

## **Justice by the Numbers: Rwandan Prison Survey**

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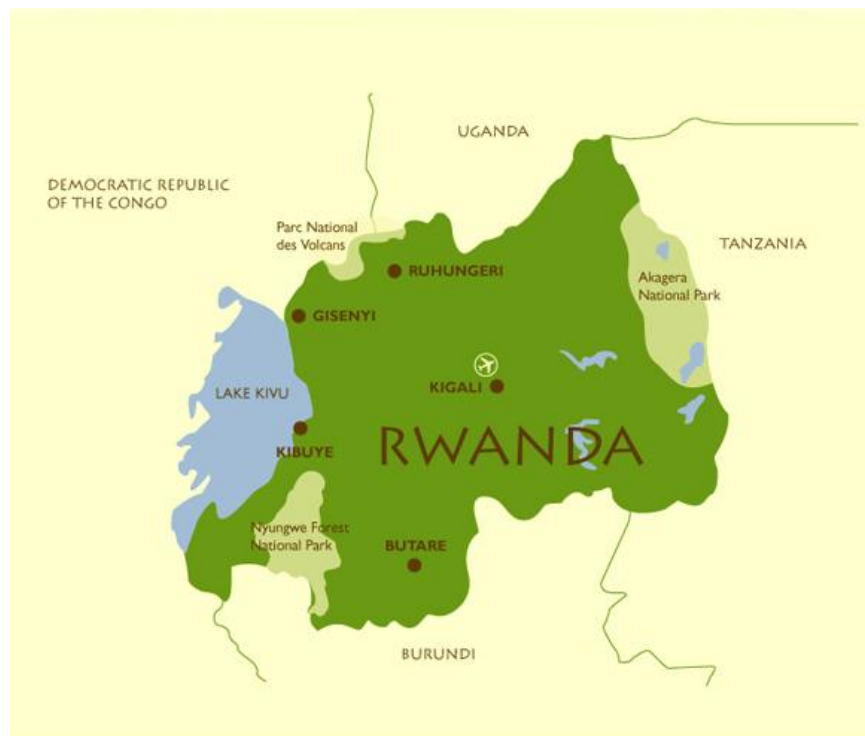
### **Abstract**

Two years after the genocide that killed 800,000 Rwandans, primarily Tutsis, there were 80,00-90,000 imprisoned in a country of a few million and the prison population continued to grow by as many as 10,000 per month, the only release being death. In spite of international horror over the brutal loss of life, international notions of justice demanded due process and some semblance of a fair and speedy trial for the accused. The post-genocide Rwandan government rightly claimed that the fragile judicial system, deprived of most of its personnel and much of its infrastructure, could not handle the prospective case load. Donor governments who had already constructed several large new prisons asserted that, however horrible the crimes, it was not acceptable to put them in prison and throw away the key. Why not, proposed representatives of the US and other nations, with the agreement of the Rwandan government, begin by selecting a sample of prisoners to bring to trial? This describes how this was done and what resulted from it.

**Key Words:** Survey, sampling, human rights, justice

### **1. Background**

In 1994 a genocide resulted in the death of approximately Rwandans, primarily Tutsis. The world stood by while unspeakable horrors were committed. French, Belgian and UN forces were unable and in some cases unwilling to protect the people of Rwanda. The UN and nations such as the US did nothing. The government of Rwanda urged Hutus in the country to slaughter friends, neighbors and relatives to provide a “final solution” by eliminating all Tutsis, whom they characterized as “cockroaches.” The slaughter began in April and finally in July cessation of the massacres was accomplished by Tutsi forces primarily consisting of Rwandans who had been living in exile in neighboring Tanzania driving through to the capital Kigali and ending the killing. As they swept across the country from east to west, those accused of taking part in the genocide were arrested and imprisoned. Arrests continued as more suspects were identified and some who had fled to neighboring countries returned. Two years later there were 80,000-90,000 in prison, in a country of only a few million.



**Figure 1:** Map of Rwanda.

**1.1 Definition of Genocide.**

What constitutes genocide is determined by the international Genocide Convention, which states:

**Article I:** The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

**Article II:** In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

**Article III:** The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

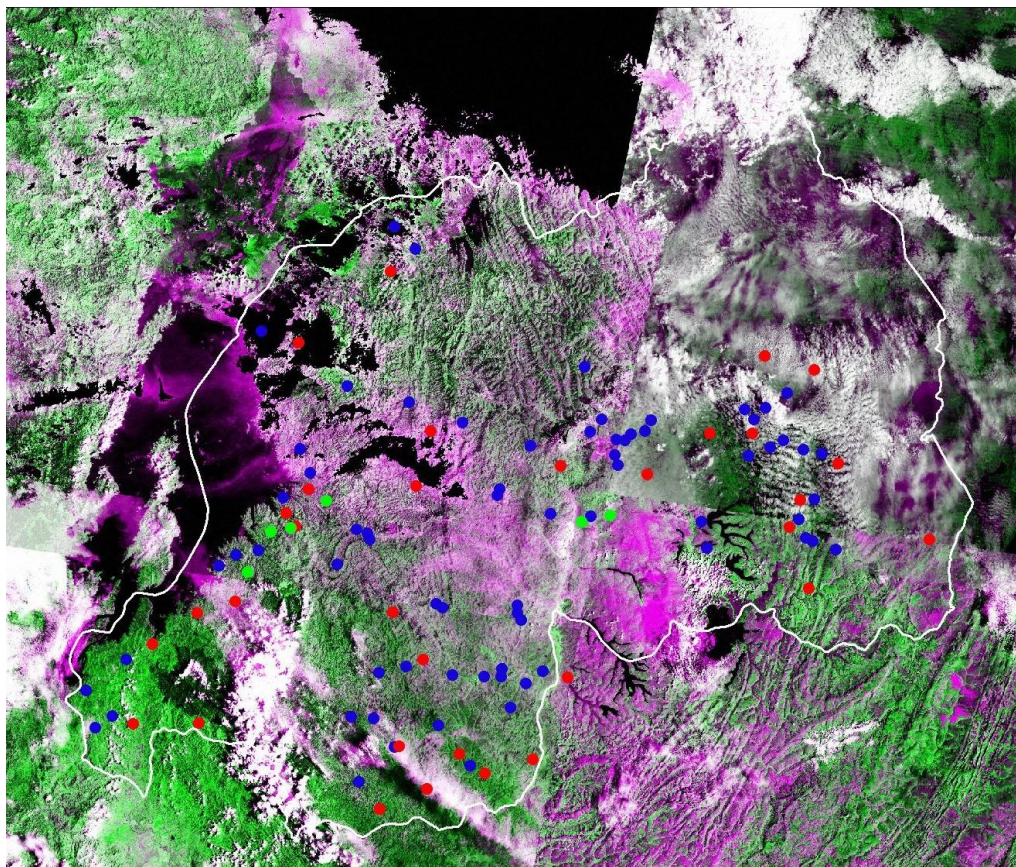
**Article IV:** Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

**Article V:** The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

**Article VI:** Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

**Article VII:** Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

**Article VIII:** Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter.



**Figure 2:** 1995 Landsat TM mosaic for the country of Rwanda after the genocide. The national border is shown in white. Genocide sites: Mass Graves ("lieux publics") are shown in blue, Memorials ("lieux de culte") in red, and resistance sites ("collines de résistance") in green.

Note that the numbers are not the crucial factor. What is important is that there be an *intent* to destroy in *whole* or in *part* a *national, ethnical, racial* or *religious* group, as such: But tactics other than *killing* can constitute genocide such as

*Causing serious bodily or mental harm*

*Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*

*Imposing measures intended to prevent births within the group*

*Forcibly transferring children of the group to another group*

Some of the accused in Rwanda claimed that the targets of the slaughter were killed because they were more prosperous—their neighbors simply sought to acquire property by killing the property owners, regardless of ethnicity. While undoubtedly some non-Tutsis were killed, little credence was given to this defense to the crime of genocide. Nor was the fact that not all Hutus in Rwanda participated as perpetrators, that is, that some sheltered their neighbors often at cost of their own lives, considered an adequate defense to the crime of genocide when presented by some in international criminal proceedings.

### 1.2 The Prison Situation

As many as 10,000 prisoners continued to be added each month and the only release for the prisoners appeared to be by death. More prisons were built, funded primarily by the US and The Netherlands, and administered by the UN. The court system had yet to be fully restored by 1996 and in any case would have been overwhelmed by the number of defendants to be tried.



**Figure 3:** Rwandan prisoners

## 2. How Can Justice Be Done?

Fundamental to a system of justice is the right to a reasonably speedy fair trial with certain procedural protections. The new government of Rwanda noted that existing judges, lawyers, and law courts were far from adequate to deal with the

issue of trials for all those in prison. It would take a long time to establish a fully functional system.

An International Criminal Tribunal on Rwanda was being set up in Arusha, Tanzania, but it could not possibly deal with the mass of people to be tried. Neither was any widespread amnesty in the making. A place to start was needed.

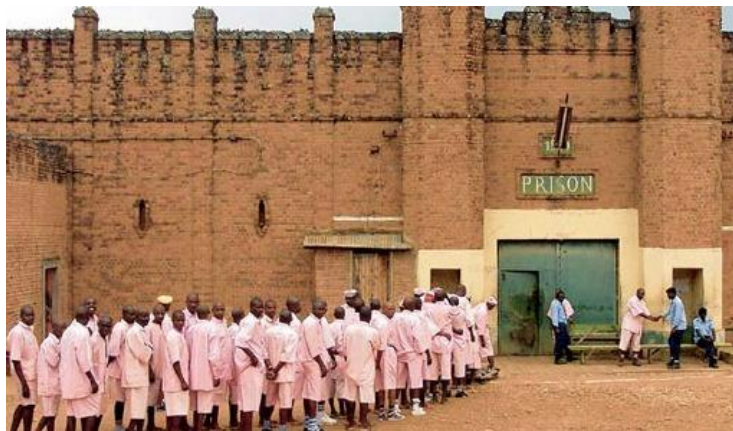
### 2.1 A Solution?

The US State Department Assistant Secretary for Democracy, Human Rights and Labor proposed that a way to begin would be to select a sample of prisoners with whom to begin. This would give everyone some notion of how to proceed and illuminate some problems that might arise in pursuing justice. The plan was agreed by the Rwandan government and other interested states, and a sampling design was set up.

### 2.2 Sampling

Because of the process that ended the killings, it was expected that the prison populations in different regions of the country would have different characteristics. In the East the arrests were started under military conditions, with little time or consideration for devising appropriate procedures.

In the West, the process was more deliberate, with possible nuances of levels of responsibility among the genocide participants. Special considerations also affected the population of the central prison in the capital Kigali. Thus a stratified sample was drawn from prisons in each corner of the country and from Kigali.



**Figure 4:** Kigali prison

### 2.3 The Records

Prison officials were surprised at visits whose purpose was not to evaluate conditions in the prisons but rather to examine the prisoner files. Records were generally somewhat chaotic—sometimes prisoners' names and details were listed in log books, other time on card then stored in boxes. From the lists we chose to take a systematic random sample.

However, the officials cautioned us that the names might well be false and in any case there was often a single name, repeated numerous times with different sets of identifiers. Sex and age were generally recorded. Place of birth or residence sometimes. What was generally missing were the details one would expect were a fair trial to be conducted. The crime listed in the records was almost always merely “genocide,” with no names of victims, locations of the crimes, arresting officers, or similar information. In the sample we drew, it was clear that substantial investigative work would need to be done to achieve an effective fair prosecution.

### 3. The Outcome

The Rwandan authorities—now consisting of representatives of the group that had been victimized and in many cases returnees from years in exile in Tanzania or elsewhere—originally supported the idea of drawing a sample with which to start the prosecutions. However, statisticians they were not and were not pleased to see that their favorite candidates for defendants in speedy trials were not in the sample—that random means random wasn’t necessarily appreciated. Thus the idea of using the sample as a place to start was dropped, leaving the same problem of massive incarcerations with no way out.

#### 3.1 The International Criminal Tribunal on Rwanda



**Figure 5:** The International Criminal Tribunal on Rwanda in Arusha

The International Criminal Tribunal on Rwanda was established by the UN in 1994 and set up in Arusha, Tanzania, in 1996 to try under international law those accused of genocide and crimes against humanity in Rwanda. Up to 2012 there

have been 93 indictments, 69 cases have been completed, and 3 cases have been transferred to national jurisdiction. However, promising as an example of international cooperation the ICTR might be, it would not empty the prisons in Rwanda by providing for fair and speedy trials, nor satisfy the desire of the genocide survivors in Rwanda for justice. Although several high-profile defendants were prosecuted, some important defendants are still missing.



**Figure 6:** Poster of the ICTR

### 3. The Solution?

Eventually a system of traditional village courts (gacaca) was set up in Rwanda, with the villagers in charge of the procedures. Many thousands have faced their neighbors in these venues, and few remain in prison. But although Rwanda today is sometimes touted as an economic success and wounds are healing, they are not yet healed.



**Figure 7:** A Rwandan man faces a gacaca court session in the village of Rukira (2005)

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