

Testifying to Genocide: Victim and Witness Protection in Rwanda



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Ending Torture, Seeking Justice for Survivors

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List of Acronyms

ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant for Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILPD	Institute for Legal Practice and Development
NPPA	National Public Prosecution Authority (Rwanda)
OTP	Office of the Prosecutor
RoPE	ICTR's Rules of Procedure and Evidence
SCSL	Special Court for Sierra Leone
UN	United Nations
UN CAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNHRC	United Nations Human Rights Committee
VWSU	Victim and Witness Support Unit

Executive Summary

Few countries have experienced mass conflict on the scale of the genocide in Rwanda, which, in the space of three months, from April to July 1994, claimed the lives of between 500,000 and 1 million Tutsi and their perceived Hutu and Twa sympathisers.¹ Few countries have also experienced such intimate violence, in which the majority of perpetrators and victims were neighbours and in many cases friends and even family members. The scale and intimacy of the genocide mean that millions of Rwandans today have suffered or witnessed crimes firsthand. In response, a large proportion of the population has provided eyewitness testimony before courts at national and international level. These include the United Nations International Criminal Tribunal for Rwanda (ICTR), based in Arusha, Tanzania; the Rwandan national courts; and the *gacaca* jurisdictions, which comprised 11,000 community-level courts overseen by locally elected judges. A significant number of Rwandan witnesses have also testified in genocide cases prosecuted on the basis of extraterritorial jurisdiction in North America and Europe.²

The purpose of this report is to explore the challenges that witnesses face in giving testimony about crimes committed during the genocide and to assess the strength of the various processes and mechanisms established to ensure their protection. Issues of victim and witness protection in Rwanda are paramount because of the sheer number of witnesses in question and the complexities of the post-genocide society in which hundreds of thousands of convicted perpetrators, suspects, survivors and their families live side-by-side on densely populated hills. In particular, the proximity of those accused of genocide crimes to those who could testify against them is a key source of communal tension and a principal challenge for any victim and witness protection programme. Illustrating this point, Yves, a genocide survivor in Rusizi district, described the distrust that existed between neighbours before the start of the *gacaca* process:

[P]eople were looking at each other with the eyes of leopards. So many people had been arrested *ad hoc*, so many innocent people were imprisoned and so many guilty people were still at large. The fear and suspicion in the community were very strong.³

These communal tensions have often led to physical and verbal attacks against prosecution and defence witnesses and social ostracism, often deterring individuals from giving evidence. It is telling, however, that despite the substantial obstacles and risks involved, hundreds of thousands of Rwandans have testified about crimes committed during the genocide. Through examining some of their experiences and the challenges they encountered, this report seeks to

¹ Most writers estimate the number of Tutsi deaths during the genocide to be in this range. In her comprehensive analysis of the Rwandan genocide, Alison Des Forges estimates that 500,000 Tutsi were murdered: A Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (Human Rights Watch, New York 1999) at 15-16. Historian Gérard Prunier, however, calculates 'the least bad possible' number of deaths to be 850,000, G Prunier, *The Rwanda Crisis 1959-1994: History of the Genocide* (Hurst, London 1995) at 265.

² See for trials abroad, African Rights and REDRESS, 'Extraditing Genocide Suspects From Europe to Rwanda- Issues and Challenges', September 2008, ('African Rights and REDRESS Extradition Report'), at http://www.redress.org/downloads/publications/Extradition_Report_Final_Version_Sept_08.pdf (all online links accessed October 2012); African Rights and REDRESS, 'Survivors and Post-Genocide Justice in Rwanda- Their Experiences, Perspectives and Hopes', November 2008, ('REDRESS and African Rights, Post-Genocide Justice in Rwanda'), at <http://www.redress.org/downloads/publications/Rwanda%20Survivors%2031%20Oct%2008.pdf>.

³ Interview with Yves, Rusizi Town, 16 April 2012. Throughout this report, all respondents' names have been changed. All interview notes on file with the authors.

identify patterns and trends that underline the need for reform in the area of victim and witness protection.

The basis of this report is an analysis of relevant Rwandan and ICTR legal documents, and individual interviews and focus groups conducted in March and April 2012 with sixty Rwandan prosecution and defence witnesses, Rwandan government officials, Rwandan and ICTR judicial personnel, as well as civil society actors. Interviews were conducted in Arusha, Kigali, Huye (and two neighbouring villages) and Rusizi (and two villages) in Southern Province, and Rubavu in Western Province, Rwanda. During the field research, particular attention was paid to interviewing a diversity of respondents, according to their age, ethnicity, geographical location, personal experience of the genocide and participation in different types of post-genocide legal processes. A draft of this report was presented to the staff of the Rwandan witness protection units in August 2012 as part of a one-day training session offered by the Institute for Legal Practice and Development (ILPD), in Nyanza, Southern Province, and amendments were made to the report following these discussions. The analysis here also draws to some extent on previous fieldwork in Rwanda conducted by the authors and other REDRESS researchers.⁴

The report highlights three overarching findings:

- a) Victims and witnesses face a wide range of threats – some highly visible and others more subtle – that require tailor-made protection processes. It is clear that some of these threats shape current international and domestic protection mechanisms, while others have been largely overlooked. *Gacaca* and the ICTR are the two institutions that have most shaped Rwanda's witness protection framework. *Gacaca* completed its mandate on 17 June 2012, while the ICTR is expected to do likewise by 2014.⁵ The Rwandan national courts will soon be the sole forum within Rwanda for the prosecution of genocide cases and will therefore have to address the legacies of *gacaca* and the ICTR including victim and witness protection. Rather than automatically replicating *gacaca*'s or the ICTR's approach to protection, it is important for the national courts to provide measures tailored to meet individual witnesses' needs, while taking account of the particular Rwandan social context and prevailing resource constraints.
- b) The experience of testifying about the horrific events of the genocide, often before a variety of judicial bodies, exposed many survivors to re-traumatisation. There is a need to strengthen domestic initiatives designed to provide witnesses with psycho-social support. Similarly, while survivors testifying before the ICTR in Arusha could receive some form of counselling while in Arusha, this has not been sustained once they returned to Rwanda. The domestic witness protection processes offer an opportunity for more sustained and engaged support. It is also necessary to take steps to avoid re-traumatisation through the training of judicial personnel in order to ensure that survivors do not find it overly difficult to testify.

⁴ For example see REDRESS and African Rights, 'Post-Genocide Justice in Rwanda', n.2; P Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (Cambridge Studies in Law and Society, Cambridge University Press, Cambridge 2010); P Clark, 'Hybridity, holism, and 'traditional' justice: The case of the *gacaca* courts in post-genocide Rwanda' (2007) 39 *The George Washington International Law Review* 765; N Palmer, *A Contextual Process: Understandings of Transitional Justice in Rwanda* (D.Phil, University of Oxford 2012); and N Palmer, 'Transfer or Transformation?: A Review of the Rule 11 bis Decisions of the International Criminal Tribunal for Rwanda' (2012) 20 (1) *The African Journal of International and Comparative Law* 1.

⁵ UN Security Council, Resolution 1966 (2010).

- c) There has been substantial domestic reform of key judicial and legal processes in Rwanda since 2004, including in the area of victim and witness protection. These reforms are primarily a response to domestic needs and concerns, particularly the challenge of handling a massive caseload of genocide suspects and the increase over time of various forms of intimidation toward witnesses who testified during *gacaca* trials. However, the domestic reform agenda has since been critically shaped by international developments such as the Rwandan government's desire to facilitate the transfer of high profile genocide suspects from the ICTR under the Tribunal's Rule 11 *bis* provisions, as well as the extradition of suspects currently residing abroad. While domestic reforms have been driven by local needs, their substance is geared towards meeting the international expectations of the ICTR and other external actors. Some of these reforms have been extremely effective at improving the protection of genocide witnesses. In other cases, however, the reforms – even though they have contributed to facilitating the transfer of several cases from the ICTR to Rwanda – appear more concerned with international requirements than with addressing the particular needs of victims and witnesses in Rwanda.

The report is structured as follows:

- Section I examines the importance of testifying from the perspective of Rwandans who have done so during genocide trials in Rwanda and abroad. The purpose of this section is to explore the motivations of witnesses, including survivors, who often take considerable risks to provide evidence. Understanding the value that witnesses ascribe to the process of testimony is key to understanding their needs and expectations in terms of protection.
- Section II briefly outlines the right to protection under international human rights law and its interpretation by international courts, tribunals and regional bodies. It then outlines the nature of witness protection as it is currently provided in the context of Rwandan genocide cases. The section describes the relevant domestic and international legal frameworks and mechanisms, as well as the current state of political and judicial debates in Rwanda that influence policies on witness protection.
- Section III explores the nature of threats against witnesses.
- Section IV analyses the efficacy of current protection frameworks and processes in responding to those threats.
- Section V offers some concluding remarks on the relevance of these witness protection issues for future stability and social cohesion in Rwandan communities. The report closes with a series of recommendations for domestic and international actors regarding further improvements to the existing protection system.

1. The Importance of Bearing Witness

Victim and witness protection in any country is designed to achieve two main objectives. First, it serves a legal function, aimed at ensuring that victims and witnesses are willing to testify in court. This is particularly pertinent in the context of Rwanda, with domestic and international genocide cases all relying heavily on eyewitness testimony. Effective protection of victims and witnesses from threats, reprisals and re-traumatisation is therefore a crucial element of all justice processes.⁶ Second, victim and witness protection performs an important social function, providing a framework that enables victims' account of the abuse suffered to be acknowledged, and in doing so offers testimony as one avenue for redress.⁷

In the context of these legal and social dimensions, the motivations behind individuals' decisions to testify, including when and under what conditions, are key considerations for any protection programme. For this reason, this report opens by examining Rwandan survivors' and witnesses' individual and collective motivations for testifying about genocide crimes. While previous studies suggest that some survivors and perpetrators have been too afraid to testify,⁸ this section focuses on individuals who have chosen to participate in genocide-related trials. Among these participants, we identify four main motivations to provide evidence:

- a) a moral obligation to be truthful about events that they witnessed firsthand;
- b) a desire to obtain more information about what happened during the genocide, including locating the bodies of murdered loved ones and identifying perpetrators;
- c) a need for public acknowledgement of suffering; and
- d) contributing to rebuilding broken communal relations and broader social reconstruction.

First, among interviewees, the strongest motivation to testify was the individual sense of obligation to bear witness to the genocide. Several respondents' accounts are illustrative in this regard. Bienvenue was a farmer who survived the genocide by travelling to her father's home, where he gave cattle to the local militia in exchange for his daughter's and her youngest child's lives. Four of Bienvenue's other children, her husband and his whole family were killed. Bienvenue was elected as an *inyangamugayo* – literally, in Kinyarwanda, 'those who love truth', the term given to *gacaca* judges – in her home sector near the town of Huye in Southern Province. She also testified before this same court, a process she described as follows:

The day that you accused or defended [any suspects], you could not be on the court as a judge. I spoke *for* my family, about my family. The mayor who was in charge of this district, I saw him, I heard him telling people to come together and kill. He came with a megaphone to say that all the people should go to the stadium for security. The next day the *interahamwe* came and surrounded the stadium. I saw those people around the stadium and I named them in *gacaca*. It was hard but I had to name them.⁹

⁶ See REDRESS, 'Ending Threats and Reprisals Against Victims of Torture and Related International Crimes- A Call to Action', December 2009, at

<http://www.redress.org/downloads/publications/Victim%20Protection%20Report%20Final%2010%20Dec%2009.pdf>.

⁷ G Sluiter, 'The ICTR and the Protection of Witnesses' (2005) 3 *Journal of International Criminal Justice* 962 at 963-964.

⁸ See further below, Section III; see also Human Rights Watch, 'Justice Compromised- The Legacy of Rwanda's Community-Based *Gacaca* Courts', 31 May 2011, pp. 86-103, at <http://www.hrw.org/reports/2011/05/31/justice-compromised-0>.

⁹ Interview with Bienvenue, Huye District, 9 April 2012.

Jeannette, a genocide survivor from a village near Huye town, echoed Bienvenue's motivations for testifying about genocide crimes:

I have testified before *gacaca* and the ICTR, but I didn't go there to Arusha. [The investigators] came here to meet me [...]. I didn't feel bad about speaking to the investigators. I felt that it was necessary. For me, it was a personal obligation to say what happened [...]. From the beginning I didn't trust *gacaca*. I could see that some of the *inyangamugayo* were killers, so I didn't have faith in the process but I knew there was nobody else who knew what I knew so I had to go and say something.¹⁰

Jeanette also expressed a second common motivation for testifying in genocide trials.

Another thing that encouraged me to go [to *gacaca*], she said, 'was that I thought I could learn where the bodies of my family were, but I never learnt this. The only bodies that I buried were those that I saw being killed.'¹¹ The importance of locating the bodies of genocide victims – and the need for a culturally appropriate reburial – is a widespread reason for witnesses choosing to attend, and to testify during, genocide trials.¹²

The motivation to testify in order to obtain information about what happened to the victims of the genocide was coupled with a desire to know who was involved in the crimes. Many respondents described testimony about genocide crimes as crucial for determining the culpability or innocence of suspects. This is a central issue, given that hundreds of thousands of Rwandans have been accused of complicity in the genocide. "I'm a survivor," said Solange, an elderly widow from a village near Huye. "My main motivation [to testify] was to uncover the truth. If a person was innocent, justice should be done and he should be released. And for me, personally, I wanted to know information about who died."¹³

Third, further highlighting the perceived personal benefits of bearing witness, previous research by one of the authors found that many survivors claim to have overcome feelings of loneliness and isolation by publicly describing the personal impact of genocide crimes and receiving communal acknowledgement of their pain. These motivations stem from *gacaca*'s emphasis on witnesses providing legal evidence in genocide cases but also having the space to describe the individual and communal effects of the genocide. These particular features of the *gacaca* process profoundly shape the ways in which many Rwandans interviewed interpret the value of bearing witness. As Paul, a survivor whose father, two brothers and one sister were killed during the genocide, said after a *gacaca* hearing in Musanze in 2003,

Gacaca is important for us survivors because it helps us live and work in the community again [...]. All the survivors come together and talk about what has happened. We realise that we are in the same situation, that we have all had family who were killed. We understand each other and we realise that we are not alone.¹⁴

¹⁰ Interview with Jeannette, Huye Town, 10 April 2012.

¹¹ Ibid.

¹² Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers*; and Palmer, 'Transfer or Transformation?: A Review of the Rule 11 bis Decisions of the International Criminal Tribunal for Rwanda'; REDRESS and African Rights, 'Post-Genocide Justice'.

¹³ Interview with Solange, Huye District, 13 April 2012.

¹⁴ Interview with Paul in Ruhengeri, 4 May 2003.

In such situations, some survivors testify in order to gain a sense of solidarity with others who have had similar experiences of suffering and to feel more connected to their communities. Survivors, even when they live side-by-side with others who have suffered pain and loss, often describe feeling a great sense of social dislocation. Therefore, a key component of testimony before *gacaca* and other courts was the opening of empathetic dialogue to facilitate individuals' sense of reintegration into the wider community.¹⁵

Finally, many participants believed their testimony would benefit Rwandan society as a whole, especially in terms of national reconstruction. This motivation was clear in Yvonne's account of her testimony. Similar to Bienvenue, Yvonne was a farmer in Huye district. During the genocide, the bodies of Tutsi victims were buried in Yvonne's back garden, and she gave evidence during *gacaca* that implicated her own family members in the killings. She said,

I saw the people who had killed and I saw where the bodies were and I knew that later this would be known. I had to tell the story so that things could come to light – otherwise what kind of a society would we be living in?¹⁶

Beyond the four motivations for testifying explored here, the value attached to both bearing witness and receiving information about the genocide was also articulated through the absence of these processes. For Francine, a genocide survivor in Rusizi district who lost her whole family in 1994 and whose left ear was severed by a machete, the lack of an opportunity to testify about genocide crimes was extremely costly. She said,

The one that made me suffer was Yussuf [Munyakazi] and he is in Arusha but I never had the opportunity to go to Arusha. I have many wounds from him but only a few people can go there. This man is in Arusha and I am only hearing that he is being tried but it is very far away and it does not help. Can you testify against someone we do not see? To speak would reduce our suffering and I hope that he will be punished but no one has come to speak to us about what he did. How can they try someone if they do not hear our stories? If he came here, maybe he could ask for forgiveness, and perhaps we could have forgiven him. Over there, it does not follow the way of justice that we expect.¹⁷

Connected to these concerns about the absence of testimony, many respondents criticised the holding of genocide trials outside of Rwanda, where fewer Rwandans can participate directly. As Hakizimana, a retired Rwandan Defence Force (RDF) soldier and current defence witness in Huye district, said,

For me, it's good to bring [the senior accused] back here. People will testify live and they will see each other. A person who testifies in another's absence, it is easy for them to lie but if you see each other, it is much more difficult to lie.¹⁸

In previous interviews, a common critique of the ICTR was that suspects were never required to account for their crimes directly before affected communities. As one *inyangamugayo* said,

In Arusha the big fish are there. The victims travel there, but in *gacaca*, everyone is

¹⁵ However, see REDRESS and African Rights, 'Post-Genocide Justice', p. 90, on the reluctance of survivors of rape and other forms of sexual violence to testify openly in *gacaca*; see also further below, Section III.

¹⁶ Interview with Yvonne, Huye District, 13 April 2012.

¹⁷ Interview with Francine, Rusizi District, 17 April 2012.

¹⁸ Interview with Hakizimana, Huye Town, 12 April 2012.

already here: survivors, perpetrators, judges, they are all here in the community. That is the difference [...]. Those in Arusha haven't asked for forgiveness, yet they have committed many crimes here. They should face us, the Rwandan family, but they avoid us by being there.¹⁹

Similar sentiments were expressed during a case in 2009 concerning the Rwandan genocide suspect, François Bazaramba, who had fled to Finland. Members of the Finnish court where Bazaramba was on trial travelled to his former village in southern Rwanda. A Finnish journalist travelling with the court interviewed a local *inyangamugayo* named Mamasani about the conducting of the trial overseas. The journalist reported:

[Mamasani] feels that the final truth in [the trial] could be reached only if Bazaramba and the witnesses in the case would come before the local people. 'When he is not there, people can say anything they like.' Mamasani feels that a *Gacaca* court would be the right place to deal with the Bazaramba case.²⁰

Even in the Bazaramba trial, where some hearings were conducted *in situ* in Rwanda, this might be perceived as inadequate because the hearings take place in Kigali, far from the affected community, and Bazaramba appeared only via videolink rather than in person. In such interpretations, justice delivered through foreign courts – or at a physical distance from the general population – is perceived by some survivors in Rwanda as less rigorous for genocide suspects because it entails no direct engagement with the population, save the Rwandans called as witnesses in those trials.²¹

While this research shows a strong preference for trials to take place in Rwanda, most survivors previously interviewed by REDRESS also emphasised that if genocide suspects abroad are not extradited to Rwanda, they should be tried abroad.²² Overall, the value that witnesses ascribe to testifying about the genocide highlights the need for an effective protection framework that will not only ensure their safety and address the concerns of survivors and other witnesses but will also allow them to satisfy these various motivations for testifying.

¹⁹ Palmer, above note 12 at 171.

²⁰ Helsingin Sanomat, 'Prosecutor in Genocide Case Takes Court on Tour of Rwanda Village', 17 September 2009, <http://www.hs.fi/english/article/Prosecutor+in+genocide+case+takes+court+on+tour+of+Rwanda+village/1135249393557>.

²¹ REDRESS and African Rights, 'Post-Genocide Justice in Rwanda', pp.72-85; Elizabeth Neuffer recorded similar views from Rwandan survivors: 'having [ICTR] trials outside Rwanda deprives genocide survivors of something they need in order for reconciliation: the need to confront those whose orders left them mutilated or robbed...of their families.' (E Neuffer, *The Key to My Neighbor's House: Seeking Justice in Bosnia and Rwanda* (Bloomsbury, London 2000) at 377.

²² REDRESS and African Rights, 'Post-Genocide Justice in Rwanda', p.85.

2. Legal frameworks for Protection: International and Domestic

Under international law, States have a duty to provide adequate witness protection.²³ This section briefly considers the right of victims and witnesses to be protected under international law and the ways in which international courts and treaty bodies have interpreted the right to protection, before examining how effectively Rwanda and the ICTR have enacted witness protection measures. It highlights the ways in which the witness protection framework in Rwanda developed in response to both domestic and international concerns. It also suggests possible ways to strengthen the current legal framework, as the national courts become the principal forum for genocide trials.

2.1. The International Legal Framework

Article 13 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) provides that:

Each State Party shall ensure that any individual who alleges that he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. *States shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given (emphasis added).*²⁴

Similar provisions are found in the Convention for the Protection of All Persons from Enforced Disappearances, the UN Convention on the Elimination of All Forms of Discrimination against Women, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and the UN Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.²⁵ The “Robben Island Guidelines” on the prohibition of torture in Africa provide that States shall:

Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.²⁶

²³ UN Human Rights Council, ‘Report of the UN High Commissioner for Human Rights on the Right to the truth’, UN Doc. A/HRC/15/33, 28 July 2010, para.6.

²⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly Resolution 39/46, 10 December 1984.

²⁵ The UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (‘Basic Principles and Guidelines’), adopted by the UN General Assembly on 16 December 2005, Resolution 147 (A/Res/60/147).

²⁶ Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (‘Robben Island Guidelines’), 2008, para. 49.

In addition to these express references to witness and victim protection under human rights law, protection of the life, bodily integrity and dignity of individuals is at the heart of all human rights instruments, starting with the Universal Declaration of Human Rights.²⁷ Similarly, the International Covenant for Civil and Political Rights (ICCPR) refers to “respect for the inherent dignity of human persons”. It provides that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.” The ICCPR in Article 9 (1) further stipulates a “right to security of a person”, which the UN Human Rights Committee (HRC) has interpreted to include a right to protection.²⁸

2.2. Right to protection in international courts and treaty bodies

In practice, the right to protection is critical to the realisation of other rights, such as the right to an effective remedy or to access justice. As such, the protection of witnesses and victims has been described as the “cornerstone on which combating impunity, providing justice and ensuring effective remedy rest.”²⁹

Accordingly, the HRC found that the right to security of the person as enshrined in Article 9 (1) of the ICCPR entails an obligation of State Parties to the Covenant to “take effective measures to ensure that [the complainant] is protected from threats/intimidation with respect to the proceedings” and to “ensure that similar violations do not occur in the future.”³⁰ The HRC similarly found in other cases that “States are under an obligation to take reasonable and appropriate measures to protect individuals whose lives have been threatened.”³¹ The jurisprudence of the HRC is reflected in judgments of the European Court of Human Rights and the Inter-American Court of Human Rights,³² which have also confirmed in several judgments that the right to protection is a prerequisite for the fulfilment of the right to justice.³³

Recognising the vital role of victims and witnesses in the human rights system, regional and international bodies have found that threats to and reprisals against complainants constitute a violation of their right to access international remedies. In Africa, for example, the Rules of Procedure of the African Commission on Human and Peoples’ Rights expressly provide that States shall “make an undertaking not to victimise or take any reprisals against the Complainant and/or any person representing them or their family members, or witnesses because of their statements before the Commission.”³⁴

International criminal tribunals and courts have similarly emphasised the importance of protecting individuals who are involved in the investigation and prosecution of cases within their jurisdiction.³⁵ For instance, the Rules of Procedure and Evidence of both *ad hoc* international criminal tribunals for the former Yugoslavia and for Rwanda contain specific

²⁷ Universal Declaration of Human Rights, General Assembly Resolution 217 A III, 10 December 1948.

²⁸ See for instance *Rajapakse v Sri Lanka*, UN Human Rights Committee, UN Doc. CCPR/C/87/D/1250/2004, 5 September 2006, para.9.7.

²⁹ See Report of the UN High Commissioner, above, note 22, para. 13.

³⁰ *Supra*, note 28, para.11.

³¹ See Report of the UN High Commissioner above note 22, para.14.

³² See further REDRESS, ‘A Call to Action’, above note 6, pp.20-28.

³³ European Court of Human Rights, *Aksoy v Turkey*, Application No. 21987/93, 18 December 1996, paras. 104, 106; Inter-American Court of Human Rights, *Castillo Paez v Peru*, Case No. 43, IACtHR, OEA/ser. C, para.106 (1998); see further REDRESS, ‘A Call to Action’, above note 6, pp. 23-26.

³⁴ Rules of Procedure of the African Commission on Human and Peoples’ Rights, Rule 99 (15).

³⁵ See further below for relevant ICTR jurisprudence and practice.

provisions on the protection of victims and witnesses³⁶, as do the equivalent rules of the International Criminal Court (ICC)³⁷, Special Court for Sierra Leone (SCSL)³⁸ and Extraordinary Chambers in the Courts of Cambodia (ECCC).³⁹ Indeed, a former Registrar of the International Criminal Tribunal for the former Yugoslavia (ICTY) emphasised the importance of a victim and witness protection programme by acknowledging that

[...] without witnesses, there would be no trials. [...] It should be noted here that these witnesses have shown incredible courage, strength and determination to come and tell their stories, and the ICTY owes them not only respect, but also profound gratitude.⁴⁰

International law establishes a clear duty on States to protect witnesses involved in legal proceedings. With this in mind, it is necessary to examine the Rwandan protection framework, focusing on the development of the law and the practice of witness protection.

2.3. The protection framework in Rwanda

In Rwanda, the witness protection framework developed in response to two distinct needs. The first need was domestic as the trial phase of *gacaca* led to an increase in the number of threats and attacks against witnesses. The current practice of witness protection in Rwanda has principally developed in response to these threats. As discussed in detail in Section IV, protection of *gacaca* witnesses has drawn on *ad hoc* community protection or self-protection in addition to government security measures. The second need was international, as the Rwandan government sought to meet international fair trial requirements in order to facilitate the transfer of cases from the ICTR and the extradition of suspects from other countries to Rwanda. The ICTR's transfer decisions, and to a lesser degree the decisions of other countries rejecting extradition requests from Rwanda, have contributed to bringing Rwanda's legislation in line with international standards.

2.4. Responding to Domestic Concerns

According to a Rwandan government report published in September 2008, 156 genocide survivors and witnesses were killed between January 1995 and August 2008 because of their participation in genocide trials. The highest number of recorded murders was 40 in 2006.⁴¹ This

³⁶ See Rules 69, 75 and 81 (B) of the Rules of Procedure and Evidence of the ICTY, Rev. 43, 24 July 2009; Rules 34, 65 (C), 69, 75, 77 of the Rules of Procedure and Evidence of the ICTR, adopted on 29 June 1995, as amended on 9 February 2010, available at <http://unictr.org/Portals/0/English%5CLegal%5CROP%5C100209.pdf>.

³⁷ See Rules 17, 19, 74(5), 76, 87 and 88 of the Rules of Procedure and Evidence of the ICC, ICC-ASP/1/3, New York, 3-10 Sept. 2002. See also, Articles 54(3)(f), 57(3)(c), 64(2) and (6), 68 and 93(1)(j) of the ICC Statute, A/CONF.183/9 of 17 July 1998, entered into force 1 July 2002.

³⁸ See Rules 26bis, 34, 65(D), 69 and 75 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone, as amended on 7 March 2003.

³⁹ See Rules 29 and 65(1) of the Internal Rules of the Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev.4) as revised on 11 Sept. 2009.

⁴⁰ See, D. de Sampayo Garrido, 'Problems and Achievements as Seen from the Viewpoint of the Registry' *Journal of International Criminal Justice*, 2004 2(2):474, at pp. 477-8.

⁴¹ Working Group in the National Public Prosecution Authority, 'Report on the Killing of Genocide Survivors and Witnesses from January 1995 to August 2008' (September 2008) Report in English on file with REDRESS; see also Human Rights Watch, 'Justice Compromised- The Legacy of Rwanda's Community-Based *Gacaca* Courts', May 2011, pp. 87-88. According to IBUKA, the number of survivors killed because of their participation in *gacaca* proceedings is slightly higher, with the

date coincides with the nation-wide start of *gacaca* trials, which fundamentally shaped the Rwandan government's initial approach to witness protection. As Théoneste Karenzi, current coordinator of the Victim and Witness Support Unit (VWSU) in Kigali, said,

The majority of our cases relate to the genocide and most of the cases relating to the genocide passed through *gacaca* so this is our main focus. At first the witnesses were [...] meeting many threats and the witnesses themselves weren't aware of their rights so the government needed to react.⁴²

The response of the government was to establish the VWSU in 2006. The Unit is housed within the National Public Prosecution Authority (NPPA) and is charged with investigating allegations of threats and harassment and with the provision of psychological support to victims and witnesses. The VWSU comprises seventeen staff members, with one officer in each of the former twelve provinces and five based in Kigali, including the coordinator, one member focusing on witness protection, one on victim protection, and a safe house manager. These staff have different professional backgrounds and include lawyers, sociologists, psychologists and social workers.⁴³

From the outset, VWSU personnel have been based in each of the NPPA's twelve offices located in the town centres of the previous provinces (which were restructured as four provinces at the end of 2006). As Amir Hirwa, a VWSU officer in Musanze district, described in 2008:

We focus on the protection of witnesses' physical and mental health and basic rights. We work closely with police and local authorities to achieve this. We teach auto-protection, or means of ensuring security for yourself, and we offer counselling, comforting witnesses and we have agreements with mental hospitals in the area. We also provide some legal aid and legal advice.⁴⁴

The Unit's protective measures draw on existing state resources and encourage neighbourhood security and self-protection. As will be discussed in Section IV, state protection has been most readily provided through: the presence of local defence units at *gacaca* hearings; the use of police night patrols to prevent harassment of witnesses; and police investigations of physical assault or homicides. Meanwhile, neighbourhood security and self-protection rely on the local community supporting witnesses in providing testimony.⁴⁵

The witness protection measures employed by the VWSU represented an immediate response to the threats raised during the trial phase of *gacaca*. The VWSU also responded to the traumatisation and other needs of survivors arising from giving testimony. Research by REDRESS among victims of sexual violence highlighted their experiences of trauma and insecurity when testifying before *gacaca*.⁴⁶ A lack of understanding and support at the grassroots level for victims suffering from trauma leads many survivors to feel isolated.⁴⁷ Testifying in the early

total number of survivors killed from 2002-2011 being 168, email correspondence with IBUKA, 14 June 2012, on file with REDRESS.

⁴² Interview with Théoneste Karenzi, Kigali, 5 April 2012.

⁴³ Ibid.

⁴⁴ Interview with Amir Hirwa, Musanze Town, 28 August 2008.

⁴⁵ See further below, p.37

⁴⁶ K Brounéus, 'Truth-telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (2008) 39 (1) *Security Dialogue* 55

⁴⁷ REDRESS and African Rights, 'Post-Genocide Justice', p.5.

years after the genocide inevitably provoked considerable trauma, as Louis, a member of the genocide survivors' umbrella organisation Ibuka, described:

We would encounter cases of trauma, but at that time, trauma counsellors were not present during the proceedings. Nobody was thinking about victims' trauma and even the prosecutor's office considered it to be a very simple thing to which he gave no importance.⁴⁸

As noted, the provincially based VWSU officers now provide witnesses with a degree of psycho-social support. However, with only one staff member in each of the twelve VWSU offices, their capacity and available resources are limited. In many cases, officers can only direct witnesses to other possible avenues for trauma counselling and support.⁴⁹ This aspect of the VWSU's work should be strengthened and, as discussed below, the Unit would benefit from a dedicated trauma counselling section.⁵⁰

In examining the existing legal framework for witness protection in Rwanda, it is important to note that the VWSU has focused on offering practical assistance to witnesses rather than developing an appropriate set of laws either to domestically enshrine the rights and protection of witnesses and victims or to govern its own practices and ensure its independence. In Rwanda, the legal framework for witness protection has been driven by the government's request for the transfer of cases from the ICTR to the Rwandan national courts. The result is that the drafting of the current legal framework has developed quite separately from the initial practice of witness protection in Rwanda.

2.5. Meeting the requirements of the ICTR

In order to receive cases from the ICTR (and to facilitate the extradition of suspects to Rwanda), the Rwandan parliament passed Organic Law N° 11/2007 of 16/03/2007: *Concerning Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from Other States* ('Transfer Law').⁵¹ The Transfer Law was drafted in consultation with the ICTR's Office of the Prosecutor (OTP) and referred directly to the ICTR's approach to witness protection. The first paragraph of Article 14 of the Transfer Law, which governs witness protection, reads:

the High Court of the Republic shall provide appropriate protection for witnesses and shall have the power to order protective measures similar to those set forth in Articles [*sic*] 53, 69 and 75 of the ICTR Rules of Procedure and Evidence.

This reference to the ICTR's Rules of Procedure and Evidence (RoPE)⁵² incorporates witness protection measures that are principally concerned with maintaining anonymity. Under Rule 75 of the ICTR's RoPE, the Tribunal is empowered to safeguard the privacy and security of

⁴⁸ Ibid, p.24; see also K Brounéus, 'The Trauma of Truth Telling: Effects of Witnessing in the Rwanda *gacaca* Courts on Psychological Health', *Journal of Conflict Resolution*, 23 February 2010.

⁴⁹ Interview with Amir Hirwa, Musanze Town, 28 August 2008, p.15 and discussion of the draft of this report at the Institute for Legal Practice and Development (ILPD), in Nyanza, Rwanda, 3 August 2012.

⁵⁰ See further below, pp.42.

⁵¹ Published in the Official Gazette of the Republic of Rwanda, Year 46, n° special, 2007 of 19 March 2007.

⁵² UN ICTR, 'Rules of Procedure and Evidence, adopted on 29 June 1995, as amended on 9 February 2010, available at <http://unictr.org/Portals/0/English%5CLegal%5CROP%5C100209.pdf>.

witnesses through: the provision of pseudonyms; expunging names from the public court records; giving testimony through image- or voice-altering devices or closed circuit television; and the use of closed court sessions. While the second paragraph of Article 14 of Rwanda's Transfer Law states that witnesses shall be provided with "medical and psychological assistance," the primary focus of the Article is on protecting the identity of witnesses. In addition, going beyond the measures applied by the ICTR⁵³ but consistent with those applied by the ICTY, under Article 14 of Rwanda's Transfer Law, witnesses are given immunity from domestic prosecution:

All witnesses who travel from abroad to Rwanda to testify in the trial of cases transferred from the ICTR shall have immunity from search, seizure, arrest or detention during their testimony and during their travel to and from the trials.

This domestic legislation was aimed at meeting the criteria set by Rule 11*bis* of the ICTR's RoPE. Rule 11*bis* was designed to facilitate the Tribunal's closure through transferring intermediate and lower-ranking accused already indicted by the Tribunal 'to competent national jurisdictions, as appropriate, including Rwanda.'⁵⁴ Under this Rule, the ICTR Chamber must be satisfied that the domestic courts employ a legal framework that criminalises the alleged conduct and provides appropriate punishment for the offence, adequate conditions of detention and fair trial guarantees.

On 28 May 2008, the ICTR Trial Chamber refused the request of the OTP to transfer the case of Yussuf Munyakazi to Rwanda.⁵⁵ This was followed by four consistent decisions relating to Gaspard Kanyarukiga,⁵⁶ Ildephonse Hategekimana⁵⁷, Jean-Baptiste Gatete⁵⁸ and ICTR fugitive Fulgence Kayishema.⁵⁹ On 8 October 2008, the Appeals Chamber upheld the refusal to transfer Munyakazi⁶⁰ and found similarly in the other appealed cases. Consistent across these decisions was the finding that it would be impossible to raise an effective defence in Rwanda due to the fear of witnesses, both inside and outside of the country, to testify for the accused, thereby undermining the possibility of a fair trial.⁶¹

The ICTR's initial transfer decisions cast an international spotlight on Rwanda's domestic witness protection programme. The ICTR Trial Chamber held that "witnesses in Rwanda may be unwilling to testify for the defence as a result of the fear that they may face serious

⁵³ Decision on the Motion for the Protection of Defence Witnesses, Kayishema and Ruzindana, No. ICTR-95-1-T, Trial Chamber II, 6 October 1997 at para 5. The ICTR Chamber held that 'protective measures should not extend to providing immunity from criminal prosecution by any appropriate authority'. See also Decision on the Defence Motion for the Protection of Witnesses, Bagambiki, Iminishimwe and Munyakazi, No. ICTR-97-36-T, Trial Chamber II, 1 October 1998, at para 3.

⁵⁴ UN Security Council Resolution 1503 (2003).

⁵⁵ Decision on the Prosecutor's Request for Referral of case to the Republic of Rwanda, *Prosecutor v Yussuf Munyakazi*, (No. ICTR-97-36-R11*bis*), Trial Chamber, 28 May 2008.

⁵⁶ Decision on the Prosecutor's Request for Referral to the Republic of Rwanda, *Prosecutor v Gaspard Kanyarukiga*, (No. ICTR-2002-78-R11*bis*), Trial Chamber, 6 June 2008.

⁵⁷ Decision on the Prosecutor's Request for Referral to the Republic of Rwanda, *Prosecutor v Ildephonse Hategekimana*, No. ICTR-00-55B-R11*bis*, Trial Chamber, 19 June 2008.

⁵⁸ Decision on the Prosecutor's Request for Referral to the Republic of Rwanda, *Prosecutor v Jean-Baptiste Gatete*, No. ICTR-2000-61-1, Trial Chamber, 17 November 2008.

⁵⁹ Decision on the Prosecutor's Request for Referral to the Republic of Rwanda, *Prosecutor v Fulgence Kayishema*, No. ICTR-01-67-R11*bis*, Trial Chamber III, 16 December 2008.

⁶⁰ Decision on the Prosecutor's Appeal against Decision on Referral under Rule 11 *bis*, *Prosecutor v Yussuf Munyakazi*, (No. ICTR-97-36-R11*bis*), Appeals Chamber, 8 October 2008 (hereafter Munyakazi Rule 11 *bis* Appeal).

⁶¹ See further, REDRESS and African Rights, 'Extraditing Genocide Suspects From Europe to Rwanda- Issues and Challenges', September 2008, at http://www.redress.org/downloads/publications/Extradition_Report_Final_Version_Sept_08.pdf.

consequences, including prosecution, threats, harassment, torture, arrest, or even murder.”⁶² The decisions raised three particular concerns about Rwanda’s protection framework: first, that the domestic witness protection service lacked resources and was generally understaffed; second, that the protection service was administered by the NPPA and relied on reports to the police, which would deter defence witnesses from seeking protection;⁶³ and third, that the availability of video-link facilities was not a completely satisfactory means to secure the testimony of witnesses living outside of Rwanda.⁶⁴ When considering extradition requests issued by the Rwandan government, national courts in European countries to a large extent shared the ICTR’s concerns about Rwanda’s capacity and willingness to ensure the protection of defence witnesses. Accordingly, courts in France, the United Kingdom, Germany, Denmark, Norway, Italy, Switzerland and Finland refused to allow the extradition of genocide suspects to Rwanda.⁶⁵

Following the first ICTR Trial Chamber decision of 28 May 2008, the Rwandan government ordered the drafting of a report into the number of genocide survivors and witnesses killed from January 1995 to August 2008. As noted above, the report found that during this period a total of 156 survivors and witnesses were killed as a result of their involvement in genocide-related trials.⁶⁶ It was published in September 2008, prior to the first appeal decision upholding the ICTR’s refusal to transfer. The report made specific recommendations to different communes, including, among other measures:

- that self-protection should be reinforced and especially those genocide survivors at risk should be “mapped” so as to provide swift assistance in case of emergency;
- explaining measures to be taken by survivors themselves, including for instance by getting “home earlier”, and promoting an “auto protection” culture;
- that a detective department should be established to investigate such crimes;
- imposing sanctions on indifferent neighbours as provided in the Rwandan Penal Code; and
- prioritising the trials of leaders suspected of inciting genocide ideology.⁶⁷

The government’s focus on both community and self-protection is evident in this report. For example, the concern over sanctioning “indifferent neighbours” for refusing to help protect individuals from harassment highlights the extent to which the Rwandan domestic protection framework relies on the local community alongside state security. The strengths and weaknesses of this approach and its implications for the practice of the Rwandan national courts are discussed in detail in Section IV.

⁶² Decision on the Prosecutor’s Appeal against Decision on Referral under Rule 11 *bis* Prosecutor v *Ildephonse Hategekimana*, No. ICTR-00-55B-R11bis, Appeals Chamber, 4 December 2008 at para. 22 (hereafter *Hategekimana* Rule 11 *bis* Appeal).

⁶³ Munyakazi Rule 11 *bis* Appeal at para 38.

⁶⁴ *Hategekimana* Rule 11 *bis* Appeal at para 26.

⁶⁵ See for references of decisions and further discussion REDRESS and African Rights, ‘Extradition Report’, above note 2, pp. 36-43.

⁶⁶ But see n.59 above, with IBUKA putting the number of survivors killed because of their participation in *gacaca* at 163 between 2002 and 2011; this does not include survivors killed prior to the start of *gacaca* in 2002.

⁶⁷ Working Group in the National Public Prosecution Authority, ‘Report on the Killing of Genocide Survivors and Witnesses from January 1995 to August 2008’ (September 2008) Report in Kinyarwanda and English on file with authors.

While driving localised approaches to witness protection, the government also amended its formal legal framework in an effort to meet the requirements set by the ICTR. On 15 December 2008, eleven days after the initial refusals to transfer were upheld by the ICTR on appeal, the President of the Rwandan Supreme Court issued an order establishing a second witness protection unit under the authority of the High Court and the Supreme Court. The new unit was empowered to:

- receive, listen to and direct witnesses, to record their requests and to submit reports to the court;
- inform the witnesses of their rights and the condition of their exercise;
- execute protective measures ordered by the court in conformity with the provisions of Article 14 of the Organic law No. 11/2007 of 16/03/2007 ('Transfer Law'); and
- maintain contact with the other services involved in the protection of witnesses, to ensure the follow-up of the implementation of the protective measures ordered by the court.⁶⁸

This new unit, which at the time of writing was still being established, has yet to begin handling protection cases, although it is likely to become active once transfer and extradition cases from the ICTR and other foreign jurisdictions commence in Kigali in the coming months. The unit was designed to ensure witness protection has a greater level of independence from the NPPA. It is placed under the authority of the High Court and Supreme Court, rather than the police and prosecution services, which could make it more accessible to a wider range of victims and witnesses. The unit's establishment was a direct result of the initial ICTR Rule 11*bis* decisions and the failure of the Rwandan government to secure the extradition of suspects from Europe and elsewhere.⁶⁹ According to the coordinator of the VWSU:

The unit in the registry [of the Supreme Court] is there, but it is not operating. When they meet a problem, then they get in touch with us. It is because witness protection is not the first mission of the Registry.⁷⁰

As of August 2012, the unit was staffed by personnel already employed within the Registry of the Supreme Court who will soon be required to work with witnesses, in addition to their existing professional obligations. It remains unclear how this new protection unit will interact with the VWSU in the future, as the majority of expertise in witness protection remains within the VWSU. At the time of writing, government directives govern both units. The 'Preliminary Draft of Law on the Charter of Rights of Victims and Witnesses of Intentional Offences' fails to

⁶⁸ Order N° 001/2008 of 15th December 2008 of the President of the Supreme Court relating to the Protection of Witnesses within the Framework of Transfer of Cases to the Republic of Rwanda by the International Criminal Tribunal for Rwanda (ICTR) and by Other States. Directive, in Kinyarwanda and English, on file with authors.

⁶⁹ Concerns as to the independence of a witness and victim protection unit under the authority of the national prosecution services were raised in most '11*bis* cases' to date; see for instance Amicus Curiae Brief of HRW, filed in the case of *The Prosecutor v Fulgence Kayishema*, Case No. ICTR- 2001-67-I, para 85- 87. These concerns were shared by the Tribunal in the case of *The Prosecutor v Yussuf Munyakazi*, Case No. ICTR 97-36-R11*bis*, 28 May 2008, para 59- 66.

⁷⁰ Interview with Théoneste Karenzi, Kigali, 5 April 2012.

clarify the relationship between the two units and there is a risk of duplication and confusion.⁷¹ Among the staff of both the VWSU and those assigned to witness protection under the Registry, there is a clear preference for establishing a single independent protection unit.⁷² The unit's independence could be supported through allocating a budget that is separate from both that of the NPPA and the Supreme Court. This would support the unit's independence by, for example, allowing its officers to visit witnesses, without having to arrive in a clearly marked NPPA vehicle, as has previously happened.⁷³ The unit would be responsible for the protection of all witnesses, and the avoidance of duplication could make resources available for a new dedicated section for trauma counselling. At the time of writing, there was no schedule for further discussion and potential adoption of the Preliminary Draft Law.

Rather than meeting the domestic needs explored above, the majority of legislation concerning witness protection has been driven by the requirements set by the ICTR. In May 2009, the Transfer Law was modified in response to the continued refusal by international jurisdictions to transfer or extradite suspects to Rwanda.⁷⁴ Article 3 of the modified Transfer Law, referred to as Article 14*bis* in the subsequent ICTR decisions, provided two more means by which witnesses living abroad could provide testimony: by deposition in Rwanda or in a foreign jurisdiction, taken by an officer of the court; or by a judge sitting in a foreign jurisdiction for the purpose of recording *viva voce* testimony. The law also provided an extension of the witness immunity provided under the initial legislation.⁷⁵

On 28 June 2011, an ICTR Trial Chamber ruled in favour of transferring the case of Jean-Bosco Uwinkindi to Rwanda⁷⁶; a decision that was upheld on appeal.⁷⁷ Regarding witness protection, the Chamber held that "the recent amendments to relevant laws and enhancements to witness protection services constitute sufficient assurances to address defence witnesses' concerns and to help secure their appearance."⁷⁸ The Chamber's central focus was on Rwanda's legislative framework, in line with the jurisprudence of the ICTY, rather than actual practice of protection in Rwanda.⁷⁹

This decision by the ICTR paved the way for the European Court of Human Rights (ECHR) to uphold the extradition of Sylvère Ahorugeze from Sweden to face trial in Rwanda. The ECHR's

⁷¹ A copy of the 'Preliminary Draft of Law on the Charter of Rights of Victims and Witnesses of Intentional Offences' is on file with REDRESS.

⁷² This position was strongly articulated by the twenty staff members, drawn from both units, who participated in the discussion of a draft of this report at the Institute for Legal Practice and Development (ILPD) in Nyanza, Rwanda, 3 August 2012.

⁷³ *Ibid.* This example was provided by one of the VWSU staff members when he was required to visit a prosecution witness in an NPPA vehicle because the witness wanted to maintain anonymity.

⁷⁴ Organic Law N° 03/2009/OL of 26/05/2009 Modifying and Completing the Organic Law N° 11/2007 of 16/03/2007 'Concerning Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from Other States.'

⁷⁵ In Article 2, referred to as Article 13 in the subsequent ICTR decisions, in listing the rights of the accused, the modifying law stated, 'Without prejudice to the relevant laws on contempt of court and perjury, no person shall be criminally liable for anything said or done in the course of a trial.'

⁷⁶ Decision on the Prosecutor's Request for Referral to the Republic of Rwanda, *Prosecutor v. Jean-Bosco Uwinkindi*, No. ICTR-2001-75-R11bis, Trial Chamber, 28 June 2011.

⁷⁷ Decision on Uwinkindi's Appeal Against the Referral of his Case to Rwanda and Related Motions, *Prosecutor v. Jean-Bosco Uwinkindi*, No. ICTR-2001-75-AR11bis, Appeals Chamber, 16 December 2011 (hereafter Uwinkindi Rule 11 *bis* Appeal).

⁷⁸ Uwinkindi Rule 11 *bis* Appeal at para 62.

⁷⁹ For example see Decision on Joint Defence Appeal against Referral Decision under Rule 11 bis, *Prosecutor v. Zeljko Mejakic, Momcilo Gruban, Dusan Fustar, Dusko Knezevi*, No. IT-02-65-AR11 bis.1, Appeal Chamber, 7 April 2006 at para 69 in which the Appeal Chamber ruled that the Referral Bench did not err by focusing on the legal framework in BiH.

decision was based primarily on that of the ICTR finding that the Rule 11 *bis* standard for transfer was higher than the ECHR's own requirement,⁸⁰ and that the ICTR's decision should be given "considerable weight"⁸¹ because it was the first transfer decision taken since the legislative changes in Rwanda.

Since its decision in the case of Jean-Bosco Uwinkindi, the ICTR has transferred the cases of three accused not yet apprehended by the Tribunal, including the case of Fulgence Kayishema, which had initially been refused.⁸² The Trial Chamber also approved the transfer of Bernard Munyagishari to Rwanda, who was arrested in May 2011 in the Democratic Republic of Congo, a decision that was pending before the Appeals Chamber at the time of writing.⁸³ In addition, Léon Mugesera, accused of inciting genocide through an incendiary speech in 1992, has been deported from Canada, following a bilateral agreement that he would be tried under the same Organic Law N° 11/2007 of 16/03/2007. In deporting Mr Mugesera to Rwanda, the Canadian Government failed to abide by a provisional measure request of the UN Committee against Torture to stay the deportation pending its examination of the case.⁸⁴

As the above review shows, two key dynamics combined to shape the domestic framework for witness protection in Rwanda. The first is the impact of the *gacaca* courts, which dramatically increased the number of witnesses involved in genocide trials. Rwandan law required that all adult citizens participated in *gacaca* and to speak out when they had relevant evidence, and there was strong state and community pressure to provide information to the courts. In addition, by the very nature of *gacaca* proceedings, all information was provided publicly. As a result, the number of individuals rendered vulnerable to harassment or more serious threats increased substantially. The challenges raised by *gacaca* provided the initial catalyst for witness protection measures in Rwanda and continue to underpin its practice as the huge number of witnesses appears to leave the government no choice but to actively encourage neighbourhood and self-protective measures.

The second dynamic is the impact of the ICTR and other foreign jurisdictions. The legal framework for witness protection in Rwanda is modelled on the ICTR's approach, and many of the recent reforms have been driven by efforts to meet the criteria set by the ICTR and other courts of countries where genocide suspects are residing. These international witness protection measures have developed to meet a different set of needs – and far fewer witnesses – from those that arose in response to *gacaca*. As discussed in more detail in Section IV, the focus on ensuring witness protection through providing anonymity to witnesses is in tension with the current use of the local community to protect individuals who have testified and, as will be discussed, is difficult to implement in tightknit rural communities.

The national courts are now the focus for genocide cases as *gacaca* and the ICTR cease operation. Balancing the domestic needs and practical constraints on witness protection in

⁸⁰ *Ahorugeze v Sweden* (App no 37075/09) ECHR 27 October 2011 at para 128.

⁸¹ *ibid* para 127.

⁸² Decision on the Prosecutor's Request for Referral to the Republic of Rwanda, *Prosecutor v Fulgence Kayishema*, No. ICTR-01-67-R11bis, Referral Trial Chamber, 22 February 2012

⁸³ Decision on the Prosecutor's Request for Referral to the Republic of Rwanda, *The Prosecutor v Bernard Munyagishari*, Case No. ICTR-2005-89-R11bis, 6 June 2012.

⁸⁴ See decision of the Supreme Cour Supérieure, Canada, Province de Québec, District de Montréal, No 500-17-069828-120, 23 January 2012.; for a critical assessment of the decision to dismiss the interim measure request see Joanna Harrington, 'Interim measures Requests and the UN Human Rights Treaty Bodies: Canada and the Mugesera Case', 24 January 2012, at <http://www.dipublico.com.ar/english/interim-measures-requests-and-the-un-human-rights-treaty-bodies-canada-and-the-mugesera-case/>.

Rwanda with the requirements set by courts outside of the country is crucial for achieving an effective witness protection programme in the national courts. Rather than automatically implementing the practice of the ICTR or relying too heavily on *ad hoc* community or self-protection measures, this balancing requires a careful assessment of the nature of threats against witnesses and appropriate responses to them.

3. The Nature of Threats against Witnesses

One of the main difficulties when considering the issue of protection in Rwanda is the diversity of threats against witnesses. A wide range of actors employ various means to threaten those who may give evidence in genocide trials. The types of threats often vary according to geography, especially between urban and rural areas and between different regions in Rwanda. Our research also indicates that certain actors who are considered protectors by some witnesses are considered threats by others, which poses particular challenges for formulating protection strategies.⁸⁵

Broadly speaking, respondents identified three main categories of actors responsible for threatening witnesses: (i) family members; (ii) neighbours; and (iii) local political, military and economic elites. They stated that these actors use a range of threats against witnesses, including verbal intimidation, false accusations of genocide crimes, physical injury, murder, theft or killing of livestock, throwing rocks on roofs during the night, family ostracism, forced removal of witnesses from their communities, bribery and other forms of financial coercion. Some of these threats, such as physical injury, murder and killing livestock, are highly visible, while others are clandestine and often cause witnesses to suffer in silence because others are unaware of their plight. As argued in Section IV, effective witness protection strategies must respond to this marked diversity of actors and types of threats and intimidation.

3.1. Threats by Family Members

One of the most common concerns expressed by respondents was fear of reprisals when they testified against their own family members or defended suspects who were accused of committing crimes against their family. In these cases, witnesses are perceived as betraying loyalty to their loved ones and experience threats from those closest to them. Two middle-aged women in a focus group in Huye district, for example, said that they had been ostracised by their families and expressed fears of family reprisals because of their testimony at *gacaca*. Yvonne, the farmer quoted earlier, said, 'At *gacaca*, I have been testifying against some of my relatives who killed people during the genocide. After I spoke at *gacaca*, many of my family members have opposed me.'⁸⁶ Vastina, whose husband was imprisoned as a genocide suspect, expressed similar concerns:

I told the authorities what my husband did during the genocide even before *gacaca* started. I told them that he stole property and cows and he ate the meat of the cows in our house. Then my husband was brought before *gacaca*. He said that nothing happened, that he did nothing during the genocide. He said, "You can even ask my wife," not knowing that I had already talked about his crimes. Then I was brought to *gacaca* and the judges said, "Tell us what your husband did," so I told the whole truth and my husband went back to prison. He left saying this was all because of me.

⁸⁵ See further below, pp.28-29.

⁸⁶ Interview with Yvonne, Huye District, 13 April 2012.

Even now I'm wondering what will happen when he comes back to the village. My sister-in-law is always saying that it's my fault, asking how I could do this to my own husband. So I'm fearing what will happen when my husband is released...I used to take food to my husband in jail but after he heard me speak at *gacaca*, I can't do that any longer. Our relationship is now bad. The authorities in jail have taught him that it is important to confess to his crimes and today he is listening to me more, but I am still worried about what will happen.⁸⁷

Théoneste Karenzi, the coordinator of the VWSU in Kigali, recognised the particular threats toward witnesses who testified against their own family members. He identified Musanze and Huye in Northern and Southern provinces, respectively, as key locations for these dynamics.⁸⁸ 'In Musanze,' Karenzi said,

there are big problems for prosecution witnesses. In that place, you hear people saying, "How can you testify against your own family, against your own ethnic group?" This includes prisoners who have given evidence against other prisoners. Of course, even witnesses who have committed genocide crimes deserve protection. In these places, many prosecution witnesses have been killed or had their animals killed.⁸⁹

Generally, the research indicated that threats against witnesses were more prevalent in rural than urban areas, perhaps because there are more genocide suspects still at large in the countryside, where they can 'disappear' more easily than in the towns. As discussed below, a number of witnesses said that they moved from villages to towns to feel safer. More specifically, previous research has consistently identified Southern and Western Provinces as particularly tense and the sites of some of the most fraught *gacaca* hearings, due to complex inter-ethnic relations. Government statistics also highlight that the highest rate of murders of genocide witnesses has occurred in these two provinces. According to these figures, Karongi district in Western Province has experienced more murders of genocide survivors and witnesses than any other district.⁹⁰ During research in 2009, threats against witnesses were seen as widespread in this area. As Innocent Rutayisire, the Karongi district prosecutor, explained,

One of the challenges for us is that suspects are still hidden in the hills and have not been found by any of the justice processes. There continue to be murders often in connection with *gacaca*... A lot of the crimes are a direct result of the genocide. *Génocidaires* who are not known and still kill in the hills, that is what has been happening here. Even recently there have been survivors who have been killed here.⁹¹

These challenges for witness protection are connected to how the genocide unfolded in these areas. Southern Province has historically comprised the largest Tutsi population in Rwanda, resulting in the highest rates of intermarriage between Hutu and Tutsi. This partly explains why the southern sectors of Rwanda were the last to experience the genocide and why the government of the day sent senior officials there to directly incite the population to participate

⁸⁷ Interview with Vastina, Huye District, 13 April 2012.

⁸⁸ Interview with Théoneste Karenzi, Kigali, 5 April 2012.

⁸⁹ *ibid*

⁹⁰ Working Group in the National Public Prosecution Authority, 'Report on the Killing of Genocide Survivors and Witnesses from January 1995 to August 2008' (September 2008) Report in English on file with REDRESS.

⁹¹ Interview with Innocent Rutayisire, Prosecutor, Karongi District, Western Province 17 April 2009).

in the massacres.⁹² The extent of intermarriage in Southern Province has fuelled major intra-family tensions during the prosecution of genocide cases, especially as large numbers of witnesses have testified against their own family members. Meanwhile, the high rate of murder of witnesses in Western Province is probably explained by the fact that this region experienced the highest number of killings during the genocide and therefore today would hold more genocide suspects than elsewhere in the country, including many who are still at large.

3.2. Threats by Neighbours

Respondents also described a range of threats from their neighbours. Similar to the situation with family members, a key challenge in handling threats from neighbours is their proximity to witnesses in the community. Several witnesses described the impossibility of avoiding those who intimidated them and their struggle to protect themselves against neighbourly reprisals. For example, Edouard, a young computer repairman in the Nyabugogo market in Kigali, described the threats against him for providing defence testimony in *gacaca* cases in his home village in Rubavu district:

I spoke at *gacaca* many times. Some of my friends and family members were falsely accused [of genocide crimes], so I had to support them. I was 12-years-old during the genocide, so I saw many things. There are many lies at *gacaca*, especially in the Category 1 cases. People say there's no corruption in Rwanda but there's much corruption in *gacaca*. If you have money, you can save yourself.

I was personally harassed after several *gacaca* hearings. The most difficult time was when [Victoire] Ingabire was going around campaigning, right before the elections, and people started accusing me of being interahamwe...I tried complaining to local officials but they just ignored me. They worry about the survivors but not the rest of us...Many people got angry during *gacaca*. It gave us some justice and it was good to talk about what happened during the genocide but there was so much corruption and that caused a lot of anger. Rubavu was a difficult place for *gacaca* because of [the proximity to] Congo. The genocide was very bad in that part of the country. Many people died, so *gacaca* was very difficult and it was often difficult to speak about what you knew.⁹³

Jeannette, the middle-aged genocide survivor in Huye district quoted earlier, also described attacks against her by members of a neighbouring community after she testified at *gacaca*:

Those who attacked me weren't from this community where I'm living now but from my mother's district where I went to *gacaca*. In that place, there were always people waiting for me on the roadside after *gacaca* had finished. They threatened me, saying these terrible things and chasing me down the road. I always managed to avoid being attacked physically, even though sometimes people chased me on motorbikes and were harassing me verbally....Whenever I went to *gacaca*, there were always problems. Eventually, I lost energy and couldn't find the force to speak about these people who participated in the genocide. I knew these people and that made it hard to

⁹² S Straus, *The Order of Genocide: Race, Power, and War in Rwanda* (Cornell University Press, New York 2006).

⁹³ Interview with Edouard, Kigali, 2 April 2012.

speak. Sometimes speaking at *gacaca* would make me sick and I'd lie in bed for two weeks.⁹⁴

Jeannette and several other respondents described having to move to different villages to avoid neighbours who threatened them after they testified in genocide hearings.⁹⁵ Several interviewees described people in the community throwing rocks on their roofs in the middle of the night – a menacing form of intimidation that was common during the genocide and often a portent of more direct attacks.⁹⁶

Another subtle form of neighbourhood threat arose when witnesses returned from giving testimony abroad, for example in North America, Europe or at the ICTR. Habimana and Gloria, two witnesses who gave defence testimony in a foreign jurisdiction in 2011, described suffering from their neighbours' jealousy over the *per diems* they received as witnesses abroad. Habimana, who was sentenced to eleven years in jail after being convicted of five attacks committed during the genocide, said that he expected reprisals from genocide survivors when he returned to his community because other returning prisoners had suffered this type of treatment. These reprisals never materialised; however, he was surprised 'by how much jealousy there was from my neighbours because of the money we were given when we went [to the foreign court].'⁹⁷ Habimana said, 'People could see that our lives had improved and they began saying negative things about us, accusing us of going there to testify so that we could make money.'⁹⁸

Gloria, who was also an *inyangamugayo* in her home sector, echoed Habimana's experience: 'I never had any real problems as an *inyangamugayo* or after we came back from [the foreign court], except for our neighbours being jealous over the money we were given. They said, "You got that money from the muzungu"⁹⁹ but the rest of us have nothing."¹⁰⁰ Gloria also said that some of the other witnesses who travelled with her to testify had been mistreated when they came home because 'there are always suspicions about people who don't speak at *gacaca* but give evidence outside...When it comes to a trial outside of Rwanda, sometimes people give testimony that they would not give inside. They go outside and they tell one story and then they come here and tell a different story.'¹⁰¹

The cases of Habimana and Gloria highlight that new communal divisions can arise because of witnesses' decision to travel abroad to testify and the *per diems* they receive. In tightknit communities, any minor change in an individual's or family's material circumstances is widely recognised, and benefits gained from providing eyewitness testimony – which most community members could also do – can cause discord and weaken witnesses' standing in the community. Witnesses' *per diems* can represent substantial amounts relative to average salaries in most Rwandan communities. The World Bank estimates Rwanda's gross national income as US\$570 per capita, with average incomes inevitably much lower in rural areas.¹⁰² Prosecution and defence witnesses testifying before the ICTR receive US\$20 for each day spent in Arusha if they

⁹⁴ Interview with Jeannette, Huye Town, 10 April 2012.

⁹⁵ Focus Group, Kigali, 3 April 2012.

⁹⁶ Ibid and interview with Marie, Huye Town, 10 April 2012.

⁹⁷ Interview with Habimana, Huye District, 12 April 2012.

⁹⁸ Ibid.

⁹⁹ Muzungu is a southern, central and eastern African term for a person of foreign descent.

¹⁰⁰ Interview with Gloria, Huye District, 12 April 2012.

¹⁰¹ Ibid.

¹⁰² The World Bank, 'Rwanda: Data', 2011, http://data.worldbank.org/country/rwanda#cp_wdi.

stay in a safe house, where they receive food and other supplies, or US\$145 per day if they choose to stay in a hotel and cover their own subsistence costs. Witnesses travelling to North America or Europe to testify receive \$US40-70 per day, depending on the jurisdiction, as well as accommodation provided by national authorities in the host country.¹⁰³ The payment of *per diems* represents a vital recognition of the time and risks that witnesses take to provide evidence. However, it is important to highlight that, because of significant discrepancies between the rate of *per diems* and average earnings in the wider community, it also often has unintended, negative consequences.

Testifying for the defence at trials abroad can have other negative effects. According to a defence lawyer, at least one witness who testified for the defence in the case of Désiré Munyaneza in Canada and subsequently returned to Rwanda was prosecuted before *gacaca* upon return for his alleged involvement in the genocide, even though he had already been tried and acquitted previously for the same crimes. According to the defence lawyer, the witness was sentenced to 17 years imprisonment.¹⁰⁴ The lawyer stated that this case may have deterred some other witnesses from testifying in foreign jurisdictions:

Some of them are scared, some agree to talk, some do not agree. For one case in Germany last month, I was working with them and some of them refused to talk, saying, 'If you go there and come back, then you end up in jail.' It is not the travel that is difficult, but the neighbours. Here in Rwanda we charge, we do not discharge. For those discharging, I think it will be difficult to get witnesses to talk freely.¹⁰⁵

In another case examined by REDRESS, survivors who had testified for the defence at the ICTR were subsequently ostracised by their local community and excluded from a survivors' organisation in charge of distributing government assistance for the most vulnerable survivors, and in turn could no longer benefit from such assistance.¹⁰⁶

Threats from neighbours and the community can take different forms, and be problematic also for the lawyers representing alleged *génocidaires* before Rwandan courts. Donart Mutunzi, former defence counsel for Léon Mugesera, notes that

There will be fewer Rwandese counsels involved [in these types of cases] because there is a challenge, to do this work they say that you are with the *génocidaires*. I go and have a beer and to go to buy someone a beer and they will say, 'No, you are with those men.'¹⁰⁷

3.3. Threats by Local Political, Military and Economic Elites

Local political and military officials and other elites, including local businessmen constitute the third category of actors whom respondents described, to a lesser extent, as a threat to witnesses. Identifying these actors as possible threats is important because, as discussed further in the next section, they are also often expected to play the role of witness protectors. Edouard,

¹⁰³ Telephone interview with ICTR defence investigator, Kigali, Rwanda, 13 July 2012.

¹⁰⁴ Interview with ICTR defence investigator and Rwandan lawyer, 9 April 2012.

¹⁰⁵ Ibid.

¹⁰⁶ Interview with ICTR defence lawyer, Mayh 2010.

¹⁰⁷ Interview with Donat Mutunzi, Kigali, 9 April 2012.

the computer repairman quoted above, said that testifying at *gacaca* became particularly difficult when Category 1 cases involving senior genocide suspects, many of whom were previously local government officials or wealthy business owners, were moved to the *gacaca* jurisdictions after revisions to the law in 2008.¹⁰⁸ Valence, also a trader in Nyabugogo market in Kigali, described similar problems:

There were many problems when *gacaca* started dealing with the big men. These rich people started paying witnesses to keep them alive. There was a lot of corruption in *gacaca*. I spoke at *gacaca* and didn't face any intimidation myself, although some of my friends and family were harassed. I was also offered money by some big men but I refused because I'm a Christian and my father is a pastor. I told them no but they kept coming back, offering me money, and they started talking aggressively but I still refused...During these *gacaca* cases, other people in the community were harassed and threatened. People don't go to the local authorities, especially when the cases are about these big men, because all big men know each other. We tell each other that survivors have to help each other. We say, "We have to talk openly about what's happening because that helps everyone."¹⁰⁹

Yves, the farmer in Rusizi district quoted in the introduction, expressed similar concerns regarding verbal harassment and financial corruption when testifying in Category 1 genocide cases:

I testified in a case against the governor of Cyangugu, who committed many crimes in this area. I feared the reaction of the killing group [used by the governor] because I was also talking about them at *gacaca*. I denounced five suspects at *gacaca*, including the governor...The ICTR investigators came here to learn about this case but they only spoke to the powerful people, not those of us in the lower class. We have more information, so they should speak to us...There haven't been any physical attacks [against witnesses] in my community but people are definitely scared because there is harassment. The rich suspects also use their money to corrupt *gacaca*. They bribe the survivors and the *inyangamugayo*.¹¹⁰

Previous research indicates that numerous challenges arose when Category 1 genocide cases were shifted to *gacaca*, not least communities coming to terms with prosecuting very senior suspects, many of whom still maintained substantial local influence. While popular participation in *gacaca* increased substantially during the Category 1 trials – as a result of the spectacle of former mayors, prefects and other high-ranking officials facing justice in front of their communities – many *gacaca* jurisdictions struggled to contain these suspects' corruption of the process.¹¹¹

Finally, some respondents expressed concerns over the possibility of threats posed by local military officials. Hakizimana, the former RDF soldier quoted above, also travelled as a defence witness to a foreign jurisdiction. "I was pleased to [testify in that court]," he said. "[The suspect] was falsely accused of committing genocide and he needed a defence, so I went to defend him."¹¹² He said that people in his community knew that he had travelled but he faced no

¹⁰⁸ Interview with Edouard, Kigali, 2 April 2012.

¹⁰⁹ Interview with Valence, Kigali, 2 April 2012.

¹¹⁰ Interview with Yves, Rusizi Town, 16 April 2012.

¹¹¹ Clark, *Gacaca* above note 2.

¹¹² Interview with Hakizimana (Huye Town, Rwanda 12 April 2012).

problems from his neighbours when he returned. However, the day that he arrived back in the community, he was summoned to the local military barracks to explain where he had been:

The military asked me many questions. They were trying to find out whether I had testified [abroad] or whether I had travelled for other purposes. They suspected that I had travelled for military reasons and they were worried about this. I had no problems after being questioned by the military but when they called me, I was very concerned.¹¹³

Hakizimana's case is salient because it highlights some witnesses' concerns that local military and political officials treat them with suspicion when they travel to testify in foreign jurisdictions.

This section has highlighted the wide range of threats against witnesses that warrant careful protection measures. The diversity of threats, as well as the actors who perpetrate them, underscores the inherent challenges of witness protection in the post-genocide context. The report turns now to analysing the efficacy of current security measures in addressing these issues.

¹¹³ Ibid

4. Responses to Threats

This section analyses the practical application of the international and domestic legal framework of witness protection, as well as informal mechanisms of protection, in addressing the particular threats discussed in the previous section. Specifically, this section examines four modes of protection: by the ICTR; by the Rwandan government; collective or neighbourhood protection provided by the population itself; and self-protection practised by individual witnesses. Each form of protection is assessed according to the broad strategies described by those tasked with guaranteeing witnesses' security and specific cases where these actors have intervened. On this basis, this section shows that all four modes of protection elicit important – and diverse – shortcomings in addressing the stated needs and concerns of genocide witnesses.

4.1. ICTR Protection

For witnesses who have appeared before the ICTR, protection has been most readily provided through anonymity. Göran Sluiter, in his analysis of ICTR case law, argues that witness protection measures through the provision of pseudonyms, the use of *in camera* hearings and hiding the identity of the witness from the public and the media are now “adopted as a matter of routine in practically every case.”¹¹⁴ The ICTR case law initially set a high standard for the provision of witness protection. It was held that ‘protective measures must be objectively grounded and cannot be exclusively based on the subjective fear of the witness concerned.’¹¹⁵ However, in practice protective measures were applied broadly as the Trial Chambers repeatedly held that the existence of a generally 'volatile security situation' in Rwanda was sufficient to justify various means of protection.¹¹⁶ Furthermore, the ICTR Trial Chamber ruled in a number of cases that, although the applicant had failed to establish that the fears of proposed witnesses were well founded, it would nevertheless adopt protective measures *proprio motu* due to the overall security situation in Rwanda.¹¹⁷

This approach to witness protection is now replicated in the Rules of Procedure and Evidence of the Residual Mechanism for International Criminal Tribunals, which assumed the operations of the ICTR on 1 July 2012. Rule 86 reflects the same set of protective measures as the ICTR. In addition, under Rule 86 (F)(i), the protective measures provided by the ICTR or the Residual Mechanism, such as for instance anonymity, apply to other jurisdictions' use of this testimony, unless the measures for a particular witness have been altered through an application to the President of the Mechanism.¹¹⁸ In short, the law is designed to ensure that the shield of anonymity provided by the ICTR as its principal protective measure is maintained in other country contexts.

¹¹⁴ Sluiter, above note 7, at 976.

¹¹⁵ Decision on the Defence Motion for Protective Measures for Witnesses, *Prosecutor v. Alphonse Nteziryayo*, No. ICTR-97-29-T, Trial Chamber II, 18 September 2001, at para 6.

¹¹⁶ Sluiter, above note 7, at 968.

¹¹⁷ Decision on Defence Request for Protection of Witnesses, *Prosecutor v Aloys Simba*, No. ICTR-01-76-I, Trial Chamber I, 25 August 2004, at para 6.

¹¹⁸ United Nations Residual Mechanism for International Criminal Tribunals, MICT/1 8 June 2012, Rules of Evidence and Procedure, at <http://www.unmict.org/docs.html>.

This law is important to ensure that witnesses can trust the anonymity provided by the ICTR. In addition to the provision of anonymity, the ICTR has endeavoured to realise the rights of victims and witnesses to protection through the provision of psychological counselling while witnesses are giving testimony in Arusha. The Tribunal has also bolstered its protection framework through prosecuting violations of protection orders as cases of contempt of court and, in a limited number of cases, relocating witnesses both internationally and within Rwanda. However, these additional measures have been the exception rather than the rule; the question therefore remains to what degree the ICTR's witness protection measures, in particular anonymity, provide witnesses with adequate protection in Rwanda and abroad. Fabrice, a Kigali-based lawyer who testified for the defence in an ICTR case, said that he had not experienced any problems upon returning from Arusha. However, he said that, as a lawyer living in an urban area, he had certain advantages over other witnesses who testified before the ICTR, some of whom had experienced intimidation:

As a lawyer myself I had no difficulties in testifying, but this is very different for '*peasants*' who don't necessarily understand the law...Some witnesses fear the reactions of their families or neighbours when they come back [to Rwanda]. For me, it was a big advantage to be a lawyer in Arusha. I even knew some of the lawyers there because we studied together in Butare, so I could ask questions of both the defence and prosecution. There was no specific protection strategy for me when I returned to Rwanda because you must request this directly and, for me, I felt this wasn't necessary. This is my country and I never doubt the security, but it's different for peasants who often fear what will happen to them. Protection is easier in urban life because people are always travelling, always coming and going, so no one questions your absence. But it's very different on the hills.¹¹⁹

Maintaining anonymity in rural areas is particularly difficult, because people know each other intimately and notice when their neighbours travel, even for short periods. Despite these widely recognised constraints, the ICTR – through both the OTP and Chambers – has encouraged Rwanda to pursue a similar protective framework when dealing with the transferred cases. In addition to the laws currently in operation, the 'Preliminary Draft of Law on the Charter of Rights of Victims and Witnesses of Intentional Offences', previously discussed,¹²⁰ includes the 'right to obtain a new identity when deemed necessary'. The extent to which anonymity will be provided as the principal form of protection before the Rwandan national courts is yet to be determined. It would be advisable to use this protection measure with care and restraint. Anonymity and the relocation of witnesses should be measures of last resort. Witness protection measures must focus on the needs of individual witnesses. Witnesses should not be routinely encouraged by protection staff to testify anonymously. Rather, the decision as to what conditions a witness testifies should be influenced by the concerns of the particular witness and a decision to testify under a pseudonym should take account of whether the particular witness is, in practice reliant on, or has a preference for, community protection and whether such protection measures are in fact available and effective.

¹¹⁹ Interview with Fabrice, Kigali, Rwanda 20 April 2012.

¹²⁰ Above, p.20.

4.2. Government Protection

In responding to threats against genocide witnesses, the Rwandan government employs formal and informal mechanisms. This section focuses on the government's formal processes, while the informal dimensions – which devolve responsibility for protection to the community – are addressed in the next section.

The VWSU, currently the government's principal organ for witness protection, adopts a four-stage response to threats and intimidation.¹²¹ In stage one, when addressing low-level threats, the VWSU files a formal complaint with local authorities – usually sector- councils at the sector level – who are tasked with investigating the threat and remedying the situation. A stage two response is necessary when stage one threats continue or escalate. In such instances, the VWSU informs the local police, army or local administration, whose task is to post a guard or increase patrols around the threatened witness's home. If it is determined that the witness's neighbours are the source of the threat, local authorities convene a community meeting to warn neighbours that this behaviour will not be tolerated. In stage three, where threats persist, a permanent police or military guard is placed at a witness's house. If the witness suffers further or more severe threats, the VWSU will temporarily move him or her to a safe house or another community. At each of these stages, individuals found responsible for threatening genocide witnesses are liable to criminal sanction.

Statistics provided by the VWSU indicate that the Unit assisted 1003 witnesses during genocide trials in *gacaca* between the opening of its operations in 2006 and 2009. Of these witnesses, 265 were for the defence and 738 for the prosecution, and roughly half of these cases involved responses to threats.¹²² Between 2008 and 2011, the Unit handled 262 genocide cases at stage one of threats, 137 at stage two, 92 at stage three and 16 at stage four, for a total of 507 cases.¹²³ In 2011, the VWSU also responded to 245 rogatory commissions from foreign jurisdictions to assist genocide witnesses, including 30 individuals located outside of Rwanda.¹²⁴

Between May and July 2009, the Public Prosecutor's office directed all regional prosecutors to invite district mayors and other local authorities, including army and police commanders and district presidents of Ibuka, to discuss solutions to problems of threats and harassment against genocide witnesses.¹²⁵ Documents obtained from the VWSU show that common solutions were proposed across the majority of districts, including: arresting genocide suspects still at large who were considered responsible for many threats against witnesses; holding regular community meetings to discuss the importance of witness testimony and problems of intimidation; encouraging further neighbourhood security; closing bars early because many threats against witnesses were perceived as happening after people had been drinking heavily at night; and encouraging witnesses to go home earlier in the evening. These prescriptions by local elites

¹²¹ VWSU, 'Genocide Survivors and Witnesses Threat Response, 2008-2011' at 1. Document on file with REDRESS.

¹²² VWSU interviews, Kigali, April 2010.

¹²³ Ibid at 2.

¹²⁴ VWSU, 'Rogatory Commissions Received and Support Offered in 2011', document on file with REDRESS.

¹²⁵ M Ngoga, 'Advice on the issue of violence against survivors and witnesses' (April 2009) Report in Kinyarwanda and English on file with authors.

strongly emphasised neighbourhood and collective security, with the arrest of genocide suspects viewed as the principal role for state actors.¹²⁶

From our interviews, it is clear that most survivors view the government as a principal source of protection. Samuel, an elderly farmer from a village near Huye who had been convicted of genocide crimes but testified against other suspects, said,

The biggest challenge when you go to *gacaca* is standing in front of people and claiming that you're innocent, then 100 people say that you're a killer. This is very difficult. But the government has been protecting people who speak the truth at *gacaca*, so everyone feels very safe. You can see the government on the streets, making sure people are safe, especially at night. So people aren't fearful of speaking at *gacaca*.¹²⁷

Several respondents emphasised the importance of the government's provision of security at *gacaca* hearings, particularly through local defence units. Solange, the elderly widow from a Huye district quoted earlier whose husband was killed during the genocide, had been elected as an *inyangamugayo* in her community. 'As a *gacaca* judge,' she said, 'I had to apply the law but I was also protected by the law. So were the witnesses who came to speak the truth. We were all protected by the police and the local defence units who assured us at every hearing.'¹²⁸

Yves, a genocide survivor from a village near Rusizi, said similarly,

If the government didn't encourage participation in *gacaca*, I wouldn't have testified. The killers here are very powerful, including some of the main decision-makers, so people were scared because they were sure if you spoke, you'd be killed. But eventually we were assured by the government security, which meant we could talk freely at *gacaca*...The National Unity and Reconciliation Commission came to teach the people the values of living together, which helped the fear decrease...There was often a negative reaction from the suspects' families immediately after anyone testified against them. The suspects would show their anger and there was always the possibility of attacks but the local defence units helped the witnesses so that they felt more safe and confident.¹²⁹

Marie, a young survivor in a village outside of Huye who was also an *inyangamugayo*, echoed Yves' views:

I've always been protected when I was harassed because the local defence forces helped me. If I was threatened badly, the army could protect me. Some people have even been put in prison because they intimidated me. In fact, almost everyone who has threatened me has been put in jail...

I felt that I received enough support whenever I was intimidated. I always felt protected. I was helped every time and it made me strong to see people put in prison. Nothing directly ever happened to me – there was never any physical harm...I know of

¹²⁶ Ibid

¹²⁷ Interview with Samuel, Huye District, Rwanda, 9 April 2012.

¹²⁸ Interview with Solange Huye District, Rwanda, 13 April 2012.

¹²⁹ Interview with Yves, Rusizi Town, Rwanda, 16 April 2012.

many others who were threatened but most of the perpetrators were arrested. People were throwing stones on the survivors' houses and they hid themselves but the police did night watching and eventually arrested them.¹³⁰

A range of witnesses also said that government oversight and surveillance were important for their sense of security when they testified in genocide cases. Samuel, the confessed genocide perpetrator quoted earlier, who had participated in *gacaca* and had his sentence reduced from 15 to 5 years imprisonment on appeal, said,

I didn't hear of any problems [for witnesses] because the government protected the people who spoke the truth. The government has been patrolling the streets to make people secure.¹³¹

Similarly in a focus group in Kigali, Didier, a young survivor who had provided exculpatory evidence at *gacaca*, leading to the acquittal of an accused, said,

I didn't have any bad consequences. There was a law passed by the government that if I felt intimidated, the government would provide security. The things happened in front of everyone and so you were safe to talk about them because everyone knew.¹³²

This position on government protection was especially complex. In addition to the government providing security, it was important for participants to feel that their decision to give testimony, whether for prosecution or defence, was being officially condoned.

Defence witnesses who testified in cases outside of Rwanda, articulated the importance of following the proper formal procedures. Théoneste, an elderly witness who initially had 'some fear about the authorities'¹³³, and Habimana, who was quoted earlier, both stated that because 'the government knew we were going [abroad]' and had provided the necessary documents made them feel safe about testifying.¹³⁴ There was an awareness of the power of the local authorities which was important for maintaining individual security. Habimana had himself been convicted of genocide crimes but testified against other suspects when he returned from prison. 'Some individuals were intimidating the people returning from jail,' he said, 'especially if we gave evidence against others...But military checkers kept asking us if we had faced any problems and this made us feel safe because we knew the military was watching out for us. We were also worried about survivors wanting revenge but that hasn't happened.'¹³⁵

Despite some survivors' positive assessments of the government's approach to witness protection, several respondents expressed serious misgivings about this. First, unsurprisingly given the VWSU statistics cited above, some respondents doubted the government's capacity to address the large numbers of protection cases across the country. The 507 cases handled by the VWSU between 2008 and 2011 are undoubtedly a small fraction of the cases of actual threats, given that hundreds of thousands of witnesses gave testimony to *gacaca* during that period. As a result, many respondents viewed neighbourhood and self-protection, which are examined below – rather than government security – as more effective methods.

¹³⁰ Interview with Marie, Huye Town, Rwanda, 10 April 2012.

¹³¹ Interview with Samuel, Huye District, Rwanda, 9 April 2012.

¹³² Focus Group Kigali, 5 April 2012.

¹³³ Interview with Théoneste Huye District, Rwanda 12 April 2012.

¹³⁴ Interview with Habimana Huye District, Rwanda 12 April 2012.

¹³⁵ Ibid

These findings echo earlier research conducted by REDRESS, which concluded that government protection strategies are not always effective. Albert, a witness who testified against 15 genocide suspects, described such problems in his community:

After my mother died, people doubled their efforts to keep me quiet. Rocks were constantly thrown at my roof. I asked the authorities to intervene and they sent soldiers to guard my home at night. They tried to calm things down by holding security gatherings. None of these efforts achieved anything. My children were turned away by our neighbours. Meanwhile, the authorities made me responsible for the security in our estate. This was a way of ensuring our safety as I'd have a team right in front of me doing patrols at night. But when my children started to feel isolated, I became more and more uncomfortable. I was also scared of being poisoned.¹³⁶

In some cases, where threats are reported to local police or local administrators, relatively little is done to assist threatened witnesses. Mathilde, whose husband Paul was killed near their home during the genocide, said that she was told by local administrators in Butare 'to return home as a condition for receiving assistance':

But how can I go back to a place that makes me afraid, where my children will not know how to protect themselves from being poisoned by neighbours, where they will be taught by the relatives of [a convicted murderer]? These are questions that I do not know how to respond to.¹³⁷

Even where aggressors have been caught and arrested, the short sentences set out in the law for witness intimidation have often meant that these individuals have been quickly released back into their communities. Threats and pressure against witnesses are punishable under Rwandan law, with Article 30 of the *Gacaca* Law providing that any person who exerts pressure, or attempts to exert pressure on witnesses, including blackmail, is liable to punishment by imprisonment of between three months and one year. If the offence is a repeat offence, the defendant may incur a prison sentence of between six months and two years. However, in practice, sentences in these cases have often been lower.¹³⁸

Second, some respondents expressed mistrust or fear of the government actors who were assumed to provide protection. We should recall the witness Habimana's statement in the previous section that he experienced great apprehension when summoned by the military upon his return from testifying abroad. Similarly, Valence, the young Kigali trader also quoted earlier, said that people in his community did not trust local authorities to deal with cases of witness intimidation because those same authorities may have a personal interest in the case. The degree to which witnesses feel protected by the government relies substantially on their previous relationship with state actors. As the previous section indicated, some witnesses consider government officials to be threats to, rather than guarantors of, their safety.

¹³⁶ Interviewed by African Rights and REDRESS in Gikongoro, 29 February 2008, see further REDRESS and African Rights, 'Post-Genocide Justice', pp. 16-19.

¹³⁷ Interviewed by African Rights and REDRESS in Butare, 6 March 2008; *Ibid*, pp.18-19.

¹³⁸ *Ibid*, p. 19.

4.3. Collective or Neighbourhood Security

The government recognises that it lacks the resources to protect the vast number of witnesses in the community and therefore encourages neighbourhood security or ‘mutual assistance’¹³⁹ as a supplement to official mechanisms. As Denis Bikeshya at the National Service of *Gacaca* Jurisdictions explained,

Our office has been advising neighbours to be responsible for the security of their neighbours. This was a reaction to the intimidation of survivors, witnesses and *gacaca* judges...We have a proverb in Rwanda that says, “the stick that beats your co-wife must be thrown over the fence”, meaning the stick could easily be used to beat you, so you must deal with it. Threats against individuals threaten collective security and so there is a collective responsibility for protection.¹⁴⁰

Jean-Bosco Siboyintore, head of the Genocide Fugitive Tracking Unit in the NPPA, put it succinctly, ‘The law doesn’t protect people. People protect people.’¹⁴¹

The government’s sensitisation has encouraged neighbours to be vigilant for signs of intimidation against genocide witnesses. The first step in neighbourhood security is awareness of possible threats, followed by neighbours intervening directly to physically protect witnesses and to encourage them to continue testifying in genocide cases, to confront those responsible for intimidation and, where necessary, to alert the police or local authorities who can provide further assistance. This sensitisation seems to have penetrated the popular consciousness, as unprompted, many respondents cited neighbourhood protection as a principal form of security. Gilbert, a middle-aged genocide survivor in Kigali, said,

We have strong strategies for dealing with witnesses’ problems in our community. We have local security strategies, with neighbours helping neighbours. We encourage survivors to stay in one location because this makes them easier to protect. This system of neighbours helping neighbours hadn’t happened before [the government sensitisation] but now we have this system all over the country. In 2002 [when the pilot phase of *gacaca* started], people were very scared to talk. Survivors’ houses were being destroyed. There was a lot of intimidation. In 2003, the government started emphasising internal security, strong strategies for neighbours to help each other, and this helped make people feel safe.¹⁴²

Some witnesses linked the idea of collective security to the communal support they received when testifying during genocide cases. Many genocide survivors in particular described finding the courage to testify when they witnessed others testifying. Marie, the young survivor and *inyangamugayo* near Huye quoted above, described this connection between collective encouragement to testify and collective protection following testimony:

It was very difficult at the start [of *gacaca*] to talk. I didn’t want to go to *gacaca* but I saw that others were going and they were receiving support from the people around them, so eventually I decided that I could go. At the start, I didn’t talk about everything

¹³⁹ VWSU document on responses to threats.

¹⁴⁰ Interview with Denis Bikeshya, Kigali, 30 March 2012.

¹⁴¹ Interview with Jean-Bosco Siboyintore, Kigali, 3 April 2012.

¹⁴² Focus Group, Kigali, 3 April 2012.

I knew. I only responded to questions from the *inyangamugayo* and mentioned who had done good or bad to me [during the genocide], pointing people out in the crowd. I've suffered a lot since testifying but my neighbours often help me....

I've been to many different *gacaca* courts to testify. This is like being between life and death. Whenever I speak at *gacaca*, I feel very exposed. People write tracts against me. I've been attacked on the roadside. Now I'm just happy to have survived.¹⁴³

Gilbert's and Marie's experiences highlight a key challenge for the policy of neighbourhood protection, namely the mobility of many witnesses. Both Gilbert and Marie had relocated to different communities in order to feel safe; an issue explored in greater detail in the following section on self-protection. One irony of Gilbert's statement above that '[w]e encourage survivors to stay in one location because this makes them easier to protect' is that he himself had moved communities in search of greater security. Our research indicates that this forced relocation is extremely common among witnesses and has in part been encouraged by a government policy of building new houses and villages for some survivors, particularly those who have been directly threatened. Several respondents had moved to such villages, while others moved from remote communities to the perceived greater safety of urban areas such as Huye and Kigali. In these cases, interviewees claimed that they felt safer as a result of these moves.¹⁴⁴

Furthermore, as Marie's story highlights, many genocide witnesses testify in multiple jurisdictions, especially at *gacaca*. Because people often travelled great distances during the genocide – for example, as survivors fled the violence – they witnessed crimes in numerous communities. *Gacaca* stipulates that genocide crimes must be prosecuted in the location of their alleged commission, which requires witnesses to return to those places to testify. Marie's experience is especially salient in this regard. She said that in her new community, where she moved after the genocide, she 'never showed [her] suffering' and today is perceived 'as someone strong, who can help others'. As a result, this community elected her as an *inyangamugayo*. However, Marie said that the situation is very different when she returns to her old community – the site of the attacks mentioned above. 'On the other side,' she said, 'it has been very difficult. Some people even hide when I come.'¹⁴⁵

A key consequence of this mobility is that the 'community' or 'neighbourhood' from which the government encourages protection is highly fluid, with members constantly moving in and out. Communities therefore are limited in how much protection they can provide when they may not necessarily recognise certain witnesses as 'their' members. Our research indicates that neighbours are a key source of witness protection but some witnesses lack support because of their mobility and membership of multiple communities.¹⁴⁶

Furthermore, as discussed in the earlier section on the nature of threats, many families and neighbours are a source of, rather than a remedy to, witness intimidation. For all of these reasons, the expectation that the community, as a stable, secure actor, should play a central role in witness protection is sometimes misplaced. This equally applies to Category 1 cases,

¹⁴³ Interview with Marie Huye Town, Rwanda, 10 April 2012.

¹⁴⁴ Focus Group Kigali, 3 April 2012; interview with Marie, Huye Town, Rwanda, 10 April 2012; interview with Jeannette Huye Town, Rwanda 10 April 2012.

¹⁴⁵ Ibid.

¹⁴⁶ See above, p. 33, experience of Mathilde.

often involving high level suspects with considerable influence in the community, including over the degree of protection the community is able to provide to particular witnesses.

4.4. Self-Protection

The importance of self-protection, in which witnesses independently protect themselves, was emphasised in interviews both at the ICTR and within the VWSU. The emphasis at the ICTR was on witnesses maintaining their anonymity, while among the national court and *gacaca* witnesses, self-protection measures were pursued through independent relocation; organization of private transport to and from genocide hearings, and, for some witnesses, through providing open and publicly visible testimony.

Within the ICTR, self-protection was a matter of silence. As one member of the ICTR Witnesses and Victims Support Section said,

If the witness succeeds to cover up, then he is safe and people will say, “He never went to Arusha”... So what do we do, we brief witnesses throughout the process to be careful. You know, we tell them, “If you are not from the same ethnic group as your wife, do not disclose even to your wife that you have been here.” Sometimes we have had a husband who is testifying for defence and a wife who is testifying for prosecution.¹⁴⁷

Among *gacaca* witnesses, the self-protection measures were much more varied as anonymity was impossible following public hearings.¹⁴⁸ As noted in the previous section, several respondents stated that they sought security by moving to an urban area. In a focus group discussion in Kigali, one participant said, ‘I never had any negative consequences [after testifying at *gacaca*] because I left for Kigali.’¹⁴⁹ For another participant who did experience harassment, independent relocation was similarly crucial: ‘For me, they took stones and threw them on the top of my house but I am not living there now – now I am living in town.’¹⁵⁰ The capacity to move away from the threat was important for several witnesses, some of whom secured this through the government’s provision of alternative housing. However, this approach also undermined the capacity for these witnesses to draw on community protection and often left them vulnerable when they had to return to their original community to provide testimony at *gacaca*. This was the case for Jeanette, the elderly woman who now lives on the outskirts of Huye town and who provided evidence to the ICTR prosecution investigators and at *gacaca*.

Despite Jeanette’s relocation, she faced considerable insecurity when returning to her previous home to testify before *gacaca*. Her experience of witness protection was one of self-protection, through her ability to convince a member of the *gacaca* court to pay the fare for a motorbike taxi:

I was attacked more than three times...No one could threaten me in the court because there were soldiers and local defence forces there. It was outside the court that I got

¹⁴⁷ Interview with Witness and Victim Support Services Personnel, ICTR, Arusha, 22 March 2012.

¹⁴⁸ The only cases not heard in public related to sexual violence. These cases were heard ‘in-camera’ by the *gacaca* judges with the bench, the witness and the accused present.

¹⁴⁹ Focus Group, Kigali, 3 April 2012.

¹⁵⁰ Ibid.

attacked...It was only the motorbike [that helped provide security]. When I got near a danger zone, I could get on a motorbike and go quickly... The leader of the *gacaca* court, when he realised it was becoming tough for me, he would help me to leave the location. He was the only one who helped. He had to pay for a motorbike to take me home...¹⁵¹

The challenge with such approaches to self-protection is that they require witnesses to have financial resources to achieve their own safety.

For some witnesses who could not afford to independently relocate or secure private transport to and from hearings, public testimony provided some means of protection. For Yvonne, the farmer in Huye district quoted earlier who testified against her own family at *gacaca*, security came through public testimony

I had seen the people who had killed and I saw where the bodies were and I knew that later this would be known... My family members were against me when I started to testify... I went to them and said, "It would have been obvious. The people came and saw the bodies, so they knew where the bodies were." In the end my family members and the other accused did not attack me because they could see that the truth had to be known... When you hide something that you know, then it is difficult for you...When you speak, your heavy burden goes off your shoulders. When you tell the truth, you can feel more secure.¹⁵²

Despite the government encouraging self-protection, the greatest challenge is that it is often pursued because of the failure of state or community security. The witnesses who tried to establish their own security were, in many cases, among the most vulnerable individuals in their communities. In building an effective witness protection programme in Rwanda, self-protection should be a matter of last resort. This is particularly true as it is due to the government's decision to establish *gacaca* courts throughout the country, and making participation in *gacaca* hearings compulsory, that many survivors and witnesses find themselves threatened and intimidated. Their protection therefore is first and foremost the responsibility of the government.

¹⁵¹ Interview with Jeannette Huye Town, Rwanda 10 April 2012.

¹⁵² Interview with Yvonne Huye District, Rwanda 13 April 2012.

5. Conclusion

The analysis of the witness protection issues in this report leads to a series of concrete recommendations but also has important implications for future stability and social cohesion in Rwanda. These are discussed after a brief summary of the main findings.

The sheer number of genocide witnesses who have testified before the ICTR, foreign state jurisdictions, the Rwandan national courts but particularly the *gacaca* courts – to which hundreds of thousands have given evidence – poses major protection problems. Furthermore, the proximity of convicted *génocidaires*, suspects, survivors and their families in tightknit communities complicates security efforts, particularly as a wide range of actors – including neighbours and family members – are considered potential threats to survivors and witnesses. That some of these actors are perceived as both protectors and threats underscores the complexity of post-genocide relations across Rwandan society. Witnesses' substantial mobility between different communities – either in search of safer places to live or to testify in multiple jurisdictions – also renders them extremely vulnerable to intimidation. In all of these settings, witnesses are subjected to various types of threats, ranging from highly visible acts of physical violence to more subtle menacing such as throwing rocks on their roofs during the night and ostracising survivors and witnesses from their communities. Other consequences of testifying to genocide include a significant risk of re-traumatisation. All of these consequences must be addressed through tailormade protection mechanisms.

Understanding witnesses' varied motivations for testifying to genocide crimes is critical to formulating and analysing the effectiveness of witness protection frameworks. Several of the stated motivations of prosecution and defence witnesses – especially fulfilling a moral obligation to tell what they know about the past, receiving public acknowledgement of their suffering and seeking solidarity with others around shared experiences of conflict – underscore the importance of public testimony. There is a key tension therefore between protecting witnesses, which may involve moving them to new locations or hiding their identities, and many individuals' stated desire to talk openly about the genocide and to be clearly identified as witnesses. In this context, many orthodox means of witness protection risk denying witnesses the opportunity to give evidence in full view of the community. Domestic and international protection schemes alike must therefore address this central tension in the Rwandan context through pursuing a careful needs assessment of individual witnesses before adopting an appropriate set of witness protection measures.

On the basis of these contextual elements, there are clear shortcomings in domestic and international witness protection frameworks that need to be addressed. There was at first substantial international critique of the Rwandan government's ability to protect witnesses in genocide cases, as highlighted by the initial refusal to transfer cases from the ICTR to Rwanda. At the time, Rwanda was in the process of reforming various aspects of its legal and judicial system, including regarding witness protection, mainly in response to threats and murders of genocide witnesses after the nationwide start of *gacaca* trials in 2006. Rwanda's decision to further reform its witness protection programme in line with the ICTR's processes was key to the ICTR's eventual decision to begin transferring cases to Kigali.

While this represented a necessary recognition of the extent of judicial reform in Rwanda, the wholesale adoption by Rwanda of the ICTR's approach to witness protection is problematic. In particular, the establishment of a second witness protection unit under the auspices of the Supreme and High Court provided a quick response to the ICTR's critiques. In practice, however, it would seem to be more constructive to establish, through legislation, a single independent witness protection unit with a separate budget and the resources to establish a trauma counselling section. In addition, the emphasis on anonymity in Rwanda's draft witness protection law clashes with some witnesses' desire for communal acknowledgement through public testimony and the fact that anonymity is often difficult to ensure on the hills of Rwanda.

Meanwhile, the government's continued emphasis on neighbourhood (and self-) protection for genocide witnesses – due to the government's inability to address such an enormous number of cases of threats – overburdens the same population that is still coming to terms with the complex legacies of the genocide, including often fraught social relations at the community level. This problem of limited government capacity may be ameliorated as both *gacaca* and the ICTR soon close, leaving a substantially smaller number of cases and witnesses in the national courts. However, the closing of those two jurisdictions will not necessarily guarantee an end to threats against witnesses, as the impact of past cases – as well as possible future cases of suspects still at large – will persist.

That so many Rwandans have participated in genocide trials, especially through *gacaca*, has been crucial for publicly acknowledging the plight of individual survivors and for delivering a measure of accountability to individual perpetrators.. However, the emphasis on firsthand testimony has also left many individuals vulnerable and, in some communities, increased communal tensions, as witnesses have testified about those with whom they live side-by-side. The general absence of adequate long-term measures taken by the ICTR and responsible authorities in Rwanda to protect witnesses from re-traumatisation is of particular concern and needs to be addressed to enable survivors to continue providing testimony.

As the focus of post-genocide justice shifts from the ICTR and *gacaca* to the Rwandan national courts, the need for witness protection will continue, along with the need to balance security for witnesses with the realities of Rwanda and its tightknit communities, and the perceived benefits of open and public testimony about the genocide.

6. Recommendations

To all witness protection providers, including the International Residual Mechanism

- Recognise witnesses' motivations for testifying and ensure that protection measures are tailored to meet individual needs; make it mandatory for police, investigators and prosecutors to inform and consult with witnesses and victims on the protection measures available and those applicable for their individual cases;
- Recognise the practical limitations of – and, in certain instances, victims' and witnesses' opposition to – anonymity as a central protection measure;
- Recognise, and formulate protection measures to address, subtle as well as more visible forms of threats against witnesses.

To the Rwandan government

- Establish, through law, a single independent and adequately resourced Witness Protection Unit that administers its own budget and has regional offices across the country;
- Ensure training of police and prosecution services on best practices for the protection of victims and witnesses;
- Establish within the consolidated Witness Protection Unit a section to provide long-term psycho-social support to survivors of genocide and victims of serious human rights violations;
- Acknowledge, and find concrete ways to address, the inherent limitations of neighbourhood and self-protection;
- Publicly emphasise the importance of testimony by both defence and prosecution witnesses;
- Address the fact that some witnesses view government actors as threats to their security, rather than as protectors;
- Remain vigilant regarding post-*gacaca* cases of threats to witnesses, as fallout from *gacaca* trials.

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