

## The International Community Fails Rwanda Again

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The recent decision by the UK High Court to release four Rwandan genocide suspects whom the Home Secretary had ordered to be extradited to Rwanda represents the latest in a series of international failures concerning post-genocide justice. The High Court ruling also repeats widespread and misinformed views on the current political and legal situation in Rwanda.

Recently based in Kigali, we witnessed the outrage of Rwandan citizens, not only at the effect of the High Court decision – which allowed individuals suspected of committing heinous crimes in 1994 to walk free – but also its timing. Only a Court detached from realities on the ground in Rwanda would issue this long-contemplated judgement on 8 April 2009, at the height of the 15<sup>th</sup> anniversary commemorations of the genocide. Many Rwandans interpreted the Court's decision as a painful affront at a time when the commemoration ceremonies across the country focused on the international abandonment of Rwanda in 1994. Just as the United Nations and foreign governments turned away when innocent civilians were being killed during the genocide, the international community is now renegeing on its duty to try genocide suspects.

Careful examination of the High Court ruling further highlights the judges' detachment from the current situation in Rwanda. In their decision, Judges Sullivan and Laws stated that the genocide suspects could not be extradited to Rwanda because they would not receive a fair trial at home. Appearing for one of the suspects, Lord Gifford QC stated that the case highlighted "an emerging international consensus that there is no fair trial in Rwanda." This comment correctly places the decision in a wider discussion about Rwandan justice standards. As judges in Germany, Finland and France have done in similar cases, the UK judges echoed the recent findings of the International Criminal Tribunal for Rwanda (ICTR). The ICTR's refusal to transfer five cases to the Rwandan courts hinges on its finding that witnesses would be too frightened to testify in the suspects' defence in Rwanda. The ICTR judges based their decisions on their own perception of the fear of witnesses who have travelled to the Tribunal in Arusha, Tanzania, and assertions by observer organisations such as Human Rights Watch (HRW), whose *amicus curiae* to the ICTR contained overly broad claims regarding problems with the Rwandan national judiciary.

The UK High Court ruling therefore resulted from a long game of legal Chinese whispers. Statements by HRW, drawing on a handful of highly selective cases in the Rwandan courts, have become the basis of key ICTR decisions, which in turn have shaped national judgements around the world. Crucial international and domestic legal decisions regarding genocide crimes are therefore being made on the basis of a distanced form of information-gathering that is filtered through the position of one dominant advocacy group. The UK decision is particularly egregious because – unlike other European countries – the UK lacks the domestic legislation to prosecute the genocide cases that it chooses not to transfer to Rwanda. Given the choice between returning suspects to Rwanda to face trial to determine their guilt or innocence and letting them walk free, the UK judges needed watertight evidence that the former would result in an unfair trial. The High Court ruling was based on no such evidence.

Our research in Rwanda over the last six years shows that most defence witnesses are willing to testify in genocide hearings. The quality of justice delivered through the Rwandan courts has increased markedly during this period, due to the widespread training of local judges and lawyers, legislative reform, and improved salaries and judicial infrastructure. The Rwandan judiciary – both the national courts and the *gacaca* community courts – have tried hundreds of thousands of genocide suspects. As is also the case before the ICTR, the determination of suspects’ innocence or guilt has depended heavily on oral evidence. The impact of defence testimony accounts for the high incidence of domestic acquittal of genocide suspects, including a 25% acquittal rate through *gacaca*. Both prosecution and defence counsel at the ICTR argue that evidence at *gacaca* is sometimes their strongest means of building a case because of the wealth of eyewitness testimony that *gacaca* has gathered. Furthermore, Rwandan defence witnesses continue to travel to the ICTR in Arusha, even though it is impossible to hide their identities (despite an elaborate witness protection programme), as tight-knit communities can easily identify individuals who are away for lengthy periods. Certainly some defence and prosecution witnesses in Rwanda have suffered intimidation and reprisals for giving testimony, either to the domestic courts or the ICTR, but no more or less than in other countries.

HRW, the ICTR and the UK High Court therefore must base their analyses on a much finer-grained examination of legal realities in Rwanda, rather than assuming that a country recovering from genocide is incapable of prosecuting serious cases.

Not only is there insufficient evidence to block the international transfer of genocide cases to the Rwandan courts, but such transfers would be of immense benefit to Rwandans. Our research indicates that justice delivered domestically can have a major impact in terms of popular understanding of the events of 1994 and reconciliation. Prosecutions through the national courts and *gacaca* have brought justice into people’s midst, making it a daily reality. Millions of everyday Rwandans have participated in *gacaca*, which takes place each week in village courtyards across the country. During *gacaca* hearings, genocide suspects and survivors tell their stories face-to-face. People hear personal, emotional narratives about the genocide, alongside the legal facts necessary to prosecute suspects. The impact of *gacaca* has not always been easy to predict, particularly given the volatile and often traumatising narratives that participants tell and hear. However, by doing justice locally, *gacaca* has come to matter to those most affected by the genocide.

In contrast, our research shows that most Rwandans feel little connection to the international justice delivered at a great distance by the ICTR in Arusha. By refusing to transfer genocide cases to the national courts, the ICTR has continued this sense of dislocation from daily life in Rwanda. Echoing the ICTR’s legal rationale, the UK High Court has also denied Rwandans the benefits of witnessing firsthand post-genocide justice being done.

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