



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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The Board		26 September 2007
About the Board	<b>RWA102591.FE</b>	
Biographies		
Organization Chart	Rwanda: The consequences of refusing to testify before the gacaca courts (2005-August 2007)	
Employment	Research Directorate, Immigration and Refugee Board of Canada, Ottawa	
Legal and Policy		
References	Articles 29 and 32 of <i>Organic Law No 16/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed Between October 1, 1990 and December 31, 1994</i> address refusals to testify before the <i>gacaca</i> courts (Rwanda 19 June 2004). These sections read as follows:	
Publications		
Tribunal		
Refugee Protection Division	[Government of Rwanda official English version]	
Immigration Division		
Immigration Appeal Division	<b>Article 29:</b>	
Decisions	Every Rwandan citizen has the duty to participate in the Gacaca courts activities.	
Forms		
Statistics	Any person who omits or refuses to testify on what he or she has seen or on what he or she knows, as well as the one who makes a slanderous denunciation, shall be prosecuted by the Gacaca Court which makes the statement of it. He or she incurs a prison sentence from three (3) months to six (6) months. In case of repeat offence, the defendant may incur a prison sentence from six months (6) to one (1) year.	
Research		
Research Program		
National Documentation Packages	Is considered as refusing to testify on what he or she has seen or known, any person who apparently knew something on a given matter denounced by others in his or her presence, without expressing his or her own opinion.	
Issue Papers and Country Fact Sheets		
Responses to Information Requests	Is considered as refusing to testify:	
Recent Research		
Media Centre		
News	1° Anyone who, once summoned to testify before the Court after knowing that he or she is holder of a testimony, refuses to declare by avoiding to speak or deliberately evading the question put to him or her;	
Information Sheets	2° Anyone who, once summoned by the Court and does not appear deliberately without reasons, avoiding to be questioned in as much as the summons is clearly notified to him or her.	
Media Relations		
Proactive Disclosure	Is considered as a perjurer, anyone who gives a testimony ascertaining that he or she is telling only the truth and holds evidences for that, takes an oath and signs	

it; but later on it appears to be false and done on purpose.

The perjury is prosecuted during the very hearing of the matter in which the prosecuted person has given the testimony, if it is discovered that the person did it or on purpose.

...

### **Article 32:**

The Seat for the Gacaca Court taking cognisance of offences stated in articles 29 and 30, decides all matters ceasing and retires to deliberate on whether it is an offence to be prosecuted according to these articles. When the prosecution of the offence is confirmed, the Seat announces the day of the hearing, notifies it to the defendant, and records it in the notebook of activities before carrying on the Court's activities.

When an offence is committed outside the Court, the plaintiff can file his or her complaint in a written form or during the General Assembly. When he or she declares before the General Assembly, the case is registered and put on the agenda for the next meeting.

In case it is notified to the President, he/she hands it to the secretary who records it in the notebook of activities, mentioning the plaintiff, motive, date of submission and the date of reception from the President. After recording, the President informs the General Assembly, and they decide on the date of examining the complaint.

On the hearing day, the President checks if the required number of persons of integrity, the accused and witnesses are present; their identities are registered, and after, reminds the provisions of the law, states the accusation and gives the floor to the defendant for presenting his or her defence and witnesses.

After their declarations, the President gives the floor to the witnesses for prosecution and any other interested person who wants to say something in the General Assembly, asks the accused to react to it, afterwards the Seat members retire for deliberations. The judgement is recorded in the notebook of activities and bears the signatures of all Seat members.

When the Seat takes an imprisonment decision, it fills out an arrest warrant which is forwarded to the nearest security organ or the representative of the National Service in charge of the follow up Gacaca Courts' activities for handing it over to the organs charged with arresting and detaining.

Detention pending trial is forbidden for the prosecuted persons whose offences are stated in articles 29 and 30 of this organic law, apart from persons referred to in article 30 when they are prosecuted by the public prosecution. (ibid., Arts. 29, 32)

In correspondence sent to the Research Directorate, the legal and political affairs adviser of a Great Lakes region human rights organization and a lawyer from the National Service of Gacaca Jurisdictions (Service national des juridictions *gacaca*, SNJG) stated that Article 29 of the above law and the articles following do indeed identify the consequences for refusing to testify in a *gacaca* proceeding (Legal and political affairs adviser 24 Aug. 2007; Rwanda 30 Aug. 2007). In a report on its monitoring of *gacaca* courts, Lawyers Without Borders (Avocats sans frontières, ASF) indicates that, although certain jurisdictions rigorously apply Article 32 of the law, many others do not follow the procedure set out in Article 32, that is to say that they convict the accused without any debate and without giving the accused a chance to defend himself or herself (18 Jan. 2007, 25, 26).

Moreover, an article in *The Sunday Telegraph* reports that a woman who refused to testify at a *gacaca* hearing was sentenced to 26 years in prison (12 Nov.

2006). This information could not be corroborated among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

#### References

Avocats sans frontières (ASF). 18 January 2007. *Monitoring des juridictions gacaca : Phase de jugement - Rapport analytique No 2. Octobre 2005 - septembre 2006.* <[http://www.asf.be/publications/publications\\_rwanda\\_monitoring\\_gacaca\\_2.pdf](http://www.asf.be/publications/publications_rwanda_monitoring_gacaca_2.pdf)> [Accessed 29 Aug. 2007]

Legal and political affairs adviser. 24 August 2007. Correspondence.

Rwanda. 19 June 2004. *Loi organique No 16/200 du 19/6/2004 portant organisation, compétence et fonctionnement des juridictions gacaca chargées des poursuites et du jugement des infractions constitutives du crime de génocide et d'autres crimes contre l'humanité commis entre le 1er octobre 1990 et le 3 décembre 1994.* <<http://www.inkiko-gacaca.gov.rw/pdf/loinouvelle1.pdf>> [Accessed 16 Aug. 2007]

Rwanda. 30 August 2007. Service national des juridictions gacaca (SNJG). Correspondence from a lawyer.

*The Sunday Telegraph* [London]. 12 November 2006. Elizabeth Hopkirk. "Grass-Roots Justice Begins to Take Hold in Rwanda." <<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/11/12/wrwanda12.xml>> [Accessed 20 Aug. 2007]

#### Additional Sources Consulted

**Oral sources:** Avocats sans frontières (ASF), IBUKA mémoire et justice, Amitiés Canada-Rwanda, AJPRODHO-JIJUKIRWA, the former president of the Commission nationale des droits de l'homme du Rwanda, another representative of the Service national des juridictions gacaca (SNJG), and two other representatives of the Ligue des droits de la personne dans la région des Grands Lacs (LDGL) did not provide information within the time constraints of this Response.

A coordinator from the Table de concertation sur la région des Grands Lacs sent the Research Directorate several general documents on *gacaca* courts.

Inter Pares did not have information on this subject.

**Internet sites, including:** AJPRODHO-JIJUKIRWA, Amitiés Canada-Rwanda, Amnesty International, Factiva, Fédération internationale des ligues des droits de l'homme (FIDH), Freedom House, Hironnelle News Agency, Human Rights Watch, IBUKA mémoire et justice, Ligue des droits de la personne dans la région des Grands Lacs (LDGL), Ligue rwandaise pour la promotion et la défense des droits de l'homme (LIPRODHOR), Never Again Rwanda, *The New Times*, Service national des juridictions gacaca (SNJG), United States Department of State.

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