

« Domestic Justice Mechanisms : perspectives on referred cases »

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Abstract

*“When I came out, there were no birds... there was sunshine and the stench of death.”*² These words of one of the survivors of genocide perpetrated against Tutsis as quoted from the book of the late Arson Des Forges, one of the leading authorities in the living world on the 1994 genocide perpetrated against Tutsis, clearly indicates that in Rwanda the concept of ‘international crimes’ is not just a term but a lived reality.

In April 1994, one of the darkest chapters of human history started³, where Tutsis became a target of killings, rapes and other inhuman acts amounting to the crime of genocide and some of which constituted crimes against humanity and war crimes as well. In the aftermath of this abhorrent period, the first thing that popped up was to bring the alleged perpetrators of genocide, crimes against humanity and war crimes committed during such a short but most detestable period to the altar of justice. The reaction of the United Nations by creating the International Criminal Tribunal for Rwanda (ICTR) was by no means adequate in holding accountable all those allegedly involved in the perpetration of genocide, war crimes and crimes against humanity, as a large number of Rwandans were immersed in the killings and it was thus a symbolic response.⁴ Therefore, Rwanda as a country on whose territory the crime of genocide was committed was the first to prosecute and punish those who could not be tried before the ICTR⁵, and thus the application of international criminal law in Rwanda was bound to happen. However, the application of rules that are international in municipal law was concomitant with challenges, but in any case lessons have been drawn from this. Thus, this paper will expound the applicability of international criminal law in Rwanda, by first discussing challenges confronted at the early stage, second, the lessons

² A. DES FORGES, *Leave No One to Tell the Story*, New York, Human Right Watch, 1999, p. 1.

³ B.K. MOON, UN Secretary General, Remarks at the commemoration of the 20th anniversary of the Rwandan genocide, Kigali, April 7, 2014, at <<http://www.un.org/sg/statements/index.asp?nid=7572>> lastly accessed on April 3, 2015.

⁴ International Crisis Group, *International Criminal Tribunal for Rwanda: Delayed Justice*, ICG Africa Report N° 30, 7 June 2001, p. 1.

⁵ See the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948 (hereinafter referred to as “Genocide Convention”), article 6.

learnt from such a perplexing application where the current state of prosecution of cases transferred to Rwanda is on-going, and ultimately the conclusion will be offered.

1. Domestic Prosecution of International Crimes: Initial challenges

Rwanda's interest with regard to the domestic application of international criminal law arose in the aftermath of the 1994 genocide against Tutsis and the initial prosecution and repression of international crimes i.e. genocide, crime against humanity and war crimes confronted with two main challenges and those were the Rwandan legal landscape that was not set to accommodate the prosecution and repression of such atrocities and the judicial system's capacity that was scant to effectively and timely prosecute and punish the alleged perpetrators.

First, in the aftermath of 1994 genocide, the Rwandan legal landscape was not ready to accommodate the prosecution and repression of international crimes, since none of the three international core crimes i.e. genocide, crime against humanity and war crimes were provided for and punished as such in Rwandan criminal law regime. State inspired violence directed against innocent civilians culminating into the culture of impunity prevailed for so long and no attempts were ever made to bring the perpetrators of crimes emanating from this violence to justice, and as a result, Rwandan society succumbed to the culture of impunity, as a result, the current government in Rwanda inherited a system of administering justice from scratch but has managed to raise it to the standards appreciated by not only Rwandans, but the regional and international courts as well. Challenges remain to-date but success has been recorded as well.

It is true that Rwanda was party to and had duly ratified the 1948 genocide convention⁶, but the convention was not self-executing⁷ and Rwanda had failed to

⁶ The genocide convention was ratified by the Presidential Decree No 08/75 of 12 February 1975, *Official Gazette*, 1975, p. 230.

⁷ W.A. SCHABAS, *Genocide in International Law*, 2nd Ed., Cambridge, Cambridge University Press, 2009, p.405.

enact the enabling legislation as required by the Genocide Convention.⁸ This failure was perhaps owing to the mistaken belief that the crime already falls under ordinary criminal law provisions prohibiting murder and bodily harm as stressed by *Jan Wouters* and *Sten Verhoeven*.⁹ However, the prosecution of the constitutive acts of genocide like murder and bodily harm as ordinary crime would deprive them their exceptional nature and thus be subject to statute of limitation like any other ordinary crime, yet international core crimes are not subject to statutory limitations.¹⁰ In this regard, Rwanda could not let the constitutive acts of the crime of genocide and other international core crimes be prosecuted as ordinary crimes, but instead a pragmatic response was to be hunted for, notwithstanding the doctrine of prohibition of *ex post facto* criminal laws, as a new law incriminating the crime of genocide and other international core crimes would be an *ex post facto* law. This legal challenge, as rightly noted by *Dr A.K. Muyoboke* was overridden by applying the doctrine of dual incrimination where, the crime of genocide was a crime under the Genocide Convention to which Rwanda was a party and customary international law as well and its constitutive acts were punishable under the then Rwanda Penal Code as ordinary.¹¹ Thus, the alleged perpetrators was charged and convicted under the genocide convention, other international treaties to which Rwanda was party¹² and customary international law and punished pursuant to the penal code.

Moreover, the application of international criminal law in Rwanda could not be smooth as the then judicial system could not effectively and timely deal with the prosecution and repression of international crimes. In this regard, it is asserted that the majority of the judicial personnel vested with prosecuting and judging international crimes were non-professional lawyers who had undergone accelerated training sessions on

⁸ See Genocide Convention, article 5.

⁹ J. WOUTERS and S. VERHOEVEN, *The Domestic Prosecution of Genocide*, Working Paper No. 55 December 2010, p. 3.

¹⁰ See the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, General Assembly Res. 2391, 26 November 1968. See also Article 13 of the Constitution of the Republic of Rwanda of 4th June 2003, as amended to date.

¹¹ K.A.MUYOBOKE, *International Criminal Law*, University of Rwanda, School of Law, 2014, p. 77 (Unpublished).

¹² It is important to note that Rwanda is a monist State where the international law forms integral party of municipal law.

substantive and procedural laws in order to deal with the unprecedented situation the country was faced with¹³, and understandably they were not familiar with legal intricacy associated with international criminal law.

After all, Rwanda has learnt a significant lesson from the application of international criminal law in its domestic law, albeit an intricate and challenging situations and this is indicated by the current state of prosecution and repression of international crimes. The challenges confronted in prosecution and repression of international crimes in the aftermath of the 1994 genocide made Rwanda realize that it was high time to act with regard to putting in place the legal landscape and the judicial system that is responsive to international core crimes. To this end, the crime of genocide, crimes against and war crimes are currently legislated for. For instance, the constitutive acts of the crime of genocide were *verbatim* reproduced in current Rwandan Penal, which also refers to the four Geneva conventions and their additional protocols with regard to war crimes and penalties for these crimes are provided for.¹⁴ Moreover, the judicial system has been reformed with aim to build a competent judiciary where a strong court system has been developed to acclimatize the prosecution and repression of international crimes both under the auspices of universal and territorial jurisdictions. Besides, as noted by the ICTR in *Prosecutor v Uwinkindi* so far Rwandan judges are qualified, experienced and they have all necessary skills to handle the cases transferred from the ICTR.”¹⁵

All things considered, Rwanda is one of the countries, if not the first one that have been challenged in dealing with international criminal law, since apart from having ratified a multitude of conventions to that effect among others the genocide convention, no further step was taken to ensure that they can be applied domestically with ease. However, from this perplexing application of international criminal law significant lessons have been learnt and per now all international core crimes have been legislated

¹³ *Ibidem*

¹⁴ See the Organic Law N° 01/2012 of 02/05/2012 instituting the penal code, in *O.G* n° Special of 14 June 2012, articles 114-134.

¹⁵ *Prosecutor v. Uwinkindi*, Case No. ICTR-2001-75-R11bis, 28 June 2011, 28 June 2011, para. 177, See also *Prosecutor v. Phénéas Munyarugarama*, Case No. ICTR-02-79-R11bis, 28 June 2012, para. 51.

and the judicial system has been reformed, so it can cope with the prosecution and repression of international. Hence, this should be the lesson to the rest of the world where States have not yet complied with their international obligations to put in place legal measures aimed at enabling the effective domestic application of international criminal law.

The Rwandan parliament first enacted the law punishing genocide in 1996¹⁶. As earlier mentioned, Rwanda ratified the genocide convention in 1975 but never included the punishment of such a crime in the penal code, and so it was very difficult for Rwanda to start adjudicating these cases domestically in the mid-nineties not until legislation had to be enacted. At this time, the 1996 law established a confession and guilt plea programs to which detained participants in that program would get reduced sentences in exchange for their confessions, also as a way of speeding up the trials of so many thousands that were in prison at that time waiting for justice to be done.

2. Legal and Judicial Reforms that set the way forward

There has been a tremendous achievement so far in building a competent Judiciary, given the legal reform processes that have been undertaken since 2001. The recognition by the International Criminal Tribunal for Rwanda (ICTR) to transfer cases for trial before the Rwandan courts under rule *11 bis of the ICTR Rules of Procedure and Evidence* is the recent step in realisation of the achievements recorded. The decision by the grand chamber of the European Court on Human Rights (ECtHR) is also the realisation of the achievements resulting from the said reforms. The cases of Jean UWINKINDI and Bernard Munyagishari were transferred to Rwanda in 2011 and 2012 respectively by the ICTR. The ECHR grand chamber has also confirmed extraditions to Rwanda from the Norway and Denmark. The U.S. has also decided to deport Rwandan genocide suspects to face justice in Rwanda and Canada deported in January 2012 a Rwandan named Leon MUGESERA to face justice in Rwanda.

¹⁶ Law N° 08/96 of 31st August 1996 Punishing the Crime of Genocide, War Crimes and Crimes against Humanity

3. International Cooperation in Criminal matters and Treaty Obligations.

First, in order for Rwanda to successfully adjudicate international crimes in her own courts, Rwanda looks at the obligations of states to cooperate in international law. By requesting cooperation in criminal matters, we envisage on two aspects: first with a view to extradition to Rwanda and second, to conduct trial in the countries hosting these perpetrators in the event where extradition to Rwanda is problematic or has failed. By doing this, Rwanda has kept on reminding several countries of their obligations. With regard to the crime of genocide, the three main important obligations are noted.

(a) Obligation *pacta sunt servanda*. Basing on the provisions of the Vienna Convention on the law of treaties,¹⁷ Rwanda is always pressing for the mutual legal assistance for the prosecution of those implicated in the 1994 genocide and in its domestic courts; and by doing this, Rwanda is complying by its obligation under the Genocide Convention, which gives *primary jurisdiction* to National Courts.¹⁸ It is under this International law doctrine of *pacta sunt servanda* that States are required to carry out binding of obligations of the treaties they are parties to in good faith, which means, even if Rwanda was not able to have the genocide fugitives extradited for domestic prosecution, countries signatory to the genocide convention have the obligations to do so.

(b) Obligation *erga omnes*. By doing this, Rwanda is also complying with the requirements of customary international law that impose a duty on states to punish. On April 7th 2004 in a speech in Geneva commemorating the 10th anniversary of the 1994 Genocide in Rwanda, the then UN Secretary Kofi Annan launched an Action Plan to prevent Genocide.¹⁹ This Action Plan is very relevant to Rwanda's commitment to mutual legal assistance (MLA) issues. The five point

¹⁷ Article 26 of the Vienna Convention on the Law of Treaties provides: "Every *treaty in force is binding upon the parties to it and must be performed by them in good faith*".

¹⁸ Article 6 of the Genocide Convention

¹⁹ See United Nations Press release SG/SM/9197 AFR/893/HR/CN/1077 of 7th April 2004. See also

<http://www.un.org/apps/news/story.asp?NewsID=10337&Cr=Rwanda&CrI=#.VUnPIPC3vCk> consulted on 6th May 2015.

action plan includes *inter alia* “ending impunity through judicial action in both national and international jurisdictions” This shade light on the continued need for cooperation in criminal matters and thereby creating an obligation *erga omnes* in respect of the principle of prohibition, prevent and prosecution of those accused of international crimes who may be investigated and punished by any state not just the state where the crimes were committed.

- (c) Peremptory norms and Obligations/*Jus cogens*. Prohibition and punishment of genocide is a peremptory norm and therefore the duty to extradite or prosecute international crimes under International law is a norm that is accepted by the international community of States from which no derogation is permitted. As expressed by a latin maxim “*aut dedere aut judicare*,”²⁰ this is an obligation that binds the States to ensure the individuals who perpetrate crimes of genocide and crimes against humanity are brought to justice. Customary international law also regards the rule requiring the prevention and punishment of the perpetrators of genocide, war crimes and crimes against humanity as *jus cogens*.²¹ This is a term(*jus cogens*) is usually used to refer to a body of rules called peremptory norms which are so important that cannot be set aside by acquiescence or agreement to a parties to a treaty. Under the Vienna Convention on the law of treaties, any treaty that is in conflict with a peremptory norm is void.²² States are therefore required to punish these crimes and this State obligation is unquestionable, and as said, where the State for one reason or the other is unable to prosecute an international crime, International law requires such a State to extradite the accused for domestic adjudication.

²⁰ Cherif Bassiouni and Edward Wise, *a duty to extradite or to prosecute in international law*(Dordrecht, 1995

²¹ United Nations Treaty Series, Vol. 1155, P331

²² Art. 53 of the Vienna Convention on the Law of Treaties

4. Obligation to punish: Perspectives from Rwanda

Under the genocide convention, contracting parties confirm that genocide is an international crime and they undertake to prevent and punish it.²³ The Genocide Convention provides that persons committing genocide shall be punished, whether they are constitutionally punishable rulers, public officials or private individuals. The convention further requires that *persons charged with genocide shall be tried by a competent tribunal of a State in the territory where the act was committed or such international penal tribunal that may have jurisdiction.*²⁴

In order to be able to adjudicate international crimes domestically, we have first set up mechanisms to investigate international crimes committed by Rwandans or foreigners on the Rwandan territory between 1990 and 1994, and in the attempt to bring mostly these fugitives perpetrators to justice back home. A number of countries have responded positively to the call of arresting fugitives with a view of both extradition and trial. Other countries have responded, without arresting these fugitives but choosing to keep a close link with Rwandan prosecution organs and carrying out continuous investigations with a view of conducting trials in their respective countries.

I should say that this cooperation is evident and real, given a dozens of visits that European, Canadians and American investigators have paid to Rwanda, in mutual, legal and technical assistance to the Rwandan prosecution, Rwanda has received much cooperation from European countries, in investigating, arresting and trying Rwandan genocide suspects in Europe, but still, much work has to be done, and more efforts to be put in especially on the African continent.

5. The legal landscape.

Although the 1948 Genocide Convention foresaw a possible “International Penal Tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction.”²⁵ International crimes are primarily intended to be

²³ See Preamble of the Genocide Convention, Para 1

²⁴ Art. 6 of the Genocide Convention

²⁵ Art. 6 Genocide Convention

prosecuted at the domestic level. International Criminal Court regime through its system of *complementarity* clearly sees national courts are the courts of first resort. Scholars have described this as “*Indirect enforcement system*” whereby international criminal law is to be enforced through national systems.²⁶ It is in this spirit that some scholars not only view national prosecutions as a primary vehicle for enforcement of international crimes but also considered a preferable option- in political, sociological and legitimacy terms-to international prosecutions.

Although the world vowed after the second world war never again to allow such atrocities to occur, 21 years ago Rwanda was experiencing the worst genocide of our times, and such crimes continue to be committed in many places around the world and domestic prosecutions remain scarce and thereby having international criminal jurisdictions as an answer to impunity that occur domestically. When the ICTR and ICTY were established over 20 years ago the international community had little experience prosecuting the perpetrators of genocide and other atrocities of international character because the trend of the international criminal tribunals have generally evolved in the 1990’s almost 50 years after *Nuremberg Military Tribunals*. After two decades of experience, the limits of these courts capabilities are becoming clear. While they have brought some senior leaders of Rwanda and perpetrators of the Crimes committed in the Balkans war respectively, the enquiries of these courts have not reached all or even most perpetrators of these atrocities.²⁷ This is for clear reasons, the two courts are far removed from the scenes of crimes they are prosecuting (ICTR in Arusha and ICTY in The Hague), other factors remaining constant.

In this regard, the criminal law regime in Rwanda on international crimes is also emphasized by the fact that the Rwandan Constitution also incorporates customary international law and that this is also available as a backup option for elements/ counts that are not otherwise covered by Rwandan law. Genocide falls in the category of

²⁶ Robert Cryer et al, Introduction to International Criminal Law and Procedure, 2nd Ed., 2010, Pg. 64

²⁷ David Kaye, Justice Beyond The Hague: Supporting the Prosecution of International Crimes in National Courts, International Human Rights Programme, UCLA School of Law, available at <http://www.cfr.org/courts-and-tribunals/justice-beyond-hague/p25119> accessed 6th May 2015.

offences known as *International crimes* and has been codified and prevented by the genocide convention to which Rwanda ratified in 1975 but failed to write a genocide provision into its penal code.²⁸ Despite the absence of a domestic legislation at the time of genocide, International law requires States (Rwanda) to punish international crimes committed within their territorial jurisdiction, in the same spirit of the genocide convention, International law imposes a duty to enact legislation and provide penalties for persons guilty of genocide. Twenty-four years after (i.e. 1951-1975) the coming into force of the Genocide Convention, and nineteen years after (i.e. 1975-1994) the ratification of this Convention by Rwanda; still there was no provision for the punishment of genocide in the Rwanda Penal Code and the failure to provide for punishment of the crime allowed the perpetrators in one way to carry on with impunity due to the loophole in the domestic legislation.

6. The Rwandan law governing transfer of cases

Rwandan organic law concerning transfer of cases to the Republic of Rwanda from the ICTR and from other States (*The Transfer Law*)²⁹ creates a legal framework for facilitating ICTR transfers under rule 11 *bis* framework and extraditions. Elements of that framework do not apply to other criminal proceedings. The new Rwandan Penal Code also punishes these crimes since 2012. The transfer law has come up as part of the on-going reforms, and has touched some of the important aspects as follows:

- **Competent Courts**

In the transfer law regime, all transfer cases are to be heard at first instance by the High Court³⁰ while the Supreme Court will deal with the appeals, as well as review applications from the High Court.³¹

²⁸ Rwanda adhered to this convention by decree law N° 8/75 of 16th April 1975, published in the Official Gazette of the Republic of Rwanda N°5 of 1975).

²⁹ Organic Law number 09/13 /OL of 16th June 2013 concerning the transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from other States, Official Gazette N° Special *bis* of 16th June 2013.

³⁰ Art. 4, Para 1 of the Transfer Law.

³¹ *Ibid.* Article 18.

- **Enlarged bench**

The most recent legislation determining the organization, functioning and jurisdiction of the Supreme Court gives the President of the Supreme Court absolute discretion to designate a quorum of three or more judges as an alternative to the standard single first instance judge. This legislation adopted in June 2012 also relates to the appointment of foreign judges to the Rwandan Courts and further specifies that referred or transferred cases “*shall be tried both at first instance and appeal level by at least a three (3) judge bench*”.³² This is a change from Article 4, Para 2 of the Transfer Law, which provides that “*at first instance, the case shall be tried by a single judge assisted by the court registrar*”.

This provision refers to the President’s assessment of the “*complexity and importance of the case*” as factors to be considered by him when deciding on possible enlargement. Complexity and importance could be interpreted with reference to various considerations (e.g. number of nature of charges, number of accused, etc.). Given current circumstances, at least the transfers from the ICTR³³ and extradition from Canada, Norway and Denmark³⁴ could arguably be seen “important” in his sense to enlarge the bench because all these cases have 3 judges designated by the President of the High Court assisted by a court registrar. This means that an assessment of the importance and complexity of the case has been noted.

- **Rights of the accused**

The Transfer Law law basing on the Rwandan Constitution, the International Covenant on Civil and Political Rights (ICCPR) the Rwanda Code of Criminal Procedure guarantees the accused person transferred to Rwanda of several rights that guarantees a fair trial.³⁵

³² Organic Law N°03/2012/OL of 13/06/2012 Determining the Organization, Function and Jurisdiction of the Supreme Court, Article 13(2)

³³ Uwinkindi Jean and Bernard Munyagishari cases.

³⁴ The cases of Dr. Leon Mugesera, Charles Bandora and Emmanuel Mbarushimana respectively.

³⁵ Article 14 of the Transfer Law

Rwanda is currently handling five (5)³⁶ cases falling under the regime of the transfer law and in all these cases, Court has been seized and trials are going on. In all these cases, Court has examined issues of indigence raised by some of the suspects and Court has asked *Rwanda Bar Association* to provide legal assistance to them at the expense of the Government of Rwanda. This is one of the fundamental rights of the accused for a fair trial which has been respected.

Regarding the above mentioned rights, issues of adequate time, and resources to prepare the defense of the accused has been respected. There has been adequate facilitation for defense to prepare for the trial.

- **Witness participation and video link testimony**

Issues surrounding the participation of defense witnesses in particular featured strongly in ICTR refusals to transfer any cases to Rwanda. Practical measures have been put in place by Rwanda to address such concerns. The protection and assistance to witnesses does not apply to ICTR transferred cases only but also to extradition cases and witness hearing by foreign jurisdictions conducting investigations in Rwanda on trials going on in other countries.³⁷ The Transfer Law largely speaks about how the High Court interprets its power to order protective measures similar to those set out in ICTR Rules 53, 69, and 75.³⁸

The Prosecutor General is also mandated to by the Transfer Law to facilitate witnesses in giving testimony, including those living abroad by the provision of appropriate immigration documents, personal security, as well as providing them with medical and psychological assistance.³⁹

³⁶ Prosecutor Vs Dr. Leon Mugesera, Prosecutor Vs Uwinkindi Jean, Prosecutor Vs Munyagishari Bernard, Prosecutor Vs Bandora Charles and Prosecutor Vs Mbarushimana Emmanuel

³⁷ Most recently, Rwanda assisted Germany in connection with the *Rwabukombe* case to establish a video-link for 11 witnesses who testified in Rwanda and were heard by the court and parties in Frankfurt, Germany.

³⁸ Article 15 of the Transfer Law

³⁹ Ibid. Para 2

The same witnesses who travel from abroad shall have the immunity from search, seizure, arrest or detention, during the testimony and during their travel to and from the trials.

- **Foreign defense counsel**

The Transfer Law provides that accused are entitled to counsel of their choice, and foreign counsel (accredited by Rwanda Bar Association) will be able to defend accused in transfer and extradition cases and their support staff shall have the right to enter into Rwanda and move freely within Rwanda to perform their duties. The Rwandan law establishing Bar in Rwanda⁴⁰ is also relevant to the participation of foreign defense counsel.⁴¹

Both the prosecution and the accused have the right to appeal against any decision taken by the High Court upon one or both of the two grounds: –“an error on a question of law invalidating the decision”, or, –“an error of fact which has occasioned a miscarriage of justice.”⁴²

- **Monitoring of transfer cases**

With regard to monitors, Rwanda has an open door system with the monitors; they have access to all officials, to all trials and to the prison. Every institution of Rwanda is cooperating with monitors and no lack of cooperation has been reported so far. Rwanda is open to monitors because we know the greatest scrutiny that we face in this regard. Scrutiny because there are certain commitments made to the ICTR that we have to meet. Monitors face everyone they wish too and have access to all prosecution and court records whenever they wish to do so.

Both the court appointed and prosecution appointed monitors have been coming to Rwanda to perform their duties in this regard and they exercise their monitoring activities within the confines of rules governing them. They are granted access to court proceedings, documents and records relating to the case as well as places of detention.

⁴⁰ Law N° 83/2013 of September 11^h 2013, published in the Official Gazette N°44 of 4th November 2013

⁴¹ See Article 17 of the Transfer Law

⁴² Article 18 of the Transfer Law

They are protected during the exercise of their work by the Vienna Convention on the Privileges and Immunities of the United Nations.⁴³

- **Heaviest penalty and detention**

Death Penalty has been eliminated altogether in Rwanda, not just in transfer cases. Life imprisonment is the heaviest penalty imposed upon a convicted person in Rwanda.

The Transfer Law provides that “*any person who is transferred to Rwanda by the ICTR shall be detained in accordance with the minimum standards of detention stipulated in the United Nations body of principles for the protection of all persons under any form of detention or imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1998*”.⁴⁴

The Transfer Law applies *mutatis mutandis* to extradition cases too. In addition to, or instead of the said UN principles, it should be understood that any conditions of detention agreed between Rwanda and extraditing States or agreed to by Rwanda through, for example multilateral treaties would also apply. Rwanda has given assurances on detention *inter alia* in different extradition cases. Rwanda has also entered in agreement with the Special Court for Sierra Leone to have convicts from this Court serve their sentences in Rwanda at *Mpanga Prison*, the prison that has been accepted by the UNICTR to be meeting the required international standards. These arrangements has paved way for Rwanda’s possibility to receive more cases as the facilities in place regarding detention are no more being an issue for refusal to transfer.

7. CONCLUSION

The existing international justice systems have not delivered to their expectations. They had their own set of problems and their eminent closure meant that national jurisdictions can and must also take over and adjudicate such crimes. It is the way forward especially in the new era of the ICC which gives primacy to national jurisdictions who are willing and able to try the crimes in their own court systems. The

⁴³ Ibid. Article 21 Para 3.

⁴⁴ Ibid. Article 26

Rwandan *Gacaca* system is a success of the home grown solutions that has yielded results and fostered unity and reconciliation among the Rwandan people. There is a need to build strong legal frameworks that support domestic prosecution of international crimes and creating belief in the justice system among the local population. Cognizant of the challenges facing countries experiencing or emerging from violent conflict, Rwanda has made history in the last 21 years by bringing together the society that has been torn apart by the ethnic hatred and genocide, to building stronger independent judicial institutions that are able to adjudicate international crimes locally and competently.