Introduction
The massacre of an estimated 800,000 Rwandan civilians, from April to July of 1994, wiped out nearly ten percent of the tiny country's population and left it shattered in the wake of its swift brutality. [FN1] The government-organized slayings were carried out by an astounding number of Hutu civilians against members of the rival ethnic Tutsi group and those perceived to be Tutsi sympathizers. [FN2] The high level of public participation and complicity in the killings, attacks, rapes and pillages, is particularly disturbing. The slaughter often took place in broad daylight within the perpetrators' local communities and was committed against neighbors, friends and even family members. [FN3] Not only did the aggressors personally know their victims, but the Tutsi extermination was carried out with such collective conviction and moral patriotic imperative that it lost its deviance. [FN4]

*32 The challenge for post-genocidal Rwanda has been how to cope with this mass atrocity and the huge numbers of perpetrators in order to achieve some measure of justice, reconciliation and peace for Rwandans. [FN5] Yet, seven years later, the two retributive responses adopted have made very little progress towards achieving these objectives. [FN6] The International Criminal Tribunal for Rwanda (ICTR) has secured fewer than nine convictions in five-and-a-half years of operation, despite an annual budget of approximately $80 million (in U.S. currency) and over 800 staff members. [FN7] While the domestic genocide trials have made greater progress with its dockets, having cleared an estimated 5,000 cases since 1996, this pace has occurred at the expense of due process guarantees to the accused. [FN8] But even if this pace were maintained, it would still take upwards of 120 years to prosecute the estimated 110,000 to 130,000 alleged genocidaires who continue to be held in overcrowded prisons and community lock-up cells throughout the country. [FN9]

*33 Faced with the realization that justice delayed amounts to justice denied for Rwandans, and that the current international and domestic prosecutions are simply incapable of delivering any form of timely and broad-based justice, the government of Rwanda sought an alternative approach to healing the country's painful past and promoting national reconciliation. [FN11] It has implemented an updated version of the traditional quasi-judicial Gacaca (pronounced ga-cha-cha) system, where respected elders resolve disputes among community members. [FN12]

This article evaluates whether Gacaca will overcome the shortcomings of the ongoing international and national prosecutions, and allow Rwanda to finally heal itself and move forward as a nation. This evaluation is particularly necessary in light of the historical use of Gacaca in civil conflicts, and yet, the government of Rwanda is placing enormous faith in this system's ability to process as many as 125,000 perpetrators of the most egregious crimes in a manner that provides satisfactory justice to Rwandans. [FN13] To contextualize the discussion, Part I briefly outlines the problems and inadequacies experienced to date with the prosecutions undertaken by the ICTR and the Rwandan criminal justice system, while Part II provides a detailed overview of the recently adopted Organic Law that will implement the Gacaca system. The heart of the discussion lies in Part III, which critically evaluates the Gacaca system in light of Rwanda's need for justice, peace and reconciliation and why these objectives have not been achievable so far. The
article concludes that, in the context of post-genocidal Rwanda, Gacaca may well be able to heal the deep wounds that continue to divide the country by ethnicity in a manner for which Western retributive systems are not designed. Indeed, it is unrealistic, impractical and short-sighted to rely solely on the ordinary criminal law model with all of its due process guarantees to address mass perpetration of crimes, particularly in a country whose judicial system has to be built ex nihilo and where ethnic tensions continue to run high.

I. The Need for an Alternative
To date, criminal prosecutions have been the sole method by which justice has been sought for post-genocidal Rwanda. This is premised on the perhaps misplaced faith that accountability and reconciliation can only be achieved through a Western-conceived adversarial trial model, and that individual criminal accountability pursued against a select few will "exonerate" the collective. Given the unique features of the genocide, including the charge that millions were likely involved in atrocities in some way, and the inherent weaknesses in both the ICTR and Rwanda's domestic criminal justice system, it is not surprising that they have been unable to deliver justice effectively.

A. Shortcomings of ICTR Prosecutions
The ICTR was hastily established under Chapter VII of the United Nations Charter in the autumn of 1994, at least in part, to assuage the guilt felt by Western leaders for not having intervened to stop the genocide and to avoid appearing as favoring the former Yugoslavia, for whom an International Criminal Tribunal (ICTY) had just been created in the wake of its genocide. The "official" reasons for establishment were that the Rwandan judicial system lay in ruins, and that even if rebuilt, it was presumed to be incapable of rendering justice in an impartial and fair manner. Moreover, the crimes committed were of such an egregious nature as to constitute a threat to international peace and security, thereby necessitating international prosecution to send a strong deterrent message to other would-be perpetrators. The ICTR was intended to bring justice to the most serious perpetrators of the genocide and other violations of international humanitarian law, and to contribute to the process of national reconciliation, to the restoration and maintenance of peace and to ensuring that such violations do not reoccur.

In hindsight, one may speculate that the ICTR was doomed to fall short of these lofty expectations when Rwanda, coincidentally a member of the Security Council at the time, was the only country to vote against the resolution creating the Tribunal. Since its inception, the ICTR has been mired in managerial, administrative and logistical deficiencies, including fraud and incompetence. It has also had a poor working relationship with the Rwandan government, lacked an effective witness protection program and relied heavily on financial, political and moral support from the international community. These factors have all contributed to the Tribunal's slow progress in conducting its work. While significant improvements have been made in these areas, it is clear that the ICTR is neither an efficient nor effective instrument in delivering justice, fostering reconciliation and restoring peace. Indeed, if one is looking for value for money, the ICTR has not delivered. After five-and-a-half years of operation, it has managed to secure, on average, only two convictions per year at an annual cost of U.S. $80 million. The majority of Rwandans know little of trials in Arusha except that the ICTR has spent millions to prosecute a handful of genocidal masterminds. To them, it is a foreign and removed body alien in procedure, whose slow pace of trials is proof of UN inefficiency, or worse, indifference to Rwandan needs. Skepticism has evolved into anger with the hypocrisy that those most culpable are subjected to the best and most fair processes. Indeed, extensive procedures exist to safeguard the rights of the accused before the ICTR, for whom conviction will likely lead to serving their terms in "luxurious" Western prisons and, in any event, to avoiding the death penalty.
B. Shortcomings of Rwandan Prosecutions

Rwanda's judicial sector was virtually annihilated by the genocide, in both structural and human terms. In 1996, less than 200 judicial personnel in all categories remained; others had fled, been killed or incarcerated. With international support, the Government of National Unity began the slow process of (re)building the justice system in an effort to begin prosecuting alleged perpetrators who had already been imprisoned and to combat the culture of impunity instilled by the ICTR. To this end, the Rwandan National Assembly adopted the Organic Law No. 8/96 of August 30th, 1996, and created 13 specialized chambers within the court structure to deal with cases flowing from the genocide. The first trials began at the end of December 1996. Since this time, an estimated 5,000 defendants have been processed by the specialized chambers, which includes an increasing number of acquittals.

While this is certainly a respectable number of prosecutions to have been carried out by a fledgling judicial system, it has come at a price. The judiciary suffers from lack of experience, inadequate resources and security measures, corruption and executive influence, which have compromised the efficiency and impartiality of the process. Due process violations for the accused have been compounded by the shortage of experienced defense counsel such that, at least in the early months of operation, some unrepresented defendants were convicted and sentenced to death at trial within a matter of hours.

With between 110,000 and 130,000 persons incarcerated, the sheer number of detainees who remain in overcrowded prisons and communal lock-ups under substandard conditions is testing the limits of the system. While promises have been made to release extremely young, old and ill detainees, they have yet to materialize consistently. An indeterminate number of those detained have not been charged and are therefore undocumented, while others have already served more time than the maximum prison sentence they would receive if convicted. Even if Rwanda were to dramatically increase the speed with which it has been processing cases, it would still take over 100 years for them to be processed. Moreover, while the expense of feeding the detainees has been shared thus far with the international community, donors have indicated that Rwanda will have to bear an increasing amount of this burden in the future, which it cannot afford.

While these numbers certainly reflect the unprecedented societal participation in the genocide, they are also the result of an alarming number of false accusations, undaunted by any real threat of punishment, by those who seek to enhance their own interests. Moreover, given that Hutu males make up the vast majority of the prison population even though members of the pro-Tutsi Rwandan Patriotic Front (RPF) also committed acts of vengeance within the Genocide Law's temporal jurisdiction, some are accusing the Government of National Unity of carrying out victor's justice against the Hutu population.

The Rwandan government may have been well-intentioned in promulgating the Genocide Law, but it has thus far failed to provide sufficient incentives for confessions so as to begin alleviating the over-burdened judicial system. This has added to the intractable struggle the government has been facing in attempting to build a solid judicial system for the long term while simultaneously prosecuting thousands of genocide-related cases as promptly as possible to allow Rwandan genocide survivors to move beyond the traumatic events of 1994.

II. The Gacaca System

In July 1997, the government of Rwanda began contemplating alternatives to dealing with the huge numbers of detainees, the slow pace of trials and the lack of national reconciliation. It established a National Unity and Reconciliation Commission in 1999 that initiated countrywide consultations on issues of co-existence between Hutus and Tutsis. The Commission ultimately recommended that Rwanda adopt the traditional Gacaca system, whereby respected community elders endeavor to
bring disputants together in an effort to render communal *41 justice. [FN53] In turn, this led to the adoption of Organic Law No. 40/2000 of January 26th, 2001, setting up "Gacaca jurisdictions." [FN54]

A. The Organic Law for Gacaca

1. Structure and Jurisdiction
This Organic Law ("Gacaca Law") preserves the basic structure of offenses and the procedures for confessions and guilty pleas established by the Genocide Law, which formed the basis for domestic genocide trials. [FN55] Specifically, it classifies detainees into one of four categories according to their alleged participation in particular crimes: Category One for organizers, inciters and leaders of the genocide or crimes against humanity, including particularly brutal or notorious killings, and all acts of rape or sexual torture; Category Two for authors or accomplices of deliberate homicides or serious attacks causing death; Category Three for authors or accomplices of serious attacks without intending to cause death; and Category Four for persons having committed offenses against assets or property. [FN56] The Gacaca system will only have jurisdiction over defendants in Categories Two, Three and Four. [FN57] All Category One defendants will continue to be processed by the specialized chambers and procedures outlined in the Genocide Law. [FN58]

Consistent with Rwanda's existing administrative bureaucracy, the Gacaca Law establishes four hierarchical "Gacaca jurisdictions," notably, the Cell, Sector, District and Province, to administer the new system of 10,684 Gacaca "courts." [FN59] Rwanda is presently divided into *42 8,987 Cells, 1,531 Sectors, 154 Districts and 12 Provinces, with the Cell being the lowest administrative unit closest to the community. [FN60] Cells will have primary jurisdiction over Category Four cases, Sectors will have primary jurisdiction over Category Three cases, Districts will have primary jurisdiction over Category Two cases and appellate jurisdiction over Category Three cases, and Provinces will have appellate jurisdiction over Category Two cases. [FN61]

In order to conduct hearings, Gacaca jurisdictions are vested with powers similar to those exercised by ordinary criminal jurisdictions, such that they may compel testimony, order searches and investigations, take protective measures, pronounce sentences and fix damages, issue arrest warrants and order preventive detention where necessary. [FN62]

2. Administration of Gacaca Jurisdictions
Each Gacaca jurisdiction is composed of a General Assembly, a Seat and a Coordinating Committee. [FN63] Direct elections are held at the Cell level, with designated representatives passing to the Sector, District and Province levels as determined by the elected members.

(i) Cell Level
The General Assembly for the Cell's Gacaca jurisdiction consists of all residents of the Cell aged 18 years and above. [FN64] It has the broadest responsibility of all the levels of Gacaca jurisdiction. In particular, all residents must provide evidence of where they lived before and during the genocide, as well as of events that occurred in their village during the genocide. This evidence will be used by the Seat to prepare a list of those who lived in the Cell before the genocide, and all victims and perpetrators within the Cell. [FN65] In addition, the General Assembly elects 24 "honest persons" from within itself, five of whom are delegated to the Sector's Gacaca jurisdiction while the remaining nineteen are chosen from the Seat for the Cell. [FN66]

In addition to preparing the aforementioned lists with the help of the General Assembly, the Seat has numerous crucial functions. [FN67] Upon receiving the files forwarded by the Department of Public Prosecution, the Seat gathers evidence and testimonies from each file and makes *43 any necessary investigations thereof. [FN68] This evidence is then used as the basis for classifying defendants in each Cell into one of the four categories of crimes. Once defendants have been classified, the Seat forwards Category
One and Two cases to the District Gacaca jurisdiction and Category Three cases to the Sector Gacaca jurisdiction. [FN69] The Seat conducts hearings for and rules on all Category Four defendants itself, and processes any confessions or guilty pleas related thereto. It also elects five members for the Coordinating Committee from within itself who must know how to read and write Kinyarwanda. [FN70] The Coordinating Committee is an administrative body that presides over meetings and coordinates activities of the Seat and General Assembly, registers testimony, evidence and complaints given by witnesses, receives and registers files for defendants, registers appeals and transfers appeal cases to the immediately higher jurisdiction, and writes decisions and prepares activity reports. [FN71] It will also be responsible for forwarding all copies of Gacaca judgments to the national Compensation Fund for Victims of the Genocide and Crimes Against Humanity, indicating the identity of people who have suffered physical and/or material damages. [FN72]

(ii) Sector, District and Province Levels
The General Assembly for each Sector's, District's and Province's Gacaca jurisdiction is made up of at least 50 honest persons, appointed from within the General Assemblies of the Gacaca jurisdiction immediately below. [FN73] In addition to delegating persons to the General Assembly at the next level of Gacaca jurisdiction, its primary functions are to elect Seat members, attend and testify at Gacaca hearings without voting power, provide evidence at Gacaca hearings and examine the activity reports prepared by the Coordinating Committee. [FN74] At the Cell level, each Gacaca jurisdiction Seat for the Sector, District and Province is composed of 19 people, elected by the jurisdiction's General Assembly. [FN75] At these levels, the *44 Seat's functions revolve around the Gacaca hearings. [FN76] They include hearing testimony and conducting any necessary investigations, processing confessions and guilty pleas from defendants, hearing and ruling on all cases within their primary and appellate jurisdiction, receiving and examining activity reports of the Gacaca jurisdiction immediately below, and electing members of the Coordinating Committee from within itself. [FN77] The Coordinating Committees at the Sector, District and Province levels perform the same functions as at the Cell level. [FN78]

(iii) Election of Judges
Any Rwandan 21 years of age or older may be elected to serve as a judge in a Gacaca jurisdiction without discrimination on the basis of sex, origin, religion, opinion or social position, provided he or she has a reputation for being honest, truthful and trustworthy, has good behavior and morals, a spirit of sharing speech and is free of sectarian and discriminatory beliefs. [FN79] He or she is not required to have any knowledge of the law. [FN80] Persons are ineligible if they have been sentenced pursuant to trial for a penalty of six months imprisonment or greater, or participated in perpetrating offenses constituting genocide or crimes against humanity. [FN81] Also, people cannot serve as Gacaca judges if they hold positions in central or local government, or if they are active soldiers, members of the national police or local defense force, career magistrates or members of leading organs of political parties, religious confessions or non-governmental organizations. [FN82] Between October 4th and 7th, 2001, the Rwandan government carried out an unprecedented election which saw the vast majority of Rwandans participate in electing 260,000 Gacaca judges to staff the 10,684 Gacaca courts at the four administrative levels. [FN83] These judges will undergo a brief but intensive training period before beginning their unpaid service, which is to begin in the first half of 2002.

3. Sanctions and the Confession & Guilty Plea Procedure
As in the Genocide Law, the Gacaca Law provides an incentive for defendants to confess and plead guilty in exchange for a reduced sentence. [FN84] In order to be accepted, a confession must be received within two years of the Gacaca Law's publication within Rwanda's Official Gazette (i.e., before March 15th, 2003) [FN85] and must contain a
detailed description of the offense, *45 including the location, date, witnesses, names of victim(s), co-authors and accomplices, and damaged assets. [FN86] In addition, the defendant must offer an apology for the offenses. [FN87] Defendants may confess at any stage during the proceedings, earning different reductions in penalties depending on the timing of the confession. Defendants who confess to their crimes prior to the drawing up of lists and categorization of cases at the Cell level will receive a greater reduction in penalties than those who confess after the drawing up of the lists (up to and including the day of the hearing itself).

Defendants who choose not to confess and plead guilty, or whose confessions have been rejected, are subject to a prison sentence ranging from 25 years to life imprisonment for Category Two offenses, and 5 to 7 years for Category Three offenses. [FN88] Defendants who choose to confess and plead guilty after their names have already appeared on the list of perpetrators drawn up by the Cell's Gacaca jurisdiction are subject to a reduced prison sentence ranging from 12 to 15 years for Category Two offenses, and 3 to 5 years for Category Three offenses. [FN89] Defendants who choose to confess and plead guilty before the Cell's Gacaca jurisdiction prepares the lists are subject to a reduced prison sentence ranging from 7 to 12 years for Category Two offenses, and 1 to 3 years for Category Three offenses. [FN90] For both confession procedures, half of the defendant's sentence will be served in custody while the rest is commuted into community service. [FN91] Category Four defendants are not subject to prison terms, and can only be ordered to pay civil reparation of damages caused to other people's property. [FN92] The applicable sanctions for defendants who, at the time of committing their crimes, were between the ages of 14 and 18 will receive a penalty of 10 to 20 years for Category One offenses and half the adult sentence for offenses falling under Categories Two and Three. Those who were under the age of 14 at the time of the offense cannot be prosecuted, but can be placed in rehabilitation centers. [FN93]

B. Relationship Between Gacaca Courts and the Department of Public Prosecution

The General Prosecutor of the Supreme Court will continue to supervise the prosecutions in the specialized chambers under the Genocide Law. [FN94] A new chamber, headed by the Vice-President of the 6th Chamber of the Supreme Court, has been designated to oversee the control, *46 inspection and coordination of all Gacaca activities at the national level, except implementation of community service programs which will be overseen by the Ministry of Justice. [FN95] The Department of Public Prosecution and the military courts will continue to receive and investigate accusations dealing with offenses provided for by the Genocide Law and the Gacaca Law, as well as confessions and guilty pleas. [FN96] However, before initiating an investigation, they are obliged to check first with the Gacaca jurisdictions at the Cell level to ensure that the Gacaca courts have not yet processed or begun to process these cases. [FN97] Once investigated, completed files will be referred by the prosecutor's office to the Gacaca jurisdictions at the Cell level. [FN98] Copies of investigations carried out by the Gacaca jurisdictions will be filed with the Department of Public Prosecution. [FN99] The effect is that all investigations that were completed and referred to the specialized chambers prior to the date of the Gacaca Law's publication (March 15, 2001) will remain under the classical jurisdiction; all other investigations will now fall under Gacaca jurisdiction. [FN100] This applies to the confession and guilty plea procedure as well, such that all confessions that were fully investigated, accepted and forwarded to a Specialized Chamber prior to March 15th, 2001 will be tried under the classical system; all other confessions and guilty pleas will now fall under Gacaca jurisdiction. [FN101] The first Gacaca hearings are expected to concentrate on defendants who have confessed their crimes and pleaded guilty. [FN102]

III. A Critical Evaluation of Gacaca's Prospects

The Rwandan government's quest to establish and implement the Gacaca system has conveyed a strong message to Rwandans and outsiders alike that it is serious about resolving the enormous problems the country continues to face post-genocide. [FN103]
Clearly, the trials conducted *47 thus far by the specialized chambers have been unable to effectively tackle the broad societal participation in the genocide and the desperate need for communal reconciliation and healing. [FN104] In fact, rather than allowing communities to convalesce, trials may actually continue to polarize the country by ethnicity into the "guilty" and the "innocent," and encourage vigilantism to obtain redress where state institutions fail. [FN105] Given that Hutu and Tutsi live intermingled, share the same language, religion and lifestyle and are economically interdependent, yet remain divided and distrustful of one another, reconciling past grievances and building trust and mutual respect is essential to avoiding repeat clashes. The government is pinning high hopes on Gacaca jurisdictions to overcome the shortcomings of the domestic and international prosecutions and, specifically, to expedite genocide trials, alleviate chronic overcrowding in prisons, establish the truth about the genocide, fight impunity and promote national reconciliation through reintegrative measures. [FN106] Indeed, it has been advertising the Gacaca system with posters that read "The Truth Heals" and depict a bright yellow sun rising over the hills of Rwanda with villagers holding hands as they move from the dark towards the rising sun. [FN107] *48 In turn, Gacaca has raised both hopes and fears among Rwandans. [FN108] After seven years of waiting, there is optimism that this new system will be swifter and fairer in delivering justice given that it is inspired by the traditional Gacaca, which aimed at restoring order and social harmony within communities through conciliatory arrangements acceptable to all participants. [FN109] Yet, many of its features resemble those of the criminal justice system but without all of the accompanying procedural safeguards, which raises concerns as to whether the new system will simply amount to criminal justice in the guise of popular justice. [FN110] The following discussion examines these competing issues with a view to determining whether the Gacaca system is capable of fulfilling the expectations that have been placed on it. The promising aspects of Gacaca are considered first, followed by those aspects that raise various concerns generally, as well as specifically, for defendants and victims.

A. Positive Features

In evaluating the ability of the Gacaca system to address the needs of post-genocidal Rwanda, it must be remembered that Rwanda is a very small, poor country, the majority of whose population continues to live in the same rural villages and communities as their ancestors. [FN111] While it is within these rural communities that most of the atrocities took place during the genocide, these communities have been most alienated from the genocide trials conducted to date by the specialized chambers and the ICTR, by distance, procedure and lack of communication. *49 [FN112] On this premise alone, therefore, the Gacaca system provides a more promising possibility for addressing the needs of those most affected by the genocide. Because Gacaca is based on local culture, it is likely to create from the beginning a greater sense of familiarity, respect, trust and commitment to the process than the Western judicial system. As members of the community, Gacaca judges will have a sense of the full measure of injury that the community has suffered and can lead hearings to address those facts. This benefit is enhanced by the greater role that women will play as Gacaca judges given that women have borne the heaviest burdens arising from the genocide. [FN113] Moreover, the participatory approach to justice will involve the entire community in truth-telling, shaming of perpetrators and broader discussions about the underlying causes of the genocide. [FN114] This process has the potential to create an environment within which the truth behind the genocide can be revealed by encouraging and facilitating testimony. Because most communities are relatively small and the attacks tended to occur in broad daylight, everyone generally knows who the perpetrators and victims are within their community. [FN115] By bringing victims and perpetrators face-to-face to tell their stories, it will empower victims who have been voiceless so far and create moral pressure on perpetrators to confess to their crimes and seek forgiveness. The confession itself will be an important source of justice for victims. Community shaming and subsequent
performance of community service as part of one's sentence can be an effective means for offenders to reintegrate with their communities, which the current genocide trials lack. As a result, Gacaca has the potential to have a cathartic and consolidating effect on fragmented communities, and could raise the level of consciousness among people about the genocide so that it will never be repeated. Gacaca hearings will also allow defendants to feel that they finally received their day in "court" in front of a jury of their peers rather than languishing in prison indefinitely. To this end, Gacaca offers the hope of expedited hearings because so many more jurisdictions will be operating simultaneously throughout the country. This, in turn, could provide an organized way of alleviating overcrowded prisons and promote productivity within the country by returning people to their communities.

B. Causes for Concern
Notwithstanding its capacity to yield beneficial, indeed essential, results, the Gacaca system also raises a number of valid concerns. For instance, while the process may heal some wounds, it could actually re-open others and thereby exacerbate ethnic tensions. The potential also exists that the government's motives are not altogether virtuous in instituting the Gacaca system, but rather stem from the increasing rate of acquittals by the specialized chambers, which the government may wish to curb by subjecting defendants to Gacaca's community justice. A more pervasive concern surrounds the possibility that, despite purporting to be based on a traditional form of dispute resolution, in effect Gacaca will be equivalent to criminal tribunals with few or no procedural safeguards against error or abuse. Unlike traditional Gacaca, the modern hierarchical version is state-conceived and will ultimately be state-enforced through the new Gacaca Chamber of the Supreme Court. Furthermore, Gacaca jurisdictions are vested with the same powers as ordinary courts, including the power to apply state criminal legislation, conduct criminal hearings for crimes as serious as pre-meditated murder, compel witnesses to testify, issue warrants, conduct searches and impose lengthy sentences. For defendants who plead guilty or are found guilty, punishment will necessarily involve a retributive component (except where sufficient time has already been served), rather than being based on compromise and community acceptance. The fact that Gacaca decisions may be appealed to the next highest jurisdiction (except decisions relating to Category Four offenses) may create a further incentive to judicialize the process. Furthermore, a concern exists that the hope offered by the Gacaca system of increasing the rate for processing the tens of thousands of cases that remain untouched by the specialized chambers will be undermined by the time needed to train the judges, equip the Gacaca jurisdictions with basic materials and operationalize the whole system. Progress and productivity might be further delayed because the number of prosecutors has not kept pace with the number of Gacaca jurisdictions, which will rely on the already overburdened local prosecutor's office to prepare case summaries.

1. For the Defendant
Numerous concerns specific to defendants also exist, most flowing from the fact that the Gacaca system is structured as an expedited criminal justice process but without the requisite due process safeguards to ensure that defendants receive a fair hearing. The African Commission on Human & People's Rights specifically stated, in its Dakar Declaration of September 11th, 1999, that "traditional courts are not exempt from the provisions of the African Charter on Human and Peoples' Rights relating to a fair trial." Yet, three internationally entrenched guarantees to a fair trial will be significantly restricted by the Gacaca system, in particular (1) the right to a fair hearing by a competent, independent and impartial tribunal, (2) the right to have adequate time and facilities to prepare a defense and consult with counsel, and (3) the right to review by a higher tribunal. The existence of these disadvantages for defendants also raises the issue that Gacaca jurisdictions, in effect, create two parallel systems of justice, where defendants in
Category One, who will continue to be handled by the specialized chambers, as well as members of the RPF who perpetrated crimes and who are dealt with by the military courts, will receive greater fair trial guarantees than those in the Gacaca process.  

(ii) Right to a Fair Hearing by a Competent, Independent and Impartial Tribunal  

A real potential exists that a defendant's right to a fair hearing could be compromised and the rule of law undermined by a number of factors. It is safe to presume that most Gacaca judges will have had limited formal education and no prior legal training aside from the brief training program they will receive. Yet, they will be expected to perform many critical functions, including classifying defendants into the various criminal categories which will determine the framework for potential sentencing; distinguishing genuine from false evidence; deciding complex and sensitive cases while under enormous pressures from both victims and/or the accused; and imposing sentences as severe as life imprisonment.  

As a result, serious errors and misjudgments are bound to occur, which could have detrimental effects for defendants. In addition, the fact that 260,000 judges have been elected casts doubt on the possibility that they are all honest persons of integrity who are bias-free. The broad complicity in perpetrating the genocide and the huge number of victims it produced leads to a great likelihood that some judges will be directly related to victims in particular cases.  

In this way, Gacaca hearings could become a means of legitimizing popular retribution in predominantly Tutsi communities, where defendants may be presumed to be guilty. Some community members may use the testimonial element of the system as an opportunity to seek revenge against defendants by fabricating evidence; others may use it to shield family members from being implicated. As a result, there may be a legitimate fear on the part of defendants that their confessions could lead to greater reprisals by community members beyond the sentences imposed, particularly where their testimony implicates other people who have managed to elude custody thus far.

(ii) Right to Have Adequate Time and Facilities to Prepare a Defense and Consult with Counsel  

The procedural informality within which Gacaca hearings are to take place abrogates the principle of equality of arms by limiting a defendant's opportunities to an adequate legal defense if he or she chooses not to confess and plead guilty. Specifically, the Gacaca Law does not entitle defendants to be represented by a lawyer, but provides, instead, an opportunity at the hearings for individuals to speak for or against the defendant. While, in theory, someone with a legal background could speak on behalf of the defendant during the hearing, it is uncertain whether this could be arranged in advance if defendants are denied access to seek legal representation. The ability of an unrepresented accused person to defend himself effectively could be further compromised by the fact that Gacaca judges will rely on case summaries prepared by prosecutors and will have access to advice in regards to "good functioning" by legal advisers designated by the Gacaca Chamber of the Supreme Court. While these advisers are not allowed to instruct judges on "trial dealings," they will undoubtedly have considerable influence given their professional legal background. This makes their independence critical, yet there are no apparent criteria for appointing these legal advisers.  

The concerns raised here are particularly problematic given that defendants will not have access to their case files before the hearing, and will not be able to present witnesses in their defense, nor cross-examine witnesses who have testified against them.
The Gacaca Law does not allow defendants to present evidence during the process when the Cell jurisdiction categorizes defendants according to the severity of their crimes, let alone attend this procedure. This determination is critical, as it provides the framework for sentencing where a defendant is found guilty or confesses and could entail a substantial difference in prison terms, and potentially one's life for those placed within Category One. Furthermore, there is only limited recourse to appeal to the next highest Gacaca jurisdiction for Category Two and Three defendants who are found guilty, or who plead guilty but want to contest their sentence. This jurisdiction will issue a final and binding decision, such that there is no recourse ever to the ordinary courts. By containing all hearings and appeals within the Gacaca system, the aforementioned concerns about the absence of fair trial guarantees pervade the entire system.

2. For the Victim
While fewer in number, several aspects of the Gacaca system also engender skepticism and distinct concerns for victims of the genocide. Of primary concern to families of deceased victims is that Gacaca will result in excessively light sentences for persons who did not mastermind the genocide, but whose actions nevertheless led to a number of deaths, intentional or not. This is highlighted by the fact that many perpetrators of Category Two or Three crimes, who plead guilty before their names are placed on the list by the Cell jurisdiction, will be eligible for community service immediately, taking into account their time served in prison to date. In addition, the practice of distributing cases for processing to Gacaca jurisdictions based on the defendant's residence before the genocide does not adequately take into account the possibility that a defendant may have committed his or her crimes in other communities. Accordingly, members of the defendant's community, including the Gacaca judges, may not be aware of any crimes committed by the defendant elsewhere, and the victims of these crimes will not have an opportunity to tell their stories unless they know where the hearing is taking place and it is accessible. This lack of information could lead to situations where a defendant is categorized incorrectly at the first instance, acquitted or improperly sentenced to a lesser crime, all of which undermine the fundamental aims of truth-telling and reconciliation. Moreover, situations may arise where insufficient witnesses remain in certain communities to provide full testimony at the Gacaca hearings.

Victims may also experience the flipside of some of the concerns applicable to defendants where Gacaca judges are related to defendants who come before them, or where the political or ethnic climate of a community is such that it favors defendants. Such biases could occur in communities that are predominantly Hutu and, as a result, could inhibit progress toward reconciliation. A further concern involves the potentially inadequate measures to protect the security of witnesses who are required by the Gacaca Law to testify in very public settings. A related security issue is whether adequate measures will exist to monitor the release of defendants and the performance of their community service. If such measures are not in place and reprisals occur against victims, there is a great risk that the entire Gacaca system and the objectives it intends to achieve will be undermined.

C. Gacaca: More False Hopes?
A critical evaluation of Gacaca must necessarily consider whether, in light of its positive features and drawbacks, this system is capable of facilitating a measure of accountability for perpetrators of the genocide, and of allowing divided communities to reconcile and unite in pursuit of a more peaceful and productive existence, in a manner that significantly improves upon the classical justice model employed so far. In this regard, it is important to recall that what constitutes justice is context-driven, and as one scholar has noted in the case of Rwanda, "a broader sense of justice may better accommodate the individuality of the post-genocidal society than simply locking people up in distant
There can be no doubt that the Gacaca system raises numerous red flags and falls short of internationally recognized standards for conducting fair trials. However, the circumstances that precipitated the enshrining of due process safeguards within international law, as well as national laws, were based on the classic Western criminal trial model, which never contemplated situations of mass violence that generated 110,000 to 130,000 perpetrators of serious crimes within a few short months. Professor Jose Alvarez notes that it is highly presumptuous for the international community, of which few countries have ever faced a dilemma comparable to that faced by Rwanda, to insist either that Rwanda suspend its local prosecutions, whatever form they may take, or that these prosecutions meet international due process standards, particularly where the international community has offered no viable alternative to providing speedy trials that fully respect all due process guarantees to the masses. Even in the best-case scenario, these numbers would overwhelm the legal systems of the most highly developed nations, let alone a poor and politically unstable country like Rwanda whose caricature of a judicial system was completely destroyed in 1994. Indeed, no state has ever succeeded in prosecuting so many detainees with appropriate due process guarantees. The inevitable result is that justice will always be limited and involve compromise in cases of mass violence. In fact, the exception contained in the ICCPR that permits suspension of rights owed to criminal defendants in times of "public emergencies" could be applied to Rwanda, given the multiple challenges it faces such that Rwandan trials, whatever form they take, should not be required to meet international due process standards. The terms of the Genocide Convention further support the proposition that the unquestioned institutionalization of criminal trials as the preferred remedy for dealing with egregious violations of human rights is unfounded. The Genocide Convention imposes an affirmative duty on states to ensure that accused persons are "tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction," and to undertake to prevent and punish such crimes by instituting effective penalties. A "competent" tribunal does not de facto equate to the Western criminal trial model; it may encompass alternative quasi-judicial forums. It is asserted that to the extent that a post-genocidal country attempts in good faith to fulfil these requirements by punishing perpetrators within the limits of its resources, the conditions of the Genocide Convention are satisfied. There can be no denying that, in defiance of the odds, Rwanda has attempted to fulfil these obligations through domestic criminal prosecutions, as has the international community through the ICTR. Predictably, both of these measures have failed to address Rwanda's broader needs for accountability and reconciliation seven years after the genocide. Rather than giving up or succumbing to the temptation of granting a general amnesty, however, the Rwandan government has turned now to its own traditions and culture to alleviate the shortcomings of the criminal trial models. This courage and perseverance merits praise and deference, not denunciation or lofty criticism. The reality is that no system can deliver model justice under circumstances as those prevailing in Rwanda. But this does not mean that a post-genocidal society should not still strive for justice, along with the companion goals of reconciliation and long-term peace. As far as alternative conduits for justice and reconciliation may be compared, the Gacaca system provides an innovative and practical blend of retributive and restorative justice that could legitimately complement the existing domestic prosecutions. While one must be wary not to romanticize the notion of traditional forms of justice, Gacaca offers a promising means for Rwandans to draw together and gain a greater sense of justice and healing than experienced thus far, even though there is no automatic linkage between reconciliation and truth-telling. It appears to strike a delicate balance between the competing interests of victims and defendants by ensuring that offenders are penalized and shamed by their communities, while providing defendants with an opportunity to expedite the processing of their cases and reduce their sentences.
significantly. Furthermore, it fosters a long-term vision of the rule of law within Rwanda by allowing the overburdened legal system to engage in a more systematic reconstruction process in conjunction with other government services. [FN164]
To take the position that justice cannot be achieved via the Gacaca system because it will not (and, arguably, cannot) provide all the due process safeguards required of classical criminal trials, even though it resembles these trials in certain ways, loses sight of the fact that very little justice has been achieved to date for Rwandans under the status quo. [FN165] Over 100,000 people have spent years in prison under appalling conditions without being brought to trial, let alone charged in some cases, while victims have been suspended in their ability to fully process their pain and suffering. [FN166] Moreover, no progress has been made towards reconciliation and consolidation within divided communities. Gacaca offers a solution to these critical deficiencies, albeit an imperfect one. [FN167]
As with any adapted and untried system, Gacaca’s success will depend greatly on the commitment of Rwandans to work together and make the system realize its full potential. This will require great vigilance, as many of the benefits will take time before they can be fully reaped. People must first develop confidence in the Gacaca hearings and trust that justice will be done fairly and honestly, no matter who the accused or the victim is. In turn, this will encourage individuals, whether Hutu or Tutsi, to fully participate in truth-telling hearings within their communities and facilitate the reintegration of defendants. To foster this participative and credible environment, judges must demonstrate genuine impartiality and sensitivity to both the systemic disadvantages faced by defendants and the legitimate concerns of victims. In addition, the government must continue to carry out a broad and consistent communication campaign throughout Rwanda to counter misperceptions and explain the entire process, particularly the incentives to confess to defendants. Otherwise, possibilities to expedite processing of cases and greater reconciliation could be lost if few defendants plead guilty.
Based on a recent study commissioned by the government and conducted by the Center for Conflict Management of the National University of Rwanda on baseline information regarding the Gacaca system, Rwandans appear to be overwhelmingly in favour of the Gacaca jurisdictions. [FN168] The system seems to have kindled a lot of hope within people that it will be able to resolve the enduring problems related to the genocide. This enthusiasm and commitment bodes well for Gacaca’s prospects of succeeding where existing measures have fallen short. It may even foreshadow that, with time, the idealistic government poster advertising the Gacaca system’s objectives may not be such an unattainable goal after all.

Conclusion
Payam Akhavan insightfully notes that in order for Rwanda to move forward with reconciliation, "the Tutsi must absolve the Hutu of indefinite collective responsibility for the genocide while also having a legitimate means of vindicating their suffering through a 'collective catharsis.'" [FN169]
If justice and reconciliation are the ultimate goals to be achieved by a legal response to post-genocidal Rwanda, then total reliance on the criminal prosecutions conducted by the ICTR and the domestic specialized chambers to the exclusion of alternative schemes is misplaced. While these models have their role within the overall response to the genocide by punishing the most egregious offenders, it is unrealistic and shortsighted to place broader expectations on them to process mass numbers of cases and promote extensive community healing, while safeguarding due process standards. In comparison, the Gacaca system's emphasis on restorative modes of justice, through participative truth-telling, atonement, public scrutiny, and reintegrative community service, provide post-genocide Rwanda's best hope for progressing towards national reconciliation and some greater sense of justice. While no doubt an imperfect model, Gacaca nevertheless promises to be a significant step in the right direction. Given the length of time that has elapsed without real progress having been made, the government of Rwanda has a high stake in ensuring that the Gacaca system succeeds in
its objectives to the fullest extent possible. According to Philip Drew, "Gacaca is likely the
last chance the government has to establish a society in which the rule of law is seen as
supreme and 'national reconciliation' is something more than the name of a government
institution." [FN170] To this end, the government must be careful that the impetus
surrounding the Gacaca does not detract from long- term efforts to improve the ordinary
court system, nor slow down the pace of trials in the specialized chambers.
In short, whether the Gacaca system conforms to a particular mode for delivering justice
and accountability is irrelevant in the context of post- genocidal Rwanda. What is needed
is a system that "truly resonates within [the] culture" [FN171]--a system the people
believe in and embrace as their own, so they as individuals and members of communities
can actively mobilize their own destiny beyond the horrors of their past, rather than wait
for the judicial system to do it for them. Gacaca offers all Rwandans this golden ray of
hope, which only courage, integrity and vigilance can keep from fading away.

[FNa1]. LL.M. 2002, Columbia University School of Law; LL.B. 1999, Osgoode Hall Law
School of York University (Toronto, Canada); B.Com. 1995, University of Alberta
(Edmonton, Canada). The author would like to thank the International Law & Practice
Section of the New York State Bar Association for selecting this article as the recipient of
the 2001 Albert S. Pergam Writing Award, and Cleary, Gottlieb, Steen & Hamilton's
generous sponsorship thereof.

[FN1]. See Prof. Kader Asmal, MP, International Law and Practice: Dealing With the Past
800,000 people were slaughtered in the Rwandan genocide); Mark A. Drumbi, Rule Of
Law Amid Lawlessness: Counseling The Accused In Rwanda's Domestic Genocide Trials,
29 COLUM. HUM. RTS. L. REV. 545, 547 (1998) (citing statistics which show that
approximately ten percent of Rwanda's population was wiped out during the genocide);
see also World in Brief/Rwanda; Census-Takers Count Genocide Deaths, L.A. TIMES, July
19, 2000, at A10 (documenting the survey by the Rwandan government and human
rights organizations of the mostly Tutsis killed by Hutu extremists).

[FN2]. See Alan Zarembo, Keeping Their Faith in a Land Time Forgot, ST. PETERSBURG
TIMES, Feb. 12, 1995, at 15A (noting that, in large part, it was the government who
organized the killings); see also Colin Nickerson, Refugee Massacre Unfolds in Congress:
Witnesses Tell Slaughter of Hundreds by Kabilia's Soldiers, BOSTON GLOBE, June 1,
1997, at A1 (discussing the organized genocide in which many Hutu males participated);
David Lamb, Rwanda Tragedy May Reflect Larger Africa Problem: Most Armies Protect
Ruling Hierarchy, So Winner Takes All, DALLAS MORNING NEWS, June 12, 1994, at 21A
(illustrating how the government-sponsored radio station motivated the killers). While
ethnic tensions and violence existed between the Hutu majority and the controlling Tutsi
minority since Rwanda gained independence from Belgium in 1959, it never rose to the
level seen in 1994. See Nancy Gibbs, Why? The Killing Fields of Rwanda; Hundreds of
Thousands Have Died or Fled in a Month of Tribal Strife. Are These the Wars of the

[FN3]. See Linda Melvern, Focus: Genocide in Africa: The Rwandan Blood on the UN's
Hands: Rwanda Saw the Worst Slaughter Since the Holocaust, Yet the West Sat Back and
Did Nothing, OBSERVER, Sept. 3, 2000, at 18 (contrasting the killings of the Holocaust,
which were carried out in secret); Ellie Tersher, Carnage of the Mind in Rwanda,
TORONTO STAR, Apr. 29, 1996, at A2 (describing in an interview that what made the
killings so grotesque was that they were carried out in broad daylight); see also Ann M.
Simmons, Rwanda Executes 22 For '94 Genocide Roles; Africa: Massacre Survivors Hail
Punishment, L.A. TIMES, Apr. 25, 1998, at A1 (discussing the plight of Kato Ninyetegeka,
director of political affairs in the office of the Rwandan president, who lost about 15
family members).
[FN4]. See Mary Gray & Sarah Milburn Moore, Next Arena for Genocide?, WASH. POST, Aug. 24, 1994, at A19 (showing that neighbors had been frightened into killing neighbors); Elizabeth Sullivan, Genocide's Unwelcome Herald, PLAIN DEALER, May 11, 1998, at 7B (hypothesizing that the efficiency of the massacres exceeded that of the Nazi gas chambers); see also From Rwanda's Ashes, Justice Rises, TORONTO STAR, Dec. 10, 1999, at 1 (explaining how a mayor turned on his own neighbors to save his prestige).

[FN5]. See Des Browne, Census Due as People Emerge From Nightmare, HERALD (Glasgow), Aug. 21, 2000, at 7 (arguing the impossibility of a poor country, such as Rwanda, to cope with the challenge); see also Rwanda; Tribunal Judges Visit Rwanda For First Time, AFR. NEWS, Nov. 10, 1999 (illustrating that whatever justice the ICTR hands down will not be enough); Peter Maguire, War Criminals Have Little to Fear, NEWSDAY, Jan. 27, 1999, at A41 (stating that the Rwandan government refuses to cooperate with the UN court). Carlos Santiago Nino identifies this type of mass violence that is no longer deviant within the society as "radical evil." CARLOS SANTIAGO NINO, RADICAL EVIL ON TRIAL vii (1996).

[FN6]. See Rwanda; ICTR Chief Prosecutor Tracks Down Genocide Suspects in DRC, AFR. NEWS, Dec. 7, 2001 (indicating that only 51 suspects have been held and seven trials are in progress by the ICTR); see also Mali; Genocide Convicts: Ex-Prime Minister, 4 Others to Serve Prison Sentences, AFR. NEWS, Nov. 27, 2001, available at LEXIS (describing that if the capacity of the ICTR remains the same, it will not be able to finish all its trials by 2007); Chris Simpson, Obituary: Judge Laity Kama, INDEPENDENT (London), May 16, 2001 at 6 (illustrating the displeasure of the Rwandan government with the ICTR's progress).

[FN7]. See Rwanda; Six Genocide Convicts Transferred to Mali to Serve Their Sentences, AFR. NEWS, Dec. 11, 2001 (illustrating the ICTR's record of eight convictions and one acquittal); see also Tribunal Confirms Genocide Perpetrator's 15-Year Prison Sentence, BBC SUMMARY WORLD BROADCASTS, Feb. 16, 2000 (noting the first conviction by the ICTR); Tanzania; Shame On the UN's Genocide Court in Arusha, AFR. NEWS, Dec. 5, 2001, available at LEXIS (stating that with a budget of $90 million and staff of 800, the ICTR has only meted eight sentences).

[FN8]. See Human Rights Watch, Rwanda: Elections May Speed Genocide Trials, available at <http://www.hrw.org/press/2001/10/rwanda1004.htm> (last visited February 13, 2002); UN Integrated Regional Information Network (IRIN) RWANDA: September Returns Bring Year's Tally to 17,000, AFR. NEWS, Oct. 23, 2000, available at LEXIS (showing two genocide suspects who boycotted their ICTR trial because they felt they could not get a fair trial); see also Susan Cook & George Chigas, Putting the Khmer Rouge on Trial, BANGKOK POST, Oct. 31, 1999, at 1 (illustrating the lack of a legal infrastructure in the Rwandan courts).


[FN10]. See Rwanda; Bagosora: Decision on Prosecution Motion for Adjournment, AFR. NEWS, Mar. 18, 1998, available at LEXIS (quoting Judge Ostrovsky who commented that international tribunals often fail to provide the accused with a speedy trial); see also International Lobby Says International Tribunal for Rwanda Incompetence, BBC
WORLDWIDE MONITORING, June 9, 2001, available at LEXIS (stating that international crisis groups have criticized the ICTR for its record).

[FN11]. See Associated Press, Rwanda to Use Traditional Justice in '94 Killings, N.Y. TIMES, Oct. 7, 2001, at A4 (noting that Rwandans hope that the Gacaca Law will foster reconciliation); see also East Africa; Great Lakes Update, AFR. NEWS, Nov. 10, 1999, available at LEXIS (illustrating the UN's acceptance of the Gacaca as the only viable alternative to ease the overcrowding jails); Rwanda; Hopes and Fears as Kigali Launches Participative Justice, AFR. NEWS, Oct. 11, 2001, available at LEXIS (showing the people's desire for a quicker system of justice).


[FN14]. See Daly, supra note 13, at 75-76 (discussing the view that criminal prosecution seems to be the "primary route to transitional justice"); Mark A. Drumbl, Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda, 75 N.Y.U. L. REV. 1221, 1245 (2000) (noting the pursuit of criminal prosecutions in Rwanda after the genocide). See generally Drumbl, supra note 1, at 639 (stating that criminal prosecutions in Rwanda are only a temporary solution).

[FN15]. See Payam Akhavan, Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?, 95 AM. J. INT'L L. 7, 7 (2001) (noting that criminal prosecutions might have a positive effect on society as far as reconciliation is concerned); Drumbl, supra note 14, at 1277 (discussing the need for judicial intervention to placate some members of society in Rwanda). See generally Jose E. Alvarez, Crimes of State/Crimes of Hate: Lessons from Rwanda, 24 YALE J. INT'L L. 365, 467 (1999) (expressing doubt as to whether the Rwandan experiment with criminal prosecutions "against a select few will 'exonerate' the collective").

(noting the inability of a judicial system in dealing with genocide perpetrators).


[FN20]. See Beresford, supra note 19, at 131 (noting the need for more "administrative and financial support" from the UN); Carroll, supra note 12, at 180 (commenting that inadequate handling of prosecutions by ICTR is undermining its legitimacy); Drumbl, supra note 1, at 591 (stating the lack of an effective witness protection program in Rwanda).

[FN21]. See Carroll, supra note 12, at 181 (noting that the delays of ICTR are a result of a "number of physical, legal, and procedural impediments"); Madeline H. Morris, The Trials of Concurrent Jurisdiction: The Case of Rwanda, 7 DUKE J. COMP. & INT'L L. 349, 374 (1997) (noting the slow pace of ICTR in addressing the problems of genocide); Widner, supra note 12, at 70 (discussing the administrative difficulties of the Tribunal in dealing with war crimes).

[FN22]. See Rupert Cornwell, Former PM Admits Part in Rwanda Genocide, INDEPENDENT (London), May 2, 1999, at 11 (asserting that the ICTR has been a "debacle" due to its inability to wrap up any trials in a three-and-a-half year span); Sylvia de Bertodano, Rwanda's Long Wait for Justice, TIMES (London), Aug. 22, 2000, available at LEXIS (discussing the inability of ICTR to deliver "efficient and effective justice" according to the United Nations Security Council briefing); Rwanda: Justice, Blinded, ECONOMIST, Nov. 27, 1999, available at LEXIS (noting the rift between the Rwandan government and ICTR due to the release of Jean-Bosco Barayagwiza, "one of 50 genocide suspects to have been indicted by the tribunal").

[FN23]. See Victoria Cowan, Who Says Traditional Ways Are Best?: Pensions Ombudsman Annual Report; Law, TIMES, Aug. 22, 2000, available at LEXIS, (discussing the inability of ICTR to deliver justice despite its $80 million budget and a staff of 729). See generally Susan Cook and George Chigas, Putting the Khmer Rouge on Trial, BANGKOK POST, Oct. 31, 1999, at 1 (noting the belief of the Rwandans that their own courts are better able to
deal with the genocide perpetrators than the ICTR); Penrose, supra note 19, at 368
(stating that only nine trials were completed in a six-year span).

[FN24]. See Carroll, supra note 12, at 181 (discussing the shortcomings and delays of
the ICTR resulting from inexperience and infancy despite its multi-million-dollar budget).
See generally Jose E. Alvarez, Lessons from the Akayesu Judgment, 5 ILSA J. INT'L &
COMP. L. 359, 367-68 (1999) (noting additional problems with the ICTR stemming from
the fact that many of the legal specialists in the ICTR are not familiar with international
criminal law, thereby leaving the validity of the judgments open to question); Todd
Howland & William Calathes, The International Criminal Tribunal, Is It Justice or Jingoism
the ICTR's first case, the trial against Jean-Paul Akayesu, the former mayor of Taba).

[FN25]. See Carroll, supra note 12, at 193 (citing lack of knowledge regarding the trials
as a source of frustration for the Rwandan people); see also Justice Minister Commends
USA for Extraditing Genocide Suspect in Kigali, BRIT. BROADCASTING CORP., Jan. 28,
2000, available at LEXIS (discussing an attempt to make proceedings more accessible to
the Rwandans); International Genocide Tribunal Launches Information Center in Kigali,
BRIT. BROADCASTING CORP., Sept. 27, 2000, available at LEXIS (stressing that the
purpose of the center is to give Rwandan citizens access to information about the ICTR
trials). Dissemination of information about the Tribunal has improved somewhat since
1998, when Radio Rwanda was formed. Radio Rwanda Announces New Frequencies, BBC

[FN26]. See Carroll, supra note 12, at 193 (discussing the belief among Rwandans that
the ICTR has been insensitive to their needs). See generally Penrose, supra note 19, at
369-70 (discussing the problems of the Tribunal created by the laborious nature of the
proceedings); Nicholas Kotch, Nationwide General News: Overseas News, AAP NEWSFEED
(April 30, 1998) (stating that some of the inefficiency is due to the ICTR's location in
Arusha, which is a remote town with a defunct telecommunications system).

[FN27]. See Alvarez, supra note 15, at 417-18 (noting that because of the sentencing
disparities between Rwandan domestic courts and the ICTR, some of the most culpable
perpetrators are likely to suffer much lighter penalties in the ICTR than their counterparts
Theogene Rudasingwa, The Rwanda Tribunal and its Relationship to National Trials in
between ICTR and the Rwandan government can be described as strained); Tanzania Re-
Arrests Rwanda Genocide Suspect Freed by U.N. Court, XINHUA NEWS AGENCY, available
at LEXIS (Mar. 30, 1999) (discussing the ICTR's failure to convict Bernard Ntuyahaga, a
major in the former Rwandan armed forces who was accused of multiple murders of UN
peacekeeping forces). In particular, anger and distrust flared towards the Tribunal in
November 1999, after the Appeals Chamber ordered the release of Jean Bosco
Barayagwiza, a director in the Foreign Ministry during the genocide and the head of the
radio station responsible for hate propaganda, because it was too slow in bringing him to
trial after his arrest. Rwandan Genocide Accused Freed by Tribunal, NATIONAL POST, Nov.
6, 1999, at A15.

[FN28]. See Carroll, supra note 12, at 177 (noting the differences in Rwandan and ICTR
sentencing guidelines); Magnarella, supra note 18, at 433-35 (discussing the ICTR's
Rules of Procedure, including the rights of the accused, sentencing guidelines and the
disparity between Rwandan and ICTR procedures); Penrose, supra note 19, at 344-45
(stating that one of the Rwandan government's initial objections to the ICTR was the
prohibition of the death penalty).

[FN29]. See Michael G. Karnavas, Rwanda's Quest for Justice: National and International
Efforts and Challenges, 21-MAY CHAMP 16, 17 (1997) (stating that at the end of the war, the country was left without a functioning judicial system as most legal personnel were either killed or participated in the killings). See generally Lieut. Catherine S. Knowles, Life and Human Dignity, the Birthright of all Human Beings: An Analysis of the Iraqi Genocide of the Kurds and Effective Enforcement of Human Rights, 45 NAVAL L. REV. 152, 199-200 (1998) (noting the difficulties that the depleted judiciary system in Rwanda will have upon an attempt to prosecute those accused of crimes against humanity); Van Lierop, supra note 16, at 211-13 (discussing the impact of the genocide on Rwanda's judicial system).

[FN30]. See Widner, supra note 12, at 68 (noting that a serious problem affecting the ability to prosecute the hundreds of prisoners was the serious depletion of law enforcement and judicial personnel); see also Evelyn Bradley, In Search for Justice--A Truth and Reconciliation Commission for Rwanda, 7 J. INT'L L. & PRAC. 129, 130 (1998) (noting that after the war "[e]ighty percent of [the Rwandan justice system's] personnel, including judges and magistrates, had been killed"). See generally Morris, supra note 21, at 353 (stating that together with the destruction of much of the country in 1994, Rwanda's judicial system was devastated).

[FN31]. See Schabas, supra note 16, at 531 (arguing that while the term "rebuilding" is often used to describe the challenge facing Rwandan justice, it is not well-chosen, as the Rwandan legal system has never been more than a corrupt farce).

[FN32]. See Drumbl, supra note 1, at 587 (explaining that the intended purpose of the new confession procedure under the Organic Law was to accelerate preliminary investigations and, thereafter, judgments and convictions); Morris, supra note 21, at 357-58 (discussing the passage of specialized legislation aimed at attempting to handle the enormous task of prosecuting those being held on charges of genocide). See generally Knowles, supra note 29, at 199-200 (stating that "[a]pproximately 60,000 to 100,000 suspects remain in domestic Rwandan jails without much promise of successful prosecution any time soon").


[FN34]. See Drumbl, supra note 1, at 593-94 (discussing the staffing and jurisdiction of the specialized chambers created by the Organic Law). See generally Schabas, supra note 16, at 530 (stating that the Rwandan Ministry of Justice began to prepare legislation in 1996 with an eye towards effecting recommendations made at the Kigali conference regarding innovations in the justice system); Widner, supra note 12, at 68 (discussing the problems faced by the Rwandan government resulting from a devastated judiciary).

[FN35]. See Major Peter H. Sennett & Lieut. Gregory P. Noone, Working with Rwanda Toward the Domestic Prosecution of Genocide Crimes, 12 ST. JOHN'S J. LEGAL COMMENT. 425, 445-46 (1997) (noting many of the difficulties experienced in 1996 when the prosecutions began). See generally Howland & Calathes, supra note 24, at 158-59 (detailing the trial of Jean-Paul Akayesu, the former mayor of Taba); Widner, supra note 12, at 68 (discussing the establishment of specialized chambers to hear the genocide cases in 1996).

[FN36]. See Drumbl, supra note 1, at 593-94 (reviewing the creation of "Specialized Chambers" in Rwanda); Schabas, supra note 16, at 530 (discussing the approval of the Kigali conference's recommendation for specialized chambers and its role in assisting the Rwandan judiciary in dealing with genocide); see also Richard Falk, Book Review, Judging the World Court, 63 N.Y.U. L. REV. 1376, 1386 n.44 (1988) (noting the tendency of
defendants to prefer specialized chambers due to their ability to choose their judges). According to a former employee of the UN High Commissioner for Human Rights in Rwanda, the acquittal rate has increased from 6% in 1997 to 20% in 2000. Werchick, supra note 13, at 15. This phenomenon may be attributable to the stagnation of evidence over the years, the failure to preserve an accurate collective memory, a shortage of witnesses and potentially greater attention on the part of judges to standards for conducting a fair trial. Akhavan, supra note 15, at 26.


[FN38]. See Akhavan, supra note 15, at 25 (stressing the security problems in the Rwandan judiciary); Morris, supra note 21, at 353 (discussing the lack of judicial resources experienced in the aftermath of Rwanda's devastation); Guy Roberts, Assault on Sovereignty: The Clear and Present Danger of the New International Criminal Court, 17 AM. U. INT'L L. REV. 35, 50 (2001) (emphasizing the inadequate resources of the Rwandan judiciary system). Both judges and witnesses, especially for the defense, are particularly vulnerable to threats of death and bodily injury. As a result, many witnesses refuse to testify or instead fabricate stories. Alternatively, witnesses find it too difficult and expensive to travel to the courts. See Mark A. Drumbl, supra note 1, at 620.

[FN39]. See Roberts, supra note 38, at 76 (highlighting the struggle for efficiency in the Rwandan judiciary system); see also Morris, supra note 21, at 353 (noting the devastation of Rwanda's judiciary following the country's political collapse); see Arbour, supra note 37, at 218 (asserting the total destruction of the Rwandan judiciary).


[FN41]. See Roberts, supra note 38, at 50 (blaming overcrowded prisons on a lack of due process in the Rwandan judicial system); see also Muna, Pillay & Rudasingwa, supra note 27, at 1474 (indicating that the number of men, women and children awaiting trial in Rwandan prisons is 120,000); Chen Reis, Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participation in Internal Armed Conflict, 28 COLUM. HUM. RTS. L. REV. 629, 633-34 (1997) (noting Rwanda's president placing blame for the overcrowding of prisons on the nation's extraordinary number of criminals).

[FN42]. See Alvarez, supra note 15, at 412 n.235 (noting the release of several young, elderly or ill prisoners by the Rwandan post-genocide courts as a result of weak evidence); Reis, supra note 41, at 635 (discussing transformations in the traditional imprisonment of children alongside adults, such as separate facilities and even release). But see David Nill, National Sovereignty: Must it be Sacrificed to the International Criminal Court?, 14 BYU J. PUB. L. 119, 130 n.67 (1999) (book review) (asserting the release of many young and old prisoners in an effort to salvage limited funds).
See Werchick, supra note 13, at 15 (noting that the number of detained people who have not been charged has been estimated to be 18,000 to 40,000); see also Drumbi, supra note 1, at 608 (noting the ignorance of prisoners maintaining innocence where they would be released for time served upon confession); Nill, supra note 42, at 130 n.67 (noting the impact of untimely judicial procedures in Rwanda on prisoners who remain detained for years prior to trial).

See Muna, Pillay & Rudasingwa, supra note 27, at 1490 (noting that at the current processing speed it would likely take "400 years to try the 120,000 people" in Rwandan prisons); see also Drumbi, supra note 1, at 592-93 (describing Rwanda's periodic publication of names of "suspects, accomplices, and conspirators" giving rise to false accusations); Mariann Meier Wang, The International Tribunal for Rwanda: Opportunities for Clarification, Opportunities for Impact, 27 COLUM. HUM. RTS. L. REV. 177, 185-86 (1995) (noting the Rwandan government's awareness of false imprisonment, crippled by a lack of resources available to investigate most accusations).

See Daly, supra note 13, at 166 (referring to the immense costs of running overcrowded prisons, including cost of meals); see also Drumbi, supra note 1, at 573-74 (describing the reliance of Rwandan prisoners on their families for food). See generally Carroll, supra note 12, at 190 (noting the health risks involved in the Rwandan overcrowded prison system, citing malnutrition as a concern).


See Jose E. Alvarez, Rush to Closure: Lessons of the Tadic Judgment, 96 MICH. L. REV. 2031, 2038-40 (1998) (discussing impartiality achieved through international tribunals avoiding "victor's justice"); Morris, supra note 21, at 371 (citing "victor's justice" as a potential impediment to justice where defendants are tried in national as opposed to international courts).

See Widner, supra note 12, at 69 (attributing the lack of confessions to the fear by detainees of reprisal by fellow inmates as there is no separation in the prisons between defendants standing trial and plea- bargaining detainees); Schabas, supra note 16, at 541 (discussing how a reduction in sentence should be an incentive to confess but it will only induce the individual to plead guilty if the sentence offered is low enough). The incentives provided by the Genocide Law did not work because the number of detainees was too large, there were insufficient resources and no coherent communication strategy to inform those in custody about the confession and guilty plea procedure. Drumbi, supra note 1, at 589-91.

See Alvarez, supra note 15, at 394 (noting that the Rwandan government struggles to use the confession process to balance fairness and expediency for the detainees with recompense and revenge for the victims); Drumbi, supra note 14, at 1280-81 (explaining the struggle between allowing plea bargains to help process the large number of detainees and pacifying the victims of genocide who want justice done); see also Drumbi, supra note 1, at 575 (stating that the release of detainees who have been unjustly held must be viewed by the victims as legitimate in order to avoid protests by the citizens of Rwanda).

See Day, supra note 13, at 237 (emphasizing that Rwanda has over 120,000 cases in which only 5,000-6,000 have stood trial but the inefficiency of the judicial system has not quieted the citizens who cry for justice as a necessary part of
reconciliation); Haile-Mariam, supra note 19, at 736 (describing how the large number of prisoners and the slow pace of prosecutions has negatively affected reconciliation for both the detainees and genocide survivors); Morris, supra note 21, at 360-61 (explaining how alternatives to trial are necessary to facilitate the enormous number of cases while contributing to national reconciliation).

[FN51]. See Carroll, supra note 12, at 198 (describing the function of the National Unity and Reconciliation Commission, established in 1999, as promoting peace, unity and reconciliation among the Rwandans); Daly, supra note 13, at 173 (asserting that the purpose of the National Unity and Reconciliation Commission was to achieve peace between the Tutsis and Hutus); Rwanda: Reconciliation Commission Making Progress, AFRICA NEWS, June 27, 2001, available at LEXIS (reporting that the National Unity and Reconciliation Commission has established programs to bring about reconciliation between the Hutus and Tutsis).

[FN52]. In Rwanda, "Gacaca" refers to the grassy plain or open space where village elders gathered to arbitrate disputes amongst community members. See Lara Santoro, Rwanda Attemps an Atonement, CHRISTIAN SCI. MONITOR, Aug. 5, 1999, at 5.

[FN53]. See Drumbl, supra note 14, at 1264 (noting that "Gacaca" was a form of traditional communal justice used to solve disagreements between community members); Daly, supra note 13, at 175 (stating that Gacaca tribunals were comprised of village elders who resolved significant community issues); Madeline H. Morris, Rwandan Justice and the International Criminal Court, 5 ILSA J. INT'L & COMP. L. 351, 352 (1999) (discussing Gacaca's role in traditional Rwandan justice as a method of dealing with community disputes and how it will apply in the Rwandan judicial system).


[FN55]. See Morris, supra note 21, at 358-59 (detailing the categories of offenses and how the confession and plea-bargain system functions as set out in the "Organic Law"); Werchick, supra note 13, at 15 (setting out the structure of offenses and how those who confess will receive reduced sentences).


[FN58]. See Werchick, supra note 13, at 15 (noting that Category One cases will be prosecuted by the conventional prosecutor's office and not by the Gacaca courts); see also Carroll, supra note 12, at 191 (stating that Gacaca courts will not have jurisdiction over those who planned and organized the genocide of 1994 and crimes carrying the death penalty); Laurie Anne Pearlman and Ervin Staub, Gacaca Process as an Avenue Toward Healing and Reconciliation, available at <http://www.heal-reconcile-rwanda.org/gacaca.htm> (last visited Feb. 13, 2002) (emphasizing that Category One defendants will not be tried by "Gacaca" courts).

[FN59]. See Gacaca Law, arts. 3 and 4.

[FN60]. See Werchick, supra note 13, at 15 ("[T]he government foresees the creation of
more than 100,000 **Gacaca** tribunals, composed of ordinary citizens, to operate in each of **Rwanda**'s 12 prefectures, 145 communes, 1,531 secteurs, and 8,987 cellules"); Rwandans to Vote Local Officials, DEUTSCHE PRESSE-AGENTUR, Mar. 28, 1999, available at LEXIS ("**Rwanda** is divided into 12 districts, themselves divided into 155 communes. The latter sub-divided into 1,531 sectors, made of 8,987 'cells'").


**[FN62]** See Gacaca Law, art. 37.

**[FN63]** See id., art. 5.

**[FN64]** See id., art. 6. The General Assembly at the Cell level can only sit legitimately if at least 100 of its members are present. Id., art. 23.

**[FN65]** See id., art. 33.

**[FN66]** See id., art. 9.

**[FN67]** See id., art. 34.

**[FN68]** See id.


**[FN70]** See Gacaca Law, art. 17.

**[FN71]** See id., art. 18.

**[FN72]** See id., art. 91.


**[FN74]** See Gacaca Law, art. 35.

**[FN75]** See id., art. 13.

**[FN76]** See id., art. 37.
[FN77]. See id., art. 37.
[FN78]. See id., art. 18.
[FN79]. See id., art. 10.
[FN80]. See id.
[FN81]. See id.
[FN82]. See id., art. 11.
[FN83]. See Rwanda to Use Traditional Justice in '94 Killings, N.Y. TIMES, Oct. 7, 2001, at 1A.
[FN84]. See id., art. 58.
[FN85]. See id.
[FN86]. See id., art. 54.
[FN87]. See id.
[FN88]. See id., arts. 69 & 70. Category One offenders will incur a death penalty or life imprisonment if they choose not to confess and plead guilty. Id., art. 68.
[FN89]. See id., art. 56. Category One offenders do not enjoy any penalty communications once their names appear on the Category One list. Id.
[FN90]. See id.
[FN91]. See id.
[FN92]. See id., art. 72.
[FN93]. See id., art. 74.
[FN94]. See id., art. 90.
[FN95]. See Organic Law, Title II: Creation, Organization, and Competence of the "Gacaca Jurisdictions," CHAPTER 4: SUPERVISION AND INSPECTION OF THE "GACACA JURISDICTIONSS," art. 51 (discussing the responsibilities of the Department of "Gacaca Jurisdictions" of the Supreme Court).
[FN96]. See Gacaca Law, art. 47.
[FN97]. See id.
[FN98]. See id.
[FN99]. See id.
[FN100]. See id., art. 97.
[FN101]. See id., art. 62.
[FN102]. See David Wippman, Atrocities, Deterrence, and The Limits of International Justice, 23 FORDHAM INT'L L.J. 473, 482 (1999) (stating that out of the first 20,000 Gacaca indictments, nearly 18,000 defendants have pled guilty and their pleas have been accepted by the court); see also Werchick, supra note 13, at 15 (indicating the role of Gacaca as a tool to re-assimilate the guilty back into society). But see Sennett & Noone, supra note 35, at 444-46 (noting that very few of the Rwandan accused have plead guilty and those who have failed to disclose the full extent of their crimes were denied the benefits of the plea, thereby commencing a full trial).

[FN103]. See Rwanda; Elections of Traditional Court Judges Begins, AFR. NEWS, Oct. 4, 2001, available at LEXIS (discussing Rwandan President Paul Kagame's message that if the Gacaca trials were successful, they would help to solve problems that resulted from the genocide in 1994); see also Werchick, supra note 13, at 15 (discussing several goals of the Gacaca plan, including: punishing genocide-related crimes, reconciling and establishing the truth about what happened); Rwanda: Kagame Urges Traditional Courts to " Expedite Backlog of Genocide Cases," RNA News Agency, Oct. 5, 2001, available at LEXIS (expressing how the Gacaca courts are both a unique way to deal with problems within Rwanda and an important contribution to international law).

[FN104]. See Rwanda; Kigali Pledges to Co-Operate with ICTR over Alleged RPF War Crimes, AFR. NEWS, Dec. 4, 2001, available at LEXIS (discussing how Martin Noga, Rwanda's Special Representative to the ICTR, stated the purpose of the Gacaca system is to involve all citizens in justice and reconciliation); see also Rwanda; Gacaca: Election of Judges in Rwanda Continues, AFR. NEWS, Oct. 5, 2001, available at LEXIS (stating the Rwandan government's belief that Gacaca will help to bring reconciliation); Rwanda; New Provisional Calendar for Launch of Gacaca Courts, AFR. NEWS, Mar. 21, 2001, available at LEXIS (stating the belief by Rwandan authorities that Gacaca will both contribute to the fight against impunity as well as promote national reconciliation).

[FN105]. See Danna Harman, Rwanda Turns to its Past for Justice, CHRISTIAN SCI. MONITOR, Jan. 30, 2002, at 9 (stating that while Gacaca may play an important role in the healing process of the nation, it may also reawaken trauma and perhaps even instigate more violence); see also Tim Gallimore, Rwanda's Dilemma, CHRISTIAN SCI. MONITOR, June 7, 2000, at 21 (discussing one person's fear that by speaking out at the Gacaca trials, he or she has opened themselves up to the threat of potential violence and ostracism).

[FN106]. The Rwandan Foreign Ministry stated that the purpose of the Gacaca tribunals is:
(1) To establish the truth about what happened, with the communities that were witness to the heinous crimes participating in the search for truth; (2) To return punishment of crime to the people, in order to eradicate once and for all the culture of impunity and afford an opportunity to all Rwandans to reach a common understanding of the tragedy which decimated our country; (3) To promote unity and tolerance between Rwandese through justice for both the victims of the atrocities and those accused of being responsible for them; (4) To prescribe penalties which promote the reform of criminals and their eventual reintegration in society without prejudice to the rights of other citizens; (5) To re-construct a new dispensation in Rwanda, free from conflict and sectarianism in order to make it possible for all Rwandese to reconcile; [and] (6) To promote security and stability within the country, establish the truth about what happened, and find lasting solutions to the problems caused by genocide and its consequences and to expedite the conduct of genocide trials and carrying out of sentences.
Update on the Process of Justice in Rwanda after the 1994 Genocide, available at <http://www.rwandemb.org/> (last visited Mar. 25, 2002). See also Carroll, supra note 12, at 190-91 (discussing the goals of the Gacaca tribunals); Werchick, supra note 13, at
15 (discussing the same).


[FN108]. See Rwanda; Hopes and Fears as Kigali Launches Participative Justice, AFR. NEWS, Oct. 11, 2001, available at LEXIS (discussing how Rwandan citizens have expressed a hope that Gacaca works in helping to solve their society's problems); see also James Astill, Rapid Justice Used to Heal Rwanda, SCOT. ON SUN., Mar. 25, 2001, at 22 (discussing one person's fear that Gacaca will increase group solidarity behind genocide); Rwanda; Kigali Elects Judges for New Justice System, AFR. NEWS, Oct. 3, 2001, available at LEXIS (stating that despite the fear some may become more traumatized by Gacaca, there is general optimism about the system).

[FN109]. See Carroll, supra note 12, at 190 (stating that the principles of the new Gacaca system of justice have been adopted from the traditional participatory system that was used to resolve disputes within small communities and villages); see also Day, supra note 13, at 249 (advancing the idea that participants in the Gacaca system both have confidence in the system and are less skeptical of it than the formal judicial system); Werchick, supra note 13, at 27 (discussing how the new Gacaca plan has borrowed several concepts from the traditional plan, including community participation, promotion of reconciliation and promotion of harmony).

[FN110]. See Daly, supra note 13, at 179 (discussing some of the shortcomings of the Gacaca system such as lack of precedent, elements of due process and a professional bar); see also Carroll, supra note 12, at 192 (noting some of the disadvantages of the Gacaca system, including the possibility of promoting revenge rather than justice and inadequately protecting due process rights as well as the safety of victims and witnesses); UN Integrated Regional Information Network, Central Africa; Great Lakes Update 910, AFR. NEWS, Apr. 26, 2000, available at LEXIS (stating that Amnesty International is concerned that a defense attorney will not represent the accused and that those judging the accused will have a personal interest in the verdict).

[FN111]. See Panafrican News Agency, Rwanda AIDS Moves From Urban to Rural Rwanda, AFR. NEWS, Dec. 7, 2000, available at LEXIS (stating that 70 percent of Rwanda's population live in rural areas and in poverty); see also Rwandan Government Accused of Forcing Peasants Off their Farms, AGENCE FRANCE PRESSE, June 11, 2001, available at LEXIS (stating "more than 90 percent of Rwandans live in rural areas"); Elizabeth Neuffer, It Takes a Village, THE NEW REPUBLIC, Apr. 10, 2000, at 18 (comparing the size of Rwanda to that of Maryland and describing it as a place where people live in small close-knit villages).

[FN112]. See Carroll, supra note 12, at 193 (stating the ICTR has not provided adequate publicity); see also Payam Akhavan, Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?, 95 AM. J. INT'L L. 7, 25 (2001) (noting the ICTR is located in the remote area of Arusha, Tanzania); Howland & Calathes, supra note 24, at 155 (discussing that the population in Rwanda is disconnected from the ICTR due to the distance between the location of the ICTR trials and the lack of publicity).

[FN113]. See Daly, supra note 13, at 171 (discussing that women are probably more traumatized than men due to rape and bonds with children); see also Citizens Turn Out En Masse to Elect "People's" Judges, AFR. NEWS, Oct. 4, 2000, available at LEXIS (stating there was a large number of women nominated to be judges); see also Rwanda
Women Take Centre Stage in Election of People's Judges, AFR. NEWS, Oct. 4, 2000, available at LEXIS (asserting women judges will encourage people to talk about the 1994 genocide more truthfully). See generally Gacaca Law, art. 11 ("[M]embers of committees of women's and youth organizations may, if they do not chair those committees, be elected as members of the 'Gacaca Jurisdictions'.")

[FN114]. See Carroll, supra note 12, at 191 (states the Gacaca system will allow individuals to discuss genocide); see also Robinson, supra note 12, at 280 (mentioning that Special Representative Michael Moussali, in a report to the general assembly, drew attention to a system of participatory justice raised by the Rwandan government in order to fully and truthfully learn about the crimes committed in Rwanda); Elizabeth Neuffer, It Takes a Village, NEW REPUBLIC, April 10, 2000, at 18 (stating Gacaca advocates assert Gacaca tribunals "will use the moral force of tribunals to shame perpetrators into admitting the truth").

[FN115]. See Daly, supra note 13, at 178-79 (discussing the local focus of Gacaca); see also Day, supra note 13, at 249 (noting the effectiveness of Gacaca as a local instrument); Drumbl, supra note 14, at 1264 (describing the importance of Gacaca in strengthening local communities).

[FN116]. See Drumbl, supra note 14, at 1267 (noting that assimilation into society after shaming enhances community strength); see also Akhavan, supra note 15, at 25 (indicating the beneficial effect Gacaca would have on Rwanda). It should be noted that a number of defendants have already served sufficient time in prison for their crimes if they confess and plead guilty, and will thus be eligible for immediate release and/or community service. Daly, supra note 13, at 103.

[FN117]. See Carroll, supra note 12, at 197 (indicating the use of Gacaca as an "imperfect" tool to remedy Rwanda's overcrowded prisons); see also Daly, supra note 13, at 179 (describing the benefits of Gacaca to Rwanda's system of law); Drumbl, supra note 14, at 1266 (indicating that one of the Rwandan government's main goals of Gacaca was to also punish non-serious crimes).

[FN118]. See Carroll, supra note 12, at 192 (noting possible detrimental effects Gacaca could have on due process); see also Daly, supra note 13, at 179 (describing the imperfections of Gacaca, including lack of due process); Wippman, supra note 102, at 482 (indicating possible due process problems under a Gacaca system).

[FN119]. See Akhavan, supra note 15, at 25 (indicating the Rwandan government's interest in incorporating Gacaca into its justice system); Daly, supra note 13, at 176 (describing the structure of Gacaca and noting the Supreme Court's administrative role in the system); Drumbl, supra note 14, at 1265 (noting a Rwandan Supreme Court member's support of Gacaca).


[FN121]. Id; see Daly, supra note 13, at 177-78 (discussing how the retributive goals of the Gacaca are likely to be realized by using community adjudication of the accused); see also Drumbl, supra note 1, at 589 (asserting that those who plead guilty must offer a detailed description of the committed crimes, an apology and a list of any accomplices or other pertinent information).

[FN122]. Gacaca Law, art. 84 (stating that verdicts rendered by the various Gacaca jurisdictions may be appealed to the next highest jurisdiction).
. See Daly, supra note 13, at 177 (stating that the Rwandan people elected 260,000 adults to serve as judges and have only been trained for three to six months); see also Drumb, supra note 1, at 594 (asserting that although the Organic Law requires "career" magistrates, the judges presiding over the genocide hearings are inexperienced and newly trained).

. See Carroll, supra note 12, at 188 (declaring that the lack of prosecutors and public accusations that prosecutors are themselves guilty of genocide have made it quite difficult to conduct fair trials); see also Drumb, supra note 1, at 630 (maintaining that given Rwanda's scarce resources, it will take over 25 years to prosecute all those accused under the Organic Law); Morris, supra note 53, at 351-52 (commenting that the failure of prosecutors to quickly prepare and move cases is caused by political resistance to justice for the accused).

. See Reply of the Government of the Republic of Rwanda to the Report of Amnesty International Entitled "Rwanda: Unfair Trials--Justice Denied," available at <http://rwandemb.org/prosecution/reply.htm> (last visited Mar. 25, 2002) (discussing that the prosecutor is not obligated to call witnesses to support the charges against an accused, and the defendant's right to summon witnesses or present evidence is within the judge's discretion); see also Alvarez, supra note 15, at 394 (maintaining that the desire for expeditious treatment of the detained prisoners has led to prisoners who have not been formally charged, a lack of defense attorneys and a failure of witnesses to come forward); Carroll, supra note 12, at 188-89 (stating that many of the accused are not represented by counsel despite the efforts of various advocacy groups to aid the indigent prisoners).


. See Amnesty International, Rwanda: The Troubled Course of Justice, AFR 47/11/00 (April 2000) at 32, n.35 available at <http:// web.amnesty.org/catalog.nsf> (last visited Mar. 25, 2002); Prinz, supra note 18, at 580-81 (commenting that defendants in categories other than Category One are more likely to plead guilty and receive a substantially reduced sentence rather than risk a biased and not impartial trial).

. See ICCPR, art. 14(1); African Charter, arts. 7(1) & 26.


. See Carroll, supra note 12, at 172 (discussing how the UN-Secretary General was afraid that the Rwandan court system would be unable to administer justice in an “objective, impartial and fair manner,” due to the local impact of the genocide). See generally Werchick, supra note 13, at 17 (stating that the vast number of judges elected to preside over the hearings jeopardizes the right to an impartial and independent judiciary); Widner, supra note 12, at 67 (explaining that judges are likely to be swayed by popular sentiment and may aid the prosecution in convicting a defendant rather than
face community outrage).

[FN132]. See generally Carroll, supra note 12, at 172 (explaining that since the tribunals are made up of local villagers, prosecutions may be motivated by revenge and "victor's justice" instead of fair trials based on notions of due process); Daly, supra note 13, at 79 (suggesting that the Gacaca system of electing judges from the local community will help effect retributive justice); Drumbl, supra note 14, at 1264-65 (noting that since the judges are from the very villages where the violence took place, the Gacaca tribunals may help to empower victims and involve the community as a whole in the judicial process).

[FN133]. See ICCPR, art. 14(3)(b), (d), & (e); African Charter, art. 7(1)(c).

[FN134]. See Carroll, supra note 12, at 192 (stating that a Gacaca hearing may not provide due process protection for someone on trial); see also Press Release, Amnesty International, Rwanda: The Troubled Course of Justice, available at <http://www.amnesty-usa.org/news/2000/14701500.htm> (last visited Apr. 26, 2000) (declaring the organization's concern with the lack of representation available to the accused). See generally Drumbl, supra note 14, at 1265 (offering that Gacaca has historically been used in small disputes and may not be applicable to severe crimes such as genocide and mass murder).

[FN135]. Gacaca Law, art. 66 (providing opportunities for defendants to present witnesses in their defense, but containing no mention of legal representation).

[FN136]. See Widner, supra note 12, at 68 (explaining that despite the lack of legal resources in Rwanda, lawyers from the United States are unwilling to offer services because they do not want to be viewed as defending those who practice genocide).

[FN137]. See Gacaca Law, art. 50.

[FN138]. See Gacaca Law.

[FN139]. See id.

[FN140]. See ICCPR, art. 14 (5).

[FN141]. See Gacaca Law.

[FN142]. See Drumbl, supra note 14, at 1263-64 (explaining how Category One is reserved for the most serious crimes of planning and leading genocide).

[FN143]. See Gacaca Law, art. 87 (stating that defendants who confess or plea-bargain have no opportunity to appeal).

[FN144]. See id., art. 88.

[FN145]. See Van Lierop, supra note 16, at 203 (noting that many of those involved in Rwandan genocide will escape punishment); see also Bradley, supra note 30, at 150-51 (remarking that many fear that amnesty will be granted to those implicated in the genocide). But see Mary Kimani, Kibuye Prisoners Voice Doubts About 'Gacaca' (Dec. 11, 2001), available at <http://allafrica.com/stories/200112110107.html> (last visited Mar. 25, 2002) (emphasizing that many of those responsible for the genocide have been sentenced to death).

[FN146]. Rwandan Const. arts. 70 & 71.
See generally Morris, supra note 53, at 354-55 (expressing that the use of courts from varying jurisdictions will result in the unequal administration of justice amongst the perpetrators of Rwandan genocide).


Rwandan Const. art. 33.

Drumbl, supra note 14, at 1244; see also Daly, supra note 13, at 100-107 (arguing that the traditional meaning of criminal prosecution may not be capable of fulfilling the needs of Rwanda as prosecutions must take into account the values of Rwandan society); Day, supra note 13, at 237 (citing that the use of alternative dispute resolution in Rwanda will aid in creative and expeditious justice within an overburdened Rwandan judicial system).

See GERARD PRUNIER, THE RWANDA CRISIS: HISTORY OF A GENOCIDE 237-238 (1995); see also Wippman, supra note 102, at 482 (finding that massive numbers of criminal prosecutions arising from the Rwandan massacres have severely taxed the judicial system). See generally Daly, supra note 13, at 163 (remarking that the acts of genocide were perpetrated by over 100,000 people).

See Carroll, supra note 12, at 172 (remarking that 1994 marked the collapse of the Rwandan judicial system); see also Schabas, supra note 16, at 533 (emphasizing that the Rwandan judicial system was in disarray before 1994 and was virtually destroyed after the genocide).

See Maura Reynolds, Chechens Endure 'Ghastly Abuse,' Study Concludes, L.A. TIMES, Oct. 26, 2000 (acknowledging that due process of Chechen captives is trumped by the corruption of the Russian military); see also Human Rights Abuses Rampant in Pak: Human Rights Watch, PRESS TRUST OF INDIA, Oct. 10, 2000, available at LEXIS (indicating the lack of human rights and the denial of due process to political detainees). See generally Jurists Intimidated and Attacked Worldwide, AGENCE FRANCE PRESSE, Aug. 11, 2000, available at LEXIS (illustrating the facts of tremendous abuse of human rights and due process in a number of countries).

See Tina Sanjar, The Nuremberg Laws, Persecution of Jews, available at <http://cghs.dade.k12.fl.us/ib_holocaust2001/Persecution_early_years/nuremberg_laws.htm> (last visited Mar. 25, 2002) (describing German laws of the 1930s which were designed for the state to take away civil or human rights from Jews); see also Theodor Meron, Comment, War Crimes in Yugoslavia and the Development of International Law, 88 AM. J. INT'L L. 78 (1994) (noting that the level of due process provided during the Nuremberg and Tokyo trials was low).

See ICCPR, art. IV.

[FN158]. Id., art. VI.

[FN159]. Id., art. I & V.


[FN161]. See Akhavan, supra note 15, at 22-7 (discussing the efforts to bring justice to Rwanda through various measures such as the ICTR and domestic prosecutions); Drumbl, supra note 14, at 1229 (showing due process in Rwanda had been improving due to the ICTR); see also Developments in the Law-- International Criminal Law, Fair Trials and the Role of International Criminal Defense, 114 HARV. L. REV. 1982, 1982 (2001) (illustrating some debates behind the drafting of ICTR).

[FN162]. See Daly, supra note 13, at 73 (noting that there are difficulties that plague the ICTR); see also Howland & Calathes, supra note 24, at 135 (stating that objectives of the ICTR are too vague and, therefore, lack efficiency). See generally Developments in the Law--International Criminal Law, supra note 161, at 1982 (describing the drafting of ICTR).

[FN163]. See Yigal Chazan, Belgrade Renews Threat of Prison Against Draft- Dodgers, GUARDIAN (London), May 21, 1992, at 8 (illustrating that the Serbian judicial system was unable to handle the thousands of "army reservists who disobeyed the mobilisation order"); see also Mary Anne Fitzgerald, Museveni Now Controls Most of Uganda, but Divisions Remain, CHRISTIAN SCI. MONITOR, Mar. 20, 1986, at 12 (stating that "Uganda's judicial system functions, but has long been open to abuse and probably could not handle mass prosecution of Okello's soldiers"). See generally Judith Matloff, S. Africa Verdict Sets Precedent of Leniency, CHRISTIAN SCI. MONITOR, Oct. 15, 1996, at 7 (showing that a large number of South Africans believe that their judicial system will be unable to do justice when it faces mass prosecution cases).

[FN164]. See Central Africa; Central and Eastern Africa: IRIN Weekly Round- up, AFRICA NEWS, Jan. 7, 2000, available at LEXIS (showing that the government of Rwanda is confident that the Gacaca system will expedite the trial rate in genocide cases); see also Rwanda; Elections May Speed Genocide Trials, but New System Lacks Guarantees of Rights, AFRICA NEWS, Oct. 4, 2001, available at LEXIS (noting the potential drawback of the Gacaca system, namely the fact that it "may be subject to political pressures and lacks some basic internationally recognized safeguards, such as the right to legal counsel"); Rwanda: Genocide Suspects Call for Speedy Establishment of Traditional Courts, BBC WORLDWIDE MONITORING, July 23, 2001, available at LEXIS (stating that "Genocide suspects detained in Kigali Central Prison have called on government to speed up the establishment of [Gacaca] traditional judicial system courts so that they can testify before the courts what they did, saw or heard during the genocide of 1994").

[FN165]. See Carroll, supra note 12, at 187 (stating "[t]he Rwandan judicial system ... is not capable of enforcing the Constitution and other laws, honoring the rights of the accused, or processing cases within a reasonable time frame"); see also Daly, supra note 13, at 179 (noting that "[Gacaca tribunals] do not provide a professional bench or bar; they do not provide for decision according to precedent or other components of due process"); Werchick, supra note 13, at 15 (concluding that the Gacaca system possesses a multitude of due process concerns, "[a majority] stemming from inadequate resources for reasonably speedy trials").
[FN166]. See Carroll, supra note 12, at 167 (asserting that as a result of the Gacaca tribunal's ineffective operation, there are "lengthy detentions of defendants before charges are brought or before trial ..."); see also Drumbl, supra note 14, at 1233 (stating that "[a]pproximately 125,000 individuals ... are incarcerated in Rwandan jails ... [and a]t the present rate of national trials, it would take hundreds of years to adjudge all of these detainees"). See generally James C. McKinley, Jr., Massacre Trials in Rwanda Have Courts on Overload, N.Y. TIMES, Nov. 2, 1997, at 3 (asserting that "[a]t the present rate of trials, it would take 500 years to try all the defendants").

[FN167]. See Carroll, supra note 12, at 197 (discussing the various solutions that the local Gacaca courts will provide to the current search for justice); see also Philip Sherwell, SUN. TELEGRAPH (London), Sept. 16, 2001, at 28 (discussing the favorable attitudes of Rwandans toward the Gacaca system). See generally Genocide Justice; 260,000 to Judge Suspects, SUN. HERALD SUN, Oct. 7, 2001, at 40 (illustrating that Rwandans seem to favor the Gacaca system).


[FN171]. Alvarez, supra, note 15, at 482.

END OF DOCUMENT