

President Paul Kagame
President of the Republic of Rwanda
Office of the President
Kigali

14 January 2003

Dear President Kagame,

African Rights has recently completed a new report, *Gacaca Justice: A Shared Responsibility*, due to be released this week. We are sending you a copy of this report and would very much like to bring to your attention some of our findings and to offer our views on surrounding issues.

As you know, *African Rights* fully supports the decision of the Government of Rwanda to bring to justice those responsible for the 1994 genocide. We recognize the enormity of the task and the huge strain it has placed upon your administration over the years. We also believe that the initiatives taken in the arena of justice, principally the introduction of the confession and guilty plea procedure and the gacaca courts, demonstrated an innovative approach to an unprecedented problem. Clearly, though, it is the implementation of the law that marks its true test. We have been monitoring the training of gacaca judges, and the hearings in the 12 original pilot sectors closely over the past six months in order to identify weaknesses and shortcomings and to make suggestions on the way forward.

The report is largely based upon interviews with the *Inyangamugayo*, and the legal experts who trained them for their role. We asked them about their expectations of gacaca, their experiences of the training and, for those in pilot sectors, about the progress of the trials already underway. From their responses it is evident that the participatory nature of gacaca brings with it both the possibility of tremendous gains for Rwandese society, and a range of difficulties which must be overcome.

Beginning with the elections of the gacaca judges, the initial high level of interest among the population was not matched with a similar level of understanding and acceptance of the principles involved in gacaca. While the democratic spirit which allows the people to appoint the judges is in itself to be celebrated, more intensive public education prior to these elections may have helped to prevent the appointment of judges who do not fit the criteria laid down. In the event, the gacaca trainers were confronted with very mixed groups of judges, with relatively high rates of illiteracy and including some who, either allegedly or in some cases by their own admission had played some part in the genocide. This posed problems for the educators and the students, particularly when the reference material was limited. Although attendance was fairly good, some *Inyangamugayo* left the sessions with no notes and only a superficial insight into the gacaca law and their responsibilities within it.

Trainers and some judges reported on individual judges whose behaviour during the genocide lacked the quality of integrity essential to their task, but were hopeful that in the process of gacaca some would either be confronted or would step down from their posts. They universally called for follow-up training sessions and greater support. Some *Inyangamugayo* were concerned about the time they would have to devote to the task and all believed judges should receive some form of incentive to enable them to carry out their work

more easily. They complained that talk of assistance with school fees or medical treatment had so far proved hollow.

At this point, we acknowledge that the government faces a dilemma as further financial investment and delays could be incurred in an attempt to improve the quality of the judges. However, the judges themselves propose some practical initiatives which merit consideration. We acknowledge that trials must forge ahead and the best hope lies with close monitoring and support. We also note a heartening enthusiasm and commitment expressed by many of the judges interviewed.

The report warns, however, that the *Inyangamugayo* will require answers to their questions, criticisms and needs if they are to maintain their enthusiasm. *Inyangamugayo* are the key partners in the relationships constructed by gacaca. The judges themselves are aware of this and call for concrete efforts to increase their standing within the community. We recommend continued and intensive efforts to promote their knowledge, skills and status.

As the elected representatives of their communities, the judges often reflect the attitudes of local residents. In those areas worst affected by the genocide, where there was exceptional widespread participation in the genocide and there are few survivors, there is the greatest likelihood that the guilty may be judged by their accomplices or sympathisers. These areas need to be identified and singled out for particularly careful observation. A few such sectors are mentioned in our report.

Repeated questions from judges as to why “revenge crimes” committed in the aftermath of the genocide would not be prosecuted is an area in which the government may need to offer some response. We uphold the need to urgently deal with the atrocities of the genocide and to ensure that the distinctive nature of this appalling crime is in no way equated with individual human rights abuses committed by soldiers or civilians. However, one possibility to increase the popular sense that they have a collective stake in the system might be to envisage a future function for the system in prosecuting other crimes or human rights abuses once the genocide trials are complete.

We accept that the scale and the novelty of the gacaca project make it a huge logistical challenge. We single out aspects of the law which are either ill-defined or problematic, and which will need clarification or remedy. Looking at the trials already underway, we also discuss dwindling attendances in some areas and argue that the element of compulsion introduced by some local authorities in response is antithetical to the principles behind gacaca.

African Rights encourages the government to make every effort to build on the popular support which does still exist for gacaca by improving the delivery of information and increasing consultation. The success of gacaca depends overwhelmingly upon popular participation: this is both its greatest strength and its most challenging aspect. Without the genuine involvement of members of all sectors of Rwandese society—particularly the accused and their relatives, survivors and witnesses—gacaca hearings may be ineffectual or they may simply be postponed.

We believe that gacaca empowers the people of Rwanda to create an antidote to the social poison of the genocide. But for gacaca to achieve its aims, more must be done to convince people of the need and value of their participation and of the fact that they are engaged in a moral enterprise to better their society as a whole.

This is one reason why *African Rights* is deeply concerned about the plans of the government to release 30-40,000 detainees, most of them genocide suspects. There is little

doubt that the prisoner releases will receive a welcome in some communities, but they undermine the notion of justice as a civil matter based upon agreed and consistent principles and practises. We have expressed our concern about the move in a statement, which we are also sending you ahead of its release. As you will see we note the time constraints which have made it essential to act upon these cases. However, we remain very worried about the impact they will have upon gacaca in a practical sense. Even more so, we fear that the communiqué of 1 January will reinforce the perception of some Rwandese—emerging from the persistence of the ideology of hatred behind the genocide itself—that genocide justice is a political engagement subject to shifting priorities and demands. This will contribute to uncertainty and weaken resolve.

I hope and believe that you will take the points made in this letter in the constructive spirit in which they are intended. As always, we are mindful of the particular struggles facing the nation of Rwanda and its government. While limited in our capacity, we seek to work in a positive way to contribute towards the search for solutions and stand ready to discuss or assist you in any way we can on matters related to justice and human rights in Rwanda.

Yours sincerely,

Rakiya Omaar
Director

Cc Mr Bernard Makuza, Prime Minister
Mr Jean de Dieu Mucyo, Minister of Justice
Mr Gerald Gahima, Public Prosecutor related to the Supreme Court
Ms Aloysie Cyanzayire, President of the Department of Gacaca Jurisdictions