



Extraditing Genocide Suspects From Europe to Rwanda

Issues and Challenges

**Report of a Conference
Organised by REDRESS and African Rights
at the Belgian Parliament, 1 July 2008**

"We encourage the use of universal jurisdiction to try fugitives and we salute Belgium, Switzerland and Canada which have exercised such jurisdiction. At the same time, we would not be talking about extradition, if every country was prosecuting the fugitives living on their territory".

Sam Rugege, Vice- President of the Supreme Court, Rwanda, Conference Intervention

"It was self- evident that the 'do nothing option' was not an option at all. The reason is obvious. No one, least of all alleged génocidaires (travelling sometimes under false names and identities), should be able to escape justice by the mere act of flitting across international borders. We have a collective responsibility not to offer safe havens to fugitives".

Bob Wood, Home Office, United Kingdom, Conference Intervention

INDEX

INTRODUCTION.....	3
ACKNOWLEDGEMENTS	6
LIST OF ACRONYMS.....	7
OPENING OF THE CONFERENCE.....	8
I EXTRADITION TO RWANDA: THEMES AND STANDARDS	8
A. Legal Basis for Extradition	8
B. Human Rights and Fair Trial Conditions for Extradition.....	12
C. Article 1 F of the 1951 Refugee Convention	15
II TRANSFER AND EXTRADITION TO RWANDA - PRACTICAL ASPECTS	17
A. Extradition Procedures.....	18
B. Cooperation Between European and Rwandan Authorities.....	22
C. The ICTR’s Rule 11 bis and the Transfer of Cases to Rwanda and to Third Countries.....	24
D. Three ICTR Trial Chambers Decisions	25
E. The Appeal by the Office of the Prosecutor.....	28
III CURRENT ARRANGEMENTS IN PLACE IN RWANDA.....	30
A. Legislative and Practical Arrangements in Rwanda	30
B. Human Rights and Fair Trial Concerns	34
IV UNIVERSAL JURISDICTION AS AN ALTERNATIVE TO EXTRADITION	36
A. Universal Jurisdiction & Genocide Suspects in France- The Perspective of Victims	37
B. Universal Jurisdiction & Genocide Suspects in Belgium- The Perspective of Victims.....	38
C. Universal Jurisdiction - General Challenges for Victims Filing Complaints against Rwandese Genocide Suspects	39
D. Universal Jurisdiction or Extradition? A Victims’ Perspective	40
V NATIONAL PROSECUTIONS – THE PRINCIPLE OF ‘AUT DEDERE, AUT JUDICARE’ – DIFFICULTIES AND ADVANTAGES.....	41
A. Aut Dedere, Aut Judicare in a National Context	42
B. Aut dedere, aut judicare: Advantages and Difficulties	42
CONCLUSION	43
RECOMMENDATIONS.....	45
A. To the Rwandan Government.....	45
B. To the Rwandan National Prosecution Service	45
C. To European governments	45
D. To European National Police and Prosecution Authorities	46
ANNEX I CONFERENCE AGENDA	47
ANNEX II CONFERENCE PARTICIPANTS	49
ANNEX III OVERVIEW OF CURRENT PROCEEDINGS AGAINST RWANDAN GENOCIDE SUSPECTS IN EUROPE	52

Introduction

In the immediate aftermath of the 1994 genocide in Rwanda, many high level genocide suspects who had been at the forefront of the killings managed to escape Rwanda to other countries, in particular to Europe, North America and a large number of African countries.

International law requires countries harbouring genocide suspects to ensure that they do not escape justice. Initially, some of those that were tracked down were transferred to the International Criminal Tribunal for Rwanda (ICTR). However, since the end of 2004, suspects found outside of Rwanda can no longer be transferred to the Tribunal, unless they are on the ICTR's wanted list. As an ad hoc tribunal and under the terms of the 'completion strategy' of the Security Council, the ICTR will have to complete all first instance trials by 2008 and all appeals by 2010.¹

In order to ensure justice, the only remaining options for countries harbouring genocide suspects is to extradite the suspects to Rwanda or other countries willing to undertake a prosecution, or to investigate the crimes themselves with a view to holding criminal trials in their own courts on the basis of universal jurisdiction.

Due to the limited range of universal jurisdiction proceedings that have taken place and are likely to take place in future, and given the growing number of suspects who have been located in European countries, including in Finland, Italy, Norway, the United Kingdom, Germany, France, Belgium and Denmark, the issues and challenges involved in extraditing suspects to Rwanda have become extremely pressing.

In recent years, the Government of Rwanda has stepped up its requests to governments around the world for the return of genocide suspects to Rwanda so they can be brought to justice. However, governments on the receiving end of such requests have had difficulties in responding effectively and expeditiously. Few countries have extradition agreements with Rwanda. Also, few have a detailed appreciation of what happened during the genocide or the nature and scale of criminality that the genocide engendered, and few will have an understanding of Rwanda's legal and judicial system. Yet, these factors need to be scrutinised in detail by those considering how best to respond to extradition requests.

African Rights and REDRESS organised the conference entitled "***The Extradition of Rwandese Genocide Suspects to Rwanda- Issues and Challenges***" to consider these issues in detail. The conference brought together extradition practitioners from a number of European countries, including Belgium, France, The Netherlands, Germany, Sweden, Finland, Denmark, Norway and the United Kingdom as well as experts from the Rwandan judiciary, the International Criminal Tribunal for Rwanda, from civil society and victims' associations, and academia.

The conference took place on 1 July 2008 against the background of three major developments over the past years: (1) an increasing number of extradition requests issued by Rwanda against suspects residing in European countries, (2) a number of arrests of genocide suspects in European countries and (3) the approaching deadline for the ICTR to complete its caseload.

¹ During the Conference, the Acting Chief of Prosecutions of the ICTR, Richard Karegyesa, said that the ICTR would ask for a year's extension from the Security Council if the refusals to transfer defendants to Rwanda were upheld on appeal.

Rwanda so far has issued 25 extradition requests against suspects residing in 10 different European countries. At the time of writing, Interpol has issued 80 Red Notices in relation to Rwandan genocide suspects living abroad and at least 15 Rwandan genocide suspects have been arrested in Europe over the past two years. Participants emphasised that close cooperation among European authorities is crucial for the investigation of genocide suspects in Europe given the similarity of, and common issues involved in, these cases. A lack of knowledge about Rwanda's justice system and arrangements in place in Rwanda, as well as difficulties to properly assess the evidence presented with an extradition request render consistent cooperation with the relevant Rwandan authorities, in particular the Rwandan National Prosecution Service, imperative. The extraordinary nature and scale of the crimes further warrant a structured approach to the presence of genocide suspects in Europe, and elsewhere.

Several countries have established specialised units within their police, prosecution and immigration authorities to provide the wherewithal to respond to extradition requests and the presence of genocide suspects on their territory. These approaches have enhanced the capacities for certain states to meet the demands placed upon them and their experiences are of use to other states that do not have in place such formalised structures.

Conference participants discussed national experiences of handling extradition requests from Rwanda, the jurisprudence of the ICTR with respect to transfer of its cases to Rwanda and the principle of universal jurisdiction as an alternative to extradition. It was agreed by most participants that trials in the vicinity of the crimes can have a deeper impact on Rwandan society. Indeed, based on current developments in several countries, including in France, the United Kingdom, Sweden, Finland, Germany and Norway, it seems that extradition to Rwanda is the preferred option for the majority of countries, though at the time of the Conference, no suspect had been extradited to Rwanda. Yet, despite the preference for trials in the vicinity of the crimes, a range of views were expressed about the extent to which the Rwandan judiciary was capable of holding trials that meet international standards of fairness as required by international law.

Participants examined the progress made within Rwanda's judicial system, including legislative reforms and an increase in practical capacity to deliver justice. The conference addressed potential obstacles that may prevent an extradition to Rwanda, including the absence of a bi- or multi- lateral extradition treaty with Rwanda and concerns that an extradition to Rwanda may violate countries' obligations under the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) and the *International Covenant on Civil and Political Rights* (ICCPR). Also discussed were the series of ICTR decisions denying extradition, and the United Kingdom Magistrates Court decision allowing extradition. Whatever the approach taken, impunity cannot be the solution and innovative and creative responses need to be found to address the concerns that have been raised.

This Report examines the different legal bases for extradition before looking at practical issues arising in the context of an extradition and transfer to Rwanda. Human rights and fair trial concerns related to the current judicial system in Rwanda are highlighted as are victims' perspectives and potential alternatives to extradition. The report is largely based on the conference presentations and discussions. It further includes information provided by Rwandan officials from the Ministry of Justice, the National Prosecution service and the Supreme Court, diplomats of several European embassies in Rwanda as well as civil society

organisations and survivors in Rwanda. Interviews were also conducted with police investigators, prosecutors and officials of Ministries of Justice of several European countries.

The Report examines the practice of European countries when dealing with extradition requests and/ or the presence of genocide suspects on their territory. It is focussed on European countries, as it is there that the majority of genocide suspects have been arrested and extradition requests have been issued mainly vis-à-vis European countries.² The responses of these and other countries to genocide suspects send a signal internationally that fourteen years of impunity might finally be coming to an end.

² Rwanda has also issued extradition requests to Canada, the United States, New Zealand and several African countries.

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We are grateful to all the speakers and conference participants for their insights and contributions to the Conference and to this Report, and to the many officials, NGOs and survivors interviewed in Rwanda and Europe for their information and perspectives.

List of Acronyms

ASF	Avocats Sans Frontières
CGRA	Commissariat Général aux Réfugiés et aux Apatrides
CoE	Council of Europe
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EU	European Union
FIDH	Fédération Internationale des ligues des Droits de l'Homme
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
Network	European Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes
MRND	National Republican Movement for Development (1975-1991) and National Republican Movement for Democracy and Development (1991-1994)
OTP	Office of the Prosecutor
NGO	Non Governmental Organisation

Opening of the Conference

The Conference took place on 1 July 2008 - the same day that the African Union met in Sharm El Sheikh to discuss, *inter alia*, issues related to international justice, resulting in the adoption of a resolution critical of the use of universal jurisdiction.³ As **Juliette Boulet**, Member of the Belgian Parliament remarked in her opening speech, 1 July was also the day France assumed the Presidency of the European Union, and she expressed the hope that both, France and the EU, would use their influence to become key players in the fight against impunity and in defending international justice. Noting that the Conference was taking place in Brussels and at the Belgian Parliament, **Ms. Boulet** further emphasised the important role Belgium continues to play in the aftermath of the genocide, by being so far the only country worldwide where several suspects had been successfully tried outside Rwanda for their involvement in the genocide.

Rakiya Omaar, the Director of African Rights in her introductory speech, pointed out that expectations of international justice within Rwanda are high. Survivors, she said, are starting to lose faith in justice. Instead of seeing tangible results in the cases in which they have provided evidence, they are told about the problems that prevent the extradition of suspects to Rwanda. The lack of faith in justice contributes to 'witness fatigue' and makes future investigations more difficult. She spoke about how prominent genocide suspects in Europe are undermining justice in Rwanda itself, by sending money to Rwanda to intimidate or buy off potential witnesses and to assist their relatives and fellow-perpetrators to escape abroad. **Ms. Omaar** encouraged participants to do their utmost to tackle the challenges concerning extraditions to Rwanda, and to exchange information as much as possible in order to overcome these difficulties.

I Extradition to Rwanda: Themes and Standards

A. Legal Basis for Extradition

There is no obligation to extradite under international law unless there is either a bi- or multi-lateral treaty, which imposes such an obligation on states parties, or a Security Council resolution under Chapter VII. Examples of multilateral extradition treaties include the regime of the European Arrest Warrant⁴ as well as the European Convention on Extradition of 13 December 1957.⁵ **Luc Reydam**s of the Department of Political Science at the University of Notre Dame, commented that a Security Council resolution can require countries to collaborate with international tribunals such as the ICTR, which includes the obligation to transfer suspects to the Tribunal.⁶ However, no such obligation exists specifically with respect to the extradition of genocide suspects to Rwanda, which therefore depends on either the

³ African Union, *Decision on the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction*, Assembly/AU/Dec.199 (XI).

⁴ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, 2002/584/JHA, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:EN:NOT> (last accessed August 2008).

⁵ European Convention on Extradition, Paris, 13 August 1957, available at <http://conventions.coe.int/treaty/en/treaties/html/024.htm> (last accessed August 2008).

⁶ The ICTR was established by Resolution 955 of 8 November 1995, adopted under Chapter VII. www.un.org/ict/english/Resolutions/955e.htm; Article 2 requests all States to cooperate fully with the Tribunal and Article 8 (2) of the ICTR's Statute establishes primacy of the Tribunal's jurisdiction over the national courts of all States.

existence of a bi- or multilateral treaty or the possibility to base an extradition on a domestic extradition framework, allowing for instance to enter into ad hoc arrangements with Rwanda.⁷ **Fanny Fontaine** of the Belgian Ministry of Justice illustrated in her intervention the different extradition regimes that could potentially be invoked for an extradition to Rwanda.

i. Bilateral Extradition Treaty

Ms Fontaine said the conclusion of a bilateral treaty is based on the reciprocity principle and is within the discretion of the concluding states. National extradition legislation usually provides the general framework for states negotiating specific bilateral treaties. This is the case in Belgium, where the Extradition Act of 1874 imposes the requirement of a bilateral treaty as a precondition for an extradition to proceed. According to **Derek Lugtenberg** of the Dutch Prosecutor's Office in The Hague, the same is true for The Netherlands where an extradition is contingent on the existence of a bi- or multilateral extradition treaty.

ii. Multilateral treaty

The absence of a bilateral treaty does not necessarily exclude the application of a multilateral treaty or convention, as for instance with respect to international humanitarian law or multilateral treaties such as the European Convention on Extradition of 1957.

- *International Human Rights and Humanitarian Law*

1. *Convention on the Prevention and Punishment of the Crime of Genocide*⁸

The Convention does include a reference to extradition in Article 7, stating “the Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force”.⁹ Any extradition therefore appears to be subject to the existence of relevant national legislation and, added **Ms Fontaine**, Article 7 cannot serve as a legal basis for an extradition of genocide suspects to Rwanda.

2. *Protocol I to the Geneva Conventions*¹⁰

Article 88 of the Protocol Additional to the Geneva Conventions, covering mutual assistance in criminal matters, provides that States Parties “shall co- operate in the matter of extradition” and “shall give due consideration to the request of the State in whose territory the alleged offence has occurred”.¹¹ Conference participants queried whether this could form a legal basis for an extradition to Rwanda, given that Rwanda is a State Party to Protocol I. According to **Mr Dive** of the Belgian Ministry of Justice, it appears, however, that the article rather invites States to cooperate in extraditions subject to their own national legislation, which, again, may make an extradition dependant on the existence of an extradition treaty. Article 88 therefore does

⁷ But see further below the principle of ‘aut dedere, aut judicare’.

⁸ *Convention on the Prevention and Punishment of the Crime of Genocide* of 9 December 1948, entry into force 12 January 1951.

⁹ *Ibid.*, Article 7.

¹⁰ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, entry into force 7 December 1979, available at www.unhcr.ch/html/menu3/b/93.htm (last accessed August 2008).

¹¹ *Ibid.*, Article 88.

not seem to serve as a legal basis for extradition,¹² yet it could be seen as a strong encouragement to conclude a bilateral extradition treaty where necessary.

3. *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*¹³

As opposed to Article 88 of the Additional Protocol I, Article 8 (2) of the Convention against Torture expressly provides that

*“if a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the **legal basis** for extradition in respect of such offences”.*¹⁴

According to **Ms Fontaine**, this would allow States to use the Convention against Torture as a conventional basis to extradite suspects even in the absence of a treaty. Belgium for instance used Article 8(2) in the case against former Chadian dictator Hissène Habré when it requested his extradition from Senegal despite the absence of a bilateral extradition treaty with Senegal.¹⁵ Rwanda, however, is not a State Party to the Convention against Torture and the relevant Article therefore is not applicable with respect to the extradition of Rwandese genocide suspects to Rwanda. **Ms. Fontaine** underlined that Rwanda could consider ratifying the Convention to use it as a basis for extradition, taking into account that so far 145 States have ratified it and that torture falls within the category of other serious international crimes and therefore could be used as a basis for prosecution of serious international crimes.

- ***The European Convention on Extradition of 1957***

In the absence of bilateral extradition treaties and other multilateral treaties that could apply to the extradition of Rwandese genocide suspects to Rwanda, **Ms. Fontaine** considered the European Convention on Extradition of 1957, which is open to countries that are not Parties to the Council of Europe and which replaces all bilateral extradition treaties entered into by States Parties of the treaty. Additional Protocol I of the Convention expressly excludes the crime of genocide and war crimes from the political offence exception.¹⁶ The Convention currently has 47 Members, with South Africa and Israel being the only two non-member countries. For a country to join, all members of the Council need to agree to the country's accession, with the key issue being the respect for human rights in the country wishing to join.¹⁷

¹² See also M. Cherif Bassiouni and E. Wise, “Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in international law”, (Dordrecht/Boston/London: Martinus Nijhoff Publishers 1995) at pp. 44-45, who conclude that ‘Article 88 of the First Additional Protocol of 1977 requires the parties to “cooperate in matters of extradition” but only if their laws permit them to do so’ (at p. 45); see also the section on ‘aut dedere, aut judicare’ in this Report, below.

¹³ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment* of 10 December 1984, entry into force 26 June 1987, available at: www.unhcr.ch/html/menu3/b/h_cat39.htm (last accessed August 2008).

¹⁴ Article 8 (2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment of 10 December 1984, entry into force 26 June 1987.

¹⁵ See Human Rights Watch, Ex- Chad Dictator Indicted in Belgium’, 29 September 2005, available at www.hrw.org/english/docs/2005/09/29/chad11802.htm (last accessed August 2008).

¹⁶ The political offence exception is designed to protect persons from politically motivated prosecution or punishment or for punishment of conduct constituting an expression of political or religious belief.

¹⁷ *Supra*, n.5, Article 30 (1).

- **London Scheme for Extradition within the Commonwealth**¹⁸

Given Rwanda's application to join the Commonwealth, this may enable Rwanda to join the *London Scheme for Extradition within the Commonwealth*, a multilateral extradition treaty. **Bob Wood** of the British Home Office outlined that it would put Rwanda in a position to acquire extradition arrangements with a wide range of countries, including Kenya, Uganda, Tanzania, Canada, Australia, New Zealand and the United Kingdom. Rwanda officially applied to join the Commonwealth in 2003 and a final decision will be made by the Commonwealth Heads of Government at the November 2009 Commonwealth Heads of Government Meeting in Trinidad and Tobago.¹⁹

iii. Ad- Hoc Agreements

The absence of a bi- or multilateral extradition treaty may not prevent an extradition where a country's legal system provides for extradition agreements to be concluded on an ad hoc basis. Such agreements are not based on the principle of reciprocity, yet usual conditions such as the political offence exception, the principle of *ne bis in idem*²⁰, the specialty principle²¹ and the prohibition to apply the death penalty may be included in the ad- hoc agreements.

The **British Secretary of State** for instance has the power under section 194 of the UK *Extradition Act 2003* to enter into a special arrangement for extradition with states where no other extradition provision exists.²² This provision was applied in the case of four Rwandan genocide suspects who were found living in the UK in 2006 and arrangements were entered into with Rwanda, allowing for the arrests of the suspects on the basis of extradition requests issued by Rwanda.²³

iv. Other Possibilities for Extradition

A number of countries do not require a bilateral or multilateral extradition treaty with the requesting state but instead rely on the existence of a domestic extradition law. In **Sweden** for instance, extradition may go ahead despite the absence of a bi- or multilateral extradition treaty with Rwanda, yet higher evidentiary standards will be applied.²⁴ Similar arrangements are being made in **Germany**, where the extradition of two Rwandese genocide suspects to Rwanda is at the moment under examination on the basis of its international mutual legal assistance legislation.²⁵ Likewise, **France** does not require an express bilateral extradition

¹⁸ The London Scheme for Extradition within the Commonwealth, incorporating the amendments agreed at Kingston in November 2002, available at www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B56F55E5D-1882-4421-9CC1-71634DF17331%7D_London_Scheme.pdf (last accessed August 2008).

¹⁹ The New Times, 5 August 2008, 'Conference on Rwanda's Commonwealth bid to be held', available at <http://www.newtimes.co.rw/index.php?issue=13612&article=8448> (last accessed August 2008).

²⁰ The principle of *ne bis in idem* provides that 'no person shall be tried twice for the same offense.'

²¹ The 'specialty principle' prohibits a state requesting extradition from prosecuting the extradited person on charges other than those alleged in the request for extradition.

²² Extradition Act 2003, Chapter 41, Article 194, available at http://www.opsi.gov.uk/acts/acts2003/ukpga_20030041_en_1 (last accessed August 2008).

²³ For further details on these cases see further below, pages 18-20.

²⁴ Correspondence with Swedish official of Ministry of Justice, 31 July 2008; Finnish law does allow for the extradition in the absence of an extradition treaty under similar circumstances.

²⁵ *Gesetz über die internationale Rechtshilfe in Strafsachen in der Fassung der Bekanntmachung vom 27. Juni 1994* (BGBl. I S. 1537), zuletzt geändert durch Artikel 1 des Gesetzes vom 6. Juni 2008 (BGBl. I S. 995) for a copy of the legislation (in German) see www.gesetze-im-internet.de/irg/index.html (last accessed August 2008); see also AFP, 8 July 2008, "Ruandischer Kriegsverbrecher in Frankfurt gefasst", available (in German) at www.123recht.net/Ruandischer-Kriegsverbrecher-in-Frankfurt-gefasst_a31270.html (last accessed August 2008).

treaty for an extradition to Rwanda to proceed.

The absence of an extradition treaty presents an insurmountable obstacle to extradition in countries where an extradition is contingent on the existence of either a bi- or multilateral treaty, as in **Belgium** and **The Netherlands**, both countries where significant numbers of genocide suspects are known to reside. In such cases, the only opportunities for justice are to bring the individuals to account before these countries' national courts on the basis of universal jurisdiction, or to extradite to another country willing to undertake a prosecution, with whom it has an extradition treaty.²⁶

In light of the absence of extradition treaties with Rwanda, the question arose whether it would be possible to have a judicial instrument adopted by the Council of Europe to confirm the basis of universal jurisdiction. Such an instrument could assist countries to overcome obstacles to extradition to Rwanda, such as the absence of an extradition treaty and potential fair trial obstacles, and thereby enable victims to a quicker access to justice on the basis of universal jurisdiction. However, even though an increasing number of European countries do recognise and implement universal jurisdiction in their domestic legislation and in practice,²⁷ the adoption of such an instrument is, according to **Humbert de Biolley**, Deputy Director of the Council of Europe's Brussels Office, not realistic in the near future. The Parliamentary Assembly of the Council of Europe already discussed this issue without coming to a conclusion, neither in favour nor against universal jurisdiction.

B. Human Rights and Fair Trial Conditions for Extradition

International human rights law impacts on extradition. The sending state (the state where the suspect is residing) can be held responsible for a foreseeable human rights violation of the suspect's rights in the receiving state (the state which requested extradition of the suspect).

The abolition of the death penalty by Rwanda on 25 July 2007 was a major step forward to facilitate extradition,²⁸ yet to date no European country has entered into a bi-lateral extradition treaty with Rwanda. It would seem to be for the Rwandan Government to take the initiative to expressly request European and other countries to agree to extradition treaties.²⁹ The issue then arises whether and if so, which, conditions could be inserted in such treaties to ensure that international obligations are observed, and indeed whether the insertion of such provisions would satisfy the courts of sending countries. The ECHR obliges all States Parties to respect certain rights of the accused and, as **Alex dos Santos**, Barrister with Charter Chambers, pointed out, 'a signatory to the Convention cannot extradite a defendant if there is a real risk that his rights under the Convention would be breached', with the Convention setting 'out the minimum standard to be attained. Many domestic legal systems provide for greater protection of rights than the European Court itself'.

²⁶ See further below, 'National prosecutions- the principle of aut dedere, aut judicare.

²⁷ See FIDH and REDRESS, *Fostering a European Approach to Accountability for Genocide, Crimes against Humanity, War Crimes and Torture*, April 2007, available at: www.redress.org/publications/Fostering%20an%20EU%20Approach.pdf (last accessed August 2008).

²⁸ Organic Law No. 31/2007 of 25 July 2007 relating to the Abolition of the Death Penalty.

²⁹ African Rights & REDRESS interview with Belgian officials, 9 April 2008.

Rights of the defendant include the absolute right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment in the requesting country³⁰ and the right to a fair trial.³¹ In domestic extradition proceedings, the burden is on the applicant to show that there are substantial grounds for believing that, if extradited, the individual faces a violation of his or her rights.³² Evidence the applicant may present, depending to some extent on the judicial system, includes expert evidence, video footage and/ or pictures as well as reports of NGOs with expertise in the relevant field and country.

i. Prison Conditions

Mr dos Santos pointed out that in the context of prison conditions, a violation of Article 3 of the ECHR may be established where the applicant demonstrates that there is a real risk that he or she would be detained in poor prison conditions passing the “minimum threshold of severity”.³³ While prison facilities in Rwanda have received criticism in the past,³⁴ in particular due to overcrowding and a lack of prison personnel, new or additional prison facilities are currently being built in Rwanda, including pre-trial detention facilities in order to meet international standards. The Rwandan Government has indicated that suspects who will be transferred or extradited will be placed in adequate remand cells in Kigali Central prison and, if convicted, imprisoned in specially created prison facilities in Mpanga prison in Gitarama.³⁵

ii. Fair Trial (Due Process and Defence Rights)

States Parties to the ECHR are obliged to reject an extradition request if it emerges that there is a risk of a flagrant denial of justice by the receiving state in case an accused is extradited.³⁶ Similarly, under the referral regime of the ICTR, Rule 11bis of the Tribunal’s Rules of Procedure and Evidence requires that the accused receive ‘a fair trial in the courts of the State concerned’³⁷.

National courts and the ICTR- Different Tests and Standards

To date, three differently composed trial chambers of the ICTR have rejected three requests of the Prosecution to transfer cases to Rwanda.³⁸ At the same time, the French *Cour d’Appel de Chambéry*³⁹ and the City of Westminster Magistrates’ Court⁴⁰ approved the extradition of genocide suspects to Rwanda.

³⁰ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol 11, available at <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0EnglishAnglais.pdf>, Article 3.

³¹ *Ibid*, Article 6.

³² *Einhorn v France*, Admissibility Decision of 16 October 2001, para. 34: “Where extradition proceedings are concerned, an applicant is required to prove the flagrant nature of the denial of justice which he fears. In the instant case the applicant did not adduce any evidence to show that.... there are “substantial grounds for believing that his trial would take place in conditions that contravened Article 6”.

³³ *Kalashnikov v Russia*, 47095/ 99 [2002] ECHR 596, 15 July 2002, para. 95- 102; accordingly, factors to include the assessment of whether or not jail conditions violate Article 3 include overcrowding, sanitation conditions, size of prison cell, length of incarceration.

³⁴ Amnesty International Report 2007, Rwanda, available at <http://report2007.amnesty.org/eng/Regions/Africa/Rwanda> (last accessed August 2008).

³⁵ See further below, page 33.

³⁶ *Soering v The United Kingdom* [1989], Series A no. 161, 7 July 1989, para. 113.

³⁷ Rules of Procedure and Evidence, Rule 11bis, available at <http://69.94.11.53/ENGLISH/rules/080314/080314.pdf> (last accessed August 2008).

³⁸ For an overview of the ICTR’s decisions up to date see further below, page 26- 30.

³⁹ Decision on 2 April 2008 of the *Cour d’Appel de Chambéry, Chambre de l’instruction* 2008/00082, No 2008/88; this decision was overturned by the *Cour de Cassation, Chambre Criminelle*, No Y 08-82.922 F-D, 9 July 2008.

Mr dos Santos argued that the different results of national courts and the ICTR can, to a certain extent, be explained by the differing standards and tests used by these courts. Rule 11bis of the Tribunal's Rules of Procedure and Evidence requires the Trial Chamber **to satisfy itself** that an accused will receive a fair trial.⁴¹ The ICTR rejected the transfer in all three cases to date on the basis that it was **not able to satisfy itself** that the accused would obtain a fair trial in Rwanda. A national court deciding on an extradition request on the other hand would have **to be persuaded by the defendant** that a fair trial could not be secured in Rwanda in order to deny the extradition. In the British case, "it was incumbent on the defendants to demonstrate a strong case they would suffer or would risk "suffering a flagrant denial of a fair trial in the receiving State".⁴²

Where concerns as to the receiving State's capacity to guarantee a fair trial remain after the assessment of the evidence presented, the extradition may in certain circumstances proceed if those concerns are addressed by diplomatic assurances. Examples may include an assurance not to impose the death penalty on an extradited defendant, or that ring-fenced funding would be made available to secure adequate representation and to fund adequate preparation of a defendant's case. **Mr. dos Santos** went on to say that the practice of issuing diplomatic assurances in such cases is now 'well established'.

He further outlined that a defendant may seek to appeal the decision to the European Court of Human Rights where a (European) national court approves the extradition of a defendant to Rwanda. Accordingly, it is possible, if such an application is made, to request an interim indication (a 'Rule 39 indication') that the defendant should not be removed prior to the case being considered by the Court. For the Court to recommend interim measures, the facts must *prima facie* suggest a violation of the Convention, and the consequences of not indicating interim measures must be the irreparable injury to certain interests of the parties or to the progress of the examination. In the majority of cases, the applicant has to prove that there is a high degree of probability that a violation of Article 3 of the ECHR will occur. The applicant must convince the Court that he or she will face a personal risk of injury to life or limb.

According to **Mr dos Santos**, cases before the European Court of Human Rights proceed very slowly. Admissibility decisions can take in the region of two years, with a final determination (if the case is declared admissible) made sometimes two to three years later. Even if an expedited judgment is sought, a case may take a minimum of 12 months before admissibility has been considered.

The principle considerations when assessing the rights of the Defence, are:

- (1) *The independence of the judiciary;*
- (2) *The presumption of innocence;*
- (3) *Trial within a reasonable time;*
- (4) *Proper representation;*
- (5) *The ability to call witnesses; and,*
- (6) *Adequate time and facilities to prepare a defence.*

**Alex dos Santos, Barrister,
Charter Chambers**

⁴⁰ The City of Westminster Magistrates' Court in the case of *The Government of the Republic of Rwanda v. Vincent Bajinya, Charles Munyaneza, Emmanuel Nteziryayo, Celestin Ugirashebuja*, 6 June 2008.

⁴¹ Rules of Procedure and Evidence, Rule 11 bis, available at <http://69.94.11.53/ENGLISH/rules/080314/080314.pdf> (last accessed August 2008).

⁴² At paragraph 370 citing paragraph 24 from *R (Ullah) v Special Adjudicator* [2003] 1 WLR 770.

C. Article 1 F of the 1951 Refugee Convention

Article 1 F of the 1951 *United Nations Convention relating to the Status of Refugees*⁴³ indicates permissible grounds for denying an alien refugee status and to exclude him or her from the protection afforded to refugees by the Convention, in the event where there are ‘**serious reasons**’ to believe that ‘he has committed a crime against peace, a war crime or a crime against humanity’⁴⁴. Article 1 F therefore provides for an exception within a Convention which is primarily humanitarian rather than repressive, commented **Caroline Cnop** of the Belgian ‘*Commissariat Général aux Réfugiés et aux Apatrides*’ (CGRA; Commissioner General for Refugees and Stateless Persons). Article 1 A provides that any person who, ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion’ may be considered a refugee.⁴⁵

The exception is based on the reasoning that certain crimes are so heinous that their authors are judged not to be entitled to international protection as a refugee. It further ensures that the framework of the asylum system does not preclude justice with respect to the worst crimes. While its application has increased in the last decades, primarily as a consequence of the conflicts in the Former Yugoslavia and in Rwanda and recent initiatives in the fight against terrorism, **Ms Cnop** stressed that Article 1F provides an exception and as such must be interpreted in a restrictive manner.

Ms. Cnop drew attention to the challenges for immigration practitioners when applying Article 1 F. She started with the order in which the two Articles should be applied: is it necessary to first establish a ‘well founded fear of persecution’ and to then analyse the request on the basis of a potential exclusion or is it possible to directly examine a potential exclusion before looking at the ‘well founded’ fear? Whether the ‘inclusion takes precedence of the exclusion’ or vice versa is controversial, yet the UN High Commissioner for Refugees issued directives in this regard, and on which the Belgian CGRA bases its practice. Accordingly, Article 1A is generally examined prior to a potential application of Article 1F. Only in exceptional cases may Article 1F be examined first:

- where there is an indictment by an international criminal tribunal
- in the case that there is easily available proof that the applicant is implicated in a war crime

Article 1 F.

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that.

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

⁴³ Convention relating to the Status of Refugees, adopted on 28 July 1951, entry into force 22 April 1954, available at http://www.unhcr.ch/html/menu3/b/o_c_ref.htm (last accessed August 2008).

⁴⁴ The crime of genocide is not as such referred to in Article 1F, yet it is included as a particular crime against humanity, requiring a separate definition.

⁴⁵ *Supra*, n43, Article 1 A

Application of Article 1F:

For the standard of ‘serious reasons for considering’ to be met it is first necessary to demonstrate that the applicant has committed or has substantially and knowingly contributed to the commission of the crime.⁴⁶

According to **Ms. Cnop**, it is sufficient if there is clear and convincing evidence or evidence that is sufficient for a court to indict a defendant. The threshold is therefore substantially lower than what is necessary for a conviction, which must be beyond a reasonable doubt. This is because the assessment does not seek to decide whether someone is guilty nor does it seek to impose criminal sanctions, but whether someone should be awarded international protection. Nevertheless, the level of evidence must be strong, credible and trustworthy to establish that an asylum seeker was implicated in the commission of Article 1F crimes.

Ms. Cnop drew attention to the fact that the Belgian CGRA assumes a (rebuttable) presumption of responsibility in cases where:

- asylum seekers for some time held a high level position in a regime known for its serious human rights violations;
- asylum seekers are members of important organisations known for their activities and violent methods.

Another challenge for immigration authorities, she added, is the difficulty in the majority of cases to find out whether someone was implicated in 1F crimes. This may be because the applicants have been warned about the procedures beforehand and often provide authorities with a false identity.

In Belgium, it is particularly asylum seekers from Afghanistan, Iraq and Rwanda who are excluded on the basis of Article 1F. In 2007, 19 out of a total of 11,562 asylum seekers (of whom 2,118 were accepted), were excluded on the basis of Article 1F. Considering the total, this number is low which might be due to the fact that in some cases, applicants do not pass the first stage, i.e. that no fear of persecution can be established. This may even be the case where there is a reason to believe that a person has ‘blood on his hands’. In such a case, an ordinary decision to reject the request is taken, yet with reference to Article 1F. However, the test applied by the Belgian CGRA required Belgian authorities to deal with 19 suspects of serious international crimes in 2007 alone.

“An excluded applicant cannot obtain a residence permit on the basis that his family was recognised as asylum seekers. He will not obtain any sort of permit. An applicant who is refused on the basis of Article 1F and cannot be sent back is tolerated on the territory solely because of Article 3 of the ECHR”.

Caroline Cnop, CGRA, Belgium

⁴⁶ Apart from the commission of the crime, an individual may be held responsible if he orders, solicits, induces, or aids, abets or otherwise assists in its commission or attempted commission and, as far as the crime of genocide is concerned, incites others to commit genocide.

- Consequences of Exclusion

Article 1 F can prevent a country from providing a safe haven to war criminals and ‘*génocidaires*’ alike, yet there are tensions that may arise between Article 1F and the ECHR, in particular in respect of Article 3. States are obliged not to expel an applicant who was refused asylum on the basis of Article 1F, if to do so would violate the country’s non-refoulement obligations.⁴⁷

Family members are not automatically excluded in case the principal applicant has been excluded on the basis of Article 1F. Their applications for asylum are examined on an individual basis, even if their reason for fear of persecution is as a result of their relationship to the excluded family member. The **Belgian CGRA** will only exclude family members where there are serious reasons to believe that they themselves have been implicated in the commission of Article 1F crimes.

Should the **Belgian CGRA** take a decision on the basis of Article 1F, this is communicated to the Federal Prosecution Service, which will decide whether or not to initiate an investigation on the basis of the information provided. The CGRA is equally competent to take back a reward of refugee status where it learns at a later stage that the relevant person has committed Article 1F crimes.

II Transfer and Extradition to Rwanda - Practical Aspects

Since June 2007, Rwanda has issued 25 extradition requests to 10 different European countries, including **France, the United Kingdom, Sweden, Finland, Belgium, Norway, Denmark, Germany, Italy and The Netherlands**.⁴⁸ Despite this increase in extradition requests, there is still very little practical experience to illustrate how national authorities and, in particular, courts, deal with such requests from Rwandan authorities. To date, only French and English courts have examined extradition requests from Rwanda.⁴⁹

*“It was self-evident that the **do nothing option** was not an option at all. The reason is obvious. No one, least of all alleged *génocidaires* (travelling sometimes with false names and identities), should be able to escape justice by the mere act of flitting across international borders. We have a collective responsibility not to offer safe haven to fugitives”.*

Bob Wood, Home Office, UK

Both cases not only underline the different approaches of civil and common law countries but, more importantly, the shared practical challenges all authorities may be faced with when considering an extradition request from Rwanda. For example, starting with the issuing of an international arrest warrant, is the suspect referred to in the arrest warrant identical to the person located on the territory? The whereabouts of the suspect on the territory need to be

⁴⁷ For a discussion of the principle of non- refoulement, see REDRESS and Immigration Law Practitioners’ Association, *Non-Refoulement under Threat*, available at www.redress.org/publications/Non-refoulementUnderThreat.pdf (last accessed August 2008).

⁴⁸ Correspondence with Jean-Bosco Mutangana, Senior Prosecutor, Head of the Fugitives Tracking Unit, Rwanda, 4 August 2008.

⁴⁹ Decision of 2 April 2008 of the *Cour d’Appel de Chambéry, Chambre de l’instruction* 2008/00082, No 2008/88; *Cour de Cassation, Chambre Criminelle*, No Y 08-82.922 F-D, 9 July 2008; The City of Westminster Magistrates’ Court in the case of *The Government of the Republic of Rwanda v. Vincent Bajinya, Charles Munyaneza, Emmanuel Nteziryayo, Celestin Ugirashebuja*, 6 June 2008.

clarified for the implementation of the arrest warrant, requiring close cooperation between European and Rwandan authorities, Interpol and potentially NGOs and survivors. Interpol plays a key role in facilitating cooperation and, through the establishment of the '**Rwandan Genocide Fugitives Project**' can serve as a centre for coordination of national activities.⁵⁰ Once an international arrest warrant has been issued, and the identity and whereabouts of the suspect has been confirmed, different alternatives need to be considered, in particular where no extradition treaty has been entered into. This may require an assessment of domestic legislation and provisions for universal jurisdiction over the offences specified in the international arrest warrant.

Where an extradition request by the relevant authorities handling the request prior to the judicial assessment, has been approved, courts must assess the legislative and practical arrangements in Rwanda to guarantee a fair trial and their obligations under the ECHR along the lines outlined further above. It may also require an assessment of the evidence submitted by the Rwandan authorities. Decisions by a national court on these issues, though not binding, may be considered by other national courts in different countries as a 'guideline', taking into account that all have the same obligations under the ECHR. Equally, the jurisprudence of the ICTR on the matter will provide guidance to national courts in deciding whether to extradite a suspect to Rwanda, while bearing in mind the different tests and approaches of national and international courts.

A. Extradition Procedures

Both the recent English and French cases illustrate that in both countries extradition is an administrative as well as a judicial procedure. There are also significant differences. In France, judicial control is relatively formal and does not go into the substance of the request, as is demonstrated in the French extradition case. In Britain, the degree of judicial control was considerable, including an assessment of the prima facie evidence and of fair trial standards in Rwanda, including the hearing of expert witnesses and resulting in lengthy judicial procedures.⁵¹

i. Common Law Procedure

In 2006, the UK Government received a request for assistance from the Rwandan Government regarding four 'category one' suspects, who were living in the UK and who were accused of participation and complicity in the genocide. There was no extradition treaty between the UK and Rwanda and British authorities did not consider themselves to be in a position to prosecute the suspects directly due to a lack of universal jurisdiction over the crime of genocide.⁵²

⁵⁰See Interpol's website for further information at www.interpol.int/Public/Wanted/images/rwanda.pdf (last accessed August 2008).

⁵¹ Claver Kamana was arrested by French authorities on 26 February 2008 and the French Cour d' Appel approved the extradition on 2 April 2008. British authorities arrested the four suspects on 28 December 2006 and the court approved extradition only on 6 June 2008.

⁵² The four could have been investigated and, where sufficient evidence exists, prosecuted for torture on the basis of section 134 of the Criminal Justice Act 1988 which allows universal jurisdiction prosecutions for the crime of torture. This option has not been vigorously pursued, as it was not clear whether the acts complained of could be fit within the definition of torture in the Act, and also as a result of issues relating to the high logistical and resource costs of extraterritorial investigations and prosecutions.

Bob Wood of the British Home Office and **Anne Marie Kundert** of the Crown Prosecution Service explained the procedure of handling the request for assistance and the extradition proceedings before the British court.

The absence of a bi- or multilateral treaty did not prevent the UK from assisting the Rwandan authorities. On the basis of Section 194 of the *Extradition Act of 2003*,⁵³ the Secretary of State certified ‘the existence of special extradition arrangements’, after taking a number of steps to enquire whether Rwanda could be a possible extradition destination. These included several trips by UK officials and lawyers to Kigali to establish the state of the potential evidence, enquiries regarding the prison facilities in Rwanda as well as, according to **Mr. Wood**, ‘satisfactory assurances as to fair trial procedures and that the period awaiting trial would not be unreasonable’ and that legislation that planned (and is now in force) to abolish the death penalty for cases to be transferred from the ICTR to Rwanda would be applied to the four suspects.

Following the Home Secretary’s decision, British and Rwandan authorities signed Memoranda of Understanding (MoUs) in respect of each of the suspects in September 2006, in effect putting into place legal instruments ‘whereby Rwanda could submit and the British could receive their extradition requests.

Once Rwanda was in a position to issue an international arrest warrant and sent an extradition request to British authorities, the four suspects were arrested on 28 December 2006, on the basis of an arrest warrant issued by a British judge on behalf of the Government of Rwanda and they have remained in custody ever since.

Ms. Kundert said that Rwanda was required to supply a ‘prima facie case’ in each of the four cases, forming part of the extradition requests. The courts’ role in the cases was not to weigh the evidence or to determine whether a witness was lying or telling the truth. Rather, the judge had to consider whether the evidence presented by the requesting state (Rwanda) disclosed a ‘prima facie’ case which would require an answer by the defendant and whether there is any evidence presented by the defence which would lead the judge to conclude that there was no case to answer.⁵⁴ While Rwanda could

decide what evidence it wanted to rely on to establish a prima facie case, **Ms. Kundert** pointed out that it also owed a duty of ‘candour and good faith’, requiring it to disclose evidence which may destroy or severely undermine the evidence on which it relied.

“The extradition jurisdiction is based on trust that the requesting State will conduct itself properly in any trials that follow a successful extradition application. In this case the defence have not satisfied me on their Article 6 point and it does appear that the Rwandan authorities have taken proper steps to ensure that the defendants’ rights will be respected both in respect of the trial process and by the construction of remand facilities which correspond to international standards”.

District Judge Evans, The City of Westminster Magistrates’ Court: *The Government of the Republic of Rwanda v Vincent Bajinya, Charles Munyaneza, Emmanuel Nteziryayo, Celestin Ugirashebuja*

⁵³ Extradition Act 2003, 2003 Chapter 41, Article 194.

⁵⁴ On the role of the Courts when considering a *prima facie* case under the *Extradition Act 2003*, see Section 84 (3) of the *Extradition Act 2003*.

In addition to looking at the prima facie case, the Magistrates Court judge also had to decide whether an extradition would violate the UK's obligations under the ECHR. Several expert witnesses (both, prosecution and defence) testified before the court, outlining the current arrangements in place in Rwanda.

After 19 case management hearings, a challenge to the High Court on habeas corpus and 42 days of hearing of evidence presentations, the judge found that the extradition requests met the relevant requirements and do disclose a prima facie case. On 6 June 2008, in a 129 page judgment, the district judge held that there was a case to answer in respect to all four suspects and that nothing presented by the defence changed this position. Accordingly, he sent the case to the Secretary of State for her consideration and decision.

On 4 August 2008, the Secretary of State decided that extradition to Rwanda should be ordered. The defence appealed the decision of the Magistrates Court and the decision of the Secretary of State. It is expected that further appeals may be made to higher courts, including eventually the European Court of Human Rights, thereby considerably prolonging the proceedings.

ii. Civil Law Procedure

Despite 21 extradition requests sent to civil law countries in Europe,⁵⁵ few cases have been decided to date. With the exception of an extradition request for Claver Kamana, sent by the Rwandan Government to France on 3 October 2007, the majority of requests seem to be still at the initial stages and have not yet proceeded to court. In some countries, domestic investigations are being considered to prepare a universal jurisdiction trial in the event that an extradition to Rwanda fails.⁵⁶

The Case of Claver Kamana in France

French police arrested Claver Kamana on 26 February 2008 in Annecy, France, on the basis of an international arrest warrant issued by the National Prosecution of Rwanda on 28 August 2007 for his alleged role in the 1994 genocide. He had been living there since 1999 and his asylum application had been rejected. The Investigative Chamber of the Court of Chambéry, which has jurisdiction in Annecy, heard his extradition case on 5 March 2008 and the Court delivered its judgment on 2 April 2008, approving the extradition of Claver Kamana to Rwanda for the crimes of genocide, complicity in genocide, conspiracy to commit genocide and crimes against humanity (murder and extermination).⁵⁷

The 17 page judgment was based on an assessment of the international arrest warrant issued by Rwanda, which included, inter alia, a brief description of the crimes and Mr. Kamana's alleged personal responsibility in committing same. The indictment sent by Rwanda also included legislation and guarantees regarding the abolition of the death penalty, prison conditions and fair trial. The Court did not go into detail as to the evidence of the crimes allegedly committed by Mr. Kamana, and based its assessment of fair trial conditions in Rwanda on assurances and the legislation provided by Rwanda rather than by hearing expert

⁵⁵ Supra, n48.

⁵⁶ REDRESS & African Rights interview with officials in Germany 8 April 2008, Finland 12 August 2008.

⁵⁷ *Cour d'Appel de Chambéry, Chambre de l'Instruction*, 2008/00082, 2 April 2008.

witnesses.⁵⁸ However, it considered (and dismissed) reports of non-governmental organisations arguing that Rwanda applies inhuman and degrading treatment contrary to Article 3 of the ECHR.⁵⁹ The Court's decision also took into account the planned transfer of cases from the ICTR to Rwanda.⁶⁰

The Court's decision was overturned on 9 July by the French *Cour de Cassation*, which held that the *Cour d'Appel de Chambéry* did not properly address the concerns voiced by the accused.⁶¹ In particular, the *Cour de Cassation* held that the *Cour d' Appel de Chambéry* did not examine whether the accused will benefit (in practice) from fair trial and fundamental rights guaranteed by the legislation and therefore lacked the legal basis to approve his extradition.⁶² The Court sent the case to the Court of Appeal of Lyon to render a decision on the extradition, and this decision is expected some time in October 2008.⁶³

In civil law countries, the extradition request does not need to include significant evidence as to the guilt of the suspect. A clear description of the facts that the requested person is alleged to have committed, as well as a copy of the relevant national law setting out the offence(s), will usually suffice to satisfy the formal requirements for extradition. The prosecution will then present the request to the courts, which will establish the identity of the requested person, the admissibility of the request and the possibility of granting the request, including a legal assessment of the extradition request, considering for instance dual criminality at the time of the receipt of the request⁶⁴ and the existence of grounds for refusal under relevant treaty and national extradition law.

Even civil law countries may examine the evidence presented against a requested person if there is no bilateral or multilateral treaty. In **Finland**, for example, the requested person has a right to request the opinion of the Supreme Court to look into the legality of the extradition request, which includes an assessment of the evidence presented by the requesting state.⁶⁵ Similar procedures apply in **Sweden**, where the extradition of Sylvere Ahorugeze to Rwanda is currently being examined.⁶⁶ The evidence presented does not need to demonstrate the suspect's guilt beyond reasonable doubt but must be sufficient to initiate a prosecution.

Once a court has approved an extradition, in both common and civil law systems, it is up to the executive, usually the Minister of Justice (in the United Kingdom the Secretary of State), to decide whether or not to extradite, with the caveat that a request will be denied where the court deemed a request inadmissible.⁶⁷ In a number of countries, including **Belgium**, **Germany**,

⁵⁸ *Ibid*, p. 12, paras. 1,3, 4; pp. 13-15. In summary, the Court held that it was satisfied that Claver Kamana would receive a fair trial before an independent and impartial court, receive legal representation and, if necessary, legal aid, that the presumption of innocence would be respected as it is included in the Rwandan Constitution and Code of Criminal Procedure,

⁵⁹ *Ibid*, p. 11, para. 6.

⁶⁰ *Ibid*, p. 12, para. 5.

⁶¹ *Cour de Cassation, Chambre Criminelle*, No Y 08-82.922 F-D, 9 July 2008.

⁶² *Ibid*, page 5.

⁶³ Correspondence with French official, Ministry of Justice, 7 August 2008.

⁶⁴ However, in the case of genocide and other serious international crimes, this requirement may be waived as is the case in the regime of the European Arrest Warrant, Article 2 (2).

⁶⁵ REDRESS & African Rights telephone interview with Finnish Ministry of Justice official, 12 August 2008.

⁶⁶ Correspondence with Swedish official, Ministry of Justice, 31 July 2008; see AFP, 'Rwanda genocide suspect remanded in custody in Sweden', 18 July 2008, available at http://afp.google.com/article/ALegM5iZQThpgU7YDo_HrAf84rlXaYk9g (last accessed August 2008).

⁶⁷ Derek Lugtenberg outlined the issues taken into account by the Dutch Minister of Justice when deciding on an extradition request, including whether there is an ongoing prosecution in the Netherlands for the same offence(s), whether a case for the same offences has been dismissed in the Netherlands, physical and mental state of the wanted person, a foreseeable death

“While we appreciate the importance of domestic prosecutions in Europe, and will do all we can to help governments in Europe to investigate and prosecute individuals in their own courts, we believe that extradition is the only possible way to deal with the very large number of suspects who are still at large, and to help the victims of the genocide obtain justice”.

**Jean-Bosco Mutangana, Senior Prosecutor,
Head of Genocide Fugitive Tracking Unit**

The Netherlands, France and the United Kingdom this decision by the executive or judicial official can also be appealed in an administrative procedure.

B. Cooperation Between European and Rwandan Authorities

The increasing number of arrests of genocide suspects living in Europe is to a large extent due to

improved cooperation among European as well as between European and Rwandan authorities.

In May 2007, the European Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes (the Network)⁶⁸ met to specifically discuss how to assist the ICTR as well as Rwandan authorities in the apprehension of genocide fugitives living in third countries. Bringing together European, Canadian and Rwandan authorities in charge of the investigation and prosecution of such crimes, the meeting also facilitated an exchange of experiences and expertise, which is key to discovering, arresting and investigating such suspects.

“Investigators and prosecutors in the Member States of the EU face special challenges when investigating crimes committed in Rwanda in 1994. Therefore the Members of the Network deem it essential to co-operate and exchange knowledge, practical experiences and best practices within the Network, with third countries, international tribunals and organisations”.

Conclusions of the Fourth Meeting of the Network, 7-8 May 2007, para. 3

Since the meeting of the Network in May 2007, at least 10 genocide suspects have been arrested in European countries, including in **Germany, Sweden** and in particular **France**. In addition, several investigations or proceedings against genocide suspects are currently ongoing in **The Netherlands, Finland, Norway, Belgium**, and the United **Kingdom**.⁶⁹ Furthermore, in respect of **Italy**, at the time of writing, it was not clear whether **Italian authorities** had reacted to the extradition request issued by Rwanda and whether an investigation against the requested suspect had been launched.

Arrests are often facilitated with the help of **Interpol**, which, in 2007 established the **Rwandan Genocide Fugitives Project**, designed to facilitate arrests through coordination of the activities of Rwandan authorities and the national investigative authorities of countries where genocide suspects are living⁷⁰. **Martin Cox**, Vice- Director of the Fugitives Investigative Support Unit highlighted the increase of Interpol activities in the investigation of serious international

penalty in the requesting State, a foreseeable prosecution on the grounds of discrimination of race, sex, religion etc, and foreseeable violations of human rights.

⁶⁸ Council Decision of 13 June 2002 setting up a European Network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes, 2002/494/JHA, available at http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002D0494&model=guichett (last accessed August 2008).

⁶⁹ See Annex III for an overview of arrests and ongoing proceedings in European countries.

⁷⁰ See for further details <http://www.interpol.int/Public/Wanted/images/rwanda.pdf> (last accessed August 2008).

crimes, including the organisation of trainings for police officers and prosecutors and setting up of a database to share information on investigations and prosecutions.⁷¹ **Stefano Carvelli**, Coordinator of the Rwandan Genocide Fugitives Project illustrated how close cooperation between Interpol, Rwandan, American and French authorities led to the arrest of Isaac Kamali shortly after the Network meeting, on 23 June 2007. Kamali had travelled from France to the United States with a valid French passport when immigration authorities checked him against Interpol's database of internationally wanted persons. Since he was subject to a Red Notice issued by **Interpol, US authorities** sent him back to **France** where he was arrested by French authorities on information provided by Rwanda and Interpol's Fugitive Investigative Support Unit.⁷² His arrest kicked off a series of arrests of genocide suspects who had been living in France with impunity until then.⁷³

Close cooperation among European officials is further warranted, as the 'Rwandan genocide cases' have a number of issues in common and are often closely connected to each other. One example includes the arrest of Sylvere Ahorugeze in **Sweden** on 16 July 2008.⁷⁴ He had previously been arrested by **Danish authorities**, who carried out an in depth investigation against him but then had to release him due to insufficient evidence to prosecute.⁷⁵ In addition to close collaboration with Rwandan authorities to produce additional material, the information collected by Danish authorities will be crucial for Swedish authorities to react adequately and promptly to the extradition request issued by Rwanda. Timely sharing of information on the cases a country is working on can thus save time and resources, irrespective of potentially different legal requirements for an investigation and prosecution in the different legal systems. To facilitate extradition of Rwandan genocide suspects from Europe to Rwanda, it is important for Rwandan authorities to promptly comply with cooperation requests from their European counterparts. This is particularly relevant given the absence of bi-lateral extradition treaties with most countries, which in turn often requires an assessment of evidence provided by Rwandan authorities in support of the extradition request. According to interviews carried out by REDRESS and African Rights with several national authorities and lawyers in Europe, a more prompt reply to information requests would speed up extradition procedures considerably.⁷⁶

In addition to collaboration on arrests and extradition proceedings, a considerable number of European countries have carried out their own investigations in Rwanda. **Belgian, British, Danish, Dutch** and **Finnish** authorities for instance travelled several times to Rwanda to investigate the allegations against suspects living on their territory. Close cooperation before, during and after the investigation can cover basic issues, for example exchanging contact details for judicial/legal counterparts in Rwanda, of translators and civil society organisations with expertise in Rwanda, and the names of relevant witnesses interviewed in Rwanda as well as in third countries to prevent 'witness fatigue', subject to appropriate security and confidentiality protocols. Discussing experiences can only make investigations more effective.

⁷¹ For further Interpol activities on the fight against impunity for serious international crimes see <http://www.interpol.int/Public/CrimesAgainstHumanity/default.asp> (last accessed August 2008).

⁷² Interpol media release 23 June 2007, 'Interpol co-ordination on three continents leads to capture of Rwandan genocide fugitive', available at <http://www.interpol.int/Public/ICPO/PressReleases/PR2007/PR200726.asp> (last accessed August 2008).

⁷³ See Annex III for an overview of arrests and ongoing proceedings in European countries.

⁷⁴ Ibid.

⁷⁵ For further information on the case see TRIAL at www.trial-ch.org/en/trial-watch/profile/db/facts/sylvere_ahorugeze_476.html (available at August 2008).

⁷⁶ REDRESS and African Rights telephone interview with Finnish official, 11 August 2008; email correspondence with Danish official, 29 July 2008; interview with French lawyer, 1 July 2008.

European practitioners attending the EU Network Meeting, as well as the African Rights & REDRESS Conference on Extradition, spoke of the help they have received from Rwandan authorities in their investigations in Rwanda. **Jean-Bosco Mutangana**, Senior Prosecutor, Head of Rwanda's Fugitive Tracking Unit, detailed the benefits of effective collaboration based on the many visits that European investigators have paid to Rwanda.

Referring to the extradition cases in the United Kingdom, he outlined how, for 18 months, the United Kingdom maintained a permanent liaison officer, and gave technical assistance which helped to develop the capacity of the staff of the Genocide Fugitive Tracking Unit.

It is equally important for national authorities to cooperate closely with civil society and in particular victims' organisations and to ensure they are adequately informed about the progress made in their cases. Very often, it is private complainants and/ or civil society organisations that filed complaints and provided national authorities with valuable information about a particular suspect. Yet many proceedings can last for years and victims often will not know what has happened to their complaint. Similarly, the non-transparent manner in which complaints are handled prevents victims and organisations from knowing about potential obstacles. And where the case has been on-going for several years, it leaves them with a feeling of powerlessness.⁷⁷

C. The ICTR's Rule 11 bis and the Transfer of Cases to Rwanda and to Third Countries

While the majority of European countries where genocide suspects have been arrested are still considering whether their extradition to Rwanda is feasible, the ICTR has already rendered three important decisions regarding the transfer of ICTR cases to the Rwandan judiciary.⁷⁸

i. The Completion Strategy

In the context of its completion strategy, the Tribunal has to complete all first instance trials by **2008**, and all appeals by **2010**.⁷⁹ To accomplish these ambitious deadlines, the Council called upon the Tribunal to make arrangements for the transfer of some of its cases to national jurisdictions. In this context, the UN Tribunal for Rwanda adopted Rule 11 bis to regulate the transfer of cases from the Tribunal to national jurisdictions.⁸⁰ The UN Security Council's completion strategy was based, to a large extent, on a successful 11bis regime. Yet there are too few national jurisdictions which are able as well as willing, as required by Rule 11bis (A), to take over the cases from the Tribunal. So far, the only country where two cases could be referred to was **France**.⁸¹ Transfers to **Norway**⁸² and The **Netherlands**⁸³ failed for legal reasons

⁷⁷ See further below, pages 37-41.

⁷⁸ *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR- 97-36-R11bis, 28 May 2008; *The Prosecutor v Gaspard Kanyarukiga*, Case No. ICTR- 2002-78-R11bis, 6 June 2008; *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-11bis, 19 June 2008; the Prosecutor filed two more cases with the Court for transfer to Rwanda: *The Prosecutor v Jean Baptiste Gatete*, Case No. ICTR- 2000- 61-1 and *The Prosecutor v Fulgence Kayishema*, Case No. ICTR- 01-67-I (at the time of writing, Fulgence Kayishema was still at large).

⁷⁹ Security Council Resolution 1503, 28 August 2003.

⁸⁰ Rules of Procedure and Evidence, Rule 11 bis, available at <http://69.94.11.53/ENGLISH/rules/080314/080314.pdf> (last accessed August 2008).

⁸¹ *The Prosecutor v. Laurent Bucyibaruta*, Case No. ICTR- 05-85-I <http://69.94.11.53/ENGLISH/cases/Bucyibaruta/decisions/070711.pdf> and *The Prosecutor v Wenceslas Munyeshyaka*, Case No. ICTR- 2005-87-I <http://69.94.11.53/ENGLISH/cases/Munyeshyaka/decisions/071120.pdf> (last accessed August 2008).

⁸² *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-AR11bis available at <http://69.94.11.53/ENGLISH/cases/Bagaragaza/decisions/300806.htm> (last accessed August 2008).

and transfers to **African countries** were not possible either because of a lack of capacity or necessary legislation. Given the recent decisions of the Tribunal to deny transfers to **Rwanda** and subject to the outcome of pending appeals of these decisions, an extension of the Tribunal's mandate beyond the first deadline of end of 2008 appears to be necessary. The UN Security Council made a first step in this direction when it extended the mandate of ICTR judges for another year.⁸⁴ Also, during the Conference, the Acting Chief of Prosecutions of the ICTR, **Richard Karegyesa**, said that the ICTR would ask for a year's extension from the Security Council if the refusals to transfer defendants to Rwanda were upheld on appeal.

ii. Rule 11 bis of the Rules of Procedure and Evidence

George Mugwanya, Senior Appeals Counsel at the ICTR, gave details about the application of Rule 11bis in practice. It is for the Prosecutor to apply to the Court if he wants a particular case to be transferred from the Tribunal to a national jurisdiction. The President of the Tribunal will then designate a Trial Chamber to examine the application, as well as responses that may be made by the accused. The chamber will only accept the Prosecutor's request for referral once it is satisfied that all the conditions set out in Rule 11 bis are met by the relevant jurisdiction:

- 11 bis (A): a *competent national jurisdiction* is a jurisdiction
 - (i) in whose territory the crime was committed; or
 - (ii) in which the accused was arrested; or
 - (iii) which has jurisdiction and is willing and is prepared to accept the referral

- 11bis (C): *Penalty Structure and Fair Trial*

“in determining whether to refer the case in accordance with paragraph (A), the Trial Chamber shall **satisfy itself** that the accused will receive a **fair trial** in the courts of the State concerned and that the **death penalty will not be imposed** or carried out”.

D. Three ICTR Trial Chambers Decisions

Three differently composed Trial Chambers considered in detail whether Rwanda fulfils the 11 bis requirements and whether, accordingly, a transfer to Rwanda could proceed. While their reasoning differed in some respects, **Mr. Mugwanya** summarised how all three Chambers came to the conclusion that **Rwanda does not yet meet the requirements of Rule 11 bis** and therefore denied the transfer of cases from the Tribunal to Rwanda for the time being.

i. Legislative framework/command responsibility

- The Trial Chamber in *The Prosecutor v. Ildephonse Hategekimana* on 19 June 2008 denied the referral to Rwanda, *inter alia*, on the basis that it was not aware that

⁸³ For further information on the case of Michel Bagaragaza see TRIAL at http://www.trial-ch.org/en/trial-watch/profile/db/legal-procedures/michel_bagaragaza_378.html (last accessed August 2008).

⁸⁴ UN Security Council extends terms of office for Rwanda tribunal judges, unanimously adopting resolution 1824 (2008), available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/YSAR-7GNMN9?OpenDocument> (last accessed August 2008).

Rwanda criminalises command responsibility – one of the modes of criminal participation with which the accused had been indicted by the Tribunal.⁸⁵

ii. Legislative framework/ penalty structure

- All three Trial Chambers in one way or another held that there was a risk for the accused, if transferred to Rwanda, to be subjected to life imprisonment with ‘special conditions’, including life imprisonment in isolation, pursuant to Rwanda’s ‘Death Penalty Law’ of July 2007.⁸⁶ Life imprisonment in isolation was considered to be equivalent to ‘solitary confinement’, which in turn may violate the right of the accused not to be subjected to ‘cruel, inhuman or degrading punishment’ and should only be used in exceptional circumstances and for limited periods.⁸⁷ Accordingly, safeguards are generally required ‘to ensure that the use of solitary confinement is not abused.’⁸⁸ The Death Penalty Law does not appear to provide such safeguards and instead of limiting the period of isolation, allows for isolation for 20 years.⁸⁹
- The Chambers held that, while Rwanda had enacted the ‘Transfer Law’⁹⁰ in March 2007, which does not provide for imprisonment with special provisions, the July 2007 Death Penalty Law made provision for such imprisonment. Both the Death Penalty and the Transfer Law provide for the repeal of contrary legal provisions in other laws. The Chambers considered the legal situation to be ‘unclear’⁹¹ and concluded that it could not ‘rule out the possibility’ that a Rwandan court will adhere to the Death Penalty Law, including its Articles 3 and 4 concerning life imprisonment in isolation.⁹²

iii. Fair Trial

The Chambers recognised that Article 13 of the Transfer Law guarantees the rights of accused persons before Rwandan courts, such as the presumption of innocence, the right to legal aid and the availability of defence counsel as well as measures to facilitate witnesses’ testimony.⁹³ However, since it was not the existence of such legislation that was disputed, but rather its application in practice, the Trial Chambers considered that it was necessary to go beyond the relevant legislation to examples of the practices of the Rwandan courts.

A number of **fair trial concerns** regarding transfers to Rwanda were voiced by the Trial Chambers, including:

⁸⁵ *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-11bis, 19 June 2008, para. 19.

⁸⁶ Organic Law No. 31/2007 of 25 July 2007 relating to the Abolition of the Death Penalty, Article 4.

⁸⁷ *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-11bis, 19 June 2008, para. 25, 78 (iii); similarly, *The Prosecutor v Gaspard Kanyarukiga*, Case No. ICTR- 2002-78-R11bis, 6 June 2008, para 104; *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR- 97-36-R11bis, 28 May 2008, para. 30.

⁸⁸ *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR- 97-36-R11bis, 28 May 2008 at para. 30 considered such safeguards to include (i) an assessment prior to the imposition of the punishment of the prisoner to determine whether imprisonment in isolation is a necessary and appropriate punishment, (ii) a right of review by a judicial body to determine whether continued isolation remains necessary and proportionate; and (iii) Arrangements aimed at providing a range of activities to ensure appropriate human contact and mental and physical stimulation.

⁸⁹ *Supra*, n 86.

⁹⁰ Organic Law 11/2007 of 16 March 2007 Concerning Transfer of Cases to the Republic of Rwanda from the ICTR.

⁹¹ *The Prosecutor v Gaspard Kanyarukiga*, Case No. ICTR- 2002-78-R11bis, 6 June 2008, para. 96.

⁹² *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-11bis, 19 June 2008, para. 23.

⁹³ See *The Prosecutor v Gaspard Kanyarukiga*, Case No. ICTR- 2002-78-R11bis, 6 June 2008, para. 29.

- The Chambers were not satisfied that the accused will be in a position to call witnesses residing in- and outside Rwanda to the same extent and in the same manner as the Prosecution, which in turn may jeopardise the right to equality of arms.
- Regarding witnesses **inside Rwanda**, the Chambers recognised that the Defence may encounter problems in obtaining witnesses inside Rwanda because they might be too afraid to testify. In this respect, the Chambers refer to concerns regarding the Rwandan **witness protection** programme⁹⁴ and the fear of witnesses that they will be prosecuted under Rwandan legislation referring to '*genocide ideology*', which, according to the chambers has been broadly construed to denounce individuals and institutions.⁹⁵
- According to the Chambers, most defence witnesses reside **outside Rwanda**, and may fear intimidation and threats if they went to Rwanda to testify.⁹⁶ Noting Article 28 of the Tribunal's Statute, which obligates states to cooperate with the Tribunal with regard to securing the attendance and/or the evidence of witnesses, the Chambers held that they were not satisfied that Rwanda was in a similar position to achieve the same goal, and according to them, there was no evidence, or they were not aware that Rwanda had taken steps to achieve that, for example by concluding, or participating in **mutual assistance arrangements** with other states in criminal matters.⁹⁷ According to the Chambers, if the defence was to obtain their testimony with **video link**, while the Prosecution's witnesses appeared in person, this would put the defence at a disadvantage, because it is preferable to hear direct witness testimony.⁹⁸
- In addition to these common grounds for denying transfers to Rwanda, the Trial Chamber in the Munyakazi decision also denied the transfer on the ground that in its view Rwanda does not respect the **independence of the judiciary**. The chamber based its conclusion on Rwanda's negative reaction to indictments of Rwanda's officials by foreign national judges and its reaction to an ICTR decision handed down in 2000 for the release of an accused, Barayagwiza.⁹⁹ The other two Trial Chambers in the following two other cases did not share this assessment and did not conclude on the basis of the facts presented to them, that the judiciary was not independent.
- The Munyakazi decision also took account of the fact that Rwanda's High Court (which will act as a court of first instance for all transferred cases) is presided over by one judge. Noting that serious violations of international law may be tried by a single judge, the chamber concluded that a single judge sitting in Rwanda would particularly be susceptible to external pressure and that 'sufficient guarantees against outside

⁹⁴ *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR- 97-36-R11bis, 28 May 2008, para. 62.

⁹⁵ *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR- 97-36-R11bis, 28 May 2008, para. 61; *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-11bis, 19 June 2008, para. 66; *The Prosecutor v Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis, 6 June 2008, para. 71-73.

⁹⁶ *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR- 97-36-R11bis, 28 May 2008, para. 63; *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-11bis, 19 June 2008, paras. 67-68; *The Prosecutor v Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis, 6 June 2008, paras. 75 and 104.

⁹⁷ *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR- 97-36-R11bis, 28 May 2008, para. 64; *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-11bis, 19 June 2008, para. 69; *The Prosecutor v Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis, 6 June 2008, para. 77.

⁹⁸ *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR- 97-36-R11bis, 28 May 2008, para. 65; *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-11bis, 19 June 2008, para. 70; *The Prosecutor v Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis, 6 June 2008, para. 79.

⁹⁹ *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR- 97-36-R11bis, 28 May 2008, paras. 41-45.

pressure are lacking in Rwanda'.¹⁰⁰ Again, this assessment was not shared by the Trial Chambers in the other two cases.

E. The Appeal by the Office of the Prosecutor

Mr. Mugwanya then outlined the Prosecutor's appeals against the Trial Chamber decisions denying the transfer of cases to Rwanda. Based on those appeals, in summary, the following issues, among others, are currently awaiting resolution by the Appeals Chamber:

i. Legislative Framework/Command Responsibility:

- With respect to the finding in the *Hategekimana* decision in relation to **command/superior responsibility**, the Prosecutor argues that the Chamber should have requested the parties for additional information to facilitate its decisions. In any case, some of Rwanda's legislation that was annexed to the Prosecutor's application for the referral of the case, and which legislation the chamber invokes with respect to other matters, provide for command/superior responsibility.

ii. Legislative Framework/Penalty Structure:

- The Prosecutor argued that the only applicable law for transfers to Rwanda from the Tribunal (as well as from other national jurisdictions) is the Transfer Law, which was enacted specifically to deal with cases transferred to Rwanda from the Tribunal and other national jurisdictions. As such, the Transfer Law is a *lex specialis* with respect to those cases, as opposed to the Death Penalty Law, which was enacted to remove the death penalty with respect to the rest of the cases not covered by the Transfer Law, namely cases not subject to transfer. The Transfer Law provides for imprisonment without any reference to detention with special conditions. The Prosecutor argued that the Death Penalty Law as *lex generalis* has no bearing on the transferred defendants, and did not repeal the Transfer Law because of **three principal reasons**:
 - The Death Penalty Law was enacted specifically to remove the death penalty with respect to cases where the death penalty still applied. It could not thus impact on the Transfer Law because the Transfer Law did not prescribe a death penalty.
 - The Death Penalty Law, in its preamble, identifies the laws it intended to affect, and it makes no mention of the Transfer Law.
 - The Chambers erred in their approach to statutory interpretation. According to the Prosecutor's appeals, the decisions ignore an established principle of statutory interpretation that as a general rule, a subsequent general statute (*lex generalis*, in this case, the Death Penalty Law) cannot be interpreted as repealing an earlier special statute (*lex specialis*, in this case, the Transfer Law), unless the general statute expressly states so, or unless the general statute is irreconcilable with or repugnant to or entirely substitutes the special statute. According to the Prosecutor's Appeal, all these requirements are lacking.

¹⁰⁰ *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR-97-36-R11bis, 28 May 2008, para. 40.

iii. Fair Trial

With respect to fair trial concerns expressed by the Chambers, the Prosecutor's appeals put forward the argument, among others, that the Trial Chambers committed errors by basing their conclusions on statements and opinions raised by the defence and amici that were not supported by evidence.¹⁰¹ In particular:

- The Prosecutor has submitted that the Defence's arguments that their **witnesses were based abroad**, and that they were unwilling to testify on reasonable grounds, were unsubstantiated. Further, it submits that the Chambers failed to take account of Rwanda's special legal framework established under the Transfer Law, which embraces an **extensive protection mechanism for witnesses** and their counsel, such as **immunity and safe passage**. The appeals also impugn the Chamber's conclusions with respect to Rwanda's current witness protection programme. According to the appeals, the fact that the programme supposedly has a small staff does not mean that this cannot change with needs. In any case, it points out, there is nothing wrong with the programme being run by the prosecution and the police.
- With respect to the alleged fears that defence witnesses would be prosecuted for **reversionism** under Rwandan '**genocide ideology legislation**', the Prosecutor has argued that there was no evidence before the Chambers to support the conclusions reached. The alleged arrest by Rwanda of defence witnesses on their return to Rwanda after testifying before the ICTR, were not supported, and there was no evidence of a nexus between the alleged arrests and the fact of their testimony before the Tribunal.
- The Prosecutor also impugns the finding in the Munyakazi case concerning alleged lack of the **independence of Rwanda's judiciary**. The Prosecutor argues that there was no evidence to support the conclusion. The Chamber, argues the Prosecutor, did not consider whether Rwanda was entitled to react negatively to indictments by foreign judges, and there was no evidence of similar reaction by Rwanda in relation to decisions by its own judges. In any case, continues the appeal, the Chamber erred by relying on Rwanda's reaction to the ICTR Barayagwiza decision handed down about ten years ago, and failed to take account Rwanda's cooperation with the Tribunal since then.
- As well, the Prosecutor challenges the approach taken in the Munyakazi decision with respect to the **composition of Rwanda's High Court**. It is argued that there was no rule of international law which stipulates that violations of international humanitarian law cannot be tried by a single judge. As well, it is argued that the Chamber failed to consider or give sufficient weight to Rwanda's comprehensive legal framework for protecting judges from external pressure. With such an extensive framework, the Prosecutor continues, the judges enjoy the presumption of impartiality and independence, and there was no evidence before the chamber to rebut that presumption.

Both the French and English courts delivered their first instance judgments allowing the extradition of suspects to Rwanda **before or immediately after** the ICTR decisions refusing

¹⁰¹ Amici curiae (Friends of the Court) intervened in all three transfer cases : opposing a transfer were Human Rights Watch and the International Criminal Defence Attorneys Association, in support of a transfer were the Government of Rwanda and Rwanda's Bar Association.

transfers to Rwanda and therefore, the ICTR decisions were not taken into account. The French decision of 2 April was overturned on 9 July 2008, weeks after the first decision of the ICTR on 28 May 2008. It remains to be seen what impact the ICTR decisions will have on the appeal of the UK decision and future judgments by other national courts.

However, as has been indicated earlier in this Report, the test of the ICTR is significantly more rigorous than that of national courts: the Tribunal needs to satisfy itself that the Rwandan judicial system fulfils the criteria of Rule 11bis, whereas the burden is on the defendant in national proceedings to 'demonstrate a strong case that he would suffer or would risk suffering a flagrant denial of fair trial in the receiving State'.¹⁰²

Further, it remains to be seen what impact the ICTR decisions will have on the Rwandan judicial system and whether it will be able to adequately address some, or all, of the concerns voiced by the Trial Chambers, thereby paving the way for ICTR transfers in the future.

III Current Arrangements in Place in Rwanda

While there are human rights concerns about Rwanda in general¹⁰³, the ICTR has distinguished these from the question of whether it was possible for the accused to get a fair trial in Rwanda. All Trial Chamber decisions emphasised the significant progress made by Rwanda in reforming and rebuilding its judicial system after the horrific events in 1994, which left its justice system in tatters.¹⁰⁴

A. Legislative and Practical Arrangements in Rwanda

Professor William Schabas, Director of the Irish Centre for Human Rights, and **Sam Rugege**, Vice President of the Supreme Court of Rwanda, outlined the current arrangements in place in Rwanda which could potentially serve to facilitate the extradition of suspects and transfer of cases to Rwanda.

i. Legislative Framework

A series of major law reforms, carried out under the auspices of the 'Rwandan Law Reform Commission', substantially improved the legal and judicial system and included a new Constitution adopted in 2003.¹⁰⁵ Other relevant legislative developments designed to facilitate transfers from the ICTR and extraditions of genocide suspects included the adoption of the 2004 Gacaca Law,¹⁰⁶ the Transfer Law¹⁰⁷ of 16 March 2007 as well as the abolition of the death penalty on 25 July 2007.¹⁰⁸

¹⁰² See above, page 14.

¹⁰³ Human Rights Watch, World Report 2008, 'Rwanda- Events of 2007', available at <http://hrw.org/englishwr2k8/docs/2008/01/31/rwanda17828.htm> (last accessed August 2008);

¹⁰⁴ The Prosecutor v. Yussuf Munyakazi, Case No. ICTR- 97-36-R11bis, 28 May 2008, para. 67; The Prosecutor v. Ildephonse Hategekimana, Case No. ICTR-00-55B-11bis, 19 June 2008, para. 78; The Prosecutor v Gaspard Kanyarukiga, Case No. ICTR-2002-78-R11bis, 6 June 2008, para. 104.

¹⁰⁵ Rwandan Constitution, adopted in Referendum on 26 May 2003; in particular relevant for transfers and extraditions is Article 190 according to which treaties, which Rwanda has ratified, are more binding than organic and ordinary laws. Rwanda has ratified the Genocide Convention of 1948 as well as all four Geneva Conventions and Additional Protocols.

¹⁰⁶ Organic law No. 16/ 2004 of 19 June 2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts.

¹⁰⁷ Organic Law 11/2007 of 16 March 2007 Concerning Transfer of Cases to the Republic of Rwanda from the ICTR.

¹⁰⁸ Organic Law No. 31/2007 of 25 July 2007 relating to the Abolition of the Death Penalty.

Referring to the ICTR's decision in the case of Hategekimana, where it held that Rwandan legislation lacked provisions for command responsibility, **Professor Schabas**, pointed out that Rwanda had enacted legislation in 1996 which, based on Article 6 (3) of the Statute of the ICTR, provided for 'superior responsibility'.¹⁰⁹ Although the 1996 legislation was repealed in 2004 by the 'Gacaca Law', that law also provided for superior responsibility in its Article 53.¹¹⁰

ii. Penalty Structure

The contentious issue related to Rwanda's penalty structure is the applicability of legislation¹¹¹ as well as the interpretation of the relevant provisions in the Death Penalty law in the absence of further legislation specifying exactly the meaning of isolation/ life imprisonment with 'special conditions'. While the Prosecutor's appeal goes into detail regarding the applicability issue, **Professor Schabas** emphasised that the 'Transfer Law' explicitly refers to the United Nations 'Body of Principles for the Protection of all Persons Under any Form of Detention or Imprisonment'¹¹², providing a 'layer of protection', since these Principles explicitly state that a prisoner shall be entitled to visits from his family and be in a position to communicate 'with the outside world'. According to **Professor Schabas**, the Chambers therefore

"Thousands of suspects have so far been tried [before Rwandan courts] and there was no outcry that they have not been tried fairly. What is so special about these few people in Europe and Arusha that when they come to Rwanda they may not receive a fair trial? What value are we giving to these few people living abroad, living in comfort as opposed to their compatriots who have been tried and faced justice in their own country"?

Sam Rugege, Vice President of the Supreme Court, Rwanda

'probably exaggerated the difficulties posed by the prospect of detention in 'isolation''¹¹³. Nevertheless, he expressed hope that Rwanda would take up this issue so that it does not come before the Appeals Chamber again in the future.

iii. Availability of Defence Witnesses

Addressing the ICTR's decision not to transfer cases to Rwanda because witnesses from abroad may refuse to come to Rwanda to testify, **Mr. Rugege** argued that the majority of witnesses are to be found in Rwanda while only a small minority of witnesses lived abroad.¹¹⁴

In none of the referral cases was the defence asked to specify, in numerical terms, how many of their witnesses are living abroad, so it is difficult to assess the viability of their argument, **Mr Rugege** added. His assessment was shared by **Professor Schabas**. Accordingly, the problem of

¹⁰⁹ Organic Law No. 08/96 of 30 August 1996 on the Organisation of Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity committed since 1 October 1990, Article 6 (3).

¹¹⁰ Organic law No. 16/ 2004 of 19 June 2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts, Article 53.

¹¹¹ On this point see above, the ICTR Prosecutor's Appeal, page 28.

¹¹² *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, GA resolution 43/173, 9 December 1988, available at http://www.unhchr.ch/html/menu3/b/h_comp36.htm (last accessed August 2008).

¹¹³ William Schabas, Transfer and Extradition of Genocide Suspects to Rwanda, paper prepared for the conference entitled "The Extradition of Rwandese Genocide Suspects to Rwanda: Issues and Challenges", hosted by REDRESS and *African Rights*, 1 July 2008, page 17.

¹¹⁴ Sam Rugege pointed out that this also has an impact on universal jurisdiction trials, given the expenses involved in flying witnesses abroad and considering that some of them might be too old or unwilling to travel.

finding defence witnesses has existed since the establishment of the Tribunal, yet it did not stop the Tribunal from issuing judgments in other cases.

With respect to witnesses living **outside Rwanda**, the Prosecutor argued before the ICTR to allow testimony by video-link or videoconference. As outlined above, the Trial Chambers did not agree that this was a satisfactory solution as it may violate the right of the accused to a fair trial if the prosecution witnesses were heard in court, while most of the defense witnesses could only testify via video link. **Professor Schabas** outlined that testimony via video link is a common procedure in many jurisdictions and that for instance the European Union Convention on Mutual Legal Assistance of 2000 provides for testimony by video-link.¹¹⁵

The argument that testimony of witnesses- living in and outside Rwanda- are difficult to find should therefore only hold up before the Chamber as far as “important witnesses, who are central to the defence case” are concerned.¹¹⁶ This in turn would require the defence to demonstrate to the Chamber the importance of the witnesses it wants to testify and it is insufficient to simply state that the witnesses are too afraid to testify, without knowing on which issues they will testify.

iv. Prison Standards

Although prisons in Rwanda are still overcrowded by international standards, with the attendant risks that this involves, there have been substantial improvements in recent years.¹¹⁷ The suspects who will be transferred or extradited will further be placed in especially created prison facilities, Mpanga prison, and adequate remand cells in Kigali Central prison. The standards in both prisons (for suspects who are transferred or extradited) is such that the ICTR considered both to meet international standards. On 4 March 2008, it concluded a sentencing agreement with the Rwandan Government, stating that ‘Rwanda has made significant progress in ensuring it meets the necessary standards of prisons to accommodate ICTR convicts’.¹¹⁸ Consequently, neither the ICTR nor the UK decision considered prison conditions in Rwanda to be an obstacle to a transfer/ an extradition to Rwanda.

v. Independence and Capacity of Rwandan Judiciary

Transferred cases will be heard in the High Court at first instance and by the Supreme Court on appeal. Though it is not yet clear whether it will be one or three High Court judges who will hear the first instance trial, the ICTR in two decisions did not consider the composition of the High Court with only one judge an impediment to a transfer.¹¹⁹ Currently, there are 26 High Court judges, who must have at least 6 years experience. There are 14 Supreme Court judges, who must have at least 8 years professional experience. Since the law reform in 2003, **Mr.**

¹¹⁵ Supra, n113, page 40-41.

¹¹⁶ The test applied by the ICTY in the case of *The Prosecutor v Tadic*, Case No. IT- 94-1-A, 15 July 1999, para. 55, which is referred to by the ICTR in its decision in *Hategekimana*, para 71, fn. 76.

¹¹⁷ According to an interview carried out by African Rights & REDRESS with an international expert in Kigali on 29 April 2008, the prison population has come down from over 100,000 a year ago to about 58,000 today.

¹¹⁸ UN News Centre, Rwanda reaches deal to enforce sentences imposed by UN Genocide Tribunal 5 March 2008, <http://www.un.org/apps/news/story.asp?NewsID=25862&Cr=rwanda&Cr1=> (last accessed June 2008).

¹¹⁹ *The Prosecutor v Hategikamana*, Case No. ICTR –00-55B-R 11bis, para. 46; *The Prosecutor v Kanyarukiga*, Case No. ICTR – 2002-78-R11bis, para.40; However, the Trial Chamber in *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR- 97-36A- 1 R11bis, held that one reason why the case could not be transferred to Rwanda was the lack of the independence of the judiciary, para. 48.

Rugege said that judges need to be legally qualified and that today there are only five judges in all of Rwanda, who are at the first instance court and who do not have law degrees and they are in their last year to complete their legal studies.

Judges are required by law to dispose of cases 6 months after they have been filed and to read judgement within 30 days after a case has been completed. These measures are aimed at dealing with the backlog of cases.

All judges have been trained during workshops organised in conjunction with international tribunals on international criminal law and procedure, added **Mr. Rugege**, and he further argued that Rwandan courts have in depth experience in dealing with the complexities of genocide cases, accumulated over the past thirteen years. Referring to the two decisions which did consider the Rwandan judiciary to be independent, he emphasised that the legal framework for appointing judges is independent and that the constitution guarantees their independence,¹²⁰ that being evident by the rate of acquittal which, according to **Mr Rugege**, can be considered a measure of independence.

vi. Practical Arrangements

The legislative reforms went hand in hand with the establishment of facilities designed to overcome the backlog of cases, and at the same time to pave the way for the transfer of cases from the ICTR as well as extradition cases from third countries.

Apart from new prison facilities, new courtroom facilities were built in the Supreme Court, providing it with new technical equipment and enabling it to hear more cases. Arrangements have been made to have witnesses testify via video link, yet it was criticised by the ICTR and others that there is no legislation in place that allows witnesses to testify via video link. However, since the arrangements are already in place, such a law, if required could be passed immediately according to **Mr. Rugege**.

In November 2007, the Rwandan Government approved the establishment of a '**Genocide Fugitive Tracking Unit**' within the National Prosecution Services, composed of a Senior Prosecutor, three prosecutors and three police officers. The unit is solely focused on genocide fugitives and provides authorities in other countries with information on fugitives residing there and assists these authorities during their investigations in Rwanda.

While the Rwandan Bar Association was decimated during the genocide, today it counts approximately 280 lawyers, some of whom have experience in defending genocide cases.¹²¹ A solution to overcome the lack of experienced lawyers for the time being would be for suspects who are transferred or extradited, to be represented by a foreign lawyer of their own choice.¹²²

¹²⁰ The Constitution of Rwanda, adopted in a Referendum on 26 May 2003, Article 140.

¹²¹ The Prosecutor v Yussuf Munyakazi, Case No. ICTR- 97-36A-1, Amicus Curiae Brief of the Republic of Rwanda in the Matter of an Application for the Referral of the above case to Rwanda pursuant to Rule 11bis, para.32. According to Human Rights Watch, the number is 274, see Amicus Curiae Brief of HRW, filed in the case of The Prosecutor v Fulgence Kayishema, Case No. ICTR- 2001-67-I, para 73.

¹²² Article 15 of the Organic Law 11/2007 of 16 March 2007 Concerning Transfer of Cases to the Republic of Rwanda from the ICTR; African Rights & REDRESS interview with representative of civil society in Rwanda, Kigali, 24 April 2008.

B. Human Rights and Fair Trial Concerns

The fine line between general human rights concerns and issues of fair trial contribute to an often polarised debate rendering an objective assessment of Rwanda's justice system difficult. Proponents of extraditions and transfers to Rwanda and who spoke at the conference and beyond, argue that considerable progress has been made by Rwanda over the past years and that legislative reforms, alongside practical improvements in the judicial sector are sufficient to allow for these cases to be tried in Rwanda. This assessment is shared by those with a general preference to have crimes adjudicated by the judiciary of the country where the crimes were committed.

At the same time there are those, also represented at the conference and beyond who, although acknowledging that considerable progress has been made, are opposed to transfers and extraditions, based on concerns about Rwanda's' current ability to render justice according to international (fair trial) standards. The main concern of opponents to extraditions to Rwanda appear to be Rwanda's ability and willingness to implement legislation that guarantees fair trial rights, into practice.

These human rights and fair trial concerns need to be considered by those assessing the viability of extraditions, even though it might be difficult for officials and courts to fully assess the concerns, given the fact that certain sources of civil society reports may need to be protected. The tension between the need to protect sources and the (legal) requirement to be transparent is difficult to overcome and will have to be examined on a case to case basis.

Alison des Forges, Senior Advisor of Human Rights Watch's Africa Division, raised a number of concerns, ranging from judicial independence and genocide ideology to the availability of defense witnesses.

i. Judicial Independence

Ms des Forges emphasised that one out of three ICTR Trial Chambers raised some serious questions about the independence of Rwanda's judiciary.¹²³ While the Rwandan legislation does guarantee the autonomy of the judiciary,¹²⁴ in practice, according to **Ms. des Forges**, there is potential for outside pressure on the judiciary to deal with cases in a certain manner. For instance, judges up to the High Court, which will try genocide cases, have to fulfil a quota of 60 cases per month, thereby increasing the likelihood of their promotion.¹²⁵ This, she feared, added to a general great reluctance among judges of conventional (as opposed to Gacaca) courts to take up complex and time consuming genocide cases, which may negative impact on their quota.¹²⁶

A recent amendment to the Rwandan Constitution provided additional reason for concern, **Ms. des Forges** argued: while previously judges were appointed for life, the amendments to Rwanda's Constitution included, in Article 25, a limitation of the tenure of judges, including of the High Court, to a 'determined term of office renewable every time by the High Council of

¹²³ *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR- 97-36-R11bis, para. 48.

¹²⁴ *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR- 97-36-R11bis, para. 48.

¹²⁵ Human Rights Watch reports that out of a total of nearly 23,000 cases between January 2005 and March 2008, 222 cases were genocide cases, see Human Rights Watch, 'Law and Reality: Progress in Judicial Reform in Rwanda', July 2008, page 28, available at <http://hrw.org/reports/2008/rwanda0708/> (last accessed August 2008).

¹²⁶ *Ibid*, page 29

the Judiciary in accordance with the provisions, by the law relating to their status, after evaluation'.¹²⁷ This has, she added, the potential to render judges more susceptible to outside pressure in order for their tenure to be renewed.

ii. Legislative Framework/Penalty Structure

The question of which law will be applicable for transfer and extradition cases before a Rwandan court- the 'Transfer Law' of March 2007 or the 'Death Penalty' Law of June 2007 with its provisions for life imprisonment with solitary confinement has so far **not** come before the Rwandan courts. **Ms. des Forges** therefore argued, that, as a judicial matter and in combination with the concerns as to the independence of the judiciary, it is not possible to know how the Rwandan courts will decide which laws to apply and whether they will be following the argument of the ICTR prosecutor.

"It is rather a technical question whether or not to have witness testimonies permissible by video, which can cut both ways. At the heart of the matter is whether people will feel safe when telling the truth".

**Alison des Forges, Senior Africa
Advisor, Human Rights Watch**

The fact that the penalty of solitary confinement was incorporated, in May 2008, into legislation amending the jurisdiction of Gacaca courts and that Parliament is considering the inclusion of life imprisonment in solitary confinement into the code of criminal procedure was, **Ms. des Forges** said, cause for concern.¹²⁸ And she added that Rwanda's "dynamic judicial system," which had seen considerable changes, meant that laws and the rights of prisoners in Rwanda can change quickly, creating the danger that guarantees which had been given in the context of transfers and extraditions could be revoked.

iii. Availability of Defense Witnesses

- 'Genocide Ideology'

Ms. des Forges also underlined that the term 'genocide ideology' is not properly defined under Rwandan law.¹²⁹ Article 13 of the Rwandan Constitution specifies that 'revisionism, negationism and trivialisation of the genocide are punishable by law',¹³⁰ while Article 4 of a 2003 law punishing genocide, crimes against humanity and war crimes prohibits 'denial, gross minimalization, and any attempt to justify or approve of genocide'.¹³¹ None of these terms are further defined, but, under the 2004 legislation, persons convicted for violation of Article 4 are

¹²⁷ Article 25 of Draft Amendment of the Constitution of the Republic of Rwanda, June 2008, see also Rwanda Gateway, 'Parliament amends Constitution, 25 June 2008, at http://www.rwandagateway.org/article.php?id_article=9483 (last accessed August 2008).

¹²⁸ Supra, n124, page 32.

¹²⁹ The Rwandan Parliament in June 2008 adopted the 'Genocide Ideology' Law, which, at the time of writing was awaiting the signature of the President and publication in the Official Gazette to become law, e-mail conversation with Jean Bosco Mutangana, Senior Prosecutor, Head of Fugitives Tracking Unit, 12 August 2008; see also Human Rights Watch 'Law and Reality: Progress in Judicial Reform in Rwanda', July 2008, page 41- 43.

¹³⁰ The Rwandan Constitution of 23 May 2008, Article 13, available at http://64.233.183.104/search?q=cache:h7KLN2Y6QQJ:www.cjcr.gov.rw/eng/constitution_eng.doc+rwandan+constitution&hl=en&ct=clnk&cd=1 (last accessed August 2008).

¹³¹ Law No 33 Bis/ 2003 Repressing the Crime of Genocide, Crimes against Humanity and War crimes, 06/09/2003, Article 4, available at http://www.amategeko.net/display_rubrique.php?ActDo=ShowArt&Information_ID=1191&Parent_ID=30692296&type=public&Langue_ID=An&rubID=30692299#30692299 (last accessed August 2008).

liable to a minimum of 10 years and a maximum of 20 years imprisonment¹³². According to Human Rights Watch's research, this is one reason for witnesses, including genocide survivors, to refuse to testify out of fear of being accused of spreading 'genocide ideology'.¹³³

- Witness Protection

The Rwandan government established a witness protection service in 2005 which, until November 2007, has assisted more than 900 persons. Nevertheless, the funding for the service, run by approximately 16 persons, is limited and it is more of a 'referral agency' as it refers all cases of threats to witness or victims to local police and is further part of the prosecutor's office. This has raised the fear that that witnesses for the defence will be more unlikely to rely on the assistance of the service, thereby rendering it more difficult for the defence to obtain witness testimonies¹³⁴. Indeed, Ms. des Forges highlighted how nine defence witnesses, who testified in a genocide trial at the ICTR in 2008 were threatened by a representative of the witness protection service after having asked for protection¹³⁵.

Refuting the arguments that trials of high level suspects in Rwanda would necessarily restore victims' faith in justice, **Ms des Forges** said that the current trial of the former Minister of Justice had failed to attract media attention and was little known among survivors living outside Kigali, in sharp contrast to the prosecution of four suspects in Belgium.¹³⁶ It remains to be seen whether this would change with respect to a high level suspect who was transferred or extradited to be tried before in Rwanda. However, pointing out that conventional courts, since the reforms in 2005, had only tried few genocide cases and took a long time, and saying the high rate at which Gacaca courts dealt with genocide had not brought justice for the victims, **Ms des Forges** questioned whether the current system is capable of satisfying the victims. For the time being, she suggested, it might be better to have cases tried in an independent and impartial judicial system, even if it means that suspects are tried abroad.

IV Universal Jurisdiction as an Alternative to Extradition

Karine Bonneau, Director of FIDH's International Justice Program, emphasised that universal jurisdiction proceedings can fill the impunity gap resulting from the absence of an extradition treaty and other obstacles that may prevent an extradition to Rwanda, especially in light of the recent ICTR decisions. In previous proceedings in Belgium¹³⁷ and Switzerland,¹³⁸ the Rwandan

¹³² Ibid

¹³³ Human Rights Watch 'Law and Reality: Progress in Judicial Reform in Rwanda', July 2008, page 34ff.

¹³⁴ Amicus Curiae of Human Rights Watch, para 85- 87. These concerns were shared by the Tribunal in the case of *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR 97-36-R11bis, 28 May 2008, para 59- 66.

¹³⁵ See further Human Rights Watch, 'Law and Reality: Progress in Judicial Reform in Rwanda', July 2008, page 77-78.

¹³⁶ *La Cour d'Assises de Bruxelles*, verdict of 8 June 2001; see 'Genocide survivors welcome Belgian verdict, at www.hirondelle.org/hirondelle.nsf/caefd9edd48f5826c12564cf004f793d/655dbe9da551e5fec1256a69004272e7?OpenDocument (last accessed August 2008).

¹³⁷ The 'Rwanda cases' before Belgian courts were the 'Butare Four' case in 2001: *La Cour d'Assises de Bruxelles*, verdict of 8 June 2001; see 'Genocide survivors welcome Belgian verdict, at www.hirondelle.org/hirondelle.nsf/caefd9edd48f5826c12564cf004f793d/655dbe9da551e5fec1256a69004272e7?OpenDocument (last accessed August 2008); the 'Kibungu' case in 2005: *La Cour d'Assises de Bruxelles*, verdict of 29 June 2005; see <http://news.bbc.co.uk/2/hi/africa/4635637.stm> (last accessed August 2008); the case of Bernard Ntuyahaga: *La Cour d'Assises de Bruxelles*, see *Avocats sans Frontières, Les Assises Rwanda 2007, Le Procès de Bernard Ntuyahaga*, at http://www.asf.be/publications/Publications_rwanda_assises_2007_fiche_08_05.pdf (last accessed August 2008).

¹³⁸ The Swiss *Tribunal Militaire d'Appel* 1A on 26 May 2000 convicted Fulgence Niyonteze to 14 years imprisonment and 15 years expulsion from Switzerland for war crimes and instigation of war crimes.

Government had not challenged the respective countries' jurisdiction under international law to bring genocide suspects to justice before their own courts.

A. Universal Jurisdiction & Genocide Suspects in France- The Perspective of Victims

Victims in France have filed up to 13 complaints so far and are still waiting for the first trial of a Rwandan genocide suspect to start before French courts.¹³⁹ The European Court of Human Rights in 2004 condemned France for the inexcusable delays in proceedings against Father Wenceslas Munyeshyaka, a case in which victims filed complaints with French authorities in 1995.¹⁴⁰ However, as **Alain Gauthier**, President of the *Collectif des Parties Civiles pour le Rwanda* outlined in his intervention, the situation is slowly improving in France, where 6 suspects have been arrested since June 2007: three on the basis of an international arrest warrant issued by Rwanda¹⁴¹, and who are currently awaiting their extradition to Rwanda and three suspects wanted by the ICTR, two of whom will be tried by French courts,¹⁴² with the third having been transferred to the ICTR on 5 June 2008.¹⁴³

Despite the progress over the past year, survivors filing complaints with national authorities in France are still confronted with a number of serious obstacles in their fight against impunity, a fight that was described by **Mr. Gauthier** as 'David against Goliath'. For instance, he said that when the Collectif first tried to file a complaint against Dominique Ntawukulilyayo with the courts in Carcassonne, they were told that their organisation was too 'young' as it had not existed for five years, a requirement under French law for an organisation to file a complaint as *parties civiles*. The Collectif then submitted the complaint on behalf of 30 Rwandan nationals, victims of Dominique Ntawukulilyayo. The Tribunal declared itself incompetent, as it did not find the suspect at the address provided by the Collectif. However, when he was finally arrested in October 2007, he was found to be living at exactly the address provided by the Collectif a year earlier to the Court.

A major problem, according to **Mr Gauthier**, appears to be the lack of resources available to the two investigative judges within the Paris jurisdiction, who are currently in charge of all Rwanda case files in addition to their day-to-day work on other domestic crimes.

Commenting on the lack of resources available to the French judiciary to tackle the challenges involved in investigating and prosecuting serious international crimes, the **French delegate** from the Ministry of Justice drew attention to what she described as tangible political and judicial will in France to fight impunity. Accordingly, it is likely that this will result in the

¹³⁹ See the website of the *Collectif des Parties Civiles pour le Rwanda*, <http://www.collectifpartiescivilesrwanda.fr/> (last accessed June 2008).

¹⁴⁰ *Ibid.*

¹⁴¹ On the arrest of Isaac Kamali see above, page 25; Marcel Bivugabagabo was arrested in Toulouse, France, on 8 January 2008, see Interpol Media Release, 9 January 2008, 'Close Co-operation between Rwanda, Interpol and French police leads to arrest of yet another Rwandan genocide fugitive, at www.interpol.int/public/News/2008/RwandanFug20080109.asp (last accessed August 2008); Claver Kamana was arrested by French authorities on 26 February 2008, see Interpol Media Release, 28 February, Fourth Rwandan genocide fugitive subject of Interpol Red Notice arrested in France, at www.interpol.int/Public/News/2008/Rwandan20080228.asp (last accessed August 2008).

¹⁴² *Supra*, n81.

¹⁴³ ICTR Press Release, 'Ntawukulilyayo Transferred to Arusha, 6 June 2008, available at <http://69.94.11.53/ENGLISH/PRESSREL/2008/567.htm> (last accessed August 2008). He was arrested on 16 October 2007 in Carcassonne, France and transferred to the Tribunal on 5 June 2008, where he pled not guilty to charges of genocide, complicity in genocide and direct and public incitement. See Press release, Dominique Ntawukulilyayo Pleads Not Guilty, 10 June 2008 at <http://69.94.11.53/ENGLISH/PRESSREL/2008/567.htm> (last accessed August 2008). It is also worth noting that France previously, in 2000, had transferred two cases to the ICTR- the case of François- Xavier Nzuwonemye and Jean de Dieu Kamuhanda.

establishment of a specialised 'war crimes' unit in France in the near future. The Ministry of Justice has been officially recommended to establish such a unit.¹⁴⁴ The French delegate underlined that French authorities are seeking contact with their counterparts in other countries in Europe to explore how best to establish a specialised unit.

EU Member States were urged to consider the creation of such units within the 'competent law enforcement authorities' by the EU Council Decision on the 'investigation and prosecution of genocide, crimes against humanity and war crimes'¹⁴⁵ of 08 May 2003. An increasing number of European countries have heeded this recommendation, setting up a specialised unit within their police, prosecution and/or immigration authorities, including **Belgium, Denmark, The Netherlands, Norway and Sweden.**

"We are of course happy about the trials in Belgium, the previous ones and the ones to come. However, having said that, what sense does it make to judge a civilian (Ephrem Nkezabera) for war crimes when the evidence clearly shows that it is rather a crime of genocide?"

Martine Beckers, President, Collectif des Parties Civiles, Belgium

The French delegate emphasised further that legislation specifically introduced in 1994 to deal with perpetrators of the genocide provides France with universal jurisdiction over the crimes committed in Rwanda in 1994. This legislation, combined with the possibilities for private parties to file complaints directly with the investigative judge, have led to the large number of complaints pending before French courts. The establishment of a specialised police unit to support investigative judges who are exclusively in charge of serious international crimes cases can help to significantly improve the current situation.¹⁴⁶

B. Universal Jurisdiction & Genocide Suspects in Belgium- The Perspective of Victims

The Belgian *Collectif des Parties Civiles*, started filing complaints against suspects in Belgium as early as 1994. It began with no resources and as such was – and is until today- dependant on lawyers acting mostly on a pro bono basis. The Collectif and other *parties civiles* were behind the three trials of a total of 7 perpetrators who were convicted in Belgium on the basis of universal jurisdiction.¹⁴⁷

Despite the success represented by these trials, **Martine Beckers**, President of the Belgian Collectif, said the activities of the Collectif involved hard work and demanded a lot of time and

¹⁴⁴ Recommendations of the 'Commission Guinchard to the Minister of Justice of 30 June 2008, available online at http://www.presse.justice.gouv.fr/art_pix/1_Synthesedespropositions.pdf (last accessed August 2008); FIDH & REDRESS, 'EU Update on Serious International Crimes', fourth edition, Summer 08, page 4, available at [www.redress.org/news/EU%20Crimes%20Bulletin%20July%2008%20\(3\).pdf](http://www.redress.org/news/EU%20Crimes%20Bulletin%20July%2008%20(3).pdf) (last accessed August 2008).

¹⁴⁵ Council Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes, available at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_118/l_11820030514en00120014.pdf (last accessed August 2008).

¹⁴⁶ Concern was voiced by conference participants about a recent legislative proposal to implement the Rome Statute and in particular Article 689- 11 of the French criminal procedural code as it significantly limits the scope of universal jurisdiction of French courts. Concerns include that cases can now only proceed against individuals who are residing in France and proceedings can only commence upon request of the prosecution and no longer on the initiative of victims/ *parties civiles*, although the latter have played a pivotal role in initiating these cases, often against the will of the prosecution; for the benefits of a specialised unit see FIDH & REDRESS, 'EU Update on Serious International Crimes', fourth edition, Summer 08, page 4, available at [www.redress.org/news/EU%20Crimes%20Bulletin%20July%2008%20\(3\).pdf](http://www.redress.org/news/EU%20Crimes%20Bulletin%20July%2008%20(3).pdf) (last accessed August 2008).

¹⁴⁷ *Supra* n 136.

resources, especially for those members who had been active since 1994, often battling in a difficult working environment.

A major disappointment, she said, is that so far none of the perpetrators were convicted for, or even charged with, the crime of genocide. Indeed, all 7 perpetrators to date were convicted for violations of international humanitarian law and war crimes. The attempt of the federal prosecution and the *parties civiles* to have another genocide suspect, Ephrem Nkezabera, arrested in Brussels in 2004, prosecuted for genocide, failed, when the Brussels '*Chambre des mises en accusation*' on 21 May 2008 decided to send the case to the *Cour d' Assises* on war crimes charges only. The Chamber based its decision on the principle of non-retroactivity of substantive criminal law.¹⁴⁸ His trial is expected to start in early 2009.

The decisions not to prosecute for genocide, **Ms Beckers** commented, are not only distressing for the victims, but are exploited by suspects and those who argue that no genocide has been committed in Rwanda.

C. Universal Jurisdiction - General Challenges for Victims Filing Complaints against Rwandese Genocide Suspects

Victims are often faced with non-transparent investigation procedures and a lack of information about the progress of their complaints, even though they carry most of the burden in getting a case off the ground by filing complaints, providing authorities with the addresses and often photos of the suspects as well as names of potential witnesses¹⁴⁹. It is often only because of their persistence that cases are progressing.

Emmanuel Daoud, member of the Legal Action Group of FIDH and lawyer of *parties civiles* in the case against Wenceslas Munyeshyaka and Laurent Buciybaruta, noted that he and the *parties civiles* were not aware whether the requests for rogatory missions in their cases, prepared by French authorities more than one year ago, had been sent to Rwandan authorities. And if so, they did not know why no rogatory missions to take witness testimonies had so far been organised.

"The trials also need to take place outside Belgium, in other European countries, in America, in Asia, in Africa, everywhere where suspects are hiding. They raise awareness about what happened in Rwanda and can respond to an essential part of our struggle, which is that none of the alleged génocidaires should feel safe anywhere in the world".

**Martin Beckers, President,
Collectif des Parties Civiles
Belgium**

The long procedural delays- in Belgium it took 6 years for the first trial to start, while in France proceedings have not started in cases that were filed 13 years ago- create difficulties for victims and their legal representatives, as money and other resources are scarce.¹⁵⁰

¹⁴⁸ Hironde News, '*Nkezabera sera juge devant les assises mais pas pour genocide*', 22 May 2008, available at <http://fr.hirondellenews.com/content/view/1419/274/>. The Prosecutor and *parties civiles* argued that Belgium had implemented the Genocide Convention already in 1951 and even though it was not included in the 1999 legislation providing Belgian courts with universal jurisdiction over serious international crimes, the offence therefore formed part of the Belgian judicial order even before 1999. The same issue arose in the case against Fulgence Niyonteze who was convicted in Switzerland for war crimes rather than genocide due to the absence of Swiss legislation on genocide at the time.

¹⁴⁹ African Rights & REDRESS interview with victims in The Netherlands, 16 April 2008; in Norway, 14 April 2008, in Belgium, 17 April; Correspondence with the Collectif des Parties Civiles pour le Rwanda in France, 20 April 2008.

¹⁵⁰ Ibid.

Victims of the genocide play a relatively minor role, or no role at all, in other jurisdictions that do not provide for the possibility to file private complaints, as for instance in **Germany, The Netherlands, Denmark and Sweden**. If investigations against genocide suspects in these jurisdictions are carried out, they are usually initiated as a result of information from immigration services, as for instance in The Netherlands and Denmark¹⁵¹, or through information about the presence of suspects in the relevant country provided by Interpol, as in Germany¹⁵², or the Rwandan Government, the media and civil society organisations, as for instance in the United Kingdom¹⁵³. However, human rights organisations and victims worry that the minor role accorded to victims can promote impunity where the political willingness to investigate against genocide suspects is solely dependant on state institutions and within the discretion of the prosecution services. The relatively large number of cases pending before French and Belgian courts and the convictions of 7 perpetrators in Belgium so far are not only due to the fact that the a large number of genocide fugitives are living in these two countries, but also because of the rights of victims to initiate proceedings as *parties civiles*.

D. Universal Jurisdiction or Extradition? A Victims' Perspective

Victims of the genocide fighting for justice in Europe are largely in favour of the extradition of the suspects to Rwanda, despite the imperfections of the Rwandan justice system, and despite their own efforts to see suspects prosecuted in courts in Europe. "The largest number possible should be tried in Rwanda", **Ms Beckers** stressed, so that perpetrators return to Rwanda face their victims.¹⁵⁴ This, in turn, will help to restore survivors' hope in justice. Victims interviewed by African Rights & REDRESS are frustrated that 14 years after the genocide, no country has extradited genocide suspects to Rwanda, claiming a lack of an extradition treaty or other obstacles.¹⁵⁵ At the same time, only Belgium, and on one occasion Switzerland, have applied domestic legislation to bring perpetrators to justice before their own courts. Where such legislation does not exist, according to **Ms Beckers**, victims expect it to be introduced. Yet, only Norway, which had failed to prosecute a Rwandan genocide suspect for genocide, introduced specific legislation with retroactive effect to ensure that genocide suspects living in Norway no longer enjoy impunity.¹⁵⁶

Fourteen years after filing the first complaint in Belgium, **Ms Beckers** said that the justifications are always the same, that there are other, more urgent issues to deal with. Still, she added, the Collectif planned to continue urging countries to pursue other avenues if extradition fails, including pushing for national jurisdictions to take over the cases on the basis of universal jurisdiction.

¹⁵¹ See for instance website of the Danish Special International Crimes Office (SICO) at <http://www.sico.ankl.dk/page34.aspx> (last accessed August 2008).

¹⁵² The arrest of and proceedings against all three suspects in Germany up to date was facilitated with the assistance of Interpol, see further below, ANNEX III.

¹⁵³ See The Guardian, 'Wanted for genocide in Kigali. Living comfortably in Bedford', 13 May 2006, available at <http://www.guardian.co.uk/uk/2006/may/13/immigration.world> (last accessed August 2008).

¹⁵⁴ This impression was shared by victims interviewed by African Rights & REDRESS.

¹⁵⁵ *Supra*, n. 149

¹⁵⁶ See FIDH & REDRESS, 31 July 2008, 'Universal Jurisdiction Developments in Europe, August 2007- July 2008' at http://www.fidh.org/IMG/pdf/UJ_developments_Aug07-July08.pdf (last accessed August 2008).

V National prosecutions – the Principle of ‘Aut dedere, aut judicare’ – Difficulties and Advantages

“Rwanda trials” in Belgium and Switzerland as well as ongoing proceedings in other countries, including **France, The Netherlands, Germany and Finland** illustrate that national authorities can make major contributions to justice, and that universal jurisdiction can be a meaningful alternative to extradition. At the same time, these cases show that a successful investigation and, where applicable, prosecution, requires considerable political will to provide resources for extraterritorial investigations. In most cases, such investigations must be based on domestic legislation that provides for jurisdiction over relevant crimes. Close cooperation of all relevant authorities on a national and international level is crucial. On a national level, this may include

immigration, police, prosecution and judicial authorities, as well as the relevant departments in the Ministries of Justice, Interior and Foreign Affairs. International cooperation in an investigation and prosecution of Rwandan genocide suspects will have to include Rwandan authorities, other countries’ authorities where witnesses might be living, Interpol and the ICTR.

In light of the current potential obstacles to extradition of suspects to Rwanda, conference participants considered whether countries are under an obligation to prosecute the suspects before their own courts, following the principle of “*aut dedere, aut judicare*”. **Gérard Dive**, Head of the International Humanitarian Law Unit of the Belgian Ministry of Justice, explained the principle as ‘the extradition of a suspect to the requesting State or the referral of the case of the suspect to the competent authorities of the requested State’.

As a general legal principle, it means that a State has to prosecute a suspect if it refused to extradite that suspect to a State that had requested his extradition. In other words, if there was no extradition request from a State with a stronger link to the crimes or the perpetrator or the victims of the crimes, no State was under an obligation to prosecute. Yet with respect to international humanitarian law, the principle has evolved over the past decades.

Today, according to **Mr Dive**, the principle can be interpreted as an obligation to prosecute unless a state has agreed to extradite on the basis of the crimes in question. The development, he said, is underscored by the meaning of the principle itself in combination with the reinforcement of States’ obligations to establish universal jurisdiction in this area of law.

- The obligation to prosecute ensures consistency in the fight against impunity without depending on the existence of an extradition request.
- The obligation to prosecute allows authorities of a State where the suspect is found to take judicial action against the suspect even in cases where the extradition is refused for reasons that do not have an impact on the prosecution.
- The obligation to prosecute underlines the common international responsibility to fight impunity.
- The obligation to prosecute can contribute to sharing the burden of prosecutions with the State where the crimes have been committed, in particular in the case of mass crimes.
- The obligation to prosecute sends a strong signal that suspects of serious human rights violations cannot benefit from impunity simply by hiding abroad.

It follows that the evolution of the principle 'extradite or prosecute' today excludes any possibility for impunity while at the same time prevents a state which implements the principle from becoming a safe haven for perpetrators of the worst crimes. The Preamble of the **Rome Statute** of the International Criminal Court supports this interpretation of the principle, confirming that serious international crimes affect the international community as a whole and requires States to take measures at the national level. It asks States Parties to enhance international cooperation to ensure that these crimes do not go unpunished, 'recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes'.¹⁵⁷

Mr Dive referred to the most recent treaty adopted by the UN in the area of international criminal law, the UN *Convention for the Protection against Enforced Disappearances* of 20 November 2006, which further underlines the development of this principle. Its Article 9 (2) reads:

*"Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction, **unless** it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized"*¹⁵⁸.

A. Aut Dedere, Aut Judicare in a National Context

The international obligation to extradite or prosecute in the context of international humanitarian law thus contains two components:

- (1) the State bound by the obligation must adapt its internal legislation to ensure it includes the obligation, unless it is directly applicable internally
- (2) the State bound by the obligation must ensure that its courts have jurisdiction to deal with relevant treaty violations, committed by a person who, after the crime, arrives or is present on the territory of the State in question

Point (2) requires States to provide their courts with universal jurisdiction. **Mr Dive** pointed out that in Belgium, all of the three 'Rwanda trials' were based on universal jurisdiction, though all of the 7 perpetrators were found to be living in Belgium. The prosecutions took place without having first refused an extradition to Rwanda. Similarly, investigations of former President Hissène Habré started in Belgium while he was in Senegal and without having first asked for his extradition.

B. Aut dedere, aut judicare: Advantages and Difficulties

Mr Dive presented some of the obstacles of a prosecution outside the territory where the crimes were committed, which may include the fact that the evidence largely exists in other

¹⁵⁷ Preamble of the Rome Statute of the International Criminal Court, paras 4 & 6, available at http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_English.pdf (last accessed August 2008).

¹⁵⁸ International Convention for the Protection of All Persons from Enforced Disappearance, adopted 20 November 2006, Article 9 (2), available at <http://www2.ohchr.org/english/law/disappearance-convention.htm> (last accessed August 2008).

countries; witnesses may have to be brought to trial from abroad; rogatory missions may need to be planned to carry out investigations abroad; the society most affected by the crimes is far removed and it is difficult to explain to a jury or a judge, who have never been to Rwanda, the crimes and the context in which they have been committed.

Past universal jurisdiction trials of Rwandan suspects, in particular in Belgium, are a clear illustration that, with the relevant political will to provide a structured approach to the fight against impunity, these obstacles can be overcome. Such an approach may include, as in Belgium and The Netherlands, the setting up of a specialised unit within the police and prosecution authorities, and focal points for serious international crimes within the Ministries of Justice, Foreign Affairs and Interior, ensuring close cooperation on a national and international level.

“We encourage the use of universal jurisdiction to try fugitives and we salute Belgium, Switzerland and Canada which have exercised such jurisdiction. At the same time, we would not be talking about extradition if every country was prosecuting the fugitives living on their territory”.
Sam Rugege, Vice President of the Supreme Court of Rwanda

Based on the experiences in Belgium, **Mr Dive** highlighted another issue that arises in the context of domestic prosecutions by third countries: once a convicted perpetrator has served his sentence and cannot be sent back to the country of origin nor receive the status of refugee because of Article 1F of the 1951 Convention.¹⁵⁹

Referring to the advantages and challenges of trials taking place abroad, **Mr Rugege** highlighted the importance for justice not only to be done, but also to be seen to be done. Survivors who have been raped or seriously injured and victims who have lost their families in Rwanda, he said, should be able to see the person tried and should be satisfied that justice was done. This is not always the case when proceedings take place abroad, he added, at a very slow pace, causing enormous frustrations among survivors. However, while expressing a preference to see suspects tried in Rwanda, he called on other countries to apply their national legislation to prosecute fugitives.

Conclusion

The conference discussions and presentations outlined a framework of the steps that need to be taken to facilitate extraditions to Rwanda in accordance with countries' obligations under the ECHR and the ICCPR. These include strengthening Rwanda's justice system to address the concerns of the ICTR and ensuring fair trial conditions, subject to the outcome of the Prosecutor's appeals. **Carla Ferstman**, Director of REDRESS, pointed out, that Rwanda and governments of third countries also need to consider how to enable Rwanda to join multilateral or to conclude bilateral extradition treaties with European countries.

Rwanda should ratify the UN Convention against Torture to establish a legal basis for extradition, which would also send a strong signal of Rwanda's commitment to international human rights conventions. Requested countries should, for their part, show a political willingness to apply a practical and innovative approach to overcome potential procedural obstacles to extradition. This was demonstrated, for instance, by the conclusion of ad hoc

¹⁵⁹ See above, pages 15-17.

agreements in the UK and the posting of a UK liaison officer to Kigali to ensure close cooperation between British and Rwandan authorities.

There was a general consensus among conference participants that the absence of an extradition, treaty or a failed extradition, must not result in the impunity of the suspect(s) living on the countries' territory. At the same time there is a great risk of an impunity gap if the obstacles to extradition are not dealt with constructively and if no alternative is found and applied. National authorities therefore need to be in a position to prosecute the alleged perpetrators before their own courts on the basis of universal jurisdiction. This will require political willingness to provide a structured approach to the investigation and prosecution of genocide suspects, including the establishment of specialised units within the immigration, police and prosecution authorities, the adoption, where necessary, of legislation providing for universal jurisdiction over serious international crimes, including the 1994 genocide, and systematic cooperation on a national and international level.

Such a two-tiered strategy is warranted and feasible in the near future so that genocide suspects who are under arrest do not fall through the net and to ensure that fugitives cannot interfere with judicial proceedings against genocide suspects in Rwanda. However, in the long term, a more constructive approach, designed to facilitate extraditions to Rwanda, and which is compatible with international human rights obligations, is imperative, given the large number of suspects living in Europe and the wish of survivors to see alleged génocidaires tried in front of their victims and in the country where they committed the crimes.

Recommendations

A. To the Rwandan Government

- Ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol relative to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This will promote human rights within Rwanda and establish a legal basis for extradition.
- Reinforce the capacity of the Rwandan prosecution services and in particular the “Genocide Fugitive Tracking Unit” to further improve co-operation with other countries.
- Continue to cooperate with the International Criminal Tribunal for Rwanda, for example by addressing the concerns voiced by the Trial Chambers with respect to the legislative framework and fair trial issues. In particular, revise legislation and draft legislation to eliminate provisions for life imprisonment in solitary confinement.
- Revise legislative provisions on ‘genocide ideology’ to specify precisely the terminology of the different laws and restrict its application to instances of ‘hate speech’.
- Increase the resources, personnel and training opportunities of the witness protection service.
- Conclude mutual legal assistance agreements in criminal matters with third countries to facilitate the attendance and evidence of witnesses from abroad, as well as cooperation with third states for the purposes of video- link or videoconference testimony.

B. To the Rwandan National Prosecution Service

- Update the May 2006 list of fugitives in third countries and provide authorities of third countries with complete case files on the suspects alleged to be living abroad.
- Continue to cooperate closely with counterparts in third countries in the extradition and the investigation of genocide suspects. Ensure that case dossiers provided to national authorities of third countries are in conformity with these countries’ formal extradition requirements and follow up on requests for further information.

C. To European governments

- Ensure that suspects of serious international crimes do not find a safe haven in your territory and, where necessary, take steps to establish accountability and justice. These should include the creation of specialised units within the immigration, police and prosecution services, and the appointment of focal points within the relevant ministries to adequately respond to extradition requests and to allegations of genocide suspects being present on each territory.

- Investigative and trial judges should be trained and their competence be focussed on serious international crimes cases to ensure timely and adequate investigations and trials.
- Ensure that domestic courts have jurisdiction to try serious international crimes irrespective of where, by whom and against whom they were committed. Such jurisdiction should be applicable retroactively to the moment when the crimes were recognised as such under international customary law, or pursuant to the State's treaty or other obligations, whichever is earlier.
- Introduce legislation implementing obligations under international law, in particular the four Geneva Conventions, the Genocide Convention, Convention against Torture and the Rome Statute of the International Criminal Court.
- Call on the Presidency of the European Union to organise specialised EU Network meetings on specific issues relevant to the presence of genocide suspects in European countries. Topics could include extradition of genocide suspects, dealing with traumatised witnesses and witness fatigue, presenting evidence collected abroad before domestic courts, assessing Rwanda's judicial system or witness protection.

D. To European National Police and Prosecution Authorities

- Ensure that information on past and ongoing investigations and prosecutions of genocide suspects is shared in an adequate and timely manner among European authorities, via Interpol's database or in a more confidential setting, the European Network of Contact Points.
- Provide Rwandan counterparts with clear guidelines of what is needed in order to initiate an investigation against a suspect allegedly living on your countries' territory and in order to proceed with an extradition.
- Ensure prompt follow up to extradition requests and to complaints submitted by parties civiles and civil society organisations regarding the presence of alleged génocidaires on your territory. Cooperate with *parties civiles* to the extent possible and keep them informed about progress made in the relevant proceedings.

ANNEX I Conference Agenda

The Extradition of Rwandese Genocide Suspects to Rwanda: Issues and Challenges

Conference – 1 JULY 2008

Ecolo, African Rights and REDRESS
With the support of the OAK Foundation

Belgian Parliament

09:00- 09:30 Registration and Coffee

09:30- 10:00 Introduction

Chair: Jürgen Schurr, Project Coordinator- Universal Jurisdiction, REDRESS

Welcome (Juliette Boulet, Member of the Belgian Parliament, Green Party)

Rwandese Genocide Suspects at Large- A Situational Analysis (Rakiya Omaar, Director, African Rights)

10:00- 10:10 Extradition- Overview and key issues (Luc Reydam, Assistant Professional Specialist, Department of Political Science, University of Notre Dame)

10:10- 11:15 Extradition to Rwanda: Themes and Standards

Chair: Humbert de Biolley, Council of Europe, Deputy Director, Brussels Office

- Extradition treaty or international law as a legal basis for extradition? (Fanny Fontaine, International Humanitarian Law Unit, Ministry of Justice, Belgium)
- Evidence (*prima facie* case) (Anne Marie Kundert, Barrister, Crown Prosecution Service, UK)
- Human rights conditions for extradition: prison facilities, due process and defense rights (Alex dos Santos, Barrister, Charter Chambers, UK)
- Article 1 F of the Refugee Convention (Caroline Cnop, Office of the Commissioner General for Refugees and Stateless Persons, Belgium)

11:15- 11:40 Discussion & Coffee Break

11:40 – 12:40 Transfer and Extradition to Rwanda : practical aspects

Chair: Luc Walley, Lawyer, Brussels, Coordinator 'International Justice', ASF

- Common Law (Bob Wood, Judicial Cooperation Unit, Extradition Section, Home Office, UK)
- Civil Law (Derek Lugtenberg, The Hague Prosecutor's Office, Netherlands)
- Cooperation between European and Rwandan authorities (Jean Bosco Mutangana, Senior Prosecutor, Head of Fugitives Tracking Unit, Rwanda)
- ICTR : Rule 11*bis* and transfer of cases to Rwanda and to third countries (George William Mugwanya, Senior Appeals Counsel, UNICTR)

12:40- 13:30 Experiences/ practices of other countries – discussion

13:30- 14 :15 Lunch

14:15- 14:45Victims’ perspective of justice and national proceedings

Chair: Karine Bonneau, Director, International Justice Program, FIDH

- a. France (Alain Gauthier, President, Collectif des Parties Civiles, France)
 - b. Belgium (Martine Beckers, President, Collectif de Parties Civiles, Belgium)
-

14:45- 15:00 National prosecutions: the principle of ‘Aut dedere, aut judicare’ - difficulties and advantages (Gérard Dive, Head of International Humanitarian Law Unit, Ministry of Justice, Belgium)

15:00- 15:15 Discussion

15:15- 16:00 Current arrangements in place in Rwanda

Chair: Rakiya Omaar, Director, African Rights

- Existing practical arrangements to facilitate extraditions (Justice Sam Rugege, Vice- President, Supreme Court, Rwanda)
- Legislative provisions (William Schabas, Professor, Director, Irish Centre for Human Rights)
- Human Rights Concerns (Alison de Forges, Senior Advisor, Africa Department, Human Rights Watch)

16:00- 16:30 Discussion & Coffee Break

16:30- 16:45 The Rwandan Fugitives Project of Interpol (Martin Cox, Interpol, Vice- Director of Fugitive Investigative Support Unit, Stefano Carvelli, Criminal Intelligence Officer)

16:45- 17:00 Conclusion (Carla Ferstman)

ANNEX II Conference Participants

Aiossa, Nicholas	Belgium	Assistant, Baroness Sarah Ludford MEP
Arena, Adrian	UK	Oak Foundation
Beckers, Martine	Belgium	President, Collectif des Parties Civiles
Berg, Janina	Belgium	REDRESS
Bonesha, Joseph	Rwanda	Ambassador of Republic of Rwanda to Belgium
Boniotti, Francesca	Belgium	Rwanda Desk Officer ASF
Bonneau, Karine	France	Director, International Justice Desk FIDH
Boulet , Juliette	Belgium	Member of Parliament, Ecolo
Carvelli, Stefano	France	Criminal Intelligence Officer, Interpol
Christophe, Antoine	Belgium	Office of the Commissioner General For Refugees and Stateless Persons
Cnop, Caroline	Belgium	Office of the Commissioner General For Refugees and Stateless Persons
Cordier, Francois	France	Procureur Adjoint, Tribunal de Grande Instance de Paris
Cox, Martin	France	Assistant Director, Fugitive Investigative Support Sub-Directorate Interpol
Daoud, Emmanuel	France	Lawyer; Legal Action Group, FIDH
de Biolley, Humbert	Belgium	Council of Europe, Dep. Director, Brussels Office
des Forges , Alison	US	Senior Advisor, Africa Division, HRW
dos Santos, Alex	UK	Barrister, Charter Chambers
Deprez, Dirk	Belgium	Belgian Technical Cooperation, Kigali
Devos, Aurelia	France	Magistrat, Ministry of Justice
D'Hauwer, Michel	Belgium	Office de police judiciaire
Dingley, Astrid	Netherlands	Legal Officer, International Crimes Unit, Dutch National Prosecution Service
Dive, Gerard	Belgium	Chef du Service de droit international humanitaire, Ministry of Justice
Dold, Beat	Switzerland	Lawyer
Ekelove-Slydal, Gunnar	Norway	Dep. Secretary General, Norwegian Helsinki Committee
Ferstman, Carla	UK	Director, REDRESS
Fontaine, Fanny	Belgium	Ministry of Justice, Service de droit international humanitaire
Gakumba	Belgium	President, IBUKA
Galand, Renaud	Belgium	Director, RCN
Gambette, Catherine	France	Lawyer, Legal Action Group, FIDH
Gauthier, Alain	France	CPCR (Collectif de Parties Civiles pour le Rwanda)
Gauthier, Dafroza	France	CPCR (Collectif de Parties Civiles pour le Rwanda)
Gauthier, Sarah	Belgium	Student
Gjostein, Jorunn	Norway	Advisor, Ministry of Justice and the Police

Goldman, Alexis	Belgium	Advisor, Direction du droit international public, Ministry of Foreign Affairs
Henquet, Thomas	Netherlands	Senior Legal Counsel International Law Division, Ministry of Foreign Affairs
Hirsch, Michelle	Belgium	Lawyer
Joubert, Chantal	Netherlands	Senior Legal Policy Advisor, Ministry of Justice
Kabanda, Aloys	Belgium	Collectif des Parties Civiles; IBUKA
Kabano, Sophie	Rwanda	Lawyer
Kangas- Alku, Tiina	Belgium	EU Council Secretariat
Karegyesa, Richard	Tanzania	Chief of Prosecutions, OTP, ICTR
Korhonen, Juhani	Finland	Legal Advisor, International Affairs, Ministry of Justice
Kumps, Natalie	Belgium	Lawyer
Kundert, Anne Marie	UK	Crown Prosecution Service, Special Crime Division
Lilienfein, Noah	France	Intern, Interpol, Fugitives Support Unit
Lugtenberg, Derek	Netherlands	Assistant Prosecutor, The Hague Prosecutor's Office
Mayassonba, Ibrahima	Belgium	OMCT
Meredith, Bayley	Belgium	British Law Society, Brussels Office
Migeot, Valerie	Belgium	Officier de Police Judiciaire
Morgan, Caroline	Belgium	Desk Officer, Criminal Justice, European Commission
Morin, Thomas	France	Lawyer
Mugwanya, George William	Tanzania	Senior Appeals Counsel, ICTR
Murkawego, Immacule	Belgium	Collectif des Parties Civiles
Mutangana, Jean Bosco	Rwanda	Senior Prosecutor, Head of Fugitives Tracking Unit
Mutimura, Yvonne	Netherlands	Survivor of genocide
Ngendahayo, Jean Marie	Burundi	Parliamentarian
Ngoga, Martin	Rwanda	Prosecutor General, Rwanda
Nyirazaninka, Marguerite	Belgium	Collectif des Parties Civiles
Omaar, Rakiya	Rwanda	Director, African Rights
Reydams, Luc	US	Assistant Professional Advisor, University of Notre Dame
Rijnders, Jeroen	Belgium	Office of the Commissioner General For Refugees and Stateless Persons
Rugege, Sam	Rwanda	Vice- President, Supreme Court
Schabas, William	Ireland	Professor, Director of Irish Centre for Human Rights
Schaper, Robert	Germany	Federal Police Office
Schurr, Jürgen	Belgium	Project Coordinator, REDRESS
Simonet, Louis	Belgium	Collectif des Parties Civiles
Tjeerde, Bertjan	Netherlands	Advisor, International Crimes Unit

Trachte , Pierre	Belgium	Collectif de Parties Civiles
Trachte, Bernadette	Belgium	Collectif de Parties Civiles
Uwazigira, Eulalie	Belgium	Collectif des Parties Civiles
Uzamukunda, Dorothee	Belgium	Collectif des Parties Civiles
van Bruggen, Hester	Netherlands	Prosecutor, National Prosecutors Office, Rotterdam
Vestberg, Birgitte	Denmark	Prosecution, Director of Special International Crimes Office
Walleyrn , Luc	Belgium	ASF/Avocat
Ward, Julia	Belgium	ASF
Wiley, William	Belgium	Director, Tsamota Ltd
Wood, Bob	UK	Home Office, Extradition Department/ Judicial Cooperation Unit
Zeitler, Helge Elisabeth	Belgium	European Commission
Zorn, Klaus	Germany	Federal Police Office

ANNEX III Overview of current proceedings against Rwandan genocide suspects in Europe

The following overview relates to cases where Rwandan genocide suspects have recently been arrested by European authorities and where information was publicly available, based on media and/ or NGO reports. The real number of suspects, as well as the number of ongoing investigations is, of course, much higher, though this is difficult to ascertain as suspects often change their names or identity upon arrival in the third country and national authorities keep their investigations confidential prior to arrest to avoid the escape of the suspect. For instance, at the time of writing, Interpol has issued 80 Red Notices in relation to Rwandan genocide suspects living abroad.¹⁶⁰

Belgium

Ephrem Nkezabera¹⁶¹

Position in 1994: Former officer of the Interahamwe Militia; in 1994, President of the Commission of economic Affairs and Finances within the 'Movement for Democracy and Development' (MRND)

Alleged crimes: War crimes; crimes against international humanitarian law

Proceedings: Trial by Jury expected before the Belgian Cour d'Assises in early 2009.

Red Notice: None

Emmanuel Bagambiki¹⁶²

Position in 1994: Préfet of Cyangugu

Alleged crimes: Rapes; Incitement to commit Rapes, allegedly committed in the region of Cyangugu.

Proceedings: International arrest warrant issued by Rwanda; Case against Bagambiki was dismissed on other charges by the ICTR Trial Chamber (in 2004) and Appeals Chamber (in 2006); subsequent conviction, *in absentia*, by a Rwandan court on 10 October 2007 to life imprisonment for rapes and incitement to commit rapes; he joined his family in Belgium on 27 July 2007; formal talks between Rwanda and Belgium on his extradition to Rwanda and alternatives;

Red Notice: <http://www.interpol.int/public/Data/Wanted/Notices/Data/2001/22/200116822.asp>

¹⁶⁰ <http://www.interpol.int/Public/Wanted/Search/ResultListNew.asp?EntityName=&EntityForename=&EntityNationality=RWA&NDA+AND+NOT+TRIBUNAL&EntityAgeBetween=15&EntityAgeAnd=95&EntitySex=&EntityEyeColor=&EntityHairColor=&EntityOffence=genocide&ArrestWarrantIssuedBy=&EntityFullText=&cboNbHitsPerPage=8&cboNbPages=20&Search=Search> (last accessed August 2008).

¹⁶¹ TRIAL at http://www.trial-ch.org/en/trial-watch/profile/db/facts/ephrem_nkezabera_627.html (last accessed August 2008).

¹⁶² TRIAL, http://www.trial-ch.org/en/trial-watch/profile/db/facts/emmanuel_bagambiki_45.html (last accessed August 2008).

Denmark

Sylvere Ahorugeze¹⁶³

Position in 1994: Director of the Rwandan Civil Aviation Authority and of Kigali international airport

Alleged crimes: War Crimes and Genocide, allegedly committed in Gikondo, Kigali
Proceedings: International arrest warrant issued by Rwanda. Arrested on 7 September 2006, he was charged with killing 25 Tutsis in a suburb of Kigali; after investigations carried out in Europe as well as in Rwanda, he was released in August 2007 due to a lack of evidence to bring a prosecution. He was subsequently arrested in Sweden on 16 July 2008 (see further below).

Red Notice: http://www.interpol.int/public/data/wanted/notices/data/2006/47/2006_9547.asp

France

Wenceslas Munyeshyaka¹⁶⁴

Position in 1994: Priest at the Parish of Sainte-Famille in Kigali.

Alleged crimes: Genocide; Crimes against Humanity (Rape; Extermination; Murder), allegedly committed in the region of Rugenge; Nyarugenge commune; Kigali.

Proceedings: Originally wanted by the ICTR. Complaint submitted by victims on 12 July 1995; he was first arrested in France on 28 July 1995, charged with "genocide, complicity in genocide, torture, ill-treatment and inhuman and degrading acts." He was released on 11 August 1995. He was sentenced *in absentia* to life in prison by a Rwandan Military Court on 16 November 2006; arrested in France on 20 July 2007, following an international arrest warrant published by the ICTR on 21 June 2007; released on 1 August, subsequent arrest on 5 September 2007 and placed under judicial control on 19 September 2007; case referred from the ICTR to the French judiciary on 20 November 2007; acceptance by French judiciary to try the case on 20 February 2008.

Red Notice: http://www.interpol.int/public/Data/Wanted/Notices/Data/2001/11/2001_411.asp

Laurent Bucyibaruta¹⁶⁵

Position in 1994: Préfet of Gikongoro

Alleged crimes: Genocide; direct and public incitement to commit genocide complicity in genocide; Crimes Against Humanity (Extermination; Murder; Rape), allegedly committed in Gikongoro.

¹⁶³ TRIAL, http://www.trial-ch.org/en/trial-watch/profile/db/facts/sylvere_ahorugeze_476.html (last accessed August 2008).

¹⁶⁴ TRIAL (in French), http://www.trial-ch.org/fr/trial-watch/profile/db/facts/laurent_bucyibaruta_653.html (last accessed August 2008).

¹⁶⁵ TRIAL, http://www.trial-ch.org/en/trial-watch/profil/db/facts/wenceslas_munyeshyaka_112.html (last accessed August 2008).

Proceedings: Originally, wanted by the ICTR. Complaint submitted by private parties on 6 January 2000; arrested upon international arrest warrant issued by the ICTR on 20 July 2007, released on 1 August 2007, arrested again on 5 September 2007 and placed under judicial control on 19 September 2007; case referred from the ICTR to the French judiciary on 20 November 2007; acceptance by French judiciary to try the case on 20 February 2008.

Red Notice: http://www.interpol.int/public/Data/Wanted/Notices/Data/2006/85/2006_29285.asp

***Dominique Ntawukuriryayo*¹⁶⁶**

Position in 1994: Deputy Préfet of Gisagara in Butare
Alleged crimes: Genocide; complicity in genocide; direct and public incitement to commit genocide allegedly committed in Gisagara in Butare.
Proceedings: Arrested on 16 October 2007 on international arrest warrant issued by the ICTR; transferred to the ICTR on 5 June 2008, after European Court of Human Rights on 16 May 08 upheld the French court's decision to transfer the suspect to the Tribunal; Not guilty plea before the ICTR on 10 June 2008.

Red Notice: http://www.interpol.int/public/Data/Wanted/Notices/Data/2006/55/2006_27355.asp

***Claver Kamana*¹⁶⁷**

Position in 1994: Businessman; allegedly local leader of the Interahamwe in Runda, Gitarama
Alleged crimes: Crimes against Humanity, Genocide, Organized Crime allegedly committed in Runda, Gitarama
Proceedings: Arrested in France on 26 February 2008 on an international arrest warrant issued by Rwanda; decision to extradite him to Rwanda was taken on 2 April 2008; decision overturned by the Cour de Cassation on 9 July 2008; case sent back to Lyon Appeals Court, decision expected in October 2008.

Red Notice: http://www.interpol.int/public/Data/Wanted/Notices/Data/2007/84/2007_46084.asp

***Isaac Kamali*¹⁶⁸**

Position in 1994: Senior Member of the National Movement for Democracy and Development (MRND)
Alleged crimes: Genocide; war crimes, allegedly committed in Nyabikenke (Prefecture of Gitarama) and Kigali.
Proceedings: Arrested in France on 23 June 2007 on an international arrest warrant issued by Rwanda; was sent back by US immigration authorities when he

¹⁶⁶ TRIAL, http://www.trial-ch.org/en/trial-watch/profil/db/facts/dominique_ntawukuriryayo_721.html (last accessed August 2008).

¹⁶⁷ TRIAL, http://www.trial-ch.org/en/trial-watch/profile/db/facts/claver_kamana_772.html (last accessed August 2008).

¹⁶⁸ Interpol, 'Interpol co-ordination on three continents leads to capture of Rwandan genocide fugitive, 23 June 2007, <http://www.interpol.int/Public/ICPO/PressReleases/PR2007/PR200726.asp> (last accessed August 2008).

tried to enter the US, following a screening of immigration authorities against Interpol's Red Notice; released under judicial control on 14 August 2007; decision regarding his extradition by the Court of Appeal in Paris is expected 8 October 2008.

Red Notice: http://www.interpol.int/public/Data/Wanted/Notices/Data/2004/08/2004_52908.asp

Marcel Bivugabagabo¹⁶⁹

Position in 1994: Lieutenant Colonel and Commander of military operations in Ruhengeri
Alleged crimes: Crimes against Humanity; war crimes allegedly committed in Ruhengeri Gisenyi

Proceedings: Arrested on 8 January 2008 on an international arrest warrant issued by the Rwandan government; the decision on his extradition to Rwanda has been deferred to 9 September 2008.

Red Notice: http://www.interpol.int/public/Data/Wanted/Notices/Data/2001/22/2001_23322.asp

Callixte Mbarushimana¹⁷⁰

Position in 1994: Technical consultant with the United Nations Development Programme; member of the Coalition for the Defence of the Republic (CDR)

Alleged crimes: Genocide; complicity in genocide; crimes against humanity; allegedly committed in Kigali

Proceedings: Arrest warrant issued by Rwanda; detained while working for the UN in Kosovo in early 2001; ICTR launched an investigation which was later closed as there was 'insufficient evidence' to justify the indictment, leading to his subsequent release. After he won refugee status in France, a complaint was filed against Mbarushimana and an investigation opened on 13 March 2008; he was arrested on 7 July 2008 by German police at Frankfurt airport, Germany, on his way to St. Petersburg.

Red Notice: http://www.interpol.int/public/data/wanted/notices/data/2004/74/2004_52874.asp

For further cases concerning suspects in France and currently pending before French authorities, see <http://www.collectifpartiescivilesrwanda.fr/affairesjudiciaire.html>.

¹⁶⁹ Interpol, 'Close international cooperation between Rwanda, Interpol and French police leads to arrest of yet another Rwandan genocide fugitive, 9 January 2008, <http://www.interpol.int/public/News/2008/RwandanFug20080109.asp>

¹⁷⁰ See Rwanda News Agency, 'Callixte Mbarushimana- Just who is the Fugitive arrested in Germany', 10 July 2008, at <http://allafrica.com/stories/200807100201.html> (last accessed August 2008).

Finland

Francois Bazaramba¹⁷¹

Position in 1994: Head of a Baptist youth training centre in Nyakizu, Butare
Alleged crimes: Genocide, allegedly committed in Nyakizu, Butare Préfecture
Proceedings: Arrested on 5 April 2007 by Finnish police once his name appeared on the list of 93 suspects residing abroad, published by Rwandan authorities in May 2006; after several investigative missions to Rwanda by Finnish police, Finnish authorities are currently considering whether to extradite Francois Bazaramba to Rwanda or whether to try him before Finnish courts on the basis of universal jurisdiction.

Red Notice: None

Germany

Augustin Ngirabatware¹⁷²

Position in 1994: Minister of Planning in interim government; among founding shareholders of Radio Télévision Libre des Mille Collines (RTL); member of the Gisenyi provincial committee of the MRND.
Alleged crimes: Conspiracy to commit genocide; genocide or alternatively complicity in genocide; direct and public incitement to commit genocide; crimes against humanity; war crimes, allegedly committed in Gisenyi.
Proceedings: Arrested in Frankfurt, Germany on 17 September 2007, on international arrest warrant issued by the ICTR; his transfer to the Tribunal is under consideration, with a complaint filed by the defendant pending before the German Constitutional Court. The complaint argues that there is a risk that a transfer to the Tribunal will violate the defendant's right to a fair trial as the Tribunal may seek to transfer him to Rwanda in the context of its completion strategy.

Red Notice: http://www.interpol.int/public/Data/Wanted/Notices/Data/2001/75/2001_16775.asp

Onésphore Rwabukombe¹⁷³

Position in 1994: Mayor of commune Muvumba in Byumba; member of local leadership of MRND.
Alleged crimes: Genocide; crimes against humanity, allegedly committed in Muvumba, Byumba.

¹⁷¹ News 24, Finns investigate Rwandan, 15 May 2007, at http://www.news24.com/News24/Africa/News/0,,2-11-1447_2113676_00.html (last accessed August 2008).

¹⁷² TRIAL (in French), http://www.trial-ch.org/fr/trial-watch/profile/db/facts/augustin_ngirabatware_707.html (last accessed August 2008).

¹⁷³ TRIAL, http://www.trial-ch.org/en/trial-watch/profile/db/facts/onesphore_rwabukombe_771.html (last accessed August 2008).

Proceedings: Arrested by German police on 25 April 2008 on an international arrest warrant issued by the Rwandan government; currently awaiting a decision regarding his extradition to Rwanda.

Red Notice: http://www.interpol.int/public/Data/Wanted/Notices/Data/2007/46/2007_48046.asp

***Callixte Mbarushimana*¹⁷⁴**

Position in 1994: Technical consultant with the United Nations Development Programme; member of the Coalition for the Defence of the Republic (CDR)

Alleged crimes: Genocide; complicity in genocide; crimes against humanity, allegedly committed in Kigali; Nyamirambo (Kigali suburb).

Proceedings: Arrested on an international arrest warrant issued by Rwanda; prior to his arrest he was detained while working for the UN in Kosovo in early 2001; ICTR launched an investigation which was later closed as there was 'insufficient evidence' to justify the indictment, leading to his subsequent release. After he won refugee status in France, a complaint was filed against Mbarushimana and an investigation opened on 13 March 2008; he was arrested on 7 July 2008 by German police at Frankfurt airport, Germany, on his way to St. Petersburg; German authorities are currently examining an extradition request from Rwanda.

Red Notice: http://www.interpol.int/public/data/wanted/notices/data/2004/74/2004_52874.asp

The Netherlands

***Joseph Mpambara*¹⁷⁵**

Position in 1994: Allegedly a member of the Interahamwe.

Alleged crimes: War crimes and torture (accused of taking part in massacres), allegedly committed in Mugonero and Biseseo, Kibuye region.

Proceedings: Arrested by Dutch authorities in Amsterdam on 7 August 2006 after discovered by Dutch immigration authorities; a first instance court at The Hague held on 24 July 2007 that Dutch law does not provide for universal jurisdiction for genocide committed in 1994, a decision that was confirmed by The Hague District Court on 3 December 2007; subject to a further appeal to the Supreme Court, the defendant will be tried for war crimes and torture only.

Red Notice: None

¹⁷⁴ See Rwanda News Agency, 'Callixte Mbarushimana- Just who is the Fugitive arrested in Germany', 10 July 2008, at <http://allafrica.com/stories/200807100201.html> (last accessed August 2008).

¹⁷⁵ TRIAL, http://www.trial-ch.org/en/trial-watch/profile/db/facts/joseph_mpambara_757.html (last accessed August 2008).

Sweden

*Sylvere Ahorugeze*¹⁷⁶

Position in 1994: Director of the Rwandan Civil Aviation Authority and of Kigali international airport.

Alleged crimes: Crimes against humanity and genocide, allegedly committed in Gikondo, Kigali.

Proceedings: International arrest warrant issued by Rwanda; arrested on 16 July 2008 in a suburb of Stockholm, after having been identified by embassy personnel at the Swedish embassy; Rwanda has since formally requested his extradition from Sweden and the Supreme Court of Sweden will determine whether there are any legal grounds preventing the extradition.

Red Notice: http://www.interpol.int/public/data/wanted/notices/data/2006/47/2006_9547.asp

United Kingdom

*Dr Vincent Bajinya*¹⁷⁷

Position in 1994: Doctor

Alleged crimes: Murder, planning and incitement to commit murder with the intent to commit genocide, allegedly committed in Kigali; Nyarugenge area of Kigali.

Proceedings: Arrested by British police on 28 December 2006 as a result of an extradition request from the Rwandan government and the signing of a memorandum of understanding between the UK and Rwanda regarding his extradition; he was arrested together with Célestin Ugirashebuja, Emmanuel Nteziryayo, and Charles Munyaneza; the extradition hearing started on 24 September 2007 and finished with the decision of 6 June 2008 of the Magistrate's Court to approve extradition to Rwanda. The Secretary State endorsed the decision of the Magistrate. The defense appealed against both the Magistrate and the Secretary's of State decision. The appeal against the Magistrate's court is expected to be heard some time in October 2008.

Red Notice: None

*Charles Munyaneza*¹⁷⁸

Position in 1994: Mayor of commune Kinyamakara, Préfecture of Gikongoro.

Alleged crimes: Genocide and crimes against humanity, allegedly committed in Kinyamakara (Prefecture of Gikongoro).

¹⁷⁶ TRIAL, http://www.trial-ch.org/en/trial-watch/profile/db/facts/sylvere_ahorugeze_476.html (last accessed August 2008).

¹⁷⁷ TRIAL, http://www.trial-ch.org/en/trial-watch/profile/db/facts/vincent_bajinya_611.html (last accessed August 2008).

¹⁷⁸ TRIAL, http://www.trial-ch.org/en/trial-watch/profile/db/facts/charles_munyaneza_475.html (last accessed August 2008).

Proceedings: Arrested by British police on 28 December 2006 as a result of an extradition request from the Rwandan government and the signing of a memorandum of understanding between the UK and Rwanda regarding his extradition; he was arrested together with Célestin Ugirashebuja, Emmanuel Nteziryayo, and Vincent Bajinya; the extradition hearing started on 24 September 2007 and finished with the decision of 6 June 2008 of the Magistrate's Court to approve extradition to Rwanda. The Secretary State endorsed the decision of the Magistrate. The defense appealed against both the Magistrate and the Secretary's of State decision. The appeal against the Magistrate's court is expected to be heard some time in October 2008.

Red Notice: None

Emmanuel Nteziryayo¹⁷⁹

Position in 1994: Mayor of commune Mudasomwa, Préfecture of Gikongoro.

Alleged crimes: Murder; planning or incitement to commit murder with the intent to commit genocide, allegedly committed in Mudasomwa (Préfecture of Gikongoro).

Proceedings: Arrested by British police on 28 December 2006 as a result of an extradition request from the Rwandan government and the signing of a memorandum of understanding between the UK and Rwanda regarding his extradition; he was arrested together with Célestin Ugirashebuja, Charles Munyaneza, and Vincent Bajinya; the extradition hearing started on 24 September 2007 and finished with the decision of 6 June 2008 of the Magistrate's Court to approve extradition to Rwanda. The Secretary State endorsed the decision of the Magistrate. The defense appealed against both, the Magistrate and the Secretary's of State decision. The appeal against the Magistrate's court is expected to be heard some time in October 2008.

Red Notice: None

Celestin Ugirashebuja¹⁸⁰

Position in 1994: Mayor of Kigoma, Préfecture of Gitarama

Alleged crimes: Murder and planning or incitement to commit murder with the intent to commit genocide in Kigoma, Gitarama.

Proceedings: Arrested by British police on 28 December 2006 as a result of an extradition request from the Rwandan government and the signing of a memorandum of understanding between the UK and Rwanda regarding his extradition; he was arrested together with Emmanuel Nteziryayo, Charles Munyaneza, and Vincent Bajinya; the extradition hearing started on 24 September 2007 and finished with the decision of 6 June 2008 of

¹⁷⁹ TRIAL, http://www.trial-ch.org/en/trial-watch/profile/db/legal-procedures/emmanuel_nteziryayo_609.html (last accessed August 2008).

¹⁸⁰ TRIAL, http://www.trial-ch.org/en/trial-watch/profile/db/facts/celestin_ugirashebuja_610.html (last accessed August 2008).

the Magistrate's Court to approve extradition to Rwanda. The Secretary State endorsed the decision of the Magistrate. The defense appealed against both, the Magistrate and the Secretary's of State decision. The appeal against the Magistrate's court is expected to be heard some time in October 2008.

Red Notice:

None