

Chapter 1: General introduction

1.1. Why this study?

The right to liberty and security is a fundamental right inherent in the individual, enshrined in international and regional instruments for the protection of human rights. These instruments provide for the protection of the individual against arbitrary arrest and unlawful detention. The right to liberty is also recognized in Article 24 of the Constitution of the Republic of Rwanda of 2003, revised in 2015, which requires that any deprivation of liberty should be conducted under conditions specified by law. Articles 90-91 of the Rwandan Code of Criminal Procedure (CCP) define unlawful detention and set out the procedure for *habeas corpus*.¹

Despite the existence of these provisions providing protection against arbitrary arrest and unlawful detention, the National Commission for Human Rights (NCHR) in Rwanda highlighted in its annual reports between 1999 through 2016 numerous cases of unlawful detention. For example, the 2009-2010 report noted cases of two people who were released, each after spending more than ten years in unlawful detention.² Moreover, in 2013, Rwanda's Legal Aid Forum (LAF)³ reported that over seven hundred people were held in unlawful detention.⁴ In the same year, the study on the End-to-End Process Mapping of the Criminal Justice System in Rwanda showed that communication issues between police, prosecution, courts, and prisons lead to unlawful detentions, unnecessary adjournment of cases, and delay in

1 Arts 90 and 91 of the CCP.

2 Nyirababirigi was released after 13 years in unlawful detention as she was detained without a criminal case and without a valid detention order. Nyiramini was released after 14 years in unlawful detention. NCHR, *Annual Report 2009-2010*, pp. 48-51.

3 LAF is a Rwandan non-government organization which was established in 2006, it creates a space where organizations that wished to provide legal aid to indigent and vulnerable groups could share information and best practices and collaborate in research, and evidence-based advocacy.

4 LAF, *Improving the Performance of the Criminal Justice System through Improved Pre-trial Justice, The Impact of Pre-trial Detention on Access to Justice in Rwanda*, Kigali, p.29, (2013).

releasing inmates who have been acquitted by courts.⁵

Since 2003, there has been a debate regarding compensation for unlawful detention in Rwanda. For example, in 2003, the National Unity and Reconciliation Commission (NURC)⁶ recommended the creation of a compensation fund for individuals who were wrongfully imprisoned in the immediate aftermath of the 1994 Genocide against the Tutsi in Rwanda and for heirs of innocent persons who died in prison.⁷ In 2010, when the Rwandan Minister of Justice was asked about compensation for unlawful detention, he replied that “Regarding compensation of individuals detained and later exonerated has not yet been incorporated as a tenet of our justice system; nor will you find it to be a principle followed in our neighbouring countries.”⁸ In 2011, while presenting its report to Parliament, the NCHR recommended compensation for unlawful detention.⁹ From 2003 until 2017, to the best of my knowledge, no steps have been taken to this end. There is neither a specific or general legal provision for compensation for unlawful detention nor a solution of the problem in Rwandan case law.

Hence, this study aims to (1) analyse the existing mechanisms at national, regional and international levels for the protection of unlawfully detained persons in Rwanda, (2) identify the legal and practical hindrances to the realisation of remedies for unlawful detention and (3) suggest mechanisms which might be introduced in Rwanda to compensate unlawfully detained persons. Additionally, this study intends to contribute to the current debate of legal scholars and legal practitioners on appropriate remedies for unlawful detention and the enforcement of international human rights instruments in national legal systems.

5 Institute of Legal Practice and Development (ILPD), *Study on the End to End Process Mapping of the Criminal Justice System in Rwanda*, May 2013. Dr. Muyoboke K. Aimé, Me Niyibizi Tite, and CIP Bisangwa Modeste conducted that study under the supervision of Prof Nick Huls., available at http://ilpd.ac.rw/fileadmin/user_upload/ILPD_Document/Publications/STUDY_ONEND_TO_END_MAPPING_TO-CRIMINAL_JUSTICE.pdf, [accessed 20/10/2017].

6 The National Unity and Reconciliation Commission was created in March 1999 by Law n°. 03/99 of 1999 to promote unity and reconciliation among Rwandans after the 1994 genocide against the Tutsi.

7 PRI, *Eight Years On...A Record of Gacaca Monitoring in Rwanda*, Penal Reform International, p. 46, (2010).

8 Response to Human Rights Watch from the Rwandan Minister of Justice, 5 May 2011. Former Minister of Justice Karugarama Tharcise, in Human Rights Watch, *Justice Compromised, the Legacy of Rwanda's Community-Based Gacaca Courts*, Human Rights Watch, (May 2011).

9 NCHR, *Annual Report January 2009-June 2010*, p.49-55, (October 2010).