

RWANDAN PRISONER RELEASES A RISK FOR THE GACACA SYSTEM

By AFRICA RIGHTS

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African Rights questions plans by the Government of Rwanda to release around 40,000 genocide detainees on bail. Announced in a Presidential communiqué on 1 January 2003, we fear that this unexpected decision will undermine efforts to deliver justice for the victims and survivors of the 1994 genocide through the gacaca courts.

Genocide suspects who have confessed but not those accused of leading the killings, minors who were between 14 and 18 years old during the genocide, elderly prisoners, the chronically ill and other persons accused of ordinary crimes will be included in the releases. The measure will apply only to detainees who run the risk of being imprisoned for longer than provided for under the law. While it is entirely understandable that the government must seek to prevent illegal detentions and the injustices they entail, we believe that this must be weighed against the potential havoc that the releases could wreak in the administration of genocide justice and that an alternative solution should be sought.

It was clearly stated that the prisoners will remain subject to justice and are merely being offered provisional liberty. This is unlikely to reassure genocide survivors and witnesses who will be anxious that the suspects may gain an opportunity to attack their accusers or to evade justice through corruption or by going into hiding or exile. Mass provisional liberty represents a foray into the unknown. It is doubtful whether the Ministry of Justice or any other government department could offer assurances as to what the consequences will be. In every aspect of the genocide prosecutions, and from the outset, the Ministry of Justice in Rwanda has been forced to broach uncharted territory and take on overwhelming challenges, but this move is certain only to compound its existing struggles.

Judicial institutions, which are already severely over-stretched, must now hasten to examine the cases of the relevant detainees within a month; this at a time when the nationwide launch of gacaca has brought its own pressures. And as the gacaca courts begin their work, many of them will now face additional and unanticipated practical difficulties. Firstly, the State can no longer guarantee the

presence in court of the prisoners who have confessed. In this respect the sole reliable factor in the gacaca trials has been complicated. Even more worrying is the potential for released prisoners, returning to their communities, to intimidate the residents, thereby preventing wider participation in the trials and causing damage and trauma to individuals. Government assurances to increase the provision of counselors and tighten security in court are to be welcomed, but inevitably cannot safeguard prosecution witnesses and judges in the period before the hearings.

As African Rights forthcoming report, *Gacaca Justice: A Shared Responsibility*, highlights, the implementation of gacaca is already encumbered by the reluctance of witnesses to name perpetrators and by several logistical problems, including shortcomings and gaps in the law, the inadequacy of some judges (Inyangamugayo) to their task, and dwindling popular attendance in some areas. But crucially, we believe the releases will undermine popular confidence in the process the very factor upon which, our findings show, the success of gacaca depends. On the basis of our past research upon attitudes to justice, there is every reason to be concerned that the releases will have a negative impact upon all the parties involved in gacaca.

Although these are not the first releases of genocide prisoners, they involve by far the largest numbers to date. Previously the government singled out selected groups of prisoners for unconditional release on humanitarian grounds; these were the elderly, the chronically ill and minors. The fact that this latest batch will also include these groups but apparently on different terms, in that they will be tried, is bound to be a source of confusion.

Reactions among detainees to these earlier releases, as detailed in African Rights June 2000-report: *Confessing to Genocide*, give some indication as to how this latest development will be received by them. At the time, prisoners and justice officials alike voiced near unanimous opposition to the release of elderly prisoners, arguing that many of them had led the slaughter, influencing the youth. Furthermore, the selective releases encouraged the hope among detainees that if they maintained their silence, the economic burden of imprisoning them would eventually ensure wholesale releases. This was a major obstacle to the functioning of the confession and guilty plea procedure, as it was implemented prior to gacaca. Gacaca gained a better reception as detainees anticipated much more lenient treatment and speedier trials. They are bound to have felt frustration at the delays so far and the releases will relieve this

for some. But rather than prompting others to genuine confession it may be that they will encourage opportunism, with prisoners offering partial or inaccurate confessions simply in the hope of immediate release. Overwhelmingly, the releases will reinforce the perception that the government lacks the capacity to properly administer genocide justice.

There have already been substantial inconsistencies in genocide prosecutions due to the introduction, first, of the confession and guilty plea procedure and, secondly, gacaca. It is logical that the government should seek to harmonise the system by, as the President suggested, affording prisoners who confessed prior to gacaca the advantages available to those who confess under the law establishing gacaca courts. But the current situation of some 120,000 prisoners in Rwanda's prison has persisted for years and with it an understanding of the time constraints involved. It is unfortunate that there have been delays in launching gacaca nationwide and this is almost certainly at the root of the problem. But nothing was done to prepare people or the gacaca courts for the possibility of imminent releases on this scale. Any sense that the government is wavering in its commitment to implement the gacaca system in its original form will create public uncertainty and weaken resolve.

It is only six months ago that the first pilot sectors began to implement the gacaca system. The sectors where the work is most advanced have just reached the stage of gathering the information necessary for categorising suspects. The witnesses who remain to be called include detainees who have confessed. A very large number of them may have given only superficial or partial accounts and fear being denounced for the crimes they have failed to reveal. Gacaca itself was introduced, in large part, because the confession and guilty plea procedure introduced in 1996 did not accelerate the pace of justice as hoped. It took time and considerable human resources to establish the veracity and comprehensive nature of prisoners' confessions, a process that slowed down the course of justice. Only after detainees have had the opportunity to confront the residents on the hills will it be possible to establish whether their confessions were full and sincere. If they are able to go home now, they will have the time to influence the outcome of their cases.

The communiqué will also undoubtedly affect the independence of the gacaca judges. These judges are not operating in a vacuum, but in a given social and political environment. Whatever the arguments to the contrary, in reality it will be extremely difficult for these judges

to send back to prison thousands of detainees which the State has already taken the decision to free, especially in a country where respect for authority is deeply ingrained.

Moreover, in Gacaca Justice, African Rights emphasises that there is still no firm consensus about past wrongs and agreement about the meaning and purpose of justice initiatives in Rwanda. We suggest that the participatory nature of gacaca holds out the possibility of depoliticising the issue by placing it openly in the civil arena. The communiqué to release prisoners will have profound implications for the workings of the gacaca courts, and the sudden momentous decision will catch them unprepared. African Rights hopes the Government of Rwanda will pause and reflect how best to convince the people of Rwanda that genocide justice is a civil and moral enterprise rather than a political initiative or a lottery.