

International Criminal Tribunals for the Former Yugoslavia and for Rwanda

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This section summarizes the significant developments that occurred during 2002 relating to the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).¹

I. The International Criminal Tribunal for the Former Yugoslavia

The year 2002 saw heightened international interest in the ICTY, as the Tribunal proceeded with the trial of Slobodan Milosevic, former President of Yugoslavia. The unique nature of the Milosevic trial resulted in a number of important developments in ICTY practice and jurisprudence. Those developments contributed to what was a very active year generally in the ICTY's affairs.

From a structural perspective, the driving theme during the year 2002 was an effort on the part of the ICTY to focus its energy toward completing all trials by the year 2008. That process was initiated with procedural reforms enacted in 2000 and 2001, including the appointment of *ad litem* judges, which resulted in an increased active case load for the ICTY in 2002.² The ICTY developed that strategy in 2002 by enacting a referral

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1. See Douglas Stringer, *International Criminal Tribunal for the Former Yugoslavia*, 31 INT'L LAW. 611 (1997); Monroe Leigh & Maury Shenk, *International Criminal Tribunal for the Former Yugoslavia*, 32 INT'L LAW. 509 (1998); Maury Shenk et al., *International Criminal Tribunal for the Former Yugoslavia and for Rwanda*, 33 INT'L LAW. 549 (1999); Maury Shenk et al., *International Criminal Tribunal for the Former Yugoslavia and for Rwanda*, 34 INT'L LAW. 683 (2000); Maury Shenk et al., *International Criminal Tribunal for the Former Yugoslavia and for Rwanda*, 35 INT'L LAW. 622 (2001); Maury Shenk et al., *International Criminal Tribunal for the Former Yugoslavia and for Rwanda*, 36 INT'L LAW. 573 (2002).

2. Maury Shenk et al., *International Criminal Tribunal for the Former Yugoslavia and for Rwanda*, 36 INT'L LAW. 573, 574 (summarizing 2000 and 2001 reforms). In contrast to previous years, in which generally three trials were conducted daily, the addition of the *ad litem* judges increased the daily trial calendar to six cases. See, e.g., Address by His Excellency, Judge Claude Jorda, President of the International Criminal Tribunal for

mechanism, pursuant to which the ICTY would focus on prosecuting the highest-ranking military, paramilitary, and civilian leaders responsible for war crimes and crimes against humanity, and refer cases of lesser visibility to national courts.³ In order to implement the referral mechanism, Rule 11 *bis* of the Rules of Procedure and Evidence was amended in October 2002. The amendment authorizes the Trial Chamber to refer ICTY cases to the authorities of a State in whose territory the crimes were committed or where the accused was arrested.^{4 5}

The ICTY, in 2002, also amended its rules to create an international bar for ICTY defense counsel.⁶ As the President of the ICTY noted, the bar is intended to “make it possible to ensure improved training for defence counsel and, consequently, increase the efficiency of the Tribunal’s functioning.”⁷ Other amendments to the Rules in 2002 included amendments to Rules 72 and 73 clarifying the availability for interlocutory appeal of decisions on Trial Chamber motions⁸ and amendments to Rule 15 *bis* regarding the authority of the ICTY to proceed with cases in the event that a member of the judicial panel leaves the ICTY or is otherwise unable to continue in the case.⁹

The year 2002 was marked by various efforts on the part of the ICTY, with different degrees of success, to obtain the cooperation of states of the former Yugoslavia in extraditing accused individuals and assisting the ICTY in the production of evidence. In April 2002, the Federal Republic of Yugoslavia (FRY) enacted a law on cooperation with the ICTY, and as a result a number of high-profile accused were detained by the ICTY in 2002 and early 2003, including Milan Milutinovic, the former President of Serbia; Nikola Sainovic, the former deputy prime minister of Yugoslavia and top aide to Milosevic; and Dragoljub Ojdanic, the former Chief of the General Staff of the Yugoslavian army. Each of the accused, along with Slobodan Milosevic, was indicted by the ICTY in the Kosovo indictment for directing, encouraging, and/or supporting a wide-ranging campaign of terror and violence

the Former Yugoslavia, to the United Nations General Assembly (Oct. 28, 2002) *available at* <http://www.un.org/icty/pressreal/p707-e.html> [hereinafter Jorda Press Release].

3. See, e.g., *Ninth Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, U.N. Doc. No. A/57/379-S/2002/985 (Sept. 4, 2002) at par. 18–21 [hereinafter Annual Report].

4. See United Nations, *Amendments to the Rules of Procedure and Evidence*, IT/210 (Oct. 11, 2002), *at* <http://www.un.org/icty/supplement/supp37-e/IT-210.htm>. Ultimate enactment of the referral strategy is dependent on the competence of national courts to prosecute referred cases. As of the present date, the Tribunal has determined that only the courts in Bosnia and Herzegovina are competent to handle referred cases, and even within that system, the Tribunal has recommended the establishment of a temporary chamber with special jurisdiction (composed provisionally of international judges in addition to the local bench) before cases are to be referred. See, e.g., Jorda Press Release, *supra* note 2.

5. Similar changes were made in the context of the ICTR rules. See *infra* notes 51–52 and accompanying text.

6. See United Nations, *Amendments to the Rules of Procedure and Evidence*, IT/207 (July 29, 2002), *available at* <http://www.un.org/icty/supplement/supp37-e/IT-207.htm> (amending Rule 44 to require that in order to qualify as a Tribunal defense counsel, attorneys must be a member of the Tribunal defense bar). The Association of Defence Counsel of the ICTY was formally recognized by the Tribunal in December 2002. See Press Release, *Association of Defence Counsel Formally Recognized by the ICTY*, Dec. 19, 2002, *at* <http://www.un.org/icty/pressreal/p720-e.htm>.

7. Jorda Press Release, *supra* note 2.

8. See Amendments to the Rules of Procedure and Evidence, IT/203 (May 1, 2002).

9. See Amendments to the Rules of Procedure and Evidence, IT/213 (Dec. 23, 2002).

against Kosovo Albanian citizens in 1999.¹⁰ Notwithstanding the FRY cooperation law and the detention of leading Serb accused, the ICTY went on record in 2002, alleging failures on the part of the FRY and other States to provide full cooperation,¹¹ and in October 2002 the ICTY referred the issue of FRY non-cooperation to the UN Security Council.¹²

The ICTY saw moderate turnover in its judicial staff in 2002. Three *ad litem* judges, Mohamed El Habib Fassi Fihri of Morocco; Volodymyr Vasylenko of Ukraine; and Per-Johan Viktor Lindholm of Finland, took their oaths in April 2002,¹³ and in November, Judge Carmen Maria Argibay of Argentina was appointed as an *ad litem* judge to replace Judge Fassi Fihri, who retired from the ICTY for health reasons.¹⁴

A. STATUS OF PROCEEDINGS

Since its inception, eighty-three accused have appeared in proceedings before the ICTY.¹⁵ Forty-seven accused currently are in custody, ten have been provisionally released, and twenty-three remain at-large and are subject to arrest warrants.¹⁶ Among the active cases before the ICTY, thirty presently are at the pre-trial stage, eight are at trial (with an additional two awaiting judgment from the Trial Chamber), and thirteen are on appeal.¹⁷ A total of sixteen accused have received their final sentence since the inception of the ICTY, and five accused have been acquitted on all counts.¹⁸

The Trial Chamber issued a total of three sentencing judgments in 2002, a moderate decrease compared to 2001.¹⁹ Those judgments include the sentencing of a Serb paramilitary member who participated in the execution of Muslims in Bosnia and Herzegovina;²⁰

10. See Press Release, *Transfer of Dragoljub Ojdanic to the Hague*, Apr. 25, 2002, at <http://www.un.org/icty/pressreal/p672-e.htm>; Press Release, *Nikola Sainovic and Momcilo Gruban Transferred to the Hague*, May 2, 2002, at <http://www.un.org/icty/pressreal/p673-e.htm>; Press Release, *Milan Milutinovic Transferred to the International Criminal Tribunal for the Former Yugoslavia*, Jan. 20, 2003, at <http://www.un.org/icty/pressreal/p724-e.htm>. A fourth accused, Vlatko Stojiljkovic, former head of the Serbian police force, was also charged in that indictment. Stojiljkovic committed suicide, however, in April 2002.

11. Specifically, Article 39 of the FRY cooperation law prohibits the extradition to the Tribunal of any accused indicated after the law came into force. See Annual Report, *supra* note 3, at para. 227. The ICTY has taken the position that the requirement is not consistent with Article 9(2) of the Tribunal Statute, which guarantees the primacy of the Tribunal over national courts. See Press Release, *Judge Claude Jorda, President of the International Criminal Tribunal For the Former Yugoslavia, to the Security Council*, Oct. 23, 2002, at <http://www.un.org/icty/pressreal/p.706-e.htm>.

12. *Id.* (requesting that the Security Council "take all measures necessary in order to force the Federal Republic of Yugoslavia to assume fully its international obligations"). For a discussion of the ITCY's perspective on the cooperation of the other States, see Annual Report, *supra* note 3, at para. 225-230.

13. Press Release, *Appointment of His Excellency Mohamed El Habib Fassi Fihri to Replace Judge Mohamed Bennouna as of 1 March 2001*, at <http://www.un.org/icty/pressreal/p559-e.htm> (last visited Jan. 31, 2002).

14. Press Release, *Appointment of Judge Carmen Maria Argibay to ICTY*, Nov. 5, 2002, at <http://www.un.org/icty/pressreal/p710-e.htm>.

15. United Nations, *Fact Sheet on ICTY Proceedings*, available at <http://www.un.org/icty/glance/profactindex-e.htm>.

16. *Id.*

17. *Id.*

18. *Id.*

19. In 2001, the Trial Chamber issued seven sentencing judgments. See Maury Schenk et al., *International Criminal Tribunal for the Former Yugoslavia and for Rwanda*, 36 INT'L LAW. 573, 576 (2002).

20. Prosecutor v. Mitar Vasiljevic, No. IT-98-32 (Nov. 29, 2002), at <http://157.150.195.147/icty/vasiljevic/trial/judgment/index.htm>.

a warden of the KP Dom prison complex;²¹ and an individual in the Serb Crisis Staff who pleaded guilty to two counts of torture as crimes against humanity.²²

B. LEGAL DEVELOPMENTS

Both the ICTY Trial Chamber and Appeals Chamber issued a number of noteworthy decisions on various substantive and procedural issues. The following summaries are among the more significant decisions issued by the ICTY in 2002.

1. *Milosevic Trial*

The trial of Slobodan Milosevic commenced in February 2002. Milosevic was charged on three separate indictments—two for events in Bosnia and Herzegovina and a third relating to Kosovo.²³ The trial was complicated by a number of unique factors, including delays resulting from Milosevic's ill health, the tremendous media attention focused on the trial, and the fact that Milosevic was the first accused in ICTY history to represent himself.

At the outset of trial, a number of extraordinary measures were taken to account for the complexities inherent in the trial. The Trial Chamber, for instance, appointed two attorneys as *amici curiae* to serve ostensibly as appointed counsel to assist Milosevic in preparing his defense,²⁴ and during trial the Chamber ordered numerous protective measures prohibiting the disclosure of the identities of certain Prosecution witnesses.²⁵ Collectively, those measures resulted in material delays in the trial process. To take one notable example, during the course of trial, Milosevic informed the Trial Chamber that one of the *amici curiae* had made public comments published in various European newspapers that were unfavorable to the defense, including comments to the effect that Milosevic should be convicted of at least some of the charges for which he was indicted. Upon Milosevic's motion, the Chambers disqualified that *amicus* and substituted another, despite the inconvenient delay of substituting counsel in the middle of trial.²⁶

In addition, the Milosevic trial was interrupted on three occasions in 2002 by interlocutory appeals to the Appeals Chamber (a fourth was raised but dismissed procedurally). The first appeal was raised at the outset of trial, after the Trial Chamber decided to join the two Bosnia and Herzegovina indictments but ordered that the Kosovo indictment be tried separately.²⁷ Applying the joinder standard set forth in Rules 2, 48, and 49 of the Rules

21. Prosecutor v. Milorad Krnojelac, No. IT-97-25 (Mar. 15, 2002), at <http://157.150.195.147.icty/krnojelac/trialc2/judgment/index.htm>.

22. Prosecutor v. Milan Simic, No. IT-95-9/2 (Oct. 17, 2002), at <http://157.150.159.47/icty/simic/trialc3/judgment/msimic/index.htm>.

23. United Nations, *Case Information Sheet: Milosevic Case ("Kosovo, Croatia and Bosnia")*, Jan. 21, 2003, at <http://www.un.org/icty/glance/milosevic.htm>.

24. *Id.*

25. *Id.*

26. The Chambers reasoned that "[i]mplicit in the concept of an *amicus curiae* is the trust that the court reposes in 'the friend' to act fairly in the performance of his duties. In the circumstances, the Chamber cannot be confident that the *amicus curiae* will discharge his duties . . . with the required impartiality." See Press Release, *Trial Chamber III Orders the Registrar of the ICTY to Revoke Appointment of Amicus Curiae*, Oct. 11, 2002, at <http://www.un.org/icty/pressreal/p702-e.htm>.

27. United Nations, *ICTY Judicial Supplement, Prosecutor v. Milosevic: Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder* (Apr. 18, 2002), at <http://www.un.org/icty/Supplement/supp32-e/milosevic.htm>.

of Procedure and Evidence, the Appeals Chambers held that the allegations regarding Bosnia and Herzegovina formed “part of the same transaction,” reasoning that “[a] joint criminal enterprise to remove forcibly the majority of non-Serb population from areas which the Serb authorities wished to establish or to maintain as Serbian controlled areas . . . remains the same transaction notwithstanding the fact that it is put into effect from time and over a long period of time as required.”²⁸

A second interlocutory appeal related to one of the protective measures issued by the Trial Chamber.²⁹ The Trial Chamber had denied a request by the Prosecutor to issue an order, pursuant to Rule 70, preventing the disclosure of a witness testimony offered on a confidential basis to the Prosecutor by an interested government. The Trial Chamber held that Rule 70 did not apply to witness testimony.³⁰ Reversing, the Appeals Chamber held that the salient analysis in a Rule 70 context is simply whether the evidence, of whatever nature, had been provided on a confidential basis, and that the rule applied to all forms of evidence, including witness testimony.³¹

The third interlocutory appeal in the Milosevic trial related to the relationship between the hearsay rule and the admissibility of summary written statements pursuant to Rules 92 *bis* and 89(c) of the ICTY Rules.³² The Trial Chamber had rejected the admission into evidence of a summary of witness statements and other related materials prepared by an ICTY investigator. The Appeals Chamber upheld that determination, ruling that the summaries of witness statements were inadmissible under Rules 89(c) and 92 *bis* because the underlying witnesses were not available to testify on cross-examination.³³

2. Qualified Testimonial Privilege for War Correspondents

In *Prosecutor v. Brdjanin & Talic*,³⁴ the Appeals Chamber addressed an issue of first impression for the ICTY regarding the scope of any qualified privilege in war crimes tribunals for war correspondents.³⁵ The case involved a journalist who had published an article containing a statement attributed to one of the accused. The Prosecutor sought a subpoena requiring the journalist to give evidence, which the latter resisted, and the Trial Chamber granted the Prosecutor’s request.³⁶

28. *Id.*

29. United Nations, *ICTY Judicial Supplement, Prosecutor v. Milosevic: Public Version of Confidential Decision on the Interpretation and Application of Rule 70* (Oct. 23, 2002), at <http://www.un.org/icty/Supplement/supp37-e/milosevic-1.htm>.

30. *Id.*

31. *Id.*

32. United Nations, *ICTY Judicial Supplement, Prosecutor v. Milosevic: Decision on Admissibility of Prosecutor’s Investigator Evidence* (Sept. 30, 2002), at <http://www.un.org/icty/Supplement/supp37-e/milosevic-2.htm>.

33. *Id.* The Appeals Chamber heard a fourth interlocutory appeal, also filed by the Prosecutor, in which the Prosecutor challenged the *proprio motu* order of the Trial Chambers directing the prosecution to conclude its case within twelve months from the date of the order. The Appeals Chamber declined to address the merits of that argument, finding that it was not satisfied that the conditions for granting interlocutory appeal had been met. See United Nations, *ICTY Judicial Supplement, Prosecutor v. Milosevic: Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limit* (May 16, 2002), at <http://www.un.org/icty/Supplement/supp33-e/milosevic.htm>.

34. *Prosecutor v. Brdjanin & Talic*, IT-99-36-PT, Int’l Crim. Tribunal for the Former Yugoslavia [ICTY] (Dec. 10, 2001).

35. *ICTY Judicial Supplement, Prosecutor v. Brdjanin & Talic: Decision on Interlocutory Appeal*, available at <http://www.un.org/icty/Supplement/supp38-e/talic.htm> (last visited Mar. 25, 2003).

36. *Id.*

The Appeals Chamber recognized the issue as a novel one, and proceeded to analyze it by asking three questions: "Is there a public interest in the work of war correspondents? If so, would compelling war correspondents to testify before a tribunal adversely affect their ability to carry out their work? If so, what test is appropriate to balance the public interest in accommodating the work of war correspondents with the public interest in having all relevant evidence available to the court and, where it is implicated, the right of the defendant to challenge the evidence [.]"³⁷

The Chamber found a clear public interest in favor of the work of war correspondents, noting that "society's interest in protecting the integrity of the newsgathering process is particularly clear and weighty in the case of war correspondents," and also that the right to receive information was receiving increased international recognition, as evidenced by Article 19 of the Universal Declaration of Human Rights.³⁸ Likewise, the Chamber found sufficient basis to conclude that compelling war correspondents to testify could jeopardize their function, noting that doing so could have the effect of hindering their ability to gather information and also could render war correspondents targets of those who commit human rights violations.³⁹ Accordingly, the Chamber found a sufficient basis to afford a qualified privilege to war correspondents and remanded the case to the Trial Chamber to apply the following test for determining when the privilege should be recognized: "First, the petitioning party must demonstrate that the evidence sought is of direct and important value in determining a core issue in the case. Second, it must demonstrate that the evidence sought cannot reasonably be obtained elsewhere."⁴⁰

3. *Legal Definition of "Extermination"*

In November 2002, the Trial Chamber sentenced Mitar Vasiljevic to a twenty-year term on an indictment including ten separate counts.⁴¹ One of the counts alleged that Vasiljevic committed "extermination" as a crime against humanity by assisting in the mass execution of seventy individuals, who Vasiljevic and others barricaded inside a house and then set ablaze. Reviewing various sources of international law and previous ICTY opinions on the issue, the Trial Chamber clarified that the elements of the crime of "extermination" include (1) "one act or combination of acts which contributes to the killing of a large number of individuals"; and (2) "[t]he offender must intend to kill, to inflict grievous bodily harm, or to inflict serious injury, in the reasonable knowledge that such act or omission is likely to cause death, or otherwise intends to participate in the elimination of a number of individuals, in the knowledge that his action is part of a vast murderous enterprise in which a large number of individuals are systematically marked for killing or killed[.]"⁴² The Chamber acquitted Vasiljevic on the extermination charge.

4. *Command and Individual Responsibility*

In *Prosecutor v. Hadzihasanovic et al.*,⁴³ the three accused military officers charged in the indictment challenged the indictment on the basis that the actions set forth therein were

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. See ICTY Judicial Supplement, *Prosecutor v. Vasiljevic: Judgment*, available at <http://www.un.org/icty/Supplement/supp38-e/vasiljevic.htm> (last visited Mar. 25, 2003).

42. *Id.*

43. *Prosecutor v. Hadzihasanovic et al.*, IT-01-47-PT, Int'l Crim. Tribunal for the Former Yugoslavia [ICTY] (Jan. 11, 2002).

not carried out by the accused, but instead, they were conducted without their approval by soldiers operating under their authority.⁴⁴ The accused argued that the doctrine of criminal liability of superiors for omissions in the context of non-international armed conflict was not evident at the time the events alleged in the indictment occurred, and that accordingly they should be protected by the doctrine of *nullum crimen sine lege*, which requires accessibility and foreseeability in the application of legal principles retroactively.⁴⁵

Reviewing relevant sources of international law, the Trial Chamber held that the doctrine of "command responsibility" was applied at the Nuremberg and Tokyo Tribunals, but was largely absent from leading international law instruments (including the Geneva code).⁴⁶ Nevertheless, the Chamber discerned that the rule existed in customary international law, both at present and during the period relevant to the indictments. The Chamber concluded, therefore, that the accused may be held criminally responsible for the allegations contained in the indictment if it could be proved that they had reason to know that subordinates within their effective control were about to commit or had committed criminal acts.⁴⁷

5. Rape/Enslavement as Crimes under Customary Law

In *Prosecutor v. Kunarac, Kovak, & Vokovic*,⁴⁸ the Appeals Chamber upheld the Trial Chamber's convictions for rape and enslavement as crimes against humanity, the first ever such convictions. In its decision, the Chamber clarified the customary law definition of "enslavement" as the "destruction of the juridical personality of a victim as a result of the exercise of any or all the powers attaching to the right of ownership," but accepted the definition of rape set forth by the Trial Chamber.⁴⁹

II. The International Criminal Tribunal for Rwanda

The United Nations announced this year that it expects the ICTR to complete its work by 2008, and the Tribunal made a concerted effort to implement measures designed to achieve that goal.⁵⁰ First, the United Nations Security Council granted the ICTR's request to transfer indicted suspects from the ICTR to the Rwandan Government. The ICTR's rules of evidence and procedure were amended to add Rule 11 *bis*, similar to that recently enacted for the ICTY.⁵¹ Marking one of the few bright spots in the ICTR's relationship

44. ICTY Judicial Supplement, *Prosecutor v. Hadzibasanovic: Decision on Joint Challenge to Jurisdiction*, available at <http://www.un.org/icty/Supplement/supp38-e/hadzibasanovic.htm> (last visited Mar. 25, 2003).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Int'l Crim. Tribunal for the Former Yugoslavia [ICTY] (2000).

49. ICTY Judicial Supplement, *Prosecutor v. Kunarac et al.: Appeals judgment*, available at <http://www.un.org/icty/Supplement/supp34-e/kunarac.htm> (last visited Mar. 25, 2003). See David Stoelting et al., *International Criminal Tribunal for the Former Yugoslavia and for Rwanda*, 36 INT'L LAW 573, 578 (2002) (discussing the Trial Chamber's decision in great length).

50. *Seventh Annual Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Note by the Secretary General*, U.N. GAOR 57th Sess., Agenda Item 46 at 5, U.N. Doc. A/57/163-S/2002/733 (2002) [hereinafter Seventh Report].

51. ICTR Rules of Procedure and Evidence 11 *bis*, available at <http://www.ictor.org/wwwroot/ENGLISH/rules/060702/index.htm> (last visited Apr. 8, 2003); see *supra* text accompanying notes 2-14.

with the Rwandan Government in 2002, the tribunal's Chief Prosecutor, Carla Del Ponte, announced her intention to transfer forty suspects to Rwanda and other national jurisdictions for prosecutions under the new rule.⁵²

Second, having experienced increased speed and efficiency after enacting similar reforms for the ICTY, the Security Council granted the ICTR's request to create a pool of eighteen *ad litem* judges to supplement the work of the nine trial judges already sitting on the ICTR.⁵³ The United Nations maintains that instituting a system of *ad litem* judges "represents the only viable solution for the timely completion of the mandate of the Tribunal."⁵⁴ The newly added Article 12 *ter* of the ICTR provides that *ad litem* judges shall be elected for non-renewable four-year terms. Article 11 provides that three permanent judges and up to four *ad litem* judges may be members of any one trial chamber. The resolution promotes efficiency by allowing trial chambers to divide into sections of three judges, consisting of both permanent and *ad litem* judges, which function with the same authority as a regular trial chamber.⁵⁵

Third, the Prosecutor announced a sharp reduction in the number of genocide suspects to be investigated by the ICTR, from 146 new suspects to only ten new suspects. The Prosecutor intends to submit indictments in those and other pending investigations for confirmation by the end of 2004, when she plans to conclude investigations for the ICTR.⁵⁶

A. STATUS OF PROCEEDINGS

By the close of 2002, eighty-one individuals had been indicted by the ICTR, with sixty-one in custody and twenty at large.⁵⁷ Eight people had been convicted by the ICTR, and the Appeals Chamber upheld seven of those convictions.⁵⁸ The 2001 acquittal of one individual was also upheld on appeal, and one appeal is currently pending.⁵⁹ Trials are ongoing for twenty-two individuals.⁶⁰ The Prosecutor has indicated that she is prepared for trial in seven cases involving thirteen individuals, but the United Nations estimates that the ICTR will be unable to commence any new trials until the expiration of the current Judges' mandate on May 23, 2003.⁶¹

52. See Seventh Report, *supra* note 50, at 3; Sukhdev Chhatbar, ICTR Can Now Transfer Cases to National Courts, INTERNEWS, July 8, 2002, available at http://www.internews.org/activities/ICTR_reports/ICTRnewsJul02.html.

53. See Shenk, *supra* note 2; see also Press Release, *International Criminal Tribunal for Rwanda, ICTR President Welcomes Ad Litem Judges Resolution*, ICTR/INFO-9-3-12 (Aug. 15, 2002), available at <http://www.ictr.org/wwwroot/default.htm>; Sheenah Kaliisa, *UN Security Council Approves 18 Ad Litem Judges for Rwanda Tribunal*, INTERNEWS, Aug. 15, 2002, available at http://www.internews.org/activities/ICTR_reports/ICTRnewsAug02.html.

54. See Seventh Report, *supra* note 50, at 5.

55. U.N. SCOR 1411, 4535th mtg., U.N. Doc. S/Res/1411 (2002), available at <http://www.ictr.org/wwwroot/ENGLISH/Resolutions/scr411e.pdf>.

56. See Seventh Report, *supra* note 50, at 3.

57. International Criminal Tribunal in Rwanda, *ICTR Detainees—Status on 28 February 2003*, available at <http://www.ictr.org/wwwroot/default.htm> [hereinafter *ICTR Detainees*]; Sukhdev Chhatbar, *ICTR President Says UN Court Experienced Problems in Getting Witnesses*, INTERNEWS, Nov. 1, 2002, available at http://www.internews.org/activities/ICTR_reports/ICTRnewsNov02.html.

58. ICTR Detainees, *supra* note 57.

59. *Id.*

60. *Id.*

61. *Id.*

Although the ICTR did not issue any judgments or sentences in 2002, it completed trials in three cases and commenced one new trial. The Semanza trial, in which former Bicumbi commune mayor Laurent Semanza is accused of fourteen counts of genocide and crimes against humanity for allegedly executing numerous individuals seeking refuge in a church, was completed in June.⁶² Midway through the trial, defense attorneys for the accused claimed to have received a threatening email from the Government of Rwanda.⁶³ After completing its case the Semanza defense raised the special defense of alibi without giving prior notice as required by ICTR Rule 67. Although such a motion is prohibited under the ICTR Rules, the Chamber determined that it is not empowered to exclude evidence in support of a special defense and allowed the accused to proceed with presenting evidence in support of the alibi. Closing arguments concluded on June 18, and the Chamber continued deliberations at the end of 2002.⁶⁴

The Ntakirutimana case completed trial in August. In that case Gérard Ntakirutimana, a medical doctor practicing at the Mugonero Adventist hospital, and his father, Elizaphan Ntakirutimana, a senior pastor at a church in Mugonero, were jointly indicted and charged with genocide and, in the alternative, complicity in genocide, conspiracy to commit genocide, and crimes against humanity. The elder Ntakirutimana was found in the United States, and in a ruling by U.S. court was permitted to be extradited to stand trial even absent an extradition treaty between the U.S. and the ICTR.⁶⁵ In a trial that began on September 18, 2001, the Prosecutor alleged that the two attacked, killed, and caused serious injury to persons seeking refuge in the Mugonero Adventist hospital and in the Bisecero area.⁶⁶ The charges were denied by the defendants who maintained that they were of good moral character and had been wrongly accused as part of a propaganda effort for political gain. In February 2003, Gérard Ntakirutimana was convicted of genocide and crimes against humanity and sentenced to twenty-five years in prison, and Elizaphan Ntakirutimana was convicted of aiding and abetting in genocide and sentenced to ten years imprisonment.⁶⁷

The *Niyitegeka* trial, begun in June and closing in November, was one of the fastest trials in the history of the ICTR.⁶⁸ Eliézer Niyitegeka, a former Rwandan Minister of Information, pled not guilty to charges of genocide and crimes against humanity, including the

62. Prosecutor v. Laurent Semanza, No. ICTR-97-2-T (June 19, 2002), available at <http://www.ictr.org/wwwroot/ENGLISH/cases/Semanza/minutes/2002/109602.pdf>; see also Seventh Report, *supra* note 50, at 8.

63. The email was allegedly sent to a legal assistant from an intelligence source in Kigali, warning the recipient to leave Arusha or his life would be in danger. The Chamber informed the attorney that he should have brought the issue "through the proper channels" prior to raising it in court. Sheenah Kaliisa, *Rwanda Government Threatening Semanza Defense Team, Attorney Claims*, INTERNEWS, Feb. 6, 2002, available at http://www.internews.org/activities/ICTR_reports/ICTRnewsFeb02.html.

64. See Seventh Report, *supra* note 50, at 9.

65. U.S. v. Ntakirutimana, 184 F.3d 419 (5th Cir. 1999), *cert. denied*, 120 U.S. 977 (2000). Mr. Ntakirutimana was the first person to be extradited by the United States to any non-sovereign entity, such as an international court.

66. Prosecutor v. Elizaphan Ntakirutimana and Gerard Ntakirutimana, Indictment, No. ICTR-96-10-T and ICTR-96-17-T (Sept. 18, 2002), available at <http://www.ictr.org/wwwroot/default.htm>.

67. See Press Release, International Criminal Tribunal for Rwanda, Convictions of Pastor and Medical Doctor, ICTR/INFO-9-2-335.EN (Feb. 19, 2003), available at <http://www.ictr.org/wwwroot/ENGLISH/PRESSREL/2003/335.htm>.

68. *Former Minister's Trial Goes Into Closing Arguments*, HIRONDELLE NEWS AGENCY, Feb. 27, 2003, at <http://allafrica.com/stories/printable/200302270091.html>; see also *Prosecutors Ask UN Tribunal to Convict Former Minister*, HIRONDELLE NEWS AGENCY, Feb. 27, 2003, at <http://allafrica.com/stories/printable/200302270760.html>; Prosecutor v. Niyitegeka, ICTR-96-14-T, Int'l Crim. Tribunal for Rwanda (2000).

murder of five people, rape, and leading scores of people in attacks on Tutsi refugees in the Bisecero hills of the Kibuye province of western Rwanda. He continues to await judgment.

The "Military" trial, involving four defendants, began on April 2, 2002 after a long delay caused by heavy Trial Chamber workload, numerous and complex pre-trial motions, and unpreparedness of the prosecution. However, the trial was immediately postponed until September to give the parties more time to prepare.⁶⁹ Three high-ranking military leaders, at the time of the 1994 genocide, are being jointly tried for genocide and crimes against humanity, including charges that they incited Rwandans to kill, maim, and rape Tutsis.⁷⁰ The prosecution announced that it intended to call over 200 witnesses against the men, but the trial was adjourned indefinitely in December, midway through the testimony of the prosecution's second witness.⁷¹

Ongoing cases before the ICTR include, *inter alia*, the "Media" trial, brought jointly against three individuals for using the radio and newspaper to incite violence against Tutsi civilians;⁷² the "Butare" trial, which is the largest ever before the ICTR, involving six individuals accused of planning the attacks against named Tutsi individuals;⁷³ and the trial of Jean de Dieu Kamuhanda, the former Rwandan minister for higher education and scientific research.⁷⁴

The ICTR heard two appeals from trial court verdicts and sentences during 2002. With only three days of deliberation, the Appeals Chamber upheld the 2001 acquittal of Ignace Bagilishema, the first ever acquittal by the ICTR. Throughout his trial, the accused denied charges that he had committed genocide and other crimes, and the Appeals Chamber rejected all arguments made by the prosecution on appeal.⁷⁵

The appeal of Georges Anderson Rutaganda, sentenced to life imprisonment for genocide and crimes against humanity, but found not guilty of war crimes, was filed in January 2001 and heard by the Appeals Chamber in the summer of 2002.⁷⁶ The appellant denies

69. See Seventh Report, *supra* note 50, at 10; see also Sheenah Kaliisa, *Military Trial Postponed Until September*, INTERNEWS, Apr. 3, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsApr02.htm; ICTR Detainees, *supra* note 57.

70. Sheenah Kaliisa, *Military Trial: Ex-Army Officers Turned Rwanda into a Killing Field, Prosecutor Says*, INTERNEWS, Apr. 3, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsApr02.html#0403b; Prosecutor v. Theoneste Bagosora et al., ICTR-98-41-T, Int'l Crim. Tribunal for Rwanda [ICTR] (2002).

71. Sheenah Kaliisa, *Military Trial Postponed Until September*, INTERNEWS, Apr. 3, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsApr02.htm; *Military Trial Adjourned*, INTERNEWS, Dec. 5, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsDec02.htm.

72. Marco Domeniconi, *Absence of Judge Delays Media Trial*, FOUNDATION HIRONDELLE, Mar. 3, 2003, available at <http://www.alertnet.org/thenews/fromthefield/603268.htm>; Prosecutor v. Jean-Bosco Barayagwiza, ICTR-97-19-T, *Ferdinand Nabimana* ICTR-96-11-T, and *Hassan Ngeze* ICTR-97-27-T.

73. Sukhdev Chhatbar, *'Butare Trial'/Rwanda Genocide was Planned Long Before 1994, Says Prosecutor*, INTERNEWS, June 12, 2001, at http://www.internews.org/activities/ICTR_reports/ICTRnewsJun01.html#0612a; Prosecutor v. Kanyabashi, ICTR-96-15-T, Int'l Crim. Tribunal for Rwanda [ICTR] (2001); Prosecutor v. Nyiramasuhuko et al., ICTR-97-21-T, Int'l Crim. Tribunal for Rwanda [ICTR] (2001); Prosecutor v. Nsabimana et al., ICTR-97-29-T, Int'l Crim. Tribunal for Rwanda [ICTR] (2001); Prosecutor v. Ndayambaje, ICTR-96-8-T, Int'l Crim. Tribunal for Rwanda [ICTR] (1998).

74. Sukhdev Chhatbar, *Former Rwandan Minister's Trial Resumes*, INTERNEWS, Jan. 28, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsJan02.html#1028a; Prosecutor v. Kamuhanda, ICTR-99-54-T, Int'l Crim. Tribunal for Rwanda [ICTR] (2001).

75. See Seventh Report, *supra* note 50, at 10; see also ICTR Detainees, *supra* note 57; UN Office for the Coordination of Humanitarian Affairs, *Ex-Mayor Freed in Tribunal's First Acquittal*, IRINNEWS.ORG, June 5, 2002, at <http://www.irinnews.org/print.asp?ReportID=28642>.

76. See Seventh Report, *supra* note 50, at 10; see also ICTR Detainees, *supra* note 57.

charges that he spearheaded the killing of Tutsi civilians in his capacity as a militia Vice-President, and he argued that he did not receive an impartial trial.⁷⁷ The case continued to await final decision by the Appeals Chamber at the end of the year.

The Appeals Chamber also ruled on an interlocutory appeal filed by defendant Jean Bosco Barayagwiza, in which he asked the Appeals Chamber to determine what constitutes a reasonable period of detention on remand. Ruling that the issue was not subject to interlocutory appeal, the Chamber dismissed the appeal as frivolous and an abuse of process and instructed the Registrar to withhold defense counsel's fees.⁷⁸

B. LEGAL DEVELOPMENTS

1. *Controversy with Human Rights Groups and Rwandan Government*

Many of the important developments at the ICTR in 2002 were controversies that took place outside the courtroom. In January 2002, after meeting with ICTR Registrar Adama Dieng, the Rwandan genocide survivors' groups AVEGA and IBUKA suspended their cooperation with the ICTR and called on the Rwandan Government to do the same.⁷⁹ As a result, several witnesses refused to testify, forcing judges in two trials to order proceedings to continue without the witnesses' testimony.⁸⁰ The groups cited "the hiring of ICTR investigators who are directly implicated in the genocide [and] the hiring as defense investigators of persons with family and parental relations with those presumed to be authors of the genocide."⁸¹ The survivors also complained of poor security afforded to witnesses after they testify, and the "persecution and harassment of witnesses, particularly the women."⁸² Relations worsened in June when a reported 3500 demonstrators, organized by survivors' groups, protested the Prosecutor and Registrar, demanding their dismissal.⁸³ At year's end, cooperation between the survivors' groups and the ICTR had not resumed.

Relations between the ICTR and the Government of Rwanda also remained tense throughout 2002. A March proposal for a joint ICTR/government task force was withdrawn due to the "inability to agree on certain fundamental points, beyond compromise, regarding the proposed commission's terms of reference."⁸⁴ In June, the Rwandan Government,

77. *Rutaganda Defence Claims Trial was 'Partial,'* HIRONDELLE, July 4, 2002, at <http://www.hirondelle.org/hirondelle.nsf>; Rutaganda v. The Prosecutor, ICTR-96-3-A, Int'l Crim Tribunal for Rwanda [ICTR] (2002).

78. Barayagwiza v. The Prosecutor, ICTR-99-52-A, Int'l Crim. Tribunal for Rwanda [ICTR], (2002), available at <http://www.ictor.org/wwwroot/default.htm>; see also Seventh Report, *supra* note 50, at 11.

79. Mary Kimani, *Rwandan Genocide Survivor Groups Suspend Co-Operation With ICTR*, INTERNEWS, Jan. 28, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsJan02.html#1028a.

80. See Seventh Report, *supra* note 50, at 13-14.

81. Kimani, *supra* note 79. In February, IBUKA claimed that forty-one genocide suspects were working as defense investigators at the Tribunal, and pledged not to resume cooperation with the tribunal until the suspects were dismissed. Sheenah Kaliisa, *Forty-One Genocide Suspects Working at the Tribunal, IBUKA Official Claims*, INTERNEWS, Feb. 11, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsFeb02.html. In 2001, the Tribunal suspended two defense investigators for their alleged involvement in genocide. See Sukhdev Chhatbar, *Former ICTR Defense Investigator Transferred to Arusha*, INTERNEWS, Mar. 20, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsMar02.html.

82. Kimani, *supra* note 81.

83. Wanda Hall, *'Go Home,' Rwandans Tell Del Ponte and Dieng*, INTERNEWS, June 27, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsJun02.html.

84. Press Release, *International Criminal Tribunal for Rwanda, Registrar Decides to Withdraw his Proposal to Establish a Joint Commission to Investigate Allegations of Mistreatment of Witnesses from Rwanda* (Apr. 17, 2002), available at <http://www.ictor.org/wwwroot/default.htm>; Sheenah Kaliisa, *ICTR Registrar Withdraws Controversial*

without advance notice to the ICTR, changed the requirements for travel documents for witnesses traveling from Rwanda to ICTR headquarters in Arusha, Tanzania, resulting in numerous trial delays.⁸⁵ Under the new requirements, a witness must personally obtain three clearance certificates, including a certificate of “no criminal record” from local offices which were reportedly often inaccessible.⁸⁶ In response, Judge William Sekule took the unprecedented step of ordering the Rwandan Government to abide by ICTR rule 56, which requires a state receiving suspect or witness transfer orders to act promptly to ensure effective transfer.⁸⁷ The Government, however, claimed that the new requirements had long been applicable to non-ICTR travelers, and that they were extended to ICTR witnesses because incidents of witness harassment required the government “to know more about the people traveling to the tribunal” in order to “follow up on any matter that may arise out of their testimony.”⁸⁸ In July, the ICTR adopted Rule 92 *bis*, enabling trial chambers to admit written witness testimony provided that the written statement does not seek to prove the acts and conduct of the accused as charged in the indictment.⁸⁹

The Prosecutor later brought the dispute before the UN Security Council, telling the Council in a July meeting that the Rwandan Government was impeding the travel of witnesses to the ICTR, and that the attitude of the Government toward the tribunal had “hardened” because the ICTR began investigations of individuals with connections to the current Rwandan army.⁹⁰ In fact, the Rwandan Government reportedly resumed allowing ICTR witnesses to travel to the Tribunal around the same time that the Prosecutor suspended her investigation of crimes allegedly committed by the Rwanda Patriotic Army soldiers affiliated with the current government. This led to at least one human rights group to express concern over the Prosecutor’s lack of independence.⁹¹

Relations between the ICTR and government appeared to take a turn for the better in November when ICTR President Pillay proposed U.N. compensation for genocide victims, acknowledging that “[m]any Rwandans have questioned the tribunal’s value and its role in promoting reconciliation when claims for compensation were not addressed.”⁹² Encouraged

Taskforce, INTERNEWS, Apr. 18, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsApr02.html.

85. See Seventh Report, *supra* note 50, at 8, 14.

86. *Id.*

87. Sukhdev Chhatbar, *Butare Trial: Judge Orders Rwandan Government to Comply with UN Statute*, INTERNEWS, June 19, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsJun02.html; Nyiramasuhuko et al., ICTR-98-42-T, Int’l Crim. Tribunal for Rwanda [ICTR] (June 19, 2002), available at <http://www.ictr.org/wwwroot/English/cases/Nyira/minutes/2002/190602.pdf>.

88. Kimani, *Rwandan Envoy Explains New Travel Requirements for ICTR Witnesses*, INTERNEWS, June 18, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsJun02.html.

89. Press Briefing, *Spokesman of the International Criminal Tribunal for Rwanda*, ICTR/INFO-9-13-22.EN (July 8, 2002), available at <http://www.ictr.org/wwwroot/default.htm>.

90. Sheenah Kaliisa, *ICTR Responds to Inefficiency Claims by Rwandan Government*, INTERNEWS, Aug. 16, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsJul02.html; see also Letter from Kenneth Roth, Executive Director, Human Rights Watch, to U.S. Ambassador John Negroponte, President of UN Security Council (Aug. 9, 2002), available at <http://hrw.org/press/2002/rwanda-Itr0809.htm> [hereinafter Human Rights Watch Letter].

91. Letter from Kenneth Roth, Executive Director, Human Rights Watch, to U.N. Security Council Members (Oct. 25, 2002), at <http://hrw.org/press/2002/10/noncooperation-Itr.htm>.

92. Press Release, *International Criminal Tribunal for Rwanda, ICTR President Calls for Compensation for Victims*, ICTR/INFO-9-2-326 (Oct. 31, 2002), at <http://www.ictr.org/wwwroot/english/pressrel/2002/3206e.htm>; see also Sukhdev Chhatbar, *Rwanda Supports ICTR Proposal to Compensate Genocide Survivors*, INTERNEWS, Nov.

by the proposal, the Rwandan Government accepted an invitation for a delegation to meet with ICTR representatives at ICTR headquarters in Arusha, Tanzania, but later cancelled the meeting after the ICTR President asked the proposed facilitator, U.S. Ambassador at Large for War Crimes Pierre-Richard Prosper, not to attend. Upon Rwanda's cancellation of the joint meeting, the ICTR's President conceded that relations between the two parties had "sadly deteriorated."⁹³

2. Fee Splitting

An important reform adopted at the ICTR in 2002 was its commitment to end the practice of fee splitting. The practice, whereby an attorney shares his or her legal fees (received from the ICTR) with a client in order that the client will maintain the attorney-client relationship, came under investigation in 2001 by the U.N. Office of Internal Oversight and Services.⁹⁴ A new ICTR Rule, Rule 5 *bis*, adopted by ICTR Judges in July, expressly prohibits fee splitting in all its forms.⁹⁵ The ICTR dismissed attorneys in two cases this year, who were alleged to have engaged in the practice. Most notably, on February 6, the Registrar dismissed Andrew McCartan, lead defense attorney for Joseph Nzirorera, for financial dishonesty.⁹⁶ On appeal, the charges were upheld by the ICTR's President. McCartan denied all allegations and refused to transfer his former client's case files to the ICTR until paid.

3. Gacaca Courts

An important alternative to prosecution by the ICTR of the Rwanda genocide cases was the inauguration of the 'Gacaca' courts in 2002, which were created by the Rwandan Government to function outside of the jurisdiction of the ICTR. The concept is based on a traditional Rwandan justice system, whereby village elders settle disputes between members of the community.⁹⁷ In 2001, Rwandans began plans to establish Gacaca courts nationwide,

Nov. 4, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsNov02.html. Discussions between the ICTR and the Secretary-General regarding compensation to victims of the Rwandan genocide resulted in a March 2002 meeting on the subject between U.N. Agencies, donor Governments, and NGOs. The ICTR has stated that it hopes to see the responsibility for assessing and processing victims' claims for compensation to lie with another United Nations agency. See Seventh Report, *supra* note 50, at 14.

93. Press Release, *International Criminal Tribunal for Rwanda, ICTR President Regrets Cancellation of Today's Visit of Rwandan Ministerial Delegation*, ICTR/INFO-9-3-14 (Dec. 10, 2002), available at <http://www.ictr.org/wwwroot/default.htm>; see also *ICTR-Rwanda Meeting Postponed*, INTERNEWS, Dec. 11, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsDEC02.html#1205b.

94. Mary Kimani & Sukhdev Chhatbar, *Defense Lawyer Dismissed Over Financial Dishonesty*, INTERNEWS, Feb. 6, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsFeb02.html. A subsequent report, issued in March 2002, claimed that ICTR detainees solicit between \$2500 and \$5000 from their attorneys for agreement to continued representation. See Sukhdev Chhatbar, *ICTR and ICTY Pledge to End Fee Splitting*, INTERNEWS, Mar. 13, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsMar02.html.

95. Press Briefing, *Spokesman of the International Criminal Tribunal in Rwanda*, ICTR/INFO-9-13-22.EN (July 8, 2002), available at <http://www.ictr.org/wwwroot/default.htm>.

96. Press Release, *International Criminal Tribunal for Rwanda, Defence Lawyer Removed for Financial Dishonesty*, ICTR/INFO-9-2-299.EN (Feb. 6, 2002), available at <http://www.ictr.org/wwwroot/default.htm>.

97. Truth seeking and reconciliation are stated goals of the Gacaca system. Attendees at Gacaca court sessions discuss what they know about the genocide, name alleged suspects, or confess to any wrongdoing. At one of the first Gacaca sessions, held in Cyabombo, Kibuye province, a woman accused one of the nineteen judges of the rape of a seventeen-year-old girl. When another woman in the crowd was overheard whispering what she had heard about the suspect, she was also forced to testify. Sheenah Kaliisa, *Gacaca Court Session Begins with Judge Accused of Rape*, INTERNEWS, June 20, 2002, at http://www.internews.org/activities/ICTR_reports/

which would hear cases related to the 1994 genocide. Roughly 260,000 men and women from every community were elected to preside over the courts, each of which has nineteen judges.⁹⁸ With only thirteen Rwandan civil courts trying genocide-related crimes involving over 120,000 individuals in detention, some legal experts estimate that trials theoretically could continue for a century, absent widespread systemic reform.⁹⁹ The Gacaca courts were instituted in an attempt to clear this backlog.¹⁰⁰ Only persons accused of having committed offences in categories 2 through 4, ranging from intentional homicide or serious assault to property crimes are eligible to stand trial in Gacaca courts. The most serious genocide offences, including organizing or leading others in violence, fall under Category 1 and must still be tried in the formal court system.¹⁰¹ Rwanda's President, Paul Kagame, urged all Rwandans to participate in the Gacaca process, which began widespread implementation in June.¹⁰²

ICTRnewsJun02.html. Some Rwandans criticize use of the Gacaca system to try suspects of genocide, because they feel that it may result in lighter punishments. Gacaca law dictates that half of an individual's sentence is to be served out within the community, and most individuals who are expected to undergo Gacaca trials have been detained for over seven years and are therefore likely to be released into the community immediately upon the conclusion of their trials. Mary Kimani, *Rwanda's Gacaca Courts to Begin Work Nationwide*, INTERNEWS, Nov. 19, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsNov02.html. Some human rights groups are also skeptical of the Gacaca system, which they fear may endanger the lives of witnesses and result in an abuse of the suspects' right to a fair trial. Press Release, *Amnesty International, Rwanda: Gacaca Tribunals Must Conform with International Fair Trial Standards* (Dec. 17, 2002), available at <http://web.amnesty.org/ai.nsf/print/AFR470052002?OpenDocument>.

98. Kimani, *Ambassador Says United States Wants UN Tribunals to Conclude Work Soon*, INTERNEWS, Feb. 8, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsFeb02.html.

99. Sheenah Kaliisa, *Gacaca Court Sessions Begin All over Rwanda*, INTERNEWS, June 20, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsJun02.html.

100. *Id.*

101. Press Release, *Amnesty International, Rwanda: Gacaca—Gambling with Justice* (June 19, 2002), available at <http://web.amnesty.org/ai.nsf/print/AFR470032002?OpenDocument>.

102. *Rwandan to Resurrect Traditional Justice System*, GLOBAL POLICY FORUM, June 17, 2002, at <http://www.globalpolicy.org/general/2002/0617ga.htm>; Sheenah Kaliisa, *Rwandan President Inaugurates 'Gacaca' Justice System*, INTERNEWS, June 18, 2002, at http://www.internews.org/activities/ICTR_reports/ICTRnewsJun02.html.