they acted accordingly.

Finally, it should be noted that the debate about Rwanda is highly politicised. International NGOs, like Human Rights Watch, have criticised Rwanda to such an extent that, within the Rwandan government, the idea has been rooted that for those organisations government actors are damned when they do and are damned when they don't. Also, it should be mentioned that the Rwandan post-1994-genocide diaspora disseminates a lot of baseless information in order to destabilise the country. On the other hand, the government of Rwanda responds to any criticism in a strong way: 'when you are not for us you are against us'. These positions have led to a situation where it has become very difficult to criticise Rwandan policy, even in a constructive manner. Perceived intentions on both sides seem sometimes to have taken a more important role than what actually happens on the ground. Thinking in stereotypes – human rights organisations whose main ambition is to destroy the future of Rwanda versus the Tutsi-dominated donor darling government that hides its ethnic intentions – dominates the debate instead of the facts of what is actually happening. Or, on a more individual level, pro-government agents consider international observers too critical and anti-government agents consider the same observers too lenient and naive. It seems hard to find a middle-way.

It is in this highly politicised, stereotypicalised, and fast-changing context that this report has been written.

2. Main Institutions and Actors in the Justice Sector (formal and informal)

2.1 General

The legal system of Rwanda is based on the civil law system of its former colonizer, Belgium. In its efforts to modernise the legal system and to integrate into the East African Community and The Commonwealth, the legal system is gradually moving toward a common law system. Traditional law is treated as a third pillar of the Rwandan legal system, as seen in the form of tradition-based *gacaca* and *abunzi*.

Most laws and regulations in Rwanda are published on the internet in three languages: Kinyarwanda, which usually is the authoritative text, English and French.²

The language spoken in court is Kinyarwanda, except for some exceptional cases involving foreign parties, such as commercial law cases.

Rwanda has ratified many international conventions. A list is available at the website of the Human Rights Library of the University of Minnesota.³

2.2 JRLO Sector

The various institutions in the justice sector in Rwanda and their partners are bundled in the Justice, Reconciliation, Law and Order Sector (JRLO Sector). The JRLO Sector includes:⁴

- The Judiciary;
- The Ministry of Justice;
- The Ministry of Internal Security;
- The Rwanda National Police;
- The National Public Prosecution Authority;
- The Office of the Ombudsman;
- The Military courts;
- The Military Prosecution;
- The National Human Rights Commission;
- The National Unity and Reconciliation Commission;
- The Rwanda Correctional Services (prisons and TIG-Travaux d'Intérêt Général);
- The Institute of Legal Practice and Development;
- National Service of Gacaca Jurisdictions (until its prorogation).

The JRLO Sector also has the following partner organisations:

- The Bar Association;
- The professional Bailiffs Body;
- Other local and international Civil Society Organisations actively involved in the Justice Sector, such as the Legal Aid Forum, Avocats sans Frontières, and RCN-Justice & Démocratie.

² See http://www.amategeko.net/index.php?Parent_ID=15.

³ See <http://www1.umn.edu/humanrts/research/ratification-rwanda.html>.

⁴ See Ministry of Justice website, <http://www.minijust.gov.rw/>, last visited 15 August 2011.

The Development Partners involved in the JRLO Sector are:

- Belgium (CTB-BTC)
- Sweden (SIDA)
- The Netherlands
- Germany (GIZ)
- USA (USAID)
- European Union
- UNDP
- World Bank

The vision and mission of the JRLO Sector, as mentioned in Prime Minister's Order 123/03 (2010)⁵ to establish the JRLO Sector, have been further detailed as follows:

The global vision of the Government of Rwanda set out in Vision 2020 is to guarantee the well-being of the population by increasing production and reducing poverty within an environment of good governance. As part of this vision, the Government seeks to have a healthy legal system which has many functions in addition to maintaining security, law and order. It is expected to provide the essential foundations for political and economic stability on which business confidence rests.

[...]

The mission of the JRLO Sector is hereby primarily concerned with the establishment of an orderly and efficient modern legal system stretching out from the centre into all regions and districts. The protection and enforcement of individual rights, regulating complex commercial transactions in a globalizing economy, supporting small businesses, protecting consumers and generally providing conditions for business confidence, as well as the smooth operation of all commercial activities

[...]

The implementation of the Justice, Reconciliation, Law and Order Strategy intends to achieve the overall goal laid down in the Economic Development and Poverty Reduction Strategy (EDPRS) of the Government of Rwanda: Sustainable Economic Growth and Social Development.⁶

The JRLO Sector Strategic Plan 2009-2012 translates this vision into four outputs:

- Universal access to quality justice.
- Genocide ideology eradicated and reconciliation mechanisms reinforced.
- Rule of law, accountability and human rights promoted.
- Safety, law and order maintained and enhanced.⁷

The Strategic Plan 2009-2012 lists the overall purpose of the JRLO Sector as strengthening the rule of law in order to promote good governance and a culture of peace.

By choosing a Sector Wide Approach (SWAP) in implementing the strategy of the JRLO-Sector, a common shared understanding of priority needs, strategies, approaches, and expected outputs is created, as well as a clear definition of roles and responsibilities based on statutory functions and mandates.⁸

⁵ Prime Minister's Order nr. 123/03 of 13/10/2010 Establishing the Justice Sector and Determining its Mandate, Structure and Functioning, Official Gazette no. 43, 25 October 2010.

⁶ See <http://www.jrlos.gov.rw> (last visited 15 August 2011).

⁷ JRLOS, Justice, Reconciliation, Law and Order Sector Strategy and Budgeting Framework 2009-2012, 2009.

⁸ JRLOS, Justice, Reconciliation, Law and Order Sector Strategy and Budgeting Framework 2009-2012, 2009.

2.3 Justice Sector Civil Society

Rwandan human rights organisations include: Ligue de Droit de la Personne dans la Région des Grands Lacs (LDGL); Youth Association for Human Rights Promotion and Development (AJPRODHO); Ligue Rwandaise pour la Promotion et la Défense des Droits de l'Homme (LIPRODHOR); Collectif des Ligues et Associations de Défense des Droits de l'Homme (CLADHO); and Association "Haguruka" pour la Défense des Droits de la Femme et de l'Enfant (Haguruka).

The Legal Aid Forum (LAF) is a membership-based network encompassing thirty-three organisations that either provide legal aid services to the indigent Rwandan population and vulnerable groups or that provide support to legal aid providers in Rwanda focusing on access to justice. The LAF comprises twenty-one national NGOs, six international NGOs, the Kigali Bar Association, the Corps des Défendeurs Juridiques, and the university law clinics.

Overall, the position of local civil society is generally considered to be relatively weak.

International civil society consists of organisations, in particular human rights organisations, that are involved in the justice sector (e.g. Avocats sans Frontières, RCN Justice & Démocratie, and until 2011, Penal Reform International), partly observing and commenting on Rwanda from an outsider's position (Human Rights Watch, Amnesty International). The relationship between the Government of Rwanda and the international civil society organisations, in particular those not actively involved in the justice sector, is not very jovial.

The system of registration for national and international NGO's is under review.

2.4 The Judiciary

2.4.1 Organisation, Functioning and Jurisdiction

As part of the judicial reforms of 2004, the Supreme Court was restructured. The 2003 Constitution provides that the "Judicial Power is exercised by the Supreme Court and other Courts established by the Constitution and other laws."⁹ The Constitution determines that the Supreme Court is the highest jurisdiction in the country.¹⁰ The Constitution also confers the Supreme Court the task of coordinating and overseeing activities of Courts and Tribunals, while ensuring judicial independence.¹¹

The law provides for a unified Supreme Court, contrary to the pre-2004 structure in which the Supreme Court was divided into sections. The Supreme Court is the highest jurisdiction in the country and its jurisdiction covers the entire national territory. It is headed by a President, and assisted by a Vice-President and twelve Judges, whose number can either be increased or reduced when necessary.¹²

The High Court has its seat in Kigali with four chambers in each province. The High Court has jurisdiction to hear cases on appeal decided in first instance by lower courts, specifically the 'Intermediate Courts' (Tribunaux de Grande Instance).

⁹ Article 140, *Constitution of the Republic of Rwanda* (O.G n° special of 4 June 2003, p.119), as amended in 2003, 2005, 2008, 2010.

¹⁰ Article 144, *Constitution of Rwanda* (2003), as amended in 2003, 2005, 2008, 2010.

¹¹ Article 145, *Constitution of Rwanda* (2003), as amended in 2003, 2005, 2008, 2010.

¹² Articles 1-3, *Organic Law No. 01/2004 of 29/01/2004 Establishing the organisation, functioning and jurisdiction of the Supreme Court, Modified and Complemented by Organic Law n° 10/2005 of 28/07/2005 (O.G special n° of 25 august 2005); again Modified and Complemented by Organic Law n° 13/2006 of 21/03/2006, (O.G special n° of 28 march 2006) and the Organic Law n° 58/2007 of 16/12/2007, (O.G n° 5 of 1st march 2008).*

The High Court handles cases of first instance in some specific criminal trials, such as treason and terrorism cases.¹³ Also, the High Court has jurisdiction to try the cases transferred/extradited to Rwanda by the ICTR and from other States.¹⁴

With regard to the lower courts, in 2006 a new judicial structure was put into place, when the law introduced Intermediate Courts (Tribunaux de Grande Instance), and Primary Courts (Tribunaux de Base).¹⁵

A parallel system under the Supreme Court exists for the military system, with a Military Tribunal and a Military High Court, both in Kigali, for cases involving military personnel.¹⁶

In December 2007, commercial courts were established: the High Commercial Court situated in Kigali, and three commercial courts in Nyarugenge, Huye and Musanze.¹⁷

In 2008, the single-judge bench was introduced at all levels except for the Supreme Court, in order to more quickly deal with the backlog of cases.¹⁸

2.4.2 Judges

The process for appointing the judges of the Supreme Court starts with a recommendation by the President of the Republic. These recommendations are made after consulting the Cabinet and the Superior Council of the Judiciary. As many candidates are proposed to the Senate as there are vacant positions. Next, a candidate judge for the Supreme Court is elected by the Senate by absolute majority. Finally, Judges of the Supreme Court are appointed by a Presidential Order. The President and the Vice President of the Supreme Court are appointed in this manner for a single, non-renewable term of eight years. The tenure of office for Supreme Court judges is not of a fixed duration.¹⁹

The qualifications for a judge of the Supreme Court is as follow:²⁰

- judges who hold at least a Bachelor of Laws degree and have served as judges for at least eight years;
- advocates who have professional experience of at least eight years in practice;
- lecturers in faculties of law of universities with at least eight years experience in the profession;
- prosecutors who hold at least a Bachelor of Laws degree and have served as prosecutors for at least eight years;
- persons who hold at least a Bachelor of Laws degree and have professional experience of at least eight years in any field related to law.

The period of professional experience of eight years is reduced to five years for holders of a doctorate degree in law.

¹³ Articles 17-18, 89-108, *Organic Law No. 07/2004 of 25/04/2004 Determining the organization, functioning and jurisdiction of courts, Modified and Complemented by Organic Law No. 14/2006 of 22/03/2006, again Modified and Complemented by Organic Law N° 51/2008 of 09/09/2008.*

¹⁴ Article 1, *Organic Law n° 11/2007 of 16/03/2007 concerning the transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and other states, Modified and Complemented by Organic Law N° 03/2009/OL. of 26/05/2009.*

¹⁵ *Organic Law No. 14/2006 of 22/03/2006, modifying and complementing Organic Law No. 07/2004 of 25/04/2004 Determining the organization, functioning and jurisdiction of courts.*

¹⁶ Articles 29-38, 138-145, *Organic Law No. 07/2004 of 25/04/2004 Determining the organization, functioning and jurisdiction of courts, as modified and complemented in 2006, 2008.*

¹⁷ *Organic Law n° 59/2007 of 16/12/2007 establishing the commercial courts and determining their organisation, functioning and jurisdiction.*

¹⁸ *Organic Law No. 51/2008 of 09/09/2008, modifying and complementing Organic Law No. 07/2004 of 25/04/2004 Determining the organization, functioning and jurisdiction of courts.*

¹⁹ Articles 4-8, *Organic Law No. 01/2004 of 29/01/2004 Establishing the organisation, functioning and jurisdiction of the Supreme Court, as modified and complemented 2005, 2006, 2007.*

²⁰ Article 9, *Organic Law No. 01/2004 of 29/01/2004 Establishing the organisation, functioning and jurisdiction of the Supreme Court, as modified and complemented 2005, 2006, 2007.*

Regarding judges from Intermediate Courts and Primary Courts, the law lays down the following requirements:

- be of Rwandan nationality;
- be at least twenty-one years old;
- have at least a Bachelor's Degree in law and a certificate from a recognized judicial college;
- be a person of integrity;
- have mental and physical capacity required for the duties;
- not to have been the subject of civil or political degradation;
- not to have been definitively convicted for an imprisonment of six months or more;
- not to have been sacked from office or removed for fraudulent acts, desertion of duty or refusal to resume duty after the end of the period of suspension of duties;
- to have passed a competition mentioned in Article 15 of the law (written application and competition organised by the Superior Council of the Judiciary).

The requirements for becoming an Intermediate Court judge include the additional requirement of having a four-year working experience in a legal field (two years for those with a doctorate degree).²¹ Similarly, the position of a High Court judge requires a working experience of six years (three years for those with a doctorate degree).²²

With the 2008 amendment of the Constitution the term of office of judges in Article 142 was changed from life tenure to an 'indeterminate determinate' term. With the 2010 amendment of the Constitution this provision was deleted again from the Constitution, implying that the mandate of judges is again for life, as was the case before the amendments of 2008, although no such express provision has been re-inserted.

2.4.3 The Superior Council of the Judiciary

The Superior Council of the Judiciary consists of the following persons:²³

- the President of the Supreme Court, who is the president of the council;
- the Vice-President of the Supreme Court;
- a Judge of the Supreme Court elected by his or her peers;
- the Presidents of the High Court and of the Commercial High Court;
- one Judge of the High Court and one Judge of the Commercial High Court elected by their peers;
- one Judge from the Commercial Courts elected by his or her peers;
- Five Judges of the Intermediate Courts elected by their peers;
- Five Judges of the Primary Courts elected by their peers;
- Two Deans of Law Faculties from recognised Universities elected by their peers;
- One member of the Bar Association elected by his or her peers;
- One representative of the Ministry of Justice appointed by the Minister in charge of Justice;
- the President of the National Human Rights Commission;
- the Ombudsman.

²¹ Articles 8-10, *Law No. 6 BIS/2004 of 14/04/2004 on the statutes for judges and other judicial personnel.*

²² Article 11, *Law No. 6 BIS/2004 of 14/04/2004 on the statutes for judges and other judicial personnel.*

²³ Article 1, *Organic Law No. 02/2004 of 20/03/2004 Determining the organisation, powers and functioning of the Superior Council of the Judiciary, Modified and complemented by Organic Law No. 11/2006 of 10/03/2006, O.G. special No. of 10 March 2006.*

The tasks of the Superior Council of the Judiciary are as follows:²⁴

- to examine and give advice either on its own initiative or upon request by another organ, on matters relating to the functioning of the justice system;
- to take decisions relating to the appointment, promotion, transfer or removal of judges from office and management of the career of judges apart from those of the military courts and take decisions as a responsible organ for their discipline with an exception of the President and the Vice President of the Supreme Court;
- to advise at all times on all proposals relating to the establishment of a new court or bill of law governing the status of judges and other judicial personnel for whom it is responsible.

2.4.4 The General Inspectorate

The General Inspectorate of the Supreme Court exercises control and permanent supervision over all lower courts. This is to ensure that they render justice equitably and in accordance with the law, at the same time fighting corruption within the judiciary.²⁵

The duties of the Inspector General are:²⁶

- Leading and supervising the inspection of the functioning of the Courts and Tribunals and reporting on it to the President of the Supreme Court;
- Monitoring the functioning of the Courts and Tribunals and seeing whether it is in conformity with the law;
- Monitoring the discipline of the judges and reporting on it to the President of the Supreme Court;
- Managing the files of the Judges and Clerks;
- Helping the other organs of the Supreme Court in the conception and execution of the training programmes of the judicial staff;
- Analysing and exploiting the reports of the Courts and Tribunals and formulating recommendations to higher instances of the Supreme Court;
- Assisting the President of the Supreme Court in the preparation of the instructions concerning the conduct of the judicial staff;
- Receiving the grievances of the magistrates and other judicial staff concerning the evaluation of their work;
- Preparing the forms to be used in the Courts and Tribunals;
- Assisting the President of the Supreme Court and the Presidents of the Courts and Tribunals in the preparation of the instructions concerning the functioning of the Courts and Tribunals;
- Receiving requests, carrying out investigations concerning the latter and communicating the findings from investigations to the President of the Supreme Court;
- Carrying out investigations on the files which should be examined by the Superior Council of the Judiciary;
- Helping the Superior Council of the Judiciary in the preparation of the recruitment and promotion examinations of the judicial staff;
- Initiating the evaluation system of activities of the jurisdictions and the judicial staff.

²⁴ Article 12, *Organic Law No. 02/2004 of 20/03/2004 Determining the organisation, powers and functioning of the Superior Council of the Judiciary, as modified and complemented in 2006.*

²⁵ See the website of the Supreme Court: www.supremecourt.gov.rw/sc/generalsc.aspx (last visited 15 August 2011).

²⁶ See the website of the Supreme Court: www.supremecourt.gov.rw/sc/generalsc.aspx (last visited 15 August 2011)..

3. The Context

The genocide of 1994 is by far the most important determining factor when looking at the historical, political, religious, and economic context of Rwanda. Like many aspects of Rwandan society, describing the context – history, politics, religion – is a politically sensitive issue. Considering the impact of its history on the current state of affairs regarding the rule of law in Rwanda, a more broad description is justified.

3.1 History²⁷

Different from Europe, where the development from a reigning monarch holding all power to a representative system with various political parties sharing power took several centuries, this development in Africa in general and in Rwanda in particular is only of recent date. Rwanda had to free itself from an internal authoritarian ruler – the *Mwami* or king – and an external authoritarian ruler – colonial Belgium – at the same time.

A well-functioning political multi-party system with various parties formed on the basis of shared societal interests – workers' rights, tax paying, social security system, et cetera, issues that dictate a developed political system – has not come about in Rwanda. Ethnicity, authoritarian leadership, and regional favouritism have for decades been the most important determining factors in politics.

When the Germans entered Rwanda for the first time in 1894 (the territory currently encompassing Rwanda and Burundi had been assigned to Germany during the Berlin Conference of 1885) they left administration almost entirely in the hands of the local population. The Belgians had a growing influence on the local administration. Initially only the Catholic Church through the White Fathers, who established their first mission post in 1900. After 1916, when the territory was assigned to Belgium by the League of Nations, the Belgians also took over the colonial administration. They considered the Tutsi, with the *Mwami* or King at the top, to be natural born rulers and used the Hamitic race theory – popular at the end of the 19th, early 20th century – to justify Tutsi dominance. This theory, combined with the fact that the ruling kings they found in Rwanda and Burundi 'had to be' Tutsi considering their physical features, resulted in a more favourable position for the Tutsi in local administration from the start of the colonial period. Hutu, who had been part of local administration until then, were replaced by Tutsi. Already existing differences between Hutu and Tutsi, initially more fluid and social rather than ethnic groups, were to a growing extent 'ethnicified', through measuring of skulls and determination of other physical features, and fixed, finally through mentioning ethnicity in identity cards, which existed in Rwanda until 1994.

Gradually, however, the Belgian coloniser tore down the power basis of the Mwami and his clan, for instance by establishing, in addition to the royal administration, a colonial administration that was democratically elected as of the early fifties, with a general right to vote for men as of 1956. These elections gradually re-introduced Hutu in the administration, more than during the past decades under Belgian/royal administration. Soon also, the Catholic Church followed this development, by stressing more and more the rights of Hutu. A growing group of Hutu *évolués* came to the fore asking for more social and political power.

²⁷ For this section about the history of Rwanda, various sources have been used, among which: J. Pottier, *Re-imagining Rwanda: Conflict, Survival and Disinformation in the Late Twentieth Century*, 2002; Alison Des Forges, *Leave None to Tell the Story. Genocide in Rwanda, 1999*; Filip Reyntjes, *Danse Macabre. Rwanda en Burundi, tussen haat en hoop*, 1996 (translated from French, first published in 1994); *Manifeste des Bahutu: Note sur l'aspect social du problème racial indigène au Ruanda*, 24 March 1957; G. Prunier, *The Rwanda Crisis: History of a Genocide*, 1995. Also Mark Heirman, *Het land van de duizend leugens*, 1995; C.M. Overdulve, *Rwanda – volk met een geschiedenis*, 1994.

An important person among those Hutu *évolués* was Grégoire Kayibanda, a former student at a catholic seminary, and since the mid-fifties, the editor-in-chief of a socio-political Catholic weekly. In 1957, he was one of the authors of the Manifeste des Bahutu (Hutu Manifesto) in which freedom of expression, opening up of all public functions for Hutu, ethnic parity in education, and retention of the indication of ethnicity in identity cards was demanded.

In the same year, 1957, Kayibanda established the Mouvement Social Muhutu (MSM). As the name indicates, MSM was an ethnically-inspired movement. Two years later, other parties were established that, despite their neutral names, were also based on ethnicity: one radical Hutu party and two Tutsi parties. One of the Tutsi parties was very conservative, the other more liberal. In the same year, Kayibanda's MSM was reformed into the Parmehutu: Parti du Mouvement de l'Emancipation Hutu, and then later again it was reformed into MDR-Parmehutu (Mouvement Démocratique Républicain).

The extent to which society and politics were ethnically polarised at that time becomes clear when in 1959 a Parmehutu leader was attacked by a group of youngsters from one of the Tutsi parties. This attack led to a massacre against Tutsi and to the first exodus of Tutsi. After many Tutsi had died or fled, the Belgians filled up the empty positions in the public administration with Hutu. This was what Hutu call the 'social revolution', and what for Tutsi was the beginning of a series of mass killings.

The first municipal elections, mid-1960, were won by Parmehutu with 70% of the votes with only 14% for the more radical Hutu party. The vast majority of the then-appointed mayors were Hutu. It is also during this period that the king, Mwami Kigeli V, left for Kinshasa (then Leopoldville) for the independence celebrations of Congo, and then never returned to Rwanda. Shortly thereafter, a provisional government led by Kayibanda is installed, followed by a provisional Assemblée Législative in early 1962, which elected Kayibanda as the prime minister and approved a constitution.

During the general election in September 1961, the MDR-Parmehutu claimed victory with more than 87% of the votes. At the same time, a similar percentage of the voters chose by referendum to abolish the monarchy. Again, thousands of Tutsi fled from Rwanda to neighbouring countries. The Assemblée Législative chose the leader of MDR-Parmehutu, Grégoire Kayibanda, as the President of the First Republic.

Shortly before independence from Belgium (1 of July 1962) a coalition government was formed in which Tutsi parties were included (after strong UN pressure). However, within a year, the government was exclusively MDR-Parmehutu. After elimination of external opposition, opponents within the party were eliminated, and power rested in the hands of people from Kayibanda's region, Gitarama, who held power until Kayibanda was overturned during a coup d'état in 1973.

The municipal elections in 1963 showed the same picture: MDR-Parmehutu got almost 98% of the votes. In 1965, during parliamentary elections, Parmehutu even got 100% of the votes. This is not as surprising as it may seem on first glance, because MDR-Parmehutu was then the sole party eligible to present candidates. In the same year, Kayibanda received 99.8% of the votes and was the sole candidate for president. Indeed Rwanda had become a single-party State.

In the meantime, near the end of 1963, a failed invasion by Tutsi rebels entering Rwanda from Burundi led to a new wave of violence against Tutsi, with 10 to 15 thousand Tutsi being killed, and many others fleeing Rwanda. The number of Tutsi refugees in neighbouring countries during that time has been estimated at 400,000. Ten years later, Tutsi are again killed and fled the Rwanda after Tutsi were expelled from university and schools following a student revolt.

In mid-1973, the Minister of Defence, Chief of Staff General Juvénal Habyarimana, staged a coup d'état, also known as the 'moral revolution'. Kayibanda was deposed as president, and the national assembly as well as the MDR-Parmehutu were dissolved.

Habyarimana, a Hutu, became the President of the Second Republic. Habyarimana held onto power until April 1994 when his airplane was shot down above Kigali. During his rule, Habyarimana was always careful to include at least one Tutsi in his government. In 1975, Habyarimana established the MRND-Mouvement Révolutionnaire National pour le Développement as the new single party of which every Rwandan automatically became a member at birth. Until 1990, the MRND dominated politics. In elections, only the MRND had candidates for president and for parliament: the Conseil National du Développement. Also, as the First Republic was dominated by Parmehutu with people from Gitarama in the Centre-South part of the country, the Second Republic was dominated by the MRND with, to a growing extent, concentration of power in the hands of people from the region of Habyarimana and his wife, Gisenyi and Ruhengeri in the North of Rwanda. In particular, the President's wife and family-in-law became an important factor, in what was called the Akazu ('small family').

The year 1990 was a turning point with regard to political pluralism. Both from the inside and the outside, pressure was put on the government to introduce political pluralism. Students demanded free elections and abolition of the single-party system. Previously, the establishment of a new political party had resulted in a prison sentence for the founder. During the Franco-African summit in 1990, France urged Rwanda to abolish the single-party system, as did the World Bank and the IMF as a condition for financial support to Rwanda. Finally, on 1 October 1990, the Rwandan Patriotic Army (RPA), the armed branch of the Rwandan Patriotic Front RPF-Inkotanyi – the latter refers to special fighters (literally 'those who fight bravely') during the ruling of Mwami Kigeri IV – invaded Rwanda from Uganda, with the same demands. At the end of 1990, Habyarimana announced the establishment of a multiparty system and abolition of the mentioning of ethnicity on identity cards.

Not all of the new political parties established thereafter were based on ethnicity from the start. Doing so was prohibited by law. However, the MRND only changed some small things in its name but kept using MRND as abbreviation. The re-established MDR in many respects was a continuation of the old MDR-Parmehutu of Kayibanda, with many members from Gitarama. In 1993, a radical faction split off under the name of MDR-Parmehutu. The RPF-Inkotanyi, despite continuously repeating that it was not exclusively Tutsi, was considered as such, however. Indeed, the fact that the RPF grew out of the Tutsi diaspora and moreover that its name refers to the Inkotanyi added to this assumption.

Within a short time, all parties were pushed into ethnic camps by the radicalising MRND, even more when a radical group of Hutu within the party formed the Coalition pour la Défense de la République (CDR). Both the MRND and CDR formed youth movements, the Interahamwe and the Impuzamugambi, which evolved into radical militia, responsible for many small and larger scale killings of political opponents, Tutsi and alleged allies. Already as early as 1993, in this regard the word 'genocide' was mentioned. In 1993, MRND and CDR also stood at the cradle of the radical RTLM-Radio Télévision Libre des Mille Collines, a channel that increasingly called for the extermination of Tutsi. The RPF in its turn was accused of elimination of opponents within the MRND and CDR.

In 1992, a small transitional government was formed with representation from almost all political parties – with one Tutsi as before – but without the RPF-Inkotanyi. Shortly thereafter, negotiations with the RPF started. During these negotiations, the RPF gradually transformed itself from a military to a political power. These negotiations resulted in an agreement to form a broad transitional government and transitional parliament in which also the RPF would be represented. However, this was repeatedly postponed, and, in the end, no transitional government or parliament was formed. One after another, the political parties broke apart into factions, some based on ethnic lines. Ethnicity increasingly defined politics.

The first persons to be killed by the radical militia and the Presidential Guards, immediately after the downing of the airplane of President Habyarimana on 6 April 1994, were political opponents of the radical Hutu parties, that is, everybody who allegedly sympathised with the RPF.

This included: all Tutsi, and members of the non-radical factions of oppositional parties irrespective their ethnicity (including Hutu, often called 'moderate Hutu'). The latter group included the then Prime minister, Agathe Uwilingiyimana, who was assassinated on 7 April 1994.

3.2 The Genocide

Without going too deep into the circumstances of the Rwandan genocide, the numbers of the genocide give a clear image of what happened before, during, and after the 100 days between 6 April and 17 July 1994 during which the genocide took place.

The population of Rwanda in 1994 was estimated at just less than 8 million people. Already during the war, before the period we now know as the 1994 Rwandan genocide, mass killings, although on a relatively smaller scale, were reported. Also RPA/RPF killings were reported. And already by 1993, an estimated 850,000 people sought refuge, fleeing from the nearby RPA/RPF-Inkotanyi.²⁸

During the months of the genocide an estimated 800,000 people were killed, Tutsi and moderate Hutu. According to the current Rwandan government, the number of victims totals 1,074,017 for the four years of genocidal ideology, between 1 October 1990 and 31 December 1994, of whom 93.7% were Tutsi.²⁹

Killings continued after the official end of the genocide, by Interahamwe and ex-FAR soldiers (the army of the old regime, Forces Armées Rwandaises). As one example, in late 1995 to early 1996, Interahamwe attacks killed 30,000 people in refugee camps in the Democratic Republic of Congo.³⁰

Apart from the dead, there were hundreds of thousands of people, including many children, who witnessed the killings, rapes, and other atrocities. The *gacaca* courts identified more than 252,913 survivors (41% men, 59% women), including 74,642 orphans, 27,733 widows/widowers and 12,074 persons disabled by the genocide.³¹ A survey one year after the genocide amongst 3,030 children between eight and nineteen years old showed that slightly less than 80% of the children experienced death in their family as a result of the genocide, almost half of whom lost both parents, and 36% witnessed family members being killed. Further, 61% of the children had, at some time, been threatened to be killed, 90% at some time believed they would die, 80% had to hide to protect themselves during the genocide, 16% had to hide under dead bodies, 95% saw or witnessed violence, 70% saw with their own eyes someone being injured or killed, 52% saw many people being killed at the same time, 58% witnessed killing or injuries with machetes, and 31% witnessed rape or sexual assault.³²

Another group of victims, albeit not of genocide, are an estimated 25,000 to well over 100,000 Hutu who were abused and/or killed by the RPA/RPF-Inkotanyi during the period of the genocide and in the years thereafter, partly as individual revenge killings, partly as a deliberate policy, for example during the clearance of refugee camps within and outside Rwanda from which Interahamwe and ex-FAR soldiers continued to attack the population.³³

²⁸ US Department of State, *Rwanda Human Rights Practices 1993*, 31 January 1994. G. Prunier, *The Rwanda Crisis: History of a Genocide*, 1995, p. 175.

²⁹ Penal Reform International, *Research on Gacaca Report, Rapport 1, Gacaca Jurisdictions and its Preparations, July-December 2001*, January 2002, p. 5.

³⁰ G. Prunier, *The Rwanda Crisis: History of a Genocide*, 1995, p. 381.

³¹ Website of the SNJG, the Service National des Juridictions Gacaca, <http://www.inkiko-gacaca.gov.rw/pdf/abarokotse%20english.pdf> (last visited 15 August 2011).

³² A. Dyregrov, Z. L. Gupta, R. Gjestad, E. Mukanoheli, 'Trauma Exposure and Psychological Reactions to Genocide Among Rwanda Children', 13(1) *Journal of Traumatic Stress*, pp. 3-21; see also Human Rights Watch, *Rwanda Lasting Wounds: Consequences of Genocide and War for Rwanda's Children*, 2003.

³³ G. Prunier, *The Rwanda Crisis: History of a Genocide*, 1995, p. 356-362; See also Allison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda*, 1999, p. 540-560; J. Pottier, *Re-imagining Rwanda: Conflict, Survival and Disinformation in the Late Twentieth Century*, 2002, p. 76-81 and 160-170.

During and after the genocide, about five million people were displaced, both internally and in neighbouring countries. In November 1994, the Goma-region (just across the border between the DR-Congo and Rwanda in the Northwest) harboured about 850,000 refugees, about 30,000 of whom died of cholera in the Goma camps during the first month after the end of the genocide.³⁴ Near Bukavu (across the DR-Congo border in the south-west of Rwanda) were about 330,000 refugees, in Tanzania about 570,000 refugees had settled and another 270,000 in Burundi.³⁵ It took many years to convince people to return to Rwanda. For example, the UN news agency IRIN reported in November 1996, two and one half years after the genocide, that an exodus of refugees from the DR-Congo and Tanzania decided to move into Rwanda and Burundi, and, in November alone, a total of 473,333 refugees returned from the DR-Congo to Rwanda.³⁶ The International Committee of the Red Cross (ICRC) reported that a total of 2,634 unaccompanied minors had been identified and registered in Gisenyi at the Rwandan side of the Rwanda-DRC border in the Northwest of the country, and were being transferred to a transit camp.³⁷ Before this 'exodus' of November 1996, about 20,000 unaccompanied children had been reported in East DRC.³⁸ In December 1996, IRIN reported that about 300,000 refugees in Tanzania had left the camps away from Rwanda, but were being stopped by the Tanzanian army and pushed back into Rwanda.³⁹ In addition to the returning refugees who fled the genocide in 1994, an alleged 600,000 to 800,000 people who fled Rwanda in the late 50s, 60s, and 70s after first mass killing also came back to Rwanda.

In the first years after the genocide, many suspects were arrested. By the end of October 1996, a total of 86,200 prisoners were incarcerated in nineteen Rwandan detention centres (this includes 3,000 women and 2,000 adolescents).⁴⁰ Of these 86,200 prisoners detained in October 1996, an 23,200 of them were captured since the beginning of 1996. By 2004, ten years after the genocide, about 125,000 suspects were incarcerated and awaiting trial in prisons that were built for less than 20,000 people. In 2003, about 25,000 suspects were released in order to diminish the number of prisoners – for a number of reasons, such as to reduce the costs for the state and to ease international pressure focused on criticizing the excessively long pre-trial incarceration. In mid-2005, another 36,000 suspects were released. In early 2007, another 8,000 suspects were released.

The information-gathering phase of the *gacaca* made clear that over 800,000 persons were suspected of involvement in the genocide. As of 2011, the *gacaca* trials have heard more than 1.2 million cases related to the genocide.⁴¹

3.3 Politics

Rwanda is a constitutional republic with a presidential system. The president is the head of state, and the president appoints the prime minister as well as ministers. The first general parliamentary and presidential elections were held in 2003.

The President is elected for a seven-year term, and is eligible to be re-elected once. President Kagame started his second term in August 2010 after elections in which he received 93% of the votes.

³⁴ G. Prunier, *The Rwanda Crisis: History of a Genocide*, 1995, p. 303-304.

³⁵ G. Prunier, *The Rwanda Crisis: History of a Genocide*, 1995, p. 374.

³⁶ UN Department of Humanitarian Affairs, Integrated Regional Information Network, *IRIN Emergency Update nr. 56 on the Great Lakes, Document 17*, 13 December 1996.

³⁷ UN Department of Humanitarian Affairs, Integrated Regional Information Network, *IRIN Emergency update nr. 35 on Eastern Zaire, Document 32*, 21 November 1996.

³⁸ UN Department of Humanitarian Affairs, Integrated Regional Information Network, *IRIN Emergency update nr. 35 on Eastern Zaire, Document 32*, 21 November 1996.

³⁹ UN Department of Humanitarian Affairs, Integrated Regional Information Network, *IRIN Emergency update nr. 56 on the Great Lakes, Document 17*, 13 December 1996.

⁴⁰ Report of the UN Human Rights Field Operation in Rwanda (HRFOR) as mentioned in *IRIN Emergency update nr. 56*.

⁴¹ Website of the SNJG, the Service National des Juridictions Gacaca, <http://www.inkiko-gacaca.gov.rw/pdf/abarokotse%20english.pdf> (last visited 15 August 2011).

3.3.1 Parliament

The Parliament has two chambers - the Senate and the Chamber of Deputies.

The Senate is elected for eight years. In 2011, a new senate was sworn in. The Senate has 26 members who are elected or appointed for an eight-year term. The 26 senators come from the following places:⁴²

- 12 elected by provincial and sectorial councils;
- 8 appointed by the President of the Republic to ensure the representation of historically marginalized communities;
- 4 appointed by the Consultative Forum of Political Organisations (see below § 2.2.3);
- 2 elected by the staff of the universities (1 from private and 1 from public universities).

Former presidents may request to become a member of the Senate.

The Chamber of Deputies is elected for five years. The current term will end in 2013. The Chamber has 80 members including:⁴³

- 53 elected in universal suffrage through a secret ballot;
- 24 women elected by specific women's councils all over the country;
- 2 members elected by the National Youth Council;
- 1 member elected by the Federation of the Associations of the Disabled.

A majority of the Chamber members are women (45 of 80). This is the highest percentage in the world.

3.3.2 Political Parties

Rwanda has ten political parties, of which the Rwandan Patriotic Front (RPF) is by far the largest. The current government is made by the RPF forming a coalition with the Centrist Democratic Party (PDC), the Rwandan Socialist Party (PSR), the Ideal [formerly Islamic] Democratic Party (PDI), the Prosperity and Solidarity Party (PSP), and the Democratic Popular Union (UPDR). Other parties include the Social Democratic Party (PSD), the Liberal Party (PL), the Concord Progressive Party (PPC), and the Social Party Imberakuri (PS-Imberakuri).

The political landscape has been dominated by the RPF-Inkotanyi ever since 1994, when it overthrew the former government, thus ending the genocide. The RPF holds a majority of seats in both the Senate and the generally-elected part of the Chamber of Deputies. The RPF-led coalition holds 42 of the 53 directly-elected seats in the Chamber of Deputies, the opposition Social Democratic Party (PSD) has seven seats, and the opposition Liberal Party (PL) has four seats.

3.3.3 The Consultative Forum of Political Organisations

All parties are member of the 'Consultative Forum of Political Organisations in Rwanda'. A role for the Forum was solidified in the Constitution of 2003, and currently membership is mandatory for political parties. However, the government recently announced its desire to change the mandatory membership requirement of the Forum. According to its Rules and Regulations, the Forum was created "to contribute and give ideas on good governance and better leadership for a New Rwanda".⁴⁴ Initially, it was established to analyse and confirm the candidatures of members to join the National Transitional Assembly and make follow up of their performances. Later, the Forum was kept intact after the transition so as to maintain the principle of power sharing and give room and opportunity for Political Organisations not represented in the government to give their contribution and play their role in the leadership of the country.⁴⁵

⁴² See generally Website of the Parliament of Rwanda, www.rwandaparliament.gov.rw.

⁴³ See generally Website of the Parliament of Rwanda, www.rwandaparliament.gov.rw.

⁴⁴ Consultative Forum of Political Organisations in Rwanda, *Internal Rules and Regulations*, October 2008 (Background [authoritative text in Kinyarwanda]).

⁴⁵ Consultative Forum of Political Organisations in Rwanda, *Internal Rules and Regulations*, Background.

Article 56 of the Constitution of Rwanda:

“Without prejudice to the independence of each political organization and their collaboration, political organizations officially recognized in Rwanda shall organize themselves in a consultative forum. The forum is mainly responsible for:

- facilitating exchange of ideas by political organizations on major issues facing the country;
- consolidating national unity;
- advising on national policy;
- acting as mediators in conflicts arising between political organizations;
- assisting in resolving internal conflicts within a political organization upon request by that political organization.

The forum's decisions shall always be taken by the consensus of the constituent organizations.”

The duties of the Forum are further detailed in the law governing Political Organisations and Politicians (Arts. 50-54), and in its Internal Rules and Regulations.⁴⁶

Each political party irrespective its size, even those not represented in parliament, has four members in the Forum, half of whom must be female.⁴⁷

The Forum mentions as its main achievements the organisation of regular debates on topical issues and its continuous training programme on “party and leadership development”. Further the Forum’s Ethics Commission monitors and evaluates the activities and behaviour of political organizations and the members thereof.⁴⁸

3.4 Religion

The *International Religious Freedom Report 2010* of the US State Department gives a concise overview of the state of religion in Rwanda:

According to a 2002 census, Roman Catholics constitute 57 percent of the population; main-line denomination Protestants, 26 percent; Seventh-day Adventists, 11 percent; and Muslims, 5 percent. Groups that constitute less than 1 percent of the population include indigenous religious practitioners and Baha’is. There are a growing number of Jehovah’s Witnesses (approximately 18,000), evangelical Protestants, and Christian-linked schismatic religious groups.

The constitution and other laws provide for freedom of religion, and other laws and policies contributed to the generally free practice of religion.

The constitution protects the rights of individuals to choose or change their religion and prohibits discrimination based on religion or faith, which is punishable by law.

The penal code provides for small fines and/or imprisonment of up to six months for anyone who interferes with a religious ceremony or with a religious minister in the exercise of professional duties. The government observes the following religious holidays as national holidays: Good Friday, Easter, Assumption, Eid-al-Fitr, and Christmas.

⁴⁶ *Organic Law No. 16/2003 of 27 June 2003 Governing Political Organisations and Politicians; Consultative Forum of Political Organisations in Rwanda, Internal Rules and Regulations, October 2008, [authoritative text in Kinyarwanda].*

⁴⁷ Article 5, *Internal Rules and Regulations* of the Consultative Forum of Political Organisations in Rwanda.

⁴⁸ Brochure of the Consultative Forum of Political Organisations in Rwanda.

The constitution prohibits the formation of political organizations based on race, ethnic group, tribe, clan, region, sex, religion, or any other division that may give rise to discrimination.

The law regulates public meetings and establishes fines or imprisonment for unauthorized public meetings, including assemblies for religious reasons. If a group was registered, no prior authorization for their meetings was required although authorities legally may require advance notice for outdoor rallies, demonstrations, and meetings.

For night meetings, including religious meetings, local authorities required advance notification, particularly those ceremonies involving amplified music and boisterous celebrations.

All nonprofit organizations, including churches and religious organizations, must register with the Ministry of Local Government and the Ministry of Justice to acquire legal status. The government generally imposed difficult and burdensome registration and renewal requirements for organizations, including religious organizations, as well as time-consuming requirements to submit annual financial and activity reports. Although authorities have not granted official legal status to any religious groups pending passage of a religious communities law under consideration in parliament since 2008, religious organizations received ‘provisional authorization’ by presenting their objectives and plans of action to local and district authorities. Therefore, some religious organizations operated without full legal protection.

Government officials presiding over wedding ceremonies generally required couples to take an oath while touching the national flag, a practice to which Jehovah’s Witnesses objected on religious grounds. This practice made it difficult for members to marry legally, since few officials were willing to perform the ceremony without the flag requirement. For some Jehovah’s Witnesses, placing their hands on a Bible on top of the flag was an acceptable alternative.

[...]

The government required all students in primary school and the first three years of secondary education in public schools to take religion class, which covers various religions, as a required extracurricular subject. The law allowed parents, for religious reasons, to enroll their children in private religious schools.⁴⁹

In particular with regard to Jehovah’s Witnesses, arrests and other measures have been reported. The stated reasons have mainly related to refusals to adhere to state rules, such as participating in night patrols, singing the national anthem, and participating in solidarity trainings (Itorero).⁵⁰

Moreover, “[t]here continued to be tensions between the government and the Catholic Church about the role of current and former church officials during the 1994 genocide.”⁵¹

3.5 Economics

The US State Department noted in April of 2011:

The Rwandan economy is based on the largely rain-fed agricultural production of small, semi-subsistence, and increasingly fragmented farms. It has few natural resources to exploit and a small, uncompetitive industrial sector.

⁴⁹ US Department of State, Bureau of Democracy, Human Rights and Labor, *International Religious Freedom Report 2010*, 17 November 2010.

⁵⁰ US Department of State, *International Religious Freedom Report 2010*.

⁵¹ US Department of State, *International Religious Freedom Report 2010*.

While the production of coffee and tea is well suited to the small farms, steep slopes, and cool climates of Rwanda, the average family farm size is one-half hectare, unsuitable for most agro-business purposes. Agribusiness accounts for approximately 36.2% of Rwanda's GDP and 45% of exports. Minerals in 2009 accounted for 28% of export earnings, followed by tourism, tea and coffee, and pyrethrum (whose extract is used as a natural insecticide). Mountain gorillas and other niche eco-tourism venues are increasingly important sources of tourism revenue.

Rwanda's tourism and hospitality sector requires continued investment. Rwanda is a member of the Commonwealth, the Common Market for Eastern and Southern Africa (COMESA), and the East African Community (EAC). Some 34% of Rwanda's imports originate in Africa, 90% from COMESA countries. The Government of Rwanda has sought to privatize several key firms. Since 2007, the telecom and mining sectors have been largely privatized, and the government has sold off several government-owned tea estates and made great strides in completing privatization of the banking sector. RECO, the utility monopoly, remains to be privatized, as do several other parastatals.

During the five years of civil war that culminated in the 1994 genocide, GDP declined in 3 out of 5 years, posting a dramatic decline at more than 40% in 1994, the year of the genocide. The 9% increase in real GDP for 1995, the first postwar year, signaled the resurgence of economic activity and massive foreign aid inflows.

In the immediate postwar period--mid-1994 through 1995--emergency humanitarian assistance of more than \$307.4 million was largely directed to relief efforts in Rwanda and in the refugee camps in neighboring countries where Rwandans fled during the war. In 1996, humanitarian relief aid began to shift to reconstruction and development assistance.

Since 1996, Rwanda has experienced steady economic recovery, thanks to government reforms and foreign aid (now over \$500 million per year). Since 2002, the GDP growth rate ranged from 3%-11% per annum, and inflation ranged between 2%-9%. Rwanda depends on significant foreign imports (over \$900 million per year).

Exports have increased, up to \$193 million in 2009. Private investment remains below expectations despite an open trade policy, a favorable investment climate, cheap and abundant labor, tax incentives to businesses, stable internal security, and crime rates that are comparatively low. Investment insurance also is available through the Africa Trade Insurance Agency, the Overseas Private Investment Corporation, and the World Bank's Multilateral Investment Guarantee Agency (MIGA). The weakness of exports and low domestic savings rates are threats to future growth. The global economic crisis has impacted Rwanda. However, while there was a decline in overall exports (28% between 2008 and 2009), remittances, and nongovernmental organization (NGO) transfers in 2009, the agricultural sector performed strongly, propelling Rwanda to a 4% growth in GDP, well above the sub-Saharan average growth for the year. Amidst obstacles, Rwanda appears committed to economic reform and private sector investment. In the World Bank's 'Ease of Doing Business' report released in September 2009, Rwanda catapulted from number 143 to number 67; in the 2010 report, Rwanda improved its ranking to number 58.

The Government of Rwanda remains dedicated to a strong and enduring economic climate for the country, focusing on poverty reduction, infrastructure development, privatization of government-owned assets, expansion of the export base, and trade liberalization. The implementation of a value added tax of 18% and improved tax collections are having a positive impact on government revenues and thereby on government services rendered. Banking reform and low corruption also are favorable current trends. Agricultural reforms, improved farming methods, and increased use of fertilizers are improving crop yields and national food supply. Moreover, the government is pursuing educational and healthcare programs that bode well for the long-term quality of Rwanda's human resource skills base.

Many challenges remain for Rwanda. The country is dependent on significant foreign aid. Exports continue to lag far behind imports and will continue to affect the health of the economy. The persistent lack of economic diversification beyond the production of tea, coffee, and minerals keeps the country vulnerable to market fluctuations. Perhaps the largest constraint on private sector development is the cost of electricity, which is currently among the highest in the world at about 24.6 cents per kilowatt hour. Given Rwanda's landlocked geography, strong highway infrastructure maintenance and good transport linkages to neighboring countries, especially Uganda and Tanzania, are critical. Transportation costs remain high and, therefore, burden import and export costs. Rwanda has no railway system for port access to Tanzania or Kenya. The limited availability and high cost of power also continues to impede the growth of manufacturing enterprises. The tourism industry has undeveloped potential for growth given the current political stability, travel infrastructure, and extensive national parks as well as other potential tourist sites. In 2006, Rwanda completed the Multilateral Debt Relief Initiative and the Heavily Indebted Poor Countries (HIPC) debt initiative, significantly lowering its foreign debt load.

Energy needs will stress natural resources in wood and gas, but hydroelectric power development is underway, albeit primarily in the planning stages, as is methane development. Rwanda does not have nuclear power or coal resources. Finally, Rwanda's fertility rate--averaging 5.5 births (2008 est.) per woman--will continue to stress services, and diseases such as HIV/AIDS transmission, malaria, and tuberculosis will have a major impact on human resources.⁵²

⁵² US Department of State, *Background Note: Rwanda*, <http://www.state.gov/r/pa/ei/bgn/2861.htm#gov>, last visited 15 August 2011. See also World Bank, *Rwanda, Country Brief*, available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/RWANDAEXTN/0,,menuPK:368714~pagePK:141132~piPK:141107~theSitePK:368651,00.html> (last visited 15 August 2010).

4. Home-Grown Initiatives

In its policy promoting reconciliation and the rule of law in the country, the Rwandan Government relies on various traditions, such as Ingando, Itorerero, Ubusabane and Ubudehe. Two home-grown initiatives have to be mentioned as of particular importance to the justice sector: the *gacaca* tribunals, used to try those accused of being involved in the genocide, and the Abunzi, mediators who focus on small conflicts.

4.1 Gacaca

The most well known home-grown initiative within the sphere of the justice sector is the *gacaca* tribunals set up to try genocide suspects. The impact of the *gacaca* trials on Rwandan society, with more than 1.2 million genocide-related cases having been tried within ten years, justifies ample description of the process that led to the re-establishment of the *gacaca*.⁵³

Directly after the genocide was stopped in July 1994, many persons were detained and accused of complicity in the genocide. By the end of October 1996, a total of 86,200 prisoners were incarcerated in nineteen Rwandan detention centres (among them 3,000 women and 2,000 adolescents),⁵⁴ many of them without a sound legal basis.⁵⁵ This number grew steadily to reach about 125,000 by the end of 1998.⁵⁶

At the same time, the judiciary had been diminished. The judicial system, already not quite well developed before 1994, was left in shambles after the genocide, as a substantial part of the judiciary had been killed or had fled the country during and after the genocide.⁵⁷ Of 758 judges, only 244 were left after the genocide, and only 12 of 70 prosecutors remained. Almost all of them were non-lawyers. There were only a handful of advocates/lawyers to defend the accused. Nevertheless, people tried to re-establish the judicial system. At the same time, the trials of genocide suspects had to start. The challenge was to build a new justice system, punish the guilty, and reconcile the population at the same time. The first law on genocide was published as early as 1996.⁵⁸ This law created specialized chambers within the *tribunaux de première instance* (first instance or primary courts) and military courts with exclusive jurisdiction to try genocide-related cases. This law also introduced the categorization of crimes and the guilty plea, two aspects that have remained cornerstones of the genocide trials.

In the late 1990s it was estimated that trying all 125,000 detained suspects of the genocide in regular penal courts would take more than 200 years. Between December 1996, when the first trials started, and July 1999, a total of 1,801 suspects were tried.⁵⁹ Moreover, the faith in the classical justice system in Rwanda in those days was low.⁶⁰ As a result, continuing only with trials before regular courts was not an option. Amnesty was not considered an option either.

⁵³ See e.g. Roelof Haveman, 'Gacaca in Rwanda: Customary Law in Case of Genocide', in Jeanmarie Fenrich, Paolo Galizzi & Tracy Higgins (eds.), *The Future of African Customary Law*, 2011, pp. 387-420.

⁵⁴ *Report of the U.N. Human Rights Field Operation in Rwanda* (HRFOR), noted in U.N. Office for the Coordination of Humanitarian Affairs, Integrated Regional Information Network (IRIN), *Emergency Update No. 56 on the Great Lakes*, 13 December 1996.

⁵⁵ Stef Vandeginste, *Justice, Reconciliation and Reparation After Genocide and Crimes Against Humanity: The Proposed Establishment of Popular Gacaca Tribunals in Rwanda*, All-African Conference on African Principles of Conflict Resolution and Reconciliation, Addis Ababa, 8-12 November 1999.

⁵⁶ U.N. Econ. & Soc. Council, Commission on Human Rights, Report on the Situation of Human Rights in Rwanda Submitted by the Special Representative, Mr. Michel Moussali, Pursuant to Resolution 1998/69, 28, U.N. Doc. E/CN.4/1999/33 (Feb. 8, 1999).

⁵⁷ SNJG, *Gacaca Jurisdictions: Achievements, Problems and Future prospects*, available at <http://www.inkiko-gacaca.gov.rw/PPT/Realisation%20and%20future%20perspective.ppt> (last visited 20 September 2011).

⁵⁸ *Organic Law No. 08/96 of 30/08/1996 on the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity Committed Since Oct. 1, 1990*.

⁵⁹ Stef Vandeginste, *Justice, Reconciliation and Reparation After Genocide and Crimes Against Humanity*.

⁶⁰ Office of the President, *Report on the Reflection Meetings Held in the Office of the President of the Republic from May 1998 to March 1999 (Detailed document)*, pp. 67-74 (August 1999).

Considering the sluggish speed of the International Criminal Tribunal for Rwanda (ICTR), with only about 70 people tried in 15 years, it would have taken the international tribunal 15,000 to 20,000 years to try all of the suspects. The ICTR was also problematic in that it sat in Tanzania, far away from Rwanda, and proceedings are conducted in a language most Rwandans do not sufficiently understand.

The *gacaca* as a tool to approach the genocide was mentioned shortly after the genocide. Apparently, immediately after the genocide, 'old-fashioned' *gacaca* emerged to deal with property crimes committed during the genocide,⁶¹ but larger crimes like murder were not discussed. A UN report of 1996, based upon a field study from the previous year, raised the possibility of using *gacaca* courts to deal with minor offenses, and to collect facts about the atrocities committed and then refer these cases to the classical tribunals. The report strongly advised against the *gacaca* itself dealing with the atrocities.⁶²

In November 1995, the *gacaca* was mentioned during a National and International Dialogue Conference in Kigali on 'Genocide, Impunity and Accountability'.⁶³ The conference rejected any consideration of a blanket amnesty in order to fight the culture of impunity: "[t]here shall be no impunity for these crimes. Those who are guilty have a rendez-vous with justice."⁶⁴ In its recommendations, the conference focused mainly on an independent specialized court or, as introduced a year later, specialized chambers within the classical penal system. The categorization of crimes, guilty pleas and the use of laymen in the courts were all raised during this conference.⁶⁵ For the less serious crimes, alternative forms of accountability were proposed without going into much detail.⁶⁶ "In particular, the Conference urges that in cases not involving crime against the person, customary Rwandan procedures such as the AGACACA be used, or adapted, to the extent possible."⁶⁷

However, it seems that it was only after 1998/1999 that the idea of using the *gacaca* really gained support in the form as we now know it. After reflection meetings were held in 1998/1999 in the office of the president – attended by politicians from various parties, members of parliament, ministers and secretary generals, prosecutors, judges, police, military, scholars and some individual citizens – many found it necessary to look for a solution outside the classical criminal justice system, a solution in which the people should actively participate as, after all, "usually justice is done in the name of the people and for the people," and it is the people "who know the truth about the events which took place."⁶⁸

The report from those meetings concluded:

*Regarding the offences of genocide and massacres, they were committed in public, by many people, in the people's eyes. So, it would be better if those offences were tried in public, the people participating in prosecuting and punishing those who committed them. Those who committed the crime together being tried and punished together. In this new justice, in which the people actively participate, leaders must not leave it to the people alone. Leaders know how people were killed and properties spoiled, and they should participate in helping to search for crimes and their perpetrators, punishing the perpetrators, thus being an example which will be followed by other people.*⁶⁹

⁶¹ Bert Ingelaere, 'The Gacaca Courts in Rwanda', in International Institute for Democracy and Electoral Assistance (IDEA), *Traditional Justice and Reconciliation After Violent Conflict: Learning from African Experiences*, 2008, pp. 25-58, at pp. 35-36.

⁶² UNHCHR, *Gacaca, le droit coutumier au Rwanda, Rapport final de la première phase d'enquête sur le terrain*, Kigali, June 1996, as mentioned by e.g. *Report on the Situation of Human Rights in Rwanda Submitted by the Special Representative, Mr. Michel Moussali*, p. 51 (repeating this opinion).

⁶³ Office of the President, *Recommendations of the Conference Held in Kigali from November 1st to 5th, 1995 on 'Genocide, Impunity and Accountability: Dialogue for a National and International Response'*, 1995.

⁶⁴ Office of the President, *Recommendations of the Conference on 'Genocide, Impunity and Accountability'*, p. 20.

⁶⁵ Office of the President, *Recommendations of the Conference on 'Genocide, Impunity and Accountability'*, p.16-21.

⁶⁶ Office of the President, *Recommendations of the Conference on 'Genocide, Impunity and Accountability'*, p. 21.

⁶⁷ Office of the President, *Recommendations of the Conference on 'Genocide, Impunity and Accountability'*, p. 23.

⁶⁸ Office of the President, *Report on the Reflection Meetings Held in the Office of the President of the Republic from May 1998 to March 1999 (Detailed document)*, 1999, p. 51.

⁶⁹ Office of the President, *Report on the Reflection Meetings*, p. 51-52.

The report also argued that this new justice in which the people actively participate could be used to help to rebuild the country, for instance, by introducing community service for convicts, eradicating the culture of impunity, fostering reconciliation and the re-establishment of unity among Rwandans. The report concluded, "Rwandans can base that new justice on the Gacaca Rwandese heritage. Gacaca which was existing in Rwanda would serve as a basis when working out the new Gacaca, which is adapted to the period in which Rwandans are living and which enables them the objectives of real justice."⁷⁰

The organization, competence, and functioning of *gacaca* courts were subsequently written down by law. Since the introduction in 2001 of the *gacaca* as a more-or-less official state tribunal system, six laws have passed parliament, each further refining the system.⁷¹

The preamble of the law establishing the *gacaca* tribunals and determining their organization, functioning, and competence is clear on what caused the government to create *gacaca*:

Considering the necessity to eradicate for ever the culture of impunity in order to achieve justice and reconciliation in Rwanda, and thus to adopt provisions enabling rapid prosecutions and trials of perpetrators and accomplices of genocide, not only with the aim of providing punishment, but also reconstructing the Rwandan Society that had been destroyed by bad leaders who incited the population into exterminating part of the Society

[...]

Considering the necessity for the Rwandan Society to find by itself, solutions to the genocide problems and its consequences,

It is decided to adopt this law on *gacaca*, providing for

*penalties allowing convicted persons to amend themselves and to favour their reintegration into the Rwandan Society without jeopardizing the people's normal life.*⁷²

The importance of finding a home-grown solution should not be underestimated. This comes out of resentment that the international community left Rwanda to solve its problems itself when the genocide started. Thus, also afterwards, Rwanda should be allowed to solve the problem itself. Also, there was the factor of pride involved in Rwanda finding a response that was not dictated by the international community.

More than 12,000 *gacaca* courts were established throughout the country, with about 250,000 persons elected as 'judges', the so-called Inyangamugayo or persons of integrity in the villages. The number of Inyangamugayo later dropped to about 170,000.

The first 'modern' *gacaca* to try genocide cases started with a pilot project in June 2002, with an information phase in 751 *gacaca* courts in 118 sectors, and the trial phase starting in March 2005.

⁷⁰ Office of the President, *Report on the Reflection Meetings*, p. 52.

⁷¹ *Organic Law No. 16/2004 of 16/06/2004 establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and other Crimes against Humanity, Committed between October 1, 1990 and December 31, 1994*, Official Gazette, No. Special of 19 June 2004, as amended by *Organic Law No. 28/2006 of 27/06/2006*, Official Gazette, No. Special of 12 July 2006; *Organic Law No. 10/2007 of 01/03/2007*, Official Gazette No. 5 of 1 March 2007 and *Organic Law No. 13/2008 of 19/05/2008*, Official Gazette No. 11 of 1 June 2008. These laws together are the revised version of the *Organic Law N° 40/2000 of 26/01/2001 Setting Up "Gacaca Jurisdictions" and Organising Prosecutions for Offenses Constituting the Crime of Genocide or Crimes Against Humanity, Committed Between Oct. 1, 1990 and Dec. 31, 1994*, and the *Organic Law N° 33/2001 of 22/6/2001 Modifying and Completing Organic Law N° 40/2000 of 26/01/2001*, two of these laws in their turn were an amendment to the *Organic Law N° 08/96 of 30/08/1996 on the Organization of Prosecutions [in regular courts] for Offenses Constituting the Crime of Genocide or Crimes Against Humanity Committed since Oct. 1, 1990*.

⁷² Preamble, *Organic Law No. 16/2004 of 16/06/2004*.

Nationwide, the *gacaca* officially started in January 2005 with an information phase to gather information on victims, suspects, looted property, et cetera, and after which suspects were categorized. The full, proper trials started around mid-2006.⁷³

There were three categories of crimes (with initially four).⁷⁴ The first category is formed by '*les planificateurs, les organisateurs, les incitateurs, les superviseurs et les encadreurs*', that is, those who committed crimes as high-ranked officials within religious or state institutions or in militia, or incited others to commit crimes, and those who allegedly committed rape and (sexual) torture.⁷⁵ The second category entails those who distinguished themselves by the zealousness or excessive wickedness (*'le zèle (...) ou la méchanceté excessive'*) with which they took part in the genocide, torturers, violators of corpses (*'les actes dégradants sur le cadavre'*), those who 'simply' killed someone, and those who acted with the intention to kill but did not succeed, and other criminal acts against persons without the intention to kill. The third category consists of those who committed acts against property.

While the *gacaca* started with the idea that about 125,000 detained suspects needed to be tried, extrapolation of the number of suspects discovered during the pilot phase of the *gacaca* led to an estimate of 800,000 suspects to be tried all over the country. Even the 800,000 estimate eventually also turned out to be a low estimation. As of July 2011, a total of 1,237,356 cases have been tried: 15,263 category one cases, 383,118 category two cases and 838,975 category three cases. The *gacaca* are due to finish at the end of 2011.

4.2 Abunzi⁷⁶

In the early 1990s, the *gacaca* were not as active as before. As far as the *gacaca* still did exist, it was soon taken over by the new genocide-*gacaca*. The so-called *abunzi* – mediators or literally 'conciliators' – can be considered a successor of the old *gacaca*, mediating in small conflicts within small communities, albeit now all state-organised.

Officially, to promote access to justice for the entire population, the Government of Rwanda has recognised the importance of promoting dispute resolution at the community level. That led, in 2006, to the creation of *abunzi* or mediation committees, with the task of providing free mediations for small conflicts in communities. It functions as a threshold to the formal legal system, requiring litigants to first try mediation before filing a case in the courts of first instance, hence contributing to diminishing the backlog of cases in the formal court system.

Two levels of mediation committees exist:

- A sort of first instance mediation committee at the cell level, and
- an appellate mediation committee at the sector level (since 2010).

⁷³ See generally SNJG, Report on Data Collection, available at <http://www.inkiko-gacaca.gov.rw/pdf/ikusanya%20english.pdf>.

⁷⁴ Article 9, *Organic Law N° 13/2008 of 19/05/2008*. Initially there were four categories, see Article 51, *Organic Law N° 40/2000 of 26/01/2001*. These four categories have been refined and reduced to three by, broadly speaking, combining the initial second and third categories.

⁷⁵ Until Organic Law N° 10/2007 of 01/03/2007, the first category also included those who distinguished themselves by the zealousness or excessive wickedness with which they took part in the genocide, and violators of corpses. As at the end of the information phase of the *gacaca* this category turned out to be too big – about 70,000-80,000 suspects – to be tried by the regular courts within a reasonable time (as first category cases are), the first category has been diminished, and these two groups have been shifted to the second category.

⁷⁶ See for all references to the law, *Organic Law No. 02/2010 of 09/06/2010 on the Organisation, Jurisdiction, Competence and Functioning of The Mediation Committee (Repealing Organic Law No. 31/2006 of 14/08/2006 on the Organisation, Jurisdiction, Competence and Functioning of the Mediation Committee)*; Rwandan Ministry of Justice, *Mediation Committees*, available at <http://www.minijust.gov.rw/moj/mediationcommittees.aspx> (last visited 20 September 2011).

According to the law, every mediation committee comprises of twelve residents of the cell and the sector respectively, who are persons of integrity and are well known for their mediation skills. They are elected for five years (renewable). As in all decisive bodies in the state, at least one third of the *abunzi* must be women. Rwanda has 2,150 cells across the country within 30 districts and a total of 32,400 *abunzi* committee members.

As for the competence of the *abunzi*, in principle, the *abunzi* are only competent to hear a conflict when the persons involved live in the territory of the *abunzi* committee. *Abunzi* can receive civil and criminal cases.

The civil competence of the *abunzi* generally covers the following cases when the amount in dispute does not exceed three million Rwandan francs (Rwf) (approximately €4,000):

- land and other immovable assets;
- cattle and other movable assets whose value does not exceed one million Rwf;
- breach of contractual obligations in cases not exceeding the value of one million Rwf, with the exception of central government, insurance and commercial contractual obligations;
- breach of employment obligations with a value of less than one hundred thousand Rwf;
- family cases other than those related to civil status;
- successions.

In criminal cases, the *abunzi* are competent to hear cases (if the matter at issue does not exceed three million Rwandan francs) related to:

- removing or displacing land and plot boundaries;
- destruction or damage to crops;
- insults;
- defamation, except in cases where it is done by the media;
- stealing crops or standing crops;
- larceny;
- concealment of goods stolen during larceny;
- thefts or extortion committed by members of the same family;
- breach of trust;
- discovering a movable asset belonging to another person or getting it unexpectedly and keep it or fraudulently giving it to a person other than the owner;
- killing or wounding without intent domestic or wild animals belonging to another person;
- destroying or damaging without intent, assets belonging to another person;
- any type of assault to a person or intentionally throwing at him/her rubbish or any other thing of a dirtying nature without causing injury or physical harm.

In criminal cases, when the offender fails to comply with the mediator's decision, the victim may file a complaint against him/her with the judicial police which compels him/her to comply with the decision. If the offender fails to do so, he/she is forced to serve a community service penalty of fifteen consecutive days. The community service penalty of fifteen days may be re-imposed in cases where the offender fails to comply with the mediator's decision. After that period, the offender may be forced to serve the community service penalty until he/she complies with the mediator's decision.

The parties together choose three mediators from the committee to deal with their case. When they cannot come to an agreement, each party chooses one mediator, who together choose the third one. If the summoned person does not appear on the day the case will be heard, he/she will be summoned again, noting that the *abunzi* will decide on the case on that new date, whether he/she appears in person or not.

The law determines that the mediation hearing shall be public (save for the hearing *in camera* when the nature of the case requires so). The *abunzi* hear claims from each of the parties and from witnesses if there are any. They may have recourse to advice by any person who can shed light on the matter. During the hearing, an advocate may assist the party when necessary, but the advocate cannot represent or plead for the party.

Mediators seek first to reconcile the parties. In case of non-conciliation, they make a decision in based on full honesty and in accordance with the laws and local customary practices (provided this is not contrary to the written law). In criminal matters, mediators shall not pronounce penalties provided by penal law. In such cases, mediators have managed to conciliate the perpetrator of the offence and the victim. Thus, the role of mediators is to find an end to a criminal prosecution.

Any party that is not satisfied with the decision of the mediation committee at the cell level, may, within a period not exceeding one month from the day on which the written decision was notified, appeal to the mediation committee at the sector level. Any party who is not satisfied with the decision of the mediation committee at the sector level may, within a period not exceeding one month from the day on which he/she was notified of the written decision of the panel, refer the matter to the primary court which shall render a judgment on merits at the first and last instance.

A study by RCN Justice & Démocratie found:

[I]n the majority of cases the abunzi try to get the parties to reach a compromise. It was also found that a considerable portion of the litigants concerned are not at all in a state that they may be reconciled. Mediation works particularly well in the early stages of a dispute or when there isn't really an alternative but to compromise. It should be well understood, however, that the intervention by the abunzi is neither the first nor the last recourse available to disputants. In a number of regions, where traditions are very strong, an inama y'umuryango [a family gathering] will first have been called. After that, the dispute will have been heard by at least two administrative units (typically the umudugudu and the cell). If this has been unsuccessful, the parties often just want the abunzi to decide who is right and who is wrong ; or, to put it more formally, to examine the facts, apply the relevant statutes, and render a decision. This is, in fact, what the law forces the abunzi to do if an accord cannot be reached.⁷⁷

The same study revealed that:

on average, 40 percent of cases dealt with at the umudugudu level are subsequently submitted to the executive secretary of the cell, either because one of the parties does not accept the outcome or because the members of the umudugudu council decided that the case was too complicated for them to deal with. This is sometimes used as a way to avoid having to take a decision that could strain relations with one of the parties or between members of the umudugudu council. About 50 percent of the cases that executive secretaries of cells deal with will subsequently be submitted to the abunzi committee and some 25 percent of the cases decided on by the abunzi find their way to the Primary Courts.⁷⁸

This means that out of every 100 cases submitted on the *umudugudu* level, only five cases will reach the primary courts.

The Legal Aid Forum together with the University of Tilburg (the Netherlands) will perform a perception study to measure public satisfaction with the system.

⁷⁷ Marco Lankhorst & Muriel Veldman, *La Proximité de la Justice au Rwanda*, RCN-Justice & Démocratie, June 2009, as summarized in English by the first author on the website of RCN-Justice & Démocratie, <http://www.rcn-ong.be/Neo-customary-dispute-in-Rwanda>

⁷⁸ Muriel Veldman & Marco Lankhorst, *Legal Empowerment and Customary Law in Rwanda*, 2011, p. 31.

Part B: Positive Trends and Challenges Regarding the Rule of Law



1. Introduction

Usually in reports on the human rights situation in a specific country, especially reports from human rights organisations, violations of human rights dominate the pages. This is not strange insofar as adherence to human rights norms is (or should be) the rule, and violations of human rights are (or should be) the exception. However, this also makes one easily forget that big steps forward may have been made during the reporting period. For example, the abolition of the death penalty and positive measures taken with respect to the fairness of the penal system are easily overshadowed by – without any doubt condemnable – incidents of unlawful detention. In particular, when a transitional period following a large-scale conflict or dictatorial regime is regarded as a process, one can and should not neglect positive developments and trends as part of that process.

In this report, instead of having done new research, existing reports, all from a recent date, form the basis for the assessment of positive trends and challenges.

These reports include in particular:

- Documents of the Rwandan Government, for instance:
 - The national report of Rwanda submitted to the Human Rights Council, Working Group on the Universal Periodic Review, January–February 2011; the presentation of the Rwandan Minister of Justice/Attorney General on that occasion and the response of the government to issues raised during the review;
 - The 2010-Rwanda Governance Scorecard of the Rwanda Governance Advisory Council, first published in 2010, which is a governance assessment tool constructed from data for over 200 questions structured around a set of 8 indicators, 37 sub-indicators and 139 sub-sub-indicators;
 - The 2008 Joint Governance Assessment of the Government of Rwanda together with its development partners;
 - Strategic Plans and other documents of Rwandan governmental institutions, such as the Justice, Reconciliation, Law and Order-Sector (JRLOS); the Supreme Court; the Consultative Forum of Political Organisations in Rwanda; the Rwanda Governance Advisory Council; the National Unity and Reconciliation Commission; the Rwandan Human Rights Commission; the Institute of Legal Practice and Development; the Service National des Juridictions Gacaca; and the Senate;
 - The Rwandan Constitution and various laws and regulations;
- Reports and documents of Rwandan institutions and organisations, such as the Institut de Recherche et de Dialogue pour la Paix (IRDP), Transparency Rwanda, and civil society organisations, including the Legal Aid Forum, the Ligue de Droit de la Personne dans la Région des Grands Lacs (LDGL), and the Rwanda Civil Society Platform;
- Reports and publications of third governments and intergovernmental organisations, such as the African Union, the European Union and the Commonwealth; the Dutch Public Prosecution Authority; the annual human rights reports of the US Department of State;
- Reports, press releases and other publications of international non-governmental organisations, such as Amnesty International, Human Rights Watch, Commonwealth Human Rights Initiative, Penal Reform International, Avocats sans Frontières, RCN-Justice & Démocratie; also Transparency International, Freedom House, CPJ-Committee to Protect Journalists, Reporters without Borders, World Bank/Brookings Institution;

- Decisions of the International Criminal Tribunal for Rwanda (ICTR), and of courts of third countries, such as the UK.

Analysis of these reports led to the identification of four positive trends and five challenges/concerns. Interviews with various stakeholders confirmed the accuracy of this choice.

This chapter starts with the four positive trends:

- The policy towards corruption;
- The judiciary in general;
- The fairness of criminal trials;
- Access to justice for the population at large.

These positive trends cannot hide that various, sometimes serious, concerns exist with respect to aspects of the Rule of Law in Rwanda. The report focuses on five main challenges:

- Freedom of expression, in particular the provisions on divisionism and genocidal ideology;
- Freedom of press;
- Political space;
- Independence of the Judiciary in particular in high profile cases;
- Fairness of *Gacaca*.

It is interesting to note that some topics mentioned as a positive trend return among the concerns also. This shows that, just as focusing on concerns may overshadow general positive trends, the opposite is also true: focusing on positive trends may hide specific concerns. For instance, whereas the judiciary in general is considered to be moving in the right direction, there are still concerns about the independence of the judiciary. As for the *gacaca*, various observers mentioned its development and use as in general a positive development (see above § 4.1). At the same time, various concerns have been raised about its fairness.

Together these are a reflection of the main positive trends as well as challenges – current as well as perceived for the near future – as mentioned in public reports and interviews with various stakeholders in the justice sector in Rwanda.

2. Positive trends

Various positive trends are mentioned in the reports. This paragraph discusses the topics that have already materialised in practice. They are:

- The policy towards corruption (§ 2.1);
- The judiciary in general (§ 2.2);
- The fairness of criminal trials in particular (§ 2.3);
- Access to justice for the population at large (§ 2.4).

It is important to note that these are trends – developments in a positive direction. For each topic, gaps remain, steps remain to be taken, improvements to be made, for some topics more than for others, working towards a better world.

The general picture that emerges is that of a government that builds institutions, such as the Public Procurement Authority, the Office of the Auditor General, the Ombudsman's Office, the Anti-Corruption Unit in the Rwanda Revenue Authority, Maisons d'Accès à la Justice, commercial courts, and whose tasks and responsibilities are well defined by the law.

2.1 Corruption

In the Rwanda Governance Scorecard 2010 the results for the control of corruption indicator are mixed.⁷⁹ However, a comparison with neighbouring countries and with African countries in general, as well as the opinion of outsider observers – reports of Transparency Rwanda, Transparency International and the World Bank –, justify classifying the level of corruption as one of the clear and generally acknowledged positive trends in Rwanda.

There is a clear political will to fight corruption – the so-called “zero-tolerance policy” – which is translated in various policy measures. As the *Rwanda Bribery Index 2010* indicates:⁸⁰

- The Government has created some new institutions such as the Rwanda Public Procurement Authority, the Office of the Auditor General, the Ombudsman's Office, the Anti-Corruption Unit in the Rwanda Revenue Authority, the Rwanda Development Board, the National Bureau of Standards in charge of the quality of different types of importation in the country and the National Examinations Council which prepares and corrects different tests.
- Several laws have been put in place in order to fight corruption, particularly the Law No. 23/2003 approved on 07/08/2003 on prevention and repression of corruption and related offences. The penal code also shows the commitment to fight against corruption in articles 220-227. Other laws concerning specific bodies or sectors also include measures to prevent and fight corruption, such as the regulation of the Chamber of Deputies (article 38, Organic Law No. 06/2006) and of political parties (Organic Law No. 16/2003) as well as the deontological code of journalists and media.
- Rwanda has signed and ratified several international conventions including the UN Convention Against Corruption, the African Union Anti-Corruption Convention and the UN Convention against Transnational Organized Crimes.

⁷⁹ Rwanda Governance Advisory Council, *Rwanda Governance Scorecard 2010*, 2011, p. 41-45.

⁸⁰ Transparency Rwanda, *Rwanda Bribery Index 2010*, 2011, p. 2.

Despite the progress made on paper and the implementation thereof in practice, the *Rwanda Bribery Index 2010* concludes that

*corruption is still present in the country and there have been instances of tax and public funds embezzlement, fraudulent procurement practices, judicial corruption, as well as high ranking officials involved in corrupt practices. Sectors most affected by corruption include the judiciary, public finance management, public administration, and public procurement. As per the records of the prosecutor general, in 2010, out of 12 districts, there were 114 reported corruption cases.*⁸¹

A survey among 2,401 respondents revealed that

*corruption is not very prevalent in Rwanda with most of the population (82%) saying that they have not witnessed any form of corruption over the period of study (12 months). This could imply that there is very little corruption known in Rwanda or that the public are reluctant to reveal the corruption cases they have witnessed. For those who admit to have witnessed corrupt practices, the most significant form of corruption witnessed is bribery. Bribery to obtain service is witnessed by 11% of the people while bribery to secure a job is witnessed by 3% of them. Similarly, only 17% of the respondents have encountered corrupt practices compared to 83% who have not.*⁸²

As the main reason for corruption, respondents mentioned the “need to access services” (30.7% of the people who encountered corruption). “Bribing to get employment is mentioned by 12.9% of the people as the second most common reason of corruption in Rwanda. Other reasons are payment of bribes to avoid law enforcement (9%), issues surrounding conformity to regulation (8.1%), and business-related procedures (6.2%).”⁸³

The report further concludes that “[t]he likelihood of encountering bribery demand situations in Rwandan institutions is 3.9%. [...] The likelihood of being asked a bribe in the Rwandan institutions that have been surveyed is therefore very low”. “Prevalence of bribery in Rwanda institutions is 2.15%, therefore very low”.⁸⁴ “Overall impact of bribery [the number of service deliveries as result of paying bribe] in Rwandan institutions is 1.98% which can be defined as very low”.⁸⁵ “The average bribe paid during the last 12 months by the respondents who paid bribes is Rwf 27,467 [approximately € 35]. This is a relatively high amount considered that more than half of the Rwandan population lives below the poverty line. [...] The information gathered in the survey also reveal that the smallest bribe given in the last 12 months was 200 Rwf [approximately € 0.25] while the biggest was worth 600,000 Rwf [approximately € 750]”.⁸⁶

International studies mostly confirm these outcomes. For example, in general, the most recent *Worldwide Governance Indicators* show a considerable improvement with regard to control of corruption in Rwanda, in particular since 2006, leaving far behind the Sub-Sahara average as well as the East African countries.⁸⁷

The *Corruption Perceptions Index 2010* by Transparency International ranks Rwanda 66 out of 174 countries⁸⁸ with a score of 4 on a scale of 10 (10 being least corrupt);⁸⁹ again leaving behind most Sub-Sahara African countries (8th out of 47 countries),⁹⁰ and the entire East African region.⁹¹

⁸¹ Transparency Rwanda, *Rwanda Bribery Index 2010*, p. 2.

⁸² Transparency Rwanda, *Rwanda Bribery Index 2010*, 2011, p. 3.

⁸³ Transparency Rwanda, *Rwanda Bribery Index 2010*, 2011, p. 4.

⁸⁴ Transparency Rwanda, *Rwanda Bribery Index 2010*, 2011, p. 5.

⁸⁵ Transparency Rwanda, *Rwanda Bribery Index 2010*, 2011, p. 7.

⁸⁶ Transparency Rwanda, *Rwanda Bribery Index 2010*, 2011, p. 8.

⁸⁷ World Bank/Brookings Institution, *Worldwide Governance Indicators 2010*. For further international studies tracking the improvement since 1996, see World Bank/Brookings Institution, *Worldwide Governance Indicators 2009*; Transparency International, *Corruption Perceptions Index 2010*; Transparency International, *Corruption Perceptions Index 2009*; Transparency International, *Corruption Perceptions Index 2008*; Transparency International, *Corruption Perceptions Index 2007*.

⁸⁸ 2009: 89 out of 180 countries. 2008: 102 out of 180 countries. 2007: 111 out of 179 countries.

The *East Africa Bribery Index 2010* again confirms the findings of the *Rwanda Bribery Index* and the *Corruption Perceptions Index*. It “clearly shows that apart from Rwanda where incidents of bribery were found to be negligible, corruption is still an impediment to public service delivery in the region.”⁹² The corruption prevalence in Rwanda is 6.6%, with the four other East African countries ranging between 28.6 and 36.6%.⁹³ Of the 116 most bribery-prone institutions in the region, not one of them is a Rwandan institution.⁹⁴

The Government of Rwanda together with its development partners concluded in their *Joint Governance Assessment Report*:

*In summary, Rwanda has an impressive record in combating corruption, and benefits from levels of corruption that are markedly lower than in neighbouring countries. There is a strong political resolve to continue the policy of zero tolerance. However, while political will is strong, there is an urgent need to strengthen the institutional framework that is required to guarantee sustained progress in fighting corruption.*⁹⁵

As a suggestion for improvement, the report mentions that “[t]he role of independent civil society as a watchdog, advocate, monitor and contributor to policy development in the fight against corruption needs to be strengthened, for example by supporting investigative journalism and educating the public and training officials on the need to fight corruption.”⁹⁶

2.2 Judiciary

Since the justice sector reforms of 2004, the justice system has made impressive steps forward, in terms of both professionalism and further specialisation of the judiciary. Also other aspects have improved, such as the infrastructure of courts and tribunals, and the digitalisation of the judiciary. Many laws and regulations are now available on the internet in three languages: Kinyarwanda, English and French.⁹⁷

2.2.1 Professionalism

Until the judicial reforms of 2004, the vast majority of judges were non-lawyers. Only 74 out of 702 judges had a law degree. In 2004, all lay judges and prosecutors were replaced, except for a small group who were offered the opportunity to get their law degree. Now, all 281 judges in the judiciary have at least a bachelor’s degree in law. However, as a result, the judiciary has been and to a large extent still is composed of young and relatively inexperienced lawyers.

In general, Rwanda has had a shortage of lawyers. Until 1994, only a handful of students graduated in law every year. It is only since the faculty of law of the National University of Rwanda reopened after 1994 and various private universities were established harbouring a law school, that law became a popular course of study. Currently, an estimated 900 law students graduate each year. In 2008, a new law curriculum was introduced, adapting academic legal education to the needs of legal practice.

In 2008, the post-graduate training institute for the justice sector – the Institute of Legal Practice and Development (ILPD)⁹⁸ – began its initial training programme for judges, prosecutors, and members of the Bar. It is the first professional training programme for the judiciary in the history of Rwanda.

⁸⁹ 2009: 3,3. 2008: 3,0. 2007: 2,8.

⁹⁰ 2009: 10. 2008: 16. 2007: 20.

⁹¹ Transparency International, *Corruption Perceptions Index 2010*.

⁹² Transparency International Kenya, *East Africa Bribery Index 2010*, p. 6.

⁹³ Transparency International Kenya, *East Africa Bribery Index 2010*, p. 14.

⁹⁴ Transparency International Kenya, *East Africa Bribery Index 2010*, p. 14-17.

⁹⁵ *Rwanda: Joint Governance Assessment Report*, as adopted by Cabinet, 8 October 2008, p. 55.

⁹⁶ *Rwanda: Joint Governance Assessment Report*, as adopted by Cabinet, 8 October 2008, p. 55.

⁹⁷ See <http://www.amategeko.net>.

⁹⁸ Institute of Legal Practice and Development (ILPD) in Nyanza, Southern Province, see <http://www.ilpd.ac.rw> (last visited 15 August 2011).

The initial training programme takes nine months and leads to a diploma in legal practice.⁹⁹ It consists of nine modules, focusing on professional skills such as judgement writing, interviewing, legal drafting, and then includes an internship and a thesis. Since the start in 2008 until mid-2011, approximately 200 judges and prosecutors have followed the initial programme, with the first class of 100 students graduating in June 2011. All already serving judges and prosecutors have to get the diploma, as well as all newly-appointed judges and prosecutors.

The institute further offers a continuing legal education programme for the justice sector, with courses on the most pressing needs indicated by the justice sector itself. A training needs assessment was conducted in 2009, based on a list of knowledge, skills, and abilities necessary for professional performance in a well-functioning judiciary. Moreover a regular performance evaluation system has been put in place.

As a result, it is generally acknowledged that the professionalism of the judiciary has increased, as well as its efficiency. With regard to the latter, it may be mentioned for instance that the number of cases dealt with by the High Court has increased from 1,166 in 2005 to 3,088 in 2008, and for the Intermediate Courts from 6,305 in 2005 to 10,222 in 2008.

2.2.2 Mandate

With the amendment of the Rwandan constitution in 2008, a provision was introduced limiting the mandate of judges to a set period instead of life tenure. This change raised concerns within and outside the judiciary, in particular, with regard to the independence of judges. In the end, these concerns led to a 2010 amendment of the constitution deleting the provision that limited judges' terms to a set period.

2.2.3 Specialised Courts and Chambers

Since the start of judicial reforms, activities of the judiciary have no longer exclusively directed toward pleading audiences, but also to the development of an economic space conducive to national and foreign investment, as the Supreme Court has remarked.¹⁰⁰ As a result of this improvement of the economic climate, the judiciary has become one of the key actors to the development of the country.

From 2004 to 2007, the commercial chambers of Huye, Musanze, and Kigali have heard commercial disputes. In December 2007, the Organic Law No. 59/2007 of 16/12/2007 instituted commercial jurisdictions in the following order:¹⁰¹

- The High Commercial Court situated in Kigali;
- The Commercial Court of Nyarugenge;
- The Commercial court of Huye;
- The Commercial Court of Musanze.

Other specialised courts include the Military Tribunal and Military High Court, trying all cases in which at least one military is involved, including non-military co-accused persons. The military judges receive the same training as other judges, with some additional courses on specific military issues.

2.3 Fair Trial

The question of whether criminal trials in Rwanda are fair has been an issue since 1994. It received international attention in particular after requests from Rwanda to other countries to extradite suspects of genocide to Rwanda as well as requests to the ICTR to transfer cases to Rwanda.

⁹⁹ See Diploma in Legal Practice, http://www.ilpd.ac.rw/ilpd/Diploma_in_Legal_Practice.aspx (last visited 20 October 2011).

¹⁰⁰ Website of the Supreme Court, <http://www.supremecourt.gov.rw/> (last visited 15 August 2011).

¹⁰¹ *Organic Law No. 59/2007 of 16/12/2007 Establishing Organization, Functioning and Competence of Commercial Jurisdictions.*

The ICTR has dealt with the question of whether to refer a case to Rwanda in six cases: Munyakazi, Kanyarukiga, Hategekimana, Gatete, Kayishema, all in 2008, and also more recently in the Uwinkindi case in 2011.¹⁰² Whereas in 2008 the Tribunal refused to refer cases to Rwanda, initially with strong wording, in 2011, in the case of Uwinkindi, the Chamber permitted referral, which decision was upheld in appeal.¹⁰³ This indicates a positive development with regard to the fairness of trials in Rwanda.

The issues under scrutiny are best summarised in the ICTR decisions concerning transfer of cases to Rwanda, which decisions also form the basis of some decisions by national courts:

- Fair Trial;
- Penalty Structure;
- Conditions of Detention;
- Availability and Protection of Witnesses;
- Right to an Effective Defence;
- Judicial Competence, Independence and Impartiality.

For the ICTR, the independence of the judiciary has been an issue of concern (see below § 3.4.2). However, the ICTR has rejected the allegation that Rwanda violates the right of the accused to the presumption of innocence. Similarly, the *ne bis in idem* principle is sufficiently guaranteed. The same pertains to the aspects of the right to an effective defence regarding the availability and working conditions of lawyers, which in the opinion of the ICTR is guaranteed, despite some difficulties.

With regard to other objections raised in the ICTR decisions (and in judicial decisions of third countries), the Government of Rwanda has tried to lift as many obstacles as possible, such as by abolishing the death penalty in 2007,¹⁰⁴ by guaranteeing that sentences do not include life in prison with special provisions in 2008, by opening a special unit in the Mpanga Prison for transferred and extradited suspects/convicts so that the prison conform to international standards, and by adopting a special transfer law in 2007 concerning the transfer of cases to Rwanda from the ICTR and third States.¹⁰⁵

The main concern remaining after these modifications is the availability and protection of witnesses. Rwanda responded to this concern by amending the Transfer Law. The new Transfer Law includes provisions relating to immunity for anything said or done in the course of a trial; all witnesses who travel from abroad to Rwanda to testify in the trial of transferred cases shall have immunity from search, seizure, arrest or detention during their testimony and their travel to and from the trials; the testimony of witnesses residing abroad can be taken by deposition in Rwanda or in a foreign jurisdiction, or by video-link hearing taken by the judge at trial or by judges sitting in a foreign jurisdiction.

¹⁰² See: *Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36-R11bis, Trial Chamber III, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 28 May 2008 (Appeals Chamber Decision, 8 October 2008); *Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis, Trial Chamber Designated under Rule 11 Bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 6 June 2008 (Appeals Chamber Decision 30 October 2008); *Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-2000-55B-R11bis, Trial Chamber Designated Pursuant Rule 11 Bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 19 June 2008 (Appeals Chamber Decision 4 December 2008); *Prosecutor v. Jean Baptiste Gatete*, Case No. ICTR-2000-61-R11bis, Trial Chamber Designated under Rule 11 Bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 17 November 2008; *Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-R11bis, Trial Chamber III, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 16 December 2008; and *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, Referral Chamber Designated under Rule 11 Bis, 28 June 2011.

¹⁰³ *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-AR11bis, Decision of Uwinkindi's Appeal against the Referral of his Case to Rwanda and related Motions, 16 December 2011.

¹⁰⁴ *Organic Law No. 31/2007 of 25/07/2007 Relating to the Abolition of the Death Penalty; Organic Law No. 66/2008 of 21/11/2008 Complementing Organic Law 31/2007.*

¹⁰⁵ *Organic Law No. 11/2007 of 16/03/2007 Concerning the Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and Other States; Organic Law No. 03/2009 of 26/05/2009 Modifying and Complementing Organic Law 11/2007.*

In addition to the witness protection programme run by the Office of the Prosecutor General, Rwanda has established a witness protection unit within the Supreme Court and High Court, and staff have been trained for this unit. At the Supreme Court, video-link facilities have been set up. Rwanda has concluded several mutual assistance agreements with States in the region and elsewhere. Lastly, the possibility has been introduced to appoint a panel of three or more judges instead of a single judge, and to include in the bench judges from foreign or international courts.

As a result of these reforms, the ICTR Trial Chamber decided in June 2011 that there were no longer objections against a transfer of genocide suspects to Rwanda.¹⁰⁶ The decision was upheld in appeal, 16 December 2011.¹⁰⁷

This can also be seen with regard to other countries. For example, the UK, France, Sweden, which initially rejected extradition to Rwanda, have gradually been changing their position, supported by the European Court of Human Rights. In 2008, the Magistrate's Court in the UK allowed the extradition of four genocide suspects, although this decision was overruled by the High Court.¹⁰⁸ In 2011, a Norwegian court granted an extradition request filed by Rwanda, and the decision was upheld on appeal. In 2009, the Supreme Court of Sweden allowed extradition of a genocide suspect to Rwanda. Further, in its decision of 27 October 2011, the European Court of Human Rights decided that extradition in the Swedish case would not involve a violation of the prohibition on inhuman or degrading treatment or punishment (Article 3) nor of the right to a fair trial (Article 6) of the European Convention on Human Rights.¹⁰⁹

2.4 Access to Justice

The Joint Governance Assessment Report remarked in 2008 that "[a]ccess to legal representation is another major challenge facing the justice sector in Rwanda. There are relatively few defence lawyers compared to the very high numbers of pending criminal cases. In addition, legal aid is generally not available, and pro-bono services are limited. In remoter rural areas, access to urban (and mainly Kigali-based) lawyers is also more difficult."¹¹⁰ One of the recommendations of the report is to "[c]onsider means of increasing access to justice and expand legal aid programmes."¹¹¹

Similar conclusions can be read in the Access to Justice Baseline Survey that was published in early 2007.¹¹² Unfortunately, the baseline survey has not yet been followed up upon with a new study in order to assess any progress made. However, access to justice is one of the topics generally mentioned as a positive development.

¹⁰⁶ *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, Referral Chamber Designated under Rule 11 Bis, 28 June 2011.

¹⁰⁷ *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-AR11bis, Decision of Uwinkindi's Appeal against the Referral of his Case to Rwanda and related Motions, 16 December 2011.

¹⁰⁸ City of Westminster Magistrate's Court, *btw the Government of the Republic of Rwanda and Vincent Bajinya & others*, 6 June 2008 and High Court of Justice Divisional Court on Appeal from the City of Westminster Court, *btw Brown aka Bajinja & others and the Government of Rwanda & the Secretary of State for the Home Department*, 8 April 2009.

¹⁰⁹ ECtHR, *Ahorugeze v. Sweden*, Application no. 37075/09, Judgement of 27 October 2011.

¹¹⁰ *Rwanda: Joint Governance Assessment Report*, as adopted by Cabinet, 8 October 2008, p. 28.

¹¹¹ *Rwanda: Joint Governance Assessment Report*, as adopted by Cabinet, 8 October 2008, p. 79.

¹¹² Sendugwa Gilbert Ronald & Havugiyaremye Aimable, *Building the Foundation for Access to Justice in Rwanda; a Report of the Legal Aid Baseline and Needs Analysis Survey*, 2007. See also, The Legal Aid Forum, *Monitoring of EDPRS Indicators in the Justice Sector, August 2008-January 2009*, August 2009; The Legal Aid Forum, *Report of the Survey on Paralegals in Rwanda*, 2009

The topic of access to justice found its way into the Strategic Plan 2009-2012 of the Justice, Reconciliation, Law and Order Sector: “universal access to quality justice” is one of the four outputs, made more concrete with five targets:

- Target 1: Access to legal advice and representation universally available at sector level.
- Target 2: High levels of satisfaction with Abunzi justice.
- Target 3: Case backlog in ordinary courts and prosecution eliminated.
- Target 4: Time taken to process criminal case from arrest to sentencing reduced.
- Target 5: Cost of enforcing commercial contracts reduced to 20% of claim.¹¹³

The plan remarks that it is

*one of the prime duties of the State to provide accessible justice for its citizens. A Constitution guaranteeing rights, and even good laws made under the Constitution are not enough. Citizens must be able to access the laws, and have the ability to enforce them. Justice will be ineffective if it is confined to Kigali. It must be decentralised and if necessary informalised. Mechanisms set up to deliver justice need to be both sustainable and accountable. Civil society has a key role to play in the delivery of universal justice. But the prime responsibility for justice delivery (and for funding justice delivery) lies with the State – with the democratically elected and accountable Government of Rwanda.*¹¹⁴

The focus of this JRLO Sector output is on justice delivery at the community level, because the vast majority of disputes and conflicts never reach the formal justice system, as well as on commercial justice, key for the development of Rwanda.

Since the publication of the Joint Governance Assessment Report and the JRLO Sector Strategic Plan, various measures have been taken to improve the situation. During the Universal Periodic Review in early 2011, the Government of Rwanda reported:

*The right to defence is guaranteed in all courts. As for criminal cases involving minors, special procedures and legal assistance are particularly availed. The Government has introduced a legal assistance system to ensure access to justice by vulnerable groups. Anyone with a local authority certificate proving that he/she is indigent may access justice before courts without paying court fees. At each Intermediate Court, two lawyers are appointed and paid by the Ministry of Justice to assist minors with case. In all other cases for vulnerable persons, the Bar Association appoints a counsel to assist the needy people. The Ministry of Justice has opened Access to Justice Bureaus (Maisons d'Accès à la Justice) in all districts. There will soon be established in the said Access to Justice Bureaus specific desks to deal with gender-based violence and children rights. Civil Society Organisations also, with the support of different partners, put in place a Legal aid Forum, with the mission for delivering legal aid to the people.*¹¹⁵

Added to this can be:

- The further development of the Abunzi system with the law been changed in 2010 (see above § 4.2);
- The presence in every Maison d'Accès à la Justice of assistance specifically for children through UNICEF;
- The fast growing number of members of the bar;

¹¹³ JRLOS, *Justice, Reconciliation, Law and Order Sector Strategy and Budgeting Framework 2009-2012*, p 21.

¹¹⁴ JRLOS, *Justice, Reconciliation, Law and Order Sector Strategy and Budgeting Framework 2009-2012*, p. 32.

¹¹⁵ Human Rights Council, Working Group on the Universal Periodic Review, Tenth Session, Geneva, 24 January – 4 February 2011, *National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: Rwanda*, UN Doc. A/HRC/WG.6/10/RWA/1, para. 47.

- Assistance, for example through paralegals, by civil society, such as the Legal Aid Forum, Avocats sans Frontières, and law clinics at the law faculties at universities providing legal aid to indigent people;
- The draft law on the bar, allowing lawyers from civil society organisations to represent clients in court.

Despite all these measures, and despite the general opinion that access to justice is to be considered as one of the positive trends, in the Rwanda Governance Scorecard 2010, the score for access to legal aid is relatively low. However, the relatively low score is due to the fact that although in all thirty districts Maisons d'Accès à la Justice have been established and are fully operational (an achievement in itself and one of the reasons why in this chapter access to justice is discussed as one of the positive trends), the Legal Aid Fund has not yet been established nor has a budget been allocated to the fund. Other issues influencing access to justice that still need to be improved include, for example, the backlog of criminal and civil cases in courts, the execution of in particular civil court decisions, and the lack of a well-functioning administrative law system.¹¹⁶

In September 2011, the Ministry of Justice launched an international open request for proposals regarding an extended legal aid baseline study and the development of a Legal Aid Policy.

¹¹⁶ Rwanda Governance Advisory Council, *Rwanda Governance Scorecard 2010*, 2011, p. 15/16.

3. Challenges

In this chapter the main challenges with regard to the rule of law in Rwanda are discussed. These are:

- Genocide ideology (§ 3.1),
- Freedom of press (§ 3.2),
- Political space (§ 3.3),
- Independence of the judiciary (§ 3.4),
- The fairness of gacaca (§ 3.5).

For each topic, the main concerns will be mentioned, after which responses from other stakeholders, including the Government of Rwanda, are mentioned.

As with regard to the positive trends mentioned previously, notably that when an area is designated as representing a positive trend, this does not mean that no further steps could be taken to further improve the situation, with regard to the challenges mentioned in the current section, it should be noted that being marked as a concern does not mean that no positive developments exist. Noting an area as an area of concern simply means that, in the opinion of observers, the concerns overshadow the positive steps taken or underway.

3.1 Genocide Ideology, Divisionism, Negationism

3.1.1 The Law

Rwanda has criminalised hate speech in a complex of crimes definitions:

- Negationism: negating, rudely minimising or attempting to justify genocide.
- Genocide ideology.
- Discrimination.
- Sectarianism, also known as divisionism.

3.1.1.1 Negationism

Article 4, of the law repressing the Crime of Genocide, Crimes against Humanity and War Crimes provides for the punishment of negating, minimising or attempting to justify genocide:

“(…) any person who will have publicly shown, by his or her words, writings, images, or by any other means, that he or she has negated the genocide committed, rudely minimised it or attempted to justify or approve its grounds, or any person who will have hidden or destroyed its evidence”.¹¹⁷

This provision is an elaboration of Article 13 of the Constitution, which determines: “Revisionism, negationism and trivialisation of genocide are punishable by the law”.

3.1.1.2 Genocide Ideology

Article 2 of the law relating to the Punishment of the Crime of Genocide Ideology (mistakes in the original text) defines genocide ideology as:

¹¹⁷ *Law No 33 bis/2003 of 06/09/2003 Repressing the Crime of Genocide, Crimes against Humanity and War Crimes.*

... an aggregate of thoughts characterized by conduct, speeches, documents and other acts aiming at exterminating or inciting others to exterminate people basing on ethnic group, origin, nationality, region, color, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war.¹¹⁸

This provision is an elaboration of Article 9 of the Constitution, which lays down “fighting the ideology of genocide and all its manifestations” as one of the core duties of the State.

When describing the characteristics of genocide ideology, Article 3 of the law relating to the Punishment of the Crime of Genocide Ideology mentions (mistakes in the original text):

... any behaviour manifested by facts aimed at dehumanizing a person or a group of persons with the same characteristics in the following manner:

- threatening, intimidating, degrading through defamatory speeches, documents or actions which aim at propounding wickedness or inciting hatred;
- marginalising, laughing at one's misfortune, defaming, mocking, boasting, despising, degrading creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred;
- killing, planning to kill or attempting to kill someone for purposes of furthering genocide ideology.¹¹⁹

Punishable are persons who commit these acts – in various capacities, e.g. as leaders, political organisations, children and their parents – as well as those who disseminate genocide ideology “in public through documents, speeches, pictures, media or any other means” (Articles 5-13).

3.1.1.3 Discrimination and Sectarianism/Divisionism

Lastly, Article 3 of the law on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism, criminalises discrimination and sectarianism (divisionism), again in various capacities:

The crime of discrimination occurs when the author makes use of any speech, written statement or action based on ethnicity, region or country of origin, colour of the skin, physical features, sex, language, religion or ideas with the aim of denying one or a group of persons their human rights provided by Rwandan law and International Conventions to which Rwanda is party.

The crime of sectarianism occurs when the author makes use of any speech, written statement or action that causes conflict that causes an uprising that may degenerate into strife among people.¹²⁰

This provision is an elaboration of Article 33 of the Constitution, which states: “Propagation of ethnic, regional, racial or discrimination or any other form of division is punishable by law”.

¹¹⁸ Law No 18/2008 of 23/07/2008 Relating to the Punishment of the Crime of Genocide Ideology. The text in French is a more precise translation: “L'idéologie du génocide signifie un agrégat d'idées qui se manifestent par des comportements, des propos, des écrits et tous les autres actes visant ou incitant les autres à exterminer des groupes humains en raison de leur ethnie, origine, nationalité, région, couleur, apparence physique, sexe, langue, religion ou opinion politique, en temps normal ou en temps de guerre.” To increase the confusion, the gacaca law gives again another definition, when giving the criteria for a judge-Inyangamugayo, however, that is no crime definition:

« Ideology of genocide consists in behaviour, a way of speaking, written documents and any other actions meant to wipe out human beings on the basis of their ethnic group, origin, nationality, region, colour of skin, physical traits, sex, language, religion or political opinions »: Article 14 of Organic Law N° 16/2004 of 19/6/2004, as amended by Organic Law N° 10/2007 of 01/03/2007.

¹¹⁹ Law No. 18/2008 of 23/07/2008 Relating to the Punishment of the Crime of Genocide Ideology. In French: “Le crime d'idéologie du génocide est caractérisé par des comportements qui se manifestent à travers les faits visant à déshumaniser un individu ou un groupe d'individus ayant entre eux un lien commun tel que :

1. les persécutions, intimidations et traitements dégradants par des propos, des écrits ou des actes diffamatoires visant à propager la méchanceté ou à inciter à la haine;
2. marginaliser, proférer des sarcasmes, dénigrer, outrager, offenser, créer la confusion visant à nier le génocide qui est survenu, semer la zizanie, se venger, altérer le témoignage ou les preuves sur le génocide qui est survenu ;
3. tuer, planifier de tuer ou tenter de tuer quelqu'un sur base d'idéologie de génocide.”

¹²⁰ Law No. 47/2001 of 18/12/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism.

3.1.2 Concerns

3.1.2.1 Introduction

In 2008, the Government of Rwanda, together with its development partners, concluded in the Joint Governance Assessment Report that Rwanda's history and the role of the media before and during the genocide "clearly establish the need to legislate and criminalise activities promoting sectarianism and genocide ideology". However, at the same time, "[l]egislation prohibiting hate speech [...] must also take into account the right to freedom of opinion and expression [...] While recognising the need for such legislation, it is important to consider whether existing and proposed laws define the offence of genocide ideology with sufficient precision to combat acts of incitement and hate speech effectively, while minimising limitations on freedom of expression."¹²¹

Addressing the existing law on sectarianism/divisionism and genocide denial and the then-proposed new law on genocide ideology, the report concluded:

[t]here are several problems [...] It is doubtful whether they fulfil the requirements of legal certainty meaning that the offence is sufficiently clearly drafted to allow a person to know whether or not their conduct would amount to a breach of the law. The absence of a requirement of intentionality (i.e. that the offender intended to cause harm) in the provisions adds to the problem of vagueness and leaves the provisions open to abuse and less effective in tackling the problem that they are designed for. In particular Article 3 of the proposed new law risks confusing the definition of genocide ideology to the extent that the law could be used where sanctions are not warranted or might fail to convict real acts of incitement. Other problems with the proposed legislation are the rigid specification of penalties that do not leave any judicial discretion in sentencing to reflect the facts of each case, and provisions on the sentencing of children. Given the gravity of the issue it is essential that laws against genocide ideology are as clearly formulated in order to ensure that the justice system can be brought to bear most effectively and to guard against the possibility of misuse.¹²²

Since then, the Law No. 18/2008 of 23/07/2008 Relating to the Punishment of the Crime of Genocide Ideology was adopted by Parliament, and has been implemented, in concert with the already existing laws on sectarianism/divisionism, and on negating and minimising the genocide. This has not stopped concerns about the definition of various crimes and their application in practice, as expressed in various reports of human rights organisations and for instance during the 2011 UN Universal Periodic Review of Rwanda.

The main concerns about the criminalisation of genocide ideology and divisionism have been expressed by Amnesty International (AI) and Human Rights Watch (HRW). In 2010, Amnesty International published a report on genocide ideology and divisionism (*Safer to Stay Silent: The Chilling Effect of Rwanda's Laws on 'Genocide Ideology' and 'Sectarianism'*).¹²³ Chapter VII of the Human Rights Watch's 2008 report on judicial reform (*Law and Reality: Progress in Judicial Reform in Rwanda*) also addresses genocide ideology and divisionism.¹²⁴

Concerns with regard to the genocide ideology and divisionism criminalisation are also raised by the US Department of State in its annual reports.¹²⁵ In 2011, Avocats sans Frontières published an analysis of court decisions.¹²⁶

¹²¹ Rwanda: Joint Governance Assessment Report, as adopted by Cabinet, 8 October 2008, p. 33.

¹²² Rwanda: Joint Governance Assessment Report, as adopted by Cabinet, 8 October 2008, p. 33.

¹²³ Amnesty International, *Safer to Stay Silent. The chilling effect of Rwanda's laws on 'genocide ideology' and 'sectarianism'*, 2010.

¹²⁴ Human Rights Watch, *Law and Reality, Progress in Judicial Reform in Rwanda*, 2008.

¹²⁵ US Department of State, Bureau of Democracy, Human Rights and Labor, *2009 Human Rights Report: Rwanda*, 11 March 2010; and US Department of State, Bureau of Democracy, Human Rights and Labor, *2010 Human Rights Report: Rwanda*, 8 April 2011.

¹²⁶ Avocats sans Frontières, *La Pratique Judiciaire du Contentieux de l'Idéologie du Génocide et Infractions Connexes au Rwanda : Limites et Défis d'Application*, 2011.

The criticism particular focuses on (1) the broadness and vagueness of the crimes definitions, (2) the consequences this has for the freedom of expression, and (3) the way the crimes are implemented in practice by prosecutors and judges.

3.1.2.2 Vague Crime Definitions

Regarding denial of genocide, Human Rights Watch considered the terms 'negated' (Fr: *nie*; HRW speaks about 'denial') and 'rudely minimised' (Fr: *minimise grossièrement*; Human Rights Watch speaks about 'gross minimization') too vague. With regard to divisionism/sectarianism both AI and HRW consider the definition of the crime too broad and too vague. Amnesty International wrote about the "sweeping and imprecise nature of the 'sectarianism' law". The report went on, "The law does not give individuals a proper indication of how the law limits his or her conduct and is not formulated with sufficient precision for individuals to know how to regulate their conduct". With regard to genocide ideology, Amnesty International stressed the vagueness of terms as 'propounding wickedness', 'marginalising', 'laughing at one's misfortune', 'mocking', 'boasting', 'despising', and 'stirring up ill feelings'. Further, Amnesty International stated that the provision in which the dissemination of genocide ideology is criminalised leaves unclear whether journalists could be prosecuted for reporting on cases of alleged 'genocide ideology'. Human Rights Watch also criticised the definition of the crime of genocide ideology, as well as the way the term is used and abused in the public debate. Moreover, the crime "is largely disconnected from the crime of genocide itself. It does not require that the perpetrator intend to assist or facilitate genocide, or be aware of any planned or actual acts of genocide."¹²⁷

Critics conclude that the broad and vague definitions of these crimes criminalise more actions than what is necessary in a democratic state to protect the rights of others, such as the right to be free of discrimination, and for the protection of national security, public order, public health and morals, as the ICCPR stipulates.

3.1.2.3 Freedom of Expression

As a result of the definitions of these crimes being too broad and too vague, Amnesty International and Human Rights Watch state that freedom of expression is at risk. Amnesty International critiqued the laws as follows:

Prohibiting hate speech is a legitimate aim, but the Rwandan government's approach violates international human rights law. Rwanda's vague and sweeping laws against 'genocide ideology' and 'divisionism' under 'sectarianism' laws criminalize speech protected by international conventions and contravene Rwanda's regional and international human rights obligations and commitments to freedom of expression. The vague wording of the laws is deliberately exploited to violate human rights.

Prosecutions for 'genocide ideology' and so-called 'genocide ideology-related' offences were brought even before the law defining this offence was promulgated. People continue to be prosecuted for 'divisionism', under 'sectarianism' laws, even though 'divisionism' is not defined in law. Rwandans, including judges, lawyers and human rights defenders, expressed confusion about what behaviour these laws criminalize.

These broad and ill-defined laws have created a vague legal framework which is misused to criminalize criticism of the government and legitimate dissent. This has included suppressing calls for the prosecution of war crimes committed by the Rwandan Patriotic Front (RPF). In the run-up to the 2010 elections, legitimate political dissent was conflated with 'genocide ideology', compromising the freedom of expression and association of opposition politicians, human rights defenders and journalists critical of the government.

¹²⁷ See for all remarks quoted in this section: Amnesty International, *Safer to Stay Silent*, p. 13-18; Human Rights Watch, *Law and Reality*, p. 34-43.

Individuals have exploited gaps in the law for personal gain, including the discrediting of teachers, for local political capital, and in the context of land disputes or personal conflicts. Several 'genocide ideology' and 'divisionism' charges based on flimsy evidence resulted in acquittals, but often after the accused spent several months in pre-trial detention. Many such accusations should have been more thoroughly investigated, but broad laws offer little guidance to the police and prosecution.

The cumulative result of these laws is to deter people from exercising their right to freedom of expression. This chilling effect means that people who have yet to have any action taken against them nonetheless fear being targeted and refrain from expressing opinions which may be legal. In some cases, this has discouraged people from testifying for the defence in criminal trials.¹²⁸

3.1.2.4 Legal Practice

In 2011, Avocats sans Frontières published an analysis of 37 court decisions concerning genocide ideology, divisionism, and negationism. The conclusions on the legal practice include, *inter alia*:¹²⁹

- Lack of or insufficiently clearly mentioning of the facts and the circumstances in which they were committed of cases presented by the prosecutor;
- Lack of or insufficiently clearly mentioning of the legal basis of cases presented by the prosecutor;
- Deficiencies in the proof presented by the prosecutor and in the assessment thereof by the judge.

3.1.3 Response

In general, the government, as well as other actors in Rwanda, agree that there may exist a tension – in terms of necessity and proportionality – between the criminalization of genocide ideology and divisionism and a restriction of the freedom of speech as a result. In response to concerns raised, the Government of Rwanda and other stakeholders pointed to a revision of the law, as well as experiments on promoting a culture of debate.

3.1.3.1 New Legislation

In April 2010, the Government of Rwanda announced, through the Minister of Justice/Attorney General, a review of the genocide ideology law, including a study into potential abuses of the law, and if necessary, a revision.¹³⁰

During the Universal Periodic Review of Rwanda in early 2011, the Minister of Justice/Attorney General remarked about this process:

We have a proverb in our language which says: you don't fear the forest: you fear what you get there. Rwandans know genocide better than anyone else and have legitimate responsibility to prevent its reoccurrence, using all means possible. Genocide happened on the basis of the ideology on which it was founded. For Rwanda, it is a big problem and it has to be addressed using all means possible, including appropriate legal regime. Genocide ideology is not an academic issue for Rwanda, it is a real threat, it is potentially a threat that could undo the achievements that Rwanda has made in last 16 years. We have agreed to review the Genocide Ideology Law because some of our friends have raised issues on it.¹³¹

A national group was commissioned, as well as two reviews by foreign experts from North America and Western Europe, and comments and input from human rights groups and other interested parties were sought. The terms of reference for the academic review included:

¹²⁸ Amnesty International, *Safer to Stay Silent*, p. 7/8.

¹²⁹ Avocats sans Frontières, *La Pratique Judiciaire du Contentieux de l'Idéologie du Génocide et Infractions Connexes*, p. 24-47.

¹³⁰ Rwanda Information Portal, *Rwanda: Kagame is now willing to review the contentious Genocide Law*, 5 April 2010; similar: *Kagame orders Cabinet review of law limiting free speech*, East Africa's Independent Media Review, 7 April 2010.

¹³¹ Republic of Rwanda, Ministry of Justice, *Presentation by the Rwandan Minister of Justice/Attorney General during the Rwandan Universal Periodic Review*, 2011.

- A comparison of the Rwandan law with similar laws in Europe and elsewhere.
- An indication of strengths and weaknesses.
- The interpretation of the law by courts.
- The proposal of a draft amended law.

According to the Minister of Justice, all comments and the output of the two reports were put together and “something positive [was crafted] into a bill that will be submitted to Government and Parliament for debate. But this will be our law, we have to own it. It will not be a piece to please our friends but an instrument to serve our people.”¹³²

At the time of the writing of this report, the draft bill is going through the political process in confidential form. In the meantime, in the draft Penal Code, the maximum penalty for the offence has been lowered.

3.1.3.2 Free Spaces

Some Rwandan initiatives may be mentioned which can be considered as experiments creating more space for free expression, such as activities undertaken by the Institut de Recherche et de Dialogue pour la Paix (IRDP), including the so-called Fora Urubuga (free spaces for debate).

In general, the IRDP wrote about its programme:

*Le programme a ouvert de nouveaux horizons à la population qui veut maintenant voir le travail aller plus loin en abordant des sujets tabous, en renforçant l'espace neutre de débat qu'il a créé et dans lequel les participants se sentent libres de s'exprimer et en créant des réseaux de communication au sein de la société.*¹³³

More in particular about the Fora Urubuga:

*L'IRDP s'est donc engagé à entretenir cet espace où les rwandais dans leur diversité se rencontrent pour se concerter et chercher ensemble des solutions à leurs problèmes. L'objectif global d'élargir cet espace est de renforcer la culture de débat pour rapprocher davantage les Rwandais de leurs dirigeants. L'objectif spécifique de maintenir cet espace est de faire participer le plus grand nombre possible de rwandais au dialogue.*¹³⁴

3.1.3.3 Public Policy Dialogue

The ‘Public Policy Dialogue’ organised by the Rwanda Civil Society Platform, is another example of an attempt to gain more space for free expression.¹³⁵ During the Public Policy Dialogue, two topics in particular were discussed: political space in Rwanda and respect of human rights in general, and freedom of expression and freedom of press in particular. Similar dialogues were held about the *gacaca*, and the UN Mapping Report on the Congo wars. The Dialogue was broadcasted in Kinyarwanda live on national radio and television. The minutes (in English) give an interesting impression of a somewhat ambiguous situation (“Interventions and issues discussed in the dialogue”), and therefore deserve to be quoted at length.

About “repression of political parties”, one participant mentioned “one incident where the Green Party was organizing a constituting Assembly to collect sufficient signatures for registering the party, individuals with pistols stormed the room and started throwing chairs at the audience. [...] This happened as the police stood by and did nothing to stop the troublemakers”. “Other political parties do not have space to voice their views, provide any alternative to citizens and recruit new members.

¹³² Republic of Rwanda, Ministry of Justice, *Presentation by the Rwandan Minister of Justice/Attorney General during the Rwandan Universal Periodic Review*, 2011.

¹³³ IRDP, website: <http://www.irdp.rw/> (last visited 25 August 2011).

¹³⁴ IRDP, website: <http://www.irdp.rw/> (last visited 25 August 2011).

¹³⁵ Rwanda Civil Society Platform, *The Public Policy Dialogue on Political Space and Human Rights in Rwanda*, 14 December 2010. All quotes in this paragraph are from this document.

Local authorities incite people to vote for the RPF. Authorities have the habit of declaring in public that their constituencies will vote 100% for the RPF.”

About “Jailing opposition leaders”, it was noted that “[p]olitical space is simply not there! Every time a political party wanted to register its leaders faced serious repression! For example: Pasteur BIZIMUNGU was jailed for more than 5 years, His colleagues are still in jail, for trying to register PDI-Ubuyanja; one member was killed another is in exile for trying to register the Green Party; Me. NTAGANDA is still in jail as we speak for trying to register PS-Imberakuri party. Even when your documents are in order, the MINALOC refuses to register your party.”

On “Shutting down the media” it was discussed that “independent news papers that have been critical to the government have been shut down, more than 10 journalists have fled the country in just one year; A journalist has just been murdered. The remaining news papers are being monitored and journalists intimidated; Things cannot go on like this!”

Under the heading: “Journalists should not be intimidated!” it is reported that “[d]uring the meeting, Gatsimbazi, the Editor of Umusingi Newspaper accused the government of frustrating press freedom, citing the banning of Umuseso and Umuvugizi, the murder of journalist Jean Leonard Rugambage and the threatening of the City Radio Sports presenter by the Minister of Sports and Culture.”

“Strongly reacting to his comments, Gen. Richard RUTATINA, the President’s advisor on security, threatened the Journalist, saying that he was not independent. ‘We have information that you are being used by other people, who are giving you money to tarnish the image of the government; don’t come here to lie to people, don’t think there is anything protecting you...’.”

“The behavior of the General, not only confirmed the allegations of the Journalist, but also was against the dialogue’s purpose of *‘a dialogue devoid of intimidation, fear or insults to individuals or institutions’* and hindered the mutual respect, tolerance and non-threatening attitude, as agreed at the beginning of the dialogue.”

“Referring to the incident in his concluding remarks, the Civil Society [Spokesperson], urged Rwandans to learn how to behave in such forums and respect each other’s opinions.”

3.2 Freedom of Press

A subject of dispute both outside and within Rwanda (see above § 3.1.3.3) is the freedom of press. Various organisations, such as Human Rights Watch and Amnesty International, as well as the US Department of State, have published reports about restrictions, and the matter was also discussed during the 2011 Universal Periodic Review.

3.2.1 Concerns

In general, organisations like Freedom House and the Committee to Protect Journalists (CPJ) are very critical about the level of the freedom of press in Rwanda.¹³⁶ In their 2010 World Press Freedom Index, Reporters without Borders ranked Rwanda near the very bottom of the scale: 169 out of 178 countries.¹³⁷ The report noted,

¹³⁶ Freedom House, *Freedom of the Press Reports, Rwanda 2009, 2010*, available at: <http://www.freedomhouse.org/> (last visited 4 September 2011); CPJ-Committee to Protect Journalists, available at <http://www.cpj.org/africa/rwanda/> (last visited 3 September 2011).

¹³⁷ Reporters without Borders, *World Press Freedom Index 2010*, available at <http://en.rsf.org/press-freedom-index-2010,1034.html> (last visited 3 September 2011).

*Rwanda (169th), where President Paul Kagame was returned to power in a highly questionable election, has fallen 12 places and now has Africa's third worst ranking. The closure of leading independent publications, the climate of terror surrounding the presidential election and Umuvugizi deputy editor Jean-Léonard Rugambage's murder in Kigali were the reasons for this fall. Journalists are fleeing the country because of the repression, in an exodus almost on the scale of Somalia's.*¹³⁸

In its 2009 and 2010 reports, the US Department of State remarked:

*The constitution provides for freedom of speech and of the press 'in conditions prescribed by the law'; however, the government at times restricted these rights. The government continued to intimidate and arrest independent journalists who expressed views that were deemed critical of the government on sensitive topics or who were believed to have violated law or journalistic standards. The government also suspended, and subsequently reinstated, a media outlet. Numerous journalists practiced self-censorship.*¹³⁹

In its reports, the US State Department gives various examples of such treatment of journalists.

In general, the concerns on the freedom of press focus on three issues: (1) the use of the crimes of defamation and genocide ideology to silence journalists, (2) the 2009 Media Law, and (3) the harassment of journalists.

3.2.1.1 Defamation, Genocide Ideology

In its report on genocide ideology, *Safer to Stay Silent*, Amnesty International stated that the provision in which the dissemination of genocide ideology is criminalised leaves unclear whether journalists could be prosecuted for reporting on cases of alleged 'genocide ideology'. The report notes, "This lack of clarity may infringe journalists' rights to freedom of expression and compromise their professional duty to inform the public."¹⁴⁰ The report includes examples involving Rwandan journalists and international media outlets.

In its annual report for 2009, Amnesty International noted that,

*[T]he BBC Kinyarwanda service was suspended by the Rwandan government after it aired a trailer for a show discussing forgiveness after the 1994 genocide. The government argued, without basis, that the broadcast constituted genocide denial. [...] The advertisement included Faustin Twagiramungu, a former presidential candidate, opposing attempts to have all Hutus apologize for the genocide as not all had participated in it. The broadcast also contained an excerpt from a man of mixed ethnicity reflecting on why the government had not allowed relatives of those killed by the Rwandan Patriotic Front (RPF) to grieve. The BBC service was reinstated in June following negotiations between the BBC and the government.*¹⁴¹

In its annual report for the year 2010, Amnesty International remarked that "[t]he government used regulatory sanctions, restrictive laws and criminal defamation cases to close down media outlets critical of the government. In July, the government began to enforce certain aspects of a 2009 media law which maintains defamation as a criminal offence. Some leading editors and journalists fled the country after facing threats and harassment."¹⁴²

¹³⁸ Reporters without Borders, *World Press Freedom Index 2010*, available at <http://en.rsf.org/press-freedom-index-2010,1034.html> (last visited 3 September 2011).

¹³⁹ US Department of State, Bureau of Democracy, Human Rights and Labor, *2009 Human Rights Report: Rwanda*, 11 March 2010; and US Department of State, Bureau of Democracy, Human Rights and Labor, *2010 Human Rights Report: Rwanda*, 8 April 2011.

¹⁴⁰ Amnesty International, *Safer to Stay Silent*, p. 14.

¹⁴¹ Amnesty International, *Annual Report: Rwanda 2010*, 28 May 2010.

<http://www.amnestyusa.org/research/reports/annual-report-rwanda-2010?page=show> (last visited 18 August 2011).

¹⁴² Amnesty International, *Annual Report: Rwanda 2011*, 28 May 2011,

<http://www.amnestyusa.org/research/reports/annual-report-rwanda-2011?page=show> (last visited 18 August 2011).

An example is given of the Rwandan Media High Council (MHC), “a regulatory body close to the ruling party, [which] suspended two private Kinyarwanda newspapers, Umuseso and Umuvugizi, from April to October. The MHC alleged that the newspapers had insulted the President and caused trouble in the army.”¹⁴³

Human Rights Watch wrote about two journalists,

*Agnès Nkusi Uwimana and Saidaiti Mukakibibi, [who] were sentenced to 17 and 7 years respectively in connection with articles in the independent newspaper, Umurabyo, that were viewed as critical of the government and of President Paul Kagame. On February 4, the High Court in Kigali ruled that by publishing these criticisms, the journalists had incited the public to rise up against the state. It found both women guilty of endangering public order. Uwimana, the newspaper's editor, was also found guilty of 'minimizing the genocide', which accounted for 10 years of her sentence, 'divisionism', and defamation. Both were arrested in July 2010 and have been in detention ever since.*¹⁴⁴

Similar allegations were raised during the 2011 UN Universal Periodic Review by Article 19 Global Campaign for Free Expression and by Human Rights Watch. The latter “stated that freedom of expression has been severely restricted for many years and that in the months leading up to the presidential elections there was further crackdown on independent voices. HRW recommended that Rwanda allow journalists, including those with a record of criticising the government, to practice freely, to carry out investigations and to publish their findings and comments without reprisals.”¹⁴⁵

3.2.1.2 2009 Media Law

The US State Department remarked in its report of 2009:

*In August the government passed a new media law called the Law on Media. Provisions in the new law grant the Media High Council the power to suspend newspapers, increase the amount of capital required to start new media outlets, impose criminal penalties on journalists who incite discrimination or show contempt to the president, and require journalists to reveal their sources when authorities deem it necessary to carry out criminal investigations or proceedings. The law also requires journalists to have either an associate's degree in journalism or communication, a certificate obtained from an institute of journalism and communication, or a university degree in another field with training in journalism. Journalists without one of these qualifications must obtain them within five years to continue in their positions.*¹⁴⁶

In both the annual report over 2009 and again in 2010, the US Department of State remarked that “[c]ritics continued to criticize the semiautonomous Media High Council for inhibiting rather than promoting press freedom.”¹⁴⁷

Amnesty International, in its annual report over the year 2009, stated: “In August, the government introduced a media law which placed undue restrictions on press freedom, including a requirement that Rwandan journalists possess a degree or certificate in journalism as a precondition to practising. Some journalists who were critical of the government continued to be excluded from government press conferences.”¹⁴⁸

¹⁴³ Amnesty International, *Annual Report: Rwanda 2011*, 28 May 2011, <http://www.amnestyusa.org/research/reports/annual-report-rwanda-2011?page=show> (last visited 18 August 2011).

¹⁴⁴ Human Rights Watch, *Rwanda: Prison Term for Opposition Leader Bernard Ntaganda, Other Activists, Journalists Punished for Political Views*, press release 11 February 2011.

¹⁴⁵ Human Rights Council, Working Group on the Universal Periodic Review, Tenth session, Geneva, 24 January–4 February 2011, *Summary Prepared by the Office of the High Commissioner*, UN Doc. A/HRC/WG.6/10/RWA/3, para. 17-30, quote in para. 24.

¹⁴⁶ US Department of State, Bureau of Democracy, Human Rights and Labor, *2009 Human Rights Report: Rwanda*, 11 March 2010.

¹⁴⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, *2009 Human Rights Report: Rwanda*, 11 March 2010; and US Department of State, Bureau of Democracy, Human Rights and Labor, *2010 Human Rights Report: Rwanda*, 8 April 2011.

¹⁴⁸ Amnesty International, *Annual Report: Rwanda 2010*, 28 May 2010, <http://www.amnestyusa.org/research/reports/annual-report-rwanda-2010?page=show> (last visited 18 August 2011).

The 2009 Media Law was also raised during the 2011 Universal Periodic Review of Rwanda. Human Rights Watch indicated that the law “placed unrealistic and burdensome restrictions on journalists, including extremely high registration fees for establishing a newspaper and levels of formal qualification which most Rwandan journalists did not have.” Article 19 stated that this is “inconsistent with international freedom of expressions standards as they failed to recognise that the right to express oneself through the mass media was universal.”¹⁴⁹

It was further noted that pro-government newspapers dominated the written press, and that the government retained a monopoly over television broadcasting.¹⁵⁰

3.2.1.3 Harassment of Journalists

Another contentious issue has been the harassment and intimidation of journalists by the government (see also § 3.1.3.3). This was discussed during the 2011 Universal Periodic Review. Human Rights Watch and Amnesty International extensively published about it. For example, Amnesty International mentioned in its annual report over the year 2010:

Jean-Léonard Rugambage, a journalist working for Umuvugizi, was shot dead on 24 June outside his home in Kigali. He had been investigating the shooting in South Africa of Kayumba Nyamwasa, and his newspaper published a story alleging that Rwandan intelligence was involved. In October, two men were convicted of Jean-Léonard Rugambage's murder and sentenced to life imprisonment. The convicted men claimed that Jean-Léonard Rugambage had killed a member of one of their families during the 1994 genocide, although he had previously been acquitted in gacaca proceedings.

*Jean-Bosco Gasasira, editor of Umuvugizi and Didas Gasana, editor of Umuseso, fled Rwanda in April and May respectively after receiving threats.*¹⁵¹

During the UPR, Article 19 similarly asserted that:

*harassment and intimidation of journalists, through arrests and illegal detention and expulsion from events was an established pattern. Human Rights Watch made similar observations. It stated that in March 2009, the Human Rights Committee, when assessing Rwanda's compliance with the International Covenant on Civil and Political Rights, expressed concerns about reports of intimidation and harassment of journalists critical of government policies. According to Article 19, self-censorship by journalists was widespread, owing to the fear of harassment by government authorities or pro-government groups and individuals. Article 19 recommended that Rwanda (1) conduct speedy, effective and impartial investigations of all cases of physical attacks against journalists; and (2) cease harassment of journalists and conduct an independent review of all cases of journalists imprisoned, fined or prosecuted in connection with their professional work, with a view to release those wrongfully imprisoned.*¹⁵²

3.2.2 Response

3.2.2.1 Government Response

The Government of Rwanda responded to criticism on the restrictions of freedom of press most explicitly in two documents: the 2008 Joint Governance Assessment Report and the Report for the 2011 Universal Periodic Review, both to be cited in detail.

In the Joint Governance Assessment Report, the Government of Rwanda and its development partners agree that,

¹⁴⁹ Human Rights Council, Working Group on the Universal Periodic Review, *Summary*, para. 18.

¹⁵⁰ Human Rights Council, Working Group on the Universal Periodic Review, *Summary*, para. 20.

¹⁵¹ Amnesty International, *Annual Report: Rwanda 2011*, 28 May 2011,

<http://www.amnestyusa.org/research/reports/annual-report-rwanda-2011?page=show> (last visited 18 August 2011).

¹⁵² Human Rights Council, Working Group on the Universal Periodic Review, *Summary*, para. 23.

[w]hile significant progress has been made, there remain some constraints to press freedom. These include outdated laws, limited access to information, and the effect of broadly drafted laws, such as the law on divisionism, which create legal uncertainty about the limitations to free speech.¹⁵³ Under the penal code libel is still treated as a criminal offence. The Press Law of 2002 restricts media access to some public information and cabinet minutes. There are regular (monthly) press meetings with the President of the Republic of Rwanda, Minister for Information in the Prime Minister's Office; however some independent journalists complain that they find it much harder to gain interviews and access to government sources than state media or preferred private media. A new press law will be published shortly, which should give journalists much greater access to government information. The law is also intended to clarify rules on registration procedures for journalists and media outlets, and to specify more clearly grounds for refusal or removal of licences.

[...] There is still a need to raise professional standards in journalism, in particular to raise levels of objectivity, strengthen ethical standards and build capacity in quality, investigative journalism. The proposed new press law will include the phased introduction of a requirement for minimum training and qualifications for journalists.

Another issue of interest to strengthening the quality of the media is the role of supporting institutions. [...] The principal body is the High Council of the Press, which has representation from all media stakeholders, including the government, and is mandated with a dual responsibility to regulate and licence the media while defending press freedom. It is also charged with enforcing rules on balanced coverage of political parties during election campaigns, a task it has undertaken well. The High Council can propose disciplinary action against journalists, but also at times acts to defend journalists [...]. These are all important tasks, but stronger capacity is required and there are valid questions as to whether the two functions should be more clearly separated. [...] [M]ore could be done to strengthen the Council's operational independence.¹⁵⁴

In its report presented for the 2011 Universal Periodic Review, the Government of Rwanda in general remarked on the freedom of expression in the following way:

Freedom of expression is reflected in the increase of media outlets in the country. The number of newspapers rose from 15 in 2003 to 57 in 2010; from one national radio that existed in 1997, currently 19 radio stations are operating in the country. The national radio has established branches in all provinces to enable mass participation. More than 50 per cent of the adult Rwandan population own and use mobile phones for communication. It is noteworthy that some print media have evolved from weekly into dailies e.g. The New Times and Imvaho Nshya. Some international radio stations have been licensed to operate on FM frequencies in Rwanda (These include BBC, DW, VoA) with their popular programmes in the national language. International newspapers enter freely the Rwandan market from neighbouring countries and even from American and European countries.

In facilitating the local media to publish their newspapers at low cost, the Government acquired a web machine with high capacity to locally print newspapers and other media products, thus reducing travel costs and associated expenses as most newspapers were printed in Kenya and Uganda. The Government has also been organising training programmes for journalists both abroad and inside the country. The School of Journalism has been established at the National University of Rwanda, and Journalism Faculties exist in some private Universities like the Catholic University of Kabgayi. The Great Lakes Media Centre (GMLC) was launched in Kigali in 2008 to upgrade the professional level of journalists of the sub region. In 2009, a total number of 28 Rwandan journalists graduated from GMLC.

¹⁵³ Added here in the report is a footnote, saying: "The concern raised by this report relates to the loose drafting of present laws rather than the need for strict rules preventing incitement on the part of the media, which are a necessity in Rwanda."

¹⁵⁴ Rwanda: Joint Governance Assessment Report, as adopted by Cabinet, 8 October 2008, p. 42-43.

Given the Rwandan context, where freedom of expression was previously abused through media outlets culminating into the Genocide, Rwanda guarantees the freedom of expression while safeguarding against its abuse that might easily degenerate into another form of violence. The Media High Council (MHC) was established to promote freedom, responsibility and professionalism of the media. It is composed of two representatives of the private media, one representative of the public media, one representative of the civil society, one representative of the private sector and two representatives of the Central Government. The MHC has the capacity to take any disciplinary measures against journalists or media institutions that violate established laws. It is in that regard that two independent Newspapers (Umuseso and Umuvugizi) were suspended for six months by the Media High Council.¹⁵⁵

About access to information, the Government of Rwanda remarked that,

A draft bill on access to information, which obliges all public institutions to provide to the media all needed information, is currently before the Ministry of Information. A Media Policy (2004) which provides guidance on media professionalism and development in the country is also in place to compliment laws and processes that grant the right of access to information. The President of the Republic holds a monthly conference with the media in which local and international journalists have the opportunity to ask questions to public officials. This conference is held live on national radio and television. A Public open day is organised quarterly by the Ministry of Local Government, provinces, districts and sectors to provide information on service delivery to the public. Similarly, public accountability days, organised in the Parliament on quarterly basis to review the progress of districts in the implementation of the performance contracts (Imihigo), offers a good opportunity of access to information. The electronic media are available and the public is encouraged to use ICT as a modern technique to exercise their right of access to information. Cyber cafés and Tele-centres are also available in different districts of the country, while an ICT bus travels to some remote rural areas, which are not yet connected to internet, to allow them to have access to modern tools of information and communication. Several TV Companies operate in Rwanda (Star Africa Media, DSTV, etc.) to provide a variety of choices on access to information.¹⁵⁶

Responding to questions raised during the Universal Periodic Review, the Minister of Justice further remarked:

"[P]erhaps I should say that the media in Rwanda has not been credited with good conduct. On the contrary it has been associated with inciting violence, hate campaigns and calling Rwandan people to committing genocide. The fact that the International Criminal Tribunal for Rwanda (ICTR) tried and sentenced [three journalists] is proof of what irresponsible media can do to a country. The idea is to create a media that is responsible and not one that could lead Rwanda to another cycle of genocide. I want to state here, without fear of contradiction, that today Rwanda is more committed to media freedom than at any other time of its long and painful history",

pointing at some benchmarks previously mentioned. He continued:

Currently the media law is also under review to address some of the concerns that have been raised. Here again I want to say that there will be cautious efforts to move slowly to ensure that the bad history does not repeat itself. Rwanda was a broken nation and perhaps a bit of restriction was essential to ensure that the healing process takes place. [...] [Y]es, there has been some restrictions, but as the healing process takes place, these restrictions will continue to be eased and systematically removed.¹⁵⁷

¹⁵⁵ Human Rights Council, Working Group on the Universal Periodic Review, Tenth session, Geneva, 24 January–4 February 2011, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Rwanda, A/HRC/WG.6/10/RWA/1, para. 22-24.

¹⁵⁶ Human Rights Council, Working Group on the Universal Periodic Review, National report, para 25.

¹⁵⁷ Republic of Rwanda, Ministry of Justice, *Presentation by the Rwandan Minister of Justice/Attorney General during the Rwandan Universal Periodic Review*, 2011.

3.2.2.2 New Legislation

During the 2011 Universal Periodic Review, the Government of Rwanda announced that various reforms with regard to the media were under way, including:¹⁵⁸

- The Access to Information bill which will soon enter into force to facilitate the access to information, especially among government institutions.
- The Government of Rwanda decided to step aside from media regulation and requested media practitioners to self-regulate.
- The Media High Council will retain only the responsibility of promoting media development and freedom.
- The media law is being revised to suit international standards in decriminalizing defamation, determining prerequisites to become a journalist, etc.
- Modifying the Office Rwandais d'Information (ORINFOR) from a State owned institution into a private Broadcasting Agency.

In 2011, the government announced that a new and independent Communications Regulatory Body will be established which will be charged with the regulation of the communication sector, including telecom, ICT and the media, separate from the Rwanda Utility Regulatory Agency.¹⁵⁹

3.2.2.3 Access to Internet

Freedom House has reported that

[a]ccess to online content in Rwanda is generally unfettered. The websites of international human rights organizations such as Freedom House, Amnesty International, and Human Rights Watch, as well as the online versions of media outlets like the British Broadcasting Corporation (BBC), Le Monde, Radio France Internationale, and the New York Times, are freely accessible. The websites and blogs of opposition activists both within and outside Rwanda are also freely available. Similarly, one of the founders of the online news portal Igihe.com reported no constraints or pressures from the government in establishing and managing that website.

However,

in early June the Media High Council ordered that the website [of Umuvugizi] be blocked, arguing that the ban on the [written version of the] newspaper had to apply online as well. As of August 2010, the site remained blocked by all ISPs, but by year's end it was available again, as the six-month suspension had expired,

which shows that the government is able to restrict internet access.¹⁶⁰

The US Department of State remarked in its 2009 report that “[t]here were no government restrictions on access to the Internet. There were reports that the government monitored e-mail, but not Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Internet cafes were common and used regularly in the largest towns, [...]”.¹⁶¹

¹⁵⁸ Report of the Working Group on the Universal Periodic Review. Rwanda. Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/17/4/Add.1, para. I A.

¹⁵⁹ *The New Times*, 28 July 2011, Government to Set Up Communications Regulatory Body.

¹⁶⁰ Freedom House, *Freedom on the Net 2011 - Rwanda*, available at <http://www.freedomhouse.org/template.cfm?page=664> (last visited 3 September 2011).

¹⁶¹ US Department of State, Bureau of Democracy, Human Rights and Labor, *2009 Human Rights Report: Rwanda*, 11 March 2010.

3.3 Political Space

A third issue of concern raised in many of the reports by observers is the limited political space in Rwanda. Also in the Rwanda Governance Scorecard, under the heading 'Political Rights and Civil Liberties', the quality of democracy scores relatively low, in particular in the opinion of experts interviewed and in the perception of citizens (with the legal framework and universal adult suffrage as high scoring sub-sub-indicators). Also relatively low scoring are the vibrancy of non-state actors in policy formulation, political parties registration and operations, and access to public information. High scores were given for the executive elections participation, respect for human rights, and core international human rights conventions.¹⁶²

3.3.1 Concerns

The main concerns regard (1) the restriction on registration as a political party, (2) genocide ideology as a way to curb political opposition, and (3) harassment of opposition politicians.

3.3.1.1 Registration

The registration of new political parties is considered to be too difficult. The US Department of State remarked in its 2009 report that the registration process of PS-Imberakuri political party was cumbersome, whereas the Green Party did not succeed in registering. The 2009 report continued,

*The government impeded the registration of the newly formed Green Party. In September the Green Party had to cancel a planned assembly because a public notary was not available. In October, after an unidentified man disrupted a Green Party assembly, police canceled the meeting, citing security concerns. In November the Green Party applied for but was unable to obtain police clearance to hold another planned assembly. By year's end the Green Party had not succeeded in registering as a political party.*¹⁶³

Amnesty International in 2009 reported in the same way.¹⁶⁴ A year later, Amnesty International reported that

*[r]estrictions on freedom of association prevented new opposition parties from contesting the [presidential] elections. FDU-Inkingi and the Democratic Green Party were unable to obtain security clearance to organize meetings needed for their registration. The only new party to secure registration, PS-Imberakuri, was infiltrated by dissident members and decided not to stand.*¹⁶⁵

During the 2011 Universal Periodic Review, the same concerns were raised by Article 19, Human Rights Watch, and the Commonwealth Human Rights Initiative.¹⁶⁶

3.3.1.2 Genocide Ideology

In its 2009 report, the US Department of State remarked that the government's enforcement of laws against genocide ideology or divisionism "discouraged debate or criticism of the government and resulted in brief detentions and the holding of one political prisoner, former minister Ntakirutinka."¹⁶⁷

¹⁶² Rwanda Governance Advisory Council, *Rwanda Governance Scorecard 2010*, 2011, p. 17-23.

¹⁶³ US Department of State, Bureau of Democracy, Human Rights and Labor, *2009 Human Rights Report: Rwanda*, 11 March 2010.

¹⁶⁴ Amnesty International, *Annual Report: Rwanda 2010*, 28 May 2010, <http://www.amnestyusa.org/research/reports/annual-report-rwanda-2010?page=show> (last visited 18 August 2011).

¹⁶⁵ Amnesty International, *Annual Report: Rwanda 2011*, 28 May 2011, <http://www.amnestyusa.org/research/reports/annual-report-rwanda-2011?page=show> (last visited 18 August 2011).

¹⁶⁶ Human Rights Council, Working Group on the Universal Periodic Review, *Summary*, para. 25.

¹⁶⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, *2009 Human Rights Report: Rwanda*, 11 March 2010.

In its 2010 report, Amnesty International remarked that the freedom of expression was further restricted. The report noted, "The RPF became increasingly sensitive to criticism in advance of the presidential elections. [...]. The authorities continued to misuse broad and ill-defined laws on 'genocide ideology' and 'sectarianism'. The laws prohibit hate speech, but also criminalize legitimate criticism of the government."¹⁶⁸ Amnesty International and Human Rights Watch mentioned the cases of Bernard Ntaganda, the leader of PS-Imberakuri, who was arrested on charges including inciting ethnic division in relation to statements criticizing government policies, and of Victoire Ingabire, the leader of FDU-Inkingi, who was arrested on charges including 'genocide ideology' based, in part, on her public call for the prosecution of RPF war crimes.¹⁶⁹ In early 2011, the High Court sentenced Ntaganda to four years in prison. The case against Victoire Ingabire is still in court.

In *Safer to Stay Silent*, Amnesty International remarked that

[t]he timing of these accusations against leading opposition politicians in the run-up to the 2010 presidential elections and the manner in which they were brought strongly suggest a political motivation. The broad nature of 'genocide ideology' and 'divisionism' laws facilitate this by allowing prosecutions that focus on perceptions of a speaker's alleged underlying philosophy, rather than an analysis of whether speech constitutes advocacy of hatred that amounts to violence, discrimination or hostility. Such broad laws are particularly open to political influence in terms of who to prosecute, on what charges and based on what evidence. Redrafting the laws will in itself not necessarily prevent misuse against legitimate political dissent unless other steps are taken, including proper investigation of cases, an end to statements by senior officials insinuating guilt before trial, and ensuring prosecutorial and judicial independence.¹⁷⁰

Amnesty International and Human Rights Watch further noted that in January 2011

four former senior government and army officials turned outspoken critics – Faustin Kayumba Nyamwasa, Patrick Karegeya, Gerald Gahima and Théogène Rudasingwa – were tried in absentia by a military court in Kigali and found guilty of endangering state security, destabilizing public order, 'divisionism', defamation, and forming a criminal enterprise. Karegeya and Gahima were each sentenced to 20 years; Nyamwasa and Rudasingwa each to 24 years, with an additional charge of army desertion. [...] Although the government has publicly accused the four men of forming an armed group and of being behind a spate of grenade attacks in Rwanda in 2010, the trial did not deal with these allegations. It focused instead on public statements and documents published by the defendants in which they criticized the government and Kagame. On June 19, an assassination attempt was made in Johannesburg against Nyamwasa, who lives in exile in South Africa.¹⁷¹

3.3.1.3 Harassment of Opposition Politicians

In its annual report on the year 2010, Amnesty International noted that "Rwandan authorities failed to adequately investigate and prosecute killings before the elections." The report mentioned in particular the case of "André Kagwa Rwisereka, Vice President of the opposition Democratic Green Party, [who] was found dead in Butare on 14 July.

¹⁶⁸ Amnesty International, *Annual Report: Rwanda 2011*, 28 May 2011, <http://www.amnestyusa.org/research/reports/annual-report-rwanda-2011?page=show> (last visited 18 August 2011).

¹⁶⁹ Amnesty International, *Annual Report: Rwanda 2011*, 28 May 2011, <http://www.amnestyusa.org/research/reports/annual-report-rwanda-2011?page=show> (last visited 18 August 2011); Human Rights Watch, *Rwanda: Stop Attacks on Journalists, Opponents*, press release of 26 June 2010; Human Rights Watch, *Attacks on freedom of expression, freedom of association and freedom of assembly in the run-up to presidential elections, January to July 2010*, 2 August 2010.

¹⁷⁰ Amnesty International, *Safer to Stay Silent*, p. 22.

¹⁷¹ Human Rights Watch, *Rwanda: Prison Term for Opposition Leader*, press release of 11 February 2011; and Amnesty International, *Annual Report: Rwanda 2011*, 28 May 2011.

André Rwisereka, who left the RPF to create the Democratic Green Party, had been concerned for his security in the weeks before his murder. The police opened investigations, but the prosecution claimed to have insufficient evidence to press charges.¹⁷²

The US Department of State human rights report about 2010 summarised the events:

*On June 24, authorities arrested several members of the PS Imberakuri political party and the unregistered FDU-Inkingi political party on charges of holding illegal demonstrations. Authorities also charged the founder of PS-Imberakuri, Bernard Ntaganda, with threatening national security, genocide ideology, divisionism, and creating a criminal organization. On June 25, authorities released some detainees, but six PS-Imberakuri and three FDU-Inkingi members remained in detention. On June 27, authorities arrested another PS-Imberakuri member. Some detainees claimed authorities physically abused them while in police custody; Ntaganda claimed authorities denied him access to a lawyer. On July 6, the detainees appeared in court, and between July 9 and 13, authorities released all detainees, except Ntaganda, on bail. In October Ntaganda went on a hunger strike to protest his treatment in prison, and on October 14, prison authorities transferred Ntaganda to a hospital in Kigali. At year's end, Ntaganda remained in prison awaiting trial.*¹⁷³

The political space was also discussed during the 2011 Universal Periodic Review. "Article 19 expressed concern about multiple reports of intimidation of political opponents in the run-up to the August 2010 election. Article 19 indicated that in many instances, political opponents were labelled as criminals using the restrictive genocide ideology laws."¹⁷⁴ Human Rights Watch and some German and Belgian organisations also had these concerns.

3.3.2 Response

3.3.2.1 Government Response

The Government of Rwanda responded to the criticism on the limited political space most explicitly in two documents: the Joint Governance Assessment Report and the Report for the 2011-Universal Periodic Review.

In 2008, the Government of Rwanda and its development partners in the Joint Governance Assessment Report remarked in general that

*[t]he discussion of political rights in Rwanda must take into account the country's recent history, and the role of political parties in exacerbating social divisions and inciting hatred prior to the genocide. There is an understandable concern in Rwanda that the political system should never again be allowed to generate ethnic strife. The political system therefore needs to strike a difficult balance between on the one hand generating the competition required for accountability and on the other hand supporting the goal of bringing about greater unity and the restoration of trust.*¹⁷⁵

The assessment made by the Government of Rwanda and its development partners gives an insight in the considerations that guided the political situation. The assessment argues:

Over the past ten years there has been immense change in the political environment in Rwanda. Until 2003 Rwanda was governed under transition arrangements that suspended multiparty elections.

¹⁷² Amnesty International, *Annual Report: Rwanda 2011*, 28 May 2011, <http://www.amnestyusa.org/research/reports/annual-report-rwanda-2011?page=show> (last visited 18 August 2011).

¹⁷³ US Department of State, Bureau of Democracy, Human Rights and Labor, *2010 Human Rights Report: Rwanda*, 8 April 2011.

¹⁷⁴ Human Rights Council, Working Group on the Universal Periodic Review, Tenth session, Geneva, 24 January–4 February 2011, *Summary prepared by the Office of the High Commissioner*, UN Doc. A/HRC/WG.6/10/RWA/3, para 26.

¹⁷⁵ *Rwanda: Joint Governance Assessment Report*, as adopted by Cabinet, 8 October 2008, p. 36.

Following the agreement on the new Constitution, multiparty democracy was restored, and Presidential and legislative elections were held [...]

Within the institutional framework of multiparty democracy set out in the Constitution there are several instruments that are intended to shape the nature of political competition by enabling a sharing of power between larger and smaller parties, and promoting inclusive rather than adversarial politics. First, no more than half of the positions in the Cabinet may be held by the political party gaining the majority of seats in the Chamber of Deputies (Article 116 of the Constitution). Secondly, there is a requirement that the President of the Republic and the Speaker of the Chamber of Deputies shall belong to different political organisations (Article 58). Thirdly, there are strict rules prohibiting political parties from promoting an ethnic or otherwise discriminatory agenda. Fourthly, by terms of the Constitution, political parties are, 'without prejudice to their independence', required to participate in the Consultative Forum of Political Organisations. Fifthly, many important positions in public office are appointed or elected indirectly by electoral colleges rather than through direct popular vote.

As a result of these mechanisms the political system in Rwanda is characterised more by consensus building and power sharing than adversarial competition. There is little sense of opposition between political parties, whose agendas are broadly aligned. Some observers have criticised the apparent limitations to political competition. However, these observations need to be viewed in context. Full democratic rights were only restored five years ago under the new Constitution, and it is reasonable to expect that they will develop over time. The rules governing competition have been endorsed by Rwandans through the referendum on the Constitution. While these rules encourage consensus politics, they do not preclude the emergence of a strong political opposition in future. There are also valid arguments that the present political configuration has served Rwanda well over the past five years where a degree of unity and consensus has been essential to promoting reconciliation and unity.¹⁷⁶

The Government of Rwanda and its development partners agree that

[i]n the longer term it will be essential that political processes sustain the gains in good governance that have already been made by strengthening pressures for accountability and responsiveness. This will require more open competition of political ideas. While it is generally agreed in Rwanda that the process of democratisation should continue, there are valid debates about the desirable pace and sequencing of change. The priority for the present discussion is to consider whether the rules governing political competition in Rwanda will serve future needs and enable new political forces to emerge [...].¹⁷⁷

One of three issues that are considered pertinent is the rules on political competition (along with the management of elections and the rules on party financing). As for the rules on political competition, the report remarks that these

are set out in the Constitution and the Organic Law No 16/2003 Governing Political Organisations and Politicians. The most important restriction is the prohibition on pursuing an ethnic or otherwise discriminatory agenda. Article 54 of the Constitution prevents parties 'basing themselves on race, ethnic group, tribe, clan, region, sex, religion or any other division which may give rise to discrimination', and requires that 'political organisations must constantly reflect the unity of the people of Rwanda.' [...] Article 56 of the Constitution establishes the Consultative Forum of Political Parties. Some have argued that the Forum reduces political pluralism, but its role in building the capacity of weaker parties and in ensuring the equitable distribution of public grants also deserves recognition. Restrictions on parties establishing offices at local level were lifted in 2007, an important move enabling parties to build up their grassroots support base. There is also room for debate about the need for more independent mechanisms for oversight of party registration, assembly and accounts, which are currently the responsibility of the Ministry of Local Government (MINALOC). Such functions might better reside with the independent electoral commission.¹⁷⁸

¹⁷⁶ Rwanda: Joint Governance Assessment Report, as adopted by Cabinet, 8 October 2008, p. 37. See for accompanying footnotes the original document.

¹⁷⁷ Rwanda: Joint Governance Assessment Report, as adopted by Cabinet, 8 October 2008, p. 37/38.

¹⁷⁸ Rwanda: Joint Governance Assessment Report, as adopted by Cabinet, 8 October 2008, p. 38.

Of more recent date are the remarks of the Government of Rwanda made within the context of the 2011 Universal Periodic Review. According to the Government,

[t]he freedom of association is a right of every Rwandan. This is in fulfilment of the obligations contained in the Rwandan constitution but also in the International Covenant on Civil and Political Rights to which Rwanda is party. With due respect to the law and other administrative requirements, Rwandans have the right to freely form political parties and various other types of associations. Currently there are 10 Political Organisations officially recognized in Rwanda. According to the law, political organizations officially recognized are permitted to organize themselves in a consultative forum. To promote and protect the right to associate, legislative measures were adopted. These include among others the Organic Law governing Non Governmental Organisations, the Organic Law governing political organizations and political ethics, the Law governing cooperatives, etc. These laws contain preventive measures against divisionism and sectarianism. Nevertheless, the number of political parties, associations and cooperatives continue to grow. From 2003, three new political parties were authorized: Parti pour le Progrès et la Concorde – PPC (2003); Parti pour la Solidarité et le Progrès –PSP- (2003) and Parti Social Imberakuri [...]. Some would be political parties were not registered due to shortfalls in meeting the legal requirements.¹⁷⁹

When answering questions raised about political space in Rwanda during the Universal Periodic Review, the Minister of Justice responded by stressing that “Rwandans can enjoy democracy nurtured and developed in Rwanda by Rwandans (a homemade democracy) and not one that is made or imported from North America, Europe or Asia. In Rwanda we know what lack of democracy can mean, our recent history is testimony to that.”¹⁸⁰ Pointing at the current high number of ten registered political parties, he wondered how many parties one expects in a country of eleven million people. About the registration of political parties he remarked that, “every party to be registered must meet registration criteria set up by law. There is no exception to this. Every party seeking registration and vying for political office must, without exception, play by the rules and act within the confines of the law. Short of that, there would be chaos, and I hope nobody needs it.”¹⁸¹

3.3.2.2 New Legislation

As seen in the previous sub-section, during the 2011 Universal Periodic Review the Government of Rwanda announced that the law governing political parties is under review. The draft new law provides that the registration of political parties will be made by an independent institution, the Rwanda Governance Board (RGB), and no longer by the Ministry of Local Government. At the same time, the registration of national and international NGOs is also under review. The Government also announced that the obligation for political parties to share the Consultative Forum of Political Organisations in Rwanda (FFP) will be lifted.¹⁸²

3.4 Independence of the Judiciary

Observers acknowledge the positive developments that have taken place in particular since the justice sector reforms of 2004 (see above § 2.4). However, as concerns regarding the rule of law should not overshadow general positive trends, a positive trend should not hide that, within this overall positive trend, some concerns also exist. One of those concerns, in particular for some human rights organisations, is the independence of the judiciary.

¹⁷⁹ Human Rights Council, Working Group on the Universal Periodic Review, Tenth session, Geneva, 24 January–4 February 2011, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Rwanda, A/HRC/WG.6/10/RWA/1, para 26.

¹⁸⁰ Republic of Rwanda, Ministry of Justice, *Presentation by the Rwandan Minister of Justice/Attorney General during the Rwandan Universal Periodic Review*, 2011.

¹⁸¹ Republic of Rwanda, Ministry of Justice, *Presentation by the Rwandan Minister of Justice/Attorney General during the Rwandan Universal Periodic Review*, 2011.

¹⁸² Report of the Working Group on the Universal Periodic Review. Rwanda. Addendum: *Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/17/4/Add.1.

3.4.1 Concerns

The independence of the judiciary was discussed during the 2011 Universal Periodic Review of Rwanda, in particular by Human Rights Watch and the Commonwealth Human Rights Initiative.¹⁸³ Human Rights Watch moreover dedicated a chapter to judicial independence in its 2008 report on Rwanda,¹⁸⁴ and deals with the issue in its *amicus curiae* brief in the 2011 referral case before the ICTR.¹⁸⁵ The main concerns regard trials of political interest and of accusations of 'divisionism'. For example, Human Rights Watch stated that, although judicial independence is guaranteed by law, it is lacking in practice, particularly in high profile cases. The following points of concern were raised:

- The tenure of judges:
 - The tenure for life of judges has been removed from the Constitution, after an amendment of such a provision in 2008 and removal of the amended provision.
 - Appointment to certain offices such as President and Vice-President of the Supreme Court is for set periods of time.
 - There is a proposal that the tenure period for lower court judges be set at four years.
- Limits on administrative autonomy.
- Corruption.
- Political influence in prosecutions:
 - against political opponents.
 - against independent journalists.
- Interference in genocide cases.

In their brief for the Universal Periodic Review, fifteen Rwandan civil society organisations note that the Superior Council of the Judiciary is no longer deemed to be independent, having among its members a representative of the Ministry of Justice, a member of the Bar, the President of the National Human Rights Commission, two deans of Law Faculties, and the Ombudsman.¹⁸⁶

The following list includes similar points that have been raised by the defence and other parties through *amicus curiae* briefs in various referral cases before the ICTR:¹⁸⁷

- There is a gap between law and practice with respect to judicial independence.
- Justice offered in Rwanda will be of a lower standard than at the ICTR, because a single judge may be less likely to ensure that competent and reliable justice is dispensed.

¹⁸³ Human Rights Council, Working Group on the Universal Periodic Review, Tenth session, Geneva, 24 January–4 February 2011, *Summary prepared by the Office of the High Commissioner*, UN Doc. A/HRC/WG.6/10/RWA/3, para. 11.

¹⁸⁴ Human Rights Watch, *Law and Reality, Progress in Judicial Reform in Rwanda*, 2008, p. 44-69.

¹⁸⁵ *Amicus Curiae* Brief of Human Rights Watch in Opposition to Rule 11bis Transfer, in the case of *Prosecutor vs. Jean Bosco Uwinkindi*, Case No. ICTR-2001-75-I, 17 February 2011.

¹⁸⁶ Rapport de la Société Civile en Marge de l'Examen Périodique Universel du Rwanda 2011 (joint report of Association Rwandaise pour la défense des droits de la personne et des libertés publiques (ADL); Forum des activistes contre la torture (FACT/Rwanda); Institut Rwandais pour le Dialogue et la Paix (IRDPA); Ligue des Droits de la personne dans la région des Grands Lacs (LDGL); Seruka; Human Rights Watch; Ibarwa; Turengere Abana; LIPRODHOR; Rwanda Youth Network; World Vision; Communauté des potiers du Rwanda (COPORWA); Centrale Syndicale des Travailleurs du Rwanda (CESTRAR); FAAS; and Association Nzambazamariya).

¹⁸⁷ See *Prosecutor vs. Yussuf Munyakazi*, Case No. ICTR-97-36-R11bis, Trial Chamber III, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 28 May 2008 (Appeals Chamber Decision, 8 October 2008); *Prosecutor vs. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis, Trial Chamber Designated under Rule 11 Bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 6 June 2008 (Appeals Chamber Decision 30 October 2008); *Prosecutor vs. Ildephonse Hategekimana*, Case No. ICTR-2000-55B-R11bis, Trial Chamber Designated pursuant Rule 11 Bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 19 June 2008 (Appeals Chamber Decision 4 December 2008); *Prosecutor vs. Jean Baptiste Gatete*, Case No. ICTR-2000-61-R11bis, Trial Chamber Designated under Rule 11 Bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 17 November 2008; *Prosecutor vs. Fulgence Kayishema*, Case No. ICTR-2001-67-R11bis, Trial Chamber III, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 16 December 2008; *Prosecutor vs. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, Referral Chamber Designated under Rule 11 Bis, 28 June 2011.

- The judiciary is dominated by the Rwandan Government; the appointment process for judges of the High Court and the Supreme Court is controlled by the President of Rwanda.
- There has been a tendency to fill higher positions, also in the judiciary, with Tutsi and exclude Hutu. The Defence also allege that the Rwandan justice system is exclusively concerned with prosecuting Hutu defendants and does not act impartially by investigating and prosecuting crimes committed by all sides. Further members of the Prosecution and the Bench in Rwanda include individuals who are Tutsi and who may have personally suffered during the genocide. The implication is that the courts may be biased, or that judicial proceedings cannot take place in a sufficiently calm and dispassionate climate.

For the High Court in the UK, the lack of independence of the judiciary was one of the reasons to appeal a previous decision by a lower court judge that allowed extradition of genocide suspects to Rwanda.¹⁸⁸

In the Rwanda Governance Scorecard 2010, the scores for the degree of independence of the judiciary are relatively high compared to other sub-indicators within the rule of law: 78%. This rate is based on two sub-sub-indicators: the percentage of citizens who expressed that the judiciary is independent (78.5%) and the rate of non-interference into the judiciary by the executive (78%).¹⁸⁹ A rate, however, of 78% could also be considered as area for improvement compared to the ideal situation of 100% independence of the judiciary.

The Rwanda Bribery Index mentioned the judiciary among the sectors most affected by corruption.¹⁹⁰

The US State Department in its report for 2009 (repeated for 2010) remarks that

*the constitution and law provide for an independent judiciary, and the judiciary operated in most cases without government interference; however, there were constraints on judicial independence. Government officials sometimes attempted to influence individual cases, primarily in gacaca cases. Unlike in previous years, there were no reports that members of the executive branch called judges to discuss ongoing cases privately and to express executive preferences.*¹⁹¹

3.4.2 Response

In general, the recommendation during the Universal Periodic Review to invite the Special Rapporteur on the independence of judges and lawyers to visit Rwanda enjoyed the support of Rwanda.¹⁹²

In its Strategic Plan 2009-2013, the Supreme Court lists that one of its four core objectives is to strengthen the independence of the judiciary, including activities within the judiciary to raise awareness of the importance of independence, and to improve the reputation of the judiciary and the perception of its independency among the public.¹⁹³

¹⁸⁸ High Court of Justice Divisional Court on Appeal from the City of Westminster Court, btw Brown aka Bajinja & others and the Government of Rwanda & the Secretary of State for the Home Department, 8 April 2009.

¹⁸⁹ Rwanda Governance Advisory Council, *Rwanda Governance Scorecard 2010*, 2011, p. 12-16.

¹⁹⁰ Transparency Rwanda, *Rwanda Bribery Index 2010*, 2011, p. 2.

¹⁹¹ US Department of State, Bureau of Democracy, Human Rights and Labor, *2009 Human Rights Report: Rwanda*, 11 March 2010; US Department of State, Bureau of Democracy, Human Rights and Labor, *2010 Human Rights Report: Rwanda*, 8 April 2011.

¹⁹² Report of the Working Group on the Universal Periodic Review. Rwanda. Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/17/4/Add.1.

¹⁹³ Supreme Court, *Strategic Plan of the Judiciary 2009-2013*.

The ICTR Trial Chambers and Appeals Chamber several times had to decide on the independence of the Rwandan judiciary, notably in decisions on the prosecutor's request to transfer cases to Rwanda where a lack of judicial independence was raised by the defence and others as a reason to refuse transfer of a case to Rwanda (see the previous sub-section on this topic).¹⁹⁴

Except for one Trial Chamber decision, overruled on appeal, in none of the decisions the independence of the judiciary is considered a concern. This in particular regards the High Court and the Supreme Court of Rwanda, which will be responsible for trying the cases referred to Rwanda by the ICTR or extradited to Rwanda by third countries.

With respect to the legal framework in place concerning independence and impartiality, the ICTR Trial Chamber considers that the Constitution states that the judiciary is independent and separate from the legislative and executive arms of government, and that it enjoys financial and administrative autonomy (Article 140). Judges hold office for life and shall not be suspended, transferred, or otherwise removed from office (Article 142). The Superior Council of the Judiciary is responsible for the appointment, discipline and removal of judges (Articles 157 and 158). Article 1 of the Code of Criminal Procedure provides for trials by a competent, independent and impartial tribunal established by law. An Ombudsman oversees the judiciary, and a Code of Ethics has been adopted.

With regard to the statement that there is a gap between law and practice with respect to judicial independence, the Trial Chamber considered that it does not underestimate the challenges facing the judiciary, which had to be reconstructed after the genocide in 1994, and that it accepts the general observation that the concept of judicial independence is relatively new in Rwanda. Although some of the illustrations provided by the *amici* appear well-founded, they are mostly of a general nature and do not focus specifically on the High Court or Supreme Court which will adjudicate cases within the framework of the Transfer Law. For example, in relation to interviews with twenty-five high-ranking Rwandan judicial officials who stated that the courts were not independent in 2005, 2006, and 2007, the Trial Chamber considered that there is no information about the basis for their views, which are too generally formulated. Other illustrations show that there may have been specific attempts to influence judges, but not that the alleged interference was successful.

With regard to the other arguments raised by the defence (see above § 3.4.1) the ICTR Trial Chamber considered the following:

- Single judge: The Trial Chamber observes that international legal instruments, including human rights conventions, do not require that a trial or an appeal has to be heard by a specific number of judges in order to be fair and independent. None of the submissions provided evidence that single judge trials in Rwanda, which commenced with the judicial reforms of 2004, have been more open to outside influence than previous trials involving panels of judges.
- Appointment process for judges: The Trial Chamber did not consider the involvement of the President of Rwanda in the appointment process for the President and Vice-President of the Rwandan Supreme Court, the High Court, and the regular members of the Supreme Court, in itself, to be problematic or exceptional. The Chamber notes that the President's role is not absolute in this regard. After consultation with the Cabinet and the Superior Council of the Judiciary, the President proposes members of the Supreme Court, but the Senate ultimately elects them.

¹⁹⁴ See for all references in this section to the ICTR Trial Chamber: *Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36-R11bis, Trial Chamber III, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 28 May 2008 (Appeals Chamber Decision, 8 October 2008); *Prosecutor vs. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis, Trial Chamber Designated under Rule 11 Bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 6 June 2008 (Appeals Chamber Decision 30 October 2008); *Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-2000-55B-R11bis, Trial Chamber Designated pursuant Rule 11 Bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 19 June 2008 (Appeals Chamber Decision 4 December 2008); *Prosecutor v. Jean Baptiste Gatete*, Case No. ICTR-2000-61-R11bis, Trial Chamber Designated under Rule 11 Bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 17 November 2008; *Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-R11bis, Trial Chamber III, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 16 December 2008; *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, Referral Chamber Designated under Rule 11 Bis, 28 June 2011.

- Bias of Courts: The Trial Chamber considered that it has not been provided with any statistical information, neither generally nor in relation to the ethnicity of judges appointed to the High Court and the Supreme Court. Irrespective of the exact composition of those two judicial bodies, the Trial Chamber did not find that these submissions prevent transfer. The acquittal rate in Rwanda in genocide cases is considerable. The ordinary courts have acquitted many accused persons of Hutu origin, including cases where convictions were overturned on appeal.

3.5 Fairness of Gacaca

From the start, *gacaca* have been followed closely by various international organisations, such as Penal Reform International,¹⁹⁵ Avocats sans Frontières,¹⁹⁶ and Human Rights Watch.¹⁹⁷ In general, the *gacaca* received acknowledgement as a way to deal with the legacy of the genocide. For example, Penal Reform International remarked:

As an internally generated forum for resolving complex cases from the genocide, the Gacaca appealed for the population's help in establishing the truth on crimes committed; it addressed the need for geographical proximity and participation of the population needed to make it acceptable. It also represents a symbolic break with the cycle of impunity in the same vein as the standard court system or the ICTR. Introducing innovative mechanisms into the range of punishments such as the confessions procedure, and community service were also major features of the process. It is also undeniable that the Gacaca enabled an almost unbelievable speeding up of trials and the rapid handling of the genocide caseload.¹⁹⁸

However, also from the start the same observers raised various concerns.

3.5.1 Concerns

The concerns expressed with regard to the *gacaca* – as far as of importance within the context of the rule of law – in particular have focused on the fairness of the trials. Seemingly the most outspoken on this issue is Human Rights Watch, which in 2011 published a concluding report on the *gacaca*, with the title *Justice Compromised*. In the view of Human Rights Watch, compromises made in adapting the customary community-based practice to try grave criminal offenses “led to significant due process violations being built into the system”.¹⁹⁹

In its letter to the Minister of Justice of Rwanda, Human Rights Watch summarised its main findings:²⁰⁰

Our concerns relate primarily to the absence of fair trial safeguards and limitations on the ability of accused persons to defend themselves effectively. Human Rights Watch documented, among other things, cases where:

- the presumption of innocence was undermined;
- the accused were not provided with adequate information on the charges against them in advance of their trial;
- the accused did not have sufficient time to prepare a defense; and
- individuals were tried twice for the same offenses, for example first in a conventional court, then in *gacaca*, or twice by different *gacaca* jurisdictions.

¹⁹⁵ See e.g. Penal Reform International, *The contribution of the Gacaca jurisdictions to resolving cases arising from the genocide: Contributions, limitations and expectations of the post-Gacaca phase, final monitoring and research report on the Gacaca process*, 2010; Penal Reform International, *Eight years on, a Record of Gacaca Monitoring in Rwanda*, 2010.

¹⁹⁶ Avocats sans Frontières, *Monitoring des Juridictions Gacaca, Phase de Jugement, Rapport Analytique no. 5, janvier 2008-mars 2010*, 2010 (and various previous reports, available at <http://www.asf.be/en/node/9#RwandaPublicationsFR> (last visited 13 September 2011)).

¹⁹⁷ See e.g. Human Rights Watch, *Justice Compromised, The Legacy of Rwanda's Community-Based Gacaca Courts*, 2011.

¹⁹⁸ Penal Reform International, *The contribution of the Gacaca jurisdictions to resolving cases arising from the genocide*, p. 50.

¹⁹⁹ Human Rights Watch, *Justice Compromised*, p. 130.

²⁰⁰ Human Rights Watch, *Justice Compromised*, Annex I. Letter to the Rwandan Minister of Justice from Human Rights Watch, March 30, 2011.

The report also documents

- the misuse of *gacaca* by private individuals as a way of settling scores or resolving personal grievances unrelated to the genocide;
- political interference in a number of trials, particularly those of individuals viewed as government critics;
- corruption of judges, accentuated by the lack of remuneration;
- intimidation of witnesses;
- obstacles to witnesses testifying freely in *gacaca* hearings;
- the broader political climate in Rwanda which has further discouraged many people from speaking out in *gacaca* trials for fear of repercussions. Repercussions for potential defense witnesses may include arbitrary arrest, accusations of perjury, charges of 'genocide ideology' or charges of complicity in the genocide.
- Other concerns relate to some of the fundamental premises of *gacaca* from the outset, for example the lack of professional legal training for judges and the absence of lawyers for the accused. The lack of professional legal training for judges, in particular, has resulted in divergent practices in different *gacaca* jurisdictions, for example in standards of proof, decision-making, and sentencing, as well as attitudes towards the accused, the civil parties, and members of local communities participating in *gacaca* trials.

3.5.2 Response

On various occasions the Government of Rwanda has responded to criticism of the *gacaca* system. The Government of Rwanda realises that the *gacaca* system is not without flaws. For example, in the Joint Governance Assessment, the government together with its development partners pointed at various shortcomings of the *gacaca*, such as that "[t]he system does not meet optimal legal standards: *gacaca* judges (*Inyangamugayo*) have no formal legal training, suspects are provided with no legal defence, there are cases where survivors, witnesses and judges have been threatened or killed, and in some instances judges have been found to be corrupt or themselves implicated in genocide crimes."²⁰¹

However, the Government of Rwanda has stressed also the positive effects, the specific characteristics of *gacaca* compared to classical penal systems, the extraordinary circumstances that led to the choice for *gacaca* and the circumstances in which *gacaca* had to operate. Also, reports by the National Unity and Reconciliation Commission highlight positive effects. For example, the vast majority of the population (94%) think that through *gacaca* the truth about the genocide, as it really happened, was revealed, 83% think the *Inyangamugayo* were impartial in the *gacaca* process, and 89% think that those convicted through *gacaca* received fair punishment.²⁰²

The Minister of Justice/Attorney General of Rwanda, Tharcisse Karugarama, elaborately responded the Human Rights Watch report, which will be quoted at length:²⁰³

Brief background information

[3] One of the particularities of the genocide of Tutsi in Rwanda in 1994 is the involvement of a large part of the Rwandan population. Applying the type of due process alluded to in your report in such circumstances was simply untenable: an economic, structural and institutional crisis would have become an insurmountable impasse. A large portion of the population remained unproductive and behind bars for years, only compounding the effects of the devastating genocide. This was among the multiple challenges Rwanda sought to solve when *gacaca* was established. *Gacaca* was intended to be a way which would allow all Rwandans to be the main actors in trying perpetrators of genocide, with the main objective of rebuilding our society.

²⁰¹ Rwanda: *Joint Governance Assessment Report*, as adopted by Cabinet, 8 October 2008, p. 25.

²⁰² National Unity and Reconciliation Commission, *Rwanda Reconciliation Barometer*, 2010.

²⁰³ Human Rights Watch, *Justice Compromised*, Annex II. Response to Human Rights Watch from the Rwandan Minister of Justice, May 5 2011.

[4] As a general starting point, it is paramount that we recall the main pillars of Gacaca as an alternative to the conventional judicial system:

- To disclose the truth about genocide events;
- To speed up genocide trials;
- To eradicate the culture of impunity;
- To bring reconciliation and strengthen unity among Rwandans;
- To prove Rwandan society's capacity to solve its own problems.

Comments/information on human rights concerns you raised in your findings:

- a) The 'absence of fair trial safeguards' and the 'limitations on the ability of accused persons to defend themselves effectively'.

[5] In your findings, it seems that Human Rights Watch envisages a conception of 'due process' which is developed through case law and shaped by a western notion of justice. These findings do not reflect that due process is a relatively new concept in Rwanda, and that Gacaca was created as an extraordinary measure for solving an extraordinary instance of human rights violations.

[6] Also, the report refers to 'human rights concerns' about the functioning of Gacaca. However, the report fails to note that it was the Government of Rwanda which identified human rights concerns before Gacaca was implemented, establishing Gacaca as a practical solution to such concerns.

[7] In fact, Gacaca is not and was never meant to be merely a judicial instrument; rather it is a system of social, cultural and legal evolution with the aim of, among other things, achieving reconciliation of Rwandans and rebuilding Rwandan society which had been torn apart by the genocide of Tutsi in 1994.

- b) Misuse of Gacaca by private individuals as a way of resolving personal grievances, corruption of judges and political interference in trials

[8] A number of government and non-government bodies were involved in monitoring Gacaca courts, including the National Commission of Human Rights, which was specifically supported in its monitoring activities by the European Community. The SNJG, which is responsible for Gacaca courts, deployed its personnel all over the country for monitoring and to ensure that Gacaca judges respected minimum procedural rules as provided for in the Organic Law on Gacaca.

[9] Even though irregularities can occur, we trust our institutions to carry out their mandate of protecting our people's rights. We also believe that your report should not conclude, based on a few discrete instances, that 'compromises in the delivery of justice for the genocide' resulted. We also urge you to recall the very positive reputation Rwanda has for fighting corruption. According to Transparency International's 2010 Corruption Perception Index, Rwanda has the best reputation in regards to corruption in all of East Africa, and is eighth in Sub-Saharan Africa.

- c) Absence of lawyers

[10] Gacaca is 'justice from and within the population'. Therefore, it is important to recall the reasons underpinning the decision of not allowing lawyers to participate in Gacaca 'in their official and traditional' way. The complexity of how the genocide was perpetrated required an extraordinary response; we determined that each and every citizen should be empowered to be a lawyer, a prosecutor and a witness. The idea of not allowing lawyers in their formal style was one of the ways we created conditions which would allow the population to speak freely about what they saw and experienced during the genocide. Not allowing lawyers was also a way of maximizing the community's sense of ownership over the process, rather than imposing a process upon them.

[11] Your report appears to call this feature of the Gacaca system an irregularity, but unfortunately, the report fails to note the balance struck in a clearly difficult situation. In fact, suspects were not refused their right to defend themselves and provide defense witnesses.

This is a style of adjudication Rwandans are familiar with, because, as you know, Gacaca had been a fixture of the Rwandan justice system many years ago, and the more recent development of Abunzi also follows this pattern. Lawyers are also part of the population and had an equal chance to participate and lend their knowledge and experience to Gacaca trials as members of the community.

On the closure of Gacaca

[12] [announcing the forthcoming adoption of a law organising the closure of *gacaca*]

[13] On your query as to how many Gacaca cases are still open, the relevant Government institutions such as the Human Rights Commission, the Office of the Ombudsman, the National Service of Gacaca Jurisdictions and the Ministry of Justice have received approximately 1000 applications for review, which are pending. The body in charge of the Gacaca Jurisdictions at national level has been commissioned to do a thorough assessment in order to determine how the appropriate bodies shall handle appeals and applications for review. [the sub 12 announced law will determine where pending cases will be decided]

Other relevant information

[14] In response to some of your other questions and concerns, we would like you to note the following:

- Regarding compensation of individuals detained and later exonerated, this has not yet been incorporated as a tenet of our justice system, nor will you find it to be a principle followed in our neighbouring countries. We do, however, take the discipline and honesty of our police force very seriously, as you know. While we are still building up the skills and capacity of the force, we do not tolerate corruption or other abuses of power, and we trust the leadership of the institution to manage such issues with integrity.
- Regarding revision of the genocide ideology law, following expert research and advice, a significant revision has been drafted to address concerns that the law was overly vague and subject to abuse. In fact, you will find many new and revised laws forthcoming in the next year that reflect the principles of transparency and accountability and increased rights of free expression and access to information.

Conclusion

[15] Gacaca is not a complete solution to the important and overwhelming genocide caseload; however, it has proved to be better than most other processes available, especially in light of the large number of cases and perpetrators. Had we relied on the traditional justice system, many suspects would still be waiting for a first hearing.

[16] We regret that, after many years of hard work by Rwandans attempting to solve the myriad problems left by the genocide of Tutsi, the reports and advice of Human Rights Watch seem to focus only on criticisms instead of pragmatic and culturally appropriate suggestions. For example, the previous Human Rights Watch report was unfortunately biased toward the experience of the defendant, and thusly neglected to highlight one of the most important objectives of Gacaca: the reconciliation of Rwandans and the revealing of the truth of what really happened during the genocide of Tutsi in 1994. The very creation of Gacaca itself is clear evidence that Rwanda found it unacceptable to leave suspects in prison for indeterminate amounts of time, and accordingly this created one of the aims of Gacaca, to increase the speed at which genocide cases were heard.

[17] Considering the development of the justice sector before 1994 and the total devastation that ensued, we were left to develop new procedures and solutions to manage the chaotic situation at hand. We would expect the forthcoming Human Rights Watch report to reflect a more realistic perspective about what type of resources Rwanda had available in the years following the genocide, and to take into consideration some of the great achievements Rwanda has made since then despite the challenges faced.

[18] We surely welcome constructive criticism as we work toward building a modern, developed justice system, but reports which characterize Gacaca as a formal legal institution, applying a strict procedural framework to the community-based courts and western legal concepts to an emerging justice sector are not, in fact, constructive. We trust you can find a way to balance informed and insightful criticisms with a respect for the enormity of the challenges Rwanda faced in the aftermath of genocide, where we determined that our main aim, above much else, was the rebuilding of our society that had been completely torn apart.

Part C: Relevant Indicators in Rule of Law

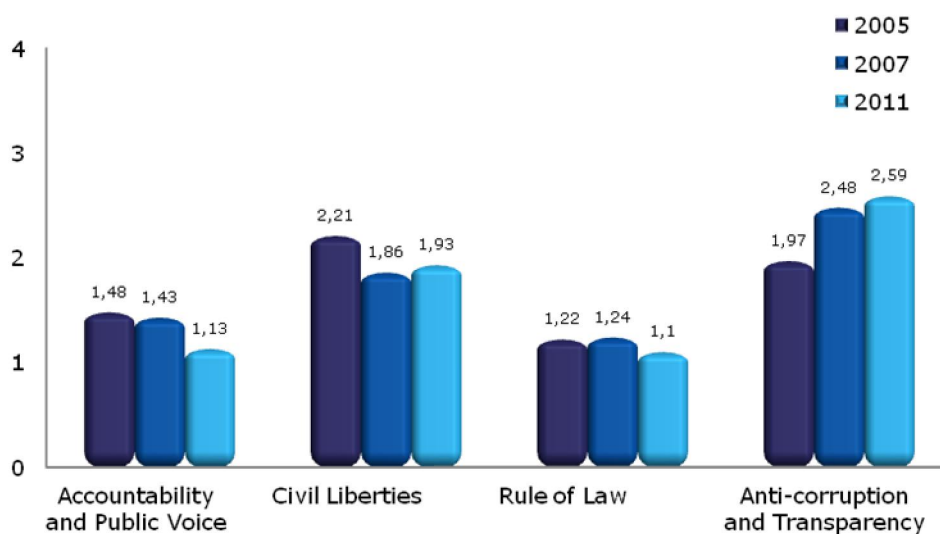


1. Freedom House, 'Countries at the Crossroads: Country Report Rwanda'

The influential Freedom House index, used widely in the works of international and academic organizations, is composed by regional experts who review an extensive collection of data, primarily newspaper reports as well as analysis by think-tanks and NGO's. The index measures the quality of democratic governance reflected by 4 core categories – Accountability and Public Voice, Civil Liberties, Rule of Law, and Anticorruption and Transparency. The rule of law is measured with respect to four sub-areas of government performance: independent judiciary; primacy of rule of law in civil and criminal matters; accountability of security forces and military to civilian authorities; and protection of property rights. On the basis of this information, separate reports are written for individual countries, which subsequently lead to a score on the Freedom House indicators. The Freedom House report is based on numerical rating on a scale from 1 to 7, assigned to each country, where 1 stands for a free society and 7 for the lowest regard for civil and political freedoms.

Despite international praise for good governance, Freedom House reports draw attention to the flaws of Rwanda's transition to democracy, launched in 1999 upon the first local elections. The country has been assessed in 2005, 2007 and 2011, placed close to the bottom of the list of countries on all governance dimensions. Rwanda's strongest performance has been on anti-corruption and transparency, which is, at the same time, the only category in which the country has improved (scoring on average 2.35). The nonetheless low score reflects the politicization of actions against corruption, the unchallenged military dominance of the political system, and the lack of accountability for the government-controlled actions of Rwandan forces involved in the war crimes in the Democratic Republic of Congo. Rule of law remains the weakest category with the score of 1.10 in 2011, better only to Eritrea at 0.27. This is mainly due to the shortcomings of the Gacaca system²⁰⁴ and the restriction of judicial independence by political branches. Further, governmental constraints on the functioning of independent political parties, and systematic interference with the media and civil society lead to the low scores on accountability and public voice (average 1.35), and civil liberties (average 2.0).

Countries at the Crossroads:
Rwanda 2005, 2007, 2011



²⁰⁴ Among the shortcomings are the fact that the Gacaca has refrained from prosecuting most RPF abuses; the long delayed nationwide implementation; and the problems of participation resulting from inadequate protection of witnesses.

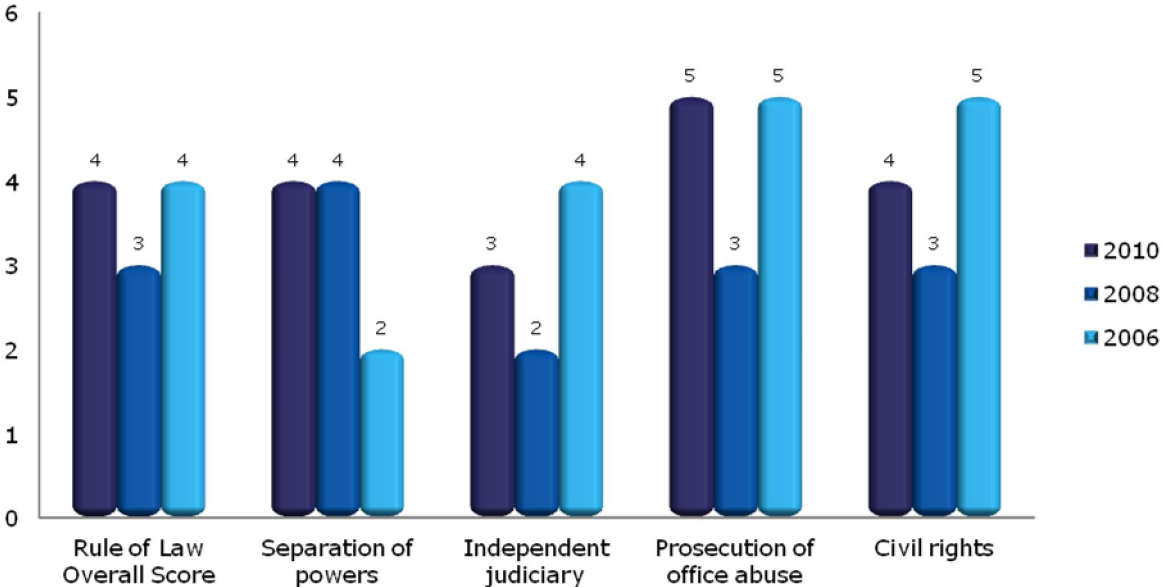
2. Bertelsmann Transformation Index

The Bertelsmann Transformation Index measures the progress of 128 countries towards full democracy based on the rule of law and a market economy protected by sociopolitical safeguards. It has been calculated for years 2003, 2006, 2008 and 2010. In contrast to minimalist definitions of electoral democracy, the BTI's understanding of democracy includes the rule of law and representativeness. It focuses on 3 dimensions: democracy, market economy and political management. The composite index relates to both a description of their democratic and market economic state and the country's leadership management performance to steer it on a course of solid transformation.

For 128 states, individual reports are written by a country expert, which is then subject to peer review by another expert. This narrative report deals with the whole chain of issues mentioned above. Subsequently, scores (1-10) are given by country experts on 49 questions. For the present purpose, the political transformation dimension of the index is particularly useful, with a focus on the rule of law sub-category.

Over the years, Rwanda's score on the rule of law has remained relatively low, never above the middle of the scale. In 2010, the score of 4.0 ranked the country as 14th out of 19 South and East African states. Rwanda has delivered its strongest performance in the prosecution of office abuse component that reflects, on the one hand, the government's anti-corruption efforts and, on the other, its denials of abusive exploitation of resources by Rwandan officials in the DRC. The weakest category was the declining independence of the judiciary, subordinated to the strong executive. Only a slightly better performance was observed for civil rights, that despite general safety, remain vulnerable to vigilante justice, violence against women and absence of effective redress for violations.

Bertelsmann Transformation Index:
Rwanda 2006, 2008, 2010



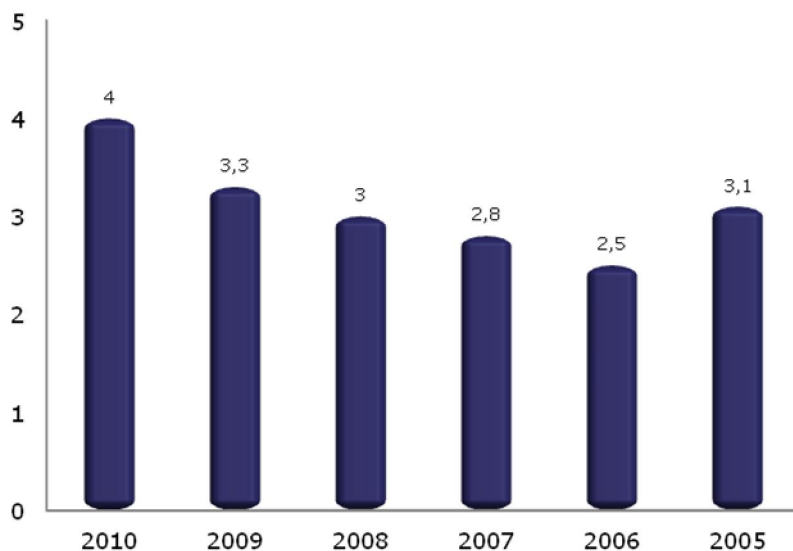
3. Transparency International: Corruption Perceptions Index

The Corruption Perceptions Index (CPI) indicates the perceived level of public-sector corruption in a country or territory. The CPI table indicates a country's ranking compared to other countries in the index. The index is based on data from 13 independent surveys and 10 independent institutions.²⁰⁵ These sources measure the prevalence of corruption in the public and political domains. This assessment is carried out for virtually all of the world's countries.

The index includes a country's ranking and score, the number of surveys used to determine the score, and the confidence range of the scoring. Scores range between 1 to 10, with 1 indicating the highest perceived level of corruption and 10 the lowest. The rank shows how one country compares to others included in the index. The reliability of the CPI scores is determined by the confidence range.

Rwanda has been assessed since 2005, its score and ranking steadily increasing. Promotion of good governance and anti-corruption have occupied a high position on the government's agenda, aimed at attracting investors. Reforms and institutions established to increase transparency and punish fraudulent practices have proved effective and increasingly impartial in combating corruption. With these efforts, Rwanda jumped 55 places in the ranking in only 4 years.²⁰⁶ In 2010, it ranked 8th out of 47 sub-Saharan states. Despite the improvement, however, the average score of 3.1 points to a high level of perceived corruption among public officials.

TI Corruption Perception Index:
Rwanda 2005-2010



²⁰⁵ Not all surveys include all countries.

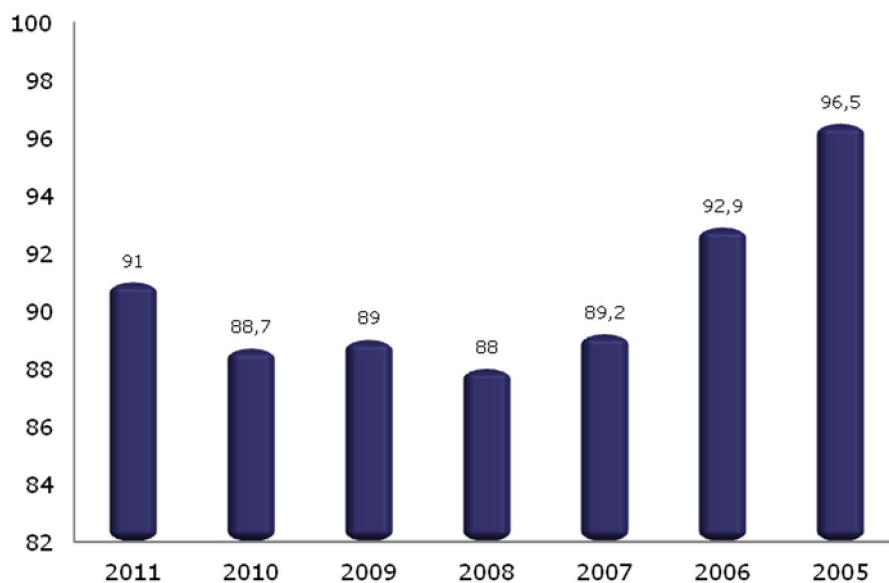
²⁰⁶ From 121 in 2006 to 66 in 2011.

4. Failed States Index

Published since 2005 by the Fund for Peace and the magazine Foreign Policy, the Failed States Index is composed of twelve indicators of vulnerability to collapse or conflict over 3 distinct dimensions (social, political and economic). The indicators include: Demographic Pressures, Refugees/IDPs, Group Grievance, Human Flight, Uneven Development, Economic Decline, Delegitimation of the State, Public Services, Human Rights and the Rule of Law, Security Apparatus, Factionalised Elites, and External Intervention. For each indicator, the ratings are determined on the basis of computer-based quantitative analysis of publications and newspaper articles on a scale of 0 to 10 (where 0 indicates the highest degree of stability and 10 the lowest). The total country score is the sum of the 12 indicators and ranges from 0 to 120.

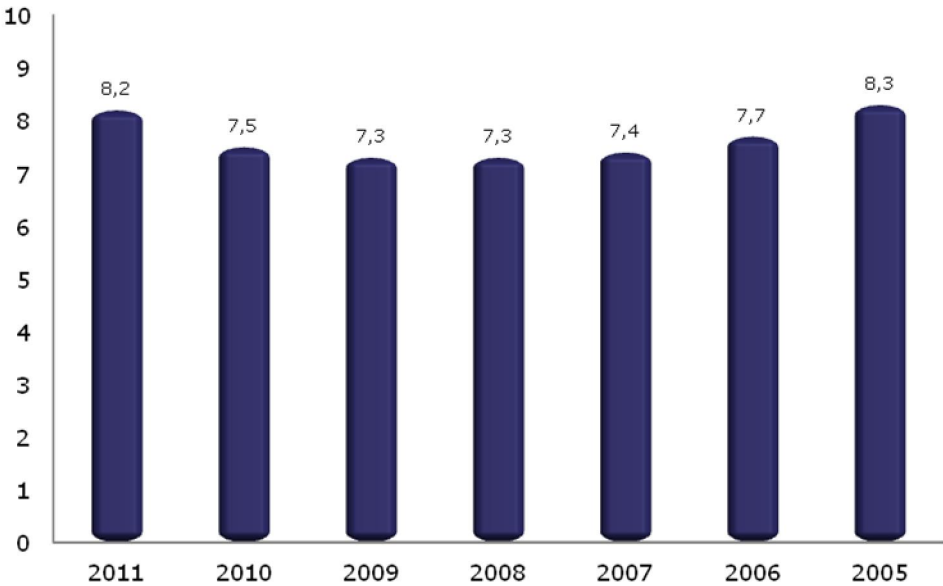
Rwanda has been covered by the index since the beginning, rated consistently as a country “in danger”. Despite generally poor scores, the country has marked a considerable improvement to the upper bound of the “warning” category, ranking 34th in 2011, from the rank of 12th and a place in the “alert zone” in 2005.²⁰⁷ Human Rights and the Rule of Law have been among the country’s weakest areas, next to Demographic Pressures, Group Grievances, and Factionalized Elites. In his commentary on the 2011 ranking, Foreign Policy magazine journalist J.J. Messner explains, “In Rwanda, the increasing authoritarianism of President Paul Kagame, including further restrictions on the media and opposition groups, did no favours for the country’s score card.”

Failed States Index:
Rwanda 2005-2011



²⁰⁷ That year, Rwanda ranked 12th, beside countries such as North Korea and Afghanistan.

FSI Indicator: Rule of Law
Rwanda 2005-2011



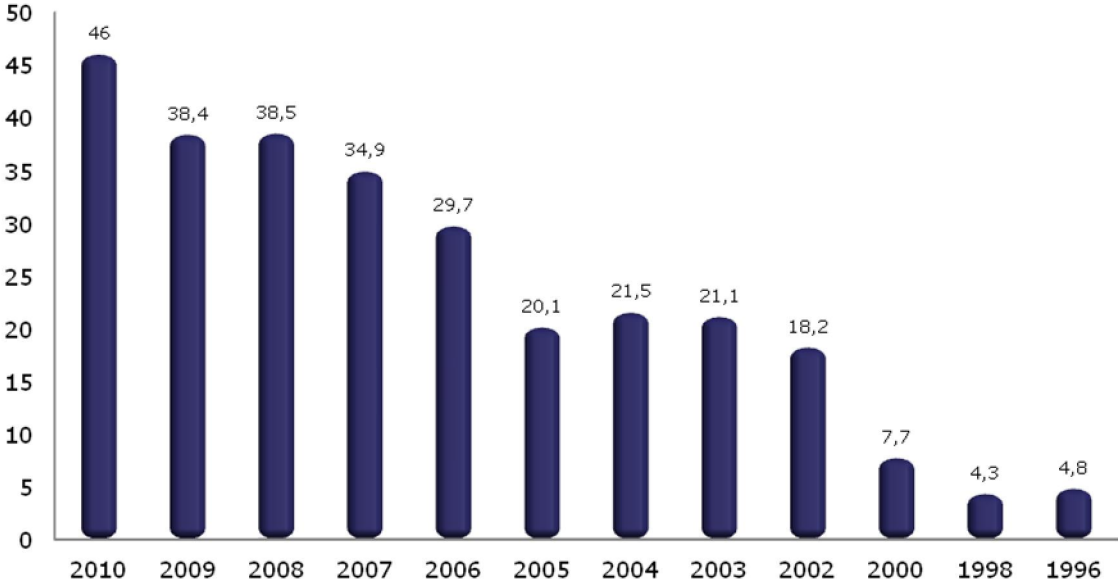
5. World Bank Governance Indicators

An authoritative scientific indicator in the field of law and governance is the World Bank Governance Indicators. Instead of working with its own data, the World Bank Governance Indicators Project compiles statistics from various other indices (among which are some of the indicators used in this study). Data are statistically rescaled to a score from 0 to 1, with a score of 0 indicating a low result on a particular variable. Six different dimensions are measured; (1) voice & accountability, (2) political stability and lack of violence/terrorism, (3) government effectiveness, (4) regulatory quality, (5) rule of law, (6) control of corruption.

The World Bank Governance indicators result in a percentile rank on each of the six dimensions. Thus, a percentile rank of 20 on any certain dimension means that only 20% of the world's countries have a worse score. Likewise, when a state scores 90, only 10% of the world's countries do better. Therefore, a high percentile rank indicates better government performance.

Indicators for Rwanda are available for years 1996-2010. The country's trajectory is marked by a steady increase at a considerable rate, from below the 5th percentile in the years which followed the genocide, to 46th percentile in 2010. The only year that saw a slight decline was 2005, reflecting the period of an increased government dominance of civil society, organizations and the media under the banner of countering genocide ideology. Overall, despite substantial improvement, the most recent percentile rank shows that Rwanda remains in the lower half all states with respect to the rule of law.

WGI: Rule of Law
Rwanda 1996-2010



6. Ibrahim Index of African Governance

The Ibrahim Index is produced by combining several indicators in a standardized way to provide a statistical measure of African countries' governance performance. Alike the WJP Rule of Law Index, it is centered on the citizen's perception of four dimensions that together comprise the definition of governance: Safety and Rule of Law, Participation and Human Rights, Sustainable Economic Opportunity, and Human Development. Data for the index is gathered from 23 separate institutions and standardized on a scale of 0-100, where 100 indicates the best performance. Due to multiple calibrations and refinements to the index made on yearly basis, comparisons between years can be performed only on the 2011 data set, containing limited information on earlier results.

Rule of Law and Security remains the weak point of Rwanda's democracy that. Unlike on other dimensions of the index, the score falls below the African average, ranking 30th out of 53 covered countries. National security comes as the poorest-performing component, situating Rwanda on the 49th position in entire Africa. Only slightly higher but still below the average are the scores for Rule of Law and Personal Safety (ranking respectively 29th and 33rd). The government's efforts to enhance transparency and accountability resulted in the country's high score in this category (ranking 9th).

Ibrahim Index 2011:
Rwanda

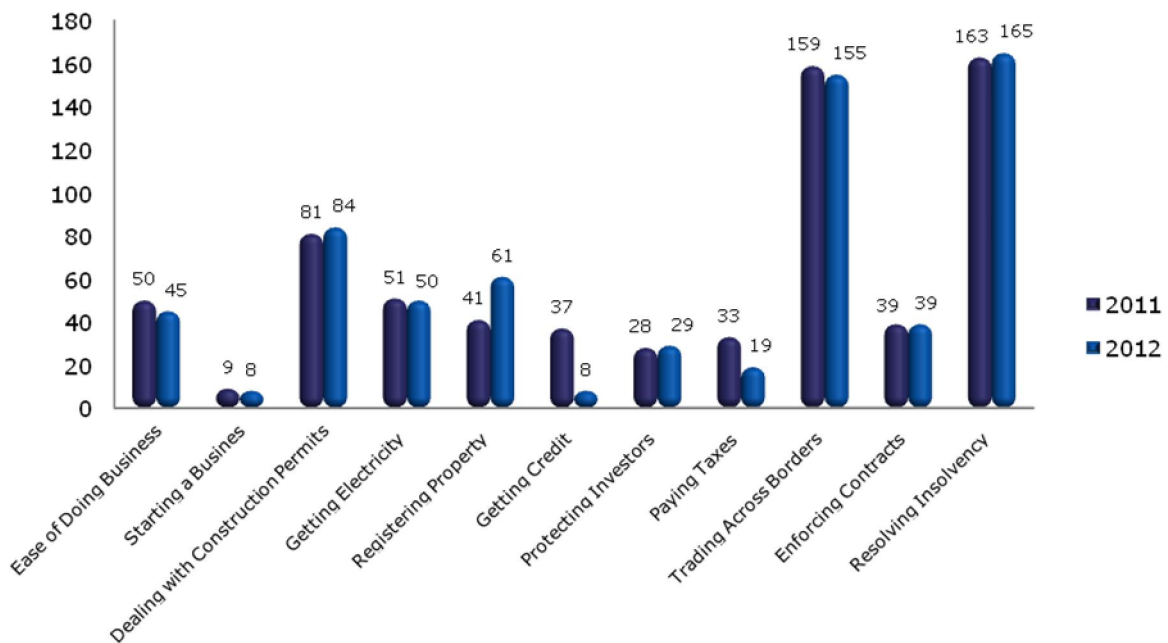


7. World Bank (Doing Business)

The World Bank's "Ease of Doing Business" index ranks 183 economies on 10 categories: starting a business; dealing with construction permits; registering property; getting credit; protecting investors; paying taxes; trading across borders; enforcing contracts; resolving insolvency; and getting electricity. Each country's ranking is calculated as the simple average of the percentile ranking on each of the categories. The higher the country's ranking, the simpler its regulations and the stronger its protection of property rights, which results in a more favourable business climate. Although the index has no immediate bearing on the rule of law, transparent and efficient regulation as well as effective implementation enable businesses to operate within the rule of law and benefit from protections and opportunities provided by the law.²⁰⁸

Rwanda has been featured in 2011 and 2012 country rankings, scoring relatively high on most categories. The country has performed strongest on the ease of starting a business (average ranking 8.5), getting credit (increased from 33 in 2011 to 8 in 2012), protection of investors (average ranking 28.5) and paying taxes (average ranking). Importantly, these results point to the government creating a regulatory environment favourable to operating a business. Only two categories stand out as indisputably weak: trading across borders (average ranking 157) and resolving insolvency (average ranking 164).

Ease of Doing Business:
Rwanda 2011 v. 2012



²⁰⁸ World Bank Group, "Doing Business 2011 – Making a Difference for entrepreneurs", World Bank Publications, 2010, [www.doingbusiness.org], last visited on November 14, 2011.

8. Cingranelli-Richards (CIRI) Human Rights Dataset

One of the largest human rights data sets in the world, the CIRI consists of standards-based quantitative data for years 1981-2009 on government respect for 15 internationally recognized human rights in 195 countries. The covered human rights are categorized into 3 sets.

The first set, physical integrity rights, included the rights not to be tortured, summarily executed, disappeared, or imprisoned for political beliefs. Country performance is measured for each of these on a scale 0-2 (where 0 signifies the least observance and 2 virtually no violation of a right in a given year), and for the overall respect for the set of rights on scale 0-8 (where 0 represents no government respect for the four rights and 8 stands for high level of government respect for the four rights).

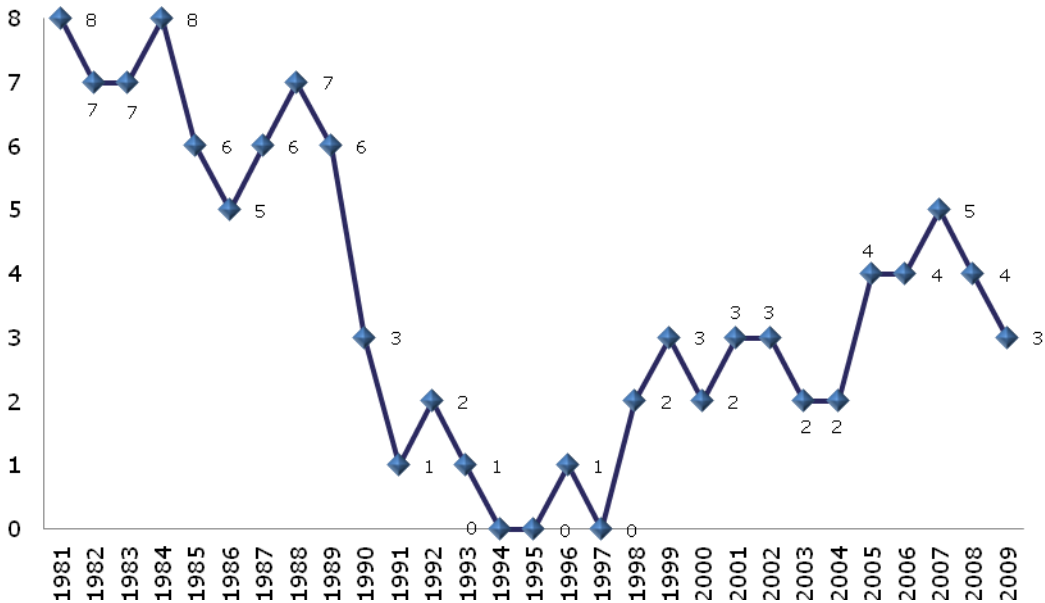
The second set, empowerment rights, include that to free speech, freedom of association and assembly, freedom of movement, freedom of religion, and the right to participate in the selection of government leaders. Alike the previous category, countries score on each separate right on a scale 0-2, as well as on the entire set of rights – here a scale ranges from 0 (no government respect for these seven rights) to 14 (full government respect for these seven rights).

Another set includes women's rights to equal political, economic, and social treatment, evaluated on a scale from 0 to 3. A score of 0 indicates that a given women's right was not enshrined in the law or that the law was characterized by discrimination based on sex. A score of 1 means that while recognized in the law, a given right lacked effective enforcement. A score of 2 indicates that although the government effectively enforced a given women's right recognized under law, women would continue to experience a low level of discrimination. Lastly, a score of 3 stands for a full realization of a given right, protected by law and enforced by the government in practice, by nearly all women.

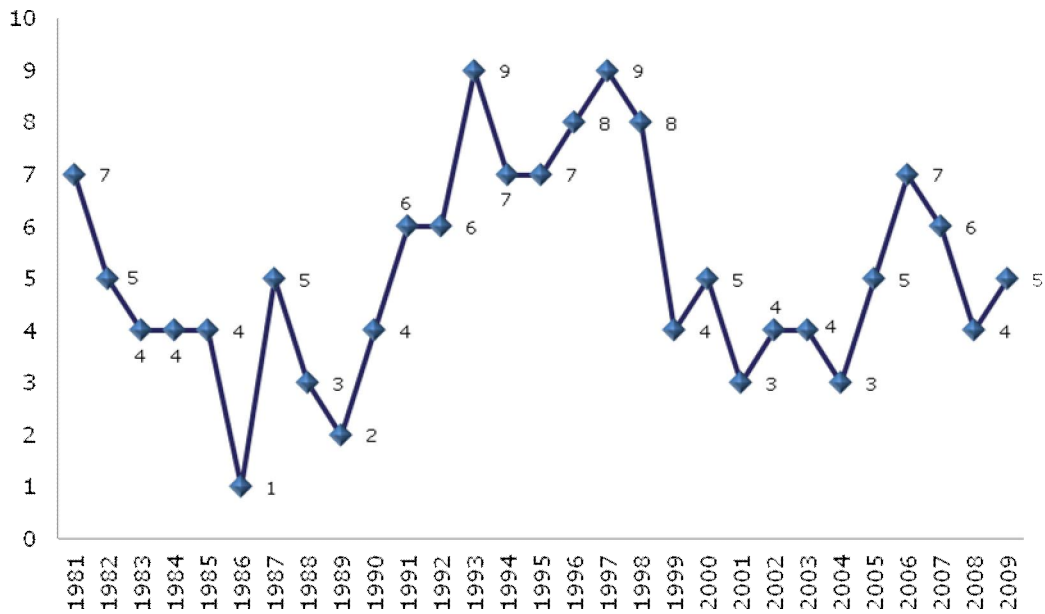
Finally, like the rights included in the first two sets, the remaining workers' rights and independence of the judiciary are measured with scores 0-2.

Rwanda has been assessed since 1981. The trajectory for physical integrity rights reflects the historical experiences of the country, from very high until the early 1990s, through practically non-existent during and shortly after the genocide, to steadily increasing since 1998. Empowerment rights have presented a partially reversed trend, with the highest scores noted between 1992 and 1998. With the much-criticized government's interference in the media and numerous limitations on the freedom of speech in the law, the poor score in 2009 (5.0) does not come as a surprise.

Physical Integrity Rights Index:
Rwanda 1981-2009

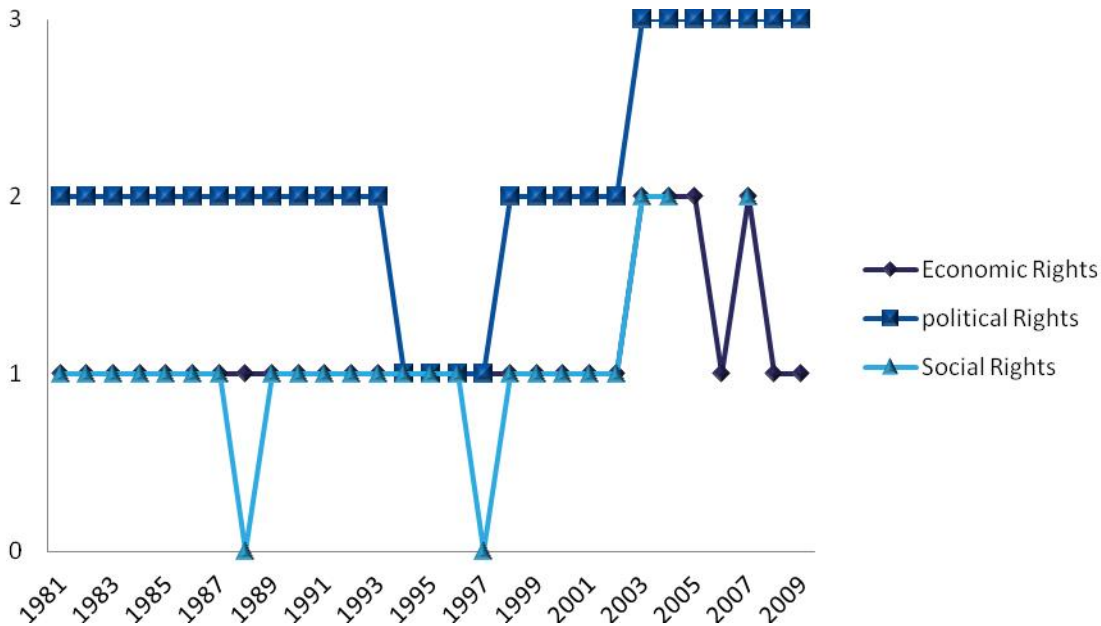


Empowerment Rights Index:
Rwanda 1981-2009



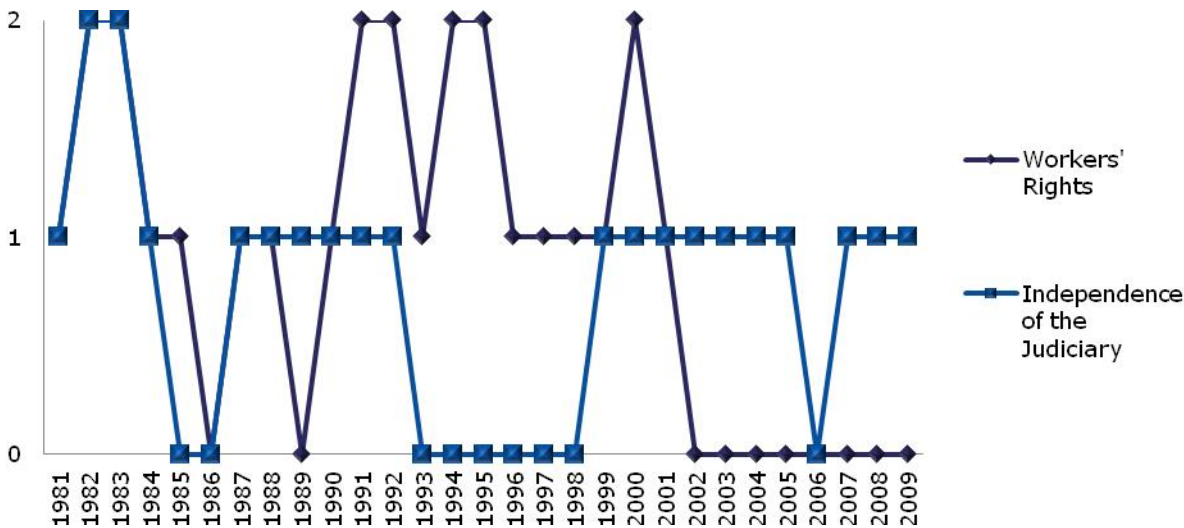
With respect to women’s rights, Rwanda’s performance on their political component stands out as particularly successful. With their political rights evaluated as nearly fully realized since 2002, Rwanda’s women hold 56% of the parliament seats and occupy important government ministries. The situation of economic and social rights is considerably worse, both assessed at 1.0 in 2009. This reflects, among others, the unfavourable ownership rights and family code.

Women's Rights:
Rwanda 1981-2009



As particularly weak stand the Workers' Rights, evaluated as severely restricted due to the shortage of trade unions, poor working conditions and prevalent child labour. Judiciary was assessed as partially restricted, with the legal guarantees undermined by the strong interference of the executive.

Workers' Rights and Independence of the Judiciary



General Conclusion

“[I]f a medical doctor diagnoses a serious disease wrongly, he/she will proscribe a wrong drug and could easily kill the patient. We call upon all our partners not to diagnose Rwanda wrongly, because that could easily kill the initiatives that Rwanda has undertaken to sort out its problems, especially those associated with distortions about its history and its people. We call upon all our development partners to accept that Rwandans know Rwanda better, care for Rwandans better and understand its history better and can solve its problems better, if supported by people of good will. If you want to know Rwanda better, come to Rwanda and deal with Rwandans to foster better understanding of the country.”

Minister of Justice/Attorney General Tharcisse Karugarama, on the occasion of the presentation of the Rwandan Report on the Implementation of the International Convention on Elimination of all Forms of Racial Discrimination, March 8th 2011.

This report describes the discussion about the Rule of Law in Rwanda in 2011, based on recent publications, including policy documents and reports from within and outside the Government of Rwanda. This report is the reflection of existing publications rather than new research on the rule of law in Rwanda. It does not aim to take a position in the debate about the rule of law in Rwanda, nor does it represent the opinions of individual participants in the discussion about the rule of law in Rwanda.

Most of the sources that formed the basis of this assessment are policy documents and reports of all kinds of organisations that are active in Rwanda. Only a small number of in-depth studies are available regarding rule of law issues in Rwanda, for instance in the form of thorough base-line studies and academic analyses. The sole exception may be the *gacaca*, but also regarding this topic it is very difficult to find a common ground among scholars; polarisation has also entered the academic arena. This shows the dire need of thorough, neutral, and in-depth studies regarding the Rule of Law in Rwanda.

The first part (Part A) gives a short overview over the justice sector in Rwanda, its main institutions and actors, including some home-grown initiatives, as well as an impression of the context in which the justice sector has to be considered: history, including the 1994 genocide, politics, religion, and economics.

The third part (Part C) presents an overview of how Rwanda scores on various Rule of Law Indicators, trying to answer the question what these rule of law indicators tell us about the state of the justice sector and the rule of law in Rwanda. The results of this analysis should be read with some caution, in the sense that experts involved with rule of law indicators reject the notion that results generated by indicators are in themselves sufficient reasons for policy decisions or decisions to allocate funds, in part because indicators say nothing about causes.

Part B of the report – positive trends and challenges – is, in comparison to Part C, a more qualitative description of some of these indicators, highlighting major topics that are generally considered as positive trends as well as issues that raise concerns. The report does not pretend to cover all aspects of the rule of law, let alone to cover them in depth. The report aims to identify the main positive trends and the main concerns in the rule of law as perceived by different stakeholders.

Very few people in Rwanda will say that Rwanda is a State ruled by the law for the full 100 %. However, when going more into the details of the issue, the discussion about the rule of law in Rwanda is heavily polarised.

The Rule of Law in Rwanda is a contentious topic. It seems hard to find a middle-way between outright believers for or against Rwanda. On the one hand are those who focus on human rights standards as more or less absolute indicators, emphasising the wrongs. On the other hand are those who stress the circumstances of everyday reality that make the achievement of the absolute standards difficult if not impossible, at least for the moment, emphasising the achievements.

International NGOs, like Human Rights Watch and Amnesty International, have criticised Rwanda to such an extent that, within the Rwandan government, the idea has been rooted that for those organisations government actors are damned when they do and are damned when they don't. On the other hand, the government of Rwanda responds to any criticism in a strong way: 'when you are not for us you are against us'. These positions have led to a situation where it has become very difficult to criticise Rwandan policy, even in a constructive manner. Perceived intentions on both sides seem sometimes to have taken a more important role than what actually happens on the ground. Thinking in stereotypes – human rights organisations whose main ambition is to destroy the future of Rwanda versus the Tutsi-dominated donor darling government that hides its ethnic intentions – dominates the debate instead of the facts of what is actually happening.

Having said this, there seems to be agreement about the main positive trends and issues of concern, albeit expressed in different wording by various stakeholders.

The positive trends mentioned are: the low level of corruption, the way the judiciary developed from almost non-existent into a more professional and efficient power within the state, the efforts made in order to create a fair justice system, and the great strides forward made with respect to access to justice through legal aid.

Challenges for Rwanda with respect to the Rule of Law include: the way genocide ideology has been criminalised in the law and is implemented in practice, the curtailment of the freedom of press, restricted political space, independence of the judiciary in particular in high profile cases, and the fairness of the *gacaca*.

For both positive trends and challenges it should be noted that these are not absolute. A positive trend does not mean that no further steps could be taken to improve the situation, for some topics more than for others, working towards an ideal world. Similarly, an area being marked as a concern does not mean that no positive developments could be mentioned. However, for that area, in the opinion of observers, the concerns overshadow the positive aspects.

The general picture that emerges is that of a government that is hesitant to open up political space and freedom of expression, referring, *inter alia*, to the history of the country where the unrestricted freedom of speech led to the 1994-genocide.

At the same time, the government is building institutions, such as the Public Procurement Authority, the Office of the Auditor General, the Ombudsman's Office, the Anti-Corruption Unit in the Rwanda Revenue Authority, Maisons d'Accès à la Justice, Commercial Courts, among others. These institutions' tasks and responsibilities are well defined by the law.

The various conflicting opinions and statements presented in the report give an impression of the main discussions, and should enable the reader to form his or her own opinion.

Hiil is an independent research and advisory institute devoted to promoting a deeper understanding and more transparent and effective implementation of justice and the rule of law, worldwide. It pursues this mission in several ways. First, it conducts both fundamental research and empirical evidence-based research. Second, it serves as a knowledge and networking hub for organisations and individuals in both the public and the private sector. And third, it facilitates experimentation and the development of innovative solutions for improving legal systems and resolving conflicts at any level. Hiil aims to achieve solutions that all participants in the process perceive as just. In line with its evidence-based approach, Hiil is non-judgemental with regard to the legal systems it studies.

Hiil works in a joint venture with Tisco at Tilburg University.

www.hiil.org

© 2012 Hiil

All reports, publications and other communication materials are subject to Hiil's Intellectual Property Policy Document, which can be found at www.hiil.org