

**BILL OF ORGANIC LAW N°.....OF.....MODIFYING THE ORGANIC LAW N° 40/2000 OF JANUARY 26, 2001 SETTING UP GACACA JURISDICTIONS AND ORGANISING PROSECUTIONS FOR OFFENCES CONSTITUTING THE CRIME OF GENOCIDE OR CRIMES AGAINST HUMANITY, COMMITTED BETWEEN OCTOBER 1, 1990 AND DECEMBER 31, 1994.**

**We, Paul KAGAME,**

**President of the Republic,**

THE NATIONAL ASSEMBLY HAS ADOPTED AND WE HEREBY SANCTION, PROMULGATE THE FOLLOWING ORGANIC LAW AND ORDER THAT IT BE PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA.

The National Assembly :

The Chamber of Deputies meeting in its session of.....2004.

The Senate meeting in its session of .....2004.

Given the Constitution of the Republic of Rwanda of 04 June 2003, as amended to date, especially in its articles **62, 90, 93, 108, 152 and 201 ;**

Revisited organic law n°08/96 of august 30, 1996 organising prosecutions for offences constituting the crime of genocide or crimes against humanity committed since October 1, 1990 ;

Revisited organic law n° 40/2000 of January 26, 2001, setting up GACACA JURISDICTIONS and organising prosecutions for offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994, as amended and completed to date ;

Revisited Law-decree n° 09/80 of July 7, 1980 on the Code of judicial organisation and competence as modified to date ;

Revisited the law of February 23, 1963 on the Code of criminal procedure, as modified and complemented to date ;

Revisited Law-decree n°21/77 of August 18, 1977 instituting the penal code as modified and complemented to date ;

Considering the genocide and the crimes against humanity committed in Rwanda from October 1, 1990 to December 31, 1994 ;

Considering that such offences were publicly committed before the very eyes of the population which witnessed the facts, and thus must recount, disclose the truth and participate in prosecuting and trying the alleged perpetrators.

Considering that the duty to testify is an obligation for every patriotic Rwandan, nobody has the right to get out of it for whatever reason it may be ;

Considering that the committed acts are both offences provided for and punished by the Penal Code, and constituting the crime of genocide or crimes against humanity ;

Considering that the crime of genocide and crimes against humanity are notably provided for by the international Convention of December 9, 1948 repressing and punishing the crime of genocide, by the Geneva Convention of August 12, 1949 relating to protecting civil persons in wartime and the additional Protocols, as well as the Convention of November 26, 1968 on imprescriptibility of war crimes and crimes against humanity ;

Considering that Rwanda has ratified those three Conventions and published them in the Official Gazette of the Republic of Rwanda, without, however, providing for special sanctions for these crimes until the time when they were committed ;

Considering, consequently, that prosecutions must be based on the Penal Code ;

Considering the necessity, in order to achieve justice and reconciliation in Rwanda, to eradicate for good the culture of impunity and to adopt provisions enabling to ensure prosecutions and trials of perpetrators and accomplices, without only aiming for simple punishment, but also the reconstitution of the Rwandese Society made decaying by bad leadership which prompted the population to exterminate one part of that Society ;

Considering the necessity that solutions to the genocide problems and its consequences must come from within the Rwandese Society itself ;

Considering that it is important to provide for penalties allowing convicted persons to amend themselves and to favour their reintegration into the Rwandese Society without hindrance to the people's normal life ;

## **ADOPTS :**

### **TITLE ONE : APPLICATION FIELD**

#### **Article one :**

The purpose of this organic law is to set up organization and competence of Gacaca Jurisdictions and the putting in trial of persons prosecuted for having, between October 1, 1990 and December 31, 1994, committed acts qualified and punished by the Penal Code and which constitute :

- a) either crimes of genocide or crimes against humanity as defined by the law n° 33 bis/2003 of September 6, 2003 repressing the crime of genocide, crimes against

humanity and war crimes, by the Convention of December 9, 1948 preventing and punishing the crime of genocide, by the Geneva Convention of August 12, 1949 relating to protecting civil persons in wartime and the additional Protocols, as well as by the Convention of November 26, 1968 on imprescriptibility of war crimes and crimes against humanity ;

- b) or offences aimed at in the Penal Code which, according to the charges by the Public Prosecution or the evidences for the prosecution or even what admits the defendant, were committed with the intention of perpetrating genocide.

### **Article 2 :**

The persons whose committed acts or criminal participation acts put in categories 2 and 3, as defined by Article 46 of this organic law, are answerable to Gacaca Jurisdictions referred to in **Title I** of this organic law. Gacaca Jurisdictions exclusively apply the provisions of this organic law.

Persons whose committed acts place in category 1, as defined in Article 46, are answerable to ordinary jurisdictions which apply the common law content and procedure rules subject to exceptions provided for by this organic law.

As regards the offence, only provisions of this organic law are applied.

Persons mentioned in the paragraphs prior to this, are answerable to jurisdictions defined in those paragraphs, even if their co-defendants are prosecuted by jurisdictions different from theirs. In this case, their co-defendants may only be summoned to testify in their trials.

## **TITLE II : SETTING UP, ORGANIZATION, COMPETENCE AND RELATIONSHIP BETWEEN GACACA JURISDICTIONS AND OTHER INSTITUTIONS**

### **CHAPTER ONE : SETTING UP AND ORGANISING GACACA JURISDICTIONS**

#### **SECTION ONE :SET UP AND JURISDICTION**

### **Article 3 :**

It is hereby set up the Gacaca Jurisdiction of the Cell in each Cell, the Gacaca Jurisdiction of the Sector and the Gacaca Jurisdiction of Appeal in each Sector of the Republic of Rwanda. These Jurisdictions are in charge of knowing, within the limits established by this organic law, the offences constituting the crime of genocide and crimes against humanity committed between October 1, 1990 and December 31, 1994.

### **Article 4 :**

Without prejudice to paragraph 2 and 3 of Article 6 of this organic law,

- the jurisdiction for the Cell's Gacaca Jurisdiction is the Cell ;
- the jurisdiction for the Sector's Gacaca Jurisdiction is the Sector ;

- the jurisdiction for the Gacaca Jurisdiction of Appeal is the Sector.

## SECTION 2 : ORGANS OF GACACA JURISDICTIONS

### **Sub-section one : General Provisions**

#### **Article 5 :**

The Gacaca Jurisdiction of the Cell is made up of a General Assembly, a Seat for the Gacaca Jurisdiction and a Coordinating Committee.

The Sector's Gacaca Jurisdiction, as well as the Gacaca Jurisdiction of Appeal are made of a Seat for the Gacaca Jurisdiction and a Coordinating Committee.

The competent organ to appoint the Seat and the Coordinating Committee's members is also competent for their replacement.

### **Sub-section 2 : The General Assembly**

#### **Article 6 :**

The General Assembly for the Cell's Gacaca Jurisdiction is made up of all the Cell's inhabitants aged 18 years and above.

When it appears that within a given Cell, the number of inhabitants aged 18 years or above is under 200, that Cell is merged to another Cell of the same Sector, to make one Gacaca Jurisdiction of the Cell. The same is applied when it appears that the number of honest persons stated in paragraph 1 of Article 7 is not reached. The merged Cells proceed to new elections for appointing honest persons.

In case the merged Cells fail to meet the required number of honest persons, and there are no more Cells in the same Sector, these Cells are merged to the Cell of the neighbouring Sector of which the merged Cells make parts.

The decision of merging Cells is taken by the National Service charged with following up Gacaca Jurisdictions' activities or any person entitled, on submission of the case by the administrator of the District or Town concerned .

### **Sub-section 3 : The Seat for the Gacaca Jurisdiction**

#### **Article 7 :**

**Each Gacaca Jurisdiction's Seat is made up of 9 honest persons and 5 deputies.**

### **Article 8 :**

Before exercising his/her ministry, every member of the Seat for the Gacaca Jurisdiction shall take the following oath :

**“I,.....solemnly swear to the Nation that I shall :**

**1° diligently fulfill the responsibilities entrusted to me ;**

**2° remain loyal to the Republic of Rwanda ;**

**3° observe the Constitution and the other laws ;**

**4° work for the consolidation of national unity ;**

**5° conscientiously fulfill my duties of representing the Rwandan people without any discrimination whatsoever ;**

**6° never use the powers conferred on me for personal ends ;**

**7° promote respect for the freedom and fundamental rights of human being and safeguard the interests of the Rwandan people.**

**Should I fail to honour this oath, may I face the rigours of the law.**

**So help me God.”**

### **Article 9 :**

A honest person member of the Seat for the Gacaca Jurisdiction cannot seat in a matter **in which is he/she is concerned or in which is prosecuted :**

- **his/her spouse ;**
- **his/her parent, grandfather, grandmother, relatives, children and grandchildren or those of his/her spouse ;**
- **his/her uncles, aunts, cousins and step-brothers and sisters ;**
- **the defendant with whom it was already existing a serious enmity ;**
- **the defendant with whom he/she has deep friendship relations ;**
- **the defendant for whom he/she was guardian ;**
- **any other relation considered incompatible with the honest person’s independence.**

In one of these hypotheses, the member of the concerned Seat must decline to act in the case. Otherwise, any person who knows about the existence of one of these causes informs, before the plea as to the content, the Seat which decides all matters ceasing.

However, **the concerned person so objected to** is admitted to give evidence for the prosecution or the defence.

### **Sub-section 4 : The Coordinating Committee**

### **Article 10 :**

Members of the Seat for a Gacaca Jurisdiction elect, among themselves, with a simple majority, the Coordinating Committee made up of the Chairperson, the first vice-chairperson, the second vice-chairperson and two secretaries, all of them who know how to read and write Kinyarwanda.

**The members of the Coordinating Committee are elected for a renewable one year mandate.**

**The secretaries of Gacaca Jurisdictions shall ensure the secretariat and the functions of secretaries for Gacaca Jurisdictions.**

**Article 11 :**

The Coordinating Committee shall carry out the following functions :

- a) to register complaints and denunciations, evidences and offers of proof given by the people ;
- b) to receive and register files for answerable defendants of Gacaca Jurisdictions ;
- c) to register declarations of Appeal formed against trials by Gacaca Jurisdictions ;
- d) to send to the Gacaca Jurisdiction of Appeal, the files of which trials are affected by Appeal ;
- e) to write decisions taken by the organs of Gacaca Jurisdictions ;
- f) to collaborate with other institutions in implementing decisions taken by the Gacaca Jurisdiction.

**SECTION 3 : MEMBERS OF GACACA JURISDICTIONS' ORGANS**

**Article 12 :**

The General Assembly for the Cell's Gacaca Jurisdiction chooses, within itself, **honest persons needed, of whom some are delegated to the Gacaca Jurisdiction of the Sector, the Gacaca Jurisdiction of Appeal and 9 honest persons making up the Seat for the Cell's Gacaca Jurisdiction.**

**Honest persons delegated to form the Sector's Gacaca Jurisdiction appoint among themselves, members of the Seat for the Gacaca Jurisdiction of Appeal and their deputies; the remaining honest persons elect, within themselves, the Seat members of the Sector's Gacaca Jurisdiction and their deputies.**

The number of honest persons to be sent by the Cell's Gacaca Jurisdiction is determined **by the National Service in charge of Gacaca Jurisdictions.**

The President of the Republic determines by means of order, the modalities of organizing elections for members of Gacaca Jurisdictions' organs.

**Article 13 :**

**Members of Gacaca Jurisdictions' organs are honest Rwandans elected by general assemblies for the Cells in which they are residing.**

Is honest, any Rwandan meeting the following conditions :

- a) not to have participated in perpetrating offences constituting the crime of genocide or crimes against humanity ;
- b) to be free from the spirit of sectarianism and discrimination ;
- c) not to have been sentenced, by a trial emanating from the tried case, to a penalty of at least 6 month imprisonment ;
- d) to have good behaviour and morals ;
- e) to always say the truth ;

- f) to be trustworthy ;
- g) to be characterised by a spirit of speech sharing.

Any honest person, who has at least 21 years of age and meeting all the conditions required by this organic law, can be elected member of a Gacaca Jurisdiction's organ without any discrimination notably of sex, origin, religion, opinion or social position.

#### **Article 14 :**

##### **Cannot be elected member of the Seat for a Gacaca Jurisdiction :**

1. the person exercising a political activity ;
2. the person in charge of centralised or decentralised Government administration ;
3. the soldier or the policeman who is still in active service ;
4. the career magistrate ;
5. the member of leading organs of political parties.

This ineligibility, however, is removed only when the person's resignation from his/her post is accepted.

Leaders meant in the second line, first paragraph of this article are the Province administrator, the Mayor of the City of Kigali, members of the Executive Committee of the District or Town and members of administrative and political council at the level of Sector and Cell.

Cannot elect or be elected anybody who is mentioned on the list of genocide suspected defendants falling in the first category.

#### **Article 15 :**

Any person appointed member of a Gacaca Jurisdiction shall be replaced for one of the following reasons :

- a) three unjustified successive absences in the sessions for the organs of Gacaca Jurisdictions ;
- b) sentence to a penalty of at least a 6 month imprisonment ;
- c) culture of sectarianism ;
- d) exercising one of the activities provided for in Article 14 of this organic law or occupying a post which is likely to impede participation in the sessions for the organs of Gacaca Jurisdictions ;
- e) effects of disease likely to prevent him/her from participating in the sessions for the organs of Gacaca Jurisdictions ;
- f) fulfilling any act incompatible with the quality of a honest person ;
- g) resignation for personal reasons ;
- h) death.

Loss of the quality of member of Gacaca Jurisdictions'organs for three successive unjustified absences in the sessions for the Jurisdictions, for culture of divisionism or any act incompatible with the quality of a honest person, is decided in writing by the members of the Seat of Gacaca Jurisdictions, **after consultations with the General assembly of his/her Cell of residence.**

The member so relieved is subject to an official warning before the General Assembly and cannot be elected as an honest person in any organ.

Other reasons for replacement enumerated in this article are ascertained by that organ of the Gacaca Jurisdiction.

#### SECTION 4 : FUNCTIONING OF GACACA JURISDICTIONS' ORGANS

##### **Article 16 :**

The General Assembly for the Gacaca Jurisdiction holds an ordinary meeting once a week and an evaluation meeting once every three months and anytime if need be.

It is convened and led by the chairperson for the Coordination Committee, on his/her own initiative or at the request of at least one third of the members of the Seat for the Gacaca Jurisdiction.

When the chairperson has a legitimate reason or refuses to convene the General Assembly, this one is convened by one of the vice-chairpersons.

##### **Article 17 :**

**The General Assembly of the Cell's Gacaca Jurisdiction only meets legitimately if at least 100 members are present.**

##### **Article 18 :**

Hearings for Gacaca Jurisdictions are public, except the hearing in camera requested by any interested person and pronounced judgement for reasons of public order or good morals.

When **taking decisions**, deliberation is secret.

##### **Article 19 :**

In the Cell's Gacaca Jurisdiction, the day and time for meetings are fixed by the General Assembly. In other Gacaca Jurisdictions, the day and time are determined by the Seat members of the Jurisdiction and communicated to the population.

##### **Article 20 :**

The Seat for the Gacaca Jurisdiction can only meet legitimately if at least 7 of its members are present.

**When the quorum is not reached due absences, the meeting is postponed .**

**When the quorum is not reached due to an absolute inavailability of the members for various reasons, it is completed by the deputies.**

**If the quorum is not reached following objection or disclaimer of some of the Seat members, it is completed by their deputies until the last decision or the hearings closure.**

**When the entire Seat is objected or disclaims, the case calls for honest persons from the nearest Gacaca Jurisdiction with the same competence until the last decision or the closure of hearings.**

**Whenever possible, it is proceeded to the borrowing of honest persons adding to the deputies for the objected Seat in order to complete it.**

**This cannot prevent those honest people coming from elsewhere from carrying out their duties in their usual Jurisdiction. The objected Seat, disclaiming Seat or any other person who is interested in the case, informs, as soon as possible, the National Service of Gacaca Jurisdictions in order to decide on the Gacaca Jurisdiction from which honest persons can be borrowed.**

**Article 21 :**

The Seat for a Gacaca Jurisdiction shall decide by consensus, and failing this, with the absolute majority of its members.

If such a majority is not reached, it is proceeded to a new vote ; each member of the Seat for Gacaca Jurisdiction having, however, to choose between the 2 positions having previously obtained more votes.

**Article 22 :**

Judgements must be motivated. They are signed or marked with the fingerprint by all members of the Jurisdiction who have seated and participated in deliberation.

**Article 23 :**

Whenever need be, Gacaca Jurisdictions can be assisted by judicial advisers appointed by the National Service in charge of following up Gacaca Jurisdictions' activities.

**Article 24 :**

The Coordination Committee of the Gacaca Jurisdiction meets as often as necessary on summons of its Chairperson, by his/her initiative or on request of at least 2 of its members. When the Chairperson justifies with a legitimate motive that he/she is hindered to summon the Committee, the latter is summoned by one of the vice-chairpersons.

**Article 25 :**

To sit conclusively, the Coordination Committee shall bring together at least 3 of its members.

**Article 26 :**

Any person who omits or refuses to testify on what he/she has seen or on what he/she knows, as well as the one who makes a false or slanderous denunciation, shall be prosecuted by the Gacaca Jurisdiction which makes the statement of it. He/she risks a prison sentence from 7 days to 3 months. In case of repeat offence, the defendant may incur a prison sentence from 3 to 6 months.

Is regarded as refusing to testify on what he/she has seen or known, any person who apparently knew something on a given matter denounced by others in his/her presence without expressing his/her own opinion.

Is regarded as someone refusing to testify :

- Any person who, once summoned to testify before the Jurisdiction after knowing that he/she is holder of a testimony, refuses to declare by keeping silent or deliberately evading the question asked to him/her.
- Any person who, once summoned by the Jurisdiction and does not appear deliberately without reasons, avoiding to be questioned inasmuch as the summons is clearly notified to him/her.

Is considered as a perjurer, anyone who gives a testimony ascertaining that he/she is telling only the truth and holds evidences for that, takes an oath and signs it ; but later it appears to be false and done on purpose.

The perjury is prosecuted during the very hearing of the matter in which the prosecuted person has given the testimony, if it is discovered that the person has perjured deliberately.

#### **Article 27 :**

The Gacaca Jurisdiction shall prosecute and punish in the same way as anybody refusing to testify or a perjurer in his/her testimony, any person who exercises pressures, attempts to exercise pressures or blackmails the testimonies or the Seat members of the Gacaca Jurisdiction.

Is regarded as an act of exercising pressures on a Gacaca Jurisdiction, anything aiming at coercing the Jurisdiction into doing against its will, translated into actions, words or a behaviour threatening the Seat, and clearly meant that if the latter fails to comply with, some of its members or the entire Seat may face dangerous consequences. **But, when the pressure is performed, provisions of the Penal Code are applied by ordinary courts.**

Is considered as an attempt to coerce a Gacaca Jurisdiction, any behaviour translated into words or acts, showing that there has been an attempt to coerce a Gacaca Jurisdiction into taking a decision in a way or another.

Is regarded as an act of blackmailing a Gacaca Jurisdiction , testimonies, words and actions threatening the testimonies or the Seat members for a Gacaca Jurisdiction, aiming at winning acceptance for his/her own wish at all costs.

Are considered as blackmailing a Gacaca Jurisdiction or the testimonies, words or actions clearly meant to threaten the testimonies or the Seat members for a Gacaca Jurisdiction, with the intention of winning acceptance for his/her wish.

#### **Article28 :**

Judgements given and passed according to Articles **26** and **27** of this organic law may be subjected to objection and appeal in conformity with the ways provided for in this organic law.

## **Article 29 :**

The Seat for the Gacaca Jurisdiction taking cognizance of offences stated in Articles 26 and 27, decides all matters ceasing and retires to examine whether it is an offence to be prosecuted according to these articles. When the prosecution of the offence is confirmed, the Seat fixes the day of the hearing, notifies it to the defendant, and records it in the notebook of activities before carrying on the Jurisdiction's activities.

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

In case it is notified to the Chairperson, he/she hands it to the secretary who records it in the notebook of activities, mentioning the plaintiff, motive, date of submission and the date of reception from the Chairperson. After recording, the Chairperson notifies it to the General Assembly for deciding on the date of examining the accusation.

On the hearing day, the Chairperson checks if the required number of honest persons, the accused person and testimonies are present ; their identities are registered. After that, the Chairperson recalls the provisions of the law, reads the accusation and gives the floor to the defendant and witnesses for his/her defence.

After that, the Chairperson gives the floor to the testimonies for the prosecution and any other person who wants to speak in the General Assembly. Afterwards, the Seat members retire for deliberation. The judgement is recorded in the notebook of activities and bears the signatures of all Seat members.

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

The detention pending trial is forbidden for prosecuted people whose offences fall in Articles 26 and 27 of the organic law setting up Gacaca Jurisdictions.

## **SECTION 5 : REMIT OF GACACA JURISDICTIONS**

### **Sub-section one : Remit of the Gacaca Jurisdiction's organs for the Cell**

## **Article 30 :**

The general Assembly of the Gacaca Jurisdiction of the Cell exercises the following remit :

- a) Electing Seat members of the Gacaca Jurisdiction of the Cell and their deputies ;
- b) Electing members of higher Gacaca Jurisdictions ;
- c) For non members of the Seat, they attend and speak whenever they so request, but without voting powers in hearings of the Gacaca Jurisdiction of the Cell ;
- d) Contributing to preparing a list of :
  - persons who lived in the cell before the genocide, locations where they moved to and routes they went through ;
  - persons who were killed in their residence Cell ;
  - persons who were killed outside their residence Cell ;

- persons who were persecuted and their damaged assets ;
- alleged authors of the offences referred to in this organic law.
- e) Presenting means of evidence or testimonies on people suspected of having committed the crime of genocide and others who took part ;
- f) Examining and adopting activity report established by the Gacaca Jurisdiction.

All Cell inhabitants shall tell the facts which were produced in their village and give evidence on them. They shall denounce their authors and identify the victims.

### **Article 31 :**

The Seat for the Gacaca Jurisdiction of the Cell exercises the following remit :

- a) With the contribution of the General Assembly, to make up a list of :
  - All persons who were staying in the Cell before the genocide, locations where they moved to and routes they went through ;
  - Persons who were killed in their residence Cell ;
  - Persons who were killed outside their residence Cell ;
  - Persons who were persecuted and their damaged assets ;
  - Alleged perpetrators of offences referred to in this organic law.
- b) To bring together the files forwarded by the Public Prosecution ;
- c) To take cognizance of evidence and testimony offers ;
- d) To make investigations on given testimonies ;
- e) To make categorization of defendants as per this organic law
- f) To know offences committed by defendants classified in the 3<sup>rd</sup> category ;
- g) To give a ruling on objection to Seat members of the Gacaca Jurisdiction of the Cell ;
- h) To forward to the Gacaca Jurisdiction of the Sector, the files of the defendants classified in the 2<sup>nd</sup> category ;
- i) To forward to the Public Prosecution of the District or Town Jurisdiction, the files of the defendants classified in the 1<sup>st</sup> category ;
- j) To elect members of the Coordination Committee.

A persecuted person is anybody who was hunted to be killed but survived, suffered acts of torture against his/her sexual parts, suffered rape, injured or victim of any other form of persecution, plundered, and whose house and property were destroyed because of his/her ethnic background or opinion against the genocide ideology.

### **Sub-section 2 : Remit of the Sector's Gacaca Jurisdiction and the Gacaca Jurisdiction of Appeal**

#### **Article 32 :**

The Seat for the Gacaca jurisdiction of the Sector and the Seat for the Gacaca jurisdiction of Appeal exercise the following remit :

- a) Making investigations, if necessary, on given testimonies ;
- b) Receiving the procedure of confession, guilt plea and apologies for defendants ;
- c) Taking decisions relating to objections to the members of the Gacaca Jurisdiction's Seat ;
- d) Knowing after being ensured of the qualification correctness, offences of its competence in conformity with this organic law and, if need be, forwarding to the

competent Gacaca Jurisdictions, the files relating to defendants coming into their respective competence.

However, for the 1<sup>st</sup> category defendants, files are forwarded to the Public Prosecution Department ;

- e) Having recognizance of judgements appeal passed by Gacaca Jurisdictions of its jurisdiction ;
- f) Electing Coordination Committee members.

### **Article 33 :**

**As regards offences relating to rape or acts of torture against sexual parts, the victim chooses among the Seat members of the Cell's Gacaca Jurisdiction, one to whom she submits her accusation or does it in a written form. In case there is none to trust, she submits it to the office of the judicial police or the Public Prosecution Department.**

**The honest person receiving such an accusation, submits it secretly to the Public prosecution for further investigations.**

**It is forbidden to publicly plead guilty for such an offence, nor anybody is allowed to charge another person not concerned with it. Any person wishing to plead guilty is allowed to do it before the Public Prosecution in camera.**

## **CHAPTER 2 : COMPETENCE OF GACACA JURISDICTIONS**

### **Article 34 :**

Gacaca Jurisdictions exercise extended competences similar to those ordinary criminal jurisdictions have, to try defendants on basis of testimonies against or in favour, **and other testimonies which may be given.**

They may in particular :

- Summon any person to appear before court ;
- Order and carry out search of or to the defendant's. This search shall, however, respect the defendant's private property and **basic human rights** ;
- Take protective measures ;
- Pronounce sentences and **order the convicted person to pay** ;
- Order the withdrawal of the distraint of acquitted person's property;
- **Prosecute and punish troublemakers in the court** ;
- Order, if necessary, appearance of the Public Prosecution for information complement on files it has investigated on ;
- Issue justice warrants to alleged authors of offences and order detention in prevention or **release**, whenever necessary.

### **Article 35 :**

The National Service in charge of following up Gacaca jurisdictions' activities determines, on his own initiative or on the request of the Seat for the Gacaca Jurisdiction or any person encroached, by means of regulations, the ways to rule on disputes relating to competences of Gacaca Jurisdictions and follows up its implementation.

## SECTION ONE : REMIT COMPETENCE

### **Sub-section one : Gacaca Jurisdiction of the Cell**

#### **Article 36 :**

The Gacaca Jurisdiction of the Cell deals at the first and last resort, with offences relating to the 3<sup>rd</sup> category. It deals also with the appeal formed against the sentence it has pronounced in the absence of accused authors.

In addition, it proceeds to the categorisation of alleged authors for offences defined in Articles 1 and 46 of this organic law.

### **Sub-section 2 : Gacaca Jurisdiction of the Sector**

#### **Article 37 :**

**The Gacaca Jurisdiction of the Sector deals at the first level, with defendants whose offences classify into the 2<sup>nd</sup> category and appeal formed against sentences pronounced in the absence of the accused authors.**

**It deals also with appeal formed against judgements pronounced for offences provided for in Articles 26 and 27 and other decisions taken by the Gacaca Jurisdiction of the Cell.**

### **Sub-section 3 : Gacaca Jurisdiction of Appeal**

#### **Article 38 :**

**The Gacaca Jurisdiction of Appeal deals with appeal formed against sentences pronounced at the first level by the Gacaca Jurisdiction of the Sector of its jurisdiction.**

**In addition, it deals with appeal formed against sentences pronounced in the absence of the accused authors.**

## SECTION 2 : TERRITORIAL COMPETENCE

#### **Article 39 :**

Is competent to know an offence, the jurisdiction of the place where it has been committed. Defendants prosecuted for offences committed in different places are answerable for the competent jurisdiction, in conformity with the preceding paragraph of this Article, to know the facts they are charged of at the time they were arrested. However, other jurisdictions are competent for offences for which they would not have been prosecuted.

**Article 40 :**

**When it appears in the file to communicate to the Gacaca Jurisdiction in conformity with Article 42 of this organic law, that the defendant has committed offences in different places, the Public Prosecution forwards it to each Gacaca Jurisdiction where crimes were committed.**

**CHAPTER 3 : RELATIONSHIP BETWEEN GACACA JURISDICTIONS  
AND OTHER INSTITUTIONS**

**SECTION ONE : RELATIONSHIP BETWEEN THE PUBLIC PROSECUTION  
AND GACACA JURISDICTIONS**

**Article 41 :**

The Prosecutions and military courts shall proceed to their mission of receiving denunciations and complaints, searching for offences and performing investigation duties dealing with offences provided for by this organic law.

However, before beginning an investigation, they will have to make sure that the Gacaca Jurisdiction has not yet tried or has not begun to study these cases.

The files investigated by the Prosecutions and military courts in conformity with the 1<sup>st</sup> paragraph of this Article, are forwarded to the competent Gacaca Jurisdiction of the Cell.

**Article 42 :**

The files investigated by the Prosecutions and military courts, but which were not yet forwarded to competent jurisdictions on March 15, 2001, shall be forwarded to the Gacaca Jurisdiction of the place where each crime was committed for defendants categorisation.

The Prosecutions and military courts carry on communicating to Gacaca Jurisdictions of the Cells or to the Jurisdiction called to recognisance of the case, evidences collected against prosecuted persons in the files it has investigated.

When the Gacaca Jurisdiction of the Cell which has made categorization, has already forwarded the file to the competent jurisdiction to have recognisance of it, the Public Prosecution or the concerned military court forwards the evidences to the Gacaca Jurisdiction of the Cell and a copy of it to the competent Gacaca Jurisdiction.

**Article 43 :**

The Prosecutor General of the Republic supervises the Prosecutions and military courts for the prosecution of offences provided for by this organic law.

## SECTION 2 : RELATIONSHIP BETWEEN ADMINISTRATIVE ORGANS AND GACACA JURISDICTIONS

### Article 44 :

Leaders of administrative organs shall provide shelter facilities for the Gacaca Jurisdictions falling within their province, as well as sensitize the population for active participation. They exercise a steady monitoring of the functioning of Gacaca Jurisdictions and provide them with necessary materials, with the collaboration of the National Service in charge of following up Gacaca Jurisdictions' activities.

## SECTION 3 : RELATIONSHIP BETWEEN THE NATIONAL SERVICE OF GACACA JURISDICTIONS AND GACACA JURISDICTIONS

### Article 45 :

The National Service in charge of Gacaca Jurisdictions shall follow up , supervise and coordinate activities of Gacaca Jurisdictions at the national level.

However, it may issue rules and regulations relating to the smooth running of activities, but it shall never interfere in Gacaca Jurisdictions' ways of trying.

## TITLE III : OFFENCES PROSECUTION AND TRIAL

### CHAPTER ONE : PROSECUTED PERSONS

#### Article 46 :

Following acts of participation in offences in question in Article one of this organic law and committed between October 1, 1990 and December 31, 1994, the prosecuted person can be classified in one of the following categories:

#### Category 1 :

- a. The person whose criminal acts or criminal participation place among planners, organisers, incitators, supervisors of the crime of genocide or crime against humanity, **together with his/her accomplices** ;
- b. The person who, at that time, was acting in a position of authority at the national Level, within political parties, army, **gendarmerie, district or Town police**, religious denominations or militia, has committed these offences or encouraged others to commit them ;
- c. The well-known murderer who distinguished himself in the location where he lived or wherever he passed, because of zeal which has characterized him in killings or excessive wickedness with which they were carried out, **as well as the person who perpetrated acts of torture on others, even if the victims have not died from them, and their accomplices** ;

- d. The person who committed rape or acts of torture against person's sexual parts, **together with his/her accomplices ;**
- e. **The person who committed degrading acts on the dead body and his/her accomplices.**

The Prosecutor General of the Republic publishes, at least twice a year, a list of persons classified in the first category forwarded to Gacaca Jurisdictions of the Cell.

**Category 2 :**

- a. The person whose criminal acts or criminal participation place among authors, co-authors or accomplices of deliberate homicides or serious attacks against persons, which caused death, **and his/her accomplices ;**
- b. The person who, with intention of giving death , has caused injuries or committed other serious violences, but from which the victims have not died ;
- c. **The person charged of committing or assisting to commit other serious acts on people without the intention of killing, and his/her accomplices.**

**Category 3 :**

The person having committed offences against assets.

However, the author of the mentioned offences who, on the date of this organic law enforcement, has agreed either with the victim, or before the public authority or in arbitration, for an amicable settlement, cannot be prosecuted for the same facts.

**Article 47 :**

The person in the position of authority at the level of Sector and Cell, at the time of genocide, are classified in the category corresponding to offences they have committed, but their quality of leaders exposes them to the most severe penalty for the defendants who are in the same category.

**Article 48 :**

For the implementation of this organic law, the accomplice is the person who will have, by any means, assisted to commit offences to persons referred to in Article **46** of this organic law.

The fact that any of the acts aimed at by this organic law has been committed by a subordinate does not free his superior from his/her criminal responsibility if he/she knew or could know that his /her subordinate was getting ready to commit this act or had done it and that the superior has not taken necessary and reasonable measures to punish the authors or prevent that the mentioned act be not committed when he/she had means.

## CHAPTER 2 : CONFESSION PROCEDURE, GUILT PLEA AND APOLOGIES

### SECTION ONE : ACCEPTANCE AND CONDITIONS

#### **Article 49** :

Any person who has committed offences aimed at in Article 1 of this organic law, has right to **have recourse to the procedure of confessions, guilt plea and apologies.**

To be received as **confession, guilt plea and apologies**, the defendant must :

- a) give a detailed description of the confessed offence, in particular the location where it has been committed, the date, the witnesses, the names of the victims and the damaged assets ;
- b) reveal the co-authors, accomplices and any other enquiry useful to the exercise of the public action ;
- c) offer apologies for the offences that he/she has committed.

#### **Article 50** :

Defendants coming under the first category **who have had recourse to the procedure of confessions, guilt plea and apologies for their offences before their names appear on the list drawn up by the Cell's Gacaca Jurisdiction, shall enjoy commutation of penalties in the way provided for by this organic law.**

#### **Article 51** :

**Shall enjoy commutation of penalties in the way provided for by this organic law, persons of the 2<sup>nd</sup> category :**

- a) **who plead guilty and offer their apologies** before the Gacaca Jurisdiction of the Cell draws up a list of authors of genocide offences ;
- b) **who already appear on this list, have recourse to the procedure of confession, guilt plea and apologies** after publication of the list of authors of genocide offences.

#### **Article 52** :

If it is found out subsequently offences that a person has not confessed, he/she will be prosecuted, any time, for these offences and shall be classified in the category in which the committed offences place him/her, in which case ,he/she risks the maximum penalty provided for for this category.

### SECTION 2 : PROCEDURE

#### **Article 53** :

The procedure of confession, guilt plea and apologies is proposed before the Gacaca Jurisdiction's Seat, **before the Officer for the judicial police** or the Officer for the Public Prosecution in charge of the investigation in accordance with Article 41 of this organic law.

The Seat for the Gacaca Jurisdiction, **the Officer for the judicial police** or the Officer for the Public Prosecution in charge of the investigation, are bound to inform the defendant of his/her right and his/her interest to have recourse to the procedure of confession, guilt plea and apologies.

**Sub-section one : Procedure of confession, guilt plea and apologies before the Officer for the Judicial Police and the Officer for the Public Prosecution**

**Article 54 :**

For files which are not forwarded yet before the Gacaca Jurisdiction of the Cell, **the Judicial Police or the Public Prosecution** receives the confessions, the offer of guilt plea and apologies. The confessions, the offer of guilt plea and apologies shall be received and transcribed by an Officer for **the Judicial Police** or by the Public Prosecutor. If confessions are forwarded in writing, the Officer for **the Judicial Police** or the Public Prosecutor requests its confirmation to the petitioner.

The petitioner signs or marks with a fingerprint the minute containing the confessions, guilt plea and apologies, or the confirmation and, if there is any, the document containing the confessions forwarded in writing by the petitioner before the Officer for the judicial Police or the Public Prosecutor who has received them.

The Officer of the Judicial Police or the Public Prosecutor signs with him/her.

**Article 55 :**

If the Public Prosecution realises that **the confessions, the offer of guilt plea and apologies** are correct and in conformity with the declaration made by the petitioner, he closes the file by establishing a note of investigation containing the petitioner's declaration and forwards the file to the competent Gacaca Jurisdiction of the Cell.

In case of refusing the confession, the offer of guilt plea and apologies procedure failing to meet conditions required by the law, or when the investigation has revealed that the petitioner for the confessions, guilt plea and apologies, has not told the truth, the Public Prosecutor states it in an explanatory note of the elements missing, closes the file that he forwards to the competent Gacaca jurisdiction.

**The Gacaca Jurisdiction of the Cell, after checking if the procedure of confessions, guilt plea and apologies performed before the Officer of the Judicial Police or the Public Prosecutor are complete, confirms or rejects it.**

**Sub-section 2 : Procedure of confessions, guilt plea and apologies before Gacaca Jurisdictions**

**Article 56 :**

**The persons whose criminal acts or criminal participation place in the 2<sup>nd</sup> and 3<sup>rd</sup> categories can have recourse to the procedure of confessions, guilt plea and apologies for the committed offences before the Seat of the Gacaca Jurisdiction before which they appear.**

They can do it orally or by means of written declarations signed or marked with their fingerprints.

**Article 57 :**

The confession, the offer of guilt plea and apologies are subject to the minute established by the secretary of the Gacaca Jurisdiction and signed or marked with a fingerprint of the defendant and by members of the Jurisdiction Seat.

The Seat for the Gacaca Jurisdiction checks if the confessions, the offer of guilt plea and apologies fulfill the conditions set up by this organic law and if the petitioner's declarations are true.

**CHAPTER 3 : HEARING AND JUDGEMENT**

**SECTION ONE : HEARING AND JUDGEMENT BEFORE GACACA JURISDICTIONS  
OF THE SECTOR AND GACACA JURISDICTIONS OF APPEAL**

**Article 58 :**

In case of **confirmed procedure of confession, guilt plea and apologies**, the hearing is organised as follows :

- 1. The Chairperson of the session calls the case and invites defendants to the bar ;**
- 2. Each defendant establishes his/her identity ;**
- 3. The Chairperson of the session requests the plaintiff to establish his/her identity ;**
- 4. The jurisdiction secretary states detention on suspicion and reads the minute containing all the defendant's declarations ;**
- 5. The Chairperson of the session invites each defendant to speak ;**
- 6. Any person among members of the General Assembly who wants to do so, takes the floor to testify in favour or against the defendant who, in his/her turn, answers to questions addressed to him/her ;**  
**Any person intervening as witness must take the oath of telling the truth in raising his/her right hand to the sky and saying : "I take God as witness to tell the truth."**
- 7. The plaintiff establishes all the offences suffered and how they were committed ;**
- 8. The defendant, if present, defends himself/herself about the plaintiff's declarations ;**
- 9. The Seat for the Gacaca Jurisdiction establishes the identity of the victims and the inventory of suffered body damages ; the defendant is invited to react on it ;**
- 10. The Jurisdiction secretary reads the statement of offence ; the Seat checks the conformity of its content with the intervening parties' declarations and, if need be, the statement of offence is corrected ;**
- 11. The Gacaca Jurisdiction's Seat successively requests the plaintiff and the defendant if they have anything to add to the debates ;**
- 12. The parties to the trial and the members of the Seat for the Gacaca Jurisdiction put their signatures or fingerprints on the statement of offence containing the defendant's guilt plea ;**

13. The debates are declared closed, unless the Seat orders any further instruction measure which it deems necessary to show the truth.

**Article 59 :**

In the files which do not contain the confession, the offer of guilt plea and apologies or when the Gacaca Jurisdiction has refused the procedure, the hearing is organised as follows :

1. The Chairperson of the session calls the case and invites defendants to the bar ;
2. Each defendant establishes his/her identity ;
3. The Chairperson requests the plaintiff to establish his/her identity ;
4. The Jurisdiction's secretary states detention on suspicion ;
5. The Gacaca Jurisdiction's Chairperson reads, to the defendants' attention, Articles 49, 50 and 52 of this organic law so that they understand the advantages they can draw from the procedure of confession, guilt plea and apologies, and asks them if they want to have recourse to it ;  
Those who want to have recourse to the procedure of confession, guilt plea and apologies, are immediately invited to speak. The hearing proceeds in the order provided for, for defendants who followed the procedure of confession, guilt plea and apologies.

For those who do not want to have recourse to the procedure of confessions, guilt plea and apologies, the hearing proceeds in the following way :

6. The session's Chairperson summaries the case. He reads the collected evidences establishing the defendant's guilt ;
7. The session's Chairperson invites the defendant to present his/her defence ;
8. The floor is given to persons who wish to testify in favour or against and, if need be, probably summoned Prosecution is heard.

Any person intervening as a witness must swear an oath of telling the truth in raising the right hand to the sky and saying : " I take God as witness to tell the truth."

9. The defendant presents his/her means of defence ;
10. Any person who wishes to do so, speaks and the defendant answers to questions put to him/her ;
11. The Gacaca Jurisdiction's Seat establishes the identity of the victims and an inventory of suffered body damages ; the defendant is invited to react ;
12. The jurisdiction secretary reads the hearing's statement of offence ; the Seat checks the conformity of its content with the intervening parties' declarations and, if need be, the statement of offence is corrected ;
13. The Seat of the Gacaca Jurisdiction successively asks the plaintiff and the defendant if they have anything to add to the debates ;
14. The present parties and members of the Seat put their signatures or fingerprints on the hearing's statement of offence ;
15. The debates are declared closed, unless the seat orders any complementary investigation it considers necessary to show the truth .

**Article 60 :**

In the files of defendants with neither known address nor residence in Rwanda referred to in Article 91 of this organic law, the hearing shall proceed as follows :

1. The Chairperson of the session calls the case and invites the defendants to the bar.

When defendants are present , the hearing proceeds in conformity with Article 59 of this organic law. In case of non-appearance of some of them, it is proceeded to the case separation .

For present defendants, the hearing proceeds in conformity with Article 59 . For absent defendants, as well as in case of non-appearance, the hearing proceeds as follows :

2. The Chairperson of the session requests the plaintiff to establish his/her identity ;
3. The Jurisdiction's secretary states detention on suspicion ;
4. The Chairperson of the session summarizes the case. He states collected evidences establishing the defendant's guilt ;
5. The floor is given to witnesses and, when necessary, the summoned Public Prosecution is heard ;
6. Any person who wants to do so, takes the floor ;
7. The plaintiff establishes all suffered offences and how they were committed ;
8. The Seat of Gacaca Jurisdiction establishes the identity of the victims and an inventory of offences suffered by each one of them ;
9. The secretary of the Jurisdiction reads the hearing's statement of offence ; the Seat checks the conformity of its content with the intervening parties' declarations and, if need be, the statement of offence is corrected ;
10. The Seat of the Gacaca Jurisdiction asks the plaintiff whether he/she has anything to add to the debates ;
11. The parties to the trial and members of the Seat put their signatures or fingerprints on the hearing's statement of offence ;
12. The debates are declared closed, unless the Seat orders any further instruction measure which it deems necessary to show the truth.

As regards pronouncement, notification and objection to the judgements passed within such circumstances, provisions applying to judgements by default are implemented.

#### **Article 61 :**

Any judgement passed by the Gacaca Jurisdiction mentions the following :

1. The Jurisdiction that has passed it ;
2. The names of Seat members who participated in deliberation ;
3. The identity of parties to the trial ;
4. Detention on suspicion against the defendant ;
5. The summary of ressources presented by parties to the case ;
6. The motives of judgement ;
7. The offence of which the defendant is found guilty ;
8. The penalties pronounced ;
9. The identity of the victims and the inventory of suffered offences ;
10. The presence or absence of the parties ;
11. If the hearings and the pronouncement of judgements were made public ;
12. Venue and date for judgement ;
13. The provisions of this organic law which have been applied ;
14. The mention of the legal period for appeal.

## SECTION 2 : HEARING AND JUDGEMENT BEFORE THE GACACA JURISDICTION OF THE CELL

### Article 62 :

In the files relating to offences against property, the hearing proceeds as follows :

1. **The Chairperson of the session states the household concerned with the case ;**
2. **The session's Chairperson recalls the household's assets damaged and known, on basis of the list of victims and damaged assets ;**
3. **The Chairperson of the session gives the floor to any person who has anything to add to the information from the list ;**
4. **The seat for the Gacaca Jurisdiction adopts the inventory of damaged assets ;**
5. **The session's Chairperson reads the names of the defendants having damaged the household's assets, basing himself on the list of defendants ;**
6. **Each defendant presents his/her identity ;**
7. **The session's Chairperson requests the representative of the suffered household or any person interested to give his/her identity ;**
8. **The Jurisdiction's secretary reads the hearing's statement of offence for every damaged property and their authors ;**
9. **The Chairperson of the session asks each defendant to present his/her defence ;**
10. **The Chairperson of the session asks the household representative or any person who so wishes to react to the defendant's declarations ;**
11. **The Seat for the Gacaca Jurisdiction adopts the list of persons having suffered material losses and their perpetrators ; the defendant is invited to react to it ;**
12. **The Jurisdiction's Seat explains to the convicted defendants the rulings on the modalities for giving the compensation provided for by this organic law, by asking each defendant to decide on the way of his/her choice and the period of payment, in case of conviction ;**
13. **The Jurisdiction's secretary reads the hearing's statement of offence ; the Seat checks the conformity of its content with the intervening parties' declarations and, if need be, the statement of offence is corrected ;**
14. **The Seat asks successively the plaintiff and the defendant whether they have anything to add to the debates ;**
15. **The parties to the trial and the Seat members put their signatures or fingerprints on the hearing's statement of offence ;**
16. **The debates are declared closed, unless the Seat orders any further instruction measure which it deems necessary to show the truth.**

### Article 63 :

Any judgement passed by the Gacaca Jurisdiction shall mention the following :

1. **The Jurisdiction that has passed it ;**
2. **The names of the Seat members who participated in deliberation ;**
3. **The identity of parties to the trial ;**
4. **The damaged property requiring reparation ;**
5. **The summary of ressources presented by the parties to the case ;**
6. **The motives of judgement ;**
7. **The damaged property and the convicted defendants ;**
8. **The identity of the victims and the inventory of their damaged essets ;**
9. **The modalities and the period for reparation ;**

10. **The presence or absence of the parties ;**
11. **If the hearings and the pronouncement of judgement were made public ;**
12. **Venue and date for judgement ;**
13. **The provisions of this organic law which have been applied**

**Article 64 :**

**Once the hearings are over, or if it is compulsory to take any decision, the seat of the Gacaca Jurisdiction retires for deliberation and takes decision on the same day or the following day.**

**The judgement or the decision taken are pronounced in public, in the General Assembly or in the next hearing before starting that meeting or hearing.**

**SECTION 3 : DISTURBANCE BANNING RULES DURING THE HEARING**

**Article 65 :**

**The hearing shall be carried out in quietness. Any person who takes the floor, must be characterized by politeness in speech and behaviour before honest people, parties, witnesses and the audience at large.**

**The chairperson of the session can interrupt any person not conforming to the speech taking modality without bawling or rushing him/her in a way or another.**

**If necessary, the session's chairperson can address a warning to the troublemakers before the Jurisdiction, eject or put him/her in detention for a period not exceeding 48 hours, according to the gravity of the offence. When the committed offence is a criminal offence, the Seat of the Gacaca Jurisdiction forwards the case to the security organs for prosecution in conformity with the common law.**

**CHAPTER 4 : SANCTIONS**

**Article 66 :**

**Defendants coming within the first category who **did not want to have recourse to the procedure of confession, guilt plea and apologies** within conditions set in Article 50 of this organic law, or **whose confession, guilt plea and apologies have been rejected**, incur a death penalty or life imprisonment.**

**Defendants who have made recourse to the procedure of confession, guilt plea and apologies within the conditions provided for in Article 51 of this organic law, are sentenced to an imprisonment of 25 years or life imprisonment.**

**Article 67 :**

**Defendants coming within the second category referred to in parts a) and b) of Article 46, who :**

- a) **did not want to have recourse to the confession, guilt plea and apologies procedure, or whose confession, guilt plea and apologies have been rejected**, incur a prison sentence ranging from 25 to 30 years.

- b) already appearing on the list of perpetrators of offences of genocide and massacres drawn up by the Cell's Gacaca Jurisdiction, **have recourse to the procedure of confession, guilt plea and apologies**, after being indicted in the trial, incur a reduced prison sentence ranging from 12 to 15 years to the maximum, but out of the pronounced sentence, they only serve half of the sentence in custody and the rest is commuted into community services on probation ;
- c) present their confessions, guilt plea and apologies before the Cell's Gacaca Jurisdiction makes a list of perpetrators of offences of genocide and massacres, incur a reduced prison sentence ranging from 7 to 12 years to the maximum, but out of the pronounced sentence, they only serve half the sentence in custody and the rest is commuted into community services on probation.

Defendants coming within the second category referred to in part c) of Article 46, who :

- a) did not want to have recourse to the procedure of confession, guilt plea and apologies or whose confessions, guilt plea and apologies have been rejected, incur a prison sentence ranging from 5 to 7 years, but out of the pronounced sentence, they only serve half the sentence in custody and the other half is commuted into community services ;
- b) already appearing on the list of perpetrators of offences of genocide and massacres drawn up by the Cell's Gacaca Jurisdiction, have recourse to the confession, guilt plea and apologies procedure, after being indicted in the trial, incur a prison sentence ranging from 3 to 5 years to the maximum, but out of the pronounced sentence, they only serve half in custody and the rest is commuted into community services on probation ;
- c) present their confession, guilt plea and apologies before the Cell's Gacaca Jurisdiction makes a list perpetrators of offences of genocide and massacres, incur a reduced prison sentence ranging from one year to 3 years to the maximum, but out of the pronounced sentence, they only serve half in custody and the rest is commuted into community services on probation.

#### **Article 68 :**

The Gacaca Jurisdiction can sentence person who confesses and pleads guilty for the offence placing him/her in the second category, to a prison penalty coupled with community services' penalty or one them, **in conformity with the previous article according to whether the defendant chooses or does not choose to carry out community services.**

However, the given community services sentence is always accompanied by the sentence suspension for the period of the said community services.

#### **Article 69 :**

Defendants coming within the third category, as well as defendants from other categories who committed offences relating to property, are only sentenced to the civil reparation of what they have consumed or damaged.

This article does not apply where an amicable settlement is reached either between the perpetrator and the victim, or **before their cases are brought before the Gacaca Jurisdiction.**

### **Article 70 :**

Persons found guilty of the crime of genocide or crimes against humanity in pursuance of this organic law, are liable to the loss of civil rights in the following manner :

- a) perpetual and total loss of civil rights, in conformity with the Penal Code, for persons in the first category ;
- b) persons coming within the second category referred to in parts **a)** and **b)**, are liable to permanent deprivation of the right :
  - to vote ;
  - to eligibility ;
  - to be expert, witness in the proceedings and to testify only by giving simple information ;
  - to possess and carry fire arms ;
  - to serve in the armed forces ;
  - to serve in the police ;
  - to be in gainful employment.

However, they may be rehabilitated in conformity with prescriptions of the legislation in force.

### **Article 71 :**

When there is an ideal or material combination of offences each of which ranks the defendant in the same category, the maximum sentence provided for, for the said category will be pronounced.

However, the defendant having committed only offences placing him/her in the second category, part **c)**, incurs the maximum penalty provided for for defendants in that category, part **c)**.

### **Article 72 :**

Children convicted of the crime of genocide and crimes against humanity who, at the time of events, were more than fourteen years old and less than eighteen years old, are sentenced :

- to a reduced prison sentence of 10 to 20 years when they come under the first category, but did not want to have recourse to the procedure of confession, guilt plea and apologies, or whose confession, guilt plea and apologies have been rejected ;
- to a reduced prison sentence ranging from 8 to 10 years to the maximum, when they come under the first category and have had recourse to the procedure of confession, guilt plea and apologies and met conditions in conformity with Article **55** of this organic law ;
- When they come under the second category, parts a) and b) of article **46** :
  - o Defendants who did not want to have recourse to the procedure of confessions, guilt plea and apologies, or whose confession, guilt plea and apologies have been rejected, incur a prison sentence of 8 to 10 years ;
  - o Defendants already appearing on the list of perpetrators of offences of genocide and massacres drawn up by the Cell's Gacaca Jurisdiction, have recourse to the confession, guilt plea and appologies procedure, incur a reduced prison sentence of 6 to 7 ½ years, but out of the pronounced sentence, they only serve

- half in custody and the rest is commuted into community services on probation;
- Defendants having recourse to the procedure of confessions, guilt plea and apologies before the Cell's Gacaca Jurisdiction put them on the list of perpetrators of offences of genocide and massacres, incur a reduced prison penalty ranging from 3 ½ to 6 years, but out of the pronounced sentence, they only serve half in custody and the rest is commuted into community services on probation ;
- When they come under the second category, under part c) of Article 46 :
  - Defendants who did not want to have recourse to the procedure of confessions, guilt plea and apologies, or whose confession, guilt plea and apologies have been rejected, incur a prison penalty of 2 ½ to 3 ½ years, but out of the pronounced sentence, they only serve half in custody and the rest is commuted into community services on probation ;
  - Defendants already appearing on the list of perpetrators of offences of genocide and massacres drawn up by the Cell's Gacaca Jurisdiction, but have recourse to the procedure of confession, guilt plea and appologies, incur a reduced prison penalty of 1 ½ to 2 ½ years, but out of the pronounced sentence, they serve only half in custody and the rest is commuted into community services under probation ;
  - Defendants having recourse to the procedure of confession, guilt plea and apologies before they appear on the list of perpetrators drawn up by the Cell's Gacaca Jurisdiction, incur a reduced prison sentence of 6 months to 1 ½ years, but of the pronounced sentence, they only serve half in custody and the rest is commuted into comùnunity services on probation.

**Article 73 :**

Children who are less than 14 years old, at the time of the charges against them, cannot be prosecuted, but they can be placed in rehabilitation centres.

**Article 74 :**

In case of a prison sentence with commutation of half the sentence into community services, the convicted prosoner may choose either to carry out the said community services or to serve the full sentence in prison.

The defendant must be asked before closing the hearings if he/she chooses to serve the sentence in custody or to carry out community services . In case of conviction, he/she may choose the prison sentence, or whenever he/she wishes so he/she can request from the board in charge of community services, to carry out community services for the remaining period.

In case of default by the convicted person released in order to carry out community services, the concerned person is rearrested so as to serve the remaining prison sentence.

A presidential order establishes and fixes modalities for carrying out community services.

**Article 75 :**

**In fixing penalties, it cannot be applied the sentence less than that provided for in this organic law, under the pretext of extenuating circumstances. However, in case of such extenuating circumstances, it is proceeded to the lower sentence of imprisonment or of the community services provided for in this organic law.**

**CHAPTER 5 : DEFENDANT’S SUMMONS AND NOTIFICATION OF HEARING**

**Article 76 :**

Gacaca Jurisdiction summons are issued at its secretary’s behest and secretary’ notified to the defendant through the basic organs or those from the administration of the detention place.

The summoned person who refuses to appear is subject to a warrant of arrest.

**Article 77 :**

At the closing of the hearing, parties to the trial and persons present in the hearing are informed of the day and the hour for the sentence pronouncement.

**Article 78 :**

When judgement is pronounced, parties present in the rial affix their signatures or their fingerprints in the register attendance to the pronouncement. When the judgement does not meet their agreement, the parties declare it before the Seat and it is registered.

Judgement passed by default or pronounced in the defendant’s absence, is validly notified by a notification act which the Jurisdiction’s secretary forwards to the defaulting party through basic organs or those from the administration of the centre where he/she is detained.

The sentence passed against a person who has neither known address nor residence in Rwanda, is notified according to the same way as the appearance summons referred to in article 92 of this organic law.

**CHAPTER 6 : WAYS OF APPEAL**

**Article 79 :**

The ways of appeal recognized by this organic law are the following : Objection, Appeal and **Review of judgement.**

## SECTION ONE : OBJECTION

### **Article 80** :

The court orders concerned by this organic law which have been passed by default, may be objected to.

The objection is brought before the Jurisdiction which has passed judgement by default. The plaintiff has his/her action recorded to the secretary of the Gacaca Jurisdiction.

The objection is only admissible when the defaulting party pleads a serious and legitimate reason which has impeded it from appearing in the trial concerned by the decision contested by that way of appeal. The Gacaca Jurisdiction shall assess beyond appeal the admissibility of reasons justifying the objection.

### **Article 81** :

The objection period is 15 calendar days starting from the day of the notification of judgement passed by default.

### **Article 82** :

Objection upon objection is not valid.

## SECTION 2 : APPEAL

### **Article 83** :

**Judgements relating to offences against assets passed by the Cell's Gacaca Jurisdiction cannot be subject to appeal, but others are subject to appeal before the Sector's Gacaca Jurisdiction which gives a ruling in the last resort.**

**Judgments passed by the Sector's Gacaca Jurisdiction at first value, are brought before the Gacaca Jurisdiction of appeal which gives a ruling in the last resort.**

### **Article 84** :

**Only parties to the trial** are entitled to lodge an appeal against a judgement passed by a Gacaca Jurisdiction.

### **Article 85** :

The time of lodging an appeal is 15 calendar days starting from the judgement's contradictory pronouncement or starting from the day following the notification of judgement passed by default which has not been objected to or pronounced in the absence of a party. The case is judged within the same forms as at first value.

### **Article 86 :**

If the Gacaca Jurisdiction to which appeal is referred, feels that the appellant has been classified in an inaccurate category, it classifies him/her in the category corresponding to offences of which he/she is accused and tries him/her **at first and last resort**.

**However, when it realizes that he/she is classified into the first category, the Gacaca Jurisdiction forwards the file to the competent Jurisdiction.**

## **SECTION 3 : REVIEW OF JUDGEMENT**

### **Article 87 :**

**The judgement can be subject to review only when :**

- **the person was acquitted in a judgement passed in the last resort by an ordinary court, but he/she is found guilty before the Gacaca Jurisdiction ;**
- **the person was convicted in a judgement passed by an ordinary court, but he/she is found innocent by the Gacaca Jurisdiction ;**
- **the person was given a sentence obviously contradictory to the provisions of the law on offences of which he/she is convicted.**

**Only parties to the trial and their descendants can lodge a review of the judgement.**

**The Gacaca Jurisdiction of Appeal is the only jurisdiction competent to review judgements passed under such conditions.**

## **CHAPTER 7 : DAMAGES**

### **Article 88 :**

**Cases relating to property damages shall be brought before the Gacaca Jurisdiction for the Cell or other courts when they are prosecuted under custody.**

### **Article 89 :**

**The reparation of damages proceeds as follows :**

- **Restitution of the ransacked assets when possible ;**
- **Repayment of the damaged property or carrying out duties worth the property to be repaired.**

**The Gacaca Jurisdiction rules on the methods of payment to be respected by each indebted person.**

**In case of default by the indebted person to honour his/her commitments, the execution of judgement is carried out under the forces of law and order.**

## TITLE IV : DIVERSE, TRANSITIONAL AND FINAL PROVISIONS

### Article 90 :

The public action and penalties related to offences of the crime of genocide or crimes against humanity are imprescriptible.

### Article 91 :

Jurisdictions called on to try, by virtue of this organic law, offences of genocide and massacres, may try public actions filed against persons who have neither had address nor residence in Rwanda or who are outside Rwanda, when there are conclusive evidences or serious guilt clues, whether they may have previously been or not been cross-examined.

### Article 92 :

When the defendant has neither known address nor residence in Rwanda, the summons' period is one month. The secretary of the Gacaca Jurisdiction or the clerk of the competent jurisdiction, in person or through other organs, has a copy of the writ displayed **on the wall of the facility housing the jurisdiction which must try the case and on the walls of District or Town, Province and City of Kigali offices.**

The copy of the writ can also be displayed only in public places intended for that purpose.

Preparation of a case to the hearing for persons so summoned is made, before Gacaca Jurisdictions, in the order established in Article 60 of this organic law, before the jurisdictions of common law, according to the order followed in the cases to be judged by default.

### Article 93 :

Testimony made on offences of the crime of genocide and crimes against humanity committed between October 1<sup>st</sup>, 1990 and December 31<sup>st</sup>, 1994 can never serve as a basis to take proceedings against its author charging him with the offences of failure to render assistance.

### Article 94 :

**The cases already forwarded to the courts by the Public Prosecution shall remain handled by the same courts. They follow provisions provided for by the criminal code, without prejudice to special provisions of this organic law, but provisions of this organic law are applied as regarding their remit.**

However, should anyone be involved in this case, is accomplice of defendants of the same category tried by the Gacaca Jurisdiction, provisions of Article 2 of this organic law, are applied.

**Article 95 :**

The National Service in charge of following up Gacaca Jurisdictions' activities shall work out rules and regulations organising the way Gacaca Jurisdictions' organs formerly set up by Organic Law n° 40/2000 of January 26, 2001 organising the prosecutions for offences constituting the crime of genocide and crimes against humanity, committed between October 1, 1990 and December 31, 1994, as modified to date, can be replaced by those set up by this organic law.

**Article 96 :**

Persons convicted by Gacaca Jurisdictions in conformity with Articles 32 and 37 of the Organic Law n° 40/2000 of January 26, organising prosecutions for offences constituting the crime of genocide and crimes against humanity, committed between October 1, 1990 and December 31, 1994, as modified to date, serve their sentences in conformity with this organic law. Those who have already served at least 3 months in custody, shall be released immediately after the publication of this organic law in the Official Gazette of the Republic of Rwanda.

**Article 97 :**

Organic law n° 08/96 of August 30, 1996 organizing proceedings for offences of the crime of genocide and crimes against humanity committed from October 1<sup>st</sup>, 1990 and organic law n° 40/2000 of January 26, 2001 setting up Gacaca Jurisdictions and organizing prosecutions of offences constituting the crime of genocide and crimes against humanity, committed between October 1<sup>st</sup>, 1990 and December 31<sup>st</sup>, 1994, as amended to date, as well as provisions of laws previous and contrary to this organic law, are hereby repealed.

**Article 98 :**

This Organic Law comes into force on the day of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on .....

The President of the Republic  
**Paul KAGAME**

The Prime Minister  
**Bernard MAKUZA**

The Minister of Justice and Institutional Relations  
**Edda MUKABAGWIZA**

The Minister of Local Government,  
Community Development and Social Affairs  
**Christophe BAZIVAMO**

Seen and Sealed with the seal of the Republic

The Minister of Justice and Institutional Relations  
**Edda MUKABAGWIZA**