by Gacaca courts falling under their jurisdiction.[178] In case the execution of the judgement rendered by a Gacaca court leads to disputes, it shall be settled by the primary court "which has affixed the executory formula or of the place of the execution of the judgement."[179]

3.3.1.3 Intermediate courts

The intermediate courts are superior courts at the second echelon after the primary courts. These courts have replaced the first instances courts (*Tribunaux de la Première Instance*) after the judicial reform of 2004, which had the specialised chambers charged with trying *génocidaires* based on Genocide Law 08 of 1996. Since 2004, intermediate courts remained with the competence of trying genocide suspects alongside Gacaca courts and ICTR. The Gacaca Law of 2004 states:

> "any person prosecuted for the act that puts him or her in the first category, paragraphs 1, and 2, as provided [in this law]shall be tried by ordinary or military courts".[180]

However, in 2008, this provision had been changed by the amendment of the Gacaca Law. This Law stipulated that all files within the jurisdiction of Gacaca referred to ordinary courts and military courts had to be submitted to relevant Gacaca courts regardless of the stage of procedure of the case.[181] In accordance with the wording of this law, the Supreme Court, High Court and intermediate courts submitted those files which, according to the new law, had to be tried by competent Gacaca courts.[182]

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178 Law terminating Gacaca, arts. 8 and 9.

179 Law terminating Gacaca, art. 16.

180 Gacaca Law of 2004, art. 2(2), amended by the Organic Law 13 of 2008, art. 1(2); *Case Nzirasanaho Anastase*, Gacaca court of Rugenge Sector, Kigali City (2009) unreported.

181 Gacaca Law of 2004, art.100 amended by Organic Law 13 of 2008, art. 26.

182 As an example, see *case Munyakazi Laurent*, Gacaca court of appeal of Rugenge sector, Kigali City (2010) unreported.

The International Criminal Tribunal for Rwanda (ICTR) also has the competence of prosecuting the 1994 genocide, but takes precedence over national courts at any stage of procedure.[183] Consequently, Gacaca courts declared themselves incompetent against the suspects already indicted by the ICTR.[184] After the closure of Gacaca courts, the intermediate courts remain actually with the competence of trying the planners and ringleaders of genocide.[185]

With regard to the jurisdiction *ratione personae*, the intermediate courts have the competence of trying acts constituting genocide committed only by civilians, while soldiers and *gendarmes* offenders fall under military court jurisdiction.[186] The decisions taken by the intermediate courts at the first instance are appealable before the High Court.[187]

3.3.2 Procedures of appeal against judgements rendered by Gacaca courts

In contrast to Gacaca Law which provided for appeal, opposition, and review, the Organic Law 04 of 2012 recognises only two ways of appeal against the judgements rendered by Gacaca courts such as opposition and review.

3.3.2.1 Filing opposition

An opposition, under the Rwandan legislation, is an objection lodged against a judgement passed *in absentia* especially in case the accused was absent during court hearing.[188] The

183 ICTR Statute, art. 8(2).

184 As an example, see *Case Col. Renzaho Tharcisse*, Gacaca court Kiyovu Cell, Kigali City (2005) unreported; *Prosecutor v. Tharcisse Renzaho*, Second amended indictment (2006), case No. ICTR-97-31-I, paras. 11 et seq.; see also *Tharcisse Renzaho v. Prosecutor*, Appeals Chamber, Judgement (2011), Case No. ICTR-97-31-A, paras. 253 et seq.

185 Law terminating Gacaca, art. 4.

186 Law terminating Gacaca, art. 7.

187 Organic Law 51 of 2008, art. 105.

188 Criminal Procedure code, art. 157; Gacaca Law of 2004, art. 86.

opposition is brought before the court which has rendered the judgement within a certain period of time from the notification of the judgement[189] and generates suspensive effects. Under the regime of Gacaca courts, the petitioner had to bring his or her objection before the court that rendered the judgement and provide grounds that impeded him or her from appearing in the trial in question.[190] Today, filing opposition is acceptable:

> "If a person was sued, tried and sentenced by a Gacaca court while abroad, returns and it is found that he [or] she did not have intention to escape justice".[191]

In other words, the applicant must be in the territory of Rwanda and prove that he or she did not leave the country because of that the judicial police, the Public Prosecution or a Gacaca court had already started investigations.[192] In addition, the applicant must file the opposition within two months from the date he or she returns to the country. The application for opposition suspends the enforcement of the sentence rendered by Gacaca court until one is found guilty or not guilty.[193]

The law recognises this privilege only for the persons tried while they were abroad as refugees, and provides effect when the convicted person is voluntarily repatriated. Furthermore, when a person tried *in absentia* by a Gacaca court is extradited from the ICTR

189 Criminal Procedure code, art. 158; Gacaca Law of 2004, art. 87; Organic Law 51 of 2008, art. 103.
190 Gacaca Law of 2004, art. 86.
191 Law terminating Gacaca, art. 9(1).
192 Law terminating Gacaca, art. 9(3).
193 Law terminating Gacaca, art. 9 (2).

or from other States, the Gacaca judgement shall first be nullified, and the competent court shall restart the case.[194]

3.3.2.2 Application for review

Review is generally applied to revise a final judgement when new and decisive evidence has been discovered or there are other grounds to believe that a court decision is false or unlawful.[195] The application for review of a judgement is also recognised by Rwandan laws in both civil[196] and criminal cases.[197] The grounds to revise a judgement rendered by a Gacaca court varied and were modified as long as the Gacaca Law was periodically amended.[198]

Hence, after the end of Gacaca courts, their judgements are susceptible of review under some circumstances. A judgement rendered by a Gacaca court may be reviewed if new evidence proves that a Gacaca court judgement acquitting or convicting the accused person was false or the bench was corrupted.[199] The right to apply for review is only recognised to victims, the convicted person and public prosecution. In addition the decision revised is not

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194 This is the case, for example, of Charles Bandora extradited from Norway to Rwanda on 10 March 2013. The suspect has been tried *in absentia* by Gacaca court of Ruhuha Sector, Bugesera District in 2009*: Case Charles Bandora*, Gacaca court of Ruhuha sector (2009) unreported. This decision has been nullified and currently the case is pending before High Court of Rwanda: *Prosecutor v. Charles Bandora*, High Court of Rwanda (2013) case still in court; for the prohibition of the risk of double jeopardy in favour of the person extradited from ICTR and other States, see *Prosecutor v. Bernard Munyagishari*, Referral Chamber designated under Rule 11 *bis*, Judgement (2012) Case No. ICTR-95-1D-R11*bis*, para. 56; *Jean Uwinkindi v. The Prosecutor*, The Appeals Chamber, Decision on Uwinkindi's Appeal against the Referral of his Case to Rwanda and related motions (2011), Case No. ICTR-01-75-AR11*bis*, para. 41. See also Law terminating Gacaca, art.8; See Oosthuizen G 'International criminal service: Notes on Rwandan's transfer law (2010) 20, available at http://www.iclsfoundation.org/wp-content/uploads/2012/02/icls-notesonrwandastransferlaw-25012010-final.pdf (accessed on 11 June 2013).

195 Gacaca Law of 2004, art. 93 amended by Organic Law 13 of 2008, art.24; Criminal Procedure Code of Rwanda, art.180; Law terminating Gacaca, art.10.

196 Civil Commercial Labour and Administrative Procedure Law 21 of 2012 (14 June 2012), in Official Gazette of the Republic of Rwanda No. 29 of 16 July 2012, arts. 184 et seq.

197 Criminal Procedure Code of Rwanda, arts. 180 et seq.; Borkamm (2012:73).

198 Gacaca Law of 2000 did not provide for review. The application for review against a judgement rendered by a Gacaca court had been first introduced by the Gacaca Law of 2004, art. 93 amended by Organic Law 13 of 2008, art. 24.

199 Law terminating Gacaca, art. 10.

subject to any other appeal.[200] Moreover, if the review is rejected, the judgement must be executed in accordance of its form and terms with no alteration whatsoever.

3.4 Execution of judgements rendered by Gacaca courts

One can ask oneself whether the termination of Gacaca courts affects also the judgements rendered by these courts. In this regard, the Law terminating Gacaca courts states that judgements rendered by Gacaca courts shall remain in force.[201] For this reason, the law set forth mechanisms relating to execution of judgements rendered by Gacaca after their termination. The law determines only the mechanisms related to enforcement of community service and compensation of property.

3.4.1 Community service as an alternative penalty to imprisonment

Community service (TIG)[202] is deemed as a pardon by the State and at the same time as a criminal sanction.[203] With regard to the punishment of the acts constituting genocide perpetrated against Tutsi, community service is "a sentence issued by *Gacaca* courts for genocide perpetrators of the [s]econd [c]ategory who have confessed, which replaces half of the prison sentence."[204] It is also a commutation of a prison sentence in community service as an alternative penalty to imprisonment in favour of genocide perpetrators made public confession, guilty plea, repentance and apology.[205]

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200 Law terminating Gacaca, art. 10 *in fine*.

201 Law terminating Gacaca, art. 22(2)

202 TIG means '*Travaux d' Intérêt Général*' which is translated in English 'Community service'.

203 Penal Reform International *Monitoring and Research Report on Gacaca: Community service (TIG), Areas of reflection* (2007) 5; Birungi C *Community Service in Uganda as an Alternative to Imprisonment: A Case Study of Masaka and Mukono Districts* (LLM thesis, University of the Western Cape, 2007) 54.

204 Penal Reform International (2007:2); Penal Reform International (2010:60).

205 The modalities of implementation of community service as alternative penalty to imprisonment Presidential Order 66/01 of 2012 (2 November 2012), in Official Gazette of the Republic of Rwanda No. 47 of 19 November 2012, art.2 (hereafter "TIG Presidential Order"); Gacaca Law of 2004, arts. 62 et seq.; Brandner (2003:36).

Community service as an alternative penalty to imprisonment is a new criminal sanction as it has been introduced for the first time in the Rwandan legislation in 2004, in order to redress the legacies of the genocide.[206] The purpose of this form of penalty is to facilitate the moral and social reintegration of the convicted *génocidaires* into the community[207] as well as resolve the problems of the overpopulation and low budget the Rwandan prisons are facing. It was argued that the offenders can amend themselves without being incarcerated rather by carrying out the community service and can reduce recidivism.[208]

Today, community service is incorporated in the Penal Code and can be applied to perpetrators of ordinary offences.[209] Currently, around 85,000 convicted genocide perpetrators are serving community services as alternative penalty to imprisonment.[210] They are carrying out the penalties under the supervision of Rwanda Correctional Service (RCS).[211] Some of those *tigistes*[212] evaded the TIG camps, and others their actual residence remains unknown.

Consequently, the "[t]racking [of] persons sentenced by Gacaca courts to imprisonment and to community services as alternative penalty to imprisonment shall be carried out by the Rwanda National Police."[213] However, this provision is ambiguous as it does not clarify

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206 Penal Reform International (2010:60); Penal Reform International (2007:6).
207 Brandner (2003:36).
208 Birungi (2007:42); Penal Reform International (2007:5-6).
209 Rwandan Penal Code (2012), arts. 47 et seq.
210 Rwanda Correctional Service (2012:12).
211 TIG Presidential Order, art.7; Establishment of Functioning and Organisation of Rwanda Correctional Service (RCS) Law 34 of 2010 (12 November 2010), in Official Gazette of the Republic of Rwanda No. 04 of 24 January 2011, arts. 55 et seq.
212 *Tigiste* is a name derived from "TIG-iste" attributed to those who are carrying out their community services as alternative penalty to imprisonment known as TIG (*Travaux d'Intérêt Général*).
213 Law terminating Gacaca, art. 11(1).

whether the duty of tracking the persons sentenced by Gacaca courts includes also those tried *in absentia* who are currently in the territories of other States.

3.4.2 Compensation of property looted during the genocide

Approximately one million of perpetrators have been ordered to compensate the property looted and destroyed during the genocide. A convicted person has three options of compensation, either restitution of the property looted whenever possible, monetary payment equivalent to the property's current value, or carrying out the equivalent work.[214]

It is observed that many of the convicted persons are indigent people that have no financial capacity of compensating the plundered property. In this regard, the law states that when the person ordered to compensate property is insolvent, the person in question shall carry out community service as an alternative penalty to imprisonment.[215]

3.4.3 Reparation

The Rwandan legislation conceives only the modalities of compensation of property pillaged or damaged during the genocide.[216] This compensation is also understood as a mode of reparation.[217] However, the Law terminating Gacaca courts limits the right to reparation to the compensation of only the property looted and destroyed during the genocide. It is evident that the municipal law regulates only the patrimonial damages and not the extra-patrimonial reparations.

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214 Gacaca Law of 2004, art. 95.

215 Law terminating Gacaca, art. 12(2).

216 Meyerstein A 'Between Law and Culture: Rwanda's Gacaca and Postcolonial Legality' (2007) 32 *Law & Social Inquiry* 486 (hereafter "Meyerstein, 2007").

217 UN Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, United Nations General Assembly Resolution 60/147 (2005),UN Doc. A/RES/60/147 (16 December 2006), para. 20(c); Meyerstein (2007:486).

3.5 Conclusion

This chapter has provided an overview of the process of termination of Gacaca courts and the Organic Law 04 of 2012 which formally terminates them. This law has two the purposes, namely, repealing Gacaca courts and regulating the prosecution of pending cases and appeals against the judgements rendered by Gacaca courts.

Despite the progressive process of official closure of Gacaca courts, these courts left behind a significant number of applications for review against its judgements, as well as thousands of files of those tried in *absentia*. This huge number of files falls within the jurisdiction of ordinary courts. However, the mechanisms set forth to deal with those cases may lead to legal problems and significant challenges. The next chapter analyses the legal issues following the end of Gacaca courts and the effectiveness of those mechanisms.

CHAPTER FOUR: KEY CHALLENGES SUBSEQUENT TO THE TERMINATION OF GACACA COURTS

4.1 Introduction

After the termination of Gacaca courts, the ordinary courts inherited the competence of trying pending cases and appeals against Gacaca judgements as well as new cases which might arise afterwards.[218] In addition, different mechanisms have been adopted in order to deal with the issues left behind by Gacaca courts.

Today, there is a significant number of pending and new genocide cases, and appeals. These cases include cases of genocide suspects extradited from the ICTR and from other countries, as well as applications for review and opposition formulated or to be formulated by those tried *in absentia*. By prosecuting those cases, the ordinary courts apply laws within their competent jurisdiction for example, Penal Code,[219] Criminal Procedure Code[220] and the Law terminating Gacaca courts.[221]

This chapter provides a critical analysis of challenges following the termination of Gacaca courts, the effectiveness and legal effects of the laws and other legal mechanisms set forth to deal with the cases which were under Gacaca Courts.

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218 Law terminating Gacaca, art. 1(2).

219 Penal Code Organic Law 01/2012/OL (02 May 2012), in Official Gazette of the Republic of Rwanda No. special of 14 June 2012 (Rwandan Penal Code).

220 Criminal Procedure Code of Rwanda.

221 Organic Law 04/2012/OL terminating Gacaca courts and also determines the mechanisms to the issues which were under those courts.

4.2 Unequal treatment of genocide suspects and violation of victims' rights

4.2.1 Disparate applicable penalties

The Law terminating Gacaca courts empowers the competent courts to continue with the prosecution of the cases which were under the jurisdiction of Gacaca courts and to accept new cases.[222] In addition, this law enumerates the acts constituting the crime of genocide which fall under the jurisdiction of intermediate courts,[223] primary courts[224] and mediation committees.[225] However, it does not provide a regulation of sanctions against these offences; it stipulates rather that:

> "The prosecution and punishment of acts constituting the crime of genocide perpetrated against Tutsi and other crimes against humanity which were committed between October 1, 1990 and December 31, 1994 [under] the jurisdiction of Gacaca courts shall be exercised by competent organs according to laws in force applicable in these matters."[226]

After the termination of Gacaca courts, the sanctions against acts constituting genocide, crimes against humanity and war crimes are laid down in the new Penal Code adopted in 2012.[227] The application of this new Penal Code provisions on 1994 genocide is deemed *ex post facto* in relation to punishments and thus violates the principle *nulla poena sine lege*.[228] Furthermore, the Penal Code contains a monistic penalty irrespective of the suspects'

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222 Law terminating Gacaca, art. 3(2).
223 Law terminating Gacaca, art. 4.
224 Law terminating Gacaca, art. 5.
225 Law terminating Gacaca, art. 6.
226 Law terminating Gacaca, art. 3(1).
227 Rwandan Penal Code, arts. 114 et seq.
228 For the applicability of the principle of *nulla poena sine lege*, see Liszt VF 'The Rationale for the *Nullum Crimen* Principle' (2007) 5 *Journal of International Criminal Justice* 1012; Schabas WA 'Perverse Effects of the *Nulla Poena* Principle: National Practice and the Ad Hoc Tribunals' (2000) 11 *European Journal of International Law* 536.

degree of criminal participation and public confession. In this regard, the Penal Code stipulates that:

> "Any person who commits, in time of peace or in time of war, the crime of genocide, as provided in the preceding article, shall be liable to life imprisonment with special provisions."[229]

It is clear that the Penal Code does not provide any commutation of penalty such as suspension of penalty and community service, in favour of genocide suspects. Under the regime of Gacaca law, by contrast, the determination of penalties took into consideration the categorisation of suspects, as well as the public confession as legal mitigating factors on one hand and aggravating factors on other hand to those whose confession was rejected.[230]

There are no valid grounds justifying the suppression of commutation of a half of imposed penalty into community service as an alternative penalty to imprisonment against the suspects to be tried after the end of Gacaca courts.[231] Today, there is a big gap between the penalties imposed by Gacaca courts and *sui generis* monistic penalty provided for in the new Penal Code.

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229 Rwandan Penal Code, art. 115.

230 Gacaca Law of 2004, art. 72 amended by Organic Law 13 of 2008 (art. 17), art. 73 amended by Organic Law 10 of 2007 (art. 14), art. 78 amended by Organic Law 13 of 2008 (art. 20); Riddell (2005: 63); Bornkamm (2012:76).

231 The suspects to be tried after the termination of Gacaca courts include those placed in first category paragraphs 1 and 2 and those extradited or to be extradited as well as those tried *in absentia* while abroad by Gacaca courts. As examples, see *Prosecutor v. Nzirasanaho Anastase*, TGI Nyarugenge (2013), Case still in court. Nzirasanaho Anastase was Senator in Rwanda until 2011 whose the file placed within first category by Gacaca Court of Rugenge sector and submitted to Public Prosecutor in 2010. For the suspects extradited from ICTR and other countries, See *Mugesera v. Canada* (Minister of citizenship and Immigration), [2005] 2 S.C.R 100, 2005 SCC 40; *Prosecutor General v. Leon Mugesera*, High Court of Rwanda (2013)[Case still in court]; *Prosecutor v. Jean Uwinkindi*, Referral Chamber designated under Rule 11 *bis*, Judgement (2011), Case No. ICTR-2001-75-R11*bis*, para. 222*; Prosecutor v. Jean Uwinkindi,* High court of Rwanda (2013), Case still in court; *Prosecutor v. Charles Bandora*, High Court of Rwanda (2013), Case still in court.

In contrast to mild sanctions which were imposed by Gacaca courts, ordinary courts will impose heaviest penalties against the suspects to be prosecuted after the end of Gacaca, meaning that they will be subject to harsh sanctions.[232] This violates the suspects' rights to equality before the law and equal protection recognised by the Rwandan constitution[233] and international legal instruments to which Rwanda is bound.[234] In addition, it results in unequal treatment of genocide perpetrators and discriminatory punishments.

Furthermore, community service has been introduced not only as a criminal sanction and a reward of public confession[235] but also as a tool of social reintegration of genocide perpetrators.[236] Moreover, it is considered as a government policy to reduce the overpopulation within prisons.[237] Currently, approximately 57,000 prisoners are incarcerated within prisons in Rwanda.[238] When those tried *in absentia* shall return to their homeland,[239] those who will be found guilty will certainly be imprisoned given that the Penal Code does not provide any form of mercy such as community service or suspension of penalty.

As a result, the number of prisoners will go beyond the capacity of Rwandan prisons as it was the case in the 1990s.[240] This causes a crucial social and economic concern. One can ask

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232 The suspects to be prosecuted after the end of Gacaca courts by ordinary courts shall be subject to the penalty of life imprisonment with special provisions while under Gacaca courts, the perpetrators were sentenced of, for example, a penalty of 1 year whose a half is commuted into community service and another party is suspended. For details see penalties imposed by Gacaca courts (ch.2).

233 Constitution of the Republic of Rwanda, 2003, art. 16.

234 ACHPR, art. 3 and 19; ICCPR, art. 14(1); UDHR, art. 7; see also Drumbl (2010: 289).

235 Gacaca Law of 2004, arts. 54 et seq.

236 Birungi (2007:42).

237 Birungi (2007:42).

238 RCS Report (2012).

239 By the time of writing this paper, the Rwandan government declared that by the end of September around 7,000 refugees were repatriated from Tanzania, Congo and Uganda. This is available at http://www.midimar.gov.rw/index.php/news/ (accessed on 3 October 2013).

240 In 2000s there were in prisons of Rwanda at least 130,000 detainees, for details see Ratting (2008:51); Sarkin (1999:788), Gaparayi (2001:78).

whether the government has a significant budget to build new prisons and to take care of the future prisoners. The Rwandan government should think of sustainable solution to this issue, such as adopting the Gacaca courts model of punishment against pending genocide cases.

4.2.2 Discriminatory and unjust legal provisions

The Rwandan legislation recognises important privileges particularly to the suspects extradited from the ICTR and from other countries,[241] such as omission of some form of penalty and annulment of a Gacaca court judgment if any. This leads to legal issues such as selective sanctions and unequal treatment of genocide suspects as well as negative effects on the victims' rights.

4.2.2.1 Selective sanctions

The municipal law provides for a number of privileges to a certain group of genocide suspects which are not applicable to others. In fact, the Rwandan law abolishing the death penalty stipulates that:

> "In all legislative texts in force before the commencement of this organic law the death penalty is hereby substituted by life imprisonment or life imprisonment with special provisions as provided for by this organic law. However, life imprisonment with special provisions […] shall not be pronounced in respect of cases transferred to Rwanda from International Criminal Tribunal for Rwanda and from other States".[242]

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241 Transfer Law, arts. 21 et seq.

242 Abolition of Death Penalty Law, art. 1(3).

This provision is not applicable to other suspects, to be prosecuted after the closure of Gacaca courts, who thus should be subject to the heaviest penalty in the domestic criminal legislation. Therefore, the question arises: what are the reasons of such discriminatory and unjust legal provision? The law relating to the abolition of the death penalty states that "a sentenced person is kept in prison in an individual cell reserved to the people guilty of inhuman crimes."[243]

This isolation element is contrary to the Torture Convention[244] and also violates the ACPR[245] and ICCPR[246] by which Rwanda is bound. In this regard, the UN Commission of Human Rights

> "[H]as [also] recognized the harmful physical and mental effects of prolonged solitary confinement and has expressed concerned about its use, including as a preventive measure during [pre-trial] detention."[247]

As a result, the UN has stated that "prolonged solitary confinement may amount to an act of torture and other cruel, inhuman and degrading treatment or punishment."[248] Through its observations on Rwanda, it was recommended that the "state party should put an end to the sentence of solitary confinement."[249] In the case of Kanyarukiga, the ICTR states that the court:

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243 Serving Life Imprisonment with Special Provisions Law 32 of 2010 (22 September 2010), in Official Gazette of the Republic of Rwanda, art.3 (2); the same provision is provided for in Transfer Law, art.21.

244 Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment of 10 December 1984, 1465 UNTS 195, art. 16(1)

245 ACHPR, art. 5.

246 ICCPR, art. 7.

247 Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel , inhuman or degrading treatment or punishment (2011) UN Doc. A/66/268, para.31 (hereafter "Torture interim report").

248 Torture interim report, para. 32.

249 Torture interim report, para. 30.

> "[R]ecognises that the punishment of solitary confinement may constitute a violation of international standards if not applies as exceptional measure which is necessary, proportionate, restricted in time and includes some safeguards."[250]

In this regard, the existence of punishment of solitary life imprisonment within domestic criminal laws constituted an impediment to the extradition of genocide suspects and resulted in the denial of some extradition requests.[251] In response to international pressure, Rwanda excluded the penalty of life imprisonment with special provisions but only in favour of extradited genocide suspects.[252]

Since then because of these legislative changes within municipal law, some genocide suspects were extradited to Rwanda under condition that the extradited suspect could not be subject to solitary confinement.[253] However, this penalty still applies against the rest of categories of *génocidaires*. This leads to selective punishment and result in unequal treatment of genocide perpetrators.

Given that the penalty of life imprisonment with special provisions violates the perpetrator's fundamental rights, human rights activists continue to push the Rwandan government to

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250 *Prosecutor v.Gaspard Kanyarukiga*, The Appeals Chamber (2008), Case No. ICTR-2002-78-R11bis, para. 15.

251 As an example, see *Prosecutor v. Gaspard Kanyarukiga*, Appeals Chamber (2008), Case No. ICTR-2002-78-R11bis, para.39; *Prosecutor v. Yusufu Munyakazi*, Appeals Chamber (2008), Case No. ICTR-97-36-R11bis, para. 11; *Prosecutor v. Ildephonse Hategekimana*, Appeals Chamber (2008), Case No. ICTR-00-55B-R11bis, paras.31-38; Human Rights Watch (2012:75); Schabas WA (2009:419).

252 See Transfer Law, art. 21; Abolition of Death Penalty Law, art. 1(3).

253 See as example *Case of Ahorugeze v. Sweden*, European Court of Human Rights , Judgement (2011), became final on 4 June 2012, para. 127; *The Prosecutor v. Fulgence Kayishema*, Chamber designated under the Rule 11bis, Judgement (2012), Case No. ICTR-01-67-R11bis, para.40; *Prosecutor v. Phénéas Munyarugarama*, Referral Proceedings pursuant to Rule 11 *bis*, judgement (2012), Case No. ICTR-02-79-R11bis, para. 24.

completely eliminate solitary confinement as a punishment. For example, Human Rights Watch recommended that:

> "[The Rwandan] Parliament adopted legislation on December 1, 2008, barring application of the penalty of life imprisonment in solitary confinement to criminal cases transferred from the ICTR or from abroad. Rwanda seems to recognise that the penalty of lifetime solitary confinement does not adhere to international standards and that it must be eliminated in order to have sent back to Rwanda for trial."[254]

Despite those allegations and criticisms, the penalty of life imprisonment with special provisions is still applied to all genocide suspects except those extradited. This is not an adequate and effective solution as this approach leads to discrimination and unequal treatment of genocide perpetrators. Therefore, one must support the recommendations of Human Rights Watch regarding the elimination of life imprisonment with special provisions in criminal sanction. This should also be the response to this legal issue of inequitable and selective sanctions.

4.2.2.2 Issue of annulment of Gacaca judgments

The Law terminating Gacaca courts provides that in case a person extradited to be tried by Rwandan courts has been sentenced by a Gacaca court, the decision of the Gacaca court shall first be nullified by that court.[255] In this regard, one can ask oneself whether an extradition of a perpetrator tried by a Gacaca court should render the judgement subsequently unlawful. It is important here to analyse grounds of annulment of Gacaca judgement and effects of this annulment.

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[254] Human Rights Watch 'Letter to Rwanda Parliament Regarding the Penalty of Life Imprisonment in Solidarity Confinement' (2009) available at *http://www.hrw.org/en/news/2009/01/29/letter-rwanda-parliament-regarding-penalty-life-imprisonment-solitary-confinement* (accessed on 27 June 2013).

[255] Law terminating Gacaca, art. 8.

4.2.2.2.1 Improper grounds of annulment of a Gacaca judgement

The reason for nullifying a judgment rendered by a Gacaca court results from the conditions laid down in the ICTR decision relating to the referral of cases from the ICTR to Rwanda. The Rwandan authorities are required to preserve the presumption of innocence principle vis-à-vis the accused[256] and to take all measures that "any accused, if transferred to Rwanda, would not run the risk of double jeopardy."[257] In compliance with these conditions, the Rwandan government opted for nullifying a Gacaca judgement, if any, in case of a referral.[258]

However, one may argue that the law should not provide the annulment of the Gacaca decision but rather the procedure through which it should be nullified. Traditionally, the court acts under request and should not decide *ultra* or *infra petita*.[259] Here, it is argued that the demand may be initiated by the prosecutor before the relevant court arguing that the Gacaca decision is unlawful as the court was incompetent to try the case.

Most of those extradited from the ICTR are in the category of planners and organisers of the genocide perpetrated against Tutsi as well as notorious *génocidaires*.[260] For this reason, they fall out of the jurisdiction *ratione materiae* of Gacaca courts.[261] To this end, it is argued that the annulment of a Gacaca court decision should be pronounced by a court judgement based on request and facts presented by the public prosecution. The cancellation of Gacaca court decisions without legal grounds may undermine the value and legal effects of Gacaca

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256 *Prosecutor v. Charles Sikubwabo*, Referral Chamber (2012), Case No. ICTR-95-1D-R11bis (hereafter "Sindikubwabo Referral Case"), para. 17; *Prosecutor v. Jean Uwinkindi*, Referral Chamber (2011), Case No. ICTR-2001-75-R11bis (hereafter "Uwinkindi Referral Case"), para. 24.

257 Sikubwabo Referral Case, paras.18 et seq.; Uwinkindi Referral Case, paras. 22 et seq.

258 Law terminating Gacaca, art. 8(2).

259 Tomuschat C 'Reparations in Case of Genocide' (2007) 5 *Journal of International criminal Justice* 909-10.

260 ICTR Statute, art. 6(1); Gacaca Law of 2004, art. 51(1) amended by Organic Law 28 of 2010, art. 9.

261 Gacaca Law of 2004, art.2 amended by Organic Law 28 of 2010, art. 1.

judgements in general. In addition, the court decision of annulment of a Gacaca court judgement should be misleading.

4.2.2.2.2 Negative effects of annulment of a Gacaca judgement

Normally, the annulment of every legal act produces the *ex tunc* effects, and thus the accessory acts shall be also invalidated.[262] Under the Gacaca jurisdiction, a large number of those tried *in absentia* have been also convicted to the compensation of the property looted during genocide.

Most of the sentences rendered by Gacaca courts have been executed and the properties of those tried in absentia have been sold in public auction for compensating the looted property.[263] In principle, the cancellation of the judgement might be extended to the execution of the property compensation thereto. Consequently, it will affect the victims' rights acquired from the property judgement already executed.

The crucial problem is to know whether the property acquired by victims should also be returned. Here, the Law terminating Gacaca courts remains completely silent with regard to the rights already acquired from the judgement to be invalidated. This law is also silent as regard the testimonies disclosed in a judgement which must be nullified.

During Gacaca hearings, a significant truth has been revealed and victims as well as witnesses have testified about what happened during genocide perpetrated against Tutsi.

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[262] Ngagi A *Droit des obligations*, *Manuel des étudiants* (2004) 83. According to Ngagi a cancellation of any legal act produces *ex tunc* effects i.e. retroactive effects and thus is extended to the rights thereto.

[263] Instructions No. 14/2007 (30 March 2007) of the Executive Secretary of National Service of Gacaca courts concerning the compensation of property destroyed during genocide.

In case of the annulment of a Gacaca judgment, it is also important to think about the value of testimonies given in the annulled judgment, in case the witness is not alive anymore.

Given that testimonies, especially those related to the hearings held in camera concerning the sexual violence cases,[264] may be important in the trial of cases transferred from the ICTR or from other countries, it is only proper and in the interest of justice that these testimonies should not be invalidated. In this regard, the law should determine the scope of the annulment of a Gacaca judgement and limit its effects. This paper proposes that the law should include the request for annulment of a Gacaca judgment by way of appeal and also determine its procedure.

4.3 Inadequacy of ways of appeal against Gacaca judgements

The Law terminating Gacaca courts provides for two ways through which Gacaca decisions should be *de jure* or *de facto* attacked. These ways include the application for review and opposition against judgements rendered by Gacaca courts.

4.3.1 Review of Gacaca judgement

A review is a procedure through which one can attack a final judgement, either in favour of the defendant or against the defendant.[265] The Law terminating Gacaca courts enumerates the reasons for which the judgements rendered by Gacaca courts shall be reviewed such as new facts proving the person's innocence; criminal responsibility; or that the bench was corrupt.[266] However, these grounds for review stated above are not adequate. The law

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264 The proceedings of rape and other sexual violence acts were conducted in camera, only the court, accused and victim were in audience (Gacaca Law of 2004, art. 38 amended by the Organic Law 13 of 2008, art. 6).

265 Bohlander (2012:278).

266 Law terminating Gacaca, art. 10.

ignores important grounds, for example, that the court decision is based on false testimony or the decision is manifestly unlawful as regard the procedural or substantive law.[267] In the latter case, for example a perpetrator can be sentenced to a penalty of appropriate for adult perpetrators while he or she was minor when committing the crime.[268]

As a result, there are lacunas within the grounds for review of the Gacaca decisions. In this respect, this paper argues that the law should include a wide range of grounds for review of Gacaca judgements in order to correct procedural errors and substantive irregularities thereto.

4.3.2 Lack of procedure for failing opposition

Traditionally, an opposition is brought before the court which has rendered the judgement within a certain period of time from the notification of the judgement to the perpetrator who has tried and sentenced *in absentia*.[269] The Law terminating Gacaca courts provides for opposition against judgements rendered by Gacaca courts before ordinary courts. This law stipulates that:

> "If a person was sued, tried and sentenced by a Gacaca court while abroad, returns and it is found that he [or] she did not have intention to escape justice, he [or] she may file opposition before a competent court which has jurisdiction to try that offence as provided by this Organic Law."[270]

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267 The Ministry of Internal Security report shows that, by June 2012, approximately 2,836 prisoners applied for review proving that their sentences are unlawful or are based on false testimony: see Ministry of internal Security (2012:34).

268 Under Rwandan criminal law, a minor is person who is under eighteen years old (Rwandan Penal Code, art.72, Gacaca Law of 2004, art.78).

269 Criminal Procedure Code, art. 158; Gacaca Law of 2004, art. 87.

270 Law terminating Gacaca, art. 9(1).

From this provision, one can say that the Law terminating Gacaca courts classifies genocide perpetrators tried *in absentia* into two main categories: those extradited from the ICTR or from other countries and those who voluntarily return. However, the law does not concede identical privileges. As mentioned, a Gacaca court judgement will be nullified and the court will restart the case in favour those extradited while the judgement will remain valid against those who voluntarily repatriate.[271] This is discriminatory provision.

First, a person tried *in absentia,* who returns, may file an opposition within the period two months from the date he or she returns to the country.[272] Therefore, the law does not stipulate the procedure of filling the opposition and this leads to a number of questions. Who will decide that the person did not have intention to escape justice? How will the accused formally be aware of the existence of the judgement and sentence against her of him?

Secondly, after the closure of Gacaca courts, all files, statements of witnesses and minutes of hearings have been kept in the National Documentation and Research Centre on Genocide located in Kigali. How will the appellants have access to the copies of the judgements containing the indictments and *dispositif* of the court on which they will base the appeal? How will the prosecutor be informed? How will they know the competent court? Here, the law remains silent. In addition to this, the Gacaca procedure is different from the criminal procedure.

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[271] When a genocide suspect is extradited to Rwanda and it is found that he or she has been sentenced by Gacaca courts, the Gacaca judgment shall be nullified (Law terminating Gacaca, art. 8(2)).

[272] Law terminating Gacaca, art. 9(2).

Under Gacaca courts, the procedure was adversarial, i.e. the case was between the victim and accused, while the ordinary criminal procedure is inquisitorial.[273] Normally, Gacaca files do not contain statements of witnesses and other relevant facts so that they can constitute the basis of a court trial within ordinary courts. Here, the crucial problem is to know whether the prosecutor will recommence investigations as it would be like dealing with a new case with no statements of witnesses and victims. Indeed, it is another issue if the copy of a Gacaca judgement or the entire file is not found. In this latter case, the Law terminating Gacaca states that:

> "Any person who needs a copy of a judgement rendered by a Gacaca court but which can no longer be found shall request the Public Prosecution at the Primary Level to collect information for the constitution of the file. Such information shall be submitted to the Primary Court in order to reconstitute the decision."[274]

The reconstitution of a Gacaca judgement is not a simple factual act, but rather a court decision. This is additional work upon the domestic courts. This may take more than two months required by the law and could amount to practical challenges in case it would be required to provide all perpetrators tried *in absentia* with copies of the judgement.

The law should clarify or provide a specific procedure for filing an opposition. The suggestion is that the court should first notify the accused tried *in absentia* of the Gacaca decision which should clarify the indictments and conclusions as soon as he or she sets his or her foots on the territory of Rwanda.

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273 Criminal Procedure Code, arts. 43 et seq.
274 Law terminating Gacaca, art. 20.

To make this possible, electronic data and records should be available at the lowest administrative level, Police station and migration office so that every person who returns to the country can be easily aware of the Gacaca court sentence against him or her. In addition if the person sentenced *in absentia* returns, the Public Prosecution should request the competent to submit a formal notification to the accused person who should thereafter file an opposition. By doing so, the applicant should submit the application to the competent court, within a period of two months from the day of the receiving the formal written notification of the court, and also notify the Public Prosecution.

4.4 Issue of dealing with sentences *in absentia* rendered by Gacaca courts

Despite the UNHCR's declaration of the cessation clause on Rwandan refugees, some of those convicted declared their unwillingness to repatriate because of their participation in the genocide.[275] They are also aware of the existence of sentences and arrest warrants over them. First, the problem is whether the domestic courts have the capacity to deal with the oppositions filed by those who do repatriate and other new cases; and secondly, how to enforce the sentences against those who remain abroad.

4.4.1 Inability of domestic courts to deal with pending genocide cases

The inability of Rwandan domestic courts to deal with all pending genocide cases is examined with regard to the large number of cases yet to be tried, and the problem of concluding trials within a reasonable time.

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[275] Integrated Regional Information Network (IRIN) 'No consensus on implementation of cessation for Rwanda refugees' (2013) available at http://www.irinnews.org/report/98409/ (accessed on 8 October 2013).

4.4.1.1 Large number of cases

The cases to be tried by ordinary courts include those ranged in the first category and new cases not prosecuted by Gacaca courts, as well as cases of those who were or will be extradited from the ICTR or from other countries. They also include cases of those tried *in absentia* who file oppositions,[276] as well as applications for review against the Gacaca judgements.[277]

In fact, since1 July 2013, the UNHCR ruled for the cessation clause for the Rwandan refugees and recommended their repatriation.[278] Among tens of thousands refugees[279] whom UNHCR is now repatriating at least half of them have been sentenced by Gacaca courts. When they will return, they will have the right to file opposition against those sentences. Here, it is important to analyse whether the domestic courts are really equipped to carry out the prosecution of these cases.

Rwanda has now sixty primary courts,[280] twelve intermediate courts,[281] one High Court with four chambers[282] as well as one Supreme Court.[283] All those courts have only a total of 347

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276 Law terminating Gacaca, art. 9.

277 Law terminating Gacaca, art. 10.

278 UNHCR 'Ending of refugee status for Rwanda approaching, Briefing notes' (2013) available at http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=51cd7df06&query=cessation%20clause%20on%20rwanda%20refugees (accessed on 7 July 2013). See also Convention Relating to the Status of Refugees (1951) 189 UNTS 137/ [1954], art. 1(C)(5).

279 Integrated Regional Information Network (IRIN) 'No consensus on implementation of cessation for Rwanda refugees' (2013) available at http://www.irinnews.org/report/98409/ (accessed on 8 October 2013).

280 Annex to the Organic Law 51 of 2008 in Official Gazette of the Republic of Rwanda No. special (10 September 2008) at 92-117.

281 Annex to the Organic Law 51 of 2008 in Official Gazette of the Republic of Rwanda No. special (10 September 2008) at 120-2.

282 Organic Law 51 of 2008, arts. 14 and 15.

283 Rwandan Constitution, art. 144.

judges.[284] As mentioned in chapter three, those courts are dealing with both ordinary criminal and civil cases. In the year 2000, before the establishment of Gacaca courts, the number of judges was 841 within the whole judicial system.[285] It was assessed that during five years, the domestic courts were able to try only 6,000 cases.[286]

From this perspective, it is noted that the trial of only the oppositions filed against the judgements rendered by Gacaca courts would take at least a hundred years while there are still other cases to be transferred from the ICTR and from other countries.[287] As result, given that limited number of judges and the estimated number of cases, the ordinary courts lack the capacity to deal effectively with these cases.

From these reasons, the argument is that the Gacaca courts have prematurely closed as they have left behind a big number of pending cases mainly applications for review and oppositions lodged against judgements. One can ask whether Rwanda shall reopen the Gacaca courts in order to confront challenges related to inability of domestic courts to handle the volume of cases they are expected to handle.

However, as the Gacaca courts had been closed, they should not be reactivated because it can be deemed a step backwards or failure of those courts, and one should rather look for appropriate alternative solution, for example, the extension of mediation committee jurisdiction to genocide cases.

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284 Supreme Court 'Annual Report of 2011-2012' (2012)10 available at http://www.judiciary.gov.rw/sc/reports.aspx (accessed on 7 July 2013).

285 National Service of Gacaca courts (2012:26).

286 Amnesty International (2002:1).

287 The number of those tried and sentenced in absentia is estimated at 58,000 that have right file an opposition against the Gacaca sentences which should take decades in comparison of the outcome of the specialised chambers created by the Genocide Law of 1996.

4.4.1.2 Problem of ending trials within a reasonable time

Speeding up the genocide trials was one of the main objectives of Gacaca courts and was deemed a solution not solely to cover the incapacity of specialised chambers but also to prevent the image of Rwandan justice from being seen as justice delayed and denied.[288]

As mentioned earlier, ordinary courts have to deal with a large number of oppositions to be filed by those tried *in absentia*, as well as new cases. Consequently, the inability of these courts to try those cases could lead to delayed justice.[289] Nonetheless, Rwanda is state party to international legal instruments which require delivering justice within a reasonable time.[290]

Rwanda is under obligation to comply with those international requirements in accordance with the *pact sunt servanda* principle[291] in order to conduct the genocide trials within reasonable time. In this respect, there should be a need of an alternative mechanism to speed up the trial of genocide cases, that could be, as highlighted above, to put some cases under jurisdiction of mediation committees.

4.4.2 Lack of enforcement policy of default judgements

The enforcement of sentences rendered by Gacaca courts might find its legitimacy in that genocide committed in Rwanda does not solely affect the victims' dignity but also affected

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288 Ridell (2005:44).
289 Riddell (2005:43-4).
290 ACHPR, art. 7(1) (d); ICCPR, art. 9(3).
291 Vienna Convention of the Law of Treaties (1969) 1155 UNTS 331, art. 25.

the international community as a whole.[292] In this respect, the Genocide Convention states that:

> "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."[293]

In accordance with this provision, States have the duty to prosecute and to undertake effective punishments against genocide suspects.[294] Given the nature of genocide "as crime of crimes"[295] the prevention of such crime can only be ensured by punishing those responsible and by enforcing the sentences rendered against them.[296] The punishment of those responsible of genocide in Rwanda will contribute to its prevention and deter perpetrators.[297] Moreover, it is important to note that convictions constitute a historical truth about genocide perpetrated against Tutsi and, as result, prevent its revisionism.[298]

Normally, the enforcement of these penalties of imprisonment requires the presence of the convicted person on the territory of Rwanda and the national police cannot operate out of its boundaries to arrest those tried *in absentia*. The execution of Gacaca judgements in other countries can be obstructed by the fact that many countries' legislations do not allow trials

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292 Union Africaine (2000:73); Cassese A *International Criminal Law* (2003) 286.
293 Genocide convention, art. I.
294 Genocide Convention, art. V.
295 Schabas (2009: 11 et seq.); *Prosecutor v. Kambanda*, Trial chamber, Judgement and sentence (1998), Case No. ICTR-97-23-S.
296 Naftali BO and Sharon M 'What the ICJ did not say about the Duty to Punish Genocide' (2007) 5 *Journal of International Criminal Justice* 864 (hereafter "Naftali and Sharon, 2007"); Cornwell *JD Criminal Punishment and Restorative Justice: Past, Present and Future Perspectives* (2006) 54.
297 Werle (2009:35).
298 Werle (2009:35).

in absentia;[299] hence the Gacaca sentences may not be enforced against the offenders in such territories. In this respect, it can be argued that the existence of these sentences may serve as evidence to prove that the offender might be considered as fugitive of justice rather a refugee.[300]

Given that the prohibition of genocide operates *erga omnes* and acquired the status of *jus cogens* norms,[301] the host country has an obligation to take legal and administrative measures to bring genocide suspects to trial.[302] It was also argued that genocide perpetrators might be considered as enemies of all humankind "in whose punishment all states have an equal interest."[303]

From this perspective, it was supported that the *aut dedere aut judicare* principle applies also to genocide cases.[304] In its judgement, the International Court of Justice ruled that States have duty to:

> "arrest persons accused of genocide who are in their territory, even if the crime of which they are accused was committed outside it and, failing prosecution of them in the parties' own courts, that they will hand them over for trial by the competent international tribunal."[305]

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299 Kraβe C 'Universal Jurisdiction over International Crimes and *Institut de Droit internatonal*' (2006) 4 *Journal of International Criminal Justice* 578.

300 Bantekas I and Nash S *International Criminal Law* 3ed (2007) 293.

301 Naftali and Sharon (2007:864).

302 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro*), Judgement, ICJ Reports (2007) 43 (hereafter "ICJ Bosnia Case"), para.443; Naftali and Sharon (2007:862).

303 *The Attorney General of Israel v. Eichmann*, Supreme Court of Israel (1962) 36 ILR 277.

304 Steenberghe VR 'The Obligation to Extradite or Prosecute: Clarifying its nature' (2011) 9 *Journal of International Criminal Justice* 1095.

305 ICJ *Bosnia case*, para. 443.

Here, the court confirmed that States have a duty to prosecute or to extradite the genocide suspects who are in their territory. Likewise, the Inter-American Court of Human Rights reiterated that in case of gross human rights violations:

> "Access to justice is a prompt norm if international law and, as such, gives rise to obligations *erga omnes* for the States to adopt all necessary measures to ensure that such violations do not remain unpunished, either by exercising their jurisdiction to apply their domestic law and international law to prosecute and, when applicable, punish those responsible, or by collaborating with other States that do so or attempt do so."[306]

The prosecution or extradition by the host States seems to be a political and diplomatic issue rather than a judicial decision. Until now no legal mechanisms have been implemented to bring to trial or to extradite genocide perpetrators sentenced *in absentia* by Gacaca courts. The absence of those legal mechanisms leads to the result that the genocide perpetrators find safe havens within host countries and will go unpunished. If the perpetrators participated in mass killings during the genocide in Rwanda remain free, it will be a step backwards against the culture of impunity and the prevention of genocide.[307]

It is also important to note that the punishment of the genocide perpetrators should also constitute the guarantee of non-repetition which is part of reparations of harm that the genocide victims suffered from.[308] The argument is that this issue should be solved by the

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306 *Case of Goiburu et al. v. Paraguay*, Inter-American Courts of Human Rights, Merits, Reparations and Costs (2006), para. 131.

307 Jones (2011:186).

308 Hayner PB *Unspeakable Truths: Facing the Challenges of Truth Commissions* (2002) 171.

political will of both the government of Rwanda and States that have genocide perpetrators in their territories to take appropriate measures to bring them to trial.

4.5 Absence of reparatory mechanisms for genocide victims

Following the end of mass violations of human rights, frequently "survivors and victims suffer a range of physical and psychological injuries."[309] They live under extreme poverty "as a result of loss of the breadwinner in their family, the destruction of property or their ability to work."[310] Reparations may involve a "variety of actions and activities that seek to restore the *status quo ante*" of the victims.[311]

They include "restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition."[312] The reparation in the context of the genocide against Tutsis is seen from two angles, reparation of patrimonial damages (compensation of the property) and extra-patrimonial damages (reparation of harm suffered).

4.5.1 Weak reparation of patrimonial damages

Patrimonial damages are related to the compensation of property looted or destroyed during the genocide. Gacaca courts have ordered compensation of those losses against close to a million of people of compensation of these losses. As highlighted above, most of those convicted are indigent people to extent that they are not able to pay the amount ordered by

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309 Hayner PB *Unspeakable Truths: Confronting State Terror and Atrocity* (2001) 171.

310 Hayner (2002:171); Hayner (2001:171).

311 Feyter K, Parmentier S, Bossuyt M and Lemmens P *Out of the Ashes: Reparations for Victims of Gross and Systematic of Human rights Violations* (2005) 38.

312 UN Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Violation of International Humanitarian Law, UN General Assembly A/RES/60/174 (2005) (hereafter "UN Basic Principles on Reparations"); Hayner (2001) 171; Hayner (2002:171); Fernandez L 'Possibilities and limitations of reparations for the victims of human rights violations in South Africa' in Rwelamira and Werle (1996) 67.

the Gacaca courts. In that case, the law rules that the insolvent offender shall be subjected to Community Services as alternative penalty to imprisonment.[313]

First, the compensation for the damage of the property consists of a monetary payment and does include a penalty of imprisonment as an alternative sanction against the insolvent offenders. Therefore, it is misleading to use the concept 'community service as an alternative penalty to imprisonment' against the insolvent offender because no imprisonment penalty is provided for the offender that fails to compensate the property. One can propose that the concept 'public works' should replace the one of 'community service as alternative penalty to imprisonment'.

Secondly, this law is ambiguous on the issue of compensation so long because it does not provide how the victim will be indemnified in case the offender is carrying out the community service as the latter does not consist of a direct benefit to the victim.[314] Furthermore, the law does not stipulate the competent authority which is to assess the offender's insolvency or to substitute the monetary compensation by the community service. Despite the execution of the community service by the insolvent offender, the victim remains uncompensated.

The survivors' associations such as IBUKA,[315] SURF and REDRESS recommended the modification of this provision before the draft law was passed on to the parliament.[316]

313 Law terminating Gacaca, art. 12(2).
314 TIG Presidential Order, art. 6.
315 'Ibuka' is a word in national language which means 'Remember'. It is an association of genocide survivors in Rwanda.

Ultimately the Rwandan parliament passed the law without any modification. This is a weakness of the Rwandan legislator which leaves the gaps or ambiguity regarding the compensation of victims. In response to this issue, it is suggested that the monetary value of the days of public works carried out by the offender should be disbursed to the victim to be compensated.

4.5.2 Lack of reparations of extra-patrimonial damages

Reparation is also seen as remedy of harm suffered which include mental and bodily harm.[317] However, the Rwandan laws, including the Gacaca legislation, lack "appropriate mechanisms of compensation"[318] The Rwandan courts are only competent to hear the cases relating to property compensation.[319] With regard to the reparation of the harm suffered the Law terminating Gacaca courts states that:

> "Filing a civil case for damages resulting from the crime of genocide perpetrated against Tutsi and other crimes against humanity committed between October 1, 1990 and December 31, 1994 shall be determined by a law." [320]

Such legal provision existed within the Rwandan legislation since the first enactment establishing the Gacaca courts and still exists within subsequent laws.[321] Reparations of harm suffered by genocide victims remains a crucial problem because of the difficulties that

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316 IBUKA 'Comments submitted to Parliament of Rwanda on Draft Organic Law terminating Gacaca courts' (2012) available *at* http://survivors-fund.org.uk/wp-content/uploads/2012/05/DraftLawGacaca_civilsociety_submission1.pdf (accessed on 5 July 2013).

317 Hayner (2001:171); Mcevoy K and Mcgregor L (ed.) Transitional Justice from Below: Grassroots Action and the Struggle for Change (2008) 34-6.

318 Schabas (2003:47).

319 Wadolf L *Transitional Justice and DDR: Case of Case of Rwanda* (2009) 17.

320 Law terminating Gacaca, art. 3(2).

321 Gacaca Law of 2000, art.91 *in fine;* Gacaca Law of 2004, art. 96; Law terminating Gacaca, art. 3(2).

may result from individual claims, namely, the insolvency of the perpetrators and the inability of courts to hear all victims' individual claims.[322]

However, the insolvency of genocide perpetrators that has been mentioned in this paper is not a justification for the lack of reparations for the genocide victims but rather it results from the lack of political will to set up reparations mechanisms. It almost seems as if the government intends to escape its duty to provide effective remedies to genocide victims.[323] In 2002, there were discussions about draft law on reparations but they failed and so far, there is no legal basis of reparations. The reason advanced by the Rwandan officials, in this regard, is that they cannot commit themselves to something which they are not able to achieve.[324]

In some cases, it was argued also that the *restitutio in integrum* is not possible as "the dead could not be brought back to life"[325] or no price could be equivalent to human life and dignity.[326] Nevertheless, reparations are part of the duty of the State in which the gross violations of human rights have been committed to give effective remedy to victims.[327] In particular, in the context of the genocide perpetrated against Tutsi, the need for the reparations for bodily and mental harm is quite significant for healing and reconciliation.[328]

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322 Tomuschat C 'Reparations in Case of Genocide' (2007) 5 *Journal of International criminal Justice* 584 (hereafter "Tomuschat, 2007").

323 The state has a duty to protect human rights on its territory (ICCPR, art.2 (1); ACHPR, art. 1) Geneva Convention Relative to the Protection of Civilian in Time of War (1949) 75 UNTS 287, art. 147. and the duty to give effective remedy to victims of human rights violations (ICCPR, art. 2(3)).

324 'Interview of Domitilla Mukantaganzwa, Executive Secretary of National Service of Gacaca courts' (6 June 2006) in Wadolf (2009:17). In this point, the Rwandan officials emphasize on the lack of financial means to award reparations.

325 Tomuschat (2007:907).

326 Hayner (2002:178).

327 ICCPR, art. 2(3)(a), art. 9(5) and art. 14(6); UN Basic Principles on Reparations, II (3)(d).

328 Tomuschat C 'Darfur-Compensation of the Victims' (2005) 3 *Journal of International Criminal Justice* 588 (hereafter "Tomuschat, 2005").

Generally, many of the victims are vulnerable, traumatised and without shelter. These victims include also women who were raped and infected with HIV-AIDS, injured people and orphans so all these people need special treatment. Therefore, the issue of reparations of harm suffered by the victims of genocide against Tutsi is complex. Likewise, as it was reported by the UN, the material reparation presents:

> "Difficult questions [like] who is included among the victims to be compensated, how much compensation is to be rewarded, what kinds of harm are to be covered, how harm is to be quantified, how different kinds of harm are to be compared and compensated and how compensation is to be distributed."[329]

In this regard, some States, namely South Africa, Germany, Chile and Argentina, have adopted administrative reparations schemes in order to redress the victims of past gross violations of human rights committed by their former authoritarian regimes.[330] From this point, to overcome these challenges, court suits are not an adequate solution to the reparations issue in the context of the genocide perpetrated against Tutsi.

Due to the big number of victims, and the limited number of judges, the domestic courts would not handle all individual claims. In addition, the insolvency of convicted offenders would constitute an obstacle to the compensation. In this respect, there is a need for

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329 Report of the Secretary-General on the Rule of Law and transitional Justice in Conflict and Post-Conflict Societies, UN doc. S/2004/616, 23 August 2004; Tomuschat (2005:585).

330 See reparations for Apartheid victims in South Africa paid by the President's Fund and Promotion of National Unity and Reconciliation Act 34 of 1995; Germany Federal Compensation Act for the victims of Nazi crimes: Crime victims Compensation Act as promulgated on 7 January 1985 (Federal Law Gazette IS.1), last amended by Article 1 of the Act of 25 June 2009 (Federal Law Gazette I p. 1580); Pension Funds for the victims of human rights violations that took place between 1973 to 1990 in Chile.

administrative reparations schemes to ensure compensation of harm that genocide victims suffered from and which should take into consideration the genocide context and Rwanda's financial situation.

4.6 Conclusion

This chapter has highlighted that the challenges that Rwanda is facing after the close of Gacaca courts have originated from the lack of harmonised domestic legislation and absence of effective mechanisms to deal with the post-Gacaca situation. The imperfections in domestic legislations result in selective sanctions and violation of victims' rights.

These legislations are criticised of violation of fundamental human rights of the accused persons and this constitutes an impediment to the extradition of genocide suspects to Rwanda. In addition, domestic legislations are deemed inappropriate to ensure the enforcement of Gacaca judgements and they ignore the issue of reparations. Despite the mechanisms set forth by the Rwandan Government to deal with all pending genocide cases and other issues left behind by the end of Gacaca courts, serious challenges remain because of their inadequacy.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 General conclusion

Gacaca courts were community-based traditional courts established by the Rwandan government as an alternative solution to address the legacy of genocide perpetrated against Tutsi. Gacaca courts constituted a hybrid transitional justice mechanism, providing both punitive and reconciliatory justice.[331] It is in this context they had just achieved that the ordinary courts failed to achieve.[332]

In this sense, this can serve as an example for the countries that encountered the same situation to redress the legacy of past human rights abuses committed in their territories. However, in 2012, Gacaca courts were repealed by the Organic Law No.04/2012/OL while there is still a significant number of cases and appeals against their decisions. These cases now fall under the jurisdiction of ordinary courts that have originally another set of ordinary (criminal and civil) cases to prosecute or to hear.

The ordinary courts, however, lack the capacity to deal with all those cases. This confirms the hypothesis that Gacaca courts have been prematurely terminated as they left behind numerous cases. In addition, some provisions of the municipal laws, notably the new Penal Code, transfer law, the Law terminating Gacaca courts as well as the law abolishing the death penalty, applicable to the pending genocide cases, pose a significant number of legal problems.

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331 Tiemessen (2004:57); Sarkin (2001:147).
332 Clark (2010:348); Katushabe (2002:45).

First, they lead to the unequal treatment of genocide suspects because they provide a number of privileges, in terms of penalties and rights, to a certain group of genocide suspects which are not applicable to others. These specific rights recognised especially to those who were extradited or to be extradited are not based on legal and objective reasons but rather on subjective and political grounds. To this end, those provisions are deemed discriminatory, selective and unjust laws as well, and thus they violate the Rwandan Constitution and international conventions such as ACHPR, ICCPR, and UDHR to which Rwanda is State Party.

Secondly, those laws violate the victims' rights by providing the cancellation of the acquired rights in property compensation and the invalidation of judgments related to such compensations. Indeed, the laws mentioned above leave out the issue of reparation and property compensation in case the offender is declared insolvent. This may be deemed as second victimisation. For these reasons, it is concluded that laws in force and other mechanisms set forth remain inappropriate and ineffective in dealing with the legacy of Gacaca courts and pending genocide cases in general. In this regard, Rwanda continues to face significant challenges after the end of Gacaca courts.

5.2 Recommendations

5.2.1 The need for international co-operation

It is evident that most of the cases to be tried by the ordinary courts are those against perpetrators tried *in absentia* or placed in the first category that are now in the territory of other States. Originally, the primary jurisdiction lies in that a State of the commission of the

crime under the territoriality principle (*locus delicti commissi*).[333] International cooperation should intervene when the perpetrator is outside of the boundaries of this competent State.[334] From this, it is recommended that the execution of the sentences rendered *in absentia* by Gacaca courts and the extradition of the perpetrators requires international co-operation between the Rwandan government and the States that have those perpetrators in their territories.

This co-operation might be triggered by Rwanda by negotiating and requesting extradition that result in a bilateral or multilateral agreement on extradition or mutual legal assistance between its government and States that have genocide perpetrators in their territories.[335] In addition, in case extradition is not possible, the recommended alternative solution should be to bring to trial these perpetrators, under the universality principle, before the national courts of the State in which they are apprehended. Rwanda should be required to co-operate with the prosecuting State in criminal investigation and prosecutions. This could be to kill two birds with one stone.

First, it could reduce the big number of cases to be tried by Rwandan domestic courts and their costs. Secondly, it could constitute a waiver on diplomatic and political obstacles that could impede the extradition of genocide suspects. In this regard, it is recommended to the States that have genocide suspects in their territories to follow the good example of Switzerland,[336] The Netherlands,[337] and other countries[338] that have already tried Rwandan

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333 Cassese A *International criminal Law* 2ed (2008) 336; see also Bantekas and Nash (2007:80).

334 Naftali and Sharon (2007:874).

335 Bantekas and Nash (2007:357-8).

336 *Niyonteze*, Cour Militaire de Cassation (2001), Arrêts du Tribunal Militaire de Cassation 2001/2002, Office de l'Auditeur en Chef, vol. 12, 3ème fascicule, 1-32.

genocide suspects before their respective domestic courts. Consequently, as Rwandan ordinary courts would still have a large number of cases, it is recommended here that the opposition filed by those who repatriate voluntarily should be submitted to the mediation committees, and the ordinary courts should remain with the applications for review and news cases. This should contribute to speed up the remaining genocide trials and dealing with all genocide suspects within reasonable time.

5.2.2 The necessity of administrative compensation schemes

Prosecutions are significantly important, but it is argued that in case of gross violations of human rights such as genocide against Tutsi, reparations should also be awarded. Due to the large number of cases and perpetrators' insolvency, this paper argues that a model based on civil suits (individual claims) does not fit the Rwandan context.

Nevertheless, reparations are in the view of this paper purposely important to make up for the damages and harm that genocide victims suffered. To make this possible, it is recommended that Rwanda should adopt the model of South Africa, Germany and Chile to establish a National Compensation Fund[339] to award lump-sum payments to the genocide victims. In this fund, contributions from government budget, international organisations, States and individuals should be collected to award monthly instalments, at the first step, to the genocide survivors who live under extreme poverty.

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337 *Joseph Mpambara*, The Hague Court of Appeal, Judgement (2011), Case numbers 09/750009-06 and 09/750007-07.

338 Those countries which have tried the Rwandan people, suspects of genocide against Tutsi, before their domestic courts under universal jurisdiction include, as example: USA (c*ase Beatrice Munyenyenzi*, Hampshire Federal Court), Norway (*case Sadi Bugingo*), Sweden (*case Stanislas Mbanenande*).

339 See Reparations for Apartheid victims in South Africa paid by the President's Fund and Promotion of National Unity and Reconciliation Act 34 of 1995; Germany Federal Compensation Act for the victims of Nazi crimes: Crime victims Compensation Act as promulgated on 7 January 1985 (Federal Law Gazette IS.1), last amended by Article 1 of the Act of 25 June 2009 (Federal Law Gazette I p. 1580); Pension Funds for the victims of human rights violations that took place between 1973 and 1990 (Chile).

As far as the budget is available, the award should be extended to other victims. It is supported that the government should trace the assets, outside and inside the country, owned by the former leaders who participated in genocide, in order to recover and use it compensate genocide victims. In relation to offenders who are subject to public works order because they cannot afford compensation due to insolvency, this paper recommends that the government should, on a monthly basis, transfer to the proposed National Compensation Fund money equivalent to the days of public works carried out by the offender in order to compensate the victim in question.

5.2.3 The requirement for legal harmonisation

It is concluded that the challenges discussed above result in lack or poor adaptation of domestic legislations to the post-Gacaca situation. Gacaca is no longer there, but its legacy is still alive. Consequently, to preserve the victims' rights derived from the Gacaca judgements and to deal with remaining cases and appeals against those judgements, there is a need for specific and non-ambiguous laws.

It is recommended that Rwanda should undertake legal harmonisation to adapt to the post-Gacaca situation; to facilitate the international co-operation and to implement the proposed National Compensation Fund. This could be done by amending the existing legislations and adopting new laws. This legal harmonisation should contribute significantly to alleviating the unequal treatment of genocide suspects and unjust provisions which violate both the suspects and victims' rights.

(19,896 words)

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APPENDIX

Organic Law No. 04/2012 of 15/06/2012 terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction

[Extract]

"We, KAGAME Paul,

President of the Republic;

THE PARLIAMENT HAS ADOPTED AND WE SANCTION, PROMULGATE THE FOLLOWING ORGANIC LAW AND ORDER IT BE PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA

THE PARLIAMENT:

The Chamber of Deputies, in its session of 05 June 2012;

The Senate, in its session of 16 May 2012;

Pursuant to the Constitution of the Republic of Rwanda of 04 June 2003 as amended to date, especially in Articles 62, 66, 67, 88, 89, 90, 92, 93, 94, 95, 108, 143,150,151,152,153,159,179 and 201;

Pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948 as ratified by the Decree-law n° 8/75 of 12/02/1975; Pursuant to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 26 November 1968, as ratified by the Decree-law n°8/75 of 12/02/1975;

ADOPTS:

CHAPTER ONE: GENERAL PROVISIONS

Article One: Purpose of this Organic Law

This Organic Law terminates Gacaca Courts charged with prosecuting and trying persons accused of the crime of genocide perpetrated against Tutsi and other crimes against humanity committed between October 1, 1990 and December 31, 1994.

It also determines mechanism of solving pending issues that were under their jurisdiction and any issues, which may rise after.

Article 2: Termination of the Gacaca Courts

Gacaca Courts charged with prosecuting and trying persons accused of the crime of genocide perpetrated against Tutsi and other crimes against humanity committed between October 1, 1990 and December 31, 1994, are hereby terminated.

CHAPTER II: PROSECUTION, HEARING AND THE EXECUTION OF JUDGMENTS ON THE CRIME OF GENOCIDE PERPETRATED AGAINST TUTSI AND OTHER CRIMES AGAINST HUMANITY

Section One: Prosecution and punishment of acts constituting the crime of Genocide perpetrated against Tutsi and other crimes against humanity

Article 3: Laws governing the prosecution and punishment of acts constituting the crime of Genocide perpetrated against Tutsi and other crimes against humanity

The prosecution and punishment of acts constituting the crime of genocide perpetrated against Tutsi and other crimes against humanity which were committed between October 1,

1990 and December 31, 1994 in the jurisdiction of Gacaca Courts shall be exercised by competent organs according to laws in force applicable in these matters.

However, filing a civil case for damages resulting from the crime of genocide perpetrated against Tutsi and other crimes against humanity committed between October 1, 1990 and December 31, 1994 shall be determined by a law.

Article 4: Acts constituting the crime of genocide perpetrated against Tutsi and other crimes against humanity within the jurisdiction of the Intermediate Court

The following offences shall be tried at the first instance by the Intermediate Court:

1° offenses or criminal participation acts aimed at planning, organising, inciting, supervising and leading the crime of genocide or other crimes against humanity, committed by a person with his/her accomplices;

2° acts constituting the crime of genocide perpetrated against Tutsi and other crimes against humanity committed between October 1, 1990 and December 31, 1994 by a person who, at that time, was in the organs of leadership, at national and prefecture levels with his/her accomplices.

Article 5: Acts constituting the crime of genocide perpetrated against Tutsi and other crimes against humanity which are in the jurisdiction of the Primary Court

The following offences shall be tried at the first instance by the Primary Court:

1° acts constituting the crime of genocide perpetrated against Tutsi and other crimes against humanity committed between October 1, 1990 and December 31, 1994 by a person who, at that time, was in the organs of leadership at sub-prefecture or commune level : in public administration, political parties, communal police, religious denominations, or illegal militia groups or encouraged other people to commit them, with his/her accomplices;

2° acts of rape or sexual torture, committed by a person with his/her accomplices;

3° homicide;

4° acts of torture;

5° dehumanising acts on a corpse;

6° serious attacks against others causing death;

7° causing injuries or committing other serious attacks against people, with intention to kill them, even if the objective was not accomplished;

8° other criminal acts against persons without any intention of killing.

Article 6: Acts constituting the crime of Genocide perpetrated against Tutsi and other crimes against humanity within the jurisdiction of Mediation Committee

Notwithstanding of the value of the subject matter and the address of the parties to proceedings, offences related to looting and damaging of property committed between October 1, 1990 and December 31, 1994, which were within the jurisdiction of Gacaca Courts shall be tried by the Mediation Committees applying laws governing these committees regardless that they were committed by civilians, *gendarmes* or soldiers. Offenders shall be ordered to pay compensation.

Article 7: Acts constituting the crime of genocide perpetrated against Tutsi and other crimes against humanity committed by a person who was a soldier or a gendarme

Acts constituting the crime of genocide perpetrated against Tutsi and other crimes against humanity committed by a soldier or a gendarme between October 1, 1990 and December 31, 1994, which were within the jurisdiction of Gacaca Courts but not relating to looting and damaging property shall be tried at the first instance by the Military Tribunal.

Article 8: Trial of an extradited person sentenced by Gacaca Courts

A person extradited to be tried in Rwanda and who has been sentenced by Gacaca Courts shall be tried by a competent court as provided by this Organic Law.

However, the decision of the Gacaca Court shall first be nullified by that court.

Article 9: Opposition against a judgment rendered by a Gacaca Court while the offender was abroad

If a person was sued, tried and sentenced by a Gacaca Court while abroad, returns and it is found that he/she did not have intention to escape justice, he/she may file an opposition before a competent court which has jurisdiction to try that offence as provided by this Organic Law.

A person who wishes to file opposition must do so within two (2) months from the date he/she returns in the country and shall remain free until found guilty or not guilty.

For the purpose of this Article, “escaping justice” means leaving the country after investigation has started either by the Judicial Police, the Public Prosecution or a Gacaca Court.

Article 10: Application for review of a judgment rendered by a Gacaca Court

A judgment rendered by a Gacaca Court may be reviewed by a competent court due to one (1) of the following reasons:

1° if a person is convicted of homicide by a Gacaca Court final judgment and after the person alleged to have been killed is found alive;

2° if a person is definitively convicted of homicide by a Gacaca Court and it is the only crime to which he/she is convicted, and later another person is convicted of the same crime where there is no complicity between the two;

3° if, after a person has been acquitted by a Gacaca Court final judgment, it is found beyond reasonable doubt that there is reliable information disclosed during the period of collecting information, unknown at the time of adjudicating the case and which however proves his/her criminal responsibility;

4° if a person has been convicted or acquitted by a Gacaca Court final judgment and later it is found that the bench which rendered the decision was corrupt, as decided by a competent court.

A review of the judgment can be requested only by the victim, the convicted person or the Public Prosecution.

A decision taken after a review of judgment shall not be subject to any appeal.

Section 2: **Execution of judgments rendered by Gacaca Courts**

Article 11: Execution of judgments related to the penalty of imprisonment and Community Services as an alternative penalty to imprisonment

Tracking persons sentenced by Gacaca Courts to imprisonment and to Community Services as alternative penalty to imprisonment shall be carried out by the Rwanda National Police.

Execution of penalties under Paragraph One of this Article shall be determined by relevant laws.

Article 12: Modalities of compensation of property

Compensation shall be paid by the offender himself/herself or his/her property.

However, if it is evident that the offender of looting and damaging is insolvent, he/she shall be subjected to Community Services as alternative penalty to imprisonment.

Article 13: Requirements for execution of judgements related to property

The decisions rendered by Gacaca Courts on the damaged or looted property must, prior to their execution, be affixed with an executory formula by the Primary Court of the place where the decision judgement was rendered upon approval by the Executive Secretary of

the Cell where the case was adjudicated through a written document submitted to the President of that Court.

Article 14: Auctioning procedure

Upon the time for auction, the property subject to the auction shall be sold, and the money shall be distributed among beneficiaries with copies of the judgment affixed with the executory formula.

Before giving to the beneficiary the money raised from the auction, the court bailiff shall give notice to persons holding a copy of judgment sentencing the person to whom the property is subject to the auction, to announce their debts within a period not exceeding thirty (30) days.

If the period referred to under Paragraph 2 of this Article expires, the money is given to the persons that were identified.

When the property subject to auction was fraudulently concealed, it is immediately seized regardless of the possessor and put in public auction.

Article 15: Opposition to the auction

Before the auction ends, any person who finds that he/she may be prejudiced by the execution of the judgment shall have the right to request its non execution before the President of the Primary Court by way of ex parte application.

In case of request for opposition to the execution of the judgment, the auction shall be suspended until a decision is made on the opposition within a period not exceeding forty-eight (48) hours.

Article 16: Disputes arising from the execution of judgments

Disputes arising from the execution of the judgment of Gacaca Courts without consideration of the relevant laws and regulations at the time of these judgments shall be settled by the Primary Court which has affixed the executory formula or of the place of execution of the auction.

A decision taken on such disputes shall be subject to appeal once.

Article 17: Auction

Without prejudice to the provisions of Article 14, 15 and 16 of this Organic Law, auction in the enforcement of Gacaca courts judgments shall be done in accordance with laws in force relating to auction.

Article 18: Execution of the penalty of community services as an alternative penalty to imprisonment

A Presidential Order shall define and determine modalities for the execution of the penalty of community services as an alternative penalty to imprisonment pronounced by Gacaca Courts on judgments related to genocide committed against Tutsi and other crimes against humanity.

CHAPTER III: MISCELLANEOUS AND FINAL PROVISIONS

Article 19: Documents of judgments rendered by Gacaca Courts

Documents, audios, videos and others means used during the hearings of Gacaca Courts shall be transferred to the National Commission to fight against Genocide.

Article 20: Reconstitution of a copy of Gacaca decision that disappeared

Any person who needs a copy of a judgment rendered by a Gacaca Court but which can no longer be found shall request the Public Prosecution at the Primary Level to recollect information for the reconstitution of the file. Such information shall be submitted to the Primary Court in order to reconstitute the decision.

Article 21: Drafting, consideration and adoption of this Organic Law

This Organic Law was drafted, considered and adopted in Kinyarwanda.

Article 22: Repealing provision

The Organic Law n° 16/2004 of 19/06/2004 establishing the organization, 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, as modified and complemented to date and all prior legal provisions contrary to this Organic Law are hereby repealed.

However, without prejudice to the provisions of Article 8, 9 and 10 of this Organic Law judgement rendered by the Gacaca Courts in accordance with the Organic Law referred to in Paragraph One of this Article shall remain in force.

Article 23: Commencement

This Organic Law shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on 15/06/2012."[340]

(Signatures)

[340] This is the English version of the Law terminating Gacaca available at http://www.primature.gov.rw/publications