

UNAMIR

HUMAN RIGHTS FIELD OPERATIONS IN RWANDA (HRFOR)

1 MAR 1995 - 23 MAR 1996

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UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS
FIELD OPERATION IN RWANDA



NATIONS UNIES
HAUT COMMISSAIRE AUX DROITS DE L'HOMME
OPERATION SUR LE TERRAIN AU RWANDA

HRFOR

Hence
the organization
was successful?
25.3

*With the compliments
of the Chief, Human Rights Field Operation in Rwanda*

ED
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*Avec les compliments
du Chef de l'Operation des Droits de l'Homme sur le Terrain au Rwanda*



HRFOR

SUSPENSION OF CLAUDIEN GATERA, PRESIDENT OF THE TRIBUNAL OF FIRST INSTANCE, KIGALI

Status report as at 15 March 1996

On 13 February, Radio Rwanda announced that the Council of Ministers had examined the manner by which the Tribunal of First Instance in Kigali and the *Parquet* of Kigali carry out their respective tasks. With regard to the Tribunal of First Instance in Kigali, its procedures for handing down provisional or final judgements, especially judgements involving large sums of money, have been questioned. This, along with allegations of the illegality of certain orders of the Court and of corruption, has caused the Council of Ministers to request the Minister of Justice to address these issues without delay with the judges of the Tribunal.

On 27 February, Radio Rwanda announced that the Council of Ministers had decided, with regard to the Tribunal of First Instance in Kigali which had been accused of corruption, to suspend Mr. Claudien GATERA, President of the Tribunal, from his functions, and requested that allegations against him be investigated. Radio Rwanda also reported that the Council of Ministers had requested the Minister of Justice to suspend all proceedings of the Tribunal in which corruption was allegedly involved, and to press ahead with the installation of judicial organs, particularly the *Conseil supérieur de la magistrature*.

Mr. GATERA told HRFOR on 28 February that he had not been officially notified of his suspension. On 29 February, HRFOR wrote to the Minister of Justice asking to be informed of the procedures applied in the case.

On 4 March, Mr. GATERA was officially notified of his suspension by the Minister of Justice. In a letter, the Minister stated that Mr. GATERA was suspended according to Article 60 of the *Décret-loi* No. 06/82 due to allegations of serious offences.

Article 60 of the *Décret-loi* No. 06/82 of 7 January 1982 on the status of judicial personnel states that the Minister of Justice has the power to suspend, by administrative order and in the interest of the judicial system, a magistrate where evidence exists that he committed a serious offence that might require disciplinary measures.

According to Article 39 (a) of the Protocol of the Arusha Agreement of 30 October 1992, it is the *Conseil supérieur de la magistrature* that has the power to nominate and revoke magistrates other than the President and the Vice-Presidents of the Supreme Court. Article 87 of the Rwandan Constitution of 10 June 1991, which was abrogated by Article 3 of the Arusha Peace Agreement of 4 August 1993, states that magistrates are nominated and revoked by the

HRFOR STRPT. 12.2/15 March 1996

President of the Republic, following a proposition by the Minister of Justice, and following a hearing of the *Conseil supérieur de la magistrature*.

To date, the *Conseil supérieur de la magistrature* has not been nominated. On 18 January, the Transitional National Assembly adopted a law revising in its Article 2 Article 38 of the Protocol of the Arusha Agreement of 30 October 1992. Article 2 facilitates the nomination of the members of the first *Conseil supérieur de la magistrature* and states in paragraph (a) that the President of the Supreme Court nominates 14 other members of the first *Conseil supérieur de la magistrature*, following a proposition by consensus of the President and the Vice-Presidents of the Supreme Court.

In the absence of the *loi organique* defining the organisation and procedures of the Supreme Court and the *Conseil supérieur de la magistrature*, the *Conseil* is not operational and cannot pronounce on the nomination and the revocation of a magistrate.



HRFOR

Kigali, 23 March 1996

H. E. The President of the Republic of Rwanda
Kigali

Subject : "Chambres Spécialisées - Categorization - Plea bargaining."

Your Excellency,

It has come to our attention that next Tuesday the Council of Ministers will be considering a piece of proposed legislation relating to prosecutions for participation in genocide. I am taking the exceptional measure of writing to you directly, because the United Nations High Commissioner for Human Rights Field Operation in Rwanda (HRFOR) is concerned that the passage of the proposed legislation - as written - would negatively impact the ability of Government to meet its international and national legal obligation.

Since its inception the HRFOR struggled to understand how continued impunity for the genocide and gross human rights violations relates to and stimulates most of the current human rights violations. This understanding was eventually institutionalized, as reflected in the HRFOR's Programme of Technical Cooperation for Rwanda dated March 1995. That programme is grounded in the understanding that unless the Government adopts a viable and sustainable policy response to the genocide and other crimes against humanity perpetrated before the present Government came to power, the development of a society based on the respect for human rights and the rule of law would be an unobtainable goal.

Understanding the transcendental nature of the development of a Government policy response to the genocide for the future of Rwanda, the HRFOR has attempted to facilitate the difficult task the Government confronts. Of particular note is the HRFOR early preparatory work with the Government on the conference: "Genocide, Impunity and Accountability: Dialogue for a National and International Response".

While the HRFOR has been a consistent source of support to the Government in this area, the HRFOR has from the beginning understood that the heavy responsibility of developing and implementing the policy rested solely with your Government. Our role has been to provide information and comparative experience that could be useful to the Government in the development of its policy response.

The proposed legislation is still a draft, and the Government should be congratulated for its attempts to grapple with a problem where there is no panacea. Given the immensity and complexity of the problem, no policy response will be sufficiently satisfactory to anyone. The decisions that need to be taken, based on real and realistically expected capacity, are difficult and painful. Especially, in light of the fact that even with the herculean efforts made the Government to train and deploy judicial personnel from the Communal Courts to Supreme Court Justices, the capacity to actually deal with

UN Human Rights Field Operation in Rwanda

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what happened according to the law is still very limited. Thus, without a rational sustainable policy response to the genocide that fully considers this limited capacity, the outlook for human rights in Rwanda is less than positive.

While appreciating that it is the Government of Rwanda's decision and understanding that the balance to be struck between competing interests is far from easy to achieve, it is the responsibility of HRFOR to signal its concern that the present proposal, were it to become law, would not create a sustainable policy.

As presently formulated, the proposal simply defers difficult decisions, and limits the use of creative alternatives. The fact that categorization of accused persons does not distinguish between those who conceptualized and planned Genocide and those who organized at the regional and communal levels (i.e., who were following orders) is of serious concern.

Secondly, the fact that plea bargaining is limited to marginal offenders, and thus not available for the majority of defendants, will negate the intended benefits of the introduction of plea bargaining to the overloaded justice system. The proposal's implementation will more than likely result in an exacerbation for the worse of the present human rights situation.

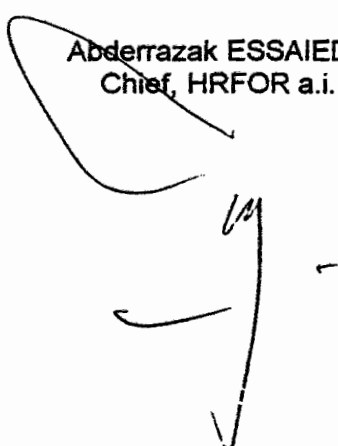
Given that what is under consideration is merely a draft, it would be inappropriate to sound alarm bells.

Nonetheless, it is a matter of great concern to the HRFOR that the positive steps already taken by the Government regarding developing a sustainable policy in response to the genocide, which are highlighted by the recommendations of the Genocide Conference, do not appear to be the basis of each important aspect of the present proposal.

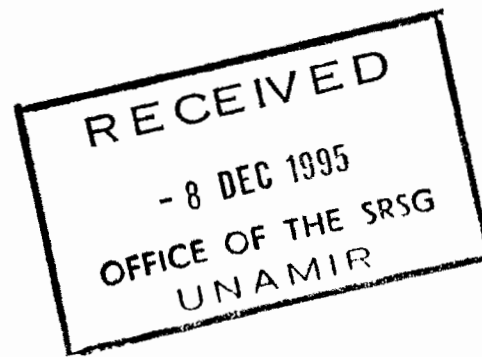
HRFOR appreciates the work the Government has done to this point in developing a sustainable policy, and hopes the work continues until that objective is fully reached. The HRFOR stands ready to provide more input you may find useful in developing a sustainable policy response to the genocide.

The United Nations High Commissioner for Human Rights avails itself of this opportunity to renew to you the assurances of its highest consideration.

Abderrazak ESSAIED
Chief, HRFOR a.i.



H.E. Mr. Pasteur BIZIMUNGU
President of the Republic of Rwanda
Kigali.



7 December 1995

Ambassador Shaharyar Khan
Special Representative of the Secretary General
UNAMIR
Kigali, Rwanda

Dear Ambassador Khan,

I enclose for your information a copy of the joint report of the National Gendarmerie and HRFOR on the incident at Kanama commune. This was finally signed by both parties on 27 November.

I want to make clear that HRFOR's investigations into this incident were not confined to this joint investigation. Other HRFOR officers were involved in investigations. I am hoping, albeit long after the incident, to bring this information together in a final HRFOR report.

Best regards,


Ian Martin
Chief, HRFOR

*I would like to know what happened to the
military personnel who were interrogated, court marshalled for the
event?*

Shaharyar Khan
8.12

ED.
Isel
JNK.

JOINT REPORT
ON THE INCIDENT AT KANAMA COMMUNE

I. Introduction

As a result of the incident at KANAMA commune, Gisenyi prefecture, on 11 and 12 September 1995, the Technical Co-operation Unit (TCU) of the Human Rights Field Operation in Rwanda (HRFOR) approached the Etat Major of the National Gendarmerie on 13 September 1995¹ and requested for an officer to go with them to Gisenyi for a joint fact finding mission on KANAMA incident. The mission was composed of the Head of the Information Unit of the National Gendarmerie, Captain Emanuel BAYINGANA, and the programme officer of the Technical Co-operation Unit (TCU, HRFOR), Homayoun Alizadeh. The primary task of this fact-finding mission was to discuss the recent events in KANAMA commune with local authorities, and to determine the cause of the incident.

On 13 and 14 September, the mission concluded consultations with high-ranking officials of the Gendarmerie and the RPA in Gisenyi and Ruhengeri. Hospitals were visited and the local population in KANAMA was interviewed. At request the team was permitted to go into the local military camp to meet with the battalion commander who was responsible for the military search operation at KANAMA commune, and to meet those detainees suspected to have had a hand in the killing of the RPA officer. While there, the delegation was also able to photograph a car and many weapons reportedly involved in the incident.

This joint fact-finding mission was designed to facilitate further governmental investigation of the incident at KANAMA commune, given that the two day joint-mission was preliminary in nature.

II. Meetings with the local authorities

On the way to Gisenyi the delegation was able to attend the funeral for Lieutenant Claude RURAZA, on 13. September. The ceremony took place in Ruhengeri where the Vice-President and the Minister of Defence, Major General Paul KAGAME, the Chief of Staff, Ministry of Defence, Colonel Sam KAKA, the Brigade Commander Ruhengeri/Gisenyi/Kibuye, Colonel William BAGIRE, and other high-ranking military officials were present. Between 1,500 and 2,000 civilians also attended the funeral.

¹ The Etat Major of the Gendarmerie, Ministry of Defence, was contacted by the TCU on 13 September 1995 as follows: Bureau of the Etat Major of the Gendarmerie, Col. Deogratias NDIBWAMI; Bureau of the Deputy Chief of Staff, Gendarmerie, Col. Kayumba NYAMWASA, Head of the Information, Documentation and Public Affairs Unit, Gendarmerie, Major John ZIGIRA, Chief of Logistics, Gendarmerie, Major Lambert SANO and the Bureau of the Chief of Staff, Ministry of Defence, Col. Sam KAKA

II. 1. Meeting with the Groupement Commander of the Gisenyi Prefecture, Lieutenant Karara MISINGO

The delegation met with the Groupement Commander of the Gisenyi prefecture on the same day. Lieutenant Karara MISINGO gave his report on the incident as follows:

At 7. p.m. Second Lieutenant Claude RURAZA was ambushed in KANAMA commune. The car was stopped by about eight “thugs” who made an unofficial roadblock, immediately after which the “thugs” opened fire. Lieutenant RURAZA was shot dead. The driver and two escorts were seriously injured. The “thugs” then ran away.

After this incident “intervention forces” came to the site to search and locate the “thugs,” who were hiding in KAYOVE and BISIZI sectors. Ultimately, an exchange of fire took place, the result of which was 24 dead civilians in KAYOVE sector and 61 in BISIZI sector. Eight persons were injured and were transported to hospitals in Ruhengeri and Gisenyi.

The military arrested four soldiers of the former Rwandan government. It is known that this area has many security problems caused by the activities of infiltrators and saboteurs from Zaire. In this military search operation many uniforms, four guns, six grenades and one sub-machine gun were found. The military operation was carried out by the Battalion Commander of BIGOGWE, Major George RWIGAMBA. The National Gendarmerie was not involved in this military operation. Lieutenant MISINGO also said he visited KAYOVE and BISIZI sectors on 12 September.

He also stated that neither the press nor human rights field officers had contacted his office. Although Lieutenant MISINGO stated he had visited KAYOVE and BISIZI sectors, the delegation asked him to visit those sectors again. He then ordered a gendarme to accompany the delegation to the sites.

II. 1. 1. Visits to KAYOVE and BISIZI sectors

The delegation spoke with civilians who seemed to be very angry about the search operation which had been carried out by the army on the night of the events. Many civilians reported the incident as follows:

- They did not believe that a RPA Lieutenant was killed;
- The attack began towards morning between 2 and 5 a.m.;
- Over 100 soldiers were involved in the operation;
- The soldiers went into the houses, brought the inhabitants out of their houses, and proceeded to conduct executions;
- The executions took place in two ways: some were executed immediately, while others were interrogated, accused of collaborating with infiltrators and saboteurs from Zaire, and then were executed;
- Many bodies were strewn about the sector.

Despite the fact that the delegation was accompanied by soldiers, the civilians discussed the actions of the soldiers involved in the operation very openly.

II. 2. Visit to Gisenyi hospital

In order to obtain more information about the incidents at KANAMA commune, the delegation decided to visit the injured persons in a hospital in Gisenyi on 14 September 1995. After discussions with the Director of the hospital, Dr. SARAMBUYE, the delegation was able to meet two injured persons.

1. A civilian named SEBUSORE (33) had been accompanying Second Lieutenant RURAZA in the car and was injured by bullets in his right arm and in chest. As an eyewitness he stated the following:

On 11 September 1995 at 7 p.m. the car in which Second Lieutenant RURAZA, two escorts, a driver and a civilian were driving, was stopped by about 12 uniformed gunmen. A wood barrage was put on the road in order to hinder the car from driving further. Eight of the gunmen surrounded the car. The eyewitness was able to hear that one of the gunmen told his colleague, "Do it quickly." Four of the perpetrators opened fire. The Lieutenant was shot dead. His two escorts, the driver and the civilian were injured. Soon after this, a taxi on route from Ruhengeri to Gisenyi arrived and took the injured persons to Gisenyi hospital.

The following points were mentioned by the above-mentioned civilian:

- The perpetrators spoke Kinyarwanda language;
 - It seemed that two "thugs" conducted the assassination;
 - Lieutenant RURAZA and his team had no means of communication, such as a radio;
 - The type of weapons used is not known.
2. A ten-year old girl named NYIRAMBONERA who is from BISIZI sector was injured during the subsequent military search operation. She was scared and, for that reason, the delegation was not able to make any inquiry into the incident.

II. 2. 1. Meetings with the personnel at Gisenyi hospital

The delegation spoke with the Director of the hospital, as mentioned above, and the Head of the surgery section, Dr. Emanuel MUNYARUGERERO. Based on these conversations six injured persons had been brought to the hospital. Their health condition was described as satisfactory. The hospital has a capacity of 325 beds and is faced with problems such as lack of qualified personnel and inadequate facilities to treat the injured and ailing. The relationship between hospital authorities, local authorities and human rights field officers was positive.

II. 3. Meeting with the Battalion Commander, Major George RWIGAMBA

The delegation met the Battalion Commander of BIGOGWE on 14 September 1995. Major RWIGAMBA conducted the military search operation at KANAMA commune. The delegation was able to meet Major RWIGAMBA inside the camp.

Major RWIGAMBA gave his statement as follows:

On Monday, 11 September 1995 at 7.30 p.m., Second Lieutenant Claude RURAZA left with his driver, two escorts and two civilians from the military camp to Gisenyi. At about 15 km from BIGOGWE, the car was stopped by between eight and ten men in military uniform at an unofficial roadblock. The gunmen opened fire, killing the Lieutenant at once. Three people were seriously injured. Meanwhile, a military car coming from Gisenyi approached the site. An exchange of fire between the perpetrators and the RPA soldiers was reported. The uniformed gunmen ran away.

After the incident, the deceased was taken back to the military camp in BIGOGWE by the RPA car which came from Gisenyi. The injured persons were taken to Gisenyi hospital by a taxi. The taxi had come from Ruhengeri and reached the site after the uniformed gunmen ran away.

According to the Battalion Commander at the military camp, Major George RWIGAMBA, 30 soldiers were sent to the site of the incident at midnight. From there they were commanded to cordon off the nearby villages in BISIZI and KAYOVE sectors in order to search for the alleged perpetrators. Supplementary military forces were also sent to that area.

According to Major RWIGAMBA's report, the alleged perpetrators hid in the villages and opened fire on the RPA soldiers, to which the soldiers responded. Civilians ran away and were thus caught in the crossfire. One soldier was killed and one was injured.

The allegation that RPA soldiers broke into the houses and inhabitants including women and children were brought out of their houses and shot in front of them at close range was denied by Major RWIGAMBA. He said that the civilian deaths were a result of stray bullets during the shoot out between the armed thugs and the RPA soldiers who had mounted a cordon-and-search operation.

In this military search operation two rifles, 13 grenades and two mines were found. According to Major RWIGAMBA about 60 soldiers took part in this military operation.

After the military search operation, inhabitants of the KAYOVE and BISIZI sectors were brought to the sector Headquarters in which they were "screened." Nine alleged "thugs" were arrested, two of whom were carrying machine guns (Kalashnikovs).

After the interview with Major RWIGAMBA the delegation was able to meet the detainees. Seven of the detainees were retired soldiers of the former Rwandan Government armed forces. The team was told by Major RWIGAMBA these detainees were innocent and would be released shortly as there was no evidence connecting them to the incident. Only two of the detainees (Tharcisse NIZEYIMANA and Pière UWATWESE) were to be transported to the prison. They had been accused of carrying machine guns during the incident. The two detainees confessed to the delegation that they had carried a rifle.

The team photographed the car in which the lieutenant was killed and also photographed weapons, mines and grenades allegedly used during the incidents.

The delegation was not able to meet the Brigade Commander Ruhengeri/Gisenyi/Kibuye, Colonel William BAGIRE.

The delegation ended its mission on 14 September at 2 p.m.

On 15 September a provisional report on the fact-finding mission was given to the Chief of Staff, Gendarmerie, Colonel Deogratias NDIBWAMI by the HRFOR representative of the delegation.

III. Remarks

The joint fact finding mission conducted into the KANAMA incident is the first mission of its kind that the UN Human Rights Field Operation in Rwanda has carried out in such close collaboration with the Rwandan authorities at the national level. This sort of confidence building measure will strengthen the co-operation between the Rwandan authorities and the United Nations High Commissioner for Human Rights and will reinforce efforts being made to improve the human rights situation in Rwanda.

The joint fact finding mission however, has raised a number of questions as follows:

- According to a number of statements, a driver and two escorts were injured in the ambush of Lieutenant RURAZA's car. The investigating delegation was not able to meet or to speak with these people whose testimony is of obvious importance. Whereas the Gendarmerie Commander in Gisenyi stated that the ambushed vehicle contained one civilian, who was injured in the attack, the Battalion Commander of BIGOGWE, Major RWIGAMBA claimed that there were two civilians in the vehicle, both of whom were injured. The delegation was only able to meet and interview one civilian at Gisenyi hospital.
- Following the information gathered about the incident, the delegation was unable to have a completely clear picture of what happened in the ambush of lieutenant RURAZA. The identity of the uniformed gunmen allegedly responsible for the attacks was not established.
- According to the information given to the delegation the ambush on the vehicle was carried out by between 8 and 12 gunmen some of whom were near enough to the vehicle for their conversation to be heard by the one civilian interviewed by the delegation. On the basis of the information given to the delegation one must ask how it is that only one person was killed in the ambush while the remaining three (or four according to different statements) survived in spite of being injured.
- The delegation was not able to obtain the exact names of the cellules in which the members of the civilian population were killed.
- Whereas the local military authorities spoke about 85 civilian deaths, the Radio Rwanda stated on 14 September that there were over 100 civilian deaths.

During the events in KANAMA a very large number of civilians were killed. According Major RWIGAMBA's information these civilians were killed in a crossfire between the gunmen who attacked Lieutenant RURAZA and about 60 RPA soldiers who were tracking them down. Given that one RPA soldier was reportedly killed in this clash and a second injured and apparently none of the gunmen were killed or injured, the delegation was not able to establish how 110 civilians who, in the early hours of the morning would normally all be in their homes, were caught in a 'cross fire'.

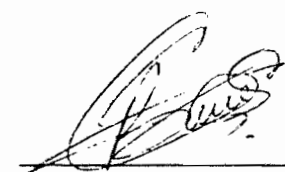
IV. Recommendations

In the framework of confidence building measures the co-operation between the HRFOR and the authorities, particularly the military authorities, should be strengthened in order to have a common response to such violations of human rights.

- On 14 September, a press communiqué was released by the Minister of Defence, stating that a commission to investigate the incidents will be established. The delegation recommends that a member of the Gendarmerie and of the HRFOR should be members of this commission.
- It is essential that the Gendarmerie as a national law enforcement entity has sufficient material support to ensure public order. The KANAMA incident highlights the lack of an adequate communications system.
- Support to military tribunal, military prosecutor.

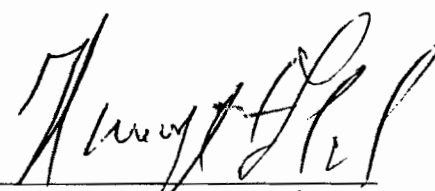
Kigali, 27 November 1995

Republic of Rwanda
Etat Major of the National Gendarmerie



Captain Emanuel BAYINGANA

Human Rights Field Operation
in Rwanda (HRFOR)



Homayoun Alizadeh, Ph. D.

UNITED NATIONS



NATIONS UNIES

RECEIVED

27 NOV 1995

OFFICE OF THE RESIDENT COORDINATOR

OFFICE OF THE SRSG

UNAMIR

FACSIMILE MESSAGE

<p>To: Ms. Ellen Johnson Sirleaf Assistant Administrator & Regional Director for Africa (212) 906 - 5830 (fax)</p> <p>Mr. Emmanuel Dierckx de Casterle Chief, RBA/Division I UNDP New York (212) 906 - 5243 (fax) (212) 906 - 5968 (phone)</p> <p>Mr. Edmund Cain, Director Emergency Response Division UNDP New York (212) 906 - 5379 (fax)</p> <p>Mr. Alan Doss, Director UNDP European Office Geneva (41) (22) 979. 90 .01 (fax) (41) (22) 979. 95. 38 (phone)</p> <p>Mr. Bruce Jenks, Director UNDP Brussels (32) (2) 280. 03. 78 (fax)</p>	<p>Date: 26 Nov 1995</p> <p>File:</p> <p>Total Pages: (including cover)</p> <p><i>A good summary of my previous conf.</i></p> <p><i>Del SF</i></p>
<p>From: <i>[Signature]</i> Sukehiro Hasegawa UNDP Resident Representative</p>	
<p>Subject: UNAMIR mandate & the visit of Justice Goldstone</p>	

I wish to inform you that during the last several days, it has become certain that the current UNAMIR mandate will not be extended after its expiration on 8 December. Therefore, we are now in the process of accelerating preparations for the takeover of some functions from the Office of the Special Representative of

the Secretary-General. These include:

- ① Security arrangements;
- ② some of the equipment now belonging to UNAMIR;
- ③ arrangements for the continued provision of certain essential services, such as the Norwegian Medical Facility (NorMed), perhaps on a cost-sharing basis.

In addition, Judge Goldstone, the Special Prosecutor of the International Tribunal for Rwanda, visited on Thursday and we discussed security arrangements. A copy of the notes of the meeting is attached for your information.

Also, please find attached an Informal Record of Ambassador Khan's press conference on Friday, 24 November, 1995.

With best regards.

INFORMAL RECORD

Press Conference of
The Special Representative of the Secretary-General
Ambassador Shaharyar Khan

24 November, 1995 11:00 AM

Ambassador Khan gave his first press conference in approximately a month on Friday morning, 24 November, 1995. The SRSG discussed three principal topics, which were as follows:

- ① the visit of Judge Goldstone
- ② the transfer of Rwandan prisoners
- ③ the Rwandan Government decision not to extend the UNAMIR mandate.

He opened the press conference with a statement on the visit of the Special Prosecutor of the International Tribunal, Judge Richard Goldstone. Ambassador Khan characterized the visit as "extremely satisfactory." The first indictments to be issued by the International Tribunal will be handed down on the 12th of December and trials are expected to commence shortly thereafter, and certainly early on in the new year. The Tribunal is counting on the full cooperation of governments in the region. Judge Goldstone had just arrived from Lusaka, where a number of Rwanda refugees suspected of participating in the genocide had been arrested, and he had also recently been in Kenya, where the Kenyan Attorney General had personally assured him of the full cooperation and support of the highest levels of the Kenyan Government.

Ambassador Khan noted that the issuance of the first indictments will redeem Judge Goldstone's pledge that the first case would be before the Tribunal before the end of the year. The SRSG pointed out that this was a very important milestone in the "totality of political developments", though many will feel that it has taken too long to bring justice to Rwanda. Nonetheless, this is an important step.

Judge Goldstone met with the Vice-President and Minister of Defense, Major General Paul Kagame, and with the Foreign Minister, Mr. Anastase Gasana. The SRSG said that, during Judge Goldstone's previous visits, he had brought good intentions, whereas now these intentions have been translated into action. The SRSG characterized this as a welcome development.

In changing the subject, the Special Representative explained that there had been many doubts about the Government's commitment to the alleviation of the poor conditions in Rwanda's prisons. But now, over the last three or four days, 4307 prisoners had been transferred with the

page 2

logistical support of UNAMIR from Byumba and Kibungo to Nsinda prison (which was formally opened at a ceremony on 5 October). Approximately 5,000 prisoners are expected to be transferred in the coming weeks, as new detention centers open in Rutare, Kabuga and Gitarama, among other places. Ambassador Khan said that it was not so much a lack of political will on the part of the Rwandan Government that had slowed the process, but more the difficulties encountered in overcoming technical problems. Additionally, many prisoners had not wanted to be moved as they feared that they would not have similar access to their families in new prison locations.

Security considerations have also been paramount among the concerns of the Government as prisoners being transferred must be registered and escorted. Now that the process has started, Ambassador Khan said that he very much hopes and is confident that the spaces created by this rehabilitation project will be fully utilized by the Government.

Regarding the discussions of UNAMIR's mandate, the SRSG characterized the negotiations as taking place in a cordial atmosphere where his offices have been a channel, rather than a participant. Ultimately, the extension or expiration of the mandate will be a decision for the Security Council. But the SRSG has been listening to the opinions expressed by the Rwandan Government and will convey that information to the Security Council, to the Secretary-General and to the G10 countries.

Whether to phase-out UNAMIR or to extend its mandate in the form of some sort of civilian assistance force is a decision that will be taken in consultation with the Government after the submission of the Secretary-General's report to the Security Council, which is expected to be issued sometime around 1 December. Ambassador Khan's assumption has always been that the phase-out would begin after the expiration of the current mandate, as the Rwandan Government has always been quite clear on this point - that there should be no further extensions of the mandate after December 1995. As UNAMIR has been acting under a Chapter 6 mandate, its deployment requires the consent of the host government. Therefore, the Government's wishes are paramount.

QUESTIONS & ANSWERS

The SRSG was asked what the American position on UNAMIR's mandate was. He responded that perhaps that was a question best put to the American Ambassador in Kigali. However, he wanted to say that the G10 countries, which have been meeting regularly in New York, are more or less agreed as to policy decisions concerning Rwanda, and that therefore there had really been very little "separate US policy" outside of

page 3

the G10 framework. Ambassador Khan also noted that the Rwandan Government had not, as a matter of principle, been adverse to discussing possibilities concerning the potential of some sort of UN force in Kigali.

Ambassador Khan was asked if he thought that the Cairo Conference would take place. He replied that there was nothing to suggest that the conference wouldn't take place. There was some doubt surrounding the participation of the Tanzanians, given the uncertainty of their Presidential elections. In his discussions with the former US President, Carter told the Ambassador that the Zairians were in favour of attending the conference and that President Carter saw no reason why they would want to "rock the boat."

The SRSG was asked whether the increased incidence of infiltration was sufficient justification for UNAMIR to remain in the country. He said that it was not, especially if the Rwandans did not want it. In his discussions with the Government, they had made it very clear to Ambassador Khan that they believed themselves to be entirely capable of defending their own country against this campaign of infiltration.

The final question concerned the disposal of UNAMIR's assets if the mandate were allowed to expire on 8 December. The SRSG noted that the Rwandan Government had expressed the wish that UNAMIR should leave as much as possible of its equipment behind if and when they withdrew from the country. However, there is a standard procedure for the disposition of such UN assets and the first priority is always the supply of other peace-keeping missions elsewhere in the world. Just as UNAMIR had benefitted from vehicles and computers from the reduction of peace-keeping operations in Cambodia, Mozambique, Somalia and Kuwait, so it was now Rwanda's turn to pass along those assets to peace-keeping operations in Angola, Liberia and Haiti. In addition, there was a General Assembly resolution which dictated how assets were to be distributed, so this not a question which the SRSG could address. Only the General Assembly could repeal its resolution if it believed that to be the appropriate measure. In lieu of that, the first priority is the supply of peace-keeping missions. The second priority would be to strengthen the capacity of UN agencies operating in the region; and the third priority would be to re-inforce the Government capacity.

The press conference was concluded at 11:50.

Provisioanel**MEETING WITH MEMBERS OF INTERNATIONAL TRIBUNAL
(Kigali, 23 November 1995)**

A delegation from the International Tribunal, headed by Judge Richard Goldstone, Chief Prosecutor, met with UN Resident Coordinator, Mr. Sukehiro Hasegawa at the UNDP Kigali office.

Judge Goldstone announced that indictments for six cases of individuals accused of participating in the genocide had been prepared by the International Tribunal and would be announced publicly on 12 December 1995.

The question of security was central to the discussion. New security arrangements were envisaged based on the clear understanding that UNAMIR's departure was imminent. Judge Goldstone expressed concern for security of his staff and potential witnesses. He informed the RC that in a meeting held earlier in the day, Vice-President Major-General Paul Kagame had indicated he would have no objection to the International Tribunal making its own arrangements for security. The RC informed the delegation that Vice-President Kagame had reiterated that UN security would be assured by the Government upon departure of UNAMIR forces. Judge Goldstone indicated that the International Tribunal would need protection by forces other than the RPA since it may be called upon to investigate crimes allegedly committed by the RPA. He stated that investigations of this nature would be undertaken only in the event of large-scale murders where involvement of Government officials seemed likely. The RC concurred on the need to avoid any conflict of interest and to concentrate on the major cases.

It was understood that the International Tribunal would be protected by an international security force. The international security force for the Tribunal, under the jurisdiction of the Registrar would be independent and report directly to UN Security Coordinator, Mr. Benon Sevan, while keeping the RC informed. At the same time, all parties agreed that efforts to closely coordinate arrangements should be undertaken and that competition or duplication should be avoided. It was agreed that final arrangements would be made after further reflection and discussion.

The RC stated that UN agencies were discussing the possibility of maintaining a helicopter on a cost-sharing basis following UNAMIR's departure. Judge Goldstone indicated that the International Tribunal would be interested in participating in such an arrangement. It was agreed that further discussions on the matter should be held.

Randall Harbour
23 November 1995
Kigali

translation (original: French)

to: Mr Ian Martin, Chief,
High Commission for Human Rights Mission to Rwanda

from: Mrs Marthe MUKAMURENZI, Minister of Justice

cc: H.E. the President of the Republic
H.E. the Vice-President of the Republic
H.E. the Prime Minister
the Hon. Minister of Foreign Affairs and Cooperation
Ambassador Shaharyar Khan
the High Commissioner for Human Rights

ref: no.2256/06.25

date: 10 November 1995

text:

Subject: doings of your officials

Sir,

*I would like
see Mr Martin's reply.
Shaharyar Khan
28.12*

*Bel
LA*

Following the GITARAMA Deputy Public Prosecutor's letter to you, no.B/288/D/A/Proré of 12 October 1995, and your letter to him of 19 October 1995, copied to me, I wish hereby to express to you my indignation at the doings of your monitors and especially their meddling [interference] in the mission [task] confided to me by the Government of Rwanda.

Indeed, Sir, it appears from reading the Prosecutor's letter and your monitors' petitions that the latter have never understood what is the real purpose of their work in our country.

To my knowledge, your mission, as defined by the Agreement between the UN and the Rwandan Government does not permit you take advantage of our will to cooperate to get involved in the

translation (original: French) 2

administration [dispensation] of justice in this country.

You will agree with me that, even in concluding that Agreement, Rwanda did not forgo its sovereignty, of which justice, as much here as anywhere, is, and must remain, a manifestation.

In Chapter V (Fields of Activity) point 5, a) and b), of the Agreement, it is recognized that your officials may investigate human rights and humanitarian law violations including acts of genocide...(point 5,a).

However, there is no stipulation, anywhere, that they are supposed to undertake joint investigations with the Rwandan Public Prosecutor's Office.

The latter, moreover, is in no case bound by your investigations, which are only intended, as far as I know, to be used in the information you must report to your headquarters in Geneva.

However, it is not excluded that your "experts" may transmit to us reports that would allow us to prevent and punish such violations, it being understood that they should exclusively be addressed to the Government or to the Ministry of Justice.

It has been observed however that the reports are sent rather, in a garbled [debased, adulterated] version, to the Special Rapporteur of the Human Rights Commission, but ... to what avail?

Recent statements by Dr RENE DEGNI SEGUI, when he visited Kigali, were clear on that subject.

The monitors' meddling is aggravated by their even claiming to have the right of interference in [to look into] cases of [normal criminal] repression under examination by our public

translation (original: French) 3

prosecutors, in violation of national laws and investigative secrecy.

As proof, I can quote from a letter sent to the Deputy Public Prosecutor, dated 2 September 1995, by Mr MOUNDEMBA who asserts that "the quorum of persons [witnesses] for the prosecution in order to proceed with preventive detention was not attained ..." whereas our Penal Code does not stipulate any number of witnesses. Does the HCHR allow itself to innovate in the Rwandan legislators' stead?

I consider, for my part, that such an assertion constitutes [comes under] deliberate disinformation in relation to the population whom you are supposed to be helping.

The same monitor, in his letter of 25 September 1995, speaks of the importance [strength, extent] of military power in Rwanda.

He, doubtless, doesn't know that our constitution only institutes three of them, i.e. the legislative, the executive and the judicial. Whence does he draw this fourth power?

He insists that there is [flawed, defective procedure] procedural error and does not know that the officers and NCOs of our gendarmerie [have the capacity of] are empowered to act as Judicial Police Officers [OPJ - *Officiers de Police Judiciaire*] and that, in that capacity, they may undertake criminal investigations, and that their powers extend throughout the nation (art.42, Decree/Law of 23 January 1974).

Do your monitors have the right to substitute themselves for the Prosecutor and declare that a detainee is innocent or to incriminate him?

(letter dated 4 May 1995 from Mr MOUNDEMBA to

translation (original: French) 4

Gitarama State Prosecutor)

Or to declare that someone indig^chted is illegally detained (another letter by Mr MOUNDEMBA dated 23 September 1995) or to request the release of some persons and the rearrest of others (Mr THIerno GUEYE's letter dated 3 October 1995)?

Still in the context of their so-called investigations, reading point 8 of the letter of 25 September 1995 one must admit that the investigations in question are obviously too accommodating when they allow themselves to base their convictions on a "joke" (Mr MOUNDEMBA's words). Some [people] might question their good faith.

Do they realize the case [type? full extent?] of crime they wish to absolve even quite clumsily in case of a confession by the accused (the Deputy Prosecutor's letter of 10 October to Mr THIerno GUEYE in answer to his letter of 3 October 1995, second page)?

Is their defence of human rights one-way? They only take account of elements [arguments] for the defence as if they excluded those for the prosecution of the accused!

It is quite clear that the human rights monitors have not mastered our laws and they interpret badly [i.e. erroneously] the international law on which their activity is based; this was noted by the GITARAMA Deputy Public Prosecutor.

Point 5,b) of Chapter 5 provides a facility for following developments in the human rights situation and that of, by their presence, being able to contribute to remedying existing problems and preventing human rights violations from being committed.

These terms underline the human rights monitors capacity

translation (original: French) 5

as [that of] simple observers, and do not mean intimidation and other aggressive injunctions by HCHR officials that have no place in our courts [prosecutors' offices].

In the field of prevention, I consider that denunciations made in good faith to our department or to the Government would help us to better fulfill our mission [task].

Must I again draw your attention to the fact that your monitors meddling not only hampers the proper administration [dispensation] of justice but could also perturb (if it hasn't already done so...) public security?

By what right do HCHR officials organize meetings with prisoners? Who gave them the mission to do this? To what purpose? The tract, dated Tuesday, 26 September 1995, written and circulated by your officials reveals their lack of frank cooperation and their one-way investigations.

What has been the result? At present, even the military whose task it is to guard it, don't enter GITARAMA prison. Only HCHR and ICRC officials have access and their privileged interlocutors are a team [group] of prisoners (said to be intellectuels) that they have united in a coalition against the warders and the rest of the staff.

It is highly regrettable to note that the sole response to the Deputy Prosecutor's request has been that the HCHR was content to transfer Mr MOUNDEMBA, who has left GITARAMA for a posting in KIGALI.

I personally believe that mere transfers, even of a disciplinary nature, cannot put an end to doings that are contrary to those expected of your staff, even if they enjoy a certain immunity, as of when they take advantage of it to jeopardize public

translation (original: French) 6

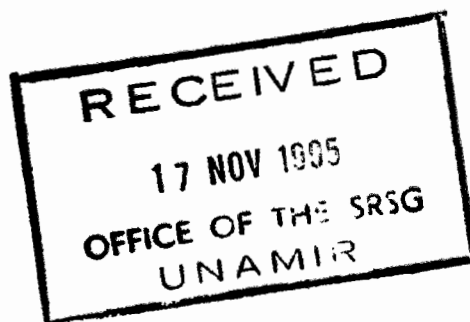
order.

It is in the firm hope that you may understand my indignation and take the measures that are called for that I request you to accept, Sir, the expression of my regards.

signed (and stamped): The Minister of Justice,
Marthe MUKAMURENZI.

REPUBLICQUE RWANDAISE
MINISTERE DE LA JUSTICE
B.P 160 KIGALI

Kigali, le 10 NOV. 1995
N° 2256/06.25



*I would like
an English translator
please. Selh.
17.11*

Monsieur IAN MARTIN
Chef de la Mission du Haut
Commissariat aux Droits de
l'Homme au Rwanda
KIGALI

Objet: Les agissements de
vos agents

Monsieur,

Suite à la lettre n°B/288/D
/A/Proré du 12 octobre 1995 vous adressée par le Substitut du
Procureur de la République à GITARAMA et à la votre du 19 octobre
1995 écrite au même Substitut et dont copie m'a été réservée, je
voudrais par la présente vous exprimer personnellement mon
indignation due aux agissements de vos moniteurs et surtout à
leur ingérence dans la mission qui m'est confiée par le
Gouvernement Rwandais.

En effet, Monsieur, il ressort
de la lecture de la lettre du Substitut et des requêtes de vos
moniteurs, que ceux-ci n'ont jamais compris quel est réellement
le sens de leur travail dans notre pays.

A ma connaissance, votre
mission, telle que définie par l'Accord passé entre l'ONU et le
Gouvernement Rwandais, ne vous permet pas d'abuser de notre
volonté de collaboration pour vous immiscer dans l'administration
de la justice de ce pays.

Vous conviendrez avec moi, que
même en faisant cet Accord, le Rwanda n'a pas renoncé à sa
souveraineté dont la justice, ici comme ailleurs, doit être et
rester l'un des reflets.

.../...

Au chapitre V (champs d'activités) point 5, a et b de cet Accord, il est admis que vos agents peuvent enquêter sur les violations des droits de l'homme et du droit humanitaire y compris les actes de génocide... (point 5, a).

Cependant, il n'est stipulé nulle part qu'ils doivent faire les enquêtes conjointement avec le Ministère Public rwandais.

Par ailleurs, ce dernier n'est en aucun cas lié par vos investigations, qui ne sont destinées à ce que je sache, qu'à l'information que vous devez à votre siège de GENEVE.

Mais, il n'est pas exclus que vos "experts" nous fassent parvenir des rapports qui nous permettraient de prévenir et sanctionner de telles violations, étant entendu qu'ils doivent exclusivement adressés au Gouvernement ou au Ministère de la Justice.

Il a été constaté, hélas, que ces rapports sont plutôt envoyés, altérés au Rapporteur Spécial de la Commission des droits de l'homme, mais...dans quel intérêt?

Les récentes déclarations du Dr RENE DEGNI SEGUI, en visite à KIGALI étaient claires à ce sujet.

L'ingérence de ces moniteurs est d'autant plus grave qu'ils prétendent même avoir un droit de regard sur les dossiers répressifs instruits par nos Parquets, et cela en violation de la loi Nationale et du secret instructoire.

Je vous citerais pour preuve la lettre du 2 septembre 1995 écrite au Substitut par Mr MOUNDEMBA qui affirme que "le quorum des personnes à charge n'a pas été atteint afin de procéder à la détention préventive ...", alors que notre code de Procédure Pénale ne prescrit aucun nombre de témoins. Le HCDH se permet-il d'innover en lieu et place du législateur rwandais ?

J'estime de ma part qu'une telle affirmation relève d'une désinformation délibérée auprès de la population que vous êtes censé aider.

.../...

Le même moniteur, dans sa lettre du 25 septembre 1995, parle de l'importance du pouvoir militaire au Rwanda.

Il ignore sans doute que notre loi fondamentale n'en institue que 3, à savoir le législatif, l'exécutif et le judiciaire.
D'où sort-il ce 4ème pouvoir ?

Il insiste sur un vice de procédure et ne sait pas que les officiers et les sous-Officiers de notre gendarmerie ont la qualité d'OPJ et qu'ils peuvent à ce titre, procéder à des investigations en matière pénale et que les officiers ont une compétence couvrant tout le territoire national (art. 42 D.loi du 23 janvier 1974).

Vos moniteurs ont-ils le droit de se substituer au Procureur pour déclarer l'innocence d'un prévenu ou l'incriminer ?

(lettre du 4 mai 1995 de Mr MOUNDEMBA au Procureur de la République de Gitarama)

Ou pour déclarer qu'un inculpé est détenu illégalement (lettre du 23 sept.1995 par le même MOUNDEMBA) ou encore demander la mise en liberté des uns et la réarrestation des autres (lettre du 3 octobre 1995 de Mr THIERNO GUEYE).

Toujours dans le cadre de leurs prétendus enquêtes, à lire le point 8 de la lettre du 25 septembre 1995, on se rend à l'évidence que ces investigations sont trop complaisantes quand ils se permettent de fonder leur conviction sur une "blaque" (terme de Mr MOUNDEMBA). D'aucuns s'interrogeraient sur leur bonne foi.

Se rendent-ils compte du cas de crime qu'ils veulent absoudre assez maladroitement même en cas d'aveu de l'inculpé (lettre du 10 octobre 1995, du Substitut du Procureur à Mr THIERNO GUEYE en réponse à sa lettre du 3 octobre 1995, 2ème feuillet) ?

Leur défense des droits de l'homme serait-elle à sens unique ? Ils ne prennent en considération que des éléments à décharge comme s'ils excluaient ceux à charge du prévenu !

.../...

Il est bien clair que les moniteurs des droits de l'homme ne maîtrisent pas nos instruments juridiques et qu'ils interprètent mal le droit international sur lequel se fonde leur action, cela a été relevé par le Substitut du Procureur à GITARAMA.

Le point 5, b du chapitre V prévoit la facilité de suivre l'évolution de la situation des droits de l'homme et celle de contribuer par leur présence, à remédier aux problèmes existants et empêcher qu'il se commette de violations des droits de l'homme.

Ces termes soulignent le caractère du simple observateur qu'est le moniteur des droits de l'homme et ne veulent pas dire intimidation et autres injonctions agressives des agents du HCDH qui n'ont aucune place dans nos parquets.

Dans le domaine de la prévention, j'estime que les dénonciations faites de bonne foi à notre département ou au Gouvernement nous aideraient mieux à l'accomplissement de notre mission.

Dois-je encore attirer votre attention sur le fait que l'ingérence de vos moniteurs entrave non seulement la bonne administration de la justice mais qu'elle peut également troubler (si elle ne fait déjà...) la sécurité publique ?

De quel droit les agents du HCDH organisent-ils des réunions avec les prisonniers? Qui leur en a donné mission ? Dans quel but ? Le tract de mardi, 26 septembre 1995 écrite et distribuée par vos agents accuse leur manque de franche collaboration et leurs investigations à sens unique.

Quel en a été le résultat ? Actuellement même les militaires chargés de la garde n'entrent pas dans la prison de GITARAMA. Seuls les agents du HCDH et du CICR y ont accès et leur interlocuteur privilégié est une équipe de détenus (dits intellectuels) qu'ils ont coalisée contre les gardiens et le reste du personnel.

Il est très regrettable de constater que pour toute réponse à la requête du Substitut du Procureur, le HCDH s'est contenté de donner une mutation à Mr MOUNDEMBA, qui a quitté GITARAMA pour être affecté à KIGALI.

.../...

Je crois personnellement que de simples mutations, même disciplinaires, ne peuvent pas mettre fin à des agissements contraires à ceux attendus de votre personnel, même s'il jouit d'une certaine immunité, dès lors qu'il s'en prévaut pour compromettre l'ordre public.

C'est en espérant fermement que vous puissiez comprendre mon indignation et prendre des mesures qui s'imposent, que je vous prie d'agréer, Monsieur, l'expression de ma considération.

Le Ministre de la Justice,
Marthe MUKAMURENZI



Copie pour information:

- Son Excellence Monsieur le
Président de la République
KIGALI
- Son Excellence Monsieur le
Vice-Président de la République
KIGALI
- Son Excellence Monsieur le
Premier Ministre
KIGALI
- Monsieur le Ministre des Affaires
Etrangères et de la Coopération
KIGALI
- ✓ - Monsieur l'Ambassadeur SHAHARYAR KHAN
Représentant Spécial des Nations Unies
au Rwanda
KIGALI
- Monsieur le Haut Commissaire aux Droits
de l'Homme
GENEVE

24 -11- 1995

OFFICE DES NATIONS UNIES A GENÈVE



UNITED NATIONS OFFICE AT GENEVA

CENTRE POUR LES DROITS DE L'HOMME

CENTRE FOR HUMAN RIGHTS

MEMORANDUM

A. To:

By fax
M. Ian Martin
Chef, Opération droits
de l'homme au Rwanda
Kigali

REF : G/SO 214 (93-1)

THROUGH:

M. Georg Mautner- Markhof
Chef des Procédures spéciales

DE - FROM: Luc Mubiala

GENEVA, 23 novembre 1995

OBJET - SUBJECT: Votre fax du 22.11.1995 adressé à M. Degni-Ségué

Le Rapporteur spécial pour le Rwanda, M. René Degni-Ségué, me prie de vous signaler avoir pris acte de votre message concernant la référence faite aux incidents de l'Ile Iwawa dans son projet de discours à l'Assemblée générale. Il m'a prié d'enlever la partie y relative et de prendre contact avec le Bureau de liaison du Centre à New York pour apporter la correction au texte du discours antérieurement transmis.

*Seen 12/11/95
The Iwawa is out of
reference and factually
kill wrong. I
Bel*



HRFOR

Kigali, le 22 novembre 1995

Monsieur le Rapporteur spécial,

J'attends avec beaucoup d'intérêt d'avoir l'opportunité de m'entretenir de plusieurs sujets avec vous à l'occasion de votre prochaine visite qui commencera le 4 décembre.

Entre temps, j'ai pris connaissance de la copie avancée du discours que vous prononcerez devant l'Assemblée Générale des Nations Unies le 27 novembre prochain, copie qui a été envoyée au juge Kablan. Je me réjouis que vous puissiez ainsi assurer que l'Assemblée Générale soit bien informée de la situation des droits de l'homme au Rwanda.

Il y a cependant un sujet dans votre discours qui me préoccupe et sur lequel je voudrais attirer votre attention. Dans la section II titre C relative aux atteintes aux droits à la vie et à l'intégrité physique, vous faites référence aux cas de massacres les plus connus de l'opinion publique internationale en mentionnant les événements de Kibeho, Kanama et de l'Ile d'Iwawa. Dans les cas de Kibeho et de Kanama, il est évidemment clair que les personnes tuées, y compris comme vous le dites des femmes et des enfants, étaient en grand nombre des civils. Dans le cas de l'Ile d'Iwawa en revanche, aucune des informations reçues par la Mission n'indique que parmi les victimes figuraient des civils non impliqués dans la formation et la préparation militaires qui avaient cours sur l'Ile au moment de l'attaque. Dès lors, ni la Mission, ni le CICR n'ont parlé de violation du droit international humanitaire ou de violations des droits de l'homme. J'imagine que le Gouvernement Rwandais serait hautement sensible à la parenthèse relative à l'incident de l'Ile Iwawa si elle est associée au même contexte que les incidents de Kibeho et de Kanama.

Meilleures salutations

Ian Martin
Chef de la Mission

Monsieur René DEGNI-SEGUI
Rapporteur spécial sur la situation
des droits de l'homme au Rwanda

012

OFFICE DES NATIONS UNIES A GENÈVE



CENTRE POUR LES DROITS DE L'HOMME

Télégramme : UNATIONS, GENÈVE
Télex : 412962
Téléphone : 917 1234 - 907 1234
Téléfax : (22) 917 0123

Réf. N° : C/SO 214 (93-1)
(à rappeler dans la réponse)

UNITED NATIONS OFFICE AT GENEVA

CENTRE FOR HUMAN RIGHTS

Palais des Nations
CH-1211 GENÈVE 10



21 novembre 1995

Monsieur le Coordonnateur,

Me référant à notre entretien de ce jour, j'ai le plaisir de vous transmettre une copie avancée du discours que le Rapporteur spécial pour le Rwanda, M. René Degni-Ségui, prononcera le 27 novembre 1995 à la 50ème session de l'Assemblée générale de l'ONU à New York.

Meilleures salutations.

L. Mutoy Mubiala

M. le Juge Aka Kablan Edoukou
HRFOR, Kigali, Rwanda

Fax: 00 33 1 44783388

NATIONS
UNIES
ASSEMBLEE GENERALE

SRSG:
The speech
summarizes the
report, which
unfortunately was
not complete. I'm
waiting for the missing
pages. In the meantime,
the speech.

28/10/95

Cinquantième session
Point 112 (c)

DISCOURS DE M. RENE DEGNI-SEGUI, RAPPORTEUR SPECIAL DE LA
COMMISSION DES DROITS DE L'HOMME SUR LA SITUATION DES DROITS DE
L'HOMME AU RWANDA

La Commission des droits de l'homme a, au cours de sa 51ème session, prolongé d'un an notre mandat en qualité de Rapporteur spécial pour le Rwanda dans sa résolution 1995/91 du 8 mars 1995 (par. 19). A ce titre, nous avons effectué trois missions au Rwanda pour nous enquêter respectivement:

- d'abord de l'état d'avancement du déploiement des observateurs des droits de l'homme (du 27 mars au 3 avril 1995);
- ensuite, des événements survenus à Kibeho lors de la fermeture forcée des camps des personnes déplacées par l'Armée patriotique rwandaise (du 25 au 28 mai 1995);
- enfin, de la situation créée par l'expulsion de réfugiés rwandais des camps situés au Zaïre (du 24 au 28 août 1995).

Ces visites sur le terrain ont permis de faire le point sur:

- le déroulement de l'enquête sur le génocide;
- la situation actuelle des droits de l'homme;
- le problème du retour de l'exode.

I. L'ENQUETE SUR LE GENOCIDE

L'enquête sur le génocide peut être évaluée au double plan du déploiement des observateurs et des progrès réalisés.

A. Le déploiement des observateurs

a connu une évolution sensible mais hélas s'est heurté à quelques difficultés.

- L'évolution peut s'apprécier par rapport à la fois au nombre des observateurs et à leur déploiement sur le terrain.

Le nombre des observateurs de l'Opération droits de l'homme est passé de 4 à la mi-août 1994 à 116 au 25 août 1995, soit près de 30 fois plus. Toutefois, il importe de relever que le personnel de l'Opération n'a jamais atteint le nombre de 147 initialement prévu et la tendance actuelle est à la baisse.

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Les observateurs sont effectivement déployés sur l'ensemble du territoire rwandais. Ils se sont constitués en équipes et en unités opérationnelles: unité d'analyse juridique et de coordination, unité de surveillance et unité d'assistance technique.

- Les difficultés rencontrées sont de deux ordres, l'un matériel et l'autre politique.

Les premières se ramènent essentiellement au manque de ressources financières qui entraîne l'insuffisance de ressources humaines et matérielles. Ainsi, pour ne citer qu'un exemple, jusqu'ici il n'a pas été possible au Rapporteur spécial d'élucider les circonstances de l'attentat de l'avion présidentiel, survenu le 6 avril 1994, nonobstant les demandes pressantes du Gouvernement et des réfugiés rwandais. Il convient d'agir vite avant que le temps n'efface les dernières traces.

Les secondes difficultés sont celles qui affectent les rapports entre l'Opération et les autorités rwandaises d'une part et, d'autre part, entre le Rapporteur spécial et le service des procédures spéciales du Centre pour les droits de l'homme. Ces difficultés ne sont pas de nature à permettre aux deux structures impliquées dans les opérations sur le terrain de s'acquitter le plus efficacement possible de leur mission. Elles sont heureusement en voie d'être aplanies. Mais en dépit de ces difficultés, des progrès ont été réalisés.

B. Les progrès réalisés

- L'enquête sur le terrain confirme autant le génocide que les autres crimes contre l'humanité. Les faits sont établis grâce à des témoignages et à des éléments de preuve. Ceux-ci ont été sélectionnés systématiquement par préfecture. Ainsi, les témoignages recueillis auprès de rescapés, d'observateurs militaires et des personnels des ONG décrivent avec force détails les massacres et citent nommément les responsables et commanditaires.

- Tous ces témoignages et preuves ont été transmis au Tribunal international pour le Rwanda qui contribuera assurément à faire progresser l'enquête. L'existence de l'instance judiciaire appelle une nécessaire collaboration avec le Rapporteur spécial qui consiste non seulement en l'échange d'informations et de renseignements mais également en l'exploitation de ceux-ci, la procédure publique devant observer une certaine réserve pour ne pas nuire à la procédure confidentielle et gêner ainsi l'enquête. La situation est toutefois différente s'agissant des violations actuelles des droits de l'homme.

II. LA SURVEILLANCE DE LA SITUATION DES DROITS DE L'HOMME

La situation actuelle des droits de l'homme au Rwanda n'a guère évolué. Elle se caractérise toujours par des atteintes aux droits de propriété, à la sûreté personnelle et à la vie.

A. Les atteintes au droit de propriété

demeurent l'occupation illégale de propriété. Face à l'échec de la Commission des litiges fonciers créée par le Gouvernement en août 1994, le PNUD s'est orienté vers la construction de logements pour les rapatriés. Mais le soutien financier de la communauté internationale à ce projet se fait encore attendre.

Cette situation est d'autant plus inquiétante que ce projet vise à financer à court terme la construction de seulement 500 logements alors qu'il faut réintégrer près de 600.000 anciens réfugiés. L'aide internationale reste donc largement insuffisante pour les logements et a fortiori pour la reconstruction nationale.

3

B. Les atteintes au droit à la sûreté personnelle

consistent en des arrestations et détentions arbitraires de personnes accusées d'avoir participé au génocide, souvent sur simple dénonciation.

Il en résulte une surpopulation carcérale qui dépasse largement le seuil du tolérable: les 113 centres de détention visités par les observateurs des droits de l'homme comptaient, au 3 novembre 1995, 53.245 détenus. Et, pour ne citer qu'un exemple, la prison de Gitarama hébergeait à la même date 6.348 personnes pour une capacité d'accueil de 800, soit 8 fois plus que prévu. Dans les différents centres de détention, les prisonniers sont logés à l'étroit, le grand nombre disposant à peine d'une place pour s'asseoir, encore moins pour se coucher sur un sol souvent rocailleux. Il s'ensuit beaucoup de maladies et de nombreux décès, dus aux mauvaises conditions de détention et aux traitements inhumains infligés aux détenus sous diverses formes: bastonnades, tortures, étouffements, viols, etc.

Les différentes mesures mises en oeuvre pour améliorer la situation dans les prisons rwandaises se sont révélées inefficaces. Il en va ainsi des commissions tripartites de triage, créées en janvier 1995 et chargées au niveau de chaque parquet de 1ère instance de trier les dossiers des détenus.

Mais, le Gouvernement rwandais, avec l'aide de la communauté internationale, a adopté un large programme destiné à réhabiliter les systèmes judiciaire et pénitentiaire.

C.- Les atteintes aux droits à la vie et à l'intégrité physique,

qui s'étaient quelque peu ralenties pour céder le pas aux arrestations arbitraires, ont connu hélas à partir de mars 1995 une résurgence. Elles consistent en des enlèvements et disparitions forcées, exécutions sommaires prenant quelquefois la forme de massacres.

- Beaucoup de personnes de l'ethnie hutu ont été enlevées ou sont portées disparues depuis la fin des hostilités. C'est pourquoi, il s'est constitué une association dénommée "Collectif des épouses des personnes disparues depuis juillet 1994". Les recherches entreprises pour les retrouver sont demeurées vaines. Et, certains auteurs présumés de ces enlèvements, quoique connus des victimes, sont, à ce jour, restés impunis.

- Des exécutions sommaires ont été également commises qui s'apparentent parfois à des crimes politiques, comme ce fut le cas de l'assassinat, le 4 mars 1995, de l'ancien préfet de Butaré, et, par la suite, d'autres responsables politiques locaux (sous-préfets et bourgmestres).

- Les cas de massacres sont plus connus de l'opinion publique internationale. On mentionnera les événements respectifs de Kibeho (18 au 22 avril 1995), avec plus de 2000 morts, ceux de Kanama (11 au 12 septembre 1995), avec plus de 110 morts dont de nombreuses femmes et des enfants, et ceux de l'île Iwawa avec plus de 300 morts.

Correcté

par

Ces différents faits ne sont pas de nature à faciliter le retour de l'exode.

Not la seule catégorie

III. LE PROBLEME DU RETOUR DE L'EXODE

Le problème du retour de l'exode n'a pas davantage enregistré de progrès sensibles dans sa résolution. Bien au contraire, la situation des personnes s'est détériorée. Les déplacés font l'objet de "rapatriement" forcé tandis que les réfugiés de menace d'expulsion.

4

A. Le "rapatriement" forcé des déplacés

L'échec de l'"Opération Retour", initiée par l'ONU en accord avec les autorités rwandaises, a poussé ces dernières à procéder, à partir du 18 avril 1995, à la fermeture des camps des déplacés et aux rapatriements forcés de ceux-ci dans leurs communes d'origine. Ces rapatriements ont occasionné les massacres de Kibeho mentionnés ci-dessus. Ces faits n'ont pu qu'engendrer de nouveaux obstacles au retour des réfugiés.

B. La menace d'expulsion des réfugiés rwandais du Zaïre

Fait également partie des préoccupations majeures de la communauté internationale.

La dégradation de l'environnement et surtout l'insécurité que font régner les réfugiés rwandais, en particulier les éléments armés, ont conduit à rendre insupportable leur présence continue sur le territoire des Etats d'accueil et à demander leur expulsion. C'est dans ce contexte que s'inscrit la décision des autorités zaïroises en date du 19 août 1995, faisant suite à la suspension par le Conseil de sécurité de l'embargo sur les armes à destination du Rwanda, aux termes de sa résolution 1011 du 16 août 1995.

Fort heureusement et grâce à la coopération entre le Gouvernement rwandais et les agences des Nations Unies, les rapatriements de 20.383 personnes rentrées du Zaïre entre le 19 août et le 1er septembre 1995 se sont déroulés dans de bonnes conditions. Mais l'ultimatum lancé par les autorités zaïroises pour le grand retour à la fin de l'année est loin de dissiper les inquiétudes en ce qu'il laisse en suspens divers problèmes se rapportant notamment aux structures d'accueil des réfugiés au Rwanda, leur réinsertion dans les communes d'origine, leur sécurité, leur sûreté et la récupération de leurs biens.

Ces différents problèmes appellent des solutions idoines et urgentes autant que des mesures d'accompagnement. C'est ce qui justifie nos recommandations.

IV CONCLUSIONS ET RECOMMANDATIONS

Nous voudrions, pour terminer, souligner que des efforts particuliers devraient être déployés pour:

- ✓ accélérer la répression du génocide et des violations actuelles des droits de l'homme,
- ✓ aider à la reconstruction et à la réconciliation nationales,
- ✓ et assurer le retour des réfugiés rwandais dans leur pays.

En ce sens:

A- L'ONU devrait, comme recommandé dans notre cinquième rapport,

- ✓ - accélérer l'entrée en fonctions effective du Tribunal international pour le Rwanda en lui donnant les moyens appropriés;
- ✓ - aider de façon substantielle le Gouvernement rwandais dans ses efforts de reconstruction nationale et de réhabilitation des systèmes pénitentiaire et judiciaire, afin de permettre l'instruction rapide des dossiers de milliers de personnes détenues dans les prisons;
- ✓ - appeler le Gouvernement rwandais à prendre des mesures en vue d'assurer le respect des droits de l'homme et de réprimer leurs violations, pour rompre la tradition d'impunité.

5

B.- L'ONU devrait recommander:

- aux Etats d'accueil des réfugiés rwandais, en particulier la Tanzanie et le Zaïre, de respecter leurs engagements internationaux en matière de protection des réfugiés;

- à la communauté internationale, au Gouvernement rwandais et aux Etats d'accueil des réfugiés de rechercher une solution globale et durable au problème de rapatriement de ces derniers;

- aux protagonistes de participer à la Conférence internationale sur les Grands Lacs, dont l'organisation a été annoncée, le 22 octobre 1995, par les Présidents de l'Ouganda, de la Tanzanie et du Zaïre, afin de rechercher un règlement global et durable des problèmes de cette région.

UNITED NATIONS

HIGH COMMISSIONER FOR HUMAN RIGHTS
HUMAN RIGHTS FIELD OPERATION IN RWANDA



HRFOR

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20 DEC 1995

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UNAMIR

NATIONS UNIES

HAUT COMMISSAIRE AUX DROITS DE L'HOMME
OPERATION SUR LE TERRAIN AU RWANDA

16 December 1995

Dear Ambassador / Head of Mission,

Please find enclosed a Report on the Human Rights Situation in Rwanda and the activities of the HRFOR during October, together with an update on November. These were presented at a briefing in Geneva by the Centre for Human Rights last Tuesday, 12 December.

Also enclosed are copies of status reports on some current incidents/cases of concern.

It is my intention to invite you to a monthly briefing in Kigali on HRFOR's activities and concerns. However, in view of the holiday period, it has been suggested to me that this should commence in the New Year.

With best wishes,

Yours sincerely,

Ian Martin

Chief, HRFOR

UN Human Rights Field Operation in Rwanda

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B. P. 445 Kigali, Rwanda



**REPORT ON THE HUMAN RIGHTS SITUATION IN RWANDA
AND THE ACTIVITIES OF THE HRFOR**

OCTOBER 1995

REF: HRFOR/RPT/1/October 1995/E



TABLE OF CONTENTS

I. OVERVIEW	1
II. GENOCIDE	2
A. Collection of information on the genocide and mass graves	2
B. Cooperation with the International Tribunal for Rwanda	2
C. Other initiatives	2
III. ADMINISTRATION OF JUSTICE	3
A. Rehabilitation of the judiciary	3
B. Establishment and elaboration of dossiers of detainees	3
C. Problems encountered by the judicial system and assistance provided by HRFOR	3
IV. CURRENT HUMAN RIGHTS SITUATION	4
A. Right to life	5
1. Killings allegedly involving agents or organs of the State	5
2. Killings allegedly involving Interahamwe and/or members of the former Rwandese Armed Forces	6
3. Killings allegedly involving individuals wearing uniforms	6
4. Popular justice/killings allegedly involving survivors of the genocide	7
5. Deaths in or after detention	7
6. Other killings	8
B. Right to the integrity and security of the person	8
1. Disappearances and abductions	8
2. Cruel, inhuman or degrading treatment	9
C. Arrests and detention	11
V. PRISONS AND DETENTION CENTRES	12
A. The population of detainees	13
B. Conditions of detention	13
1. Overcrowding	13
2. Hygiene and nutrition	14
3. Ill-treatment	14
4. Other aspects of conditions of detention	14
VI. HUMAN RIGHTS EDUCATION AND PROMOTION	15
VII. RETURNEES	15
A. Number of returnees	15
B. Reintegration of returnees in the prefectures	16
C. Arrests of returnees	16
VIII. SECURITY SITUATION	17
A. Reported incidents involving former Rwandese Armed Forces or Interahamwe	17
B. Security of HRFOR personnel	18
IX. STATUS OF DEPLOYMENT	18

**REPORT ON THE HUMAN RIGHTS SITUATION IN RWANDA
AND THE ACTIVITIES OF THE HRFOR**

OCTOBER 1995

Note: The following report is presented in a modified format and begins a series of reports which will cover each calendar month. The analysis of the human rights situation and the reports of specific alleged human rights violations have been submitted to the Government of Rwanda, which has been invited to provide information on its investigations into such incidents. This procedure aims to strengthen the dialogue on problems and progress in building the institutions and fostering the culture necessary for the protection and promotion of human rights in post-genocide Rwanda. Information and comments from the Government of Rwanda subsequent to this report will be reflected in future reports.

I. OVERVIEW

Two important steps toward the rehabilitation of the judicial system were taken in October. The National Assembly approved the nominations of the President and five Vice-Presidents of the Supreme Court, sworn in by the President on 17 October. The draft law on the Organisation of the Conseil Supérieur de la Magistrature was also approved by the National Assembly.

The deployment of additional Inspectors of Judicial Police (IPJs) was reflected in significant progress in some communes as regards preparation of cases for eventual trial. Arrests, chiefly on accusations of involvement in the genocide, continued to take place. The number of detainees in the detention centres throughout the country increased from around 55,000 at the beginning of the month of October to around 58,000 by the end of the month.

The authorities cooperated in continuing efforts to promote respect for legal procedures in arrest, including seminars arranged by HRFOR and the United Nations High Commissioner for Refugees. Numerous arrests however, continued to be made outside legal procedures. The number of detainee cases reviewed either by the judicial authorities or by the Commissions de Triage remained very small, and some of the few persons released provisionally upon review were promptly rearrested.

Prison conditions remained a matter of acute concern. Although additional short-term detention facilities were officially opened in early October, concerns of the Government of Rwanda regarding adequate security in these facilities and other matters delayed the transfer of detainees and the consequential reduction in the gross over-crowding in prisons and detention centres. However, it should be noted that the transfer of several hundred detainees from the Central Prisons of Kibungu and Byumba to the renovated centre in Nsinda began on 17 November 1995.

Overcrowding was also acute in most local detention facilities. HRFOR expressed concern to local authorities about, and urged investigations to be carried out on, a number of cases of deaths in custody, allegedly resulting from torture. There were other reports of ill-treatment of detainees in the prisons and communal cachots in several prefectures. HRFOR did not usually have access to detainees in military custody. HRFOR was seeking information about several disappearances of persons taken into custody, including new cases reported during October.

HRFOR continued to receive reports of extra-judicial executions, attempted killings and killings, some attributed to members of the Rwandese Patriotic Army, others to members of the former Rwandese Armed Forces, *Interahamwe* militias, and armed bandits. Among the victims were the Conseiller of Mururu sector, Cyimbogo commune, Cyangugu Prefecture, and the IPJ of Gishoma commune, Cyangugu Prefecture.

Although the State and the Rwandese judicial system in several cases have indicated their genuine intention to bring those responsible for violations of human rights to justice, HRFOR notes with concern that only a small number of cases implicating agents of the State have led to the opening of a judicial enquiry or to making public the outcome of enquiries.

According to Rwandese law, certain military personnel and gendarmes are by reason of their rank, Officers of the Judicial Police, and therefore authorized to make arrests. It is apparent, however, that some members of those institutions continued to exercise powers which are not granted to them by law. The delimitation of areas of competence of each of these institutions--administrative, judiciary and military--remains imprecise and little respected, and this has impeded movement toward full respect for the rule of law.

II. GENOCIDE

A. Collection of information on the genocide and mass graves

New mass grave sites were located in October in Cyangugu and Kibuye Prefectures.

Human rights field officers visited newly discovered massacre sites in Gisuma and Gafunzo communes, Cyangugu Prefecture. Besides identifying the locations, human rights field officers interviewed survivors of these massacres who not only provided the names of some of the victims, but also revealed the identities of the alleged perpetrators. A delegation from the Projet Mémorial, which identifies genocide sites, visited Cyangugu Prefecture on 27 October. The two delegates, from the Ministry of the Family and the Promotion of Women's Affairs, and the Ministry of Rehabilitation and Social Integration discovered, according to information transmitted to HRFOR, new mass graves in Cyimbogo commune. HRFOR provided the delegation with logistical support.

Also within the framework of the inter-ministerial project to identify mass graves, another delegation, composed of representatives from the Ministry of Higher Education and from the Ministry of the Interior, began at the end of October a one month visit to Kibungo and Butare Prefectures. Besides logistical support, the delegation were accorded access to the collection of information on the genocide which had been gathered by HRFOR in those prefectures.

One mass grave was also discovered in Kibuye Prefecture. Situated in Gishyita commune, between Mubuga, Gitesi, and Biseru sectors, the mass grave is located in a natural grotto more than ten metres deep. According to first information received, the remains of several hundred persons were found. Because of the difficulty of access to the site, an extensive inspection of the site has not been possible to this point.

B. Cooperation with the International Tribunal for Rwanda

Investigators, judges and medical experts from the International Tribunal continued during October to be deployed within Rwanda and to collect information which will be transmitted to the Office of the Chief Prosecutor. Delegations of the International Tribunal visited Kibuye and Butare Prefectures. The purpose of these visits was to conduct in-depth investigations related to the genocide. HRFOR continued its close cooperation with these delegations as requested.

C. Other initiatives

The end of October was marked by the preparations for the Conference on Genocide, Impunity and Responsibility. Convened by the Government, the Conference, held from 1 November to 5 November, assembled several hundred participants from around the world. HRFOR actively participated in the organisation and preparations for the Conference.

One of the issues discussed in the Conference working groups that considered the means by which perpetrators of acts of genocide should be brought to justice, was whether a special tribunal should be created for that purpose, or whether such cases should be tried in a special chamber within the established judicial system. There was also debate over the forms and degrees of criminal culpability as well as on the questions of plea-bargaining and alternative forms of accountability other than the criminal trial process. Among the conference recommendations were initiatives to document the genocide and to establish appropriate memorials as well as to provide compensation to survivors and to meet their needs in other ways.

The Government of Rwanda did not announce any decisions on these matters in the month of November. However, the Ministry of Justice was considering the establishment of Commissions de Triage at the level of each of the 147 communes.

III. ADMINISTRATION OF JUSTICE

A. Rehabilitation of the judiciary

The restoration and consolidation of the judicial system were significantly advanced with the draft law on the Organisation of the Conseil Supérieur de la Magistrature as well as by the nominations of the President and Vice-Presidents of the Supreme Court. These advances, the effects of which will be realised only in the mid-term, are not in themselves sufficient to ensure the reinvigoration and effective functioning of the judicial system. The other essential elements are discussed below.

B. Establishment and elaboration of dossiers of detainees

The process of establishing and examining case files of detainees continued during the reporting period. The deployment of officers du Ministère Public (OMP) and of Inspectors of the Judicial Police (IPJ) to the Parquets in several prefectures permitted not only more thorough investigations but also the creation of new case files.

This process, however, remains insufficient in relation to the number of persons detained without case files. Approximately 20,000 detainees have not been interrogated by an officer of the judiciary. For instance, for the 1,500 detainees in Gisenyi Central Prison, only 600 case files have been established. In Cyangugu, only 160 of the 2,000 detainees have case files. Not only are there few case files, but the majority of these are incomplete. Frequently, results of investigations and witness statements are missing. Many of the case files contain no more than a basic record of the detainee.

The Commissions de Triage set up to alleviate the overcrowding in detention centres have continued to sit only in three prefectures (Gitarama, Cyangugu, and Kibungu). The Commission de Triage in Kibungu was the only one to have released detainees during its sittings in October. It released nine persons who had been accused of acts of genocide.

The current state of the Rwandese judicial system is still inadequate for the fair trial of genocide cases. None of the six Tribunals of First Instance which currently function, tries genocide cases. Most of the tribunals try only common law offenses. On 15 October, the Tribunal of First Instance in Cyangugu, tried nine suspects who were not provided with adequate opportunity to mount a defense, three of whom were sentenced to death. Moreover, because the four Courts of Appeal do not function, there is no effective right to appeal. The activities of the Cantonal Tribunals, which have competence in civil and criminal matters, are also limited. Of the 147 Cantonal Tribunals, less than a dozen are currently functioning.

C. Problems encountered by the judicial system and assistance provided by HRFOR

Limited human and material resources contribute heavily to the paralysis of the judicial system and the slow process of bringing arrest and detentions within the law.

The dearth of adequately qualified personnel continued to pose an acute problem. Of the 800 Rwandese magistrates prior to the 1994 armed conflict, only 284 are presently active. Although

new *Officiers du Ministère Public* and new Inspectors of the Judicial Police were deployed at the end of September 1995, around 50 communes are still without Inspectors of the Judicial Police. Means of transport and facilities provided to the administration of justice remain inadequate to meet the immense task.

HRFOR and the Ministry of Justice, with the support of UNHCR and the NGO Citizen's Network, organised seminars on arrest and detention procedures. IPJs, OPJs of the Gendarmerie, bourgmestres, and officers of the Rwandese Patriotic Army all participated in these seminars. In October, such a seminar was held in Ruhengeri Prefecture.

HRFOR continued, in October, to provide assistance to the judicial system at both the local and national levels. In the prefectures, human rights field officers continued to assist with the transfer of detainees, and to provide advisory and logistical support, e.g. providing means of transport to IPJs, especially within the context of investigations into the genocide.

IV. CURRENT HUMAN RIGHTS SITUATION

During October, numerous human rights violations were reported to HRFOR. Aside from cases of arrest which constituted the most frequent type of reported human rights violations, more than 50 killings, comprising possible extrajudicial executions, assassinations and death resulting from ill-treatment in detention centres, were confirmed by HRFOR investigations. Cases of alleged cruel, inhuman or degrading treatment were also brought to HRFOR's attention during visits to detention centres. HRFOR also received reports of cases of disappearance and abduction.

These violations of human rights were noted in all the prefectures where HRFOR has a field office. The frequency of the alleged violations and their type, however, vary considerably from one prefecture to another. It appears that Cyangugu and Kibuye are the prefectures most affected. Even within those prefectures, however, the alleged violations appear concentrated in several specific communes.

Amongst the victims (which include women and children) were not only persons who appear to have been targeted because of their function or occupation, but also ordinary citizens accused of participation in the genocide, as well as those stigmatized as having had close allegiances with the former government. Refugees who have recently returned, according to information received by HRFOR, were not particularly targeted.

In general, it appears the following three categories were observed to be perpetrators. The first group, to whom the greatest number of cases were attributed, were agents of the State, including soldiers of the Rwandese Patriotic Army. The second group were armed individuals wearing uniforms. It was difficult to establish whether these individuals were civilians or military personnel, and whether they were members of the Rwandese Patriotic Army or of the former Rwandese Armed Forces. The third category comprised individuals identified as members of *Interahamwe* militias or of the former Rwandese Armed Forces, generally in the course of incursions into Rwandan territory.

Only a small number of these various incidents and cases have been investigated by judicial authorities. Apart from difficulties and limitations confronting the judicial system, it is apparent that very few investigations have been initiated by the authorities.

A. Right to life

During the month of October, HRFOR continued to receive information on violations of the right to life. Approximately fifty killings, attempted killings and deaths following ill-treatment during detention were noted by HRFOR.

HRFOR was able to confirm that 51 persons were killed in 23 specific incidents. Twenty civilians lost their lives in the course of two specific incidents. It became clear, through evidence received and through investigations conducted by HRFOR, that 28 of the 51 victims were alleged to have been killed by individuals wearing uniforms of the Rwandese Patriotic Army. Moreover, human rights field officers received information possibly implicating members of the former Rwandese Armed Forces and of *Interahamwe* militias in the assassination of seven persons. Furthermore, three cases of "popular justice" were reported to HRFOR, in which four victims were lynched by civilians. Two of the persons assassinated reportedly were killed by survivors of the genocide.

These killings were registered in eight of the nine prefectures where HRFOR has a field office. No killings were reported in Kibungo. More than half of the killings were committed in the west and the south of the country, particularly in Cyangugu, Kibuye and Gikongoro Prefectures.

Amongst the victims, HRFOR counted 43 men, five women and three children under 7 years of age. The victims included an Inspector of the Judicial Police and a sector councillor. On the basis of reports received by HRFOR, these persons appeared to have been targeted on account of their official position.

Although in several cases the cause of death could not be determined with precision, HRFOR was able to establish, pursuant to their investigations, that 23 of the victims were shot, 13 killed by machetes or knives, and 11 died following cruel, inhuman or degrading treatment.

Most of these violations were committed at the victims' homes, or in public areas such as roads or forests. HRFOR has received information, however, on five cases of detainees having died after being subjected to cruel, inhuman or degrading treatment in detention.

Not every suspicious death gave rise to the opening of a judicial enquiry in accordance with Rwandese law. To HRFOR's knowledge, only 22 of 51 killings were investigated. Eight suspected perpetrators of these killings, including one member of the Rwandese Patriotic Army, were arrested and detained. Three were released a few days later (see Annex 1).

The cases which follow represent some examples of the reports received by HRFOR regarding the right to life.

1. Killings allegedly involving agents or organs of the State

On 25 October 1995, at 7:30 pm, three men in Rwandese Patriotic Army uniform went to the home of an Inspector of the Judicial Police of Gishoma commune, **Cyangugu Prefecture**. The IPJ was having dinner with three friends and invited the three soldiers to join them. Once they had finished dinner, the three soldiers reportedly asked the IPJ why he had organised and held meetings in his house. After a short discussion, the soldiers allegedly ordered the IPJ and his friends to lie face down on the ground, then opened fire, fatally wounding them. The motive for this killing of the four has not been established. According to information available to HRFOR, no investigation has been conducted by the Parquet or the gendarmerie.

On Sunday, 15 October 1995, a 26-year-old farmer was killed in front of his house in Nyabigugu cellule, Gitesi sector, Gitesi commune in **Kibuye Prefecture**. Thirteen cartridges were found on

the doorstep of the young man's house. Initial investigations indicated that there were two perpetrators. One was identified as a communal police officer from Gitesi. According to the Bourgmestre, the victim was suspected of hiding arms, particularly grenades. According to the Bourgmestre, the state agents were operating under a properly authorised mandate signed by the IPJ and acted in self-defence.

On 2 October 1995, in Mudasomwa commune, **Gikongoro Prefecture**, several soldiers of the Rwandese Patriotic Army accompanied by the former Bourgmestre, the sector councillor and other residents, went to the home of a man in order to arrest him. Upon arrival, the group asked the man, suspected of participation in the genocide, to come out. After several futile attempts, the soldiers forced the door open and threw a grenade into the house, killing the victim immediately.

In Muyira commune, **Butare Prefecture**, a soldier of the Rwandese Patriotic Army posted in Kigali killed 10 persons at the beginning of October 1995. According to local authorities, the RPA soldier, whose identity was revealed to HRFOR, had come to his home commune to search for the bodies of his parents, who were killed and buried during the genocide. The day after the reburial ceremony, the soldier killed **10 persons in the area** whom he accused of having taken part in the assassination of members of his family. The perpetrator was arrested by the local military authorities. After having been detained at the communal cachot, the perpetrator was transferred to Kigali. The current status of the soldier is unknown.

2. Killings allegedly involving Interahamwe and/or members of the former Rwandese Armed Forces

On 16 October at noon, a 21-year-old farmer was killed by three men wearing uniforms of the former Rwandese Armed Forces in front of his house in Bisate sector, Kinigi commune, **Ruhengeri Prefecture**. On the basis of the information received from several residents, the victim was killed while the group was attempting to attack a post of the Rwandese Patriotic Army.

On 16 October 1995 at around 11:30 pm, a group of individuals armed with machetes and revolvers went to the home of the Conseiller of Mururu sector in Cyimbogo commune, **Cyangugu Prefecture**. One of the five men threw a grenade into the house, killing the conseiller and one of his children instantly. Two other children were critically wounded. According to a credible witness interviewed by human rights field officers, this attack was conducted by members of *Interahamwe* militias, one of whom was a neighbour of the victim. The day after the incident, local authorities apprehended and interrogated the mothers of three of the individuals presumed to be implicated in the killings. The women, who were accused of having provided shelter to the militia members, were detained at the brigade in Kamembe commune. The motives for this attack, however, remain unknown.

3. Killings allegedly involving individuals wearing uniforms

On 25 October 1995, at 11:00 pm, a group of men in uniform came to the home of a farmer, in Kanombe commune, **Kigali Rural Prefecture**. After indicating that they were in charge of security within the sector, the man opened the door. The members of his family were immediately surrounded by the armed men. While some of them carried the farmer outside the house, the others attacked his wife and children with machetes and sticks. Four persons, including three children under 8 years old, were killed. Meanwhile, the man was taken by the group to the home of a neighbour, a 47-year-old farmer. After the latter had opened his door, the group proceeded to kill the five members of this family and the man who had been taken to the house. Alerted by

the cries, a neighbour ran to the sector councillor in order to inform him. The two men first decided to go to the place but changed their minds once they heard gunshots not far from the houses of the victims. It was not until the next morning that 10 mutilated bodies were discovered. The Bourgmestre and several gendarmes from the Remera and Kabuga brigades went to the sites of the incident. An investigation into the assassinations has been initiated.

4. Popular justice/killings allegedly involving survivors of the genocide

In Kiziba cellule, Rubazo sector, Gitesi commune in **Kibuye Prefecture**, a resident was killed on 28 October 1995 by three individuals identified as survivors of the genocide. These genocide survivors, whose names have not been disclosed, had accused the man of being a member of the *Interahamwe* militias and of having participated in the genocide. The group beat the victim, who later died from his wounds. The sector councillor and the military authorities went to the site of the incident and conducted an investigation, following which three genocide survivors were arrested and detained in the military cachot of Karongi situated in an old Electrogaz facility.

During the night of 11 to 12 October 1995, two individuals accused of theft were lynched by residents of Tambwe commune, **Gitarama Prefecture**. The double killing was confirmed by the assistant Bourgmestre of the commune. No arrests have been made in connection with the incident.

5. Deaths in or after detention

On the morning of 20 October 1995, a man was arrested by the Councillor of Kabwende sector and two public officials in Kabwende, Kinigi commune, **Ruhengeri Prefecture**. He was accused of illegal possession of arms. The man was taken to the Minagri military camp. Upon arrival, a soldier asked him to reveal the identity of other residents in the region who possessed firearms. The man provided several names. He was then taken into the camp. Later, the official returned, accompanied by another man who had been identified by the first. After interrogating the second man, the soldier demanded that he speak again with the first. When he was led into the room, he collapsed in pain. Questioned about the circumstances under which he was injured, the man indicated that he had been beaten by soldiers. The two men were released at 12:30 pm. At the gate of the camp, the injured man complained of multiple pains. The next morning at 7:00 am, he died at the home of a close relative.

On 22 October 1995, around 2:00 pm, a 64-year-old retired postal worker, was arrested on a public road in Gasura sector, Gitesi commune, **Kibuye Prefecture**, by soldiers as he returned home from a church service. His nephew, an employee of Rwandatel, was also arrested. Accused of harbouring *Interahamwe*, the two men were conducted to Gitesi cachot. The next morning, a soldier came to find the wife of the retiree at his home and conducted her to the cachot. A soldier beat her toes, allegedly to force her to admit that one of her sons had returned from Zaire. She then confessed that two months before, one of them had come one night and left in the early hours of the following morning. At midday, the Bourgmestre and sector councillor officially informed her of the death of her husband. According to several witnesses the clothes of the retired postal worker were covered with blood and a number of wounds were visible on his head. The widow of the deceased indicated that her husband had been in excellent health before his detention.

HRFOR received reports of three additional cases of death in detention or following detention in communal cachots of Gisenyi, Gitarama and Kibuye Prefectures. Apart from these deaths in detention, which appeared to follow cruel, inhuman or degrading treatment of the victims, six

other detainees died following illnesses: four in Kibuye Central Prison, and two in Gitarama Central Prison.

6. Other killings

On 21 October 1995 during the night, a man was killed with machetes by a group of unidentified individuals in Buremera sector, Nyamagabe commune, **Gikongoro Prefecture**. Several other residents in the area were attacked during the same night by members of this group. The motive for these attacks could not be established.

B. Right to the integrity and security of the person

1. Disappearances and abductions

Eighteen cases of disappearances and abductions were reported to human rights field officers in October 1995. These disappearances or abductions took place in the course of 10 specific incidents. Amongst the cases reported, 13 were perpetrated in October and five in the two preceding months (August and September). Those which took place in October were recorded in Gisenyi, Kibuye and Ruhengeri Prefectures.

Following investigations by human rights field officers and on the basis of testimonies received, HRFOR has been able to establish the identity of the perpetrators responsible for some of the acts in question. State agents allegedly were implicated in 13 of the 18 cases of persons reported missing. HRFOR received information indicating that *Interahamwe* militiamen and members of the former Rwandese Armed Forces abducted two persons. In the other cases, the identity of the perpetrators remained unknown.

According to information gathered by HRFOR, the victims were reported missing following two types of circumstances: In the first case, the victims disappeared after having been arrested and/or detained. In the second, victims were abducted. In certain cases reported to HRFOR, it was not possible to establish the exact circumstances of the abduction. In half of the cases reported, the victims disappeared following arrest, detention, or transfer from one centre of detention to another.

According to reports received by HRFOR, the victims frequently disappeared in groups. The victims included civilians suspected of being members of *Interahamwe* militias, and returnees.

Despite efforts by relatives of the victims, by human rights field officers, and sometimes by the authorities to locate the whereabouts of the victims, principally in hospitals and centres of detention, the fate of none of the victims could be established. None of them has reappeared. The search for those who disappeared, and the determination of their fate is long and complex, and rendered all the more difficult in a country where detainees are not always properly registered, and where large numbers of persons do not reside in their home communes (see Annex 2).

The summary of cases mentioned below are presented as illustrations. They do not represent all the cases reported to HRFOR.

On 25 October at around 7:00 pm in the evening, a teacher and a second man were abducted by a group of about twenty men in uniform, in Kanombe commune, **Kigali Rural Prefecture**. The two men were harassed and beaten. Whilst the second man managed to escape, the teacher was carried off by the group to an isolated path leading to the Nyabarongo river. His bloodstained

shirt allegedly was discovered not far from the river. Initial enquiries suggest that the teacher was killed, although his body has not been recovered. Neither the motive for the attack nor the identity of the assailants are known. The day after this disappearance, the Bourgmestre and the gendarmerie began an enquiry. The investigations have not yielded any results to date. In the course of the same evening as the incident, ten residents were assassinated in the same commune by a group of 20 men wearing uniforms (see *Right to life, Killings allegedly involving individuals wearing uniforms*).

On 17 October 1995, in Rukavu commune, **Gisenyi Prefecture**, soldiers of the Rwandese Patriotic Army arrested **six persons** on grounds of membership in *Interahamwe* militias who had infiltrated the country. The six were taken to the detention centre at the Ecole Technique a Gisenyi (ETAG), where they were imprisoned. Two days later, on 19 October, another man was captured by the Rwandese Patriotic Army in Gishwati forest. Allegedly, he admitted to having assisted 30 persons to infiltrate into Rwanda. He also was taken to the ETAG. On 24 October, the seven detainees left the ETAG escorted by a lieutenant of the Rwandese Patriotic Army. Since that date, they have not been seen again. HRFOR was informed that one of the infiltrators allegedly knew the identity of the assassins of the Bourgmestre of Kayove, killed on 27 September 1995.

Four weeks before this apparent transfer, a retired captain of the former Rwandese Armed Forces, originally from the same commune as the former President Juvenal HABYARIMANA, was detained at the ETAG following expulsion from Zaire on 19 August, and his arrest on the same date. He was transferred on 26 September 1995 from ETAG to another detention centre allegedly located in Kigali. The former soldier was escorted by a lieutenant whose identity was communicated to HRFOR. According to information received by human rights field officers, the retired captain had indicated clearly since the beginning of his detention that he would not integrate into the Rwandese Patriotic Army and that he wanted to return to civil life. Despite attempts undertaken to discover his whereabouts, his fate remains unknown to date.

On 13 October 1995, a 10-year-old girl, was abducted by a group of unidentified individuals as she attended mass. The incident took place in Kayumba, Kanzenze commune, **Kanazi Sub-Prefecture**. The reasons for this abduction, as well as the fate of the young girl, remain unknown.

At the beginning of October 1995, two returnees originally from Twumba sector, Gisovu commune, **Kibuye Prefecture**, were, according to testimony received from residents of the area, arrested by soldiers of the Rwandese Patriotic Army. Accused of having participated in the genocide, the two men were brought to a neighbouring forest. Several residents testified that the two men were killed. Their bodies, however, have never been discovered.

2. Cruel, inhuman or degrading treatment

As in previous months, numerous cases of cruel, inhuman or degrading treatment have been reported to HRFOR. According to reports received by human rights field officers, these violations of the right to physical integrity were committed mostly in detention centres.

With the exception of Ruhengeri Prefecture, cases of ill-treatment have been reported to HRFOR in all prefectures in which HRFOR has a field office. Ill-treatment of detainees is a regular practice in Kibuye, Butare, Cyangugu and Gikongoro Prefectures.

Cruel, inhuman or degrading treatment is inflicted upon detainees at the time of their arrest, during the course of their detention, and sometimes during their transfer to another detention

centre. Although the great majority of ill-treatment has taken place in communal cachots, HRFOR has also received reports of ill-treatment having taken place in Nianza Central Prison.

Ill-treatment is administered to detainees indiscriminately. No category of detainees appears to have been immune from ill-treatment. The cases reported included cases of ill-treatment of minors, women and elderly persons. However, according to reports received by HRFOR, detainees suspected of genocide were targeted more frequently.

Beatings remain the most frequent form of ill-treatment according to reports received by HRFOR. Detainees most often are beaten with batons, whipped, kicked and punched.

The intensity of some incidents of ill-treatment resulted in the deaths of five detainees during the month of October. (*see Right to life, Deaths in or after detention*)

The majority of cases of cruel, inhuman or degrading treatment reported to HRFOR were committed in detention centres. HRFOR has received reports of soldiers of the Rwandese Patriotic Army and communal police having participated in incidents of ill-treatment. In Mabanza communal cachot (Kibuye), however, several detainees reported having been beaten by the assistant Bourgmestre in charge of judicial affairs. In the same prefecture, human rights field officers received corroborated reports that detainees in various communes have been beaten during interrogation. Moreover, HRFOR has received reports that in some communes, such as Kigembe commune (Butare), detainees were beaten by civilians, mostly genocide survivors, who were given access to detention centres by the guards.

The following examples constitute some of the illustrative cases of cruel, inhuman or degrading treatment reported to human rights field officers during the month of October.

A 60-year old woman accused of participation in the genocide had been arrested in October and then detained in the Gisovu communal cachot, **Kibuye Prefecture**. She showed human rights field officers numerous contusions on her shoulders and back and both her thumbs were very swollen. The elderly woman stated she had been beaten by the communal police officers who arrested her.

On 13 October 1995, after a transfer of detainees from Rusatira communal cachot, **Butare Prefecture**, to Nianza Central Prison, some detainees showed human rights field officers bruises from recent beatings. Blood was running from the face of one of these detainees. HRFOR immediately informed the gendarme in charge of security of detainees during the transfer. The gendarme informed the Nyabisindu Gendarmerie Commander who, in the presence of human rights field officers, stated that an inquiry into the matter would be opened. One week later, the Gendarmerie Commander in a meeting with human rights field officers indicated that disciplinary measures were being taken against those soldiers implicated in the ill-treatment. The type of disciplinary measures as well as the number of soldiers implicated were not revealed.

A 48-years-old farmer detained at Kibuye Central Prison, was admitted to the prisoner section of the Kibuye hospital to be treated for a sprained left arm, a dislocated clavicle and multiple haematoma. The man was arrested on 3 October by a soldier of the Rwandese Patriotic Army without an arrest warrant in Rwamatamu commune, **Kibuye Prefecture**, his commune of origin. The soldier accused the man of having participated in the genocide. Detained in the communal cachot for two days, he was subsequently transferred, along with other detainees, on 5 October to Kibuye Central Prison. According to reports received by HRFOR, all 51 detainees transferred on 5 October had been whipped and beaten at Ngoma Military Camp. Allegedly, the victim's injuries were inflicted by soldiers of the Rwandese Patriotic Army.

In Kivumu communal cachot, **Kibuye Prefecture**, human rights field officers noted that a minor aged 13 suffered injury to one eye and to his left hand. The minor, who had been arrested the day before, stated that his injuries were inflicted during and after his arrest. Human rights field officers also noted, during the course of a visit to Gitesi communal cachot, **Kibuye Prefecture**, that another **minor** who had been arrested and detained the day before the visit, was beaten so severely that he was unable to stand. These two adolescents, accused of theft, had not had their injuries treated.

C. Arrests and detention

Arrests continued during the month of October. Dozens of men, women, and some minors were arrested and detained, throughout the country. The continuation of arrests is evident on one hand by the numerous cases reported to HRFOR, and on the other hand by reference to detention centre registries.

Arrests were noted in all prefectures in which human rights field officers are deployed. It would seem, however, that the greatest number of arrests were conducted in Cyangugu, Butare, Gitarama and Kibuye Prefectures, as well as in Kanazi Sub-Prefecture. In contrast, during the same period, HRFOR received relatively few reports of arrests in Ruhengeri Prefecture.

In numerous instances, these arrests were not conducted according to arrest procedures laid down by law. Moreover, it appears that very often arrests were not conducted by the legally competent authorities, such as Inspectors and Officers of the Judicial Police.

In addition to cases involving the arrest of ordinary citizens, HRFOR received reports of arrests of civil servants, teachers, returnees, and members of the former Rwandese Government Forces, as well as local employees of international organizations.

As in the past, the great majority of persons arrested were accused of having participated in the genocide. Some were suspected of having been directly involved in the massacres, while others were suspected of aiding killers by isolating targets. Most returnees arrested were accused of genocide. Moreover, HRFOR has received reports that dozens of people were arrested as a result of their affiliation with particular religious congregations or prayer groups. Such cases were most notable in Gitarama and Kibuye Prefectures. The nature of the charges against these persons differed according to prefecture and commune. Some were accused of "tapage nocturne" (causing a disturbance by drumming at night), others of involvement with clandestine associations, and others of having caused a public disturbance. Human rights field officers also received reports of individuals arrested for allegedly having posed a threat to internal security of the State.

Arrests, according to reports received by HRFOR, frequently continued to be conducted on the basis of mere denunciation. With the exception of some cases, very few persons arrested were presented with an arrest warrant at the time of arrest. HRFOR was informed that in several communes, arrest warrants were presented after the arrest. Arrests were, for the most part, conducted by soldiers of the Rwandese Patriotic Army, communal police, and bourgmestres, although it appears that the Inspectors of the Judicial Police have begun to play a more effective role. In certain communes, human rights field officers received corroborating testimony indicating that arrests were being conducted by citizens who had no authority to do so.

The cases below illustrate the kind of cases brought to the attention of HRFOR during the month of October.

During the afternoon of 30 September an interpreter for the UNAMIR military observers, was arrested in Kibuye town by soldiers of the Rwandese Patriotic Army without a warrant. Accused of the crime of genocide, he was detained in a military detention centre located at the former offices of Sonarwa. According to several reports, the interpreter, a former professor, felt threatened for several weeks, and feared he would be arrested. During the month of September, the interpreter had assisted members of UNAMIR in an inquiry into the death of an active member of MDR (Mouvement démocratique républicain) political party, and into several threats made against other members of this party in Bwakira commune. On 1 November, he was transferred to Kibuye Central Prison without having been interrogated by the Parquet.

On 3 October, an administrative assistant in the office of the United Nations High Commissioner for Refugees in Kigali, was arrested at Grégoire Kayibanda airport in Kigali, while waiting for a flight to attend a conference organised by UNHCR in Nairobi. Accused of having publicly tarnished the image of her country, the young woman was led to the Remera brigade and was later detained at Kigali Central Prison. The father of the woman, at present a refugee in Zaire, was a colonel in the former Rwandese Government Forces. Her husband was forced to leave the country after having been detained.

On 4 October, in Bulinga commune, Gitarama Prefecture, 46 members of the Seventh-Day Adventist Church were arrested without a warrant. Among those arrested were 13 minors. Accused of disturbing public order, the followers of this religious order were detained at the Bulinga communal cachot. According to local authorities, the individuals were caught *in flagranti delicto*. HRFOR learned these persons were released several days later. Human rights field officers were informed that several dozen members of this religious order had also been arrested in Rutobwe and Nyakabanda communes (Gitarama).

On 11 October, four teachers at the Tambwe Hanika Technical School, Gitarama Prefecture, were arrested by members of the Rwandese Patriotic Army. No warrant had been presented at the time of arrest. Accused of violating internal security, the four teachers were taken to Tambwe and Kigoma communal cachots. The Director of the school and the Deputy Prosecutor indicated that these persons were arrested because they were suspected of having organized secret meetings intended to destabilise the country. On 13 October, human rights field officers questioned the four detainees, who denied the accusations. They explained they had been arrested because there had been a dispute between the Director of the school and the teachers. According to teachers, they had been suspected by the school administration of organising meetings to incite students to revolt.

V. PRISONS AND DETENTION CENTRES

HRFOR continued to pay particular attention to the serious human rights situation in the country's detention centres. The work of human rights field officers in this area, however, was inhibited because access to some detention centres was limited or denied in several prefectures. Human rights field officers were denied entrance to Kibungo, Nsinda, Rilima and Kigali prisons. In several communal cachots, they were unable to conduct private interviews with detainees. Access to military detention centres very often was denied.

During the month of October, three rehabilitated prison sites, with a total detainee capacity of 9,000, were inaugurated by the Government of Rwanda in the presence of representatives of United Nations organizations, of the International Committee of the Red Cross and others. The sites inaugurated were ONATRACOM (Kigali), Nianza (Butare) and Nsinda (Kibungo). The opening of these sites should allow at least the partial alleviation of the problem of overcrowding in other detention centres.

The increased capacity of prisons, having risen from 12,000 to 21,000, however, will not be sufficient to improve substantially prison conditions.

A. The population of detainees

At the end of October, according to information received by HRFOR, nearly 58,000 persons were detained in detention centres throughout Rwanda. Approximately 43,000 individuals were detained in Rwanda's central prisons and 15,000 in communal detention centres. Among those detained in the central prisons were approximately 1,300 women, and slightly more than 800 minors. Nearly 240 infants were also present with their mothers. The centre for reeducation at Gitagata (Kigali Rural), with a capacity of 200, held 150 minors, all between the ages of 6 and 15 years. All of these youths were accused of genocide.

Compared with figures collected by HRFOR at the end of September, it appears the detention centre population grew by a little more than 4,000 detainees during the month of October. This increase can be explained largely by an increase of detainees in the communal cachots of certain prefectures (Gitarama for instance). The detainee population of the 13 central prisons increased mainly as a result of transfers from communal cachots. Between 11 and 30 October, more than 800 detainees detained in 15 communal cachots in Butare Prefecture were transferred to the newly rehabilitated facilities at Nianza Prison (Butare). During the same period, 237 detainees originating from four communal cachots were transferred to Kibuye Central Prison.

Although the detainee population grew in certain central prisons (Kigali, Kibuye, Gisenyi and Byumba), the population has stabilized in others. This is notably the case in the central prisons of Butare, Gitarama, Ruhengeri, Cyangugu and Nsinda (see Annexes 3, 4 and 5).

According to corroborated reports, the total number of detainees could in fact be greater than 58,000, in that the estimation of HRFOR does not include those detainees held in military camps and detention centres, and those held in secret or unofficial detention centres.

B. Conditions of detention

Conditions of detention in the prisons and communal cachots continued to be characterised by overcrowding and extremely poor hygiene. Whereas in central prisons detainees were regularly fed and were rarely subject to ill-treatment, the situation in numerous cachots was sometimes critical. Several cases of malnutrition and ill-treatment in communal cachots were reported.

1. Overcrowding

The population of detainees in nearly all detention centres exceeded their normal capacity. For instance, the Gitarama Central Prison held more than eight times its original capacity, and Kigali Central Prison held more than five times its original capacity. In certain prisons, detainees were forced to remain sitting or even standing for lack of space. In Kibuye Central Prison, there are three detainees for every square metre of space. In the same way, communal cachots were affected by overcrowding, in particular Gikomero (Kigali Rural), Muhazi (Kibungo) and Runyinya (Butare).

2. Hygiene and nutrition

The overcrowding has resulted in extremely poor hygiene conditions. Aside from the fact that most detention centres lacked adequate toilet facilities, detainees at many detention centres cannot bathe on a regular basis, such as in the communal cachots of Gishoma (Cyangugu) and Kivu (Gikongoro).

The number of ill detainees remained high. For instance, more than 400 detainees were treated for illnesses during the month of October at Gitarama Central Prison. The majority were treated for open wounds. Malaria, diarrhoea and dysentery constituted the most frequently reported diseases. Even though sick detainees were increasingly separated from other detainees by the civil authorities, the presence of detainees with contagious diseases could prove to be very dangerous for the detainee population in general. Due to lack of adequate care, and despite efforts by prison authorities to improve conditions, detainees continued to die from illness in Rwanda's detention centres. HRFOR has received reports of six detainees who died as a result of illness during the month of October.

Although detainees in the central prisons receive food (corn, manioc, protein biscuits) mainly from the International Committee of the Red Cross, detainees in communal cachots generally depend on their relatives to supply food. Some detainees however do not receive any food. Their survival depends on sharing with other detainees. HRFOR has received several reports indicating that in certain cachots, food brought by families of detainees has been partially or entirely confiscated by the guards. A significant number of cases of malnutrition have been reported to human rights field officers, notably in the prefectures of Kibungo (Rukondo Commune), Gitarama (Murama Commune) and Kigali Rural (Bicumbi Commune).

3. Ill-treatment

Incidents of cruel, inhuman or degrading treatment were most commonly reported to have taken place in detention centres other than prisons. Human rights field officers have received reports that detainees were regularly beaten in several detention centres, for instance, in the communal cachots of Mabanza, Gisovu and Gishyita (Kibuye), and Kigembe (Butare). In contrast, human rights field officers have noted that ill-treatment no longer took place in Mukingi communal cachot (Gitarama), after the soldiers who guarded the cachot were changed. Human rights field officers, however, have received reports that ill-treatment took place in Nianza Central Prison (Butare). Five detainees were reported to have died during October after having been beaten (see *Right to life, Deaths in or after detention*).

4. Other aspects of conditions of detention

In all centres of detention visited by HRFOR, female detainees were separated from male detainees. Although separation by gender was generally respected, detainees accused of genocide were rarely separated from those accused of common law offenses. Except at the central prisons, minors generally were not separated from adults. In some detention centres, HRFOR noted that certain well known persons were deliberately separated from the rest of the detainees. Taba communal cachot (Gitarama) is one example of this. The right to visit detainees was not always accorded to families and, at certain detention centres, detainees were not granted the right to speak with their relatives.

VI. HUMAN RIGHTS EDUCATION AND PROMOTION

HRFOR continued to participate in the work of the subcommissions on the reform of national legislation in relation to women's and children's rights at the Ministry of Family and Promotion of Women. In a first stage of this review, various discriminatory provisions in existing Rwandese law were examined.

Human rights field officers contributed to the training of personnel at the centre for reeducation at Gitagata, **Kigali Rural Prefecture**. The centre quarters 150 minors accused of participation in the genocide. Human rights field officers gave lectures on international human rights law with a specific focus on the rights and protection of children.

Human rights field officers in **Ruhengeri** continued to give human rights lectures at the National Gendarmerie Training School. More than 500 students in all ten classes at the Gendarmerie School attended the programme.

In **Kibuye**, human rights field officers gave a lecture on women's rights at a meeting organised by the representative of the Ministry of Family and Promotion of Women and initiated a programme of human rights education at orphanages in the prefecture. HRFOR also held a meeting in Gisovu commune, **Kibuye Prefecture**, to raise public awareness in human rights matters, particularly with regard to the rights of refugees and the rights of women. Human rights field officers accompanied the Bourgmestre of Ngenda, **Kanazi Sub-Prefecture**, and took part in meetings on the sectoral level to sensitize the local population on human rights matters. HRFOR gave a lecture on human rights at the school for social work at Karubabda, **Butare Prefecture**. In **Kibungo**, human rights field officers met with several representatives of local women's associations to discuss concrete ways of supporting their projects.

In **Gisenyi**, particular attention was devoted to Kanama commune following the incidents in September. Human rights field officers regularly visited the commune and held public lectures on human rights to contribute to re-establishing confidence between the local population and the authorities. The local population, councillors and members of the Rwandese Patriotic Army attended these meetings.

HRFOR continued to work with the Government on the elaboration of several projects. HRFOR is a member of the committee on women at the National University in Butare that is in the process of elaborating a plan of action to promote women's rights in Butare Prefecture. HRFOR also collaborated with both the Ministry of Family and Promotion of Women and the Ministry of Justice on a project to train 50 female legal and social assistants who will collect information on victims of violence throughout the country and provide assistance to them. Moreover, HRFOR was asked to assist an inter-ministerial committee, set up to prepare a plan of action for the human rights training of State employees at the national as well as the prefectural level.

VII. RETURNEES

A. Number of returnees

According to the United Nations High Commissioner for Refugees (UNHCR), slightly more than 13,000 refugees returned to Rwanda during the course of October. This number has significantly decreased in comparison with the more than 20,000 refugees who, according to UNHCR, returned during the month of September.

Among these returnees, approximately 9,000 came from Zaire, 2,000 from Tanzania, 1,000 from Uganda, and 1,000 from Burundi. The number of returnees coming from Burundi has diminished considerably (see Annex 6).

Four-fifths of the returnees who arrived from Zaire came from camps at Goma, and crossed the border into Gisenyi Prefecture. The remaining one-fifth crossed the border into Cyangugu Prefecture. This constituted a reversal of what was taking place at the beginning of September, at which time a greater number were crossing into Cyangugu Prefecture than into Gisenyi Prefecture.

As in September, returnees coming from Zaire, Tanzania and Burundi during October entered Rwanda under the voluntary repatriation programme organized by UNHCR. The majority of these returnees were women and infants who had fled Rwanda in 1994. Very few of those repatriated from Zaire, Tanzania and Burundi were refugees who fled Rwanda in 1959. Returnees who arrived from Uganda had come spontaneously, and were, for the most part, refugees who fled Rwanda in 1959.

B. Reintegration of returnees in the prefectures

Of the approximately 13,000 refugees who returned to Rwanda during the month of October, nearly 5,000 originated from Ruhengeri Prefecture, and more than half of these returned to Kinigi and Butaro communes. Other returnees arrived in Kibungo Prefecture (2,000), Kigali Ville and Rural (1,500) and Gitarama Prefecture (294). The specific number of returnees arriving in other prefectures was not available.

During the month of October, HRFOR continued its visits to communes to evaluate the overall reception and reintegration of returnees into their respective sectors and cells. In communes visited during the month of October, human rights field officers noted that the majority of returnees had been well received not only by local civilian and military authorities, but also by members of their communities. Most returnees were able to take possession of their property. However, for those whose homes and land were occupied, they temporarily moved in with other family members, with neighbours, or into public buildings (schools, markets) specifically set aside to accommodate returnees. In a large number of communes, authorities have agreed on a time period of several weeks to restore possession of homes to the original owners who have returned. Some property disputes have been reported, however, during the month of October, notably in Kibungo Prefecture. These disputes generally have been resolved at the local level.

Returnees continued to face however, a number of problems. Many returnees' houses were destroyed or looted during the 1994 armed conflict. Moreover, many returnees suffered food shortages. Although certain returnees have been able to recommence agricultural work on their land, many have been unable to do so due to lack of tools or seeds. Programmes created to assist returnees in this regard continued to be limited in comparison to the problem. A massive influx of returnees would create serious problems in certain communes, notably with regard to property and housing issues.

C. Arrests of returnees

According to reports received by HRFOR, 60 returning refugees were known to have been arrested and detained upon their return to Rwanda. Considering the total number of returnees and the overall number of arrest made throughout the country during the reporting period, the number of returnees arrested was relatively small, as in previous months. In addition to two

cases of disappearance of returnees, HRFOR received information concerning arrests outside proper legal procedures (see *Right to integrity and security of the person*).

Arrests took place most often at the moment of arrival within the returnees' communes of origin. These arrests were often conducted by soldiers following public denunciations. Of the 60 returnees arrested, 56 were accused of having participated in the genocide. All the refugees arrested were men. Fourteen were released some days after arrest on grounds of insufficient evidence against them. The detainees included seven alleged members of the former Rwandese Armed Forces.

Among the 60 cases of arrest of returnees reported to HRFOR, 33 occurred in Butare Prefecture. In Ruhengeri Prefecture, by contrast, only one case of arrest was reported to human rights field officers following the return of 5,000 refugees. Arrests were noted in the following prefectures: Gisenyi (13), Kibungo (11), Gitarama (6), and Kibuye (6). According to information received by HRFOR, no wave of arrests of returnees has taken place. The actual number of arrested returnees could be higher, taking into account the fact that some of these persons, were not immediately arrested upon arrival, but only at a later stage of their return. It is also difficult to identify returnees among the prison population.

VIII. SECURITY SITUATION

A. Reported incidents involving former Rwandese Armed Forces or *Interahamwe*

During the month of October, HRFOR received 38 reports of incidents with suspected involvement of former Rwandese Armed Forces (ex-FAR) or *Interahamwe* militias. Nearly all reported incidents occurred in the Western prefectures bordering Zaire, with 14 incidents reported from Cyangugu Prefecture, and 11 from Gisenyi Prefecture. The trend of an increased number of incursions from Zaire into Ruhengeri Prefecture continued. Four other incidents reportedly occurred in Nyungwe and Gishwati forests. Reports have been received of secret militia training camps in these forests. In general, a continued increase of reported incidents were observed. Of even more concern was the increasing seriousness of the attacks (see Annexes 7 and 8).

Eastern border areas were calm throughout the reporting period. In contrast with the previous month, no reports of incursions from Tanzania were received. The Rwandese Patriotic Army (RPA) increased its presence along the more porous areas of the frontier with Tanzania where most incidents of incursions were reported. This appeared to contribute to a stabilisation of the security situation in the area.

A total of 15 persons were said to have been killed in the reported incidents, including 9 civilians, six alleged ex-FAR soldiers and three RPA soldiers. Twenty six persons were reported to have been injured, including 24 civilians and two RPA soldiers, and eight ex-FAR soldiers were captured by the RPA. The majority of the victims were civilians. Personnel of international organisations and NGOs were not affected by any of the incidents.

A number of tragic mine incidents occurred, most of them in the last week of the month. In the recent past, most mine incidents were caused by old mines left over from the armed conflict in 1994. Reported mine incidents in October, however, almost invariably involved freshly laid mines. The frequency of reported mine incidents also increased considerably in October. Eight mine blasts were reported to have killed five people, including two RPA soldiers, and injured 14 persons, including one RPA soldier. The majority of the victims were civilians. All eight mine incidents occurred in Western border regions, seven of them in the second half of the month.

The incidents reported during October also included 12 gun fights between the RPA and the ex-FAR, in which six ex-FAR and three RPA soldiers were said to have been killed. There were four acts of sabotage reported during the month, two in Cyangugu and two in Ruhengeri. In three incidents, electric power pylons were targeted, while in the fourth a bridge was targeted.

B. Security of HRFOR personnel

The increased number of mine incidents and of engagements between the Rwandese Patriotic Army and the former Rwandese Armed Forces, *Interahamwe* militias and bandits, particularly in the western regions of the country, remain of concern for the security of HRFOR personnel. Human rights field officers have never been directly targeted by infiltrators. The risk, however, that HRFOR personnel might become unintended victims of such incidents has increased, particularly due to their field deployment and the need to travel on infrequently used roads in isolated areas. Human rights field officers had to suspend their visits to certain regions in Gisenyi, Ruhengeri, Kibuye and Cyangugu Prefectures.

A second risk to HRFOR personnel is posed by armed robberies in Kigali. On 30 October 1995 at around 9.00 pm, a human rights field officer was attacked and robbed at gunpoint in front of his house in Kigali. He had returned by car to his residence. When he stepped out of his car to close the gate behind the car, he was assaulted by two armed intruders. They hit him and knocked him down. Then they robbed the car and drove off. The field officer suffered minor injuries on both arms.

In a second incident not involving HRFOR personnel, on 18 October at around 9.00 pm, an Italian national working for the NGO Terre des Hommes, was robbed at gunpoint, shot at and wounded in the parking lot of the Hotel Méridien in Kigali. The victim was attacked by an unknown individual when the victim returned to his car with a friend. The perpetrator threatened the victim with a gun and asked for the keys to the car. The victim offered money to the robber. The perpetrator took the money and shot the victim in his right arm.

IX. STATUS OF DEPLOYMENT

As of 31 October, there were 126 members of the HRFOR, comprising the following: 39 fixed-term UN staff, 64 UN Volunteers, 17 human rights field officers contributed to the HRFOR by the European Union, and six administrative staff on special service agreements. Of these, 74 were deployed in 10 field offices throughout the country. Sixteen administrative staff and the remaining 36 members of the HRFOR were deployed in the different units at the headquarters in Kigali.

The HRFOR currently has 10 field offices: 9 prefectural headquarters (Butare, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali and Ruhengeri) and one additional office covering Kanazi Sub-Prefecture. In addition, there is a sub-office at Nyamesheke in Cyangugu Prefecture.

HUMAN RIGHTS FIELD OPERATION IN RWANDA
STATEMENT OF PLEDGES AND CONTRIBUTIONS AS AT 12 December 1995

Countries	Currency and Amount	Equivalent US\$	Payment effected	Other services provided+ Remarks
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1- GENERAL PLEDGES AND CONTRIBUTIONS

Australia	A\$ 100,000 A\$ 200,000	63,500 146,000	US\$ 73,690.00 US\$ 145,800.00	
Austria	Sh 500,000	45,000	US\$ 46,843.97	
Belgium	FB 15,000,000	465,800	US\$ 523,098.52	
Canada	CDN\$ 100,000	68,376	US\$ 66,500.00	
Denmark	US\$ 100,000	100,000	US\$ 100,000.00	
Finland	FIM 400,000	75,600	US\$ 83,267.41	1 Investigator (1 1/2 month)
France	FF 1,200,000	233,100	US\$ 190,476.19 US\$ 40,899.80	
Germany	DM 314,704 DM 500,000	201,700 352,112	US\$ 119,949.36 US\$ 93,126.28	Office building in Kigali Contribution pending
Ireland	Irish £ 50,000 " £ 50,000	79,500 76,923	US\$ 79,547.71 US\$ 80,930.00	
Israel	US\$ 10,000	10,000	US\$ 10,000.00	
Japan	US\$ 500,000	500,000	US\$ 200,000.00 US\$ 300,000.00	
Liechtenstein	CHF 10,000	8,772	US\$ 8,771.93	
Luxembourg	Fr.L. 550,000	17,000	US\$ 16,791.67	
Netherlands	Dfl. 75,000 Dfl. 1,350,000 Dfl. 1,000,000	42,600 798,800 621,118	US\$ 44,640.00 US\$ 764,439.41	1 Prosecutor + 1 Forensic Doctor + 3 Criminal Investigators for (3 months) Contribution pending
New Zealand	NZ\$ 50,000	29,600	US\$ 29,597.74	
Norway	NOK 700,000	101,700	US\$ 105,616.55	+ 2 Procurement Experts and 2 criminal investigators for 3 months
Spain	US\$ 9,880 US\$ 208,000 US\$ 150,000	9,880 208,000 150,000	US\$ 9,880.00 - -	2 Forensic Doctors for 2 months + 1 Prosecutor for 1 month 8 UNVs for 6 months For additional UNVs
Sweden	SEK 1,000,000	129,500	US\$ 137,631.25	
Switzerland	CHF 100,000 CHF 150,000	75,758 113,636	US\$ 75,757.58 US\$ 113,636.36	+ 1 Criminal Investigator 9 months
United Kingdom	£ 250,000 £ 2,000,000	383,200 3,200,000	US\$ 383,155.00 US\$3,223,000.00	+ 4 vehicles in Kigali
United States	US\$ 750,000 US\$ 50,000 US\$ 1,000,000	750,000 50,000 1,000,000	- US\$ 50,000.00 US\$ 500,000.00	Payment made to UNDP New York for 25 UNVs for 6 months (total 750,000) - 5 Criminal Investigators (3 weeks) + Airlift to vehicles Kuwait to Kigali Balance contribution pending

OTHERS				
EUROPEAN UNION	ECU 6,060,000	7,790,884	-	Contribution consist in provision of fully equiped Officers
UNDP	US\$ 250,000	250,000	-	Recruitment of UNVs
ACCT, Paris	US\$ 180,000	180,000	US\$ 159,617.65	Balance contribution pending
OXFAM	£ 50,000	80,000	-	In kind 3 vehicles provided in Kigali
Individuals	FF 1,000 +US\$ 200	400	US\$ 395.31	
TOTAL		18,405,459	US\$ 7,776,859.69	

2 - PLEDGES AND CONTRIBUTIONS FOR TECHNICAL ASSISTANCE PROGRAMME IN RWANDA

Italy	L 2,000,000 000	123,333	US\$ 123,333.00	
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HRFOR/RPT/1/October 1995/E

ANNEX 1

**CASES OF VIOLATIONS OF THE RIGHT TO LIFE REPORTED
TO HRFOR IN OCTOBER 1995**

	Number of victims	Number of incidents
Number of confirmed cases	51	23
Victims: - men - women - children	43 5 3	
Cause of death: - fire arms - machetes, knives - cruel, inhuman or degrading treatment - undetermined	23 13 11 4	
Alleged perpetrators: - State agents / members of the RPA - Interahamwe militias / ex-FAR - individuals wearing uniforms - civilians / genocide survivors - unidentified	28 7 10 4 2	13 4 1 3 2
Prefectures: - Cyangugu - Gikongoro - Ruhengeri - Butare - Gisenyi - Kibuye - Gitarama - Kigali (Rural)	9 3 2 10 4 6 7 10	4 2 2 1 3 6 4 1
Judicial investigations: - investigations initiated - arrest of suspected perpetrators	22 8	4

Source: HRFOR/RPT/1/October 1995/E

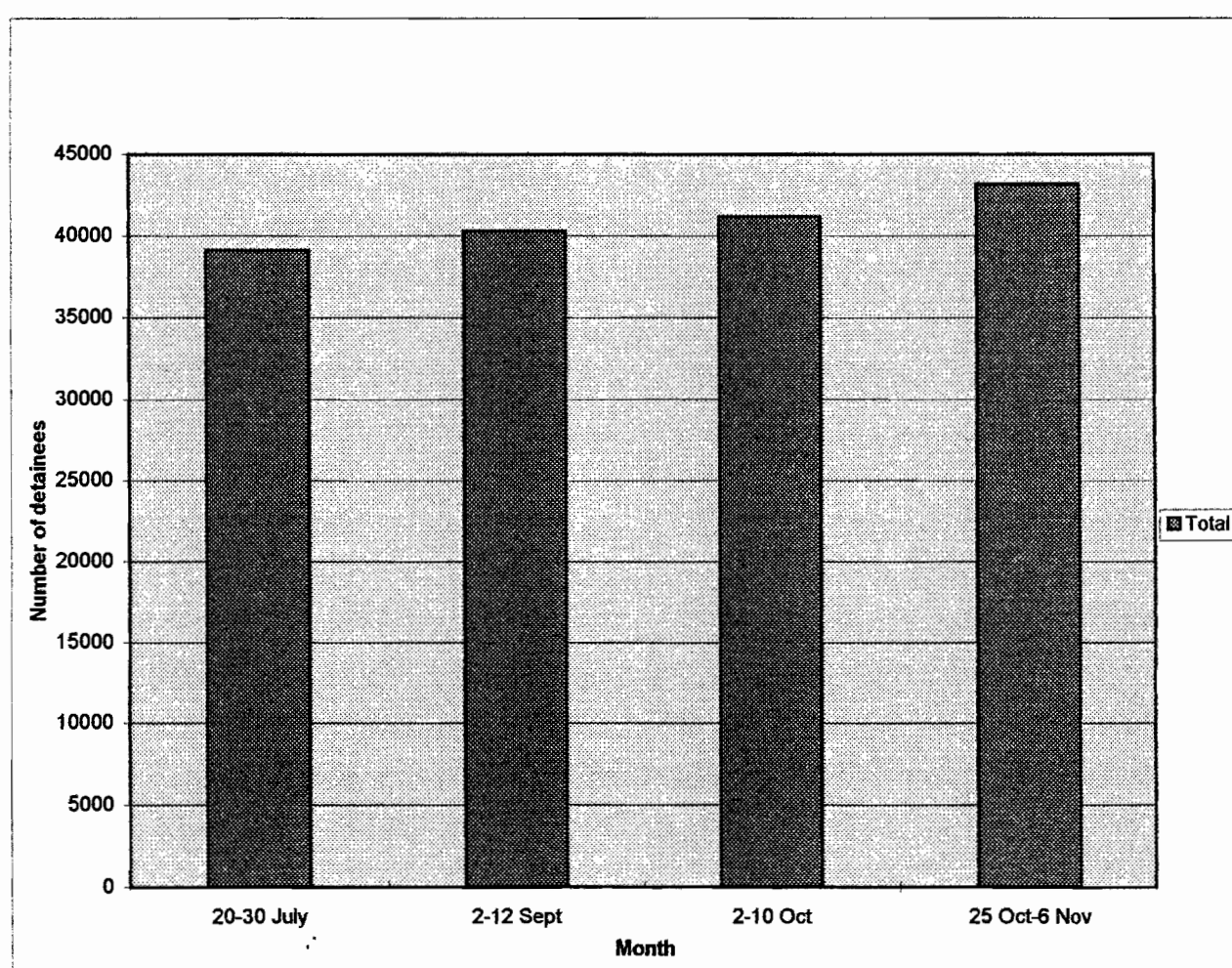
HRFOR/RPT/1/October 1995/E

ANNEX 3

TOTAL DETAINEE POPULATION IN THE 13 CENTRAL PRISONS IN RWANDA*

JULY UNTIL NOVEMBER 1995

	Prison	20-30 July	2-12 September	2-10 October	25 October- 6 November	Development in the last period
1	Butare	6610	6653	6595	6594	-1
2	Byumba	300	312	363	413	50
3	Cyangugu	2001	2053	2065	2066	1
4	Gikongoro	945	1040	1116	1138	22
5	Gisenyi	1284	1350	1388	1502	114
6	Gitarama	6424	6408	6407	6410	3
7	Kibungo	3222	3414	3497	3507	10
8	Kibuye	1758	1965	2171	2393	222
9	Kigali	9696	9982	10058	10455	397
10	Nyanza	1383	1565	1841	2717	876
11	Nsinda	943	943	941	940	-1
12	Rilima	3150	3150	3281	3515	234
13	Ruhengeri	1438	1441	1467	1517	50
	Total	39154	40276	41190	43167	



*These figures do not account for the approximately 15,000 detainees in communal detention centres.

Various sources

HRFOR/RPT/1/October 1995/E

ANNEX 4

TOTAL DETAINEE POPULATION IN THE 13 CENTRAL PRISONS IN RWANDA

30-Oct-95

	Prison	Men	Women	Minors	Total	Infants	Capacity	Date
1	Butare	6270	215	109	6594	54	1000	06-Nov-95
2	Byumba	387	17	9	413	3	500	30-Oct-95
3	Cyangugu	1999	26	41	2066	3	700	23-Oct-95
4	Gikongoro	1104	15	19	1138	4	700	27-Oct-95
5	Gisenyi	1434	27	41	1502	10	800	30-Oct-95
6	Gitarama	6130	218	62	6410	32	800	08-Nov-95
7	Kibungo	3373	72	62	3507	13	400	25-Oct-95
8	Kibuye	2307	72	14	2393	14	600	02-Nov-95
9	Kigali	9788	353	314	10455	80	2000	06-Nov-95
10	Nyanza	2514	144	59	2717	14	800	30-Oct-95
11	Nsinda	895	24	21	940	3	200	30-Oct-95
12	Rilima	3360	68	87	3515	13	1200	31-Oct-95
13	Ruhengeri	1462	25	30	1517	7	1500	30-Oct-95
	Total	41023	1276	868	43167	250	11200	

Various sources

HRFOR/RPT/1 October 1995/E

ANNEX 5

TOTAL DETAINEE POPULATION IN THE 13 CENTRAL PRISONS IN RWANDA

09-Oct-95

	Prison	Men	Women	Minors	Total	Infants	Capacity	Date
1	Butare	6277	216	102	6595	56	1000	09-Oct-95
2	Byumba	346	8	9	363	3	500	09-Oct-95
3	Cyangugu	1998	26	41	2065	4	700	02-Oct-95
4	Gikongoro	1083	14	19	1116	3	700	05-Oct-95
5	Gisenyi	1320	27	41	1388	10	800	06-Oct-95
6	Gitarama	6128	217	62	6407	31	800	10-Oct-95
7	Kibungo	3350	85	62	3497	24	400	02-Oct-95
8	Kibuye	2096	62	13	2171	7	600	05-Oct-95
9	Kigali	9450	342	266	10058	80	2000	05-Oct-95
10	Nyanza	1696	103	42	1841	14	800	09-Oct-95
11	Nsinda	892	24	25	941	2	200	05-Oct-95
12	Rilima	3183	18	80	3281	3	1200	05-Oct-95
13	Ruhengeri	1412	25	30	1467	7	1500	06-Oct-95
	Total	39231	1167	792	41190	244	11200	

Various sources

HRFOR/RPT/1/October 1995/E

ANNEXE 6

**RETURNEES TO RWANDA
SEPTEMBER AND OCTOBER 1995**

Country of departure	September	October
Zaire:	10,635	8,623
- via Cyangugu	NA*	1,348
- via Gisenyi	NA*	7,308
Burundi:	7,773	1,012
- via Butare	NA*	512
- via Bugesera (Kigali Rural)	NA*	470
Tanzania:	984	2,069
- via Kibungo	984	2,069
Uganda:	1,076	1,315
- via Byumba	1,076	1,315
Other	0	3
Grand total	20,648	13,022

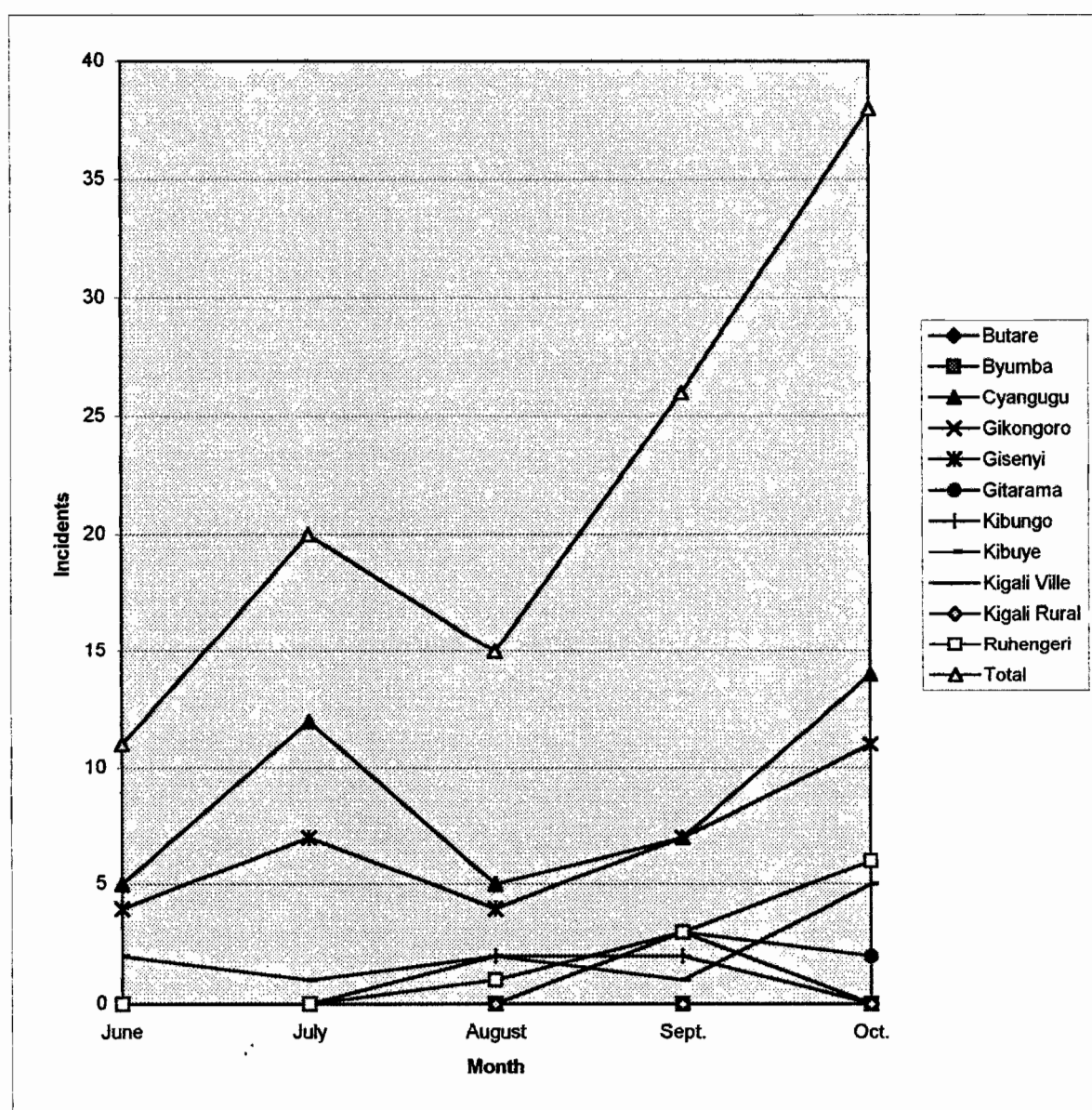
NA*: Not available

Source: United Nations High Commissioner for Refugees, Kigali, Rwanda

ANNEX 7

REPORTED INCIDENTS INVOLVING EX-FAR OR INTERAHAMWE

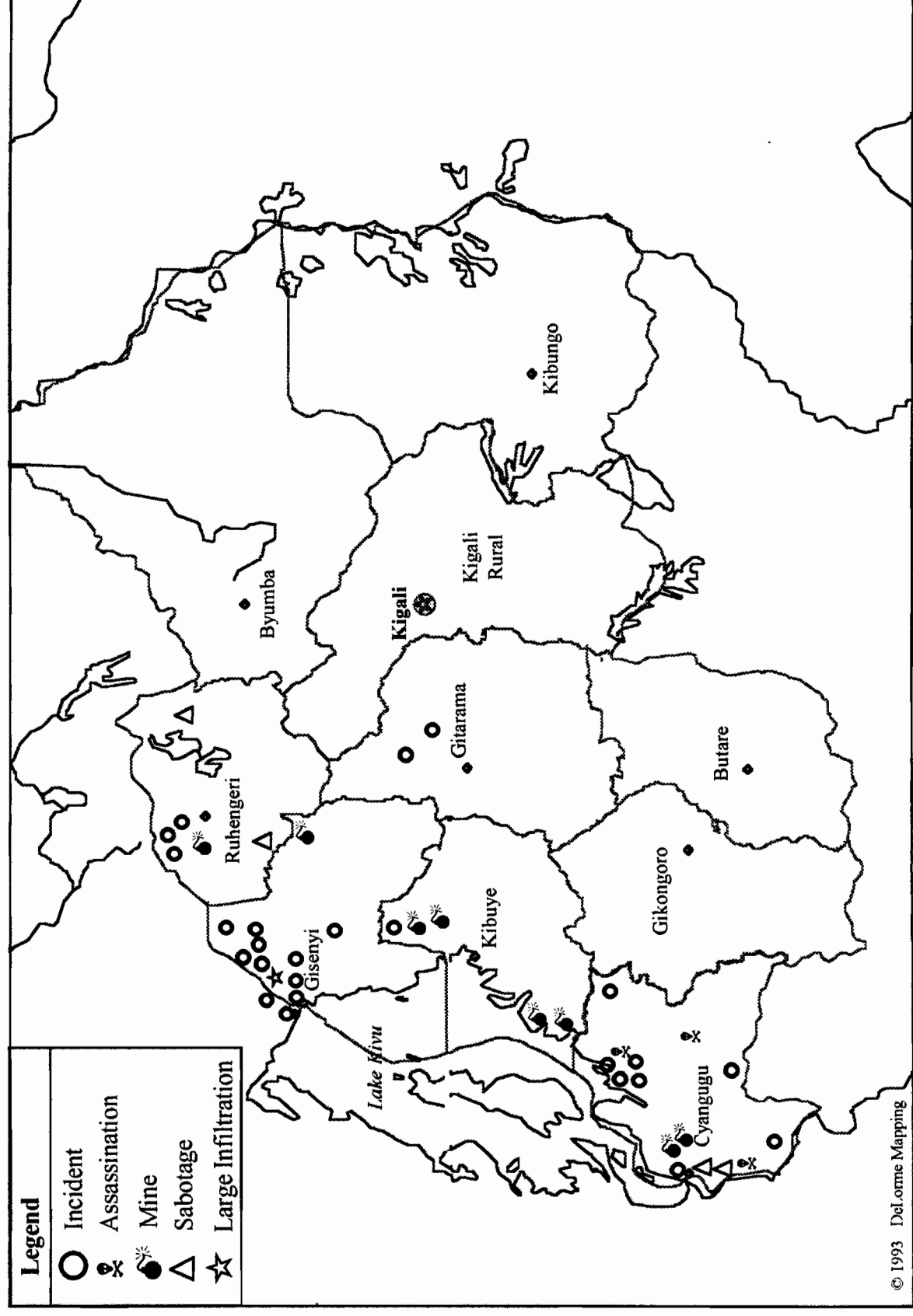
Prefecture	June	July	August	Sept.	Oct.	Total
Butare	0	0	0	0	0	0
Byumba	0	0	0	0	0	0
Cyangugu	5	12	5	7	14	43
Gikongoro	0	0	0	3	0	3
Gisenyi	4	7	4	7	11	33
Gitarama	0	0	1	3	2	6
Kibungo	0	0	2	2	0	4
Kibuye	2	1	2	1	5	11
Kigali Ville	0	0	0	0	0	0
Kigali Rural	0	0	0	0	0	0
Ruhengeri	0	0	1	3	6	10
Total	11	20	15	26	38	110



ANNEX 8

31 October 95

SECURITY INCIDENTS IN OCTOBER 1995



Various Sources

HRFOR/RPT/1/October 1995/E



HRFOR

UPDATE ON THE HUMAN RIGHTS SITUATION
DURING NOVEMBER 1995

Significant measures relieving the most severely overcrowded places of detention were taken during November. More than 5,000 detainees were transferred from the prisons of Byumba, Kibungo and Kigali to new accommodation at Nsinda (Kibungo prefecture). The extension of Gitarama prison was also completed, and about 2,640 detainees who had been in particularly extreme conditions in this prison were transferred to the new extension.

While the population of the prisons, except for those affected by the transfers, remained relatively stable, the number of people detained in the local detention centres (*cachots communaux*) of several prefectures increased significantly over the period. The number of arrests reported to HRFOR was significantly higher than in the two previous months, with waves of arrests of several dozens of people in three prefectures: Butare, Kibuye and Kigali-rural. The measures which relieved overcrowding in certain places of detention should therefore not divert attention from the situation of extreme concern which continues to exist in Rwandan prisons and especially in the local detention centres.

Regarding the administration of justice, November saw the completion of training of 112 magistrates and the beginning of the further training of 50 IPJs (*inspecteurs de police judiciaire*) to become assistant prosecutors (*substituts du procureur*). The process of establishing and examining files of detainees progressed slowly. Only three *Commissions de Triage* met, and only one non-genocide detainee was released as a result. Four more in the series of seminars on arrest and detention procedures organised by HRFOR with others were held during the month.

HRFOR participated in the Government of Rwanda's Conference, "Genocide, Impunity and Responsibility", held in Kigali 1-5 November. The working groups regarding bringing the perpetrators of genocide to justice reflected debate over whether a special tribunal should be set up or cases should be tried in a special chamber of the established judiciary; they also envisaged some categorisation of degrees of guilt, plea-bargaining and/or alternative forms of accountability other than criminal trial. The recommendations of the conference also included initiatives to document the genocide and establish appropriate memorials, as well as to compensate and meet the needs of survivors. The Government of Rwanda did not announce any decisions on these matters during November. The Ministry of Justice was known to be considering the establishment of *Commissions de Triage* at the level of each of the 147 communes.

The number of refugees who returned fell considerably in comparison with the previous month. According to UNHCR, 6,700 refugees returned to Rwanda in November, compared with slightly over 13,000 in October. The number returning from Burundi and Tanzania registered the most marked reduction. HRFOR knew of the arrests of 28 returnees during the month, but received indications that others might have been detained in addition.

In addition to cases of arrests carried out outside legal procedures, reports of human rights violations during November included over 60 alleged violations of the right to life, two new possible "disappearances", and many cases of ill-treatment in detention, including three deaths following ill-treatment in one local detention centre. Several people reported being subjected to intimidation or threats. As in the previous month, the human rights situation was of greatest concern in Cyangugu and Kibuye prefectures bordering Zaire, but the situation was of increased concern in Gikongoro and Butare prefectures.

HRFOR investigated the killing of civilians on 25 November in an operation by the RPA against a temporary settlement of internally displaced people in Nyungwe Forest, Gikongoro prefecture. Human rights field officers who visited the site observed 13 bodies, including six women and two children, and were told that freshly-dug graves contained seven more victims and other bodies were in the area. The RPA, which is cooperating with HRFOR in its investigation, acknowledges that 10 people, including five women and two children, were killed, and says that they died in crossfire after the RPA patrol was fired upon from the camp. Surviving residents denied that there were weapons in the camp and said that they were fired upon as they fled. Investigations are continuing.



HRFOR

NYUNGWE FOREST INCIDENT

Status report as at 7 December 1995

On Thursday, 30 November, Human rights officers began investigating a report that killings had taken place in the Nyungwe Forest, in Gikongoro Prefecture. HRFOR received information from several sources that, on the morning of 25 November, eight armed uniformed men entered a temporary settlement in the Nyungwe Forest, and began to kill its residents.

Human rights officers proceeded to the site of the reported killings. On the path to the site, HRFOR observed two dead bodies. One was the body of a woman, who was reportedly used to carry possessions taken from the site, and killed by the armed men once the party reached the edge of the forest. Also observed was the body of an elderly man whose hands had been tied behind his back.

No one was present when human rights officers arrived at the site. The camp consisted of 22 blindés (or huts) constructed on the side of a steep hill. Thick underbrush had been cleared in the area where the huts were situated. The huts at the site had been constructed in the same fashion as those in Kibeho, and the Burundian refugee camp at Kigeme. According to documents found at the site, most inhabitants had noted Rwamiko commune of Gikongoro Prefecture as their commune of residence. Some huts were covered with UNHCR plastic sheeting, and appeared to have been burned.

Personal possessions -- clothing, small plastic containers, cooking implements, letters, photographs, etc. -- were scattered throughout the camp. Cooking pots containing food were still sitting on hearths, suggesting that inhabitants may have fled hurriedly. Further down the steep hill beyond the camp, human rights officers observed bodies.

Human rights officers observed a total of 13 dead bodies. The bodies included two children, six women and three men; two were not identifiable. They included the body of one woman with a dead infant tied to her back. Sources indicated that seven more bodies were buried in freshly-dug graves pointed out to human rights officers. In addition, human rights officers noted the odour of what was thought to be additional bodies in the surrounding underbrush, but did not directly observe additional bodies. Surviving residents who had escaped the camp during the killings said there were many other bodies on the surrounding hillsides, and that many bodies had been thrown into the nearby river.

HRFOR has been in contact with the Ministry of Defence, and has received cooperation from the RPA in its investigation.

HRFOR STRPT/1/1/7 December 1995

The RPA has confirmed that, in the context of efforts to reduce banditry, ambushes and the number of infiltrators who set up camps, a patrol carried out an operation in the Nyungwe Forest, reaching the settlement at about 1630 in the afternoon. Officers of the RPA, as well as the Staff Sergeant who led the eight-man patrol, have stated that, approximately 50 metres from the camp, the soldiers were fired upon, and that the incident was a clash between the soldiers and former Rwandese Government Forces. The RPA stated it suffered no casualties, but confirmed that a minimum of ten residents of the camp were killed.

The RPA soldier who led the patrol stated that, of the ten people the RPA cited were killed, three were men, five were women and two were children or infants. Officers of the RPA stated the women and the infants were caught in the crossfire. The RPA soldier who led the patrol stated that none of the women or children reportedly caught in the crossfire appeared to be carrying weapons.

Officers of the RPA originally stated that no arms were recovered from the camp, but later stated that a one belt (or magazine) of bullets was found. Human rights officers who visited the site saw no arms or other military equipment.

Some surviving residents of the site interviewed by HRFOR have stated that most of the people living in the camp had come from the Kibeho area IDP camps, but left those camps in May to go to Burundi. When they reached the border, they stated, they decided not to cross it for fear the situation in Burundi was worse. They then decided to settle in the forest, fearing to return to their home communes.

According to the surviving residents, between 60 and 140 people lived in the camp, the number varying because some residents would leave the camp for varying periods of time. They also stated the residents of the camp possessed no weapons.

They stated that, at around 0900 hours on 25 November, one of the residents of the camp informed them that soldiers were coming into the forest. Responding to this, residents began fleeing the camp, moving downhill. According to the surviving residents, as they fled, the soldiers started to shoot the fleeing residents from a high ground position. One surviving resident stated his wife was shot and was moving slowly as he continued to flee with his mother-in-law and children. He stated that the shooting continued for hours. Other surviving residents stated that some residents tried to hide, but were hunted down by the soldiers, who they said stayed in the camp until the late afternoon.

HRFOR is continuing its investigation.



HRFOR

ARREST OF THEOBALD GAKWAYA RWAKA

Status report as at 16 December 1995

On 18 November 1995, at around 7:00 pm, Théobald Gakwaya Rwaka, administrative director of the cement factory in Cyangugu, first Vice-President of the Parti Démocrate Chrétien and member of the Cyangugu section of the Ligue rwandaise pour la promotion et la défense des droits de l'homme (LIPRODHOR), was arrested by a group of gendarmes in civilian clothes at his residence in Nyakabanda, Nyarugenge commune, Kigali Ville prefecture.

The gendarmes did not show Mr. Rwaka an arrest warrant. He was told that he would be questioned at the Gikondo brigade, Kigali prefecture, and would soon be able to return to his residence. He was, however, detained at the brigade and, on or about 6 December, was transferred to Kamembe brigade, Kamembe commune, Cyangugu prefecture.

HRRFOR has been informed that the arrest was due to comments made by Mr. Rwaka during a speech in Cyangugu on 15 August 1995, at a seminar on arrest and detention procedures. The seminar was one of a series organised by the Ministry of Justice together with HRRFOR and UNHCR. Mr. Rwaka was an invited speaker and made in his speech on "Etat de droit comme protection des droits de l'homme au Rwanda" comments critical of the current human rights situation in Rwanda. According to reports received by HRRFOR, the Ministry of Justice addressed a letter to the Prosecutor in Cyangugu, asking for the arrest of Mr. Rwaka and giving his speech as the reason for the arrest. Local civil and military authorities were reportedly upset over Mr. Rwaka's speech.

Mr. Rwaka is now under investigation by the Prosecutor in Cyangugu. On 8 December, human rights field officers attempted to visit Mr. Rwaka at Kamembe brigade, but were denied access on the ground that Mr. Rwaka was being interrogated. The human rights field officers were able to meet Mr. Rwaka on 13 December in the presence of gendarmes.

HRFOR has written to the Government of Rwanda to ask whether Mr. Rwaka's arrest was in accordance with Rwandan law and international human rights standards, and to express concern that it may have been in violation of his right to freedom of expression. The Minister of Justice has informed HRFOR that Mr. Rwaka is being investigated in connection with Article 166 of the Penal Code.¹

¹ Article 166 of the Penal Code of Rwanda: *Quiconque, soit par des discours tenus dans des réunions ou lieux publics, soit par des écrits, des imprimés, des images ou emblèmes quelconques, affichés, distribués, vendus, mis en vente ou exposés aux regards du public, soit en répandant sciemment de faux bruits, aura soit excité ou tenté d'exciter les populations contre les pouvoirs établis, soit soulevé ou tenté de soulever les citoyens les uns contre les autres, soit alarmé les populations et cherché ainsi à porter les troubles sur le territoire de la République, sera puni d'un emprisonnement de deux à dix ans et d'une amende de deux mille à cent mille francs ou de l'une de ces peines seulement, sans préjudice des peines plus fortes prévues par d'autres dispositions du présent code.*

English translation: *Whosoever, whether by speeches held in meetings or in public places, by writings, by print, through images or emblems of any sort, displayed, distributed, sold, put on sale or exposed to public view, or whether by knowingly spreading false rumours, will have excited or tried to excite the population against the established powers, or raised or tried to raise the citizens against each other or alarmed the population and tried thereby to create trouble within the territory of the Republic, will be punished with two to ten years of imprisonment and with a fine of from two thousand to one hundred thousand francs or with just one of these two sentences, without any prejudice to heavier sentences provided for in other provisions of the present code* (translated by HRFOR).



HRFOR

**KILLING OF EPAPHRODITE MUNGANYENDE,
IPJ OF GISHOMA**

Status report as at 16 December 1995

During the evening of 25 October 1995, the Inspector de la Police Judiciaire (IPJ) of Gishoma commune, Cyangugu prefecture, Mr. Epaphrodite Munganyende, was killed, along with three other individuals. According to one source, Mr. Munganyende was in his house, along with two male guests and a "houseboy" when, at approximately 7:15 pm, at least three armed uniformed men came to the front door of the house.

According to reports received by HRFOR, the uniformed men were invited into the house by Mr. Munganyende, and ate dinner with the IPJ and his guests. Mr. Munganyende was questioned by the armed men on the nature of recent discussions he had had with his guests. Mr. Munganyende explained that the discussions focused on the upcoming marriage of one of his guests.

At approximately 8:00 pm, the uniformed men reportedly ordered Mr. Munganyende, one of his two guests and the "houseboy" to lie down on the parlour floor. After this, the armed men shot all three, killing Mr. Munganyende and the guest, while the "houseboy" received non-fatal wounds. The other guest reportedly was shot and killed while he was in another room of the house.

Local villagers, some of whom heard the sound of shooting, later came to Mr. Munganyende's house. According to reports, villagers noted that the "houseboy" was not dead, placed him on a stretcher and began to carry him to a local health centre. While on the way to the health centre, the villagers carrying the "houseboy" reportedly were fired upon, or confronted by armed uniformed men, at which point the villagers abandoned the stretcher and the "houseboy". Soon after this, the "houseboy" was fatally shot in the head. Villagers reportedly later carried his body back to Mr. Munganyende's house.

The body of one of the IPJ's guests was later identified as that of Mr. Edmond Sibomma. According to several sources, Mr. Sibomma was to be married the day after the incident. The body of the other guest was not identified, but this individual was thought to be from neighboring Bugarama commune. The name of the "houseboy" was not known.

An eyewitness later stated he recognised one of the armed men who came to the house as a local Rwandese Patriotic Army soldier and that the nature of their uniforms identified them as soldiers of the RPA.

According to representatives of the Gendarmerie and the Rwandese Patriotic Army, however, Mr. Munganyende, his guests and the "houseboy" were killed by members of *Interahamwe* militia. A local Gendarmerie commander has informed human rights officers investigating the case that a copy of the Gendarmerie's investigation would be provided to HRFOR.

HRFOR is continuing its investigation.

HRFOR STRPT/3.1 16 December 1995



HRFOR

**ARREST OF JEAN-BAPTISTE BARAMBIRWA,
PRESIDENT OF CLADHO**

Status report as at 16 December 1995

In the morning of 11 December 1995, HRFOR was informed that Jean-Baptiste BARAMBIRWA, President of the Collectif des ligues et associations de défense des droits de l'homme au Rwanda (CLADHO), had failed to return home after a speech he had given the evening before at the Hotel des Diplomates in Kigali on the occasion of the closing ceremonies of the Human Rights Week organised by CLADHO. In the speech, he criticised several aspects of the current human rights situation in the country.

In the afternoon of 11 December, in response to urgent inquiries to the Ministry of Defence, HRFOR was informed that Mr. BARAMBIRWA was detained at the Gendarmerie Brigade in Remera, Kigali Ville. In the morning of 12 December, human rights field officers met with the Brigade Commander of Remera and were able to see and speak to Mr. BARAMBIRWA. In the afternoon, human rights field officers spoke with the Prosecutor to whom the case had been referred that day. Mr. BARAMBIRWA appeared before the Substitute Prosecutor at around 3:00 pm and was provisionally released at around 4:30 pm.

Mr. BARAMBIRWA said that he was arrested as he was leaving at the end of the ceremonies at around 6:30 pm in the parking lot in front of the Hotel des Diplomates by a group of four men including three wearing civilian clothes and an armed soldier. No arrest warrant was presented to Mr. BARAMBIRWA. From there, he was brought by car to the Remera Brigade where he was detained.

On 12 December in the morning, human rights field officers interviewed Mr. BARAMBIRWA in the presence of the Brigade Commander of Remera. The Commander restricted the kind of questions human rights field officers were allowed to ask to those concerning his treatment by authorities. Mr. BARAMBIRWA said he had not been physically ill-treated during his detention, and has confirmed this since his release.

HRFOR informed the wife of Mr. BARAMBIRWA of his whereabouts. She was able to bring him food. She saw him briefly after he spoke with the human rights field officers. She was not allowed, however, to visit with him.

At around 3:00 pm, Mr. BARAMBIRWA appeared before the Substitute Prosecutor at the Parquet of Kigali and was interrogated by him. Mr. BARAMBIRWA was provisionally released at around 4:30 pm and was required to return to the Parquet the next day at 8:00 am. On 13 December at 8:00 am, he was told that he had to appear before the Prosecutor every

HRFOR STRPT/4.2/16 December 1995

first Friday of the month and that he had to inform the Parquet if he wanted to travel outside the country or leave Kigali for a period longer than one month.

Mr. BARAMBIRWA was interrogated on the way to the Brigade and several times after his arrival there. His questioning on these occasions as well as before the Substitute Prosecutor related to several points in his speech delivered at CLADHO's 10 December celebration.

HRFOR has written to the Government of Rwanda to ask whether his arrest was in conformity with Rwandan law and international human rights standards, and to express concern that his right to freedom of expression should be fully respected. HRFOR has been informed by the Minister of Justice that Mr. BARAMBIRWA is being investigated in connection with Article 166 of the Penal Code.¹

¹ Article 166 of the Penal Code of Rwanda: *Quiconque, soit par des discours tenus dans des réunions ou lieux publics, soit par des écrits, des imprimés, des images ou emblèmes quelconques, affichés, distribués, vendus, mis en vente ou exposés aux regards du public, soit en répandant sciemment de faux bruits, aura soit excité ou tenté d'exciter les populations contre les pouvoirs établis, soit soulevé ou tenté de soulever les citoyens les uns contre les autres, soit alarmé les populations et cherché ainsi à porter les troubles sur le territoire de la République, sera puni d'un emprisonnement de deux à dix ans et d'une amende de deux mille à cent mille francs ou de l'une de ces peines seulement, sans préjudice des peines plus fortes prévues par d'autres dispositions du présent code.*


English translation: *Whosoever, whether by speeches held in meetings or in public places, by writings, by print, through images or emblems of any sort, displayed, distributed, sold, put on sale or exposed to public view, or whether by knowingly spreading false rumours, will have excited or tried to excite the population against the established powers, or raised or tried to raise the citizens against each other or alarmed the population and tried thereby to create trouble within the territory of the Republic, will be punished with two to ten years of imprisonment and with a fine of from two thousand to one hundred thousand francs or with just one of these two sentences, without any prejudice to heavier sentences provided for in other provisions of the present code* (translated by HRFOR).



HRFOR

MEMORANDUM

To: Amb. Shaharyar Khan
Special Representative
of the Secretary General
UNAMIR

From: Ian Martin 
Chief, HRFOR

Date: 8 March 1996

Subject: Coordination Meeting - 18 March

This is to give you advance notice that I will not be able to attend a Coordination Meeting at 9 a.m. on Monday 18 March. I have to attend the opening of a seminar we have organised jointly with the RPA in Gitarama/Kibuye. Since this is a very positive initiative, I attach the programme for your information.

Best regards.

Encl.

96Mar014
IM/mjd

REPUBLIC OF RWANDA
MINISTRY OF DEFENCE



UNITED NATIONS
HIGH COMMISSIONER
FOR HUMAN RIGHTS

INVITATION

**Madme,
Monsieur,**

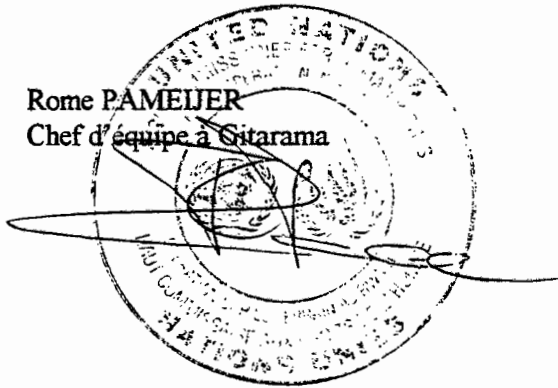
Vous êtes cordialement conviés à participer à un Séminaire Atelier sur la question du Rôle de l'Armée Patriotique Rwandaise (APR) dans la Promotion et la Protection des Droits de l'Homme après le Génocide.

L'objectif de ce séminaire organisé par la Brigade 305 (Gitarama, Kibuye) en collaboration avec le HCDH est la sensibilisation et la formation des officiers de l'APR à la promotion et au respect des droits de l'homme.

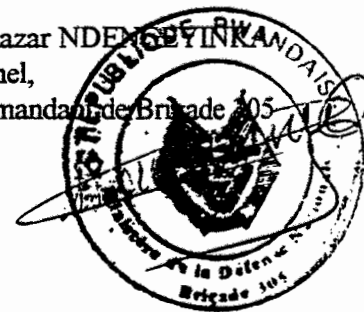
Ledit séminaire se tiendra du 18 au 21 Mars 1996 au Centre de Formation Professionnelle de Murambi à Gitarama.

Vous trouverez, annexée à la présente invitation, la copie du programme.

Rome PAMEIJER
Chef d'équipe à Gitarama



Balthazar NDEMYINKA
Colonel,
Commandant de Brigade 305



Cc:

- Etat-Major de l'Armée Patriotique Rwandaise
- M. Ian Martin, Chef de la mission

REPUBLIC OF RWANDA
MINISTRY OF DEFENCE



UNITED NATIONS
HIGH COMMISSIONER
FOR HUMAN RIGHTS

**JOINT SEMINAR ON
THE ROLE OF THE RWANDESE PATRIOTIC ARMY (RPA)
IN THE PROTECTION AND PROMOTION OF HUMAN RIGHTS
AFTER THE GENOCIDE**

18 - 21 March 1996

Monday 18 March 1996

- 08.30 Registration of participants and distribution of documentation
- 09:00 Speech by the Prefect of Gitarama, and Introduction of Participants;
Désiré NYANDWI
- 09.15 Opening of the Seminar by the Chief of Brigade 305
Col. Balthazar NDENGEYINKA
- 09.30 Mandate and Policy of the United Nations High Commissioner for Human Rights
Ian MARTIN, Chief HRFOR (to be confirmed)
- 10.00: Introduction to Politics
Capt. Vincent NYAKARUNDI, Political Commissar
- 11.00 Open discussion
- 11.30 Break
- 11.45 The Role of local authorities in the Process of Reconciliation
J. De Dieu RUTATIKA, Representative of the MIJEMA², Gitarama
- 12.30 Open discussion
- 13.00 Lunch

² Ministère de la Jeunesse et du Mouvement Associatif

- 14.00 The Mandate of the International Committee of Red Cross (ICRC) and
Fundamental Rules of International Humanitarian Law
Ms. Huong T. HUYNH, Legal Advisor
- 14.45 Human Rights in the Administration of Justice
Homayoun Alizadeh, UNHCHR
- 15.30 Open discussion
- 16.00 Break
- 16.15 Arrest and Detention Procedures
Ferdinand MBERA, Prosecutor of the Republic
- 17.30 Open discussion
- 18.30 Video film
"Cry Justice"
- 19.00 End of session

Tuesday 19 March 1996

- 08.00 Popular Defence
Col. Balthazar NDENGEYINKA, Chief of the Brigade 305
- 09.00 The Role of External Forces in Problem of Rwanda
Lt. Col. Charles KAYONGA, Deputy Chief of Brigade
- 10.00 Open discussion
- 10.30 Break
- 10.45 Mandate and Policy of the United Nations High Commissioner for Refugees
Roberto QUINTERO, Assistant Representative of UNHCR (to be confirmed)
- 11.30 Refugees Repatriation and Property Rights in Post-Genocide Rwanda
Christine UMUTONI, Director of Cabinet, MINIREISO (to be confirmed)
- 12.30 Open discussion
- 13.00 Lunch
- 14.00 Democracy and Democratic Principles
Major John ZIGIRA, G5 Gendarmerie (to be confirmed)

15.30 Corruption, Embezzlement and Misuse of Office
Lt. Col. James KABAREBE, Chief of Republican Guard (to be confirmed)

16.30 Open discussion

17.00 Break

17.15 Rule of Law and Human Rights
Capt. Tony NTARINDWA, Political Commissar, Gendarmerie, Kigali

18.15 Open discussion

18.45 End of session

Wednesday 20 March 1996

08.00 Security for and by population
Capt. Peter KARIMBA, Military Security Officer, Gitarama

09.30 The Role of Military Courts in Respect of Human Rights
Capt. Joseph NZABANITA, Military Prosecutor (to be confirmed)

10.30 Open discussion

11.00 Break

11.15 Organisation and Structure of the Judiciary in Rwanda
Félicien IYAMUREMYE, *Président du tribunal de première instance, Gitarama*

12.30 Open discussion

13.00 Lunch

14.00. Genocide Background Causes and Consequences
Antoine MUGESERA, MINIJUST (to be confirmed)

15.30 From Genocide to Democracy
Capt. Emanuel BAYINGANA, Political Commissar, Gendarmerie

16.00 Open discussion

16.30 Break

16.45 Commission de Triage
Alphonse MUTAYOBA, MINIJUST

17.30 Open discussion

18.00 End of the session

Thursday 21 March 1996

08.00 A Historical Perspective of the Problems of Rwanda
(to be nominated)

09.00 Challenges of the Economy of Rwanda
Capt. Eugène HAGUMA, Political Commissar

10.00 Open discussion

10.30 Break

11.00 Workshops: case studies conducted in small groups³

12.30. Open discussion

13.00 Lunch

14.00 Workshops: case studies conducted in small groups

15.00 Evaluation, synthesis, recommendations and resolutions

16.00 Closing of the seminar

□

³ Topics related to arrest and detention procedures and structure of the judiciary in Rwanda will be discussed in small groups.



**JOINT SEMINAR ON
THE ROLE OF THE RWANDESE PATRIOTIC ARMY (RPA)
IN THE PROTECTION AND PROMOTION OF HUMAN RIGHTS
AFTER THE GENOCIDE**

LIST OF PARTICIPANTS

List of attendants

- Political Commissar	1
- Sous-Préfet	2
- <i>Substituts de procureur (IPJ)</i>	5
- Junior Officers of the RPA	20
- Soldiers	20
- Local administrators (Assistants Burgomasters)	10
Total	58

List of Lecturers:

- Prefect	1
- Military Prosecutor	1
- Prosecutor of the Republic	1
- Chief of the brigade	1
- Deputy Chief of the brigade	1
- Political Commissars	4
- Security Officer	1
- Representatives of the Ministry of Justice	3
- Representative of the Ministry of Rehabilitation and Social Integration	1
- Representative of the Ministry of Defence	1
Total	15

Grand total **73**



HRFOR

STATUS REPORT ON NYUNGWE FOREST INCIDENT

as at 7 December 1995

On Thursday, 30 November, Human rights officers began investigating a report that killings had taken place in the Nyungwe Forest, in Gikongoro Prefecture. HRFOR received information from several sources that, on the morning of 25 November, eight armed uniformed men entered a temporary settlement in the Nyungwe Forest, and began to kill its residents.

Human rights officers proceeded to the site of the reported killings. On the path to the site, HRFOR observed two dead bodies. One was the body of a woman, who was reportedly used to carry possessions taken from the site, and killed by the armed men once the party reached the edge of the forest. Also observed was the body of an elderly man whose hands had been tied behind his back.

No one was present when human rights officers arrived at the site. The camp consisted of 22 blindés (or huts) constructed on the side of a steep hill. Thick underbrush had been cleared in the area where the huts were situated. The huts at the site had been constructed in the same fashion as those in Kibeho, and the Burundian refugee camp at Kigeme. According to documents found at the site, most inhabitants had noted Rwamiko commune of Gikongoro Prefecture as their commune of residence. Some huts were covered with UNHCR plastic sheeting, and appeared to have been burned.

Personal possessions — clothing, small plastic containers, cooking implements, letters, photographs, etc. — were scattered throughout the camp. Cooking pots containing food were still sitting on hearths, suggesting that inhabitants may have fled hurriedly. Further down the steep hill beyond the camp, human rights officers observed bodies.

Human rights officers observed a total of 13 dead bodies. The bodies included two children, six women and three men; two were not identifiable. They included the body of one woman with a dead infant tied to her back. Sources indicated that seven more bodies were buried in freshly-dug graves pointed out to human rights officers. In addition, human rights officers noted the odour of what was thought to be additional bodies in the surrounding underbrush, but did not directly observe additional bodies. Surviving residents who had escaped the camp during the killings said there were many other bodies on the surrounding hillsides, and that many bodies had been thrown into the nearby river.

HRFOR has been in contact with the Ministry of Defence, and has received cooperation from the RPA in its investigation.

The RPA has confirmed that, in the context of efforts to reduce banditry, ambushes and the

number of infiltrators who set up camps, a patrol carried out an operation in the Nyungwe Forest, reaching the settlement at about 1630 in the afternoon. Officers of the RPA, as well as the Staff Sergeant who led the eight-man patrol, have stated that, approximately 50 metres from the camp, the soldiers were fired upon, and that the incident was a clash between the soldiers and former Rwandese Government Forces. The RPA stated it suffered no casualties, but confirmed that a minimum of ten residents of the camp were killed.

The RPA soldier who led the patrol stated that, of the ten people the RPA cited were killed, three were men, five were women and two were children or infants. Officers of the RPA stated the women and the infants were caught in the crossfire. The RPA soldier who led the patrol stated that none of the women or children reportedly caught in the crossfire appeared to be carrying weapons.

Officers of the RPA originally stated that no arms were recovered from the camp, but later stated that a one belt (or magazine) of bullets was found. Human rights officers who visited the site saw no arms or other military equipment.

Surviving residents of the site interviewed by HRFOR have stated that most of the people living in the camp had come from the Kibeho area IDP camps, but left those camps in May to go to Burundi. When they reached the border, they stated, they decided not to cross it for fear the situation in Burundi was worse. They then decided to settle in the forest, fearing to return to their home communes.

According to the surviving residents, between 60 and 140 people lived in the camp, the number varying because some residents would leave the camp for varying periods of time. They also stated the residents of the camp possessed no weapons.

They stated that, at around 0900 hours on 25 November, one of the residents of the camp informed them that soldiers were coming into the forest. Responding to this, residents began fleeing the camp, moving downhill. According to the surviving residents, as they fled, the soldiers started to shoot the fleeing residents from a high ground position. One surviving resident stated his wife was shot and was moving slowly as he continued to flee with his mother-in-law and children. He stated that the shooting continued for hours. Other surviving residents stated that some residents tried to hide, but were hunted down by the soldiers, who they said stayed in the camp until the late afternoon.

HRFOR is continuing its investigation.



UNAMIR-MINUAR

The Special Representative of the U.N. Secretary-General
P.O. Box 749
Kigali, Rwanda
Telephone: 212 - 963 - 3930
Fax: 212 - 963 - 3090

21 November 1995

Dear Mr. Martin,

Thank you for sending me your draft paper on the Mandate, Strategy and Priorities of HRFOR in 1996.

I have shared your paper with colleagues in my office and have asked them to offer their comments with view to providing some external angles to your work programme.

I hope that our comments will contribute to the overall objectives of your mission.

Best regards,

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Shaharyar M. Khan".

Shaharyar M. Khan
Special Representative
of the Secretary-General for Rwanda

Mr. Ian Martin
Chief Human Rights
Field Operation in Rwanda
Kigali

Comments on the draft paper on the Mandate, Strategy and Priorities of IIRFOR for 1996

I. General comments

It would be advisable if the GOR would approve this work plan once it has been finalized. In that way it will be obliged to support it.

II. Investigations into past violations - the genocide

(a) While IIRFOR conveys information both to the Rapporteur and the International Tribunal, there is a substantial difference that is not reflected in the paper. Is it the role of IIRFOR to, as proposed, "prepare a public report" on the information provided to the Rapporteur? Or is it up to the Rapporteur to decide what information will be reflected in his Report? On the other hand, information provided to the Tribunal is confidential which must be kept secret; not doing so could possibly jeopardize the work of the Tribunal.

(b) There seems to be a contradiction regarding information that IIRFOR would provide to the Government. On the one hand it is said in para.4 that "IIRFOR should convey as much information as possible to the GOR"; on the other hand, in para.5(b) it is claimed that the extent of IIRFOR's cooperation with the Government in its attempts to prosecute those responsible for the genocide will depend on the extent to which the procedures decided upon by the Government are consistent with human rights principles. Again in para.9 it is said that "IIRFOR's major contribution, as the judicial system becomes operational, will be to promote the processing of cases according to the law"; read in conjunction with para.5(b), this promotion of the application of the law will only be effected if the law is consistent with human rights principles.

(c) It is not clear what promotion of "arrangements for compensation" of the victims of the genocide entail. It could range between compensation mechanisms apart from the compensation awarded in trials, to contributing to the establishment of a national fund for compensation of the victims.

III. Current monitoring and prevention of violations

(a) The flow of information described is limited to relations IIRFOR/Government. A reference could have been made to reporting to the High Commissioner.

(b) A more focused description of "assistance" in relation to the prisons would be helpful. The same applies to the already commented upon "promotion of the processing of cases according to the law", see II (b) above.

(c) Could it be possible that suitable mechanisms are developed for monitors to work in conjunction with the communal police and gendarmerie? There would be two objectives: that the investigation itself (a) function as a consciousness raising process, (b) for those who will be part of the administration of justice.

IV. Re-establishing confidence and facilitating refugee return

HRFOR contributes to re-establishing confidence and facilitates the return of refugees by the development of its activities, such as effective monitoring and prevention of human rights violations. Other agencies are mandated specifically with facilitating refugee return (UNHCR, UNDP); in the case of HRFOR, a reference to the importance of facilitating the return of refugees could be made, but perhaps not presented as one of its main activities.

V. Technical cooperation: the administration of justice and human rights education

(a) In the field of promotion of human rights, there is no reference to strengthening of Rwandan institutions except from support to be given to local NGOs.

(b) Contacts may be established with the **Crime Prevention and Criminal Justice Branch, of the United Nations Office in Vienna**, to explore and engage their expertise in this area. This is instrumental in developing a long term administration of justice system in Rwanda.

UNITED NATIONS



NATIONS UNIES

High Commissioner for Human Rights
Field Operation in Rwanda

HRFOR

Haut Commissaire aux Droits de L'Homme
Operation sur le Terrain au Rwanda

16 November 1995

Ambassador Shaharyar Khan
Special Representative of the
Secretary General
UNAMIR
Kigali

Dear Ambassador Khan,

I enclose a draft paper on the Mandate, Strategy and Priorities of HRFOR in 1996, which I am discussing within HRFOR.

I would very much value your advice in this matter, before I finalize the paper and submit it to the High Commissioner for Human Rights as a basis for our discussions with the Government of Rwanda and governments contributing to HRFOR.

Perhaps we could meet to discuss this early next week.

Best regards,

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ian Martin".

Ian Martin
Chief, Human Rights
Field Operation in Rwanda

cc: Ms. Isel Rivero-Mendez
Ms. Ladan Rafii

THE MANDATE, STRATEGY AND PRIORITIES OF HRFOR IN 1996

1. HRFOR's mandate as set out in the High Commissioner's agreement with the Government of Rwanda (GOR), has five aspects:

(a) To carry out investigations into violations of human rights and humanitarian law including possible acts of genocide...;

(b) To monitor the ongoing human rights situation, and through their presence help redress existing problems and prevent possible human rights violations from occurring;

(c) To cooperate with other international agencies in charge of reestablishing confidence and thus facilitate the return of refugees and displaced persons and the rebuilding of civic society;

(d) To implement programmes of technical cooperation in the field of human rights, particularly in the area of the administration of justice; and

(e) To report to the High Commissioner who will make the information available to the Special Rapporteur on the situation of human rights in Rwanda...

2. This is an extremely broad mandate. It was drawn up over a year ago. Each aspect of the mandate nevertheless remains important in the current context, but each now needs to be interpreted and applied in the current situation. It is not a matter of opting for one aspect over another: genocide investigation over the current human rights situation, or human rights monitoring over technical cooperation. The elements of the mandate are mutually reinforcing. Justice and national accounting for the genocide is essential to reconciliation; preventing or addressing current human rights violations is essential to refugee return and confidence-building in local communities; effective assistance to building the administration of justice and other institutions, and human rights training and awareness, are essential if human rights violations are to be prevented or addressed. Confidence-building is an over-arching objective: a relationship of confidence with the local population, including local authorities, is essential to all objectives, including human rights monitoring.

3. HRFOR's resources are however extremely limited in relation to so broad a mandate. It is therefore essential that HRFOR's objectives and strategy within that mandate are given further

definition if limited resources are to be applied effectively and if staff, in the teams and at headquarters, are to have clear priorities in their work. In determining priorities in a context of limited resources, it is important to have regard to the roles and capacities of other organizations, and to work in a manner which complements rather than duplicates activities where mandates overlap.

Investigations into past violations - the genocide

4. HRFOR was established in response to genocide and related gross violations of human rights in Rwanda, which are the major factor conditioning the country's current realities. It has conveyed to the International Tribunal (IT) as well as to the Special Rapporteur the information it collected. The extent of this work has not been fully made known: HRFOR should consider preparing a public report describing this work and presenting the analysis of the genocide which emerges from it. HRFOR should convey as much information as possible to the GOR.

5. HRFOR's continuing work in relation to the genocide has four aspects:

(a) The IT now has the leading international role in investigations. HRFOR must define its relationship with the IT, and must give every assistance the IT wants from it, chiefly in facilitating the operation of its investigators in the field. It should continue to make available to the IT and to the Special Rapporteur new information regarding the genocide which comes to the attention of its teams.

(b) Following the Genocide Conference, the GOR can be expected to decide upon its strategy and procedures for prosecuting the perpetrators. The decisions it takes - the extent to which the procedures are inside or outside the normal justice system - will affect the overall framework for assistance to the justice system, and the role that HRFOR can play in mobilising assistance to and monitoring the process. International law as well as national reconciliation require that the perpetrators of genocide be brought to justice; the extent to which the procedures decided upon are consistent with human rights principles will affect HRFOR's relationship to the process.

(c) Other recommendations of the Genocide Conference envisage a national accounting extending beyond individual prosecution - writing a definitive account, hearing and preserving testimony, establishing memorials. HRFOR should give high priority to the

contribution, albeit limited, it can make to this process, taking due account of the framework set by GOR decisions.

(d) HRFOR should continue to look for opportunities to promote arrangements for compensation, within the framework of international human rights standards, to surviving victims, and assistance for their needs for medical treatment.

6. Other areas of HRFOR's work - for example, human rights education - must reflect a consciousness of the genocide and the need to address its legacy.

Current monitoring and prevention of violations

7. Endeavouring to prevent human rights violations logically precedes investigating those that do occur, and is a major reason for a field presence building relationships with the authorities, including the security forces, and engaging in human rights promotion. But there is no conflict between human rights monitoring, properly conceived, and assistance to human rights protection. A crucial way to assist a government in fulfilling its commitment to protect human rights is to bring promptly to its attention those violations which occur and to encourage the appropriate response. This is a central function of HRFOR. It requires clear guidelines regarding the investigation of individual violations and the proper manner of addressing concerns to the authorities at the local level. The purpose of human rights monitoring is to bring about positive improvements. Obtaining information and getting problems addressed both require a relationship of confidence with local authorities.

8. The first purpose of reporting from the teams to headquarters on the human rights situation and cases is to enable individual cases and patterns of concern to be addressed to the authorities at the national level. This currently requires a major systematisation of the channels of communication with the GOR. The response of the authorities should be reflected in subsequent reporting which becomes public through the High Commissioner, the Special Rapporteur or otherwise. Feedback to the teams is essential for the most effective dialogue with the authorities at local and national level, as well as for the quality of investigation and reporting.

9. HRFOR's role in relation to the prisons and other places of detention has both monitoring and assistance aspects. Conditions of detention are one of the most serious aspects of the current human rights situation and must therefore form part of HRFOR's

overall monitoring and dialogue with the authorities. However, the ICRC has greater resources and professional experience in this area, and HRFOR's role needs to be defined in a manner which is complementary to its leading role, and our respective dialogues with the authorities need to be closely coordinated so as to be mutually supportive. HRFOR's major contribution, as the judicial system becomes operational, will be to promote the processing of cases according to the law.

Re-establishing confidence and facilitating refugee return

10. Confidence-building is an over-arching objective of HRFOR, to which each of its areas of work contributes, and which in turn is crucial to the return of refugees. In the period immediately ahead, which is intended to see major repatriation, HRFOR's work will be closely linked to the pattern of expected and actual return. However, confidence-building in the context of refugee return is not distinct from HRFOR's other objectives, and should not become the basis of a diffusion of human rights priorities. HRFOR's main contribution to refugee return is to carry out as effectively as possible its objective of contributing to the development of institutions essential to human rights protection, especially the justice system; preventing human rights violations; and, where they occur, getting them rapidly addressed. The agreement with UNHCR in this respect provides a sound basis for defining HRFOR's role, and HRFOR must continue to work closely with the GOR through the coordination of the Ministry of Rehabilitation. Priority should be given to monitoring the circumstances of new returnees and the situation in the communes to which many have returned. HRFOR should be a source of objective information on the situation to which they are returning or considering return.

11. Field teams become acutely aware of the full range of economic and social needs which post-genocide Rwanda confronts, and which have to be addressed for the full realization of human rights. Progress in economic, social and cultural rights is an essential human rights objective in itself, and will contribute to progress in civil and political rights. HRFOR cannot become a general development organization, nor substitute in its local work for other international organizations, UN or non-governmental, with economic and social mandates. It can however play a useful role in drawing local needs to the attention of other organizations which can be sources of assistance, and in assisting local organizations in presenting their needs.

Technical cooperation: the administration of justice and human rights education

12. HRFOR's comparative advantage in relation to the administration of justice consists in two things. The first is its unique local outreach and opportunity to understand needs and be supportive at the local level. The second should be the ability to make available to the GOR and others the best human rights professionalism in advising and helping to shape assistance projects at the national level. This twin contribution should be applied both to the rehabilitation of the justice system and to the development of the administration of prisons.

13. Effective human rights education merits the highest priority in a society divided by genocide. It has three major aspects:

(a) The inclusion of respect for human rights in the training of professionals, especially those with direct law and order responsibilities, i.e. the police, judicial officials, prison warders, and in the current context, the military.

(b) The incorporation of respect for human rights in the curriculum of the formal education system at all levels.

(c) Human rights promotion aimed at the general population, or particular sectors.

This is a vast area, and HRFOR must design, in response to opportunities presented by the wishes of the GOR and non-governmental actors, involvements which are strategic in each aspect. Ultimately the development of a human rights culture is the role of Rwandan civil society, and human rights education will be most effectively carried out by Rwandans: HRFOR's contribution will be enhanced to the extent that it trains continuing educators and stimulates rather substitutes for Rwandan non-governmental organizations.

14. HRFOR should remain alert to other strategic opportunities to contribute to the development of national institutions contributing to the promotion and protection of human rights, both within the machinery of government and within civil society. It should seek to contribute to the strengthening of non-governmental human rights organizations. HRFOR should give high priority to contributing to the training of local human rights NGOs in objective monitoring and other activities.

15. HRFOR is not, and cannot become, a funding agency. It needs to have an adequate budget allocated from Geneva for activities it

carries out itself, e.g. human rights seminars, newsletter publication. But HRFOR cannot grant funds or (other than in the most exceptional circumstances) make donations of equipment to others, or accept directly in Rwanda any funds, either for its own activities or for disbursement to others.

16. HRFOR has played and should continue to play an important role in identifying needs for human rights funding, and matching these to potential funding sources. These sources can include the Voluntary Fund of the Centre for Human Rights; UNDP; other UN agencies - UNHCR, UNICEF, UNESCO etc; the European Union; bilateral government donors; and NGOs. In such cases, activities must be directly funded by the donor, or the funding must flow from the donor to the recipient, and not (except in the case of the Voluntary Fund) via HRFOR. HRFOR may be able to play a continuing role in identifying specific needs within the agreed purpose of available funding, or in distributing material purchased through such funding.

17. HRFOR can play a useful role in developing technical cooperation projects, especially for funding through the Centre for Human Rights' Voluntary Fund. But HRFOR's role in the administration of justice and human rights education should by no means be defined only in terms of the development of technical cooperation projects. It consists also in the work of the field officers and in a sustained professional relationship with the GOR, other agencies and donors, and non-governmental organisations.

Process for strategy- and priority-setting

18. The continuing process for strategy- and priority-setting will have three levels:

(a) The overall strategy and priorities for HRFOR will be set by the Chief of Mission, in dialogue with the GOR and after consultation with the High Commissioner and HRFOR staff, and must be revised when necessary to be responsive to changes in the human rights situation and its context.

(b) Specific guidance will be issued for the operation of teams in particular areas of work within these priorities.

(c) Team leaders will be responsible for proposing and implementing local strategies and priorities in accordance with the overall strategy and priorities. Guidance in specific areas of work will be available from specialized units, but there will be a single channel for overall guidance in priority-setting.



HRFOR

**SUSPENSION AND ARREST OF SILAS MUNYIAGISHALI,
ASSISTANT PROSECUTOR, *PARQUET* OF KIGALI**

Status report as at 8 March 1996

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On 13 February, Radio Rwanda announced that the Council of Ministers had examined the manner in which the Tribunal of First Instance in Kigali and the *Parquet* of Kigali carry out their respective tasks. With regard to the *Parquet*, the Council of Ministers decided to suspend Mr. Silas MUNYIAGISHALI, Assistant Prosecutor to the Kigali *Parquet*, from his functions. Referring to allegations made against Mr. MUNYIAGISHALI of corruption, of bad management of the *Inspecteurs de police judiciaire* under his responsibility, and of the disappearance of certain case files, the Council of Ministers asked the Minister of Justice to follow these issues closely and to address the situation, in particular, to review the functioning of the *Parquets*.

Mr. MUNYIAGISHALI fulfilled the functions of Prosecutor of the Republic *ad interim* in Kigali from March 1995 until January 1996, when a new Prosecutor was nominated.

Mr. MUNYIAGISHALI told HRFOR on 15 February that he had received no official notification of his suspension. He stated further that he had neither been accused of any misdemeanour nor been informed of the reason for his suspension. He said that, on several occasions, he had been subjected to pressure from other authorities regarding decisions.

On 22 February, Mr. MUNYIAGISHALI was arrested at the Kagitumba border post on the Ugandan border by members of the RPA. Mr. MUNYIAGISHALI said that he was on his way to visit his hospitalized brother in Kampala. Members of the RPA confiscated his passport. Then they arrested him. He spent the night at Kagitumba military camp.

On 23 February, agents of the Department of Military Intelligence (DMI) escorted Mr. MUNYIAGISHALI from Kagitumba to Kigali. Mr. MUNYIAGISHALI spent the night of 23-24 February at the DMI. On 24 February at around 4 pm, he was brought to his residence. The house was guarded by members of the National Gendarmerie. Mr. MUNYIAGISHALI was confined to his residence. He was not allowed to leave the house or to receive visitors. His passport was retained.

HRFOR learned of his detention on 26 February, and human rights field officers went to the residence, where they spoke with the officer of the National Gendarmerie in command of the armed guards present in the residence. They were not permitted to see Mr. MUNYIAGISHALI. Later that day, HRFOR further requested permission to visit Mr. MUNYIAGISHALI, through its channels of liaison with the National Gendarmerie. HRFOR

HRFOR STRPT: 11/18 March 1996

also wrote to the Minister of Justice asking to be informed of the legal status of Mr. MUNYIAGISHALI.

On 29 February at around 12:30 pm, Mr. MUNYIAGISHALI was arrested with a warrant and brought to the Gendarmerie brigade in Nyamirambo, Kigali Ville. At around 2:30 pm, he was transferred to Kigali Central Prison. The arrest warrant was signed by the Prosecutor General at the Court of Appeal. HRFOR learned that Mr. MUNYIAGISHALI was charged with complicity in the genocide.

On 1 March, human rights field officers visited Mr. MUNYIAGISHALI at the prison. Mr. MUNYIAGISHALI stated that he had not been ill-treated. He told HRFOR that, to date, he has not been questioned by any judicial authorities on the charges brought against him. HRFOR has not yet been able to meet with the Prosecutor General at the Court of Appeal to discuss the state of the case file.

On 8 May 1995, Mr. MUNYIAGISHALI brought a criminal complaint in the Kigali Court of Appeal against two individuals who accused him of having participated in the genocide. On 11 May, the then Prosecutor General at the Court of Appeal charged an IPJ to conduct an investigation into the case. On 31 May, the IPJ submitted a report to the Prosecutor General stating that the allegations were false.

Article 60 of the *Decret-loi* of 7 January 1982 on the status of judicial personnel states that the Minister of Justice has the power to suspend, by administrative order and in the interest of the judicial system, a magistrate where evidence exists that he has committed a serious offence requiring disciplinary measures.

According to Article 37 and 38 of the *Code de procédure pénale*, an accused can be placed under pre-trial detention when, *inter alia*, serious indications of culpability exist and the accused has been questioned by an *officier du Ministère Public*. Article 23 read together with Article 10 states that, if the accused is a magistrate with the rank of an Assistant Prosecutor, the Prosecutor General at the Court of Appeal must personally lead the investigation.

I. Compte rendu de la réunion du Conseil des Ministres en sa séance du 13 février 1996

Page 2/Paragraphe 1

Concernant le 2^{ème} point figurant à l'ordre du jour, le Conseil des Ministres a examiné les façons dont le Tribunal de Première Instance de Kigali et le Parquet de Kigali s'acquittent de leurs tâches respectives.

S'agissant du Parquet, le Conseil des Ministres a décidé de suspendre Mr Silas Munyagishali de ses fonctions de Substitut du Procureur près le Parquet de Kigali. Concernant les allégations portées contre lui au sujet de son éventuelle corruption et des mauvais agissements des Inspecteurs de Police Judiciaire placés sous sa responsabilité, ainsi que des disparitions de certains dossiers, le Conseil des Ministres a en outre demandé au Ministre de la Justice de suivre avec attention tous ces problèmes et de redresser la situation notamment au niveau du fonctionnement des parquets.

Page 2/Paragraphe 2

Concernant le Tribunal de Première Instance de Kigali qui est mis en cause sur la façon dont les jugements sont rendus et prononcés provisoirement ou définitivement, et plus spécifiquement les litiges portant sur de fortes sommes d'argent et sur la livraison illégale des ordonnances faisant objet de corruption, le Conseil des Ministres a demandé au Ministre de la Justice d'élucider cette question avec les responsables dudit tribunal dans les plus brefs délais.

II. Compte rendu de la réunion du Conseil des Ministres en sa séance du 27 février 1996

Page 2/Paragraphe 2

Concernant le Tribunal de Première Instance de Kigali qu'on accuse de corruption, le Conseil des Ministres a décidé de ce qui suit :

- 1) suspendre Mr GATERA Claudien de ses fonctions de Président dudit tribunal et de mener des enquêtes au sujet des allégations portées contre lui.
- 2) demander au Ministre de la Justice de suspendre tous les procès pendants qui pourraient être entachés d'irrégularités.
- 3) prier le Ministre de la Justice d'accélérer la mise en place des institutions judiciaires et notamment du Conseil Supérieur de la Magistrature.

Traduction non officielle des comptes rendus des deux séances du Conseil des Ministres, textes originaux rédigés en Kinyarwanda.

UNITED



NATIONS

HIGH COMMISSIONER FOR HUMAN RIGHTS

Human Rights Field Operation in Rwanda (HRFOR)

Sec Gen two month report -

HRFOR October 8 - December 8, 1995

In early December HRFOR had 120 Human Rights Field Officers; 39 fixed-term staff, 64 UN Volunteers, 17 Officers contributed by the European Union. The Operation maintained its 10 field offices throughout the country and its headquarters in Kigali.

In October the leadership of the Operation changed. W. Clarence, who launched HRFOR in September 1994, was replaced by Ian Martin, formerly Director for Human Rights of the UN/OAS International Civilian Mission in Haiti (MICIVIH).

Preparation for the accelerated return of refugees continued. HRFOR developed an information sharing system with other UN agencies and regularly visited communes targeted to receive large numbers of refugees.

HRFOR Officers continue to work closely with judicial authorities throughout the country. Between October and December the series of 11 prefectural seminars on arrest and detention procedures was completed. Seminars were held in Ruhengeri, Rilima, Byumba and Kibuye. Follow-up activities are underway in all of the prefectures and similar seminars on the communal level have been undertaken in Kibungu and Cyangugu.

HRFOR also continued human rights training with the national gendarmerie and practical human rights courses have been prepared for the communal police training.

HRFOR has facilitated the establishment of women's centres in all 11 prefectures. Qualified staff will be in the centres to offer legal assistance and counselling to the victims of genocide. Projects aimed at developing self sufficiency for individual women and women's association will be coordinated at the Centres. The Centres will be stocked with information concerning women's issues in Rwanda and will provide a space where women and women's associations can meet. A conference on women's rights and the law of Rwanda was held in Ruhengeri in November.

HRFOR also facilitated the establishment of Human Rights Centres

in the prefectures. These centres will provide meeting rooms for local NGOs, they will serve as a centre for community activities as well as information points, including televisions and videos.

HRFOR, in collaboration with UNDP, continued the practical activity of purchasing filing cabinets, desks and chairs for judicial authorities around the country. Furniture was distributed in Butare, Cyangugu, Gisenyi, Gitarama, Kibungo, Kibuye and Ruhengeri. HRFOR continued to assist with the practical needs of communal judicial authorities from funds donated by the Irish NGO Trocaire.

HRFOR participated in the genocide conference, which was initiated via an inter-Ministerial working group that was facilitated by the Operation and assisted with transportation and administrative needs. A special genocide conference edition of the HRFOR newsletter "Amahame" was prepared by local journalists and distributed throughout the country in order to inform as many Rwandans as possible about the significance of the event.

Radio plays on themes related to reconciliation and human rights, prepared by HRFOR, were aired on National Radio as well as UN Radio, and videos were distributed to the prefectures for HRFOR teams to use in human rights education activities with the local population.

HRFOR facilitated visits of the Ministry of Higher Education to the prefectures to collect information to create a historical record and research the possibility of creating national memorials to remember the genocide.

Appropriate liaison with investigative work of the International Tribunal was established. A mass grave discovered in Kigali was exhumed with the assistance of HRFOR.

HRFOR worked to facilitate the work of the prefectural and national committees established to review the dossiers of detainees and release individuals when there is no evidence to justify their detention.

Ends

REPUBLIQUE RWANDAISE
COUR CONSTITUTIONNELLE

ARRET N° 009/11.02/95.

LA COUR CONSTITUTIONNELLE, SEANT A KIGALI, A RENDU L'ARRET SUIVANT
APRES EXAMEN DE LA LOI PORTANT SUSPENSION DE L'APPLICATION DES REGLES RELATIVES A LA DETENTION PREVENTIVE ET A LA MISE EN LIBERTE PROVISOIRE DES PERSONNES POURSUIVIES POUR CAUSE DE GENOCIDE, MASSACRES, CRIMES DE GUERRE, CRIMES CONTRE L'HUMANITE ET AUTRES CRIMES;

LA COUR;

OUI le rapporteur en son rapport;

VU la lettre n° 0180/A.N/95 du 05 juillet 1995 du Président de l'Assemblée Nationale de Transition reçue au greffe de la Cour le 11 juillet 1995, par laquelle elle est saisie conformément à l'article 75 alinéa 1 de la Constitution du 10 juin 1991, pour se prononcer sur la constitutionnalité de la loi portant suspension de l'application des règles relatives à la détention préventive et à la mise en liberté provisoire des personnes poursuivies pour cause de génocide, massacres, crimes de guerre, crimes contre l'humanité et autres crimes;

VU l'ordonnance n° 07/95 du 11 juillet 1995 du Président de la Cour Constitutionnelle, fixant au jeudi 20 juillet 1995 à 9 heures du matin, l'examen de ladite loi; qu'à cette date, l'audience n'a pu être close et fut remise au 24 et puis au 26 juillet 1995 date à laquelle furent clôturés les débats;

Quant à la loi dans son ensemble;

ATTENDU que la loi sous examen est une loi de procédure, qui modifie le code de procédure pénale du 23 février 1963 sur la matière relative à l'arrestation, la détention préventive et la liberté provisoire des personnes soupçonnées pour avoir commis une catégorie d'infraction, que donc il s'agit des règles de procédure devant être appliquées devant les juridictions de jugement;

Mais attendu que la Loi Fondamentale, au titre du Protocole d'Accord sur le partage du pouvoir, signé le 30 Octobre 1992 en son article 33, pose un principe selon lequel une loi organique détermine les règles de compétence, d'organisation et de fonctionnement de la Cour Suprême, et qu'en attendant l'adoption de ladite loi, la législation en vigueur relative à l'organisation et à la compétence des juridictions ainsi qu'aux procédures prévues devant ces juridictions demeurent d'application;

QU'EN l'espace et pour autant que la loi organique sur la Cour Suprême n'est pas adoptée, la Loi Fondamentale, supérieure à une quelconque loi ordinaire, gardera sa suprématie normative, la cour étant appelée à censurer toute initiative qui tenterait de contourner la Loi Fondamentale, car sa stabilité et sa permanence justifie la raison pour laquelle elle apparaît comme une norme de référence juridique et institutionnelle respectable par toutes les autorités publiques, que donc l'adoption d'une procédure pénale avant la loi organique sur la Cour Suprême va à l'encontre de l'esprit de l'article 33 de la Loi Fondamentale au Protocole d'Accord sur le partage du pouvoir;

Quant aux articles de la loi;

ATTENDU que l'article premier de la loi sous-examen stipule qu'"à titre exceptionnel, toutes les règles de procédure relatives à la détention préventive et à la mise en liberté provisoire édictées par la loi du 23 février 1963, telle que modifiée et complétée à ce jour sont suspendues pour les personnes poursuivies pour cause de génocide, massacres, crimes de guerre, crimes contre l'humanité et autres crimes, elles ne pourront être appliquées à nouveau qu'à partir de l'abrogation de la présente loi";

ATTENDU que la détention préventive, ou plutôt la détention provisoire puisque la détention n'est pas la règle, doit apparaître d'autant plus grave qu'elle entraîne l'emprisonnement d'une personne dont la culpabilité n'est pas certaine, et fait passer sur elle une injustice quelquefois notoire, que si cet emprisonnement est nécessaire dans certains cas pour éviter la fuite ou la subornation des témoins à charge ou alors éviter que l'inculpé laissé en liberté ne subisse la vengeance d'une foule indignée ou manipulée, il convient qu'une mesure aussi grave ne soit jamais édictée à la légère ou par routine, que donc il faut un contrôle judiciaire et subordonner la mise en détention préventive à des conditions strictes qui garantissent les libertés fondamentales;

QU'EN adoptant une mesure suspensive de la liberté provisoire ou des règles relatives à la détention préventive, le législateur procède indirectement à la condamnation automatique des personnes poursuivies pour des faits dont la véracité n'est pas encore établie, qu'en procédant ainsi, il sous-entend la présomption de culpabilité, allant à l'encontre du principe constitutionnelle qui, en l'article 12 alinéa 4 de la Constitution du 10 juin 1991, prescrit que "toute personne est présumée innocente des infractions qui lui sont reprochées tant qu'une condamnation définitive n'est pas encore intervenue";

ET attendu qu'en suspendant les règles relatives à la liberté provisoire, ne fut-ce que pour un temps, et comparativement à la présomption d'innocence reconnue par la Loi Fondamentale à l'article 12 alinéa 4 de la

garantie constitutionnalis   par la Loi Fondamentale en son article 17 du Protocole d'Accord sur les questions diverses et dispositions finales insiste sur les principes contenus dans la D  claration Universelle des Droits de l'Homme, en ce que ladite D  claration   nonce    l'article 8 que "toute personne a droit    un recours effectif devant les juridictions nationales comp  tentes contre les actes violent les droits fondamentaux qui lui sont reconnus par la Constitution ou par la loi";

ATTENDU qu'en constitutionnalisant le principe d  j acquis par les deux instruments internationaux, les auteurs de la Loi Fondamentale entendaient s'accrocher aux valeurs humaines   dict  es par lesdites conventions, car ils tenaient    prot  ger les innocents qui seraient    tort poursuivis pour des infractions qu'ils n'auraient pas commises, que le pouvoir judiciaire - bien que n'  tant pas seul habilit      prot  ger les droits et libert  s des personnes - est constitutionnellement comp  tent pour en assurer le respect dans les conditions pr  vues par la loi (art. 33 Constitution du 10 juin 1991);

ATTENDU que, bien que la loi intervienne souverainement en toute mati  re, en r  glementant    nouveau la d  tention pr  ventive par la suspension des r  gles y relatives ou celles concernant la libert   provisoire, la loi ne peut r  glementer l'exercice d'une libert   fondamentale qu'en vue de la rendre plus effective ou de la concilier avec d'autres r  gles ou principes de valeur constitutionnelle, qu'en ce sens, le l  gislateur est tenu de conserver les principes de la l  gislation ant  rieure lorsque celle-ci a   t      la source de garanties constitutionnelles, et son action ne peut   tre que dans le sens du renforcement de ces garanties, que s'il existe bien un pouvoir discr  tionnaire du l  gislateur en mati  re d'abrogation ou de suspension des lois, celui-ci ne peut s'exercer que dans le respect des r  gles, des principes et des objectifs de valeur constitutionnelle concr  tiss  s par des garanties l  gales ant  rieures;

ATTENDU que l'Etat de droit dont il s'agit au titre du Protocole d'Accord sign  , le 18 Ao  t 1992 et la reconnaissance universelle par ce Protocole, des droits de l'Homme (article 14 alin  a 1), la loi ordinaire doit plut  t se pr  occuper de la protection contre la violation   ventuelle des droits et libert  s par la garantie constitutionnelle (article 14 alin  a 2 in fine dudit protocole), et la Loi Fondamentale ne doit permettre    une quelconque loi d'en att  nuer la protection;

ATTENDU que cet Etat de droit signifie la soumission de l'Etat au droit en rendant les honneurs    la force du droit et, la protection des garanties constitutionnelles en faveur des particuliers autorise la Cour

Constitution du 10 juin 1991, la loi sous-examen enlève à la justice tout pouvoir d'appréciation des faits; que même si aux crimes exceptionnels il faut des traitements exceptionnels, le législateur ne doit pas oublier que les règles de procédure ont été édictées pour protéger les innocents contre les abus éventuels de l'administration, qu'ainsi, le constituant a voulu placer les droits et libertés publiques sous la protection du pouvoir judiciaire en ce que, selon l'article 33 de la Constitution du 10 juin 1991, le pouvoir judiciaire est gardien des droits et libertés publiques, et de ce fait, doit en assurer le respect dans les conditions prévues par la loi; qu'il serait donc agir contre l'esprit de la Constitution, de suspendre les règles relatives à la détention préventive car ce serait éléver au pouvoir judiciaire l'une de ses missions constitutionnelles envers la société;

QUE dans le même ordre d'idées, par la suspension des règles de procédure relatives à la détention préventive et celles relatives à la possibilité d'une liberté provisoire, même pour des personnes manifestement innocentes sous le seul prétexte qu'elles sont poursuivies pour des faits dont question à l'article premier de la loi sous-examen, celle-ci s'oppose d'une façon non équivoque à l'article 6, 5 ième et 6 ième trait du Protocole d'Accord relatif à l'Etat de droit signé le 18 Août 1992, en ce que la loi en question n'entend pas garantir les droits fondamentaux de l'Homme ou de la personne tels que stipulés dans la Déclaration Universelle des Droits de l'Homme ainsi que dans la Charte Africaine des Droits de l'Homme et des Peuples, instruments internationaux que la Loi Fondamentale a introduite dans l'ordonnement juridique rwandais, les plaçant même au dessus de la Constitution par l'article 17 sur les questions diverses et dispositions finales;

ATTENDU qu'à partir des considérations ci-avant développées, l'article 11 -1. de la Déclaration Universelle des Droits de l'Homme énonce que "toute personne accusée d'un acte délictueux est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie au cours d'un procès public où toutes les garanties nécessaires à sa défense lui auront été assurées", cette présomption d'innocence étant reprise à l'article 7,b) de la Charte Africaine des Droits de l'Homme et des Peuples;

QUE, de surcroît, en suspendant les règles relatives à la liberté provisoire, la loi sous-examen démontre une négation pure et simple des principes protecteurs des droits fondamentaux, notamment celui porté à l'article 8 de la Déclaration Universelle des Droits de l'Homme, en ce que la loi en question suspend également les règles relatives à l'appel contre la détention préventive et la liberté provisoire, alors que le principe de

Constitutionnelle à censurer toute atténuation des garanties en faveur des droits et libertés fondamentales;

QUE de ce qui précède, l'article premier de la loi sous-examen est contraire aux articles 12 alinéa 4 et 33 de la Constitution du 10 juin 1991, articles 6, 51ème et 61ème trait, 14 alinéa 1 et 2 du Protocole d'Accord du 18 Août 1992; article 8, 11-1 et 14 alinéa 1 de la Déclaration Universelle des Droits de l'Homme; article 7, b) de la Charte Africaine des Droits de l'Homme et des Peuples ainsi que l'article 17 sur les questions diverses et dispositions finales;

ATTENDU que l'article deux de la loi portant suspension des règles relatives à la détention préventive et à la liberté provisoire accorde d'une part un délai de quatre ans pendant lequel ces règles peuvent être suspendues, et d'autre part, accorde au Ministre de la Justice le pouvoir de déterminer le délai de vie de la loi en question ainsi que la compétence abrogative de ladite loi;

ATTENDU que sur le point relatif au délai pendant lequel la suspension serait effective, il est hors de droit fondamental qu'une personne présumée innocente attende jusqu'à quatre ans pour qu'elle voit pour la première fois sa cause entendue par la justice, que même entendue, le suspect ne puisse bénéficier des garanties constitutionnelles alors que la présomption d'innocence joue toujours tant que n'intervient pas encore une condamnation définitive, que la loi sous-examen, en allongeant les délais par la suspension des mesures de liberté provisoire, ne garantit pas les droits fondamentaux, contrairement à ce qui est confirmé par l'article 14 du Protocole d'Accord du 18 Août 1992 relatif à l'Etat de droit;

ET attendu que, selon l'article 9 point 3 du Pacte International relatif aux droits civils et politiques auquel le Rwanda a adhéré en date du 12 février 1975, énonce que "tout individu arrêté ou détenu du chef d'une infraction pénale sera traduit dans le plus court délai devant un juge ou une autre autorité habilitée par la loi à exercer les fonctions judiciaires et devra être jugé dans un délai raisonnable ou libéré. La détention des personnes qui attendent de passer en jugement ne doit pas être de règle, mais la mise en liberté peut être subordonnée à des garanties assurant la comparution de l'intéressé à l'audience, à tous les autres actes de la procédure et, le cas échéant, l'exécution du jugement";

QU'au point 4 du même article, il est dit que "quiconque se trouve privé de sa liberté par arrestation ou détention a le droit d'introduire un recours devant un tribunal afin que celui-ci statue sans délai sur la légalité de sa détention et ordonne sa libération si la détention est illégale"

ATTENDU que le pacte International ci-avant invoqué considère à juste titre, dans le 31ème alinéa du préambule, le bien fondé de la déclaration Universelle des Droits de l'Homme, que ce faisant, les parties adhérentes, dont le Rwanda, font leur le contenu du Pacte et de la Déclaration;

QUE surabondamment à ce qui précède, la Loi Fondamentale proclame à l'article 17 sur les questions diverses et dispositions finales qu'en matière des libertés publiques et droits fondamentaux, il y a primauté des principes énoncés dans la Déclaration Universelle des Droits de l'Homme par rapport à ceux énoncés dans la Constitution du 10 juin 1991 en ce que ceux-ci sont contraires aux premiers, que par ces instruments protecteurs des libertés publiques et droits fondamentaux il y a renforcement des garanties dans ce sens qu'une loi ordinaire, elle-même inférieure à la Constitution d'après la hiérarchie des normes, ne peut limiter les droits fondamentaux sans porter atteinte à l'esprit de la Loi Fondamentale;

ATTENDU que la mesure d'arrestation est d'une gravité évidente, et, elle est dans ce sens une atteinte irréversible lorsqu'elle s'accompagne d'une soustraction au pouvoir judiciaire, ne fut-ce que pour un temps, d'une compétence d'en examiner le bien fondé dans le plus bref délai, qu'il en va de l'essence même de la personne humaine en tant qu'être de la famille humaine, que plutôt il convient d'entourer de garanties cette mesure d'arrestation et de détention, et de confier l'opération au pouvoir judiciaire doté de la plus grande indépendance vis-à-vis de l'Exécutif et du législatif;

QU'ainsi, la partie de l'article deux de la loi sous-examen, concernant les délais, porte atteinte à l'article 33 de la Constitution du 10 juin 1991; article 17 du Protocole d'Accord sur les questions diverses et dispositions finales; article 9 -3 et 4 du Pacte International relatif aux droits civils et politiques;

ATTENDU, d'autre part, que ce même article 2 de la loi sous-examen appelle des considérations suivantes en ce que la loi accorde au Ministre de la Justice la compétence pour fixer les délais de validité de la loi;

ATTENDU que l'institutionnalisation des normes constitutionnelles a pour conséquence la délimitation avec plus de netteté des compétences normatives des autorités qui participent à la création des règles de droit, que le contrôle constitutionnel n'a d'autre but que de permettre la précision de l'étendue et les limites de la production normative des autorités publiques au regard de la Constitution;

ATTENDU que le principe de la séparation des pouvoirs se trouve consacré par la Loi Fondamentale considérée dans son ensemble, et plus particulièrement dans l'article 6, 3ième trait du Protocole d'Accord relatif à l'Etat de droit, le respect de ce principe étant une condition nécessaire de cet Etat de droit;

QUE l'Etat de droit ne tient pas seulement à ce que les autorités de l'Etat respectent la loi, mais aussi à ce qu'il y ait renforcement de la suprématie de la Loi Fondamentale, en faisant de celle-ci une norme de référence dont le respect s'impose aux autorités publiques, que dans ce sens, le contrôle de la constitutionnalité permet d'assurer le respect des attributions de compétence opérées par le pouvoir constituant et ce contrôle de compétence rejaillit sur la nature même du contrôle de la Constitutionnalité;

ATTENDU que le contrôle exercé par la Cour Constitutionnelle signifie que la norme posée est inconstitutionnelle lorsque l'autorité qui l'édicte est allée au-delà de la compétence que lui attribue la Loi Fondamentale; que ce contrôle de compétence peut jouer en faveur du législateur lorsque la Cour sanctionne un abandon abusif de la compétence du législateur au profit du pouvoir réglementaire, cette position du législateur liée à l'incompétence négative devant conduire la Cour Constitutionnelle à contrôler si ce législateur n'abandonne pas au pouvoir réglementaire le champ d'application de la règle posée par la loi; que l'origine de l'institution de la Cour intéresse la répartition des compétences entre le pouvoir législatif et le pouvoir réglementaire en fonction de la délimitation effectuée par la Loi Fondamentale du domaine de la loi;

ATTENDU, en outre, que l'article 40 de la Loi Fondamentale au Protocole d'Accord sur le Partage du pouvoir apporte une précision quant aux autorités que ledit Protocole réserve la compétence de l'initiative législative, à savoir l'Assemblée Nationale et le Gouvernement;

ET attendu aussi, que l'article 72 du même Protocole trace les limites normatives de chaque autorité, appelant par là une sécurité juridique incontestable qui veut que le pouvoir législatif soit du domaine de la loi ou du décret-loi pris par le Gouvernement en cas d'impossibilité, pour l'Assemblée Nationale de siéger ou en cas d'urgence;

ATTENDU que l'article deux de la loi sous-examen, attribue au Ministre de la justice le pouvoir d'apprécier la durée de vie d'une loi, qu'en l'espèce la même loi lui reconnaît un pouvoir d'abrogation d'une loi, initiative revenant constitutionnellement au législateur, puisque pour abroger

une norme il faut une norme équivalente si non supérieure pour conserver le parallélisme des normes ou la hiérarchie normative, la Cour Constitutionnelle devant contrôler le respect de la primauté de la loi aux règlements, fussent-ils pris en conseil des Ministres, car le législateur ne doit pas abandonner son domaine d'intervention au profit d'une quelconque autre autorité;

QUE donc l'article 2 de la loi sous-examen viole l'article 6, 3ième trait du Protocole d'Accord sur l'Etat de droit et les articles 33, 40 et 72 du Protocole d'Accord relatif au Partage du Pouvoir;

ATTENDU que selon le prescrit de l'article 12 alinéa 2 de la Constitution du 10 juin 1991, les tribunaux répressifs sont les gardiens des libertés individuelles car nul ne peut être poursuivi que dans les cas prévus par la loi et dans la forme, qu'elle prescrit; que pour l'application des lois pénales de forme, la régularité d'une procédure s'apprécie au regard de la loi en vigueur au jour où cette procédure est entamée, c'est-à-dire au jour où a été posé le premier acte de procédure, à savoir la mise sur procès-verbal d'arrestation de l'inculpé;

ATTENDU que le principe de sûreté énoncé par l'article 13 de la Constitution du 10 juin 1991 signifie, non pas que l'Etat ne peut jamais porter atteinte à la liberté individuelle, mais que les garanties particulières doivent, dans ce domaine, être accordées à l'individu afin que ces atteintes ne soient jamais irrégulières ou illégales, les principes protecteurs existant essentiellement en l'organisation d'une procédure pénale qui assure la répression des infractions, mais accorde également aux innocents des garanties certaines;

QUE de ces garanties, le Pacte International relatif aux droits civils et politiques en son article 9-1. in fine pose un principe que nul ne peut être privé de sa liberté si ce n'est pour les motifs et conformément à la procédure prévue par la loi; qu'il ne s'agit donc pas de poser une loi après arrestation mais que plutôt l'arrestation et la détention doivent suivre la procédure déjà existante, la rétroactivité ne pouvant concevoir dans les matières pénales de forme que lorsqu'elle entend adoucir les mesures posées par une loi antérieure, la loi nouvelle étant recommandée à la fois par l'intérêt de l'administration et des administrés, l'antagonisme des intérêts des deux parties devant aboutir au rejet de la loi nouvelle si elle est plus contraignante et donc moins protectrice des garanties individuelles;

ATTENDU que la loi sous-examen en son article trois, contre le principe de non-rétroactivité des lois, énonce qu'elle produit ses effets à partir du 06 avril 1994, ce qui va à l'encontre de l'esprit de l'article 9 -1. du Pacte International relatif aux droits civils et politiques en ce que ladite loi entend substituer une procédure d'arrestation, de détention préventive de la liberté provisoire une nouvelle procédure plus escamoteuse des droits fondamentaux, que donc l'article 3 de la loi est contraire aux articles 12 alinéa 2 et 13 de la Constitution du 10 juin 1991, article 9-1 du Pacte International relatif aux droits civils et politiques;

PAR CES MOTIFS;

VU la Constitution du 10 juin 1991, en ses articles 12, alinéa 2 et 4; 13, 33; 75 alinéa 1;

VU l'Accord de Paix d'Arusha entre le Gouvernement de la République Rwandaise et le Front Patriotique Rwandais en ses articles 33, 40 et 72 au chapitre du partage du pouvoir;

VU le Protocole d'Accord relatif à l'Etat de droit, spécialement en ses articles 6 -3, -5, -6;

VU le Protocole d'Accord sur les questions diverses et dispositions finales en son article 17;

VU la loi du 23 février 1963 portant organisation de la Cour Suprême, telle que modifiée, spécialement en ses articles 44, 45 et 62;

VU le décret-loi n° 41/78 du 29 décembre 1978 portant dispositions transitoires en matière d'organisation et de compétence judiciaires, confirmé par la loi n° 01/82 du 26 janvier 1982 portant confirmation de décrets-lois en ses articles 1er et 2;

VU la Déclaration Universelle des Droits de l'Homme en ses articles 8, 11 -1 et 14 alinéa 1;

VU le Pacte International relatif aux droits civils et politiques, en son article 9 -1; -3 et -4;

VU la Charte Africaine des Droits de l'Homme et des Peuples en son article 7, b);

A R R E T E :

Article 1er: La loi portant suspension de l'application des règles relatives à la détention préventive et à la mise en liberté provisoire des personnes poursuivies pour cause de génocide, massacres, crimes de guerre, crimes contre l'humanité et autres crimes est contraire à la Loi Fondamentale.

Article 2: ORDONNE que le présent arrêt soit transmis au Président de l'Assemblée Nationale de Transition.

AINSI ARRETE ET PRONONCE PAR LA COUR CONSTITUTIONNELLE, EN SON AUDIENCE PUBLIQUE DU 26 JUILLET 1995, OU SIEGEAIENT MESSIEURS: V. NZAMUKWEREKA; PRESIDENT; J. RUBADUKA, E. HAKIZIMFURA, V. NKEZABAGANWA, J.B. MUTASHYA ET X. NDEZE; CONSEILLERS ET E. NIYUYITA; GREFFIER.

V. NZAMUKWEREKA; PRESIDENT.

J. RUBADUKA; CONSEILLER.

E. HAKIZIMFURA; CONSEILLER.

V. NKEZABAGANWA; CONSEILLER-RAPPORTEUR

J.B. MUTASHYA; CONSEILLER.

X. NDEZE; CONSEILLER.

E. NIYUYITA; GREFFIER.



UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS
HUMAN RIGHTS FIELD OPERATION IN RWANDA
TECHNICAL COOPERATION UNIT

REPORT N° 3
STATUS OF THE ADMINISTRATION OF JUSTICE
IN RWANDA

- July, 25th, 1995 -

TABLE OF CONTENTS

Analysis of the Administration of Justice in Rwanda

- The Triage Commissions

- The proposed law for the derogation of the application of the procedures for preventive detention and provisional release for those accused of genocide, massacres, war crimes, and crimes against humanity.

Recommendations

Annexes

[Report 3, 25. 7. 1995/ released 31. 8. 1995]

The Technical Co-operation Unit of the Human Rights Field Operation intends to examine, on a monthly basis, the state of the administration of justice in Rwanda from the view point of human rights. The reports of the TCU are the result of, on the one hand, the work accomplished by the teams of Human Rights Officers in the field and, on the other hand, collaboration with the Government of Rwanda, the donor countries, United Nations agencies and NGOs. The present report is a special edition which will not include the usual themes of international aid and the organisation and functioning of the justice system. All recent changes regarding the above themes will be communicated in the next report.

The HRFOR would like to express its gratitude to all those who have given their contribution to the development of this report. Comments and suggestions are welcome.

The following report has been embargoed since 29 July 1995. The introduction has been slightly revised before its present release of 31 August 1995, but the information contained in the report has not been updated. The HRFOR apologizes for the delay and any inconvenience that it might have caused you.

Since the writing of this report, the Constitutional Court in the end of July rejected the proposed law, that is discussed in the second section of this report as unconstitutional. This makes the issues and recommendations presented in that section even more relevant.

The Triage Commission

Introduction

An analysis of the Triage Commission is a complex undertaking. The Commission, its existence, its functioning, and impact are potentially divisive and controversial issues.

Its existence grows out of a genocide unprecedented in its breadth and savagery. Rwandan society was ripped apart and Government institutions decimated both in terms of personnel and material.

From a human rights perspective the Triage Commission's impact has both positive and negative aspects.

Positive in that individuals wrongly detained have been released. Positive because it has helped the Government focus limited prosecutorial resources which has resulted in further investigations of a number of cases. Positive in that it brings all relevant actors together with the goal of maximizing the available resources and this improves the Government's ability to respond to the present situation. Positive because it is an effort by the Government to deal with a very real capacity problem.

Negative, because it is an institution that ideally should not exist, for - as it presently operates - it displaces certain functions that normally should be carried out by judicial personnel with proper training and experience. Negative because standards regarding the burden of proof and regarding the process of case selection are ambiguous and open to varying and arbitrary interpretations.

In such post-traumatic circumstances as Rwanda finds itself today, given the limited capacity of the government, full compliance with domestic and international law may prove temporarily unobtainable. Special circumstances may merit special responses. Nonetheless, it is imprudent and undesirable to institutionalize ad-hoc

[Report 3, 25. 7. 1995/ released 31. 8. 1995]

responses, especially when such institutions may slow the process toward normalization and compliance with the law. Further, there is a lack of transparency both as it relates to internal operations and decisions of the Triage Commission.

At the time this report was originally written, the Triage Commission was functioning in every prefecture except Kibuye and Gikongoro. In August the Commission began to operate in Gikongoro. This Commission has not released a significant numbers of detainees.

Without changes, the Triage Commission will not have a significant impact on the detainee population. As it presently operates the Triage Commission does not have a significant educative impact on arresting agents given the physical distance and amount of time that passes before cases are reviewed. Thus, while there may be some benefit to the accused, the Commission's operation to this point has not substantially bettered arrest and detention procedure.

Nonetheless, until the system of justice begins to function, it is desirable if not necessary that the government review cases presently pending.

THE WORK OF THE COMMISSIONS, BY PREFECTURE.

The "National Commission"

In conformity with article 10 of the criminal procedure code, a Commission was put in place by the Government in the month of March to look specifically at the arrest records of well known people (e.g former government officials and magistrates). This Commission, was composed of the *Premier Avocat Général* (who presides over the Commission), a representative from the information service of the Prime Minister's office, representatives from the Ministry of Defence and the Ministry of the Interior (see the supplement to the report No.1). After visits throughout the country a report was given to the council of Ministers. This report contained the individual files on each of the 56 cases that were examined. These files contain the identity of the individual, the place and date of his arrest and the name of the arresting authority, the type of infraction, the proof for and against and the opinion of the Commission on the case with regard to the charges and proof held against the person. The Council of Ministers, after examining the report in a session on the 18th of June 1995, decided that the recommendations of the report should be put into action. The 22 people who were recommended for provisional liberty were released. One has since been killed, and one re-arrested. We note that the decisions were all taken unanimously.

The first Triage Commission began in Kigali. In a letter date 31 March 1995, the Minister of Justice instructed prosecutors around the country to establish similar Commissions.

Commissions are formed by the prosecutor on behalf of the Minister of Justice, and include one representative of the gendarmerie (except in prefectures where there is no gendarmerie e.g Gitarama), one representative of RPA, and one representative of the intelligence service of the prefecture.

The Triage Commissions were instructed to review the judicial and penitentiary dossiers, checking the manner of arrest, the witnesses, and type of proof. They were to release the detainees who are jailed with no legal basis.

In most prefectures, three out of four of these representatives must agree before a detainee can be provisionally released. However, in a few of the prefectures, the practice is to reach a consensus before an individual is provisionally released.

[Report 3, 25. 7. 1995/ released 31. 8. 1995]

Butare

The Commission first met on 30 June 1995 and decided to do the work in two phases. The first phase would be to separate physically common crime detainees from those accused of genocide. And the second phase would be to deal with cases related to the common crimes and the genocide cases. They planned to start with those cases involving minors. And at the request of HRFOR Butare team, the next target group would be women. As of 20. 7. 1995, no working meetings had been held.

Byumba

Put in place on the 2nd of May 1995, following the instructions of the Minister of Justice, the Triage Commission has examined 63 cases. One person was freed on the 30th June 1995. In the majority of cases, the files will be re-examined by the Commission after investigations are further developed.

Cyangugu

The Triage Commission first met on 13 July 1995. It established the modalities of its functioning. In its session on 20 July 1995, ten cases were examined and the outcome was that six people were released.

On the communal level there has been practice of releasing detainees from the cachots under order of communal "Security Commissions". These communal "security commissions" are mainly composed of the bourgmestre, an IPJ (if assigned to the commune), a representative of the RPA, a security officer responsible of the detention centre (communal cachot) and the president of the communal court (if functioning).

Gikongoro

The Triage Commission, was established at the end of July. A number of detainees, however were released by the Prosecutor, before the Commission was established.

Gisenyi

The deputy prosecutor, chaired the first meeting of the Triage Commission on 24 May 1995. Its jurisdiction is limited to cases of those accused of crimes related to the genocide. The deputy prosecutor, appears to decide which cases are presented to the

Commission and at which meeting. As a result of the first and the second meeting of the Commission, nine detainees were released.

Gitarama

The Commission met for the first time, on the 5th May 1995. Since this date the Commission has met weekly. 18 cases have been examined by the Commission of which 8 people were freed. One person was re-arrested.

Kibuye

The Triage Commission does not exist in this Prefecture. The absence of a prosecutor is the major handicap in the process towards regularisation of arrest and detention procedure. Even without the Triage Commission three people accused of genocide were released over the month of June after investigations of an intelligence service officer working with the prefect. Under an order from the prefect, the intelligence officer began to examine the files of those accused of common crimes and those cases of people accused of genocide with little evidence against them.

Kibungo/Rwamagana

The Triage Commission first met on 11 July, when it discussed procedural matters. It has not met a second time.

Kigali

Two views exist as to when Triage Commission started to function. According to the deputy prosecutor, the Triage Commission started meeting in October 1994. Nevertheless, in a meeting with the former prosecutor, M. Francois Xavier, he mentioned the commission started to function in November 1994. Due to a controversy as to the participation of a representative of the Prime Minister's office and the absence of the prosecutor, M. Francois Xavier, the Triage Commission stopped meeting in the month of February and re-started its work in April. Kigali is where the Triage Commission has functioned for the longest time and held the most sessions of Commissions operating in the country. Since the Commission has commenced work in Kigali, 50 people out of 4000 cases reviewed, were provisionally released from the Kigali central prison. Of the 50 people, three were re-arrested. No minor has been released.

Ruhengeri

The Commission was established in February 1995. It meets once a week. Of the 80 cases investigated 35 people have been released (these people were all accused of participating in the genocide). From this total we have received information of one re-arrest; this person was accused of having participated in the genocide in a different commune than the one where he had initially been arrested.

[Report 3, 25. 7. 1995/ released 31. 8. 1995]

The proposed law for the derogation of the application of the procedures for preventive detention and provisional release for those accused of genocide, massacres, war crimes, and crimes against humanity.

In mid-July, the National Assembly of Transition passed the "*UMUSHINGA W'ITEGEKO RIHAGARIKA IKURIKIZWA RY'AMATEGEKO YEREKEYE GUFUNGA NO GUFUNGORA BY'AGATEGANYO KUBERA ITSEMBATSEMBA, IBYAHABIKOZWE MU NTAMBARA, IBYAHA BYIBASIYE INYOKO-MUNTU.*"⁽¹⁾

The rationale for this proposed law argues that it is necessary due to the present capacity of the judiciary and the penal systems to cope with detentions in accordance with the law.

The problem that the Assembly is trying to address is indeed urgent and needs be dealt with at once. Yet, the bill raises doubts as to Rwanda's compliance with both domestic law and international obligations. In its present formulation, if the bill is to become law ⁽²⁾ it is likely to attract criticism from the international human rights community.

This commentary tries to address the issue and suggest possibilities for the improvement of the bill

1 - Context

There are presently over 50 000 people held in Rwandan prisons and detention centres. Virtually all of these detainees are in preliminary detention pending trial for crimes related to the 1994 genocide.

People have been arrested in a variety of ways. In the early months following **July 1994**, most were detained by **RPA** soldiers and put in prison without further ado. Once the Gendarmerie began to function (**September 1994**) arrests were made by soldiers, gendarmes and/or bourgmestres or conseillers who used communal *cachots* before later transferring detainees to prisons or gendarmerie brigade headquarters. Prosecutors resumed work in September, but only in certain areas. Even now, they do not fully cover the national territory. Most of the Courts of First Instance with jurisdiction over crimes related to the genocide have some staff, yet much less than **50 per cent** of them are functional and none are presently handling cases related to the genocide.

-
- (1) The "proposed law for the derogation of the application of the procedures for preventive detention and provisional release for those accused of genocide, massacres, war crimes and crimes against humanity."
 (2) The bill will become law once it clears review by the constitutional court and is published in the official gazette.

[Report 3, 25. 7. 1995/ released 31. 8. 1995]

This scenario has created a problem. Almost all of those detained were not arrested in conformity with the Code of Criminal Procedure. This implies a violation of the international prohibition of arbitrary arrests (3).

Further, this violation and practice opened the possibility that those accused of genocide would be freed from prison based on procedural irregularities and not upon guilt or innocence for the underlying crime.

Hence the bill was drafted to derogate retroactively to legal procedures to avoid the possibility of widespread impunity for the genocide.

2 - The law

According to Rwandan law, arrests can be made once authority has been granted by a prosecutor, unless it is a case of *flagrant délit* (caught red-handed). In the normal course of events, a preliminary investigation into a crime will lead to suspicion of a particular culprit, which in turn will lead to a formal order to have that person brought in for questioning (*mandat d'emmener*). The result of the interrogation may be release or arrest proper. Arrest can only be authorized by law if there are sufficient indications of the suspect's guilt for the crime in question. Once all the requirements are met and after questioning the suspect, the OMP (Officier du Ministère Public) can issue a *mandat d'arrêt provisoire*. Preventive detention must then be promptly authorized by the president of the court of the jurisdiction. The relevant effect of the "mandat" is limited to **30 days** but can be renewed for further periods of **30 days** as required by the public interest and the investigation's needs.

Rwanda is a party to the **International Covenant on Civil and Political Rights**. Art. 9 reads:

"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrests, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. [...]

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

(3) Arrests made without proper regard to national law.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

None of the participants in the genocide and the massacres have been arrested immediately following the killing. Therefore, none of the arrests follow the procedure of *flagrant délit*. In law, no one may be arrested for participation in the massacres without a prior investigation to find evidence of guilt sufficient to warrant detention. Although arrests have usually been made following denunciation by one or more witnesses, the witness' statements have rarely been taken down (*procès verbal*). Virtually no preventive detentions have been duly authorized by a judge. Frequently, the detainees have not been informed of the reasons for their arrest. For these various reasons alone, few of the arrests and detention in this country have been "on such grounds and in accordance with such procedures as are established by law". In principle, a diligent group of defense attorneys could take out *habeas corpus* proceedings for each and every one of the detainees and the courts would be bound to release all of them. For obvious reasons, the immediate release of the suspected mass murderers is not desirable. It has been the Rwandan Government's argument that proper procedures have not been followed because of lack of resources. The international community has been willing to acquiesce to these arguments.

However, the response given by the derogation law goes beyond what is necessary to achieve the desired goal. Further, the law eliminates protections already afforded by the Government and within the Government's means to meet, such as the review of the dossiers by the Procureur before transfer to a central prison.

In a nutshell, it can be said that under the present situation the implementation of this law as drafted would result in the infringement of international human rights standards, as specified in the following documents:

The bill also contravenes Art. 6 of the **African Charter on Human and People's Rights**, duly ratified by Rwanda, that reads:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reason and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

International Covenant on Civil and Political Rights**

Art. 9 Right to liberty and security of the person. Freedom from arbitrary arrest and detention

Art. 14 Fair and speedy trial

International Convention on the Rights of the Child

Art. 40 Right to a fair and speedy trial and proper penal treatment

1977 Standard Minimum Rules for the Treatment of Prisoners, in particular Part II C - Prisoners under arrest or awaiting trial.

1990 Basic Principles for the Treatment of Prisoners

1990 UN Rules for the Protection of Juveniles Deprived of their Liberty, in particular III - Juveniles under arrest or awaiting trial.

1985 UN Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), in particular 13 - Detention pending trial.

* Derogation from these ICCPR provisions is admissible under Art. 4 in case of a "*public emergency which threatens the life of the Nations and the existence of which is officially proclaimed*". Considering the present situation it would not be too far fetched to argue that a situation of emergency exists. If Rwanda wants to invoke this clause, it has to inform the other State Parties to the Covenant, through the intermediary of the Secretary General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. If such a path is taken, the derogation should be of limited duration, but such a derogation at this time does not appear to be desirable in light of progressive compliance with above mentioned provision. A further communication would have to be made on the date on which the derogation ends.

[Report 3, 25. 7. 1995/ released 31. 8. 1995]

Recommendations

1. Greater emphasis should be given to complying with arrest procedures. Proper review of cases of those already detained will require a functional judicial system.

2. International and national norms must be followed. Realistic plans with time-frame and goals should be drawn-up by all arresting agents as to how they will eventually gain compliance with the law.

For example, it is possible to obtain greater accountability of the arresting agent. Cases could be reviewed by a superior with proper training promptly at the local (communal) level with the arresting officer present. At first this internal review should occur within 10 days, progressively reaching compliance with the actual legal procedures within 6 months. All detainees could be transferred to a central prison location only after the prosecutor has been consulted and the proper warrant issued. This process could happen within 20 days, progressively reaching compliance with the actually legal procedures within 6 months.

3. Plans by the prosecutor, bourgmestre and the gendarmerie as to how to obtain full compliance with the law should be supported and resources should be made available immediately.

4. Structures that create real cooperation between the arresting agents and the prosecutors should be created and supported. Working groups - already in place in some prefectures with the participation of the HRFOR - including the prosecutors, IPJs, bourgmestre, and gendarmerie should be supported. Regular meetings, of once every two weeks or once a month should be encouraged. A budget should be provided to these working groups so actual needs to improve compliance with arrest procedure are immediately addressed.

5. The Triage Commission should be in place only until the judiciary is functioning; efforts to get the system in place within six months should be supported.

6. Institutional members of the Triage Commission should be supported to fulfill the role provided them under the law but the commission as an institution in itself should not be supported.

7. If the Triage Commission continues to function the Government should define the length of time it will operate, what burden of proof it is to utilize (considering the legal training of those involved), ensure the case selection and decision making process be transparent, and commence a public education campaign to explain its function and usefulness.

8. If the derogation proposal is found to be unconstitutional by the Constitutional Court, the proposal should be redrafted to better comply with national and international law and reflect and encourage the improvements being made in relation to arrest procedure. Support to the Transitional National Assembly should be provided to increase their capacity to draft legislation in compliance with international and national law.

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