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HUMAN RIGHTS REPORTS

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ACC.	<u>1998/0270</u>



General Assembly

Distr.
GENERAL

A/49/537
19 October 1994

ORIGINAL: ENGLISH

Forty-ninth session
Agenda item 100 (a)

HUMAN RIGHTS QUESTIONS: IMPLEMENTATION OF
HUMAN RIGHTS INSTRUMENTS

Effective implementation of international instruments on human
rights, including reporting obligations under international
instruments on human rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the fifth meeting of persons chairing the human rights treaty bodies, convened pursuant to General Assembly resolution 48/120 of 20 December 1993.

ANNEX

Report of the fifth meeting of persons chairing the human
rights treaty bodies

I. INTRODUCTION

1. Since the adoption of resolution 37/44 on 3 December 1982, the General Assembly has continuously kept under review the problems relating to the effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights. Those problems have also received careful attention during the various sessions of the treaty bodies, at some of the meetings of States parties and at meetings of such other organs as the Economic and Social Council and the Commission on Human Rights.

2. Pursuant to General Assembly resolution 38/117 of 16 December 1983, the Secretary-General convened a first meeting of the persons chairing the bodies entrusted with the consideration of State party reports in August 1984. The report of that meeting was presented to the General Assembly at its thirty-ninth session (A/39/484, annex). A second meeting was convened by the Secretary-General in October 1988, pursuant to Assembly resolution 42/105 of 7 December 1987, and the report of that meeting was presented to the Assembly at its forty-fourth session (A/44/98, annex). A third meeting was convened by the Secretary-General in October 1990, pursuant to Assembly resolution 44/135 of 15 December 1989, and the report of that meeting was presented to the Assembly at its forty-fifth session (A/45/636, annex). A fourth meeting was convened by the Secretary-General in October 1992, pursuant to Assembly resolution 46/111 of 17 December 1991, and the report of that meeting was presented to the Assembly at its forty-seventh session (A/47/628, annex).

3. In its resolution 48/120 of 20 December 1993, the General Assembly endorsed the conclusions and recommendations of the meetings of persons chairing the human rights treaty bodies aimed at streamlining, rationalizing and otherwise improving reporting procedures; requested the Secretary-General to take the appropriate steps in order to finance the biennial meetings of persons chairing the human rights treaty bodies from resources available from the regular budget of the United Nations; and decided to give priority consideration, at its forty-ninth session, to the conclusions and recommendations of the meetings of persons chairing human rights treaty bodies, in the light of the deliberations of the Commission on Human Rights. In its resolution 1994/19 of 25 February 1994, the Commission on Human Rights urged the treaty bodies to examine ways of reducing the duplication of reporting required under the different instruments and of generally reducing the reporting burden on Member States and welcomed the emphasis placed by the meeting of persons chairing the human rights treaty bodies on the importance of technical assistance and advisory services.

4. The fifth meeting of persons chairing the human rights treaty bodies was convened by the Secretary-General pursuant to General Assembly resolution 48/120 and Commission on Human Rights resolution 1994/19.

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II. ORGANIZATION OF THE MEETING

5. The meeting was held at the United Nations Office at Geneva from 19 to 23 September 1994. The following representatives of the human rights treaty bodies attended: Mrs. Hoda Badran (Chairperson, Committee on the Rights of the Child), Mrs. Virginia Bonoan-Dandan (Rapporteur, Committee on Economic, Social and Cultural Rights), Mrs. Ivanka Corti (Chairperson, Committee on the Elimination of Discrimination against Women), Mr. Vojin Dimitrijevic (Vice-Chairperson, Human Rights Committee), Mr. Ivan Garvalov (Chairperson, Committee on the Elimination of Racial Discrimination) and Mr. Alexis Dipanda-Mouelle (Chairperson, Committee against Torture).

6. Representatives of the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF) and the Office of the United Nations High Commissioner for Refugees attended the meeting. Representatives of the following non-governmental organizations also attended the meeting: American Association for the Advancement of Science, Amnesty International, Anti-Racism Information Service, Baha'i International Community, Friends World Committee for Consultation (Quakers), International Service for Human Rights, International Womens' Rights Action Watch and the NGO Group for the Convention on the Rights of the Child.

7. The agenda for the meeting was as follows:

1. Opening of the meeting.
2. Election of the officers of the meeting.
3. Adoption of the agenda.
4. Organizational and other matters.
5. Review of recent developments relating to the work of the treaty bodies.
6. Improving the operation of the human rights treaty bodies.
7. Adoption of the report.

8. The following documentation was made available to the participants:

- (a) Provisional agenda (HRI/MC/1994/1);
- (b) Report of the Secretary-General on improving the operation of the human rights treaty bodies (HRI/MC/1994/2);
- (c) Report of the Secretary-General on the status of the international instruments and the general situation of overdue reports (HRI/MC/1994/3);
- (d) Informal note by the Secretariat containing a compilation of the recommendations concerning the functioning of the treaty bodies formulated by

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non-governmental organizations within the framework of preparatory activities for and during the World Conference on Human Rights;

(e) Report of the fourth meeting of persons chairing the human rights treaty bodies (A/47/628);

(f) Conclusions and recommendations of the fourth meeting of persons chairing the human rights treaty bodies: report of the Secretary-General (A/48/508 and Corr.1);

(g) Financing and adequate staff resources for the operations of the human rights treaty bodies: report of the Secretary-General (A/48/560);

(h) Convention on the Elimination of All Forms of Discrimination against Women: report of the Secretary-General (A/49/308);

(i) Interim report on the updated study of the independent expert on enhancing the long-term effectiveness of the United Nations human rights treaty regime (A/CONF.157/PC/62/Add.11/Rev.1);

(j) Vienna statement of the international human rights treaty bodies (A/CONF.157/TBB/4 and Add.1);

(k) Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993 (A/CONF.157/23);

(l) Relevant resolutions of the General Assembly: resolutions 47/111 of 16 December 1992 and 48/120 on effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights; resolution 48/119 of 20 December 1993 on the international covenants on human rights; and resolution 48/141 of 20 December 1993 on the High Commissioner for the promotion and protection of all human rights;

(m) Economic and Social Council resolution 1994/7 of 21 July 1994 on the Convention on the Elimination of All Forms of Discrimination against Women;

(n) Relevant resolutions of the Commission on Human Rights, including resolutions 1993/16 of 26 February 1993 and 1994/19 on effective functioning of bodies established pursuant to United Nations human rights instruments; resolution 1994/15 of 25 February 1994 on the status of the international covenants on human rights; and resolution 1994/16 of 25 February 1994 on the succession of States in respect of international human rights treaties;

(o) Compilation of general comments and general recommendations adopted by human rights treaty bodies (HRI/GEN/1/Rev.1);

(p) Letter dated 29 August 1994 from the Assistant Secretary-General for Human Rights to the chairpersons;

(q) Letter dated 19 September 1994 from the Coordinator for the International Year for the Family to the chairpersons.

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9. The meeting was opened by Mr. Ibrahima Fall, Assistant Secretary-General for Human Rights, who addressed the chairpersons. The United Nations High Commissioner for Human Rights addressed the meeting on 21 September 1994 and discussed a number of issues with the chairpersons.

10. Mr. Ivan Garvalov was elected Chairperson-Rapporteur of the meeting.

11. On 23 September 1994, the chairpersons considered the draft report of their fifth meeting. The report, as amended during the course of the meeting, was adopted unanimously by the chairpersons.

III. REVIEW OF RECENT DEVELOPMENTS RELATING TO THE WORK OF THE TREATY BODIES AND IMPROVING THE OPERATION OF THE HUMAN RIGHTS TREATY BODIES

12. Consideration of agenda items 5 and 6 began with a brief oral overview by each of the participants. Among other developments, participants noted that following the recommendation of the fourth meeting of chairpersons, a number of treaty bodies had taken steps towards elaborating early warning measures and urgent procedures with a view to preventing the occurrence, or recurrence, of serious human rights violations. In that connection, the chairpersons welcomed the establishment of the post of United Nations High Commissioner for Human Rights, whose mandate included the prevention of human rights violations around the world. The treaty bodies would be able to provide expert knowledge and advice relating to specific situations as well as detailed recommendations which could be of significant value to the High Commissioner in the discharge of his mandate.

13. Throughout their discussions, the chairpersons emphasized that the work of the treaty bodies was not only one of the fundamental pillars of the United Nations human rights programme and policy, but indeed at the core of the international human rights order. The United Nations human rights treaties were universal in nature and in application. The treaty bodies which monitored the application of the human rights treaties constituted an integrated system in which the broad spectrum of human rights - civil, cultural, economic, political and social - were dealt with as an indivisible and interdependent whole. No human rights standards were to be ignored in favour of others. The chairpersons emphasized that those standards were to guide and inform the United Nations in its diverse activities. In addition, the work of the treaty bodies constituted an invaluable guide to the application of those human rights standards in 176 of the 184 States Members of the United Nations and in 4 non-member States.

IV. CONCLUSIONS AND RECOMMENDATIONS

14. The following conclusions and recommendations are submitted to the General Assembly for its consideration in accordance with resolution 48/120. Some actions might be taken by the Assembly itself or by another appropriate organ of the United Nations, while others fall within the competence of the Secretary-General, of the respective treaty bodies or of the States parties to the treaties. However, no distinction is drawn in this regard for the purposes

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of the present report, since the mandate of the meeting is to propose diverse means to improve the functioning of the treaty supervisory system within the overall framework of the United Nations.

Priority objective of the United Nations

15. The chairpersons emphasize that the promotion and protection of all human rights and fundamental freedoms must be considered a priority objective of the United Nations, as stated in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights. They pledge their full support and cooperation to realize that objective. At the same time, they believe that this commitment should be accompanied by important budgetary reallocations in favour of United Nations activities related to human rights, including the servicing of the treaty bodies.

Achieving universal acceptance of the human rights treaties

16. The chairpersons note with satisfaction that 176 of the 184 States Members of the United Nations and 4 non-member States are now parties to one or more of the six principal human rights instruments monitored by the treaty bodies. Concern is expressed, however, that no instrument has yet achieved universal ratification. With this in mind, the chairpersons welcome the recent initiative taken by the Secretary-General personally to address a communication to all heads of State urging that their Governments ratify, accede or succeed to those principal human rights treaties to which they are not yet a party. The chairpersons also welcome indications by the High Commissioner for Human Rights that he intends to follow up with a similar initiative in the near future. The chairpersons consider it of the utmost importance that the issue of ratification be brought regularly to the attention of non-States parties whenever possible in contacts between Governments and senior officials of the United Nations. They, however, reiterate their position that adherence by States to international human rights instruments is not sufficient unless it is accompanied by full compliance with their provisions, including those relating to reporting obligations.

Overdue and non-submitted reports

17. The chairpersons reiterate the views expressed in their Vienna statement that full and effective compliance with international treaty obligations is an essential component of an international order based on the rule of law. Failure to comply, including a failure to report as required, constitutes a violation of international law. They urge the States parties to the human rights treaties to deal with this matter at their regular meetings. These meetings should not only be devoted to elections of members of treaty bodies, but should consider general problems relating to the implementation of the treaties. They also urge States parties whose reports are overdue to request the assistance of the advisory services programme of the Centre for Human Rights to fulfil their reporting obligations.

18. The chairpersons also reiterate the recommendation made at their fourth meeting that each treaty body should follow, as a last resort, the practice

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already adopted by some committees of considering the situation in States parties whose reports are long overdue, in the absence of a report.

More effective integration of human rights into the totality of United Nations activities

19. The chairpersons emphasize that all human rights contained in the international human rights instruments apply fully to women and that the equal enjoyment of those rights should be closely monitored by each treaty body within the competence of its mandate. A common strategy should be developed by the treaty bodies in that regard and discussed at the meeting of chairpersons.

20. The chairpersons note with concern that reports submitted by States parties often do not contain adequate information on the actual enjoyment by women of their human rights, nor has such information been forthcoming from other sources. In this regard, the chairpersons recommend that each treaty body consider amending, where appropriate, its guidelines for the preparation of State party reports to request information, including disaggregated statistical data, from States parties on the situation of women under the terms of each instrument. The chairpersons express the wish for similar information from non-governmental organizations, intergovernmental organizations, specialized agencies and from United Nations offices.

21. Furthermore, the chairpersons deplore a growing tendency in the United Nations on the part of bodies concerned with some aspects of human rights in their activities steadfastly to ignore the standards codified in the international human rights treaties and, in some cases, to attempt to redefine those standards by adopting a different vocabulary, assigning different priorities and creating additional monitoring mechanisms. This tendency has been most recently manifested in the preparatory process for the World Summit for Social Development, which has not reflected the relevant standards contained in the International Covenant on Economic, Social and Cultural Rights and in the Convention on the Elimination of All Forms of Discrimination Against Women.

22. The chairpersons draw the attention of the High Commissioner for Human Rights to this and similar problems and request that they be addressed within his mandate to coordinate human rights promotion and protection activities throughout the United Nations system. In that connection, the chairpersons also welcome the recommendation, contained in the Vienna Declaration and Programme of Action (sect. II, para. 7), that human rights training for international civil servants who are assigned to work relating to human rights should be organized. The chairpersons affirm that human rights should have a high profile in all relevant United Nations activities and, inter alia, must be clearly identified with, and understood in the context of, the United Nations human rights instruments and the work of the treaty monitoring bodies.

23. The chairpersons emphasize the importance of more effective cooperation at all levels with the specialized agencies, other organizations of the United Nations system and United Nations bodies. In this connection, the chairpersons welcome the participation of the High Commissioner for Human Rights in the April 1994 session of the Administrative Committee on Coordination (ACC) and the addition, for the first time, of human rights to the agenda of that body. The

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chairpersons express the hope that a human rights focus in ACC will continue in the future.

Education in the field of human rights

24. The chairpersons recommend that treaty bodies include the issue of education in the field of human rights among their priority activities. They should, in particular, encourage States parties to include human rights teaching and education in school curricula, in the light of the essential role they play in the promotion of human rights. Efforts in this respect should be intensified in view of the proposed decade for human rights education.

25. States parties are also urged to encourage and support the media in the production of imaginative programmes on human rights which are accessible to the wider public and adapted to the local cultural environment.

Prevention of human rights violations, including early warning and urgent procedures

26. The chairpersons welcome the initiative taken by a number of treaty bodies to develop, within the scope of their respective mandates, procedures aimed at preventing human rights violations. Further efforts in this regard are warmly encouraged. Such procedures should include early warning aimed at preventing existing problems from escalating into conflicts and urgent procedures aimed at responding to problems requiring immediate attention to prevent or limit the scale and number of violations. Consideration should be given to developing a systematic and consistent approach to identifying problem areas and developing a range of possible courses of action which might be taken.

27. The chairpersons reiterate the recommendation made at their fourth meeting that the Security Council should be encouraged to take full account, in its deliberations and in its decisions and resolutions, of the obligations of the States concerned pursuant to the principal human rights treaties. The chairpersons urge the treaty bodies to take all appropriate measures in response to situations of massive violations of human rights, including the possibility of bringing those violations to the attention of the High Commissioner for Human Rights as well as the Secretary-General and the competent organs and bodies of the United Nations, including the Security Council. The chairpersons believe that it would be most effective if more than one treaty body were to take concerted action in this regard.

28. The chairpersons also recommend that increased attention be given by the Security Council to violations of human rights, which are a first indication of national and international instabilities and a threat to peace. To this end, early warning measures adopted by treaty bodies and information provided by them on human rights violations should be taken into consideration by the Council in deciding on a course of action.

29. The chairpersons suggest a meeting in 1995 with the Secretary-General to discuss the role of the treaty bodies in bringing urgent matters relating to human rights violations to his attention and, through him, to the Security Council.

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Reservations

30. The chairpersons believe that treaty bodies should be insistent in seeking explanations from States parties regarding the reasons for making and maintaining reservations to the relevant human rights treaties. They recommend that treaty bodies state clearly that certain reservations to international human rights instruments are contrary to the object and purpose of those instruments and consequently incompatible with treaty law. Treaty bodies should also bring this to the attention of the States parties to the relevant treaties.

Successions

31. The chairpersons note with concern that a number of successor States to former States parties to the human rights treaties have not yet formally confirmed to the Secretary-General their succession to the human rights treaties. The chairpersons urge all successor States, if they have not already done so, to confirm as soon as possible their succession to those treaties. The chairpersons welcome the initiatives taken by some of the treaty bodies to bring this matter of urgency to the attention of successor States. Similar initiatives by other treaty bodies are warmly encouraged.

32. The chairpersons are, however, of the view that successor States are automatically bound by obligations under international human rights instruments from their respective date of independence and that the respect of their obligations should not depend on a declaration of confirmation made by the new Government of the successor State.

New instruments

33. The chairpersons welcome the elaboration by United Nations bodies of optional protocols to international human rights instruments. They encourage, in particular, the elaboration of provisions which have a preventive character as well as provisions relating to recourse or inquiry procedures.

Multiple reporting requirements

34. The chairpersons support the recommendation made by the World Conference on Human Rights that the treaty monitoring bodies should include the status of women and the human rights of women in their deliberations and findings, making use of gender-specific data, and that States parties should be encouraged to supply information on the situation of women, de jure and de facto, in their reports to treaty monitoring bodies. States parties should also be encouraged to supply information on the situation of children.

Reducing the burden of reporting

35. With reference to the question of reducing the reporting burden of States, the chairpersons took note of the suggestions made by the independent expert, Mr. Philip Alston, in his interim report on the updated study on enhancing the long-term effectiveness of the United Nations human rights treaty regime.

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Reducing delays in the consideration of reports

36. The chairpersons note that an increasing backlog of State party reports pending consideration is becoming a serious problem for a number of treaty bodies and invites those treaty bodies to give due consideration to ways of reducing that backlog.

Cooperation with the specialized agencies and other United Nations bodies

37. The chairpersons welcome the contribution to the work of the treaty bodies made by the specialized agencies and other United Nations bodies. The chairpersons express the hope that such cooperation will continue and increase in the future, particularly with a view to ensuring consistency in the application of related provisions of the human rights treaties and other international instruments. The chairpersons recommend that representatives of the specialized agencies and other organizations within the United Nations system be invited to their future meetings.

38. The chairpersons encourage each human rights treaty body to review its practices concerning the participation of representatives from the specialized agencies and other United Nations bodies so as to enhance that participation and the exchange of pertinent information. To that end, the treaty bodies may wish to consider issuing information obtained from the specialized agencies as documents or working papers, referring, where appropriate, to the work of other monitoring bodies (such as the ILO Committee of Experts) and drawing the attention of the reporting State, where appropriate, to the availability of technical assistance from the specialized agencies.

39. In order to give greater prominence to human rights in the work of the organs, organizations and bodies of the United Nations system, the chairpersons suggest that those agencies consider inviting one or more representatives of the human rights treaty bodies to address their general conferences on pertinent trends and developments. Alternatively, meetings with representatives of treaty bodies could be organized by specialized agencies and United Nations organs when treaty bodies are in session.

40. The chairpersons also suggest that the specialized agencies and other organizations of the United Nations system supply the treaty bodies annually with information relevant to human rights issues, such as the situation of refugees, human rights of women, the right to strike, poverty, etc., that those agencies and organizations would like to be considered by treaty bodies.

Enhancing the role of non-governmental organizations

41. The chairpersons recommend that each treaty body examine the possibility of changing its working methods or amending its rules of procedure to allow non-governmental organizations to participate more fully in its activities. Non-governmental organizations could be allowed, in particular, to make oral interventions and to transmit information relevant to the monitoring of human rights provisions through formally established and well-structured procedures. In order to facilitate the participation of non-governmental organizations, the chairpersons recommend that information about States parties' reporting,

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including scheduling and document numbers of the reports, be made available at a single point in the Centre for Human Rights. Similarly, advance information on the topics of proposed general comments should be made available to encourage non-governmental organizations to provide input to the drafts and to promote further discussion. Attention should be given by treaty bodies and non-governmental organizations to securing a stronger, more effective and coordinated participation of national non-governmental organizations in the consideration of States parties' reports.

42. The chairpersons welcome the contribution made at their fifth meeting by non-governmental organizations and recommend that at future meetings representatives of non-governmental organizations again be invited to address the chairpersons and to submit appropriate recommendations for consideration by the meeting.

Public information activities

43. The chairpersons are of the view that concluding observations and comments that treaty bodies adopt at the end of their consideration of States parties reports should be given more publicity, especially at the national level. To this end, the texts should be transmitted to the appropriate United Nations information centre and made available to the public. In addition, local non-governmental organizations should be encouraged and, if possible, financially supported to translate the concluding observations on the State party where they operate or other basic decisions of treaty bodies into local languages.

44. Each treaty body should urge States parties to translate, publish and make available to the media the full text of the concluding observations on their reports. The Department of Public Information of the Secretariat should, at the end of each year, publish as a separate volume a compilation of all concluding observations adopted during that year by treaty bodies.

Adequate Secretariat resources for servicing the treaty bodies

45. The chairpersons strongly support the recommendation made by the World Conference on Human Rights that sufficient human, financial and other resources should be provided to the Centre for Human Rights to enable it to carry out its activities effectively, efficiently and expeditiously. The chairpersons reiterate the view expressed in their Vienna statement that for the treaty supervisory system to function efficiently and effectively the number of relevant Professional staff should be tripled.

46. Attention was also drawn by the chairpersons to the question of a committee resource room within the Centre for Human Rights. This measure had been recommended by the chairpersons at their second, third and fourth meetings and had been endorsed on a number of occasions by various treaty bodies. In view of the fact that six years had passed since the need for the facility was first identified, the chairpersons urge the High Commissioner for Human Rights to take action on the matter.

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Financing of the treaty bodies

47. The chairpersons welcome the endorsement by the General Assembly of the amendments to the funding provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which occurred since their last meeting, and request that the necessary measures be taken to ensure that the two committees meet as scheduled until the amendments enter in force. The chairpersons note that individual States parties should act as rapidly as possible to notify the Secretary-General of their acceptance of the amendments.

48. In addition, the chairpersons strongly recommend that the regular budget of the United Nations providing for the functioning of the treaty bodies include a fund specifically devoted to the activities of their members relating to emergency situations, as well as to information, coordination and human rights training, which are often requested by United Nations organs and specialized agencies.

Providing adequate resources for the effective functioning of the Committee on the Elimination of Discrimination against Women

49. The chairpersons note with serious concern that the ability of the Committee on the Elimination of Discrimination against Women (CEDAW) to discharge its duties effectively under the Convention on the Elimination of All Forms of Discrimination against Women continues to be severely constrained by the lack of sufficient meeting time to examine State party reports. Owing to the resulting large backlog of reports pending consideration, State party reports may not be examined until three years after their submission, a situation which the chairpersons consider wholly unacceptable. The chairpersons strongly recommend that this deplorable situation be addressed by the addition of significantly increased meeting time until the backlog of pending reports has been eliminated. They also strongly recommend that consideration be given to the suggestion of CEDAW that the Convention be amended as necessary.

50. In addition, the chairpersons are seriously concerned at the lack of resources, including adequate Secretariat support, which continues to affect the activities of CEDAW. The chairpersons are strongly of the view that CEDAW should no longer be separated from the mainstream of the other human rights activities and that it should be based, like all the other human rights treaty bodies, at the United Nations Office at Geneva. In this connection, the chairpersons strongly reiterate the recommendation contained in the reports of their third and fourth sessions to the effect that the servicing of CEDAW by the Secretariat should be provided from the Centre for Human Rights at Geneva. They also note the difficulties encountered by CEDAW in exchanging information with other treaty bodies due to its location at Headquarters, while all the other treaty bodies are based at the United Nations Office at Geneva. It is essential that a unified approach to servicing be put in place in order that CEDAW may have access to the same services and facilities as the other committees and in order to achieve the full and effective integration of CEDAW into the overall human rights treaty regime.

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51. The chairpersons recommend that, at its next session in January 1995, CEDAW give consideration to the proposed relocation of its sessions and its secretariat and take a decision on this matter.

Computerizing the work of the treaty bodies

52. The chairpersons take note of the repeated efforts made by the Centre for Human Rights to secure adequate resources for automation and urge that further and immediate action be taken to secure the required resources for the long overdue computerization of the entire Centre for Human Rights, in particular the work of the treaty bodies, both through the regular budget of the United Nations and by means of voluntary contributions. Immediate measures should also be taken, on the basis of the funds already available, to begin implementation of some of the recommendations of the task force on computerization of the work of the treaty bodies. 1/ The chairpersons are of the view that delay in the computerization of the work of treaty bodies would seriously affect their effectiveness.

53. The chairpersons deplore the fact that the recommendations contained in the report of the task force still have not been implemented despite the repeated strong support expressed for computerization of the work of the treaty bodies each year in the resolutions of the Commission on Human Rights and the General Assembly.

54. The chairpersons note with interest the proposal by the American Association for the Advancement of Science (AAAS), a non-governmental organization with consultative status in the Economic and Social Council, to provide logistical and other support to the treaty bodies in relation to the development of an electronic database. In view of the desirability of obtaining contributions towards the overall goals of the Centre for Human Rights in this area from as many sources as possible, they express the hope that the proposal would succeed in gaining funding from a private foundation or other comparable source.

55. The chairpersons note, however, that the AAAS project cannot be seen as a substitute for, and must in any event not delay in any way, the Centre's own programme to provide full electronic access to the documentation sources required by the treaty bodies, the States parties, non-governmental organizations and other users. Given the long delays that have already occurred since the task force of the Commission on Human Rights reported in late 1989, the chairpersons also request that immediate steps be taken to ensure that as much of the treaty body documentation as possible is made available immediately, particularly on Internet. For this purpose, consideration should be given to the possibility of working through Togethernet to ensure accessibility of the documentation as soon as possible.

56. Noting that some specialized agencies, academic and other institutions have already produced or are in the process of producing relevant databases, the chairpersons recommend that those efforts be coordinated so that the databases may be used without delay in the work of the treaty bodies.

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Manual on Human Rights Reporting

57. Owing to the need to include a new chapter relating to the Convention on the Rights of the Child and the operations of the Committee on the Rights of the Child, as well as to reflect the numerous procedural and other changes that have been adopted by the various committees since its publication, the chairpersons recommend that the Manual on Human Rights Reporting (HRI/PUB/91/1) be revised prior to its issuance in loose-leaf format.

Facilitating greater coordination and interaction among the treaty bodies

58. The chairpersons note that it is imperative for the effective functioning of the treaty bodies that steps be taken to facilitate greater coordination and interaction among them. To this end, the chairpersons recommend that a meeting of chairpersons be scheduled in 1995 in order to identify common obstacles to the implementation of the human rights treaties and to develop strategies aimed at achieving progress in their application. The meeting would also serve as an opportunity to exchange views on elaborating guidelines on specific topics of common concern. At the 1995 meeting, that topic will be ways to monitor more effectively the human rights of women. In preparation for that meeting, the chairpersons invite each treaty body to consider, within the competence of its mandate, how the monitoring of the human rights of women may be enhanced.

Periodicity of the meetings of chairpersons

59. In the light of the numerous issues of common interest and concern to all treaty bodies which need to be discussed and coordinated more frequently than is done at present, the chairpersons strongly recommend that henceforth their meetings be held annually instead of biennially.

60. In the future, a conference of all treaty bodies could be envisaged to discuss issues of common interest and common problems.

Notes

1/ E/CN.4/1990/39.

CHALLENGES TO HUMAN RIGHTS AT THE CLOSE OF THE TWENTIETH CENTURY

The need to ensure respect for human rights was the principal theme to emerge at the International Journalists' Round Table sponsored by the Department of Public Information (DPI) of the United Nations, which convened at United Nations Headquarters from 14 to 16 October 1991.

Fifty journalists from all regions of the world joined senior United Nations officials and other experts concerned with human rights to discuss "Challenges to Human Rights at the Close of the Twentieth Century".

Protecting refugees and internally displaced persons, ways to create a just society and the problem of international economic disparities were among the most debated topics. The discussion also focused on the safety of journalists and on discriminating practices against HIV carriers and AIDS patients.

Among the participants invited by DPI to attend the Round Table were journalists from some 30 countries including Australia, Canada, Chile, Czechoslovakia, El Salvador, Israel, Jordan, Kenya, the Philippines, the United Kingdom, the United States and the Soviet Union, as well as from Hong Kong. Participants also included correspondents of international news media based at the United Nations and international correspondents working in the New York area.

ENSURING RESPECT FOR HUMAN RIGHTS

There is a growing interest and concern over human rights among the world public, according to Thérèse P. Sévigny, head of DPI, who cited results of a recent DPI world-wide public opinion polling programme. Public opinion now called for narrowing the gap between aspirations expressed in human rights instruments and facts, she said.

Human rights are not a "western invention", stressed Jan Martenson, head of the United Nations

Centre for Human Rights: the provisions of the Universal Declaration of Human Rights have been incorporated into the legal systems of many non-Western countries. What was really important was how to implement human rights instruments. Having developed a series of legal instruments, now it was the time for effective implementation, he said.

"Who is going to implement the human rights norms?" asked Vítit Muntarhorn, United Nations Special Rapporteur on the Sale of Children. He emphasized the importance of implementing standards, as opposed to upgrading existing ones.

The issue of implementation was also raised by Jerome Shestack, Chairman of the International League for Human Rights. There were two aspects in human rights: setting of standards and implementation, he said. Standards were now quite sufficient and well recognized, while implementation still remained ineffective.

Mr. Shestack acknowledged the results obtained by the United Nations through its mechanisms of implementation, such as the procedure of receiving confidential communications from individuals under Economic and Social Council Resolution 1503(XLVIII), commonly known as the 1503 procedure; the setting up of working groups and special rapporteurs; the establishment of treaty bodies such as the Human Rights Committee; and the development of advisory services and information campaigns.

Non-governmental organizations (NGOs) played a different role — that of consultant, catalyst and opposition, he said. They were active as catalysts: the Convention against Torture, for instance, was the brainchild of Amnesty International, he said. NGOs had also been pressing their Governments to include human rights as a major determinant of foreign policy. And NGOs acted as a stimulus to the United Nations system, whose slow administrative process and lack of action, he said,



UNITED NATIONS

frustrated the effective implementation of human rights instruments.

In Mr. Shestack's view, more money should be spent on implementation, including the hiring of more lawyers and officers to analyze and review reports, in particular for communications under Resolution 1503. In addition, the Secretary-General, in his exercise of good offices, should pay more attention to human rights issues.

The relationship between technical cooperation and observance of human rights was raised by Ian Chambers, Representative of the International Labour Organisation to the United Nations, New York. "Can or should the UN system, which includes... the World Bank and the IMF [International Monetary Fund], make its support conditional on a Government's respect for human rights?" he asked.

Mr. Chambers also questioned the implicit assumption often held that development including its human rights component meant increasing resemblance to the societies of Western Europe and the United States.

In answer to a question as to whether linking humanitarian assistance to the situation of human rights was permissible, Ambassador Andreas Mavrommatis, of Cyprus, a senior member of the United Nations Human Rights Committee, replied that when the situation was an emergency, linking humanitarian assistance to human rights conditions should not be allowed. This kind of linkage should be allowed only in relation to economic assistance.

PROTECTING REFUGEES AND DISPLACED PERSONS

Participants stressed the difficulties in the effort to protect the human rights of refugees and displaced persons.

"Population movements are an essential component of an emerging new world order", said Sadako Ogata, United Nations High Commissioner for Refugees. "The desire of people to move across borders to enjoy freer and better opportunities helped bring down the Iron Curtain and thus change the old world order."

In terms of causes as well as effects, refugee issues were clearly linked to peace, justice and development. Violations of human rights and underdevelopment produced refugees and migrants, Mrs. Ogata said. "The presence of refugees may become a source of tension between States and may impede development, by diverting limited resources and creating instability in the countries of origin", she said. "Development alone is of limited value, unless linked to improving the human rights situations which cause displacement."

"Often overlooked in discussions about humanitarian issues is the human rights dimension", said Roberta Cohen, Senior Advisor for Human Rights, Refugee Policy Group. Despite numerous violations of human rights inflicted on refugees, such as piracy attacks, rape, detention in inhumane conditions and expulsion, humanitarian and human rights issues had grown up in isolation from one another.

In Ms. Cohen's view, one of the reasons for this gap in the United Nations was that the main focus of human rights violations had been on the violations within a country. The Office of the United Nations High Commissioner for Refugees (UNHCR) and NGOs had begun in recent years to recognize this problem. But UNHCR "is not always able to ensure full protection for refugees, asylum seekers and displaced persons", she said. Its main legal instrument — the Convention relating to the Status of Refugees — did not include the remedies that human rights instruments did; it gave a narrow definition of refugees and it did not address the root causes of displacement.

Forcible repatriation and internally displaced persons, she said, were two of the major issues which required more attention by the United Nations human rights bodies. To respond to these issues, the United Nations would have to confront the obstacle of sovereignty and to involve human rights bodies in its overall efforts to protect internally displaced persons.

The only difference between internally displaced persons and refugees was whether one had crossed the border, said Catherine O'Neill, Chair, Women's Commission for Refugee Women and Children. The assistance of refugees under the

existing framework also discriminated against those who lived away from borders, as they had less likelihood of reaching the border and receiving international assistance as refugees. "The world community faces the challenge of evolving a more equitable humanitarian response to people in trouble who have lost the protection of their own Government", she said.

Ms. O'Neill suggested the possibility of "humanitarian intervention" by the United Nations through an "international humanitarian rapid deployment force" and an "international protective military force".

PROMOTING SOCIAL JUSTICE

Introducing the topic of social justice and economic disparities, Margaret J. Anstee, head of the United Nations Centre for Social Development and Humanitarian Affairs, asked, "What is a just society?" She listed certain features of such a society: equality before the law, no arbitrary derogation of rights, respect for diversity and no arbitrary use of power.

A just society, or "society for all", she said, had to overcome the problems of unequal access to resources and apathy or over-optimism, both of which tolerated the present economic disparities. At the same time, a society had to recognize rewards commensurate with work, risk and talent. Equality and a rewarding system must be balanced.

The problem of international economic disparities remained a crucial challenge, she said. "Now that the East-West tension is relaxed, it is surely high time to turn energies and resources so released to bridging that other great divide, between North and South, which poses an even greater, more insidious threat to future peace and security." Allowing "have-not" countries to compete freely in the global economy could constitute a scheme of "sharing of resources".

"How do we really inculcate action in equitable resource allocation?" Mr. Muntarhorn asked. This problem must be dealt with locally. The cooperation of the private sector and of NGOs was crucial, he said. Journalists could play an important role as watchdog and in information dissemination.

ENSURING SAFETY OF JOURNALISTS

Anne Nelson, Executive Director, Committee to Protect Journalists, addressing the topic of freedom of the press and safety of journalists, said there had been recent improvements in the situations surrounding journalists. But civil wars, libel laws and traditional forms of press control were matters of concern.

With the end of ideological conflicts, there would be more civil conflicts over ethnic and national divisions, she said. Journalists would continue to be under cross-fire and in danger of their lives. Cases of killings and injuries of journalists in Croatia attested to this concern.

Presenting the cases of South Africa and Greece, she elucidated the continual abuse of journalists all over the world. The end of ideological conflicts did not necessarily mean the end of journalist abuse and press control, she said.

Mia Doornaert, President of the International Federation of Journalists, addressed the close relationship between the independent work of journalists and fundamental human rights.

"Attacks on journalists... are an attack on the whole society", she said. "Where journalists are prevented from investigating and publishing the truth, the whole society is deprived of two basic rights: the right to know and the right to freedom of expression."

Another restriction journalists often suffered, she said, was self-censorship caused by undue pressure, harassment and unnecessary precaution. In this respect, "absence of government control is the first but not the only condition for real press freedom", she said.

Professor Nicholas Daniloff, School of Journalism, Northeastern University, Boston, said that legislating immunity for journalists could be a viable protection of their freedom in reporting. On the other hand, such an arrangement would make journalists less independent of the Government, he said. The autonomy of journalists must be preserved.

HUMAN RIGHTS AND AIDS

Dr. Dorothy Blake, Deputy Director of the World Health Organization (WHO) Global Programme

on AIDS, focused her talk on the human rights aspects of AIDS-related issues.

Health was one important component of universal human rights, she stressed. Thus discriminating practices against HIV carriers and AIDS patients were a blatant violation of basic human rights. "Without a valid public health foundation, limitations of the individual rights of persons with HIV infection and AIDS are unjustified, and amount to discrimination", she said. "Non-discrimination is not only a human rights imperative, but a technically sound strategy for ensuring that infected persons are not driven underground."

Dr. Blake proposed three prevention measures: programmes of information and education, individual efforts to assume the responsibility of not putting oneself or others at risk and the establishment of support systems for patients.

To translate these measures into effective policies, the balance between benefits to public health and possible adverse effects of such measures must be carefully analysed, Dr. Blake said. For instance, the autonomy of HIV-infected persons was respected by anonymous testing and confidentiality but this might imply withholding information from another who might be harmed. There were both cost and benefit sides in such policy measures, and a firm balance between interacting principles of human rights, ethics, law and public health policy must be reached.

The relationship between public health and

privacy was one of the main concerns around the AIDS/HIV pandemic, said Professor Ronald Bayer, School of Public Health, Columbia University, New York. Despite the recognition of the right to privacy in liberal societies, the ongoing realities suggested that this was not the case in AIDS-related issues.

As the second decade of the pandemic began, the consensus that recognizes the right to privacy had begun to erode, he said. The fair balance between public health and human rights must be restored.

Elsa Stamatopoulou-Robbins, Chief, United Nations Centre for Human Rights, New York Office, identified a series of rights being violated by discriminatory measures and policies against HIV-infected persons. These included the right to life, the right to privacy, the right to work and the right to an adequate standard of living, all of which were protected under the Universal Declaration of Human Rights and other United Nations instruments.

No form of discrimination against HIV-infected persons was permissible from either the viewpoint of international law or that of public health, she said. Information dissemination, education and strict confidentiality were the most effective tools to deal with the pandemic.

Recognition of fundamental human rights was an indispensable part of facing the pandemic, she said. Only by mobilizing human rights networks — such as Governments, NGOs and the media — could the pandemic be effectively tackled.

amnesty international

A call for UN human rights action on Rwanda and Burundi

MAY 1994

SUMMARY

AI INDEX: IOR 41/02/94

In this document Amnesty International sets out its recommendations for urgent and coordinated human rights action by the United Nations (UN) on both Rwanda and Burundi. Amnesty International urges the Commission on Human Rights in its special session on 24 and 25 May 1994 to mobilize its own experts and other resources to implement the program of action set out in this document. Wherever it cannot act by itself, it must make strong recommendations for action by other UN bodies. Amnesty International is also calling on the Security Council, General Assembly and the High Commissioner for Human Rights to implement these recommendations.

The special session of the Commission on Human Rights must ensure that human rights are at the heart of the UN response to the crisis: it must act to protect civilians in Rwanda and prevent an escalation of continuing abuses in Burundi. It should:

- **Appoint Special Rapporteurs on Rwanda and Burundi** to visit the region within a matter of days, investigate the human rights situation and make practical recommendations about urgent and longer term measures.

- **Urgently send the Commission's own thematic experts** to Rwanda and Burundi to work with the Special Rapporteurs in investigating, reporting publicly and making practical recommendations. Experts on extrajudicial killings, "disappearances", torture, violence against women, racism and the internally displaced should all carry out on-site visits, jointly if possible.

The Commission should call on other UN bodies, particularly the Security Council and General Assembly, as well as the Organization of African Unity (OAU) to:

- **Strengthen and implement the human rights provisions in the Rwanda Arusha Peace Accords** and ensure that there is effective international supervision of their implementation.

- **Establish an effective human rights presence** by the speedy return to Rwanda of UN civilian police monitors, an increase in their numbers and an expansion of their

mandate, so that they can help to prevent the killings by their dissuasive presence, by reporting systematically what they see and by taking up individual cases wherever possible. UN troops and other personnel cannot remain silent witnesses to the killings and must report what they see. In Burundi, the UN should develop a joint human rights monitoring mission with OAU participation.

- **Ensure close cooperation with the OAU in every aspect of the UN response** including by involving the African Commission's Special Rapporteur on extrajudicial executions in visits of the UN thematic mechanisms to the region and facilitating the strengthening and implementation of the Arusha Peace Accords.

The Commission should send a clear message to the international community that it must strongly support:

- **The high level political and coordinating role of the UN High Commissioner for Human Rights and his role in developing a long term human rights program for Rwanda and Burundi.**

- **The establishment of independent and impartial commissions of inquiry in Rwanda and Burundi involving all sectors of society to investigate long term human rights violations with a view to establishing the truth about what has happened; making recommendations that will prevent their recurrence and promoting human rights.**

- **Effective steps to bring the perpetrators to justice** including by sending a clear message that human rights violators will be brought to justice, wherever they are, and the victims and their families compensated; working towards the reconstruction of the judicial systems in both countries with, if necessary, outside judges and lawyers serving with local officials; and quickly establishing a permanent international criminal court to try those responsible for war crimes, crimes against humanity and other serious human rights violations.

- **Neighbouring countries, the UN High Commissioner for Refugees and other relevant organizations in their efforts to provide the assistance needed for the continuing protection of refugees, for as long as needed.**

KEYWORDS: UN COMMISSION ON HUMAN RIGHTS / RWANDA / BURUNDI / EXTRAJUDICIAL EXECUTION / REFUGEES / ARMED CONFLICT / INVESTIGATION OF ABUSES / HUMAN RIGHTS INSTRUMENTS / OAU /
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This report summarizes a 14-page document: *A call for UN human rights action on Rwanda and Burundi* (AI Index: IOR 41/02/94), issued by Amnesty International in May 1994. Anyone wanting further details or to take action on this issue should consult the full document.

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amnesty international

A call for UN human rights action on Rwanda and Burundi



• May 1994
AI Index: IOR 41/02/94
Distr: SC/PO

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

A call for UN human rights action on Rwanda and Burundi

"[L]essons should be drawn from the past and the cycle of violence which has drenched both Burundi and Rwanda in blood must be broken. To this end, the impunity of the perpetrators of the massacres must be definitely brought to an end and preventive measures to avoid the recurrence of such tragedies must be designed."

Report of the UN Special Rapporteur on extrajudicial, summary and arbitrary executions to the Commission on Human Rights, December 1993¹

1. A failed international responsibility

The international community has failed in its responsibilities towards the people of Rwanda and Burundi. Despite being responsible for the administration of Rwanda and Burundi for four decades through a League of Nations mandate and later a United Nations (UN) trusteeship, the international community declined to act in the face of periodic and widespread politically-motivated killings which occurred in the lead up to and after independence.²

Indeed, when mass killings occurred in the past in both Rwanda (in the late 1950s, early 1960s and early 1990s) and Burundi (in the mid 1960s, early 1970s, late 1980s and early 1990s) the international community chose to deal only with the short-term humanitarian crises and to move the focus of its attention elsewhere as soon as the killings ended.

¹ UN Document E/CN.4/1994/7/Add.1, paragraph 171.

² After the end of the First World War both countries became League of Nations mandates under Belgian administration carved out of former German East Africa. In 1946 they were united in the UN Trust Territory of Ruanda-Urundi under Belgian administration with the obligation "to ensure respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". The UN organized elections in 1961 leading to self-government and gave both countries independence in 1962, but the UN did not take any steps during the four decades of international supervision to ensure that the new states provided effective institutions to promote and protect human rights.

As recently as 1993, the UN failed to heed the warnings of the UN Commission on Human Rights' own thematic expert on extrajudicial executions who visited Rwanda in April 1993 and made 12 detailed recommendations to address "[m]assacres of civilian populations" in relation to which "it has been shown time and time again that government officials were involved".³ And in 1994, in the face of reports of systematic extrajudicial executions in Burundi since last October, the 1994 session of the UN Commission on Human Rights failed to appoint a Special Rapporteur on that country.

The scale of the loss of life over the past seven months in both countries – with hundreds of thousands of defenceless people deliberately and arbitrarily killed – makes it even more unacceptable that the member states of the UN have failed to act together quickly or decisively to stop these killings. The Security Council has just voted to increase its peacekeeping force in Rwanda, but it has taken few specific human rights measures. Amnesty International is calling on the UN to ensure that human rights are at the heart of its response to this crisis: it must also act to protect civilians in Rwanda and prevent an escalation of the continuing abuses in Burundi.

The Commission on Human Rights will meet on 24 and 25 May 1994 for a special session. It is now up to this human rights body to lead the way. The Commission must immediately mobilize its own experts and other resources and wherever it cannot act by itself, it must make strong recommendations for urgent action by other UN bodies, particularly the Security Council and General Assembly. Amnesty International is also calling on these bodies and on the High Commissioner for Human Rights to implement the recommendations in this paper.

Amnesty International continues to document the situations in both countries.⁴ Through its worldwide membership, the organization will continue to campaign against the abuses and for the introduction of effective human rights safeguards.

³ Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions on 11 August 1993 to the UN Commission on Human Rights. UN Document E/CN.4/1994/7/Add.1, paragraph 28.

⁴ The most recent documents on Burundi are: *Time for International Action to End a Cycle of Mass Murder* (AI Index: AFR 16/08/94); *Reiterating Amnesty International's Concerns in 1992* (AI Index: AFR 16/13/92); *Sectarian Security Forces Violate Human Rights with Impunity* (AI Index: AFR 16/10/92); *Appeals for an Inquiry into Army and Gendarmerie Killings and Other Recent Human Rights Violations* (AI Index: AFR 16/04/92); *Killings of Children by Government Troops* (AI Index: AFR 16/04/88); *Prisoners of Conscience and Political Prisoners held in Burundi in May 1987* (AI Index: AFR 16/08/87); *Background Briefing on Amnesty International's Concerns in Burundi* (AI Index: AFR 16/04/86); *Restrictions on Religious Activities in Burundi and Arrests of Members of Christian Churches* (AI Index: AFR 16/03/84). The most recent documents on Rwanda are: *Rwanda: Mass murder by government supporters and troops in April and May 1994* (AI Index: AI Index: AFR 47/07/94); *Persecution of Tutsi Minority and Repression of Government Critics, 1990-1992* (AI Index: AFR 47/02/92); *Amnesty International's Concerns since the Beginning of an Insurgency in October 1990* (AI Index: AFR 47/05/91); *A Spate of Detentions and Trials in 1990 to Suppress Fundamental Rights* (AI Index: AFR 47/07/90).

2. Need for coordinated human rights action on both Rwanda and Burundi

Human rights measures should be tailored to the specific characteristics of the situations in Rwanda and in Burundi. However, with a similar ethnic composition in Rwanda and Burundi, the massive and fluid flow of refugees between the two countries and some common causes for the human rights violations, it is vital that the international community takes human rights measures which take into account this inter-relationship. For this reason, Amnesty International has urged that the Commission on Human Rights deal with both countries. Attempts to address problems in one country will inevitably have a major impact on the political and human rights situation in the other country.

Burundi and Rwanda have both experienced killings on a massive scale over the past seven months, the latest tragedies in a cycle which started some 35 years ago with dramatic social change in Rwanda before the UN ended its trusteeship. Both have the same social or ethnic composition, with Hutu majorities and Tutsi minorities. Both were Tutsi-dominated monarchies until Rwanda's revolution in 1959. However, whereas the Tutsi effectively lost power in 1959 and have in recent years been labelled a "fifth column" by the civil and military authorities there, in Burundi they continued to dominate the government until elections in 1993 and have retained control of the armed forces. The governments of both countries have used ethnic divisions in order to remain in power, inciting extremist elements to resort to violence although the killing has not been exclusively along ethnic lines.

To identify solutions to the human rights crises in both countries, all of this must be taken into account. Furthermore, any lasting solutions must deal with the plight of exiles from the two countries, not only in Rwanda and Burundi themselves, but also in neighbouring Tanzania, Uganda and Zaire.⁵

⁵ The situation of Rwandese exiles in Uganda especially has had a particularly significant effect on the political situation in Rwanda: in the early 1980s, the Ugandan Government headed by President Milton Obote demonstrated how precarious the residence rights of Rwandese living in Uganda were by persecuting them and forcing many to return temporarily to Rwanda. Many Rwandese living in Uganda backed Yoweri Museveni's National Resistance Army (NRA) in its campaign against the Obote government and 4½ years after the NRA took power in Uganda they formed the Rwandese Patriotic Force (RPF) and launched their own military campaign against the government of Rwanda.

3. Urgent investigations leading to practical recommendations for action

The Commission on Human Rights should follow the lead taken by the UN High Commissioner for Human Rights and ensure that its own experts, working in close cooperation with the Organization of African Unity (OAU), urgently go to **Rwanda** and **Burundi** to start investigating the human rights situations, report publicly and draw up practical recommendations for the protection of human rights in both countries. The Commission should:

3.1. Appoint Special Rapporteurs on Rwanda and Burundi

The special session of the Commission should appoint Special Rapporteurs for **Rwanda** and **Burundi**.

The Special Rapporteurs should be human rights experts, investigating first-hand and continuously the human rights situations and making recommendations for the immediate and long-term protection and promotion of human rights. Within a matter of days after the special session, the Special Rapporteurs should carry out the first investigation and report back urgently to the Commission, if necessary in a reconvened special session to consider their recommendations and decide on further action.

To ensure effective, continuous monitoring of the situation and coordination with other UN bodies, the Special Rapporteurs may need to base staff long-term in the region, as is the case with the Special Rapporteur on the former Yugoslavia. The Special Rapporteurs should also be the focal point for the collation and analysis of material collected by the Commission's own thematic experts, peacekeeping and other UN personnel, as well as UN specialized agencies, the OAU and other intergovernmental organizations, governments and non-governmental organizations.⁶

The Special Rapporteurs should be requested to submit interim reports to the General Assembly and full reports to regular sessions of the Commission. All reports should also be made available to the Security Council.

⁶ In the context of the former Yugoslavia, the UN General Assembly, Resolution 47/147, 18 December 1992, para. 17, has called on "all UN bodies, including the UN Protection Force and the specialised agencies, and invites Governments and informed intergovernmental and non-governmental organizations to cooperate fully with the Special Rapporteur and in particular to provide him on a continuing basis with all relevant and accurate information in their possession on the situation of human rights in the former Yugoslavia".

3.2. Initiate urgent investigations by thematic experts of the Commission

There is also a need for fact-finding by the relevant thematic mechanisms of the Commission, particularly the Special Rapporteur on extrajudicial, summary and arbitrary executions, but also those dealing with "disappearances", torture, violence against women,⁷ racism and the UN Secretary-General's personal representative on the internally displaced. Whichever experts are available should visit the region immediately after the special session, along with the newly appointed Special Rapporteurs on Rwanda and Burundi. The other experts should visit as soon as possible after that.

These experts would begin a systematic investigation and assessment of the facts and would make their expertise available to the Special Rapporteurs and the High Commissioner for Human Rights to assist them in making practical recommendations for ending human rights violations and preventing their recurrence in both countries. They and the country Special Rapporteurs should be provided with all necessary medical, forensic and other technical support. Delegations should include people with expertise in the investigation of violations against women and, wherever possible, female interpreters to facilitate interviewing of women victims. They must enjoy complete freedom of movement in the region and unrestricted access to all places of detention. They must have the right to speak in private with anyone they wish, with assurances that there will be no reprisals against people who provide information to them.

3.3. Support the political and coordinating role of High Commissioner for Human Rights

The High Commissioner for Human Rights should be encouraged to continue his high level political and coordinating role. He should ensure that there is international support and the necessary resources for the implementation of recommendations made by the Commission, the Special Rapporteurs and the thematic mechanisms and that there is frequent and comprehensive public reporting on the activities and analyses from all parts of the UN system, including the UN Assistance Mission to Rwanda (UNAMIR) operation in Rwanda, as well as the report of the recent UN fact-finding mission to Burundi. He should continue to liaise with the UN Secretary-General and develop long term human rights programs for both Rwanda and Burundi. He should also use his influence to help ensure that the parties to the conflict comply with international human rights standards and also cooperate with human rights action taken by the Commission and other UN bodies.

⁷ Although the appointment of the Special Rapporteur on violence against women has still to be confirmed by the Economic and Social Council, she could participate in a joint mission in her personal capacity.

4. Ensure effective human rights operations in Rwanda and Burundi

Amnesty International believes an effective human rights presence could help to protect civilians and others taking no part in the fighting in Rwanda and prevent an escalation of the continuing abuses in Burundi. The UN could draw on the experience of other on-site human rights operations, which are analyzed in detail in Amnesty International's report *Peace-keeping and human rights*.⁸ The Commission should call on the UN Security Council and the General Assembly to implement the following measures:

In Rwanda, a UN operation can help to prevent killings just by its very presence, by reporting systematically on what its personnel witness and by taking up individual cases wherever possible. Amnesty International repeats its call for the speediest return to Rwanda of the 52 UN civilian police monitors (CIVPOLs) who were evacuated to Kenya, and an increase in their number at least to the 90 suggested by the UN Secretary-General in his report to the Security Council of 13 May 1994 (S/1994/565). These CIVPOLs should have an expanded mandate to report and take up human rights abuses committed by all parties. They should also train other members of UNAMIR in basic human rights standards and methods for reporting human rights violations they witness. In the longer term the CIVPOLs would also play a role in supervising and training national police and security forces in human rights standards.

It is also vital that UN troops and other personnel in the field do not remain silent witnesses to the atrocities. UNAMIR should regularly issue reports on human rights developments, as it is required to do by its mandate and this obligation should be strengthened.⁹ The UN Secretary-General should issue instructions that all UNAMIR personnel must report on the human rights violations and violations of humanitarian law they witness or which are reported to them.¹⁰ These reports would be sent to the Special Rapporteur on Rwanda, amongst others, and could assist the Secretary-General in preparing his reports to the Security Council pursuant to Security Resolution 918

⁸ AI Index: IOR 40/01/94, January 1994. Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations is annexed to the present document.

⁹ The mandate of UNAMIR, as approved by Security Council Resolution 872 (1993), includes investigating and reporting on incidents regarding the activities of the Gendarmerie and the police. UNAMIR is also required to "monitor and report on developments in Rwanda, including the safety and security of the civilians who sought refuge with UNAMIR", under Security Council Resolution 912 (1994), para.8(c), 21 April 1994.

¹⁰ Note the obligation imposed on the UN Protection Force (UNPROFOR) and other UN personnel to pass human rights information to the Special Rapporteur on the former Yugoslavia (see footnote 6). UNAMIR might appoint a senior officer to carry out liaison with those collecting information on human rights violations.

(1994), paragraph 18 in which he is requested to "present a report as soon as possible on the investigation of serious violations of international humanitarian law committed in Rwanda during the conflict". In addition the Security Council has already requested the Secretary-General "to make proposals for investigation of the reports of serious violations of international humanitarian law during the conflict".¹¹

As soon as feasible, civilian human rights monitors should be deployed who would contribute to the dissuasive role of the UN and the OAU and the systematic reporting on human rights. It would then be possible to develop this human rights operation into a fuller monitoring mission, similar to the one proposed for Burundi, below.

In Burundi, the UN and the OAU should cooperate closely in developing measures to prevent a deterioration of the human rights situation. This could include a human rights mission with both UN and OAU participation, supplementing the current OAU presence (see section 8 below). Such a mission, which should include CIVPOLs as well as human rights monitors, would act as a dissuasive presence, monitor and take up individual cases of human rights violations with authorities, report publicly on the situation and train security forces. The mission, together with other experts, including the UN Special Rapporteur on the independence and impartiality of the judiciary and the Working Group on arbitrary detention, should be encouraged to work with the government to create conditions whereby, in the longer term, technical assistance, as proposed in Commission resolution 1994/86, can play a role in effecting real and measurable advances in law and practice for the promotion and protection of human rights.

5. Strengthen and implement the human rights provisions in the August 1993 Rwanda Arusha Peace Accords

Between 1991 and August 1993 the Government of Rwanda and the *Front patriotique rwandais*, Rwandese Patriotic Front, (RPF) signed a complex series of related agreements, the Arusha Peace Accords, in Arusha, Tanzania, in which they reaffirmed their commitment to the principles of the rule of law (*l'état de droit*), including democracy, national unity, pluralism, respect for the freedoms and fundamental rights of the individual (*les droits de la personne*). These agreements provided for a cease-fire, freeing of prisoners taken by each side, establishment of a transitional government to last at least 22 months and amendment of the constitution to allow multiparty elections. Although the Arusha Peace Accords state that the "principles" of the Universal

¹¹ Statement by the President of the Security Council, 30 April 1994, S/PRST/1994/21.

Declaration of Human Rights are superior to the 1991 Constitution and contain some other human rights provisions, these provisions are inadequate.

The Accords also provided for international and national commissions to supervise the implementation of the agreements. In addition, they provided for an international commission of inquiry into human rights violations which occurred during the conflict and a national commission with broad powers to monitor current and future human rights violations, as well as national commissions to foster national unity and reconciliation, to draft reform legislation and a new constitution and to conduct elections. The Arusha Peace Accords fail to spell out clearly the powers, staffing and resources of the commissions, fail to provide effective procedures for reaching decisions, and the commissions with responsibilities for human rights fail to satisfy international standards for such commissions.

Unfortunately, apart from the cessation of hostilities in August 1993, monitored by the OAU and later by the UN, most of the provisions of the Arusha Peace Accords have yet to be implemented and none of the international or national commissions were established.

It is essential that any cease-fire agreement and new governmental arrangements contain strong and effective human rights and humanitarian law guarantees consistent with international minimum standards. These standards include treaties to which Rwanda is a party, such as the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, the four Geneva Conventions of August 12, 1949, the Convention on the Prevention and Punishment of the Crime of Genocide and a wide range of other international standards.¹² Any peace agreement should also provide for an effective machinery for the supervision and verification of the human rights commitments which spells out clearly the powers, staffing and resources, provides effective procedures for reaching decisions and satisfies international standards for such institutions (see Section 7 below on commissions of inquiry).

¹² These other international standards include the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Code of Conduct for Law Enforcement Personnel, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the UN Basic Principles on the Independence of the Judiciary, the UN Guidelines on the Role of Prosecutors, the UN Basic Principles on the Role of Lawyers, the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment. Rwanda should also become a party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the first and second optional protocols to the ICCPR and other human rights treaties, as required by the Arusha Peace Accords.

6. Take effective steps to bring those responsible for human rights violations to justice

It is essential to bring those responsible for human rights violations and abuses to justice. If officials and those operating with their acquiescence who are responsible for extrajudicial executions and other grave human rights violations are not prosecuted and punished, they will remain free to repeat the crimes, and others may do likewise, believing they can violate the law with impunity. This has been the case for decades in Rwanda and Burundi. Prosecution and punishment break the cycle of crime and impunity. It protects the public from the culprits repeating their crimes and it helps to deter others from committing similar crimes by raising the real threat that they, too, may be caught and punished.

There are three ways in which the international community could help to bring those responsible for human rights violations to justice:

First, the international community could provide sufficient assistance to Burundi and Rwanda to reconstruct the judicial systems in both countries to ensure that they are independent, impartial and adequately funded and staffed to ensure fair trials.¹³ The international community could supply judges, prosecutors, lawyers and prison administrators who could advise or even serve, if necessary, with local officials.¹⁴ The OAU and the African Commission on Human and Peoples' Rights could play an important role in locating qualified personnel for these tasks.

Second, many of the crimes committed in both countries amount to crimes against humanity, or other crimes under international law which are subject to universal jurisdiction under international law. This means that every state in which someone suspected of such a crime is found is obligated to bring that person to justice or to extradite the suspect to a state which will. The reports of the Secretary-General referred to above in section 4 will be crucial in this regard. States parties to the UN Convention on the Prevention and Punishment of the Crime of Genocide are also obliged to extradite any person who is wanted for trial for the crime of genocide.

Third, to the extent that it is impossible to conduct fair trials in Burundi or Rwanda because of the lack of an impartial, independent and effective judicial system,

¹³ Even prior to the recent crises, the judiciary in both countries was not able to function in a truly impartial and independent manner.

¹⁴ The UN Special Rapporteur on the independence and impartiality of the judiciary and the UN Working Group on arbitrary detention could provide useful advice.

an international criminal court would be necessary. The possibility has been raised of creating an *ad hoc* international tribunal to try people accused of gross violations of human rights in Rwanda and Burundi. While the statute of the International Criminal Tribunal for the former Yugoslavia - the only other existing *ad hoc* tribunal of this sort - has laid the foundations for a just, fair and effective *ad hoc* tribunal, Amnesty International believes a permanent institution is preferable to an *ad hoc* one. The atrocities in Rwanda and Burundi once again highlight the need for a permanent international criminal court to try those responsible for war crimes, crimes against humanity and serious human rights violations wherever they occur in the world. Action by the next regular session of the General Assembly on the draft statute for a permanent international institution which the International Law Commission is expected to complete in July 1994, to establish a permanent court which is fair, just and effective, is the best solution, even in the short term.

7. Ensure establishment of an independent and impartial commission of inquiry

The governments in both Burundi and Rwanda should establish independent and impartial commissions of inquiry consisting of all sectors of society to investigate the human rights violations and abuses which have occurred. Although the commissions would be expected to make recommendations concerning the necessity of bringing those responsible for violations and abuses to justice, they would have a broader objective. This would include establishing the truth about what occurred, the causes of human rights violations, making recommendations on effective steps to prevent their recurrence and promoting human rights. Furthermore, in light of the level of tension between the various sectors of society in both countries, consideration could be given to having international members of the commissions.

The commissions should have broad powers, adequate staff and resources and should be consistent with UN standards for such inquiries, including the UN Principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the UN Manual on their implementation and the UN Principles Relating to the Status of National Institutions, annexed to UN Commission on Human Rights Resolution 1992/54, adopted on 3 March 1992. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions made valuable recommendations on the powers and objectives of such a commission in his 1993 report on Rwanda which could be implemented in both Burundi and Rwanda. The Arusha Peace Accords provide for national and international commissions of inquiry, but these have yet to be established.

8. Ensure effective cooperation between the UN and the Organization of African Unity in protecting human rights

As indicated above, it is essential that the UN and the OAU work together effectively to protect and promote human rights both in Burundi and in Rwanda. The OAU has sent a 15-person civilian team to Burundi and several advance military teams as part of an authorized 200-person stabilization force, *Mission de protection et d'observation pour le rétablissement de la confiance au Burundi* (MIPROBU), Protection and Observation Mission to Re-establish Confidence in Burundi. The primary role of the civilian team is conflict resolution rather than promotion and protection of human rights. The UN Special Representative to Burundi and the UN thematic mechanisms should work together to assist MIPROBU in implementing the recommendations in Amnesty International's *15-Point Program for Implementing Human Rights in International Peace-keeping Operations*.

The OAU, which played an important part in drafting the Rwanda Arusha Peace Accords, and provided the first military observers for the various cease-fires between the parties to the conflict, should take steps to persuade the parties to strengthen and implement the human rights provisions and the UN should assist it in this process. The Security Council has welcomed the efforts of the OAU to provide diplomatic, political and humanitarian support for its resolutions on Rwanda and encouraged the OAU Secretary General to help obtain personnel for an expanded UNAMIR. The OAU Secretary General could play an important role in locating civilian police and human rights monitors in Rwanda.

The African Commission, an organ of the OAU, has an important role to play in helping to coordinate the UN and OAU human rights response to the crises both in Burundi and in Rwanda. In April 1994 the African Commission appointed Mohammed Hatem Ben Salem as its new Special Rapporteur on extrajudicial executions, and requested him "to address the situation in Rwanda as a matter of urgency". He should participate in joint fact-finding missions with UN thematic mechanisms where possible and the UN should ensure that its activities are coordinated with those of the Special Rapporteur. The UN Commission should invite the OAU Secretary General and the African Commission's Special Rapporteur on extrajudicial executions to participate in the special session, to report on their activities and to coordinate their efforts with the UN to end human rights violations in both Burundi and Rwanda. The international community should ensure that the OAU and the African Commission have adequate staff and resources to carry out these human rights activities.

9. Guarantee protection of refugees

Amnesty International has previously raised its concerns about the UN Commission's failure to take concerted action on situations of major human rights violations causing refugee movements. This point has been tragically illustrated in the cases of **Rwanda** and **Burundi** where human rights violations have resulted in unprecedented refugee flows and massive internal displacement. Amnesty International welcomes the fact that governments of neighbouring countries have acted in accordance with their obligations under international law by keeping their borders open to those seeking protection. It calls on states of the international community to provide these states, the UN High Commissioner for Refugees and other relevant organizations with the assistance needed to ensure the protection of the refugees for as long as is needed. In cases where people from **Rwanda** and **Burundi** seek protection in other countries, whether in the African region or elsewhere, Amnesty International calls on governments scrupulously to observe their obligations under the principle of *non-refoulement*, and not to return anyone to **Rwanda** or **Burundi** while the current situation persists, or at any time when their lives or safety may be at risk.

Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations

1. The political role of the international community. The UN and its Member States should give early, consistent and vigorous attention to human rights concerns when designing and implementing peace settlements and should plan for a continued human rights program in the post-peace-keeping phase. The international community must be prepared to publicly condemn human rights violations during and after the settlement process and to ensure that recommendations for institutional reform are fully and promptly implemented. Human rights protection measures should be kept under review, strengthened as necessary and properly evaluated at the end of the operation.

2. No international 'silent witnesses'. All international field personnel, including those engaged in military, civilian and humanitarian operations, should report through explicit and proper channels any human rights violations they may witness or serious allegations they receive. The UN should take appropriate steps, including preventive measures, to address any violations reported.

3. Human rights chapters in peace agreements. Peace agreements should include a detailed and comprehensive list of international human rights laws and standards to be guaranteed in the transitional and post-settlement phase, as well as providing for specific and effective oversight mechanisms. Peace settlements should require eventual ratification of any human rights treaties and adherence to any international systems of human rights protection to which the state concerned is not yet a party.

4. Effective and independent human rights verification. A specialized international civilian human rights monitoring component should be part of all peace-keeping operations. These components should have adequate resources and staff with human rights expertise. Their mandates should include human rights verification, institution-building, legislative reform, education and training. Monitors should be trained and should operate under consistent guidelines and in conformity with international standards. Human rights components should be explicitly and structurally independent from the political considerations of the operation and on-going negotiations relating to the settlement and their decision-making mechanisms must not be constructed so as to permit parties to the conflict to obstruct investigations. Effective human rights mechanisms, such as advisers or independent jurists, should also be established in less comprehensive peace settlements and should have an oversight role in matters such as the release of prisoners and the guarantee of rights to freedom of speech and assembly.

5. Ensuring peace with justice. Peace settlements should provide for impartial investigation of past abuses, processes aimed at establishing the truth and measures to ensure that any perpetrators of human rights violations are brought to justice. Individual responsibility for human rights violations, past and present, must be made explicit and sweeping pre-conviction amnesties should not be part of peace settlements.

6. On-site human rights monitoring. Human rights monitors should be mandated out to carry out investigations and verify compliance with human rights obligations and to take corrective action in respect of violations. They should have broad access to all sectors of society and relevant institutions and the full protection of those who are in contact with them must be assured. Peace-building measures, such as institutional and legislative reform and education and training, must complement but never replace the verification role.

7. Frequent and public reporting. To guarantee the effectiveness, security and credibility of international human rights personnel there must be frequent comprehensive public reports of their activities and findings which should be broadly disseminated nationally as well as internationally.

8. International civilian police monitors. Civilian police monitors should monitor, supervise and train national police and security forces and verify their adherence to international human rights and criminal justice standards. Police monitors should cooperate fully with any human rights component or mechanisms and should themselves be trained in and fully respect international human rights and criminal justice standards at all times. There should be full public reporting of their activities.

9. Long-term measures for human rights protection. Human rights components in peace-keeping operations should assist in the establishment of permanent, independent and effective national institutions for the long-term protection of human rights and the reinstitution of the rule of law, including an independent judiciary and fair criminal justice system. Other mechanisms, such as ombudsmen or national commissions, may be encouraged to reinforce respect for human rights. Such mechanisms must be impartial, independent, and competent with the necessary powers and resources to be effective. They should conform to international guidelines and must never be a substitute for a fair and independent judicial system. While national institutions are being constituted, consideration should be given to establishing an interim relationship with relevant international tribunals.

10. Human rights education and advisory assistance programs. Public education and training on human rights standards and complaints procedures should be provided to all sectors, particularly the judiciary, lawyers and law enforcement officials. Other technical assistance programs should be provided, including drafting legislation in conformity with international standards and support for national human rights NGOs. Such programs should not be a substitute for human rights verification by a specialized monitoring component.

11. The protection of refugees, internally displaced persons and returnees. Refugee repatriation programs should include an effective monitoring and protection aspect for as long as necessary. International refugee law and protection standards must be adhered to at all times, including the principles of *non-refoulement*, the right to seek asylum and repatriation only on a voluntary basis with international supervision.

12. The gender dimension. Measures should be taken to guarantee consideration and respect for the particular needs of women in armed conflict situations. Peace-keeping personnel should

**GENOCIDE IN RWANDA
APRIL-MAY 1994**

CONTENTS

SYSTEMATIC SLAUGHTER	2
THE WORST, BUT NOT THE FIRST MASSACRE	3
THE SLAUGHTER BEGINS IMMEDIATELY AFTER THE CRASH	3
THE WAR RESUMES	4
THE SELF-PROCLAIMED GOVERNMENT	4
EXTENDING THE MASSACRES	4
NETTOYAGE - CLEANING UP THOSE WHO ARE LEFT	5
CENTRAL DIRECTION	6
RESISTANCE TO THE MASSACRES	6
THOSE WHO CAN HALT THE VIOLENCE	6
ABUSES BY THE RWANDAN PATRIOTIC FRONT	7
THE SUFFERINGS OF THE DISPLACED	8
RESPONSE OF THE INTERNATIONAL COMMUNITY	8
The United Nations	9
The Diplomatic Community in Kigali	11
The United States	11
France	12
RECOMMENDATIONS	12

The death of president Juvénal Habyarimana of Rwanda in a suspicious plane crash on April 6, 1994 was the pretext for Hutu extremists from the late president's entourage to launch a campaign of genocide against the Tutsi, a minority who make up about fifteen percent of the population of Rwanda. The extremists also killed Hutu who had shown that they were willing to cooperate with Tutsi in forming a more democratic government. Six weeks later, the killing continues. At least 200,000 and perhaps as many as 500,000 unarmed and unresisting civilians have been slain. The international community has failed to take any effective action to stop the slaughter.

SYSTEMATIC SLAUGHTER

The massacres were planned for months in advance. The Presidential Guard and other elements of the Rwandan army taught members of the political party militias, the *Interahamwe* and the *Impuzamugambi*, how to kill most efficiently. The *Interahamwe*, "Those Who Attack Together," are part of the *Mouvement Républicain National pour le Développement et la Démocratie* (MRND), the party of the late president; the *Impuzamugambi*, "Those With a Single Purpose," are attached to the *Coalition pour la Défense de la République* (CDR), an extremist Hutu party in alliance with the MRND. Created in 1992, the militias received intensified military training in late 1993 and early 1994, as groups of 300 men at a time were sent for three weeks to a military camp in the northeastern region of Mutara. In their attacks on civilians, the militia are often accompanied by a small number of soldiers or national policemen, but the militia have killed far more people than have uniformed members of the armed forces.

The Rwandan authorities distributed firearms to militia members and other Habyarimana supporters as early as 1992, and gave out many more in late 1993 and early 1994. The bishop of the important Catholic diocese of Nyundo criticized this distribution of weapons in a pastoral letter at the end of December 1993. The militia who returned from training programs in early 1994 brought firearms, including grenades, back with them.

A private radio station owned by members of Habyarimana's inner circle, the *Radio Télévision Libre des Milles Collines*, last autumn began a campaign of hate-filled propaganda against the Tutsi generally and members of the opposition to the Habyarimana regime, both Tutsi and Hutu. At the end of 1993, the broadcasts became more virulent and began targeting individuals who were named as "enemies" or "traitors" who "deserved to die." Among those so labeled were Lando Ndasingwa, Minister of Labor and Social Affairs, who was one of the first killed once the massacres began (along with his mother, his wife and his children), and Monique Mujawamariya, a human rights activist, who narrowly escaped with her life. Throughout these weeks of slaughter, the Radio des Milles Collines has incited listeners to genocide, encouraging them to "fill the half-empty graves."

Among the owners and directors of the Radio des Milles Collines are:

- Alphonse Ntirivamunda, son-in-law of Juvénal Habyarimana;
- Félicien Kabuga, a wealthy businessman whose son is married to a daughter of Habyarimana;
- Jean-Bosco Barayagwiza, head of the CDR;
- Tarcisse Renzaho, the prefect (governor) of Kigali city; and
- André Ntarugera, Minister of Postal Services and Communications.

For some time, this radio station was run by Ferdinand Nahimana, who had been in charge of the national radio when it was used to promote the killing of Tutsi in an earlier massacre.

The state-owned Radio Rwanda has also played a negative role in the violence, broadcasting contradictory messages, sometimes appealing for calm, but just as often encouraging continued massacres. As recently as May 19, it was ordering listeners to extirpate the rebels to the last man and eliminate anyone suspected of opposing the regime. It may have adopted a harsher tone in order to replace the Radio des Milles Collines, whose broadcast range was limited to Kigali following repeated attacks on its transmitter by the Rwandan Patriotic Front (RPF), a largely Tutsi rebel movement.

THE WORST, BUT NOT THE FIRST MASSACRE

The current slaughter differs in scale but not otherwise from earlier massacres in Rwanda in October 1990, January-February 1991, March 1992 and December 1992-February 1993. The earlier killings, like those this year, were organized by officials of the Habyarimana government or of his political party, the MRND, and the closely allied CDR. Like those this year, the killings targeted Tutsi and those Hutu labeled as opponents of the Habyarimana regime. These attacks by the government on its own unarmed citizens cost about 2,000 lives and were condemned by both local and international human rights organizations.¹

THE SLAUGHTER BEGINS IMMEDIATELY AFTER THE CRASH

Within an hour of the plane crash, the Presidential Guard had set up roadblocks around the capital of Kigali and had begun liquidating key members of the moderate opposition. Among the early victims were Prime Minister Agathe Uwilingiyimana and President of the Supreme Court Joseph Kavaruganda. Others were human rights activists, including Charles Shamukiga, Fidele Kanyabugoyi, Ignace Ruhatana, Patrick Gahizi, Father Chrysologue Mahame, S.J., and Abbé Augustin Ntagara.

The Presidential Guard was joined by the party militias, and within a week these forces had killed an estimated 20,000 people in Kigali and its immediate environs. The international community responded by evacuating foreign nationals, the first step in its withdrawal from the crisis. Perhaps encouraged by this retreat, the leaders of the genocide extended its scope outside the capital to the east and the southwest. Beginning on April 15, when most foreigners had departed, authorities distributed large quantities of firearms, including automatic and semi-automatic rifles and pistols, to militia and other supporters of Habyarimana.

Many people were killed in their homes, but others were slain in hospitals and churches, places usually recognized as sanctuaries. Among the worst such incidents were the following:

- Kibungo - 2800 people gathered in a church center were slaughtered in a four-hour period by the Interahamwe using grenades, machine guns, machetes and R4 rockets. Approximately forty people survived.
- Cyahinda - 6000 Tutsi who had taken refuge in a church were attacked by militia who left only about 200 to live.
- Kibeho - 4000 people killed in a church.
- Mibirizi parish - 2000 slain.
- Shangi parish - 4000 killed.
- Rukara parish - 500 slaughtered in the church.
- Kigali and Butare - hundreds of patients and staff were killed in hospitals.
- Butare orphanage - twenty-one children, selected solely because they were Tutsi, were slain as well as thirteen Rwandan Red Cross volunteers who tried to protect them.
- Gikongoro - eighty-eight pupils were slaughtered at their school.

Thousands of survivors in Kigali sought safety in the Amahoro stadium, the Hotel des Milles Collines, the Sainte Famille Church and other locations. The Rwandan army has bombarded these sites from time to time, killing

¹ Human Rights Watch Arms Project, *Arming Rwanda: Talking Peace and Waging War: Human Rights Since the October 1990 Invasion* (February, 1992); *The International Commission of Investigation on Human Rights Violations in Rwanda Since October 1, 1990, Final Report* (March 1993); Africa Watch, *Beyond the Rhetoric: Continuing Human Rights Abuses in Rwanda* (June, 1993).

sixty at Amahoro stadium on April 19, and eighteen others at the Sainte Famille Church on May 1. All of these hostages are surviving under inhumane conditions, often with no food or water for days at a time. Troops of the United Nations Assistance Mission in Rwanda (UNAMIR) guard those at the stadium and the hotel and try to visit the other sites occasionally.

THE WAR RESUMES

Shortly after the massacres of civilians had begun, the war between the Rwandan army and the rebel Rwandan Patriotic Front (RPF) resumed, ending a cease-fire in effect since August 1993. Since early April, two kinds of violence -- the slaughter of the defenseless by government party militias or the Presidential Guard, and the battle between the two armies -- have gone on simultaneously, sometimes in the same area, as in Kigali, but often in widely separated regions. The south and west, where some of the worst massacres have taken place, are remote from the actual war zones.

The RPF is composed largely of Tutsi who fled a 1959-63 revolution that ended their aristocratic control over Rwanda (previously backed by the colonial Belgian government) and installed the current Hutu-dominated regime. After thirty years in exile, a force composed from among these refugees and their children invaded Rwanda in October 1990, first seeking to win the right to return home and later hoping to overturn the Habyarimana government. In addition to resisting the RPF militarily, Habyarimana immediately launched a campaign against the Tutsi within the country, accusing them of being "accomplices" of the RPF. Serious human rights violations were committed against Tutsis uninvolved in the rebel movement, including the massacres described above.

The civil war between the government and the RPF was ended by a peace agreement signed in Arusha, Tanzania, on August 4, 1993 (the Arusha Accords), which provided for a transitional government composed of Habyarimana's MRND, the internal opposition parties, and the RPF. The United Nations provided a peacekeeping force (UNAMIR) to monitor the execution of the agreement and facilitate the integration of the two armies. Under the terms of the agreement, the RPF was permitted to station a battalion in Kigali under U.N. protection. Because of a series of delays, most of them caused by Habyarimana and his supporters, the transitional government had not yet been installed at the time of the plane crash.

When the civilian massacres began, the UNAMIR troops failed to respond. The RPF decided to resume the war, both to rescue its troops in Kigali, who clearly could not expect any effective protection from the U.N., and to try to stop the massacres.

THE SELF-PROCLAIMED GOVERNMENT

Shortly after the crash and the beginning of the massacres, a group of politicians close to Habyarimana proclaimed themselves the new government. Backed by extremist military, the self-proclaimed regime also won at least tacit acceptance from Jacques-Roger Booh-Booh, the Special Representative of the U.N. Secretary-General in Rwanda. The "ministers" of the new government purported to represent a number of political parties and thus to continue the mandate of the previous coalition government, but in fact all emerged from the same ideological position whatever their party labels.

EXTENDING THE MASSACRES

During the first two weeks of slaughter elsewhere in Rwanda, the *préfet* (prefect or governor) of the important southern *préfecture* of Butare succeeded in keeping his region generally calm. The prefect, Jean-Baptiste Habyalimana, was a Tutsi and a member of the political opposition. His wife, Josephine, was a human rights

activist. Butare, where Tutsi and Hutu had lived closely together for centuries, was generally hostile to Habyarimana and his anti-Tutsi ideology. As the site of the original campus of the National University, several research institutes, and the showplace new National Museum, it was the intellectual capital of Rwanda.

On April 19, the "President" of the rump government, Theodore Sindikubwabo, removed the prefect of Butare and replaced him with a hardline military man from the north of Rwanda. At the same time, he gave a speech on the radio calling for the killing of "accomplices" in Butare. That evening units of the Presidential Guard flew into Butare airport. The massacres began almost immediately. One eyewitness recounted that on the night of the arrival of the Guard, they dug pits in the ground and filled them with burning tires. He saw people thrown live into the pits, including his sixty-year-old mother-in-law. By noon the next day, the sound of gunfire had become continuous as Tutsi and Hutu allied with them were executed in an arboretum adjacent to the National University, in an area behind the National Museum, and on the banks of a nearby stream. The killings continued day and night for the next three days.

NETTOYAGE - CLEANING UP THOSE WHO ARE LEFT

In late April, leaders of the militia called upon their members to finish the "cleaning up" (*nettoyage*) of Tutsi and members of the Hutu opposition who had escaped death up to that point. An attack on those sheltered at the Hotel des Milles Collines in Kigali was narrowly averted, apparently by French intervention, but an effort to rescue sixty-two of the hostages failed on May 3. U.N. troops, in possession of a guarantee of safe conduct from the commander-in-chief of the army, sought to escort the hostages to safety, but the convoy was set upon by militia directed to make the attack by the Radio des Milles Collines. Nine of the hostages were seriously wounded and all had to return to the hotel.

On April 29, military and militia killed more than 300 of 5,000 hostages who had been held since April 15 at a stadium in Cyangugu in southwestern Rwanda. Several days earlier the clergy of Bukavu diocese in neighboring Zaire had alerted the world to the suffering of these hostages who had been confined for two weeks without food and with a single water tap and no sanitary facilities. On May 11, militia and military began transferring the hostages to a former refugee camp some thirteen kilometers from the town of Cyangugu, where they could torture or kill them without drawing attention. The buses transporting the hostages were often stopped en route and some persons removed to be slaughtered and left by the side of the road. The bus making the trip on Wednesday, May 11, was halted and all men between the ages of forty and eighty were removed and killed.

Militia and military continue to make nightly visits to stadiums, church compounds and other locations where people at risk have taken refuge. They remove groups of people to be executed. Anyone who is educated or has shown capacity for leadership is targeted for elimination.

On May 16, the "Minister of Defense," Augustin Bizimana, asserted that the massacres had stopped--except for "isolated killings by extremist elements." That same day foreign journalists were still witnessing groups being removed for execution from a Tutsi refugee camp at the large church center of Kabgayi in central Rwanda, some fifteen miles from where Bizimana made his statement. Also on May 16, the International Committee of the Red Cross (ICRC) reported that the self-proclaimed Rwandan government had refused to accept the neutrality of its hospital at Kabgayi and would not guarantee its security. On that day and the two days immediately after, massacres increased in the southern prefecture of Butare. Militia manning the road blockades in that area also behaved more aggressively to passers-by. These changes resulted from the arrival of militia from the north who had been brought in because the region was "pas suffisamment nettoyé," that is, "not cleaned up enough." They were to kill the Tutsi and Hutu opposition members who had been previously protected by local officials or who had otherwise managed to escape massacre.

By mid-May, the militia had been able to create a dense network of road blocks throughout the zones controlled by the rump government. In some cases, the barriers were separated by no more than a few hundred yards, making escape virtually impossible for those targeted for elimination.

CENTRAL DIRECTION

The dispatch of additional militia to the south indicates that there is still central control of the massacres. In addition, Matthieu Ndirumapfse, President of the MRND, apparently expects the militia to heed his orders when he addresses them over the radio. He did so on May 19, directing them to allow hostages trapped at the Hotel des Milles Collines and elsewhere in Kigali to leave for safe havens. At the time of this writing, negotiations were proceeding about the release of those hostages.

Although much of the violence is still controlled by authorities of the hardline parties, the rump government or the Rwandan army, random killing, especially in the course of banditry and pillage, is growing as well. As food becomes more difficult to obtain, violence linked to the struggle for survival will increase.

Discipline among Rwandan army troops, lax for some time, has crumbled further in the last month, resulting in multiple abuses against civilians. In the region of Bugesera, for example, soldiers looted at will during the week of May 16, apparently in violation of orders from their commanding officer. Their attacks caused the local population, virtually all Hutu, to flee in panic towards Burundi.

RESISTANCE TO THE MASSACRES

Reliable accounts describe the heroism of some Rwandan authorities, both civilian and military, who have sought to prevent or halt the slaughter in their regions. In some regions, local government officials, known as burgomasters (*bourgmestres*), have done their best to protect the targeted populations and to guarantee security within their communes. Unfortunately, in some cases, they have eventually been forced to yield and permit the massacres. Military officers who have tried to maintain order or to aid the threatened to escape have later suffered reprisals for their human conduct.

Human Rights Watch/Africa will not publish the names of these courageous defenders of human rights for fear of putting them in danger but will acknowledge them for their bravery and decency at a future date.

THOSE WHO CAN HALT THE VIOLENCE

All those who claim to exercise authority within Rwanda are legally and morally obligated to halt the genocide and other human rights abuses. They include the following persons.

Party Officials:

Jean-Bosco Barayagwiza, head of the CDR
Matthieu Ndirumapfse, President of the MRND

Those who claim positions in the self-proclaimed government:

Theodore Sindikubwabo, "President"
Jean Kambanda, "Prime Minister"
Augustin Bizimana, "Minister of Defense"
Justin Mugenzi, "Minister of Commerce"
Eleazar Niyitegeka, "Minister of Information"

Military Officers:

General Bizimungu
Colonel Bagosora
Colonel Nkundiye
Colonel Mpiranya
Colonel Mpiranya
Captain Simbikangwa

ABUSES BY THE RWANDAN PATRIOTIC FRONT

The self-proclaimed government has accused the RPF of having killed hundreds of thousands of civilians, both last year and in recent weeks, but it has been unable to provide any details of time, place or circumstance where the alleged massacres have taken place. After extensive investigation among reliable sources, both Rwandan and foreign, representing clergy, staff of nongovernmental organizations, and journalists, Human Rights Watch/Africa has concluded that there is at present no credible evidence that the RPF has engaged in any widespread slaughter of civilian populations, although there are reports of less systematic abuses.

Refugees who fled to Tanzania at the end of April have frequently talked of RPF abuses, but the accounts are too vague to be credible. No one among the enormous number of people at Ngara camp, for example, appears to have first-hand knowledge of such alleged abuses. In the quarter of a million mostly Hutu refugees at the camp, medical authorities report that they treated only four wounds, all of them slight. This contrasts with the reports of numerous and serious wounds among the Tutsi refugees who have fled to Burundi or who have escaped to northern Rwanda. The massive flight of Hutu to Ngara drew widespread attention because it was the largest number of people ever to flee a country in such a short period of time. But these refugees fled in panic about reports that the RPF was approaching their region, not because they had been attacked or seen others attacked by the incoming troops. They had been frightened by propaganda broadcast on the radio about supposed RPF atrocities. Many refugees had taken the time, nonetheless, to gather food and even farm animals before their departure.

On May 18, a spokesman for the U.N. High Commissioner for Refugees (UNHCR) reported that RPF troops had fired on Rwandans seeking to flee across the river that marks the border between Rwanda and Tanzania. He added that UNHCR representatives had gathered credible accounts from persons who had been abused or seen others abused by the RPF. The RPF immediately denied the allegations and invited UNHCR officials to inspect the zone under their control. Human Rights Watch/Africa has requested the details of these reports from the UNHCR, but at the time of writing had not yet received the information.

Church sources indicate that two Catholic priests were killed by the RPF at Nyinawimana, but information on the date and circumstances of these killings is not yet available.

In other cases, church sources report that refugees at a camp in Uganda relate that the RPF killed civilians at Rwantanga, seven kilometers from the Ugandan border, and at Nyambwesonzezi, in Byumba prefecture. A witness from Rwantanga, a woman who arrived badly beaten, recounted that RPF soldiers had beaten her twelve year-old daughter to death with their rifle butts. Another witness reported that his wife and children had been killed by the RPF when the soldiers attacked people whom they had summoned to a meeting.

A newspaper account published in Uganda in late April related that RPF soldiers had tied up a person accused of being a local leader of the Interahamwe militia and had delivered him to any angry crowd who had kicked him to death. The story was accompanied by a photograph of the apparent victim. Other reliable sources have told Human Rights Watch/Africa that they have seen RPF soldiers execute civilians who appear to have been militia leaders.

Human Rights Watch/Africa has brought these reports to the attention of the RPF and has asked for investigation of the incidents and punishment for any soldiers found guilty of killings or other abuses of civilians.

THE SUFFERINGS OF THE DISPLACED

Approximately two million Rwandans have fled their homes in the face of the massacres and the war. Within the country, Tutsi survivors are clustered in a variety of locations, some voluntarily, others held hostage by military or militia units. In addition to those frequently mentioned at sites in Kigali, there are those at the stadium at Cyangugu and in several places in Butare. In central Rwanda, there are approximately 50,000 displaced persons, largely Tutsi at Kabgayi, mostly Hutu at nearby Gitarama. In addition there are certainly other groups who remain unknown to outside observers. More than 200,000 people have sought refuge within the zone controlled by the RPF in northern and eastern Rwanda.

When the slaughter began, there were about 200,000 Burundian refugees located in camps in southern Rwanda, who had fled violence in Burundi in October 1993. Many of them have returned to Burundi or fled to Tanzania, but as many as 80,000 may still be left in Rwanda.

Over 300,000 Rwandans have fled to surrounding countries, the great majority of them to Tanzania. Approximately one quarter of a million Rwandans are grouped at Ngara, Tanzania, the largest refugee camp in the world. Approximately 8,500 Rwandans have sought safety in Zaire; between 5,500 and 10,000 in Uganda, and between 16,000 and 47,000 in Burundi.

The misery of those seeking refuge in surrounding countries has been well publicized, and a variety of organizations are seeking to meet their enormous needs. Information on the suffering of those within Rwanda is very limited, but those reports available indicate that conditions are desperate for many of the displaced. Often they go without food or water for days at a time. Medical care is simply nonexistent for the great majority of these refugees, many of whom have died as the result of untreated wounds or disease.

The battle for control of Kigali between the army and the RPF has made it difficult, often impossible, to deliver the supplies and services needed to keep these refugees alive. In many other cases, militia and authorities of the self-proclaimed government have hindered or prevented assistance to the displaced. In the most notorious instances of such conduct, militia and military have attacked hospitals in Kigali and Butare and killed both staff and patients. International agencies such as *Médecins sans frontières* and the ICRC have lost large numbers of local staff.

RESPONSE OF THE INTERNATIONAL COMMUNITY

After nearly seven weeks of slaughter and hundreds of thousands of lives lost, the international community has still made no effective response to the genocide, crimes against humanity and violations of international humanitarian law in Rwanda.

Human Rights Watch, the *Fédération Internationale des Droits de l'Homme* (based in Paris), Amnesty International, the International Centre for Human Rights and Democratic Development (based in Montreal, Canada), Oxfam UK and other international nongovernmental organizations have condemned the slaughter as genocide. The Secretary-General of the United Nations and the Pope have also called the slaughter genocidal. Major heads of state, however, have refused to call the horror by name even as they condemned the massacres. Governments are reluctant to talk of genocide by name because to do so would obligate them to act under the terms of the 1948 U.N. Convention on the Prevention and Punishment of the Crime of Genocide. The convention requires its signatories to "prevent and punish" genocide--defined as acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group--as a crime against humanity. A large number of states are party to the

Genocide Convention, including all the permanent members of the U.N. Security Council and Rwanda itself. As yet, few states--none of them major Security Council powers--have stated that they are willing to live up to their obligations under the convention. The Security Council debated for eight hours on April 29, before finally adopting a declaration early on April 30 that used the legal terminology of the Genocide Convention but still rejected the use of the term itself.

The United Nations

Under the terms of the Arusha Accords, the United Nations was asked to provide a peacekeeping force to monitor the agreement, the United Nations Assistance Mission in Rwanda (UNAMIR). This force, which just before the crisis numbered 2,500 troops, was to monitor the cease-fire, contribute to the security of the city of Kigali, and engage in other activities associated with the establishment of a transitional government in which members of Habyarimana's government would share power with members of the internal opposition and representatives of the RPF.

Among the duties of UNAMIR was the enforcement of a prohibition against the importation of arms and ammunition into Rwanda. On the night of January 26, UNAMIR learned of the unauthorized secret landing and unloading of a planeload of arms at Kigali airport. The U.N. force intervened and placed the arms under joint U.N.-Rwandan government supervision to prevent their distribution to the Rwandan army. During February, UNAMIR also prevented the delivery of three more planeloads of arms and ammunition for the Rwandan government. The U.N. authorities therefore knew that the Rwandan government was attempting to obtain fresh supplies for its troops, presumably in preparation for further war.

In February 1994, the assassination of two leading political figures was followed by a week of killings and other violence in Kigali. Interpreting its mandate narrowly, UNAMIR made no effective response to the violence, although it certainly heightened insecurity in the capital city. As tensions grew throughout February and March, U.N. personnel and the diplomatic community generally were well aware of extremely worrying developments indicating that hardliners in the government intended to overturn the Arusha Accords. They were frequently warned by responsible local persons, including human rights activists and political leaders, that preparations were underway for a campaign to wipe out those who opposed the Habyarimana regime. They knew of the hate-filled radio broadcasts, the training of militia and the distribution of arms. Whether unable to imagine the scale of impending horror or limited by mandate or the traditions of diplomatic practice, they took no effective action to prevent the disaster.

With the onset of the killing after the plane crash in which President Habyarimana died, UNAMIR again failed to act decisively. Apparently both the terms of the mandate and the lack of appropriate equipment for the troops hampered an effective response. Had there been prompt and firm action by UNAMIR to suppress the first violence, the situation would certainly have developed differently.

When Prime Minister Agathe Uwilingiyimana fled for her life to a U.N. compound, UNAMIR dispatched ten soldiers, part of the Belgian contingent, to rescue her. They encountered a hostile and armed crowd and three were disabled. The others requested instructions from headquarters and, according to a press account, were told to put down their arms and attempt to negotiate with the crowd. They were slaughtered. The Belgian government then withdrew its troops, who were the best equipped of those available to the UNAMIR force. Subsequently Bangladeshi troops also left, some of them in panic before orders were given for their withdrawal.

On April 21, the Security Council met to decide the fate of the UNAMIR force. Rather than admit that genocide was taking place, as was clearly apparent by that date, and accept the responsibility of preventing it, the Security Council voted to withdraw the majority of the remaining troops and to leave behind a skeleton force of 270 soldiers. The United States, initially in favor of removing the U.N. presence completely, led this move to retain only a token UNAMIR presence.

Proponents of the reduction of UNAMIR argued the necessity of removing the troops from a threatening situation which they were ill-equipped to handle. But with the exception of the ten Belgian soldiers killed while attempting to defend the Prime Minister, surely one of the most important targets of the extremists, no additional U.N. soldier had been killed in the weeks of subsequent violence. (One was later killed in a mortar attack in Kigali). There was no evidence that U.N. troops had been targeted by either of the hostile parties after the first day of the massacres.

In the first weeks of violence, the Security Council apparently received inaccurate reports on the situation, particularly those based on information from the Secretary-General's Special Representative Jacques-Roger Booh-Booh. Characterized by *The Washington Post* on May 8 as "blurred, sanitized summaries...depicting mutual and chaotic killings," these reports failed to convey the systematic and organized nature of the genocide which had at the time already been established by accounts in the press.

In the face of the mounting disaster--and particularly following widely publicized accounts of the massive outflow of refugees on April 29--the United States and other actors decided that more troops must be sent back to Rwanda with an expanded mandate. Within the Security Council, delegates from the Czech Republic, New Zealand, Spain and Argentina played the leading role in shaming other member nations into this decision. After lengthy debate on May 16, the Council authorized a force of 5,500 troops with an enlarged mandate to protect displaced persons, refugees and civilians at risk (UNAMIR II). Unlike the mandate for the first U.N. force, that for UNAMIR II permits troops to use force if necessary to carry out their mission. However, last minute hesitations by the United States resulted in orders to deploy in the first instance only a small force of several hundred troops and about 150 unarmed observers. Deployment of the rest of the force depends upon progress towards a new cease-fire between the RPF and the government, the availability of resources, and further review and action by the Security Council.

General Romeo Dallaire, the Canadian military commander of UNAMIR, has played a constructive role, particularly in maintaining communication with both sides of the civil war. He is currently negotiating with both parties to obtain neutrality for Kigali airport. Were the U.N. assured control of the airport, the work of UNAMIR II would be greatly facilitated. Fighting over the control of the airport has often made it impossible for relief flights to land there.

The government of Rwanda, as it existed before April 6, held a non-permanent seat on the Security Council. Its representative has continued to serve the self-proclaimed regime that took power after the death of Habyarimana and has been permitted to retain the seat on the Council. He has even been permitted to speak at length in debate and to vote on resolutions concerning Rwanda, although customarily representatives do not play an active role in considerations of conflicts that affect their own states. Jerome Bicamumpaka, the so-called foreign minister of the rump government, was recently allowed to address the Security Council. Accompanied by CDR head Jean-Bosco Barayagwiza, he was in New York as part of the self-proclaimed government's efforts to justify the unjustifiable and to win international acceptance for their genocidal regime. In these statements, the self-proclaimed government has stated that it would favor the return of U.N. troops to Rwanda to enforce a cease-fire between the RPF and the Rwandan army, with the armies to return to the positions they held before the resumption of the civil war.

The RPF initially favored U.N. intervention in Rwanda, but at the end of April reversed its position to issue a hardline statement opposing the sending of more U.N. soldiers. It subsequently softened its position somewhat to say that it would not oppose a force sent for humanitarian purposes; it remains opposed to any force that would attempt to interpose itself between the two armies.

In response to urging by the United States and others, the new United Nations High Commissioner for Human Rights, José Ayala Lasso (who took office on April 5, the day before the crisis began), undertook a mission

to Rwanda and Burundi in mid-May, five weeks after the massacres had begun. In a statement on his return, he condemned the widespread violence, but did not label the systematic killing of Tutsi as genocide.

At the request of Canada, an emergency meeting of the United Nations Commission on Human Rights has been convened for May 24. It will be only the third time that this body has met in such a special session, the preceding meetings having been called to deal with the Bosnian crisis. The session will probably call for the sending of a special rapporteur to investigate the situation in Rwanda.

The Diplomatic Community in Kigali

Representatives of most nations in Kigali offered temporary protection to Rwandan staff members and others who sought asylum at their homes or embassies. On April 13, Amnesty International reported, however, that some unidentified embassies had apparently turned away Rwandans seeking protection. Diplomats mobilized primarily to evacuate citizens of their own countries and most refused to assist Rwandans, even long-time employees of their own staffs, in leaving the country. Belgium and France were apparently the only nations to aid some Rwandans in escaping, although French press reports indicated that several Rwandan employees at the French embassy had been abandoned and later killed by government forces. France provided aircraft to permit evacuation of Madame Agathe Habyarimana, members of the Habyarimana family and others close to the regime. Some were transported to Paris and several hundred others were taken to Zaire.²

The United States

Like the United Nations and most of the international community, United States officials have shown considerable confusion and slowness in dealing with the UNAMIR II initiative, apparently because it is the first to be considered since the declaration of a new administration policy on peacekeeping missions.

President Bill Clinton made an unusual direct radio appeal to Rwanda on April 30, calling for an end to the violence; it was one minute in length and spoke only in vague terms about the need for Rwandan leaders "to recognize their common bonds of humanity." A more useful public statement was made by the President's National Security Advisor, Anthony Lake, on April 22. He called upon Rwandan military leaders by name to "do everything in their power to end the violence immediately." The Lake statement, which did not actually condemn the leaders named, nonetheless represented an important departure from routine diplomacy because it supported the principle of individual accountability for human rights abuses and named those able to end the massacres.

Assistant Secretary of State for Human Rights John Shattuck adopted the same approach in a statement issued on May 8, after a visit to countries surrounding Rwanda. He advocated a United Nations-directed inquiry to establish individual responsibility for the massacres.

Other important State Department officials, including Deputy Assistant Secretary of State for African Affairs Prudence Bushnell, have made frequent public statements over the Voice of America condemning the killings.

The United States has thus far resisted pressure to pledge that it will not assist any regime that emerges from the genocidal slaughter. It did, however, deny the request for visas made by representatives of the self-proclaimed government who wished to make their case in Washington. Because of the special international status of U.N. territory, the United States could not prevent those representatives from going to New York to lobby at the U.N.

Members of Congress have expressed grave concern over the massacres and have pressured the administration for further action. The House Foreign Affairs Subcommittee on Africa held a hearing on the

² Alain Frillet & Sylvie Coma, "Paris, terre d'asile de luxe pour dignitaires hutus," *Libération*, May 18, 1994.

situation on May 4. Senators Paul Simon and James Jeffords, the ranking members of the Africa Subcommittee of the Senate Foreign Relations Committee, and Kweisi Mfume and Donald M. Payne of the Congressional Black Caucus have all written to President Clinton to ask for more effective United States action.

In terms of real action, the United States government has continued diplomatic efforts aimed primarily at a cease-fire in the civil war between the RPF and the government rather than at halting the massacres. It has also contributed some \$28 million in assistance to refugees and has stated that it plans to approve an additional \$28 million for similar efforts. The U.S. has also indicated that it is willing to pay approximately one third of the costs of the new UNAMIR II force and provide logistical support in sending the troops to Rwanda.

France

France has supported the Habyarimana regime for many years, even sending French troops to assist in the army's actions against the RPF, in October 1990 and again in February 1993. In *Arming Rwanda: The Arms Trade and Human Rights Abuses in the Rwandan War* published in January 1994, Human Rights Watch documented French participation in arming and training the Rwandan army. Along with Egypt, France has received representatives of the self-proclaimed government, thus helping accord them respectability in the international community. The delegates received in Paris included Jean-Bosco Barayagwiza, the head of the CDR party which is most responsible for the current genocide.

RECOMMENDATIONS

- Jean-Bosco Barayagwiza, head of the CDR party; Matthieu Ndirumpatse, president of the MRND party; those who claim authority under the self-proclaimed government, including Theodore Sindikubwabo, Jean Kambanda, Augustin Bizimana, Eleazar Niyitegeka and Justin Mugenzi; and military officers Bizimungu, Bagosora, Nkundiye, Mpiranya, and Simbikangwa must halt the genocide and other violations of international humanitarian law in Rwanda immediately.
- Authorities of the RPF, including its president, Alexis Kanyarengwe, and its military commander, Paul Kagame, must order members of their forces to halt all summary executions or other killings of Rwandan civilians. Any who are found to have committed such abuses must be disciplined as appropriate and held in custody pending trial. Where the forces of the RPF succeed in overcoming government forces, they must arrest all those accused of involvement in genocide and other crimes against humanity and ensure that they are held in humane conditions to await trial as soon as circumstances allow.
- The international community must clearly and forcefully condemn genocide in Rwanda calling the horror by its rightful name. The Security Council and the Commission on Human Rights of the United Nations, as well as the individual governments of the international community--including the United States--must recognize that the organized nature as well as the scale of the massacres proves that the authors intended to eliminate in whole or in part the Tutsi as a group within Rwanda; that is, that their actions fulfil the definition of the Genocide Convention.
- The international community must also condemn the systematic slaughter of thousands of Hutu who opposed the Habyarimana regime, as a violation of international humanitarian law and a crime against humanity.
- The member states of the United Nations must do everything possible to assist a speedy and complete deployment of UNAMIR II forces. Members must respond promptly to requests for additional troops. The United States must devote the necessary resources to ensure that any organizational or logistical problems are resolved immediately.

- The international community must insist upon accountability for genocide, crimes against humanity and violations of international humanitarian law. The United Nations Commission on Human Rights should name those persons who have the power to halt the slaughter and should demand that they do so immediately.
- The international community must take steps to ensure that no form of impunity be offered to those responsible for genocide and other crimes against humanity. The United Nations Commission on Human Rights should mandate a representative to attend negotiations between all parties to the Rwandan conflict who must insist that impunity not be granted as part of a peace settlement. No participant in the negotiations should be permitted to trade cooperation with international efforts to resolve the crisis, by arranging a cease-fire or in making peace, for protection for himself or any other person accused of genocide or crimes against humanity.
- The international community must ensure that those accused of genocide and crimes against humanity are brought to justice in trials that conform in all respects with accepted international practice, including guarantees of the rights of the accused. If such trials are to be held in Rwandan courts, the collaboration of international magistrates and prosecutors should be required, through the creation of an exceptional jurisdiction if necessary.
- Governments, human rights organizations, and individuals should use all possible channels to take legal action to bring those guilty of genocide and other crimes to justice. Human Rights Watch/Africa has assisted one victim--who is the sister of several of the dead, including the late Minister Lando Ndasingwa--in bringing a civil suit in the U.S. courts against Jean-Bosco Barayagwiza for genocide and other crimes against humanity. Officials and individuals elsewhere should initiate similar proceedings against the chief authors of these horrors. The criminals should be made aware that there will be no place in the world where they can escape judicial action.
- The United Nations Commission on Human Rights should delegate and adequately fund a special rapporteur to report promptly on the Rwanda crisis. It should insist that members of the UNAMIR force be charged with a mandate to report all human rights violations to the Commission through its delegated representative. It should also provide for a group of human rights monitors in Rwanda to supplement reports provided by UNAMIR personnel.

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Human Rights Watch/Africa (formerly Africa Watch)

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; and Susan Osnos is the communications director. Robert L. Bernstein is the chair of the executive committee and Adrian W. DeWind is vice chair. Its Africa division was established in 1988 to monitor and promote the observance of internationally recognized human rights in Africa. Abdullahi An-Na'im is the executive director; Janet Fleischman is the Washington representative; Karen Sorensen, Bronwen Manby, Alex Vines and Berhane Woldegabriel are research associates; Kimberly Mazyck and Urmi Shah are associates; Alison Des Forges is a consultant. William Carmichael is the chair of the advisory committee and Alice Brown is the vice chair.

HUMAN RIGHTS WATCH/AFRICA PUBLICATIONS
Volume 6 (1994) newsletters

- (A601)** Arming Rwanda: The Arms Trade and Human Rights Abuses in the Rwandan War, 1/94, \$7.00
 - (A602)** South Africa: Impunity for Human Rights Abuses in Two Homelands, 3/94, \$3.00
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amnesty international

PEACE-KEEPING AND HUMAN RIGHTS

It is imperative that both parties respect their responsibilities under international humanitarian law applicable to civilians and other persons taking no active part in armed hostilities, including the obligation to respect the right to life and the prohibition of torture and other cruel, inhuman and degrading treatment. I should also, in this connection, stress my belief that respect for human rights constitutes a vital, indeed a critical component, among measures to resolve, on a long-term basis, conflicts of this nature, including efforts to promote enduring conditions of peace, national reconciliation and democracy.

*United Nations Secretary-General Boutros
Boutros-Ghali, report to the Security Council on
Angola(S/25840, May 1993)*

JANUARY 1994

AI INDEX: IOR 40/01/94

Distr: SC/PG/PO

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

Amnesty International is a worldwide voluntary movement that works to prevent some of the gravest violations by governments of people's fundamental human rights. The main focus of its campaigning is to:

—*free all prisoners of conscience*. These are people detained anywhere for their beliefs or because of their ethnic origin, sex, colour or language — who have not used or advocated violence;

—*ensure fair and prompt trials for political prisoners*;

—*abolish the death penalty, torture and other cruel treatment of prisoners*;

—*end extrajudicial executions and "disappearances"*.

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Amnesty International, recognizing that human rights are indivisible and interdependent, works to promote all the human rights enshrined in the Universal Declaration of Human Rights and other international standards, through human rights education programs and campaigning for ratification of human rights treaties.

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Amnesty International's 15-Point Program

1. The political role of the international community.
2. No international 'silent witnesses'.
3. Human rights chapters in peace agreements.
4. Effective and independent human rights verification.
5. Ensuring peace with justice.
6. On-site human rights monitoring.
7. Frequent and public reporting.
8. International civilian police monitors.
9. Long-term measures for human rights protection.
10. Human rights education and advisory assistance programs.
11. The protection of refugees, internally displaced persons and returnees.
12. The gender dimension.
13. Adherence of international peace-keeping forces to human rights and humanitarian law standards.
14. Prosecution of war crimes and attacks on international peace-keeping personnel.
15. Continued promotion and protection of human rights in the post-settlement phase.

Amnesty International's 15-Point Program for Implementing Human Rights in Interna- tional Peace-keeping Operations

1. The political role of the international community.

The UN and its Member States should give early, consistent and vigorous attention to human rights concerns when designing and implementing peace settlements and should plan for a continued human rights program in the post-peace-keeping phase. The international community must be prepared to publicly condemn human rights violations during and after the settlement process and to ensure that recommendations for institutional reform are fully and promptly implemented. Human rights protection measures should be kept under review, strengthened as necessary and properly evaluated at the end of the operation.

2. No international 'silent witnesses'.

All international field personnel, including those engaged in military, civilian and humanitarian operations, should report through explicit and proper channels any human rights violations they may witness or serious allegations they receive. The UN should take appropriate steps, including preventive measures, to address any violations reported.

3. Human rights chapters in peace agreements.

Peace agreements should include a detailed and comprehensive list of international human rights laws and standards to be guaranteed in the transitional and post-settlement phase, as well as providing for specific and effective oversight mechanisms. Peace settlements should require eventual ratification of any human rights treaties and adherence to any international systems of human rights protection to which the state concerned is not yet a party.

4. Effective and independent human rights verification.

A specialized international civilian human rights monitoring component should be part of all peace-keeping operations. These components should have adequate resources and staff with human rights expertise. Their mandates should include human rights verification, institution-building, legislative reform, education and training. Monitors should be trained and should operate under consistent guidelines and in conformity with international standards. Human rights components should be explicitly and structurally independent from the political considerations of the operation and on-going negotiations relating to the settle-

ment and their decision-making mechanisms must not be constructed so as to permit parties to the conflict to obstruct investigations. Effective human rights mechanisms, such as advisers or independent jurists, should also be established in less comprehensive peace settlements and should have an oversight role in matters such as the release of prisoners and the guarantee of rights to freedom of speech and assembly.

5. Ensuring peace with justice.

Peace settlements should provide for impartial investigation of past abuses, processes aimed at establishing the truth and measures to ensure that any perpetrators of human rights violations are brought to justice. Individual responsibility for human rights violations, past and present, must be made explicit and sweeping pre-conviction amnesties should not be part of peace settlements.

6. On-site human rights monitoring.

Human rights monitors should be mandated out to carry out investigations and verify compliance with human rights obligations and to take corrective action in respect of violations. They should have broad access to all sectors of society and relevant institutions and the full protection of those who are in contact with them must be assured. Peace-building measures, such as institutional and legislative reform and education and training, must complement but never replace the verification role.

7. Frequent and public reporting.

To guarantee the effectiveness, security and credibility of international human rights personnel there must be frequent comprehensive public reports of their activities and findings which should be broadly disseminated nationally as well as internationally.

8. International civilian police monitors.

Civilian police monitors should monitor, supervise and train national police and security forces and verify their adherence to international human rights and criminal justice standards. Police monitors should cooperate fully with any human rights component or mechanisms and should themselves be trained in and fully respect international human rights and criminal justice standards at all times. There should be full public reporting of their activities.

9. Long-term measures for human rights protection.

Human rights components in peace-keeping operations should assist in the establishment of permanent, independent and effective national

institutions for the long-term protection of human rights and the reinstitution of the rule of law, including an independent judiciary and fair criminal justice system. Other mechanisms, such as ombudsmen or national commissions, may be encouraged to reinforce respect for human rights. Such mechanisms must be impartial, independent, and competent with the necessary powers and resources to be effective. They should conform to international guidelines and must never be a substitute for a fair and independent judicial system. While national institutions are being constituted, consideration should be given to establishing an interim relationship with relevant international tribunals.

10. Human rights education and advisory assistance programs.

Public education and training on human rights standards and complaints procedures should be provided to all sectors, particularly the judiciary, lawyers and law enforcement officials. Other technical assistance programs should be provided, including drafting legislation in conformity with international standards and support for national human rights NCOs. Such programs should not be a substitute for human rights verification by a specialized monitoring component.

11. The protection of refugees, internally displaced persons and returnees.

Refugee repatriation programs should include an effective monitoring and protection aspect for as long as necessary. International refugee law and protection standards must be adhered to at all times, including the principles of *non-refoulement*, the right to seek asylum and repatriation only on a voluntary basis with international supervision.

12. The gender dimension.

Measures should be taken to guarantee consideration and respect for the particular needs of women in armed conflict situations. Peace-keeping personnel should receive information on local cultural traditions and should respect the inherent rights and dignity of women at all times. Human rights components should include experts in the area of violence against women, including rape and sexual abuse.

13. Adherence of international peace-keeping forces to human rights and humanitarian law standards.

The UN should declare its formal adherence to international humanitarian law and human rights and criminal justice standards, including in relation to the detention of prisoners and the use of

PEACE-KEEPING AND HUMAN RIGHTS

Introduction

This paper looks at the evolution of human rights promotion and protection in the context of United Nations (UN) peace-keeping operations from two perspectives. First, it looks at what the United Nations is expected to do to effectively and consistently address human rights concerns as an essential part of its peace-keeping and peace-building work; and, second, it examines what the United Nations should do to prevent the abuse of human rights by its own peace-keeping personnel and to ensure that international peace-keepers abide by international human rights standards at all times and are held responsible for any abuses.

As UN peace-keeping activities around the world are dramatically expanding, the United Nations is now faced with new roles and opportunities in the realm of human rights. These new roles are developing at UN headquarters in New York and around the world in imaginative but somewhat haphazard ways. This paper looks at these developments and points to the need for a considered evaluation which might lead to a more coherent approach. In the 1990s the world expects a lot from the United Nations. A great deal can be achieved if the UN carries into the field its determination professed in its Charter in 1945 to 'save succeeding generations from the scourge of war' and 'reaffirm faith in fundamental human rights'. Amnesty International is firmly convinced that, if the United Nations is ready to prevent wars and human suffering, then tackling human rights violations early on is essential and the only way to confirm that the UN is taking human rights seriously. Amnesty International is equally concerned that the United Nations must exhibit the highest standards of behaviour and provide a model for dealing with training, investigations, disciplinary action and reparations when its own personnel are alleged to have committed human rights abuses.

Amnesty International's approach to peace-keeping and human rights is determined by its

mandate. Amnesty International is a world-wide voluntary movement that works to prevent some of the gravest violations by governments of people's human rights. The main focus of its campaigning is: to seek the unconditional release of all prisoners of conscience; to ensure fair and prompt trials for all political prisoners; to abolish the death penalty and the torture and other cruel treatment of prisoners; and to end extrajudicial executions and 'disappearances'. In addition, Amnesty International opposes certain abuses by opposition groups including hostage-taking, torture and killings of prisoners and other arbitrary killings. The organization does not take a position on whether peace-keeping operations should be authorized for any particular situation to begin with, nor does it take a position on peace-keeping methods in general. This paper specifically analyzes the actual effects on human rights conditions which recent and existing United Nations peace-keeping operations have had. It presents Amnesty International's conclusions and recommendations regarding ways to maximize the protection and promotion of human rights in the context of peace-keeping operations.

1. Human rights in United Nations field operations

Peace-keeping mushroomed during 1992 and 1993. Over one-third of all United Nations peace-keeping operations were established during the last three years. 1992 saw a fivefold increase in the United Nations personnel involved in peace-keeping activities. By October 1993, over 75,000 military personnel and civilian police were deployed in 18 separate peace-keeping missions.¹ The troop strength of the UN operation in Somalia stood at 27,961 on 22 December 1993 representing one of the largest deployments ever. At the same time, the contours of what these operations are mandated to do have radically changed.

Amnesty International considers that attention

to the promotion and protection of human rights has to be a central tenet of any type of peace-keeping operation. Important political statements supporting this position are reflected in, among other sources, the UN Secretary-General's June 1992 report, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping*, and the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in June 1993.² With the end of the Cold War and East-West paralysis of UN decision-making, the United Nations has been presented with new opportunities for more comprehensive approaches to peace-keeping, including in some cases the formulation of specific UN mandates to address human rights issues. Some recent peace-keeping operations and civilian observer missions established in wartorn countries have been able to address human rights problems on the spot with the potential for taking immediate corrective measures and establishing programs for longer-term institution building. The fact that these are field-based missions, working over a relatively long period in the country concerned, is what makes these activities potentially very effective.

As yet, however, the United Nations has not really come to terms with this new role. While there are a growing number of precedents for human rights work being officially conducted in the context of UN peace-keeping, these measures have been elaborated in haphazard ways, illustrating a conceptual and political gap which needs to be bridged before the UN can be said to be adequately addressing the human rights aspects of conflict and post-conflict situations. Much of the thinking as well as the existing organizational structures in this area remain mired in the history of traditional peace-keeping, rather than in the future of peace-building. This has meant that many of the newer operations—or the UN Member States which collectively decide the parameters of their activities—are sometimes making up or adapting the rules to new situations as they go along, with mixed results. Amnesty International hopes that the recommendations set out in this paper will contribute to the efficacy of human rights programs in peace-keeping operations. The observations and recommendations which follow are intended to serve as some basic and consistent guidelines for the design and implementation of human rights programs in peace-keeping efforts.

In order to understand how the UN and its Member States see these operations—that is, how peace-keeping is debated, authorized and evaluated within the UN's own decision-making process—it is worth briefly examining the different functions which peace-keeping operations have been mandated to address and how these have

evolved, particularly in the last few years.³ It is important to stress at the outset that the cardinal rule of peace-keeping has traditionally been that operations are only deployed with the consent of all concerned parties. In recent years, the presumption of consent has started to become somewhat blurred as the UN has become more involved in conflicts of an internal nature. In these situations, the 'consent' of the parties—whether governmental, non-governmental opposition groups, or military or paramilitary bodies—may be impossible to seek, verify or maintain. Where the absence of consent actually approaches hostility, even if only from a small sector of the population, then the UN's role begins to approach that of an active combatant and its overall role risks being coloured by this factor.

A. Historical Overview

1. *Traditional peace-keeping adapts to new situations*

Within the traditional conceptualization of peace-keeping, there are two main types: military observer groups and infantry-based forces. Both of these serve primarily to control cease-fire arrangements, at the request of the parties. Military observer groups, which are usually unarmed, are intended to create the conditions for successful political negotiations to proceed. Essentially this means trying to maintain a cease-fire simply by virtue of the presence of an accepted impartial monitor. Examples include two very early but still existing operations in the Middle East and in Jammu and Kashmir.⁴ Infantry-based forces, which carry arms, albeit usually light weapons, are generally mandated to establish and control demilitarized or buffer zones in order to physically separate parties to a conflict. This sometimes includes disengaging and supervising separation of forces. Examples include UN operations in: Cyprus; along the Israeli-Syrian border, in southern Lebanon; and in the three 'UN Protected Areas' in Croatia.⁵ Some 'traditional' peace-keeping operations have had mandates which transcend merely supervising disengagement. The UN force in Lebanon is technically mandated to assist the Lebanese Government in restoring its effective authority in the southern part of the country,⁶ while the Cyprus force is supposed to 'contribute to the maintenance and restoration of law and order and a return to normal conditions'.⁷ UN civilian police monitors in Cyprus have conducted activities such as searching for persons reported missing on either side of the green line.⁸

In the current proliferation of peace-keeping operations and the variety of situations and tasks

to which such missions are assigned, traditional peace-keeping functions are now also being applied in more novel situations. In the Western Sahara and in Angola, 'traditional' peace-keeping is being used as a holding operation or fall-back option in view of the failure to implement more comprehensive programs. Political setbacks in the Western Sahara have meant that the activities of the UN Mission to Monitor the Referendum in Western Sahara (MINURSO), have been limited for nearly two years to verifying the cease-fire between Morocco and the POLISARIO Front (*Frente Popular para la Liberación de Saguia El Hamra y de Río de Oro*) in the territory.⁹ In Angola a large-scale operation established under a comprehensive peace settlement was reversed at its culmination, after the electoral results were disputed and widespread combat resumed. In the face of this turnaround, the UN has reduced the strength of its operation in Angola to around 50 military observers and 18 civilian police monitors, while awaiting the outcome of the efforts of the Secretary-General's Special Representative in Angola to restore an effective cease-fire and implementation of the original peace settlement, the Bicesse Accords.¹⁰

The UN Observer Mission in Liberia (UNOMIL) represents a particularly interesting new development in the UN's 'traditional' military observer role. In this case, the UN's mandate is mainly to oversee the actions of the regional peace-keepers, rather than the Liberian parties themselves. In view of the inability of the Economic Community of West African States's peace-keeping force in Liberia (ECOMOG) to keep the peace in accordance with a 1991 peace plan, the warring parties signed a new peace agreement in Cotonou in July 1993. The Cotonou agreement stipulated that the UN should deploy military observers to monitor the cease-fire verification and demobilization activities of the new ECOMOG. While some degree of peace enforcement powers are conferred upon the regional organization,¹¹ the UN will be responsible for monitoring the prescribed actions of the regional peace-keeping force, including search, seizure and storage of weapons, demobilization of forces and the guarding of encampments. Among actions which, as defined in the Cotonou agreement, would constitute violations of the cease-fire are: obstruction, harassment and attacks on peace-keeping personnel. Although the United Nations is acting merely as an observer force in Liberia, the Cotonou agreement does provide for comprehensive transitional measures leading to elections. These aspects of the agreement and provisions for their verification are discussed further in section I.A.2 (case studies 3) of this paper concerning the implementation of comprehensive settlements.

The UN's operation along the Iraq/Kuwait bor-

der (UNIKOM), established after the Gulf War, also has a 'traditional' mandate to monitor the demilitarized zone on the border for incursions or other cease-fire violations. However, the context in which it was deployed was not a traditional one, but followed on from a 'peace enforcement' operation.¹² UNIKOM's mandate was expanded in February 1993, when its personnel were authorized to carry arms and to guard against violations of the demilitarized zone by using force if necessary.

A new form of peace-keeping which is also traditional in terms of its basic function, but which has only become a viable political option since the end of the Cold War, is now called 'preventive deployment'. Sometimes called a 'trip-wire' force, this refers to an international force deployed in a country not yet experiencing or involved in conflict but where conflict could occur. UN Secretary-General Dr Boutros Boutros-Ghali has called for the increased use of preventive deployment in countries whose neighbours are at war and there is a fear of 'spill-over'. He has also suggested preventive deployment as an option for countries experiencing civil crises which could result in armed conflict.¹³ The country where the UN troops are based would normally request their deployment at a point when there is no actual conflict taking place. This type of operation has been used so far only in the former Yugoslav Republic of Macedonia where about 1,000 peace-keepers have been guarding the border with Serbia since June 1993.¹⁴

2. The new wave: implementation of comprehensive settlements (peace-keeping meets peace-building)

The comprehensive 1978 settlement plan for the independence of Namibia, which was finally enabled to go forward in 1988, initiated the new wave of peace-keeping operations, characterized by the implementation of comprehensive peace settlements.¹⁵ Other UN operations implementing comprehensive peace settlements include the recently completed operation in Cambodia (UNTAC), the original plans for Angola and Western Sahara (UNAVEM II and MINURSO), and the ongoing ones in El Salvador and Mozambique (ONUSAL and ONUMOZ). The most recent operation of this type is in Rwanda (UNAMIR), which was approved by the Security Council in October 1993.¹⁶ (It should be noted that Somalia does not fit in this category at present, since there is no agreed peace settlement, although the United Nations is now involved in substantial longer-term peace-building activities there, similar to some of the activities discussed in this section. The operation in Somalia is discussed in sections I.A.4. and I.B.4 below on peace enforcement activities.)

All of these operations have been based on

broad peace agreements between parties to the conflict. In some cases the agreements have been brokered by the UN, such as that in El Salvador, while other agreements, such as that in Mozambique, had little UN involvement during initial negotiations. In all cases, however, the parties have agreed that the UN should play a key role in verifying the implementation of the agreement. (In the case of Liberia, while the Cotonou peace agreement is fairly comprehensive in scope, the verification arrangements called for in the agreement are nevertheless quite vague, particularly with regard to the respective roles of the UN and the regional peace-keeping body.) These peace agreements are called comprehensive settlements because they have involved significant internal restructuring processes in the country concerned in military and civilian sectors. They have generally aimed to culminate in national elections.¹⁷

In these operations UN personnel have been deployed in the country to oversee the restructuring process in accordance with an agreed timetable. This has involved a range of military and civilian tasks for the UN, including: monitoring cease-fires; overseeing demobilization of troops and weapons destruction; monitoring the integration or formation of and training new armed forces and national police forces; investigating human rights violations; resettling refugees and demobilized soldiers; providing humanitarian assistance; observing and verifying elections; conducting public information campaigns or technical assistance programs with legislative, judicial and administrative tasks; and working with or supporting the development of national institutions as well as local non-governmental organizations ('NGOs').

In the new vocabulary of the UN, therefore, such operations have not served just as a passive barrier between fighting forces (peace-keeping), but they have also established and actively monitored longer-term institution-building processes (peace-building). Various peace-building tasks have generally been allocated to separate specialized components within the UN operation, for example: military observers, civilian police monitors, civilian human rights observers, refugee protection officers, electoral monitors, judicial or legislative advisers, technical development and demining experts, and political and administrative personnel. Often specialized agencies, such as the UN High Commissioner for Refugees, have a major role in the peace process, but they have usually remained structurally outside of the peace-keeping operation itself. Regrettably, however, most of these operations and any human rights components they have included have been worked out in New York at UN headquarters with a marked lack of involvement, consultation or cooperation with the UN's own

human rights bodies and experts or its Centre for Human Rights, based in Geneva, and with hardly any reference to other UN programs such as the Vienna-based crime prevention and criminal justice program. Amnesty International considers that these other programs, which have specialist experience to contribute, need to be much more closely integrated into the planning, design, implementation and follow-up of the relevant aspects of these operations, particularly the human rights components.

CASE STUDIES 1: Human rights verification

El Salvador & Cambodia

Of the comprehensive settlement operations established to date, only those in El Salvador and Cambodia have included specific civilian human rights components with verification mandates. In **El Salvador**, the San José Agreement on Human Rights was among the first of the series of agreements comprising the peace settlement between the Government and the *Frente Farabundo Martí para la Liberación Nacional* (FMLN). ONUSAL began verification of the San José Agreement in July 1991, nearly six months before the finalization of the full peace settlement. The El Salvador experience has established a number of unique precedents in the area of UN human rights monitoring. First, the San José Agreement was the first specific human rights agreement concluded in the context of a peace settlement, and it provides a clear framework for UN verification in this area. ONUSAL's human rights division was the first such component to be established in a peace-keeping context, and it is all the more unique for having been deployed before a cease-fire was in effect. There are still over 100 civilian monitors placed around the country carrying out the work of 'active verification'. According to the human rights division of ONUSAL:

Active verification is a systematic investigatory procedure designed to gather objective evidence to corroborate the existence of human rights violations. It is carried out through a process comprising various phases: first, the receipt of complaints or the reporting of a violation on the Mission's own initiative; second, the investigation or inquiry proper, which comprises a detailed follow-up of the facts, police and judicial investigations and the exercise of the Mission's fact-finding powers; third, if the facts are corroborated and it is found that there was no violation of human rights, the case is closed, but if verification reveals the opposite, recommendations are made either for compensating the injury done or for rectifying the situation which gave rise to or facilitated the violation; fourth, through-

*out the process, active verification involves using the Mission's good offices to contribute to the transparency and efficiency of police investigations, due process, safety of witnesses, etc., and its power of initiative to assist in overcoming existing situations of human rights violations.*¹⁸

Although the human rights division of ONUSAL has been able to make far-reaching recommendations, it does not have the extensive human rights powers which the UN had in Cambodia. As its name suggests, the UN Transitional Authority in Cambodia (UNTAC) was empowered to virtually administer the country during the transitional period leading up to the May 1993 elections, a role which included 'general human rights oversight'. One of the key goals of the peace agreements relating to Cambodia¹⁹ was to guarantee 'the non-return to the policies and practices of the past'. The preamble to the agreements recognized 'that Cambodia's tragic recent history requires special measures to assure protection of human rights'. Under the agreements UNTAC officials were empowered to investigate human rights complaints and to take 'corrective action', which included requiring the reassignment or removal from office of Cambodian administrative personnel.²⁰ According to the peace agreements, UNTAC could issue binding directives to public security agencies, and was to be given 'unrestricted access to all administrative operations and information' under their purview. All civil police forces were to operate under UNTAC supervision and control 'in order to ensure that ... human rights and fundamental freedoms are fully protected'. In addition, UNTAC could 'supervise other law enforcement and judicial processes throughout Cambodia' and could order the release of prisoners. UNTAC officers could themselves arrest, detain and prosecute offenders. In January 1993 UNTAC took the initiative to 'prosecute cases involving serious human rights violations', through the appointment of a Special Prosecutor.²¹ However, while several arrests were made, it proved impossible to bring suspects to trial. They were handed over to the Royal Government of Cambodia when the UNTAC mandate expired. Despite the presence of UNTAC human rights officials throughout the whole country, human rights violations were widespread.

The peace agreements for El Salvador also provided for dismantlement of existing security and police bodies and the formation of a new National Civil Police, to be 'strictly civilian in character, structure, management and doctrine'.²² ONUSAL included a component of international civilian police monitors to observe the transitional phase of the new police force. Both UNTAC and ONUSAL have provided human rights training for military,

police and judicial personnel. They have assisted judicial and legislative reform and other projects intended to strengthen national civilian institutions for promoting and protecting human rights. They have also given important support to existing or nascent local non-governmental human rights groups. In Cambodia, UNTAC carried out a relatively extensive human rights education program amongst the Cambodian population and authorities as well as UN staff, including training in human rights standards and the development of codes of conduct for those personnel most directly involved in human rights protection.

In addition to the monitoring by ONUSAL's human rights division of the human rights situation during the transition process, the El Salvador peace accords incorporated another singular and unprecedented human rights measure. The peace agreement established two separate bodies to address the phenomenon of impunity.²³ The first of these bodies was the Commission on the Truth, charged with investigating human rights violations during the civil war between 1980 and 1992 'whose impact on society was deemed to require an urgent and public knowledge of the truth', and making recommendations to the Government of El Salvador and to the FMLN for the implementation of its findings.²⁴ The second body was the *Ad Hoc* Commission on the Purification of the Armed Forces, charged with evaluating the professional behaviour of all members of the armed forces, with the aim of recommending personnel to be discharged in the process of 'purification' of the armed forces.

Both Commissions have been faced with a failure on the part of the Government of El Salvador to comply fully with their recommendations, despite the fact that these recommendations are binding under the terms of the peace agreement. With respect to the Truth Commission's extensive recommendations, published on 15 March 1993 following pressure from the UN Secretary-General and the Security Council,²⁵ the El Salvadorian Government has only just begun an incomplete process of implementation very recently.²⁶ In December 1993, after an ominous rise in political violence in the preceding weeks, including a series of killings carried out in a manner suggesting the resurgence of 'death squad' activity in El Salvador, the Secretary-General announced the establishment of a Joint Group to investigate the activities of so-called illegal armed groups, in accordance with one of the still unimplemented recommendations of the Truth Commission.²⁷

CASE STUDIES 2: Decolonization settlements

Namibia & Western Sahara

In Namibia, the UN Transition Assistance Group

(UNTAG) had 'the political task of ensuring that a major change in political atmosphere took place so that there could be a free and fair campaign in a fully democratic climate.'²⁸ This included the withdrawal of all South African military forces except for 1,500 who were confined to base, as were the forces of the armed liberation group, the South-West African People's Organisation (SWAPO). The South West African Police (SWAPOL) were the only remaining South African-controlled security force left in Namibia during the transitional period.²⁹ The police were required to carry out law and order functions during the transition impartially and without intimidation, and this required close monitoring by UNTAG civilian police monitors. The UN civilian police observed SWAPOL patrols, investigations, conduct at political rallies and in communities. However the UN police monitors had no direct law enforcement powers themselves, in contrast to Cambodia.

Discriminatory and restrictive legislation was repealed or substantially amended, an amnesty for political exiles proclaimed and the return of over 42,000 exiled Namibians was monitored and assisted. The release of political prisoners and detainees was provided for in Security Council Resolution 435 (1978), and about 40 detainees and just over 20 convicted prisoners held by the South African authorities, as well as over 200 persons held by SWAPO, were released. This required a certain amount of investigation to follow up cases and places of detention, and an Independent Jurist was appointed to advise UNTAG on disputed cases. However, many hundreds of people had 'disappeared' in the custody of the other side; they remained unaccounted for by the time UNTAG withdrew.

The UN Mission for the Referendum in Western Sahara (MINURSO) was established in April 1991 in order to supervise the referendum which was due to be held around February 1992. By the end of 1993 the referendum had not yet been held and MINURSO's presence had not stopped human rights violations occurring in the territory. MINURSO is supposed to guarantee a free and fair political climate during a process leading up to and including a territorial referendum on the question of Western Saharan independence or incorporation as a Moroccan territory. The referendum agreement stipulates that the UN is responsible for establishing 'the conditions and modalities for a referendum campaign in which freedom of speech, assembly, movement and the press are guaranteed'.³⁰ MINURSO, with the assistance of an Independent Jurist who has yet to be sent to the territory, is also to take steps to ensure the release of all political prisoners and detainees. As in the Namibian model, the Independent Jurist is sup-

posed to advise on an amnesty to be promulgated for political prisoners, and to assist in the settlement of any disputes concerning the release of prisoners and detainees and identification of laws and measures which 'could obstruct the conduct of a free and fair referendum' and are therefore to be suspended.³¹ Like their counterparts in Cambodia, MINURSO civilian police monitors are to have the power of arrest.³²

Amnesty International has raised with the UN its concerns about arrests and harassment of hundreds of Sahrawis, on suspicion of supporting Western Saharan independence or for participating in peaceful protests against Moroccan control in the territory, as well as the Moroccan Government's continued refusal to account for or allow investigations into the fate of hundreds of 'disappeared' Sahrawis. Amnesty International believes the 'disappeared' Sahrawis must be included amongst the detentions to be investigated and publicly accounted for.³³ These conditions in the Western Sahara violate the human rights guarantees in the referendum agreement, and Amnesty International has called on the UN to address these issues urgently by expanding MINURSO's mandate to allow for human rights monitoring and investigation, and deploying the UN civilian police monitors immediately.³⁴ In Amnesty International's view, the political stalemate over the referendum voting criteria, which has stalled the implementation of most of the measures set out in the agreement, does not release the UN from its responsibility to ensure a climate of freedom of expression in the run-up to the referendum and to clarify the fate of the 'disappeared' and oversee the immediate release of political prisoners.

CASE STUDIES 3: Structural weaknesses in verification

Angola, Mozambique & Liberia

In Angola, the UN's operation (UNAVEM II) is judged to have failed largely because the operation was unable to ensure sufficient disarmament of the parties, particularly the *União Nacional para a Independência Total de Angola* (UNITA) National Union for the Total Independence of Angola, before the elections took place. The Secretary-General has lamented that the parties only assigned a limited role to UNAVEM II in the Bicesse Accord (so called because they were signed in Bicesse, Portugal, in May 1991); according to him this weak mandate hampered the ability of UNAVEM II to 'correct the drift towards non-compliance'.³⁵

Amnesty International has been concerned at the weaknesses in the civilian components of UNAVEM II, including a lack of sufficient attention to human rights as well as weak verification mecha-

nisms established to investigate alleged violations of the peace accords. The Bicesse Accords contain provisions requiring respect for human rights, including freedom of expression, association, movement and the prohibition of acts of violence against the civilian population. Although these provisions appear in various parts of the agreement, there was no clear human rights chapter specifying the source of specific rights to be guaranteed and setting out investigative and remedial provisions. The Bicesse Accords also required the release of all prisoners detained in the context of the conflict, yet by the time the elections were held in September 1992, UNITA had not complied with this requirement.

The supervisory and monitoring mechanisms provided for in the Bicesse Accords were composed of Government and UNITA representatives, but lacked UNAVEM II or any other impartial participation. These mechanisms were based on the principle of consensus, which granted each side what amounted to the power to veto action on any complaint which might be launched by the other party. Amnesty International believes that the incorporation of the principle of consensus was a major reason behind the failure to investigate and remedy violations of the peace agreement which took place in the period leading up to the elections, including political killings and other serious human rights violations. Amnesty International considers that the UN's inability to speak out or respond effectively in the face of such violations contributed to contempt for and the eventual total breakdown of the peace process itself.

The current situation in Angola is a dire one indeed. Amnesty International has received information about hundreds of extrajudicial and arbitrary killings by Government and UNITA forces since November 1992. Further prisoners have also been detained since the resumption of hostilities after the elections, many of whom have been subjected to 'disappearance' or extrajudicial execution.³⁶

The weaknesses of UNAVEM II's mandate are echoed somewhat in the UN's operation in **Mozambique** (ONUMOZ). The main oversight mechanism established in the Mozambique peace agreement, the Supervisory and Monitoring Commission (CSC), is at least now chaired by the UN. However, the role of the UN in preventing obstruction in this body remains limited and the consensus system still applies. Amnesty International is concerned that human rights investigations could be blocked by one side or the other in Mozambique, as happened in Angola. The General Peace Agreement for Mozambique (concluded in Rome in October 1992) binds the parties to respect civil and political rights. However, it does not provide a specific mechanism to monitor reports of human rights

violations and ensure that such reports are properly investigated and remedied.

Under the Rome agreement, the national police will continue to perform their functions under the responsibility of the Government, and both the police and the state security agency are required to act impartially and with strict respect for human rights and fundamental freedoms. The activities of these two governmental security bodies are to be monitored by two of a number of separate verification commissions established under the accord, which report to the overall CSC. Two CSC sub-bodies, the National Information Commission and the National Police Affairs Commission, are mandated to investigate irregularities and inform the competent state authorities so that appropriate judicial or disciplinary measures can be taken. However, because both these bodies are required to report through the CSC, investigations into violations of the agreement, including its human rights provisions, could still be blocked by either of the parties. (It should be noted that disputes over the composition of the various commissions delayed their establishment until December 1993.)

Furthermore, although the peace agreement provides that 'bodyguards' from the opposition party, the *Resistência Nacional Moçambicana* (RENAMO) Mozambique National Resistance, will be given police status, their activities do not appear to be subject to any form of monitoring. Indeed RENAMO forces seem exempt from any of the supervisory structures and it is not clear that any state security structures are to have access to RENAMO-held territory.

Finally, a new army comprising both RENAMO and government soldiers is to be formed under the Rome agreement, which established a further verification mechanism to monitor the formation of this new force. However, there do not appear to be provisions for monitoring the behaviour of the new army once it is established, despite the past record of serious human rights violations committed by both government and RENAMO armed forces and the fact that the new army is required to cooperate with the police 'to protect civilian inhabitants against crime and violence of all kinds'.

Amnesty International has brought these concerns to the attention of the UN and recommended that ONUMOZ include a civilian police contingent to monitor the conduct of police investigations into reported human rights violations, as well as police access to RENAMO-controlled areas. Amnesty International urged that the UN civilian police monitors be required to report frequently and regularly on the activities of the Government's security forces, RENAMO bodyguards, and the respective verification commissions established in the peace agreement. In its

implementation plan for ONUMOZ, issued in December 1992, the UN did recommend inclusion of a civilian police component to monitor the 'neutrality of the Mozambiquan police', subject to the parties' agreement. However, although agreement was eventually obtained from both parties, the UN Secretary-General announced in October 1993 that there would be a delay in providing such a police contingent, due to a lack of available trained personnel.³⁷

Amnesty International has also noted that in a UN document published in July 1993 concerning the financing of ONUMOZ the UN intended to appoint a Human Rights Adviser to work within the office of the head of the mission, the Special Representative of the Secretary-General.³⁸ According to the document, the Human Rights Adviser was stated to be responsible for 'overall monitoring of the human rights situation in the mission area, keeping the Special Representative informed of current developments and, in consultation with the Department of Humanitarian Affairs and the relevant authorities, recommending courses of action to address identified issues.' While welcoming this proposal, Amnesty International is disappointed that no such human rights monitoring is really taking place as of December 1993.

In Liberia, the Cotonou agreement provides, among other things, for the release of prisoners, return of refugees and the promulgation of an amnesty for acts committed during military engagements. However, the agreement contains no express human rights guarantees. A six-month transitional government to be established under the agreement is to 'operate as closely as practicable under the Constitution and laws of Liberia'. Not only is 'practicable' an extremely unclear term, but the Constitution is itself a deeply flawed document, allowing extensive derogation of basic human rights.³⁹ In addition, these provisions do not directly apply to the parties but only to the transitional government (which, at the time of writing, has yet to be established).

The agreement lacks any provisions for reconstructing the essential institutions of civil society which will be able to ensure the rule of law and lasting respect for human rights. There are no provisions for rebuilding the judicial system along lines which ensure that courts are competent, independent and impartial, affording all the necessary guarantees for fair trial, for establishing an independent prosecution and guaranteeing an independent bar. Indeed, apart from a provision stating that the current Supreme Court will continue to exist, the agreement fails to provide for any court system in the transitional phase. The agreement's provision for the release of political prisoners does not require parties to identify the names and status

of individual prisoners, nor is there any clear system of independent supervision of detention conditions or screening of the distinction between political detainees and 'common criminals'.⁴⁰ There are no provisions for human rights training for judicial, law enforcement or prison personnel. Similarly, it is not clear what armed forces or police forces will be established under the transitional government or after elections.

Finally, the amnesty provision in the Cotonou agreement would seem to undermine the recommendations of the UN panel of inquiry into the June 1993 massacre of civilians which took place near Harbel, Liberia. The panel, established by the UN Secretary-General in accordance with a request by the Security Council, stressed in its general conclusions:

*the need at this juncture for similar investigations of a number of major atrocities attributed to the parties to the conflict. This request was made strongly and with conviction by nearly all the persons whom the Panel met. The Panel agrees that this is necessary in the interests of both equity and to deter the recurrence of such actions. It agrees with many Liberians who expressed the view that the identification and disclosure of the perpetrators of such acts would lead toward atonement and reconciliation. Finally, it believes that this approach would help to construct a more solid foundation for durable peace.*⁴¹

The amnesty provision would not cover those responsible for the Harbel killings since, according to the panel of inquiry, these killings did not take place 'in the course of actual military engagements'. However, if persons responsible for war crimes and crimes against humanity during military engagements should be granted an amnesty, this would be in breach of Liberia's obligations under the Geneva Conventions to suppress breaches of humanitarian law, and would also be inconsistent with the UN's own findings and recommendations. Amnesty International regrets that there is no provision in the agreement for investigation of breaches of human rights and humanitarian law obligations, or for bringing those responsible to justice or for compensating victims or their families.

The verification bodies established under the Cotonou agreement⁴² are to monitor, investigate and report all cease-fire violations. Amnesty International finds several problems with these new verification mechanisms. The first is the lack of any express mandate to address violations of human rights and humanitarian law obligations. Secondly, the agreement does not specify whether they are to decide questions by consensus or majority vote. If they are to proceed by consensus, this system of

addressing violations of the cease-fire will be prey to the same deadlocks seen in Angola and Mozambique. If it is determined that the verification bodies are to take decisions by majority vote, the provision for ECOMOG enforcement of such decisions could be more effective than the mechanisms established in Angola and Mozambique. However, the enforcement powers granted to ECOMOG under the agreement are not spelled out. Furthermore, whether an expanded ECOMOG, which was previously seen as one of the parties to the conflict, can do this effectively remains to be seen. Although the agreement that the UN monitor ECOMOG's activity may partially address the difficulties inherent in enforcing the decisions of the verification bodies, the relationship between the two bodies in the event of disputes is not that clear. If the UN is going to further delegate peace-keeping duties to regional organizations it is important that such organizations are properly equipped to carry out the necessary tasks. Furthermore, thought will also have to be given to the question of how to ensure that regional peace-keepers act and are seen to act in an impartial way.

Although the UN's operation in Rwanda (UNAMIR) has barely been established as yet, Amnesty International fears some of its concerns regarding the Angola, Mozambique and Liberia settlements may apply to Rwanda as well. UNAMIR's overall mandate is 'contributing to the establishment and maintenance of a climate conducive to the secure installation and subsequent operation of the transitional Government'.⁴³ Elections are proposed for some time between October and December 1995. The UN's implementation plan does not provide for a human rights component, although the following elements are included in the mandate of UNAMIR: monitoring the security situation during the final period of the transitional government's mandate leading up to the elections; investigating, at the request of the parties, instances of alleged non-compliance of the peace accords relating to the integration of armed forces; providing security for distribution of humanitarian assistance; monitoring the repatriation of Rwandese refugees and the resettlement of displaced persons; and for UN civilian police to assist in the maintenance of public security through the monitoring and verification of the activities of reconstituted *Gendarmerie* and Communal Police.

The Rwandese Government and the Rwandese Patriotic Front signed a series of protocols in the months leading up to the eventual signing of the Peace Accord on 4 August 1992. Some of the protocols, in particular the 'Protocol relative to the Rule of Law', included provisions for the protection of human rights. Article 15 calls for the establishment of an independent national commission

of inquiry responsible for monitoring human rights violations and Article 16 calls for the signatories to set up an international commission of inquiry to investigate human rights violations committed during the war. As far as Amnesty International is aware none of these commissions have been initiated, as at the end of 1993.

3. Civilian observer missions: peace-keeping and peace-building without the military?

The deployment of purely civilian observer missions without military staff, in the absence of a cease-fire, and possibly even without an underlying peace agreement, is a very new option for the United Nations. The two civilian human rights missions established thus far in the UN system are the International Civilian Mission in Haiti (MICIVIH) and the UN Observer Mission in South Africa (UNOMSA).⁴⁴ (There have additionally been smaller-scale and shorter-term electoral observation teams sent to countries requesting this, but these are not addressed in this paper.)⁴⁵

There are striking differences between this kind of operation and all those discussed above. First, these are purely civilian missions with no military peace-keeping component. The purpose nevertheless is similar, since the deployment of international civilian personnel is intended to lower or diffuse levels of violence and create a climate of greater security and confidence to enable peaceful political peace processes to go forward. As in traditional peace-keeping operations this is intended to be achieved essentially by the significant pressure of having international witnesses on the scene, albeit unarmed. Since their presence is not necessarily based on a comprehensive peace agreement or an effective cease-fire, the real pressure must come from credible and visible activity on the ground.

A second difference is that these civilian missions have been specifically human rights-related. The international observers are charged with monitoring and reporting on the general human rights situation and they may be mandated to take up individual violations with the authorities. Their presence may be predicated on a consent agreement such as that with the *de facto* military authorities in Haiti, which specified the terms of reference of the mission and required the monitors be given access to places of detention, courtrooms, etc. The observers may also have general human rights education functions.

A third difference with other kinds of peace-keeping missions is that in procedural and political terms the mission might be approved in a number of ways, but not solely by the Security Council, as has become the tradition for peace-keeping.⁴⁶ This

means the General Assembly can take the initiative, as it did with Haiti, rather than wait for Security Council approval of a huge military peace-keeping operation; or a 'memorandum of understanding' can be agreed between the UN and the country concerned as happened in Iraq with regard to the security guards.

CASE STUDIES 4: Civilian Monitoring Missions

Haiti & South Africa

Although the human rights monitors in Haiti were evacuated to the Dominican Republic for security reasons on 15 and 16 October 1993 and, at the time of writing, the fate of the Mission was still in doubt, the work achieved by the Mission from February 1993 until its withdrawal is worth evaluating. One of MICIVIH's unique features is that it is a joint venture of the UN and the Organization of American States.⁴⁷ With a combined personnel of over 230 human rights monitors from both organizations, this is the largest specific human rights operation yet established. The monitors' job in Haiti was to engage in actual verification of respect for human rights, based on the rights guaranteed in the Haitian Constitution and the international human rights treaties to which Haiti is a party.⁴⁸ The Mission was entitled to receive allegations of human rights violations, interview anyone freely and privately, visit any place or establishment, including places of detention, and enjoy full freedom of movement throughout Haiti. In addition they observed political meetings and demonstrations where it was feared human rights violations might occur, as a 'dissuasive presence'.⁴⁹ The Mission regularly made its concerns known to the Haitian authorities, including remedial recommendations, and inquired as to any follow-up taken by the authorities.

The results of MICIVIH's presence have been mixed. The Mission took an 'active approach to information gathering' and sought access throughout the state both for educational and information-gathering purposes, notwithstanding serious obstacles for the proper investigation of reported human rights violations.⁵⁰ Certainly, the knowledge on the part of the police and security forces that incidents would be followed up by the international monitoring Mission meant that beating, arbitrary detention and other irregularities were sometimes avoided.⁵¹ In addition, the presence and assistance of observers during judicial proceedings has strengthened the observance of the Constitution and penal code, at least for those cases attended, as well as the authority and confidence of the judiciary. The Mission took steps to see that prisoners and other victims of human rights violations received medical and legal assistance. As

public knowledge about the Mission grew during the months the observers were present, more and more people sought out the Mission to seek assistance or provide information on human rights violations.

Nevertheless, summary executions continued through 1993 despite the presence of the Mission and their condemnations of the violence. In July, August and the first part of September, and in Port-au-Prince in particular, the Mission observed a dramatic increase in killings and 'disappearances'. The Mission received reports of several hundred cases of arbitrary arrests and illegal detention, often with evidence of torture. A disturbing feature of the violence has been persistent threats and attacks against people who have been in contact with the Mission or have featured in cases publicized by the Mission.

Since the departure of the international human rights observers, threats and intimidation against local human rights monitors have reportedly increased, and many have been forced into hiding. Amnesty International has also received reports that military and paramilitary forces have increased acts of intimidation against those believed to support President Aristide's return. With MICIVIH's withdrawal and the increased danger facing local human rights monitors, these reports are difficult to verify in detail but Amnesty International fears very serious human rights violations and massacres may take place with no international witnesses to record or report them. The organization believes it is vital that effective, impartial human rights monitoring take place in Haiti during this extremely precarious period. It is also naturally concerned at the conditions which led the international observers to withdraw, including the escalating level of human rights violations directed in many cases against Haitian human rights monitors.

There are two particular issues in Haiti on which the UN and OAS have not taken a public stance. The first of these is the treatment of Haitian refugees, who have continued to be forcibly returned to Haiti by the United States, in violation of international refugee and asylum law. The UN and OAS must ensure that all Haitian refugees are granted full protection and asylum, and are not subjected to illegal *refoulement*. All Member States, including the United States, must comply with proper asylum procedures.⁵²

The second issue of concern to Amnesty International is the amnesty to be granted to members of the Haitian armed forces under the terms of the Governors Island Agreement.⁵³ By effectively giving in to a state of continued impunity in Haiti, the international community has shown it is not serious about human rights in the longer term.

Amnesty International does not underestimate the delicacy of this balancing act. Amnesty International considers it absolutely crucial that the UN, regional organizations such as the OAS in the case of Haiti, and individual Member States must act in a consistent fashion to support civilian human rights missions. There must be ongoing express political support given to the activities and protection of the mandate of the mission. Close vigilance and high-level political support is the only way to guarantee the success of such a project. In the case of Haiti, there was insufficient political censure for the generalized level of human rights violations as well as the specific threats against MICIVIH personnel since their arrival in Haiti. The international community must show that it will not tolerate such abuses or violations of the terms of reference of the mission itself, and the guarantees given therein.

In South Africa, the Security Council gave the Secretary-General a mandate couched in wide terms to deploy observers 'to address effectively the areas of concern noted in his report, in coordination with the structures set up under the peace accord'.⁵⁴ After an initial deployment of UN observers in August 1992, the main contingent of some 50 observers arrived in South Africa from September onwards with a very broad brief to strengthen the capacity of the structures established under the terms of the country's National Peace Accord, which was signed by representatives of a number of political parties and the South African Government in September 1991. The United Nations Observer Mission in South Africa (UNOMSA), whose members were drawn primarily from UN headquarters staff in New York, was initially criticized for deploying observers who lacked specialized training in the areas of human rights monitoring or policing, mediation or legal skills, for interpreting its terms of reference extremely narrowly, for being inaccessible to non-governmental organizations outside the structures of the National Peace Accord, for, in certain instances, relying upon the protection of the security forces when observing events in black residential areas, and for failing to report publicly on the mission's activities.

More positively, the presence of UNOMSA observers, along with observers from the Commonwealth, the Organization of African Unity (OAU) and the European Union, at public demonstrations and rallies have clearly had a restraining effect on local participants and the security forces at these events, resulting in a marked reduction in loss of life or the unjustified use of excessive force by the security forces. The unfortunate exception in this specific regard concerns restrictions on access by the observers from intergovernmental organizations to territory controlled by the nominally inde-

pendent 'homeland' of Bophuthatswana. The 'homeland's' authorities, who are not signatories to the National Peace Accord and are refusing to participate in the interim governing structures prior to South Africa's first non-racial elections in April 1994, have continued to use restrictive legislation, arbitrary detentions and unjustified, excessive force to curb public political activities. UNOMSA and the other international observer missions have relied upon 'quiet diplomacy' with the South African Government and Bophuthatswana authorities in a bid to open up the territory to international scrutiny, but with remarkably little success.

Despite the lack of clear cut authority from the Security Council and the lack of precision in the mission's terms of reference, individual members of the mission have acted creatively in response to local conditions and in recognition of the continuing weakness of the National Peace Accord structures in certain areas of the country. They have become more open to contacts with non-governmental organizations. Their active support has helped strengthen a number of successful grassroots peacemaking initiatives. Some UNOMSA observers have visited police stations and prisons, assisted in the tracing of detainees, and intervened with police authorities to obtain medical assistance for injured detainees. The mission has expressed concern privately to government authorities about the evidence of torture and ill-treatment in custody, and other human rights abuses which have come to UNOMSA's attention. On occasions, through press interviews with the head of mission or through press releases, UNOMSA makes public some of its concerns. However overall the mission has been reluctant to provide detailed public reports of the mission's activities, as, for instance, has been done by the operations in Haiti and El Salvador and indeed by the Commonwealth Observer Mission in South Africa (COMSA).

Amnesty International believes that UNOMSA should commit itself to greater public reporting, as a means both of building public understanding of and confidence in the mission, and of increasing pressure upon those in authority and in leadership positions to be accountable for their actions. This will become increasingly important as the UN steps up its operations in South Africa prior to the elections. In October 1993 the Security Council authorized the expansion of the mission to 100, in view of the increasing violence. In addition, following a decision on the report of the needs assessment team, more personnel will be sent to South Africa as election observers.

4. The UN's new quandary: enforced peace?

The US Ambassador to the United Nations,

Madeleine Albright, remarked in a statement to the US Senate Foreign Relations Committee on 20 October 1993: 'The difficulties of peace operations in Angola, Somalia, Bosnia and Haiti demonstrate that traditional approaches are not adequate where government and civil society have broken down or where one or more of the parties is not prepared to end the conflict.'⁵⁵ In other words, the UN is increasingly confronted with situations where it is not receiving full 'consent' for its peace-keeping aims and is therefore faced with the unpleasant choice of withdrawing, conducting its activities under fire, or using the authority of Chapter VII of the United Nations Charter⁵⁶ to enforce its aims militarily.

A new phenomenon in the area of peace-keeping is the use of military personnel to assure the **safe delivery of humanitarian assistance** within a conflict situation in the absence of a cease-fire but usually in the context of peace-making efforts. The two examples so far of peace-keeping operations organized purely around the delivery of humanitarian assistance are the early UN operation in Somalia (UNOSOM I, before the United States-led Unified Task Force arrived in December 1992), and the UN's current operation in Bosnia and Herzegovina.⁵⁷ In both these situations, the UN has attempted to act as neutral broker for a peace settlement while also attempting to deliver humanitarian assistance to the civilian population caught in the conflict. But the very fact of delivering or attempting to give assistance has not necessarily been seen as neutral, either by warring factions or even by the population at large. UN humanitarian personnel in the field are increasingly being fired upon in the line of duty as their actions are perceived as aiding enemy forces, while the UN's credentials for impartial peace-making efforts have foundered. In such situations, the issue of consent seems moot in the absence of clear sovereign authorities, and the UN is no longer in a position of keeping the peace but is getting caught up in war. These operations have had to consider resorting to military responses on the ground, such as firing on roadblocks even before actually being attacked, and have deployed much heavier weaponry with back-up from regular armies or regional defence organizations.⁵⁸

'Peace enforcement' generally refers to situations where UN troops, initially stationed between two parties as part of a traditional peace-keeping operation with the consent of the parties, would become authorized to use force should the cease-fire break down. This would be the scenario should the UN or NATO begin taking offensive military action to enforce the provisions of any eventual peace plan for Bosnia and Herzegovina. Such an international force would not only

act in self defence but also to 'silence guns that persisted in violating the cease-fire.' In the current operation in Somalia (UNOSOM II), the UN soldiers are authorized to use force to defend themselves from attacks or against parties using force to obstruct them from carrying out their mandate to establish a secure environment for relief operations. The initial consent has not been a factor due to the collapse of state institutions which could produce legitimate or lasting consent.⁵⁹ Secretary-General Boutros-Ghali had recommended that the peace enforcement mandate in Somalia should be authorized with a phased time limitation and only as part of a longer-term strategy 'for the restoration of peace, stability, law and order'.⁶⁰

The international community is now faced with an impasse. While it may sanction peace-enforcement measures the UN does not always have the means to take on armies or even rebel forces. Moreover, in Bosnia and Herzegovina there has been no agreement, even by the beginning of 1994, as to whether the use of force would save lives or actually aggravate the conflict and disrupt the UN's delivery of humanitarian assistance. The hard decisions have to be taken at the political level as to whether governments supplying troops to these operations want to put their nationals at risk. Nevertheless there has been a proposal that a multinational UN volunteer force could be formed. It has been suggested that such a force could operate without the administrative and political problems that currently bedevil the start-up of operations as units would be ready and waiting, specially trained, willing to take combat risks and not a liability or heavy responsibility for any one government. However, the public debate on this and similar options is only just beginning.⁶¹

CASE STUDIES 5: Peace Enforcement in Somalia (UNOSOM II)

Security Council Resolution 794 (1992) authorized the US-led Unified Task Force (UNITAF), 'to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations'.⁶² Later this role was taken over by UNISOM II. In Resolutions 814 (1993) and 837 (1993), the Security Council stated that those found responsible for breaches of humanitarian law would be 'held individually accountable'⁶³ and UNOSOM II was asked to assist in the re-establishment of the Somali police including 'the investigation and facilitating the prosecution of serious violations of international humanitarian law'.⁶⁴ Resolution 837 explicitly reaffirmed that the UN would be 'authorized to take all necessary measures against all those responsible for the armed attacks [against UNOSOM II on June 5 1993] to

establish the effective authority of UNOSOM II throughout Somalia, including to secure the investigations of their actions and their arrest and detention for prosecution, trial and punishment.'

The thrust of these later resolutions was to single out the Somali faction of General Mohamed Farah Aidid for arrest by the UN forces, after a UN inquiry found him responsible for the killing of UN troops, and the American head of UNOSOM II, Admiral Jonathan Howe, announced a reward for Aidid's capture. According to Mr Kofi Annan, Under-Secretary-General for Peace-Keeping Operations: 'When the Aidid distraction constituted a threat to UNOSOM's mandate, as it did and continues to do, the Security Council authorized the removal of the threat.'⁶⁵ Thus began a very dark period for UN peace-keeping, in which the UN forces were pitted as a party in a bitter conflict with one group in the larger Somali conflict, which came to dominate the whole operation and resulted in the deaths of many Somali civilians and fighters as well as UN troops. By November 1993, faced with adverse international criticism and domestic US pressure, UN and US policy changed to revert to the search for a political settlement of the Somali crisis, which would involve General Aidid. The Security Council in Resolution 885 (1993) suspended its arrest order and asked the Secretary-General to establish an international inquiry into the attacks on UN personnel.

Amnesty International has been deeply concerned at the gross and widespread human rights abuses that have been committed by several of the armed Somali groups which emerged in January 1991 at the end of the brutal 21-year dictatorship of President Mohamed Siad Barre. Both before and during the military conflict between the international troops and General Aidid's force (the Somali National Alliance, or SNA), which began in June 1993, SNA forces had been responsible for major human rights abuses against members of opposing clans or sub-clans, as well as the killing of UN troops and summary killings of Somalis suspected of being informers for the UN. Pro-Aidid mobs killed four foreign journalists taken to witness civilian deaths caused by a US raid on 12 July 1993, and abused the bodies of US troops killed on 3 October 1993. The SNA mistreated two military captives—a Nigerian UN soldier and an American helicopter pilot—before releasing them on 14 October.

In the second half of 1993, the military objective of arresting General Aidid on suspicion of being responsible for the killing of 25 Pakistani UN troops on 5 June 1993 has overshadowed the humanitarian objective of the UNOSOM II operation. Amnesty International deplores the heavy loss of life during this latest phase of the UN operation in

Somalia. Several hundred Somalis, including many women and children have been killed, as have over 60 UN troops and 18 US soldiers. Some of the civilians killed by UN or US troops seem to have been victims of the use of lethal force in breach of human rights and international humanitarian law obligations. In addition, hundreds of Somalis, including SNA political leaders, have been detained by UNOSOM II troops since the operation began in May 1993. Most of these prisoners were released after some days or weeks in UN custody, but some 400 prisoners were transferred to the custody of the new Somali police force for eventual processing by the recently re-established Somali courts. At the end of 1993, some eight Somali detainees were still being held in UN custody without charge or trial, and most of the other Somali detainees were still reportedly held without charge or trial, and without access to relatives or lawyers. Most recently the UN has appointed an Independent Jurist (Mr Enoch Dumbutshena, former Chief Justice of Zimbabwe) to deal with matters relating to detainees held by UNOSOM in Somalia.

The UN-held detainees have reportedly been denied access to relatives, although the International Committee of the Red Cross has been allowed to visit them. Their legal status is undefined: none has been charged with any offence, brought before any kind of court or allowed access to lawyers. A UN spokesperson said they were being held in 'administrative detention', and their location was not to be disclosed for security reasons.⁶⁶ Amnesty International has expressed its serious concern to the UN that this situation amounts to arbitrary and indefinite detention without charge or trial, in contravention of the UN's own human rights standards. The legal basis on which the prisoners are being detained, or on which they may be tried, has not been specified. The UN's own basic standards for the treatment of prisoners affirm that all prisoners must be allowed access to lawyers, review of their detention and the benefit of a fair trial after they are charged with an offence.

Amnesty International wrote to the UN at the end of October 1993 after a ceasefire with the SNA went into effect, and called on the UN to fulfil its obligations as the world's human rights standard bearer to carry out a thorough, prompt and impartial investigation into the killings of civilians by the UN (and in particular the incidents of 13 June, 12 July and 3 October) and to see if there have been violations of human rights standards, and to make the results of such an investigation public. In a public statement Amnesty International noted there was an urgent need for all parties, including UNOSOM II as well as the armed Somali groups, to seize the opportunity of the cease-fire to put human rights for Somalia high on their agendas and, in

particular, to ensure they respect human rights and basic international humanitarian law obligations.

One of the other disturbing effects of the conflict between UNOSOM II and the SNA, was that it detracted attention from what the UN had been doing outside of southern Mogadishu in terms of humanitarian work to end the famine, improve security, and establish local administrative, police and judicial structures. The Mogadishu conflict from June to October 1993 ended such work in Mogadishu for the rest of the year and severely affected the program outside Mogadishu. It must be additionally noted that the bulk of the cost of UNISOM II went on military operations.

Amnesty International is concerned at the weakness of the human rights components relating to the UNISOM II operation. The Human Rights Office referred to by the Secretary-General in his August 1993 report had apparently not been set up by the end of the year, and the independent expert on Somalia called for by the UN Commission on Human Rights in March 1993 had hardly begun his work by the end of the year, and even then had no plans for an early visit to Somalia.⁶⁷

Investigations by the UN or the responsible national authorities into the killings or other abuses by foreign troops were in most cases non-existent or minimal. It is also unclear whether the institution-building arrangements have been consistent with UN principles of political impartiality, human rights accountability and transparency, and the monitoring and correction of abuses.

In the northwest, the administration of the self-declared Somaliland Republic has itself improved security in the area, creating opportunities for reconstruction and establishing human rights protection. However its relations with UNISOM II officials have not been good.

B. Amnesty International's Observations on Human Rights in UN Field Operations

1. Traditional peace-keeping

The common element of traditional peace-keeping operations is that they are primarily organized and staffed by military personnel, with a mandate to observe military activities in the country concerned and, of course, with the consent of the parties to the conflict. The variable is largely in the scope of activity they monitor and the degree to which they can respond to non-compliance. One concern often expressed about traditional peace-keeping forces which have remained in place for many years, such as in Cyprus, is that the very presence of the force can itself encourage political stalemate, making the need to resolve political conflict appear less urgent to the parties.

Amnesty International does not take a position with respect to peace settlements, political negotiations, or the deployment of peace-keeping and military forces *per se*. However, the organization is concerned with such situations when human rights violations continue to occur notwithstanding the presence of UN troops or field personnel. Despite the presence of peace-keepers along the Iraq-Kuwait border and in southern Lebanon, Cyprus, Croatia, and Kashmir, Amnesty International and other human rights organizations have documented numerous human rights violations in those areas, including extrajudicial killings, arbitrary detentions, 'disappearances', torture and rape. On bringing its concerns to the UN, or in seeking confirmation of allegations, Amnesty International has in the past been told that UN personnel can not publicly report on human rights violations as this would compromise their neutrality.

Nonetheless, in January 1993, after reports of arrests of Sahrawis who had participated in public demonstrations in the Western Sahara, the UN Secretary-General himself wrote, 'while MINURSO's current military mandate is strictly limited to the monitoring and verification of the ceasefire, MINURSO, as a United Nations mission, could not be a *silent witness* to conduct that might infringe the human rights of the civilian population. Hence MINURSO patrols were alerted to possible unrest.'⁶⁸ Amnesty International concurs with the view that UN personnel cannot ignore human rights violations taking place in situations where the UN has a peace-keeping mandate. The UN must recognize its responsibility to respond to such violations in order to maintain its impartiality and credibility in keeping the peace, including by taking up allegations with the appropriate local authorities. Furthermore, in situations where there is no UN human rights verification activity, Amnesty International considers that information regarding human rights violations, including any complaints received by UN field operations, should be reported by the field personnel to the relevant human rights investigatory mechanisms, such as those established by the UN Commission on Human Rights.⁶⁹

2. Implementation of comprehensive settlements

Comprehensive peace settlements such as those mentioned in this chapter have had or will have a significant impact on the future of human rights in the territories or countries where they have been implemented. Yet only two of the UN operations mandated to oversee comprehensive peace processes—ONUSAL and UNTAC—have provided for specific UN civilian human rights components empowered to correct abuses through inquiries, pub-

licized recommendations, compensation, and even the dismissal and arrest of human rights violators in the case of Cambodia. In both El Salvador and Cambodia the presence of UN's human rights officers is considered to have served as a significant deterrent to possible human rights violations. Their work has resulted in the release of detainees and the improvement of prison conditions. They have made important contributions to the legislative and institutional reform of the legal order for improving the protection of human rights in accordance with international standards and to raising public awareness of human rights issues, including through education programs. Amnesty International considers that the relative success of these operations can be at least partly attributed to the serious, open and accountable procedures of the human rights divisions.

Without open and accountable procedures of this type, human rights concerns are likely to go uncorrected and jeopardize the ultimate credibility of the whole operation. Amnesty International therefore considers it necessary that all such comprehensive peace-keeping operations should have a specific human rights monitoring component. It is of some concern to Amnesty International that in several operations the UN on the ground has not always been prepared to take up violations of the settlement with one or another party in a vigorous or consistent way. This has been particularly a problem where the UN operation sees itself, not as a guardian of the settlement, but rather as an impartial facilitator, and becomes cautious about protesting too loudly lest it be perceived as taking sides. This has meant in practice that disputes over interpretation or actual violations have tended to be dealt with only through informal political channels, rather than being addressed directly through public and vigorous condemnations and remedial action.⁷⁰ It is unacceptable that disputes over particular aspects of an agreement, such as that in the Western Sahara, should prevent the UN from undertaking its responsibilities to monitor and address human rights problems even if other aspects of the agreement are on hold.

Another reason for the relative effectiveness of the El Salvador and Cambodia processes is that the respective peace agreements specified which human rights the parties were obliged to guarantee, as well as international verification mechanisms to ensure their compliance. Such human rights chapters should be included in any new or renewed peace agreements for other conflicts at the time they are drawn up. These may include a customized charter of human rights to be guaranteed in any one specific context, as was the case with the San José Agreement, but the emphasis must also be on internationally accepted standards. Peace agree-

ments should state that violations of fundamental human rights will not be tolerated and the human rights chapter should include a list of specific rights to be guaranteed and establish impartial and effective procedures for monitoring, investigation and remedial action in respect of any violations. International and national verification bodies should be required to conform to UN standards for investigation of human rights violations. The agreement should also call for ratification of any major international and regional human rights treaties to which the concerned state is still not a party.

UN civilian police monitoring components (CIVPOLs) have complemented the human rights components in El Salvador and Cambodia. International police monitors will often be best equipped to carry out proper training and supervision of existing or new police forces in the country concerned, and indeed the national police forces may be more receptive to other police personnel, their professional counterparts, as monitors. There is a certain confidence which police personnel can instill in restructured or new police forces through their practical experience and training. It must be stressed, however, that preparation and training is essential. It is not merely a question of redeploying police from one country to another. There will always be a risk that police monitors may identify too closely with the police force under scrutiny and certainly care must be taken to select monitors who are themselves above reproach in their conduct and are committed to respect for human rights. Civilian police monitors have to understand the political context in which they are working and attempt to instill a greater sense of fairness, neutrality and respect for human rights in the local police force in question. They must themselves be trained in, and prepared to exemplify, UN standards for human rights and the conduct of law enforcement personnel.

Their role should include monitoring police investigations, ensuring impartial and effective complaints procedures exist and are functional and accessible. They can provide technical advice on improving such procedures and they should evaluate and advise on training programs for local security forces. They must be prepared to work closely with UN human rights monitors as their respective roles will be closely linked, and the activities of the UN police monitors should be included in public reporting on the operation. It is also important that the deployment of civilian police monitors alone is not accepted as an adequate measure to address human rights issues in the context of the UN operations and is not used as a substitute for an experienced impartial human rights component. A civilian police contingent should not preclude establishing a separate corps of experienced human

rights investigators who are not burdened with other duties involving law enforcement, training and oversight of the civil administration.

It is to be regretted that other current operations in this category—in Angola, Mozambique, Western Sahara, Liberia and Rwanda—have relatively weak human rights monitoring programs, despite the recognition in the respective peace agreements that the UN operation should guarantee a climate conducive to free, fair and peaceful transition processes. Amnesty International believes the UN should endeavour to add a human rights monitoring component to all these operations. However, there may be other options for human rights monitoring, besides UNTAC- or ONUSAL-style divisions within the UN's operation itself, which may be more feasible or appropriate for particular situations, especially where the peace plans are already agreed. In the case of Mozambique, Amnesty International has recommended to the parties the establishment of an independent, national human rights monitoring body whose members would include Mozambiquans of recognized expertise and impartiality. In Angola, Amnesty International has drawn on ideas originally suggested in the context of negotiations for a political settlement in Bosnia and Herzegovina and proposed the appointment of a UN human rights commissioner for Angola as part of UNAVEM II, and the establishment of an ombudsman's office. Amnesty International believes such proposals, which are described more fully in Part III of this paper, could work in other contexts too.

Any monitoring and verification system set up must avoid the problems in Angola and Mozambique where the requirement of consensus has in effect given the parties the power to veto investigations into complaints made by the opposing party. Verification systems must have an impartial, international component which can prevent the blocking of investigations. As stated above comprehensive, widely distributed public reports by the human rights component are essential to the success of such components.

Refugee repatriation processes must similarly be accompanied by full guarantees for the protection of returnees. The repatriation of refugees should take place only under conditions of absolute safety. UNHCR should be recognized as having a legitimate concern for the consequences and outcome of return, and should be given direct and unhindered access to returnees for as long as necessary to monitor the safety of returnees and the fulfillment of amnesties, guarantees or assurances on the basis of which the refugees have returned. Refugees who, despite the existence of a repatriation program, still do not wish to return because they fear for their lives or freedom should not be

coerced to do so. Each such individual's case and his or her reasons for not wishing to return should be fully examined in a fair and satisfactory procedure in order to establish whether his or her fears are well founded.

Provisions related to the release of prisoners should require that all parties identify by name, place of detention and dates of detention all persons being held or who have been held, and report the circumstances of all deaths in custody, which should be properly investigated in accordance with international standards. Such a requirement is an essential safeguard against political killings and 'disappearance' and would ensure that anyone responsible for such abuses can be held accountable. All too often parties in similar circumstances fail to account for the fate of all detainees and simply declare that persons who are released were the only persons being held. There should be an independent verification mechanism such as appointment of an Independent Jurist, as in Namibia and Western Sahara, mandated to receive information regarding prisoners from other sources, including non-governmental organizations, and to monitor compliance with prisoner release provisions, including any processes established to distinguish between 'political' and 'criminal' detainees.

Only in El Salvador has systematic impunity for massive human rights violations been recognized as one of the aspects which must be addressed in order to ensure success in the longer-term peace-building process. Amnesty International believes it is essential that past human rights violations are fully investigated, that the truth is made known, and that structural impunity is dismantled through an investigative and purification process, such as that in El Salvador. Bringing those responsible for violations to justice is an essential aspect of healing the wounds and revealing the truth in a society after internal conflicts and large-scale violations of human rights, but pre-conviction amnesties undermine this goal. Amnesty International takes no position on pardons granted after a judicial process and conviction, recognizing that it may be deemed that the interests of national reconciliation after a period of violence and repression would thus be best served; however, the organization insists that the truth has to be revealed and the judicial process completed. Long-term peace can only be guaranteed on the basis of public accountability and justice — otherwise the goal of 'sweeping the table clean' can not be achieved.⁷¹

Finally, the lack of active follow-up to a peace-keeping operation, and particularly to the work of any human rights component, can pose just as serious risks for the ultimate success of such operations. The UN and its Member States, especially those which were particularly involved as negoti-

ating partners or observers in a peace-making process, must be prepared to stay the course. If a peace-keeping operation is completely withdrawn after elections have taken place, there may be no effective guarantees that hostilities will not resume or that human rights concerns will be adequately addressed. An evaluation should always be made as to whether the situation in the country warrants some level of continued UN civilian monitoring presence, especially in the area of human rights, even after a full-scale peace-keeping operation has completed its work and withdrawn. Recent developments in El Salvador, Cambodia and Angola in particular signal the need for continued human rights monitoring even after elections have taken place, armed conflict has ended or military demobilization has largely been obtained.

The UN's Commission on Human Rights and Centre for Human Rights could play important roles in this respect. While human rights education and training and technical assistance programs, particularly in the areas of legislative and institutional reform, will be particularly important follow-up measures, it is also essential that international monitoring of the human rights situation and other measures of protection are not wholly abandoned when the main peace-keeping operation leaves. The Independent Expert on El Salvador, appointed by the Commission on Human Rights, has a specific mandate to maintain scrutiny of the human rights situation and to monitor compliance by the parties of their obligations under the peace agreements, as well as the recommendations of ONUSAL. In this regard he has made important recommendations in his own reports. In Cambodia, on the other hand, the Commission on Human Rights did not make adequate provision for continued on-site human rights monitoring and investigation in the post- UNTAC period and did not appoint a Special Rapporteur (even though such a step was envisaged in the original peace agreement). Instead the Commission's February 1993 resolution called on the Secretary-General to appoint a Special Representative and concentrated more on technical assistance and advisory services to be provided by the UN Centre for Human Rights. Administrative delays have meant that the Centre's program had barely begun by the end of 1993. Furthermore, even if a monitoring and/or assistance program is established under the auspices of the Commission on Human Rights, it remains important that the UN bodies and Member States which were involved in and authorized the organization's role in the respective peace processes to begin with, including the General Assembly and Security Council, also continue their own close vigilance, approve adequate resources, and press for full compliance by the parties of all long-term

obligations undertaken in the relevant peace agreements.

3. Civilian Human Rights Observer Missions

In countries where no full scale peace-keeping operation is in place or is warranted, international civilian human rights observer missions may be of critical importance in addressing serious human rights crises, including in the context of internal violence such as in South Africa and Haiti. In so doing, observer missions may be able to help reduce the level of human rights violations as well as assist in bringing about conditions where peaceful and viable political processes can be pursued.

This idea is not entirely new. In July 1991, Amnesty International was gravely concerned for the lives and safety of hundreds of thousands of Kurds, Arab Shi'a Muslims and others in Iraq at serious risk of human rights violations in the wake of the final withdrawal of Gulf War coalition forces which had been protecting 'safe havens' in the northern Kurdish area. Amnesty International proposed that the UN should set up a sustained human rights monitoring operation in Iraq by sending a team of on-site observers to Iraq to investigate human rights violations, to protect the population against further abuses and to assist in establishing more durable guarantees and institutions for the future protection and promotion of human rights in the country.⁷² A similar proposal has continued to be suggested and supported by the UN Commission on Human Rights' Special Rapporteur on Iraq, Mr Max van der Stoep.⁷³ Although this proposal for field monitors in Iraq has been expressly supported and endorsed in resolutions of both the General Assembly and the Commission on Human Rights, such an operation has not been established. There is a rather beleaguered UN humanitarian aid program in Iraq, which operates under the protection of a small number of UN security guards, but its mandate does not directly address human rights issues. Amnesty International has continued to press for on-site human rights monitors in Iraq. On 20 December 1993 the General Assembly adopted its latest resolution (48/144) on the subject and called for the 'immediate and unconditional stationing of human rights monitors throughout the country.'

Amnesty International considers that the presence of civilian human rights observers with a specific mandate for investigation has proved of significant importance in preventing human rights violations in situations such as South Africa and El Salvador. But the lesson of Iraq shows that mere presence is never enough. Clearly the presence of the UN security guards in northern Iraq has done little to change to pattern of human rights repres-

sion. Nor has it resulted in any public information about what the guards may have witnessed or achieved.

The advance team sent to Haiti to assess the possibility of an observer mission remarked that the 'credibility of the Mission will depend crucially on its ability not merely to report on human rights violations but to bring about redress and prevent future human rights violations.'⁷⁴ Apart from reducing the immediate violence, the long-term challenge of such missions should be to ensure that national bodies, including police, judiciary and prosecution, are established or reformed in such a way as to function in accordance with human rights standards after the international observers depart.

Obviously, the establishment of such missions must be permitted by the national authorities (whether *de facto* or otherwise) in the first place. The mission must receive cooperation and basic guarantees for the safety of its own personnel as well as any nationals of the country in contact with it or the subject of its investigations and publicity. At the same time its mandate must be specific and clear and it must be able to make public its concerns. One of the most essential aspects of maintaining the credibility of an operation is to ensure that its findings and activities are regularly and frequently reported and widely disseminated internationally and in the country itself.

Amnesty International believes that other authorities in similar situations can be persuaded to accept human rights monitoring. One aspect of such monitoring missions which should not be overlooked is their contribution to establishing a climate of confidence on the part of the government and other officials as well as the general population. It is clear that whether the issue is the transition to democracy, or a closely fought election or referendum, the tension surrounding such events is in danger of precipitating a renewed cycle of human rights violations where there is a fear on the part of the police or other government officials that they may be subject to violent lawless retribution for past abuses.⁷⁵ This also underscores the need to guard against measures which contribute to impunity, both in the immediate and long-term sense, and the need to safeguard the credibility and impartiality of the civilian mission at all times.

Amnesty International hopes these issues will be addressed urgently but carefully in the case of Haiti, in order to allow MICIVIH's prompt return. Amnesty International recognizes that there are considerable complexities inherent in such a project. One dichotomy evidenced in Haiti is the question of whether MICIVIH's withdrawal may have done more harm than the good done by the presence of the mission in the preceding months. However, without the mission's presence the human

rights situation could well have been worse, and Amnesty International is extremely concerned that the situation may now deteriorate still further if the observers are unable to resume their monitoring functions.

4. Enforcement Operations / Securing Humanitarian Relief

Enforcement operations, and the Somalia operation in particular, have highlighted big questions for the UN and its Member States in the area of peace-keeping, most prominently the issue of the humanitarian and human rights standards to which the UN forces should themselves be held accountable. In enforcement situations, especially where the national government and state institutions have collapsed, international peace-keeping soldiers may increasingly be given what are essentially *civilian* law enforcement and policing tasks, as has been the case in Somalia. While they may be involved in open combat situations, responding to armed attacks, the guidelines which should apply for the defensive use of force and for riot control are the same as those which regulate police forces. However, without proper training, advice and human rights supervision to provide this kind of orientation, it is quite predictable that troops will act and react in the military combat mode in which they are trained. As has already happened in Somalia, such a response may involve the disproportionate and excessive use of force, in contravention of international standards guiding law enforcement personnel. Furthermore UNOSOM II's mandate to make arrests, hold people in detention and ensure judicial prosecutions highlights even more the need to monitor and guarantee compliance with international human rights and law enforcement standards. Amnesty International believes it is axiomatic that UN personnel should comply with the United Nations' own basic standards. Amnesty International's views and recommendations in this regard are described in detail in Part II of this paper.

On an even more fundamental level, Amnesty International is deeply concerned that the UN and Member States have not yet begun to take up human rights questions at an early enough stage to avoid being faced with such dilemmas, despite years of UN debate about improving 'early warning' systems and other preventive measures. In situations where humanitarian disasters have occurred due to 'manmade causes' (armed conflict), the human rights aspects have generally not been considered or tackled early enough to prevent conflict from escalating to a situation where attempts to deliver aid may draw international agencies into the conflict itself. Amnesty International does not believe this is a problem of lack of information but

the lack of political will on the part of Member States to tackle human rights concerns before they degenerate into a major crisis. The argument that taking human rights into account at an early stage will taint 'purely' humanitarian efforts is not convincing - on the contrary assessment of the human rights situation must be part of what informs humanitarian policy at the earliest stages. Time and again the links between violations of human rights and the necessity of humanitarian assistance have been highlighted. The need for a more integrated approach is nowhere better illustrated than in the UN's response to the situation in Somalia. What started as an ostensibly humanitarian operation became overwhelmingly militarized and political in its aims, prompting even Jan Eliasson, as Under-Secretary-General for Humanitarian Affairs, to bemoan the absence of humanitarianism even where action had been taken in the name of 'humanitarian intervention'.⁷⁶

The Sudan today is another example of an urgent humanitarian challenge facing the international community. In the Sudan, civilians have been the deliberate target of governmental forces seeking to destabilize territory controlled by the armed opposition, the Sudan People's Liberation Army (SPLA). The forced displacement of millions of people, 'ethnic cleansing'-style extra-judicial executions and 'disappearances' of civilians targeted on account of their racial or ethnic origin, and the use of torture are tactics practised by both sides of the conflict. The flagrant violation of human rights standards and the principles protecting civilians and others in times of conflict has created famine and dependency on food relief in many areas affected by war. Hundreds of thousands of people have died from illness and food shortage as a direct result of the tactics used in the conflict; these are not merely incidental casualties.

The international community has an obligation to the people of Sudan to ensure that the Government and all factions of the SPLA respect humanitarian and human rights principles. The UN's extensive relief operation there, Operation Lifeline Sudan, is attempting to ameliorate the consequences of the humanitarian disaster. However relief efforts alone will not be enough in a situation where the disaster is being continually and purposefully worsened by the conflict itself. The human rights issues lying at the heart of the destruction and displacement being wrought by the warring parties must be urgently and seriously addressed by the international community, including in the peace process sponsored by the Organization of African Unity. In the meantime all UN agencies, including those participating in Operation Lifeline Sudan, should be monitoring and demanding conformity with international human

rights and humanitarian law standards. This cannot be avoided in the name of humanitarianism.

2. Attacks on peace-keepers and indiscriminate use of force by peace-keepers

1. Attacks on UN peace-keepers: investigations and jurisdiction

With the massive expansion of UN military and civilian personnel deployed in the field in the last couple of years, peace-keepers have faced increasing attacks and higher numbers of casualties among their ranks, with over 170 killed in 1993 alone. Even where peace-keepers are mandated to use force, as in Somalia, the UN has suffered serious casualties. This has made UN Member States understandably increasingly reluctant to risk the safety and lives of their own soldiers in such operations, and the UN is now faced with a crisis of confidence in this regard.⁷⁸

It is now almost standard for Security Council resolutions authorizing peace-keeping operations to include statements that individuals found guilty of attacks on international peace-keeping and humanitarian personnel will be held individually accountable for these acts. In a March 1993 Presidential statement, the Security Council made it clear that it 'may consider measures appropriate to the particular circumstances to ensure that persons responsible for attacks and other acts of violence against United Nations forces and personnel are held to account for their actions'.⁷⁹ The Secretary-General similarly suggested in a report on the security of UN operations that all attacks on UN personnel should be considered 'interference with the exercise of the responsibilities of the Security Council under the respective provisions of the Charter of the United Nations and may require the Council to consider measures it deems appropriate'.⁸⁰ Recent Security Council resolutions on Somalia, Liberia and Rwanda all contain clauses threatening the application of such measures against individuals found responsible for attacks on international personnel. However, the measures have not been clearly spelled out in any of these three situations.

In many cases where a UN presence has been secured without recourse to enforcement powers, it should be expected that the national authorities in the country where the peace-keepers are stationed would investigate and prosecute such attacks. National authorities would normally be obliged to do this under status-of-forces agreements with the United Nations through which they grant

permission and set the terms for the deployment of the peace-keeping force. However, operations mandated under Chapter VII of the UN Charter, where peace-keepers are authorized to use force beyond what would be necessary purely for self-defence, present particularly complex problems in this regard. The UN's own expert appointed to conduct an initial inquiry into the 5 June 1993 attack on UNOSOM II forces, which had caused the deaths of over 20 Pakistani soldiers, indicated one way in which this authorized use of force is constrained. He stated that the use of force against UN soldiers in order to prevent them from carrying out their mandated responsibilities should be considered an international crime, except 'perhaps, in a case where UN personnel are manifestly exceeding their jurisdiction and the use of force against them is the only means available to prevent grave and permanent injury to interests which the accused is entitled under general principles of international law to protect.'⁸¹

While it may be quite legitimate for the Security Council to authorize the investigation of attacks on the UN and the arrest of those suspected of being responsible, Amnesty International considers that it is necessary that the review of the grounds for detention, prosecution, judgment and any eventual punishment be handled by independent judicial bodies. At the moment, however, such bodies do not exist at the international level to adjudicate crimes of this nature, except in respect of the conflict in the former Yugoslavia. The February 1993 decision to establish the International Tribunal for Crimes in the Former Yugoslavia⁸²—marks the first time such an international mechanism with a jurisdiction for trying individuals under international law has existed since the Nuremburg and Tokyo war crimes tribunals. Amnesty International has observed that *ad hoc* tribunals often lack real independence and impartiality, and the organization has expressed its concern that the Yugoslavia tribunal risks being no more than a token gesture to satisfy the short-term interests of states. Amnesty International has urged that this tribunal be a first step towards setting up a *permanent* international court competent to try grave violations of humanitarian and human rights law, *wherever* these may occur.

The New Zealand Government has suggested that, where no state can assume responsibility for detention, trial and punishment, then international jurisdiction ought to extend to individuals who have violated norms of international law covering UN forces and personnel. They rightly point out that there would be less incentive for the Security Council to employ Chapter VII and for the UN to use grave options if there were an established regime for exercising such jurisdiction.⁸³

In the long term, the crime of attacks on UN personnel might be covered by an international convention, as suggested by the New Zealand and Ukrainian Governments, possibly with international jurisdiction residing not only at the national level but also eventually with the proposed international criminal tribunal currently under discussion in the UN's International Law Commission and General Assembly.⁸⁴ It will be essential, however, that the statute of any such tribunal incorporates full guarantees for fair trial and due process. Amnesty International also believes consideration could also be given in appropriate situations to a fact-finding role for the commission established under Protocol I to the Geneva Conventions. In the case of Somalia, for example, the level of allegations, recriminations and reprisals demonstrate the need for impartial investigation conducted from outside the United Nations structure.

Finally, Amnesty International considers it equally imperative, when drawing up any declaration or mechanism outlining the obligations on Member States and possible individual criminal responsibility in relation to attacks on UN forces and personnel, that similar obligations are attached to UN forces themselves, and the Member States which contribute troops to those forces. If UN forces are to be covered by special status agreements, and privileges of diplomatic immunity and non-combatant status, the corollary is that their own rules of engagement have to restrain UN forces from resorting to the excessive use of force, as outlined in the following section. The degree to which these two issues are inextricably linked has also been echoed by the New Zealand Government: 'Confronted with a situation in which there is no legal system to detain, try and punish offenders, United Nations forces on the ground will need to resort to increasingly robust rules of engagement'.⁸⁵

2. Disproportionate use of force and other abuses by UN peace-keeping troops

According to Security Council Resolution 794, the Secretary-General and Member States are authorized under Chapter VII of the Charter 'to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations' in Somalia. As stated above, Resolution 814 similarly authorized UNISOM II, and, following the 5 June 1993 attack on the Pakistani UN troops, Resolution 837 (quickly passed on Sunday 6 June) reaffirmed that the Secretary-General was authorized to take 'all necessary measures against those responsible for the armed attacks'. On occasion, peace-keeping forces are clearly involved in open

combat situations, responding to armed attacks. But when launching operations to establish a secure environment, UNISOM II or US forces cannot exceed the Council's authorization and pursue a course which is aimed at traditional military gains. It must be stressed that the word 'necessary' has a legal meaning which implies that there are no alternative options which would be less harmful. In fact, applying the customary principle of proportionality in this context demands that, for any one attack, the civilian damage must be the minimum necessary to achieve the particular aim (in the Somalia example, establishing a secure environment for the delivery of humanitarian aid). If the civilian casualties and damage are disproportionate to the attempted gains by the international forces, then those forces and their commanders would be in breach of international humanitarian law and acting outside the authority mandated to them by the Security Council.

It is explicit in the UN Charter that the Security Council must 'act in accordance with the Purposes and Principles of the United Nations', which include respect for justice and international law. However, Amnesty International believes that it must also be explicitly stated that UN personnel are bound by international humanitarian and human rights law in the carrying out of their tasks. In particular, the UN must ensure that troops under its command carrying out law enforcement functions, such as arrest, detention, search and seizure, crowd dispersal or ensuring public order, are trained in and abide by international human rights and criminal justice standards. Such standards should include, among others, the Code of Conduct for Law Enforcement Officials⁸⁶ and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The fundamental principle of these standards is that force may be used only when strictly necessary and only to the minimum extent required under the circumstances. Principle 9 of the Force and Firearms Principles states: 'In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life'.

The functions of arrest, detention and assisting Somali police in investigation and prosecution procedures, which have been mandated to UNOSOM II soldiers, are also policing rather than military functions. If troops are to carry out these policing functions they must abide by and be trained in international standards of policing, rather than the practices of war. Any pre-emptive use of force resulting in unlawful killing, rather than a fair and prompt judicial procedure, would exceed the Security Council's authorization in Somalia.

When actually responding to an armed attack it must similarly be made clear to all troops that,

despite the humanitarian nature of their mission and the authorization of the Security Council, they still have to abide by international humanitarian law as set out in the Geneva Conventions and their Protocols as well as general principles of humanitarian law such as proportionality and the avoidance of indiscriminate attacks. Proportionality in this context means only using the force necessary to avert the immediate danger. It cannot relate to the mission's overall military objectives, as the peace-keeping soldiers are not fighting a war with military aims. The principle is applicable whether or not the Geneva Conventions are legally binding. In fact, the report of the independent expert engaged to carry out an investigation into the 5 June 1993 attack on UN forces in Somalia notes that, with regard to the principles embodied in the Conventions: 'Plainly a part of contemporary international customary law, they are applicable wherever political ends are sought through military means. No principle is more central to the humanitarian law of war than the obligation to respect the distinction between combatants and non-combatants'.⁸⁸ Amnesty International considers that forces acting under UN authority are similarly bound by these principles.⁸⁹

According to Article 51(4) of Protocol I of the Geneva Conventions, indiscriminate attacks are those which cause incidental civilian losses and damage excessive in relation to the concrete and direct military advantage anticipated. Again, because the advantages are not military but merely what is necessary for self-defence or the protection of humanitarian assistance, or even exceptionally the arrest of someone wanted in connection with war crimes, the permissible use of force is likely to be even less than that which might be justified in the event of all-out war. It has recently been pointed out that there is now increasing danger that UN forces operating in an enforcement capacity may perceive themselves to be fighting a just war and therefore believe those objectives would somehow warrant taking the risk of greater collateral civilian casualties than would normally be anticipated.⁹⁰

3. Ways for the UN to address and prevent abuses by UN personnel

As early as 1961, the International Committee of the Red Cross (ICRC) drew the attention of the UN Secretary-General to the application of the Geneva Conventions to UN forces.⁹¹ More recently, the ICRC has stated that 'the measures decided upon and recommendations made by the Security Council under Chapter VII of the Charter cannot be considered *neutral* within the meaning of international humanitarian law, even though their ulti-

mate objective may in some cases include the aim of putting an end to violations of that law. The use of armed force is thereby not excluded. Should such force be used, it will itself be subject to the relevant provisions of international humanitarian law.⁹² The International Conference for the Protection of War Victims (an inter-governmental meeting of states parties to the Geneva Conventions held in September 1993) stressed that 'peace-keeping forces are bound to act in accordance with international humanitarian law'.⁹³

In addition, Amnesty International believes it is now imperative that the UN explicitly state in some appropriate form that it considers itself bound by the Geneva Conventions and their Protocols. Similar action has been urged in the past by resolutions of the Council of Delegates of the Red Cross (1963), the International Law Association (1966) and the Institut de Droit International (1971 and 1975). Now more than ever such a declaration and proper implementation would be timely.⁹⁴ Amnesty International furthermore considers that the UN should state in an equally explicit manner that the UN itself, and all forces and other personnel acting under a UN mandate, are bound by UN standards in human rights, the administration of justice, and law enforcement and human rights.⁹⁵

Violations of these international humanitarian norms carries individual criminal responsibility — that is to say, any individual found to have committed such violations may be prosecuted, regardless of having acted under orders of a commanding officer. Ever since the 1956 Status of Forces Agreement, under which the first UN Emergency Force (UNEF I) was established in Egypt, exclusive jurisdiction has traditionally been granted to the national authorities of the state contributing troops to the UN operation whose soldiers committed a crime while serving in a UN operation.⁹⁶ Some incidents where UN peace-keeping soldiers have reportedly been involved in the disproportionate use of force in Somalia, including killings of unarmed civilians, have apparently been the subject of such national inquiries.⁹⁷ However, Amnesty International is concerned about the sufficiency of leaving this strictly in the hands of national authorities. One problem is that military investigative and even court-martial procedures may be inadequately designed or orientated for dealing with breaches of standards for the use of force and the protection of human rights. Another concern is the often closed nature of such procedures. In addition such procedures will generally not be appropriate for investigating the contravention of international human rights and criminal justice standards relating to the arrest, detention and treatment of detainees held under UN authority and to fair trial procedures for such persons. Nor would

they necessarily extend to civilian as opposed to military UN personnel involved in a peace-keeping operation.

The UN's overall responsibility for the conduct of its personnel cannot be absolved through such national procedures, and the UN operation as a whole will probably suffer the impact of increasing negative public opinion regarding its impartiality and a growing public perception of UN impunity and self-absolution if an impartial and public complaints and investigation procedure is not available in such cases. The responsibility for ensuring proper and open investigative channels must rest with the UN. The UN should make explicit and promote its own existing criminal justice standards, and if national authorities fail to deal properly with criminal allegations the UN should set up its own inquiries, the results of which should be made public.

The UN's own Research Institute for Social Development (UNRISD) has pointed to the need to have better guidelines regarding the recruitment, briefing and training of peace-keeping and other international personnel. In a recent workshop the Institute also concluded: 'There is a need to establish a monitoring unit to assess the conduct of peace-keeping personnel and public perceptions concerning the behaviour of United Nations security personnel. It is important that there exist an office (or ombudsman) with sufficient resources and powers to investigate and deal promptly with complaints concerning behaviour'.⁹⁸ Amnesty International also considers that it is essential to establish proper and regular institutions both for training and for monitoring the law enforcement and other activities of UN civilian and military peace-keeping personnel.

Amnesty International welcomes the proposal in a recent UN report on Somalia to establish an office within UNOSOM II to 'investigate and facilitate prosecution of serious violations of international humanitarian law'.⁹⁹ Amnesty International has suggested to the UN that this office should examine all such violations, including alleged violations by UN troops. The UN report goes on to propose that the International Committee of the Red Cross (ICRC), UN agencies and NGOs should be able to monitor conditions in prisons established by UNOSOM. Although Amnesty International is aware of ICRC visits to UNOSOM-held detainees, as stated above, the organization is not aware of access by other organizations to regularly monitor conditions. Furthermore, the report does not suggest measures for the supervision of the use of force by UN peacekeepers, which Amnesty International also deems necessary.¹⁰⁰

Security Council Resolution 885 (1993) authorized the Secretary-General to establish a commis-

sion of inquiry to investigate armed attacks on UNOSOM II personnel.¹⁰¹ The resolution appropriately stresses that the investigation should be thorough and the procedures followed should be in accordance with UN standards. The resolution also requests the Secretary-General to 'suspend arrest action against individuals' implicated in the 5 June incident and 'make appropriate provision to deal with the situation of those already detained.' However, it is unclear whether this commission will also undertake to determine the legality of the use of force and other alleged human rights violations by UN troops.

Of course the actions of UN troops will be examined in the context of the responses which UN behaviour elicited and the origins of the attacks on UN personnel, but it is important to have an investigation into the various killings of civilians by UN, US or any other troops operating under UN authority in Somalia.

Whatever investigative mechanisms are established or utilized, whether regularly or for specific incidents, Amnesty International considers it of the highest importance that these always conform to the UN standards, including the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.¹⁰² These principles set crucial standards for the conduct of thorough, prompt and impartial investigations, including the need for a public written report of such investigations.

In the former Yugoslavia, serious allegations against UNPROFOR personnel have included rape and forced prostitution. The UN has appointed a commission of inquiry to look into 'allegations of improper conduct among personnel from UNPROFOR, UNHCR and other humanitarian agencies.'¹⁰³ The commission is comprised entirely of former or current UN peace-keepers. Amnesty International hopes the results of this investigation will be made public, particularly since it is an internal investigation.

In general, Amnesty International considers that, in contexts where clear international jurisdiction for such abuses is still absent, as in Somalia today, the UN Commission on Human Rights' special rapporteurs and human rights investigative mechanisms should also be able to receive complaints and follow up incidents of violence and allegations of the lethal use of force by UN peace-keepers.¹⁰⁴ Amnesty International is concerned that, at least at the present time, there is no part of the UN system which is looking at the institution's own potential for human rights abuses, and so the UN is taking no serious steps to prevent such abuses. As the UN consolidates its human rights system under the umbrella of the newly established High Commissioner for Human Rights, Amnesty

International hopes that one of the Commissioner's functions will be to infuse the highest human rights standards into the UN system, and particularly into its peace-keeping and field operations.¹⁰⁵

3. Amnesty International's Recommendations: Implementing Human Rights in International Peace-keeping Operations

1. The political role of the international community

Human rights considerations should be part of what informs the UN's peace-making, peace-keeping and humanitarian policy at the earliest stages. There must also be consistent and effective political support by the international community for human rights measures at the outset and for the duration of any peace-keeping operation, as well as a long-term commitment to the promotion and protection of human rights during post-conflict peace-building phases.

Human rights questions should be on the agenda of all peace-making processes. UN Member States, and observer governments in particular, participating in such negotiations, and the UN officials involved, should ensure effective protection and verification measures are built into peace settlements and plans for their implementation. The UN should ensure that its own human rights bodies and experts are fully involved in the design, planning, implementation and follow-up of the human rights measures decided upon. The UN should not agree to supervise such settlements if human rights safeguards are not adequately dealt with as part of settlement agreements. The UN's political organs, including the General Assembly and Security Council, as well as individual Member States, particularly those acting as observers or mediators in peace negotiations, must be prepared to follow closely the reports and activities of peace-keeping operations, civilian observer missions, and humanitarian relief operations. The international community must demonstrate serious, consistent and long-term interest in resolving conflict, and must be prepared to condemn violations of human rights and international humanitarian law.

The UN should exercise flexibility in the implementation of the human rights components of peace-keeping plans and keep them under constant review. If initial verification and protection measures are shown to be inadequate or failing, the UN should be prepared to push for the strengthening of its implementation plan. At the end of the operation it should also undertake comprehensive and

frank evaluations of the implementation measures, including the human rights aspects, in order to benefit from the lessons learned in other operations. The UN should support extensive and long-term post-conflict and institution-building work for the promotion and protection of human rights, and it should ensure international human rights monitoring is not terminated prematurely.

The international community should ensure that human rights considerations are addressed not only in peace-keeping situations but also in the context of UN humanitarian relief operations, particularly in situations where humanitarian disaster is a product of internal strife. All UN field operations, including those involved in disaster relief, should be instructed to monitor compliance with international human rights and humanitarian law, and they should have clear channels to transmit reports on violations.

International electoral verification missions should be mandated to verify conditions of free expression and assembly in the broadest sense in the period leading up to the referendum or election, and this must include access to political detainees and the ability to receive and take up complaints of human rights violations.

2. No international "silent witnesses"

UN field personnel in all sectors—military, diplomatic, humanitarian, electoral and administrative—should be instructed that they have a duty to report human rights violations. If there is reason to fear the occurrence of violations, the UN should take preventive steps, including maintaining an alert "dissuasive presence" by going to the sites of potential or alleged human rights violations. UN field personnel should also report any allegations of past incidents which they receive. The UN should establish proper channels for field personnel to report such information, including to the relevant human rights mechanisms established by the UN Commission on Human Rights. UN field personnel should be instructed as a matter of course to follow up allegations of human rights violations with appropriate local authorities to ensure that further inquiry and prompt corrective action is taken. The Secretary-General's various reports on peace-keeping operations should include a chapter on human rights activities and findings.

UN personnel in all sectors - military, civilian, and diplomatic - should not shy away from reminding parties of their legal obligations in the fields of international human rights and humanitarian law. In the context of the former Yugoslavia the General Assembly called upon 'all United Nations bodies, including the United Nations Protection Force and

the specialized agencies', to provide human rights information on a continuing basis to the Special Rapporteur for human rights.¹⁰⁶ Often personnel executing the delivery of humanitarian assistance will be confronted with evidence of human rights abuses on a daily basis. It is unacceptable that this information should be suppressed. The principle established in the context of the former Yugoslavia has to be applied universally.

3. Human rights chapters in peace agreements

At the stage when peace settlements are being negotiated, international observers and mediators should ensure that these include full human rights guarantees. Peace agreements should specify the rights and standards which the parties are to respect in the transition and post-settlement periods, and they should specify a clear and workable international human rights verification mechanism. Peace-keeping operations established to implement comprehensive settlements should always include a specific international human rights monitoring component.

Human rights chapters should be worked into renewed or renegotiated agreements if previous agreements have been weak in this area. Such human rights chapters may include a customized charter of human rights to be guaranteed in any specific context, but the emphasis must also always be on internationally accepted standards. Peace agreements should include a list of specific rights to be guaranteed, including those contained in the relevant national constitution and legislation (where these are in conformity with international standards), in international instruments to which the state concerned is a party, and in other international human rights and criminal justice standards and principles, including those listed below. Agreements should state that, in the event of any discrepancies, the provisions affording the greater protection of human rights shall prevail.

Peace settlements should require ratification of any major international and regional human rights treaties and adherence to systems of human rights protection to which the concerned state is still not a party.

4. Effective and independent human rights verification

Parties to a peace settlement should authorize the UN to play a key role in the supervision of the human rights aspects of agreements, investigate alleged human rights violations and take appropriate corrective action.

Peace-keeping operations established to imple-

ment comprehensive settlements should always include a specialized international civilian human rights monitoring component. Even in less comprehensive settlements smaller-scale human rights mechanisms, such as human rights advisers and independent jurists, should be appointed to deal with human rights issues.

Human rights components should be headed by human rights experts and must be adequately resourced and staffed. The human rights component should incorporate mechanisms for monitoring the human rights situation, receiving complaints of violations, full investigations of such complaints and the capacity for remedial action. It should also incorporate measures for establishing human rights education programs, for constitutional and legislative reform, for establishing or strengthening a fair criminal justice system, an independent judiciary and legal profession and other institutions aimed at the promotion and protection of human rights. Monitors should be trained in international human rights standards as well as in human rights monitoring, investigation and reporting. They should operate under clear and consistent guidelines and procedures. They should not be confined to urban centres but should also cover the situation in remoter areas where human rights violations are reported or are likely to occur.

Human rights verification mechanisms must be independent and impartial. International human rights missions, offices or components must be assured a high level of independence and autonomy from any ongoing political relations between the UN and the parties. If verification mechanisms or bodies established under peace agreements include parties to the conflict in their decision-making structure, none of the parties should be able to obstruct human rights investigations. If the decisions of verification mechanisms are to be consensus-based, it should be explicitly agreed at the outset that the UN has an overriding voice to prevent the blocking of investigation or action.

All verification bodies — whether international or national — should be required to conform to UN standards for the investigation of human rights violations, including the Principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

In situations where there may not be a comprehensive settlement, but where agreements provide for the release of prisoners and detainees, there must still be an independent verification system mandated to receive information regarding prisoners not only from the parties but also from other sources. Provisions related to prisoners should require all parties to identify by name, place of detention and dates of detention all persons detained and report the circumstances of all deaths in cus-

tody, which should be fully and promptly investigated. There must be international oversight of review procedures distinguishing prisoners-of-war, political prisoners and criminal detainees, if they are to be treated differently under the agreement. Oversight of prisoner releases could be done by a human rights monitoring component or an Independent Jurist.

5. Ensuring peace with justice

Peace settlements should include provisions for investigating past human rights abuses and ensuring that perpetrators are brought to justice. If abuses by those responsible for law and order are to be brought to an end and peace is to be better guaranteed for the future, Amnesty International believes that all governments must fulfil certain fundamental responsibilities, and these should be required in peace settlements. First, provisions for investigating past violations should be ensured in order to determine individual and collective responsibility and to provide a full account of the truth to the victims, their relatives and society. Investigations must be undertaken by impartial institutions, independent of the security forces. In the context of peace-keeping arrangements, investigations into the past should preferably include international participation. The results of the investigation must be made public. Where there has been an endemic pattern of human rights abuses, a public inquiry commission should be established to investigate the entire pattern of abuses and the reasons why they occurred. Such an inquiry should be able to examine the institutions and agencies responsible and make recommendations regarding the accountability of personnel; legislative, institutional, and procedural reforms; and human rights education and training for officials who continue in office.

Amnesty International considers that those responsible for human rights violations must be brought to justice. Those accused of human rights crimes should be tried, and their trials should include a clear verdict of guilt or innocence. Although Amnesty International takes no position on *post-conviction* pardons, where it is deemed that such a measure would be in the best interests of national reconciliation, the organization does oppose amnesty laws which prevent the emergence of the truth of individual cases as well as the pattern of abuses in the society, or which prevent the full completion of the judicial process.

6. On-site human rights monitoring: 'active verification', investigation and corrective action

Human rights monitors should have a clear and

specific mandate to engage in 'active verification' of human rights violations, which would include a monitoring, investigatory and correctional role. They should have the authority to enter places of detention and interview prisoners in private. They should be empowered to take up incidents with local authorities and parties, and be able to follow up such approaches until cases are considered resolved. They should ensure that authorities take appropriate disciplinary and other action in respect of any offending personnel, and follow up their recommendations.

Human rights monitors should be guaranteed free and unencumbered access to the local media, non-governmental organizations and individuals seeking assistance or wishing to make complaints. Parties must undertake to guarantee that no one having contact with the human rights component, or reporting on their activities, will be threatened or harmed in any way.

Peace-building measures such as assistance with drafting or revising legislation, training the police, and conducting human rights education programs must complement, but should not replace, the essential verification role.

Where other human rights mechanisms are established, such as ombudsmen, human rights advisers, national commissioners and special prosecuting authorities, the human rights monitoring component should be cooperative but not co-opted.

7. Frequent and public reporting

Human rights components and civilian monitors should prepare periodic public reports on their work, describing allegations received regarding human rights abuses, steps the component has taken to investigate or correct them, and general recommendations made to the authorities. These reports should be readily available and widely disseminated in the host country, as well as to the relevant UN political organs. National dissemination is vital as this will have a deterrent and educational effect: first, the parties will be made more aware of the international implications of respect for human rights; second, victims and witnesses will be informed of the importance of making complaints and should be better protected by publicity; third, specific cases not resolved at the national level can be followed up at the international level; fourth, confusion and misunderstandings concerning the role and limitations of the UN operation can be diffused.

8. International civilian police monitors

In comprehensive settlements, international civilian police monitors should be deployed to monitor,

supervise and train emerging police and security forces. They may also have a useful role in working with the human rights component in the investigation of violations. Their role should explicitly include monitoring police investigations and ensuring that impartial and effective complaints procedures exist and are functional and accessible. Civilian police monitoring activity should be described in public reports on the overall peace-keeping operation. Police monitors must be prepared to work in close cooperation with any international human rights monitoring component.

International civilian police monitors must themselves have received adequate preparation and training in international human rights and criminal justice standards, and they must be prepared to exemplify and pass on this training to the national security forces they work with. Police monitors should provide technical advice on creating or improving criminal justice and investigation procedures, and they should evaluate and advise on training programs given to national security forces. Nascent and reformed national security forces should receive training in basic international human rights and criminal justice standards, including those listed below.

In some situations, such as where state structures have collapsed, consideration should be given to supplementing civilian police monitors with 'police advisers' (international experts initially to assist the UN military component and eventually organize the creation of a police training academy), such as those suggested by the UN Secretary-General in the context of Somalia.

9. Long-term measures for human rights protection: the judicial system and national human rights bodies

The UN should encourage and assist in the creation or re-building of independent and effective institutions that will be capable of ensuring that respect for human rights is fully guaranteed long after international supervision of the settlement ends. These should include an independent judiciary and a fair criminal justice system. In some cases it may be appropriate also to assist in the building of supplementary human rights mechanisms at the national level, such as ombudsmen or national human rights commissions. While Amnesty International considers that national human rights bodies, particularly commissions, can be important institutions for strengthening human rights protection, these must never replace or diminish the safeguards inherent in comprehensive and effective legal structures, enforced by an independent, impartial and accessible judiciary. It is also important to ensure that such initiatives are accompanied

by a strong anti-impunity policy, in order to prevent such institutions from serving more to protect than to expose agencies which are responsible for human rights violations.

- **Ombudsmen** can play a role in investigating violations of human rights as defined in international standards, interceding with the competent national authorities, referral of matters to prosecuting authorities and follow-up of cases through the criminal justice system to see that they are conducted in accordance with international standards for fair trial.

Ombudsmen should be men or women of recognized impartiality, independence and competence. They should have the explicit duty and the necessary powers and resources to investigate, either on the basis of complaints or on their own initiative, all violations of human rights and fundamental freedoms as defined in international standards. They should also be able to take appropriate action to call for the correction or reversal of violations, including interceding with the competent national authorities and, when appropriate, providing information to international agencies such as the International Committee of the Red Cross. Each ombudsman should be empowered to refer matters to the proper judicial channels and to follow cases through the criminal justice system to see that they are dealt with fairly and in accordance with international standards.

The ombudsmen should publish regular reports on their inquiries,

their recommendations and the responses of the authorities or parties. An ombudsman could be mandated to carry out a human rights education program to inform citizens of their rights and how to seek redress for violations of these rights.

Ombudsmen, preferably nationals of the country concerned, can also be established during the transitional period to work alongside the peace-keeping operation. All parties to the conflict should be able to nominate their own ombudsman and the UN operation should assist in ensuring the national publication and dissemination of the ombudsmen's reports.

- **National human rights commissions** can play a useful role to supplement and strengthen capacity at the national level for proper human rights investigations and for the hearing of complaints. The independence and impartiality of such bodies must be guaranteed and they should be staffed by independent and prominent national or international persons with experience in human rights law and protection. The UN's Principles Relating to the Status of National Institutions should serve as the basic minimum guidelines for the establishment of national institutions for the promotion and protec-

tion of human rights.¹⁰⁷

- An interim relationship with **international courts or tribunals**, including any set up by the United Nations, could also be established.¹⁰⁸ Such a relationship would bring objectivity and instill confidence while national institutions are reconstituted to be impartial guarantors of the rule of law.

10. Human rights education and advisory assistance programs

Human rights monitoring components within peace-keeping operations should also take on promotional tasks, including conducting a vigorous public information and education program on human rights. This should include specific human rights training for judges, prosecutors, police, security and prison officers and other government personnel and lawyers.

Independent experts within the human rights monitoring component should be charged with giving advice and assistance in the drafting of constitutional and other legislative changes. They should advise on the incorporation of human rights guarantees and safeguards into new legislation, drawing on UN standards and norms in the field of human rights, crime prevention and criminal justice.

The human rights component should also actively encourage, strengthen and protect national non-governmental human rights organizations. This could include providing security and material support for the activities of independent national groups engaged in the promotion and monitoring of human rights.

However, promotional activity should not be allowed to be used as a way of avoiding real human rights monitoring by the international human rights component itself.

11. The protection of refugees, internally displaced and returnees

The UN High Commissioner for Refugees should be mandated to monitor the return and resettlement of refugees. In any UN peace-keeping operation in a country where the return of refugees is likely to take place, it must have a full and explicit in-country protection role. However, it must be emphasized that the international system for the protection of refugees can only work effectively if all states respect their obligations towards those who seek protection. States must abide by the principle of *non-refoulement* and not forcibly return refugees to territories where they would be at risk of human rights violations. In the context of peace-making and peace-keeping activities, it is vital that all states fully respect the fundamental principles of

refugee protection and apply specific safeguards necessary to ensure any repatriation is completely voluntary and is conducted only in accordance with adequate international access and supervision. Those who do not wish to return should have their claims examined in accordance with the UN High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*. States who adopt policies contrary to these principles counter the peace-making and peace-keeping efforts of the international community as a whole, as well as violating fundamental human rights principles and the international law which governs asylum.

12. The gender dimension

Human rights and police monitors need to consider the gender dimension of their work as they prepare their mission and conduct investigations. This should include consulting women's groups before and during the mission, ensuring that women's prisons and places of detention are located and investigated, and ensuring that victims of rape and other violence have suitable and confidential facilities to meet with investigators who are specially trained and experienced in this area. In addition, UN personnel must be familiar with specific international standards relating to the detention of women, including those contained in the UN's Standard Minimum Rules for the Treatment of Prisoners, and the Declaration on the Elimination of Violence Against Women.¹⁰⁹

All UN personnel, civilian and military, deployed to a country as part of a UN mission should have, as part of their training, information about local cultural traditions and their impact on women so that they can both deal properly with violations of the human rights of women, and also so that they behave (both on duty and off duty) in a way that does not actually exacerbate existing violations of the human rights of women and girl-children in the host country.

13. Adherence of international peace-keeping forces to human rights and humanitarian law standards

All international peace-keeping forces must abide by the highest standards of international humanitarian and human rights law, especially where they have enforcement authority.

In the short term, an unambiguous statement should be issued by the UN Secretary-General, as well as a declaration adopted by the General Assembly and Security Council, affirming that forces acting under UN authority are bound by international human rights standards and international

humanitarian law. Public reports on how these standards are being observed should be compiled by the Secretary-General. In the longer term the UN should consider ways of becoming formally bound by the relevant legal standards, including possibly by acceding to the Geneva Conventions and their Protocols, as well as to the international human rights treaties.

Where peace-keeping forces or police monitors are carrying out policing functions such as riot control, crowd dispersal, searches, seizures, arrests, detentions or interrogations, they should abide by the international principles which cover the conduct of law enforcement, the use of force and firearms, and the treatment of prisoners (see list of basic standards below). Wherever necessary, UN forces should be properly prepared and equipped to use non-lethal crowd dispersal techniques rather than resorting to the use of their firepower in a disproportionate and indiscriminate way.

UN human rights officers or advisers should be attached to peace-keeping operations that are empowered to use force. The human rights advisers should be mandated to hear complaints and investigate allegations regarding improper behaviour of the peace-keeping forces. There should be an accessible and transparent procedure whereby individuals can complain about violations by UN troops and receive compensation. Investigations must be timely, the results made public and disciplinary and other appropriate action must be taken against personnel who violate these norms. Special rapporteurs and other UN investigative mechanisms appointed by the Commission on Human Rights might additionally be asked to receive complaints and follow up allegations against UN peace-keepers.

14. Prosecution of war crimes and attacks on international peace-keeping personnel

Threats against and attacks on international peace-keeping personnel and civilians working with them should be investigated by the national authorities of the host country, under the status of forces agreement between the UN and these authorities. Where the UN is mandated by the Security Council under Chapter VII to use force and ensure law and order, and sufficient national structures do not exist for such investigation and prosecution, any action taken by the UN must be in conformity with international law.

Prosecution and punishment measures should be carried out by an impartial tribunal or an international court. The creation of a eventual permanent institution for the prosecution of international

crimes should be encouraged. All the international standards and guarantees for fair trial and due process must be explicit in the statute of any international tribunal.

15. Continued promotion and protection of human rights in the post-settlement phase

The UN should ensure that effective international human rights monitoring and assistance continues after the elections or other agreed political measures are completed, until it is clear that the government in question is able and willing to implement international human rights guarantees effectively without international monitoring and assistance.

The commitment to human rights in the long term should be made at the time of the settlement. Well in advance of the end of the mission there should be an evaluation as to whether the human rights component ought to stay on or what other measures may be needed to ensure a complete transition to a society characterized by the rule of law. Tasks to be undertaken in this context could include: further work to strengthen the judicial system, human rights training for law enforcement officials, general human rights education programs, support for national non-governmental human rights organizations and the establishment of UN 'integrated or interim offices' to coordinate UN system-wide activities relating to issues such as human rights, development, the return of refugees, health, nutrition and the coordination of information after the withdrawal of the peace-keeping troops.¹¹⁰

Human rights monitors who remain in the country should continue to be required to publish regular reports, and they should be requested to work closely with any other relevant UN human rights monitoring mechanisms and the UN Centre for Human Rights.

The UN Commission on Human Rights should consider in much greater depth its role in the post-settlement phase and any measures it takes or recommends should be integrated into, and coordinated with, the final stages of the peace-keeping operation. Advisory assistance programs may be particularly important in this phase but should never be a substitute for continued monitoring, investigation and other protective measures. Post settlement monitoring and assistance should be agreed and prepared in good time to ensure a smooth transition when the peace-keeping operation leaves.

It may be appropriate for the UN Commission on Human Rights to appoint its own expert rapporteur to be given a complementary task of following up the peace-keeping operation's

recommendations to the parties. The mandate and role of such experts should be clear and should relate to real needs, rather than a means of paying lip-service to human rights promotion and protection. If an expert is appointed during the life of the peace-keeping mission, particular thought must be given to the integration and coordination of the expert's role with the human rights component and other aspects of the peace-keeping operation. Whenever necessary, an on-site presence should remain to continue the monitoring, investigating and reporting work initiated by the human rights component from within the peace-keeping mission.

If the recommendations of international human rights components remain unimplemented, UN bodies — the Commission on Human Rights, the General Assembly and the Security Council — as well as individual Member States must continue to maintain their involvement and press for full compliance.

List of international human rights and criminal justice standards to be guaranteed and incorporated into peace agreements

In addition to the major international human rights treaties¹¹¹, Amnesty International considers that incorporation of and respect for the following non-treaty human rights standards must also be guaranteed by all parties to a conflict, reformed and nascent security forces established by virtue of peace settlements, as well as by international peace-keeping personnel involved in peace settlements.

These include:

- **Standard Minimum Rules for the Treatment of Prisoners, and the Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners** (adopted by the Economic and Social Council in Resolutions 663 (XXIV) and 1984/74, respectively)
- **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** (adopted by the General Assembly in Resolution 43/173)
- **Code of Conduct for Law Enforcement Officials, and the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials** (adopted, respectively, by the General Assembly in Resolution 34/169 and the Economic and Social Council in Resolution 1989/61)
- **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** (adopted by

the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990)

- **Basic Principles on the Independence of the Judiciary and the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary** (adopted, respectively, by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990, and the Economic and Social Council in Resolution 1989/60)
- **Basic Principles on the Role of Lawyers** (adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990)
- **Guidelines on the Role of Prosecutors** (adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990)
- **Principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions** (adopted by the Economic and Social Council in Resolution 1989/65) and the UN's **Manual on these Principles**.
- **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** (adopted by the General Assembly in 1992 as resolution 47/135)
- **Declaration on the Protection of All Persons from Enforced Disappearances** (adopted by the General Assembly in 1992 as resolution 47/133)
- **Declaration on the Elimination of Violence against Women** (adopted by the General Assembly in 1993 as resolution 48/104)

Concluding Remarks

There will soon be more than 100,000 UN peacekeepers operational around the world. As this paper demonstrates, Amnesty International believes that it is imperative that these complex, extensive and costly operations address the promotion and protection of human rights. Amnesty International also considers that it is essential that UN personnel, who are often performing a policing function, must themselves respect and be held accountable to human rights standards. In order to respond to these demands the UN and its Member States urgently need to review and implement special human rights training for all personnel involved in peace-keeping.

So far the General Assembly and the Security Council have encouraged the Secretary-General in

the development of his *Agenda for Peace*. However, little attention has been paid to the human rights dimension of peace-keeping and there is very little evidence that the issue of training with respect to human rights and criminal justice principles is being taken seriously either by Member States or by the UN.¹¹²

The recommendations contained in this paper are intended as a contribution to the current discussion on the future of peace-keeping and the UN. There is a danger that human rights will get caught between the hard rock of military intervention and the wide open sea of humanitarianism. For too long the world of human rights has been divorced from the arena of peace-keeping. The issues are urgent and pressing. The links between human rights and peace-keeping are now well established. The UN needs to act if it wants to ensure that its operations are to fulfill the expectations they have generated and retain the UN's greatest asset, its credibility.



ENDNOTES

¹ UN Department of Public Information, *Background Note: United Nations Peace-Keeping Operations*, October 1993.

² *An Agenda for Peace: Preventive Diplomacy, Peace-Making and Peace-Keeping* (UN document A/47/277-S/24111, 17 June 1992) was produced at the request of the Summit Meeting of the Security Council held on 31 January 1992, which was the first time the Council had met at the level of heads of state and government. In *Agenda for Peace*, Secretary-General Boutros-Ghali made the following observations: 'Increasingly, peace-keeping requires that civilian political officers, human rights monitors, electoral officials, refugee and humanitarian aid specialists and police play as central a role as the military....Peace-making and peace-keeping operations, to be truly successful, must come to include comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people. Through agreements ending civil strife, these may include...advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation....The authority of the United Nations in this field would rest on the consensus that social peace is as important as strategic or political peace....Democracy within nations requires respect for human rights and fundamental freedoms, as set forth in the [UN] Charter. It requires as well deeper understanding and respect for the rights of minorities and respect for the needs of the more vulnerable groups of society....This is not only a political matter. The social stability needed for productive growth is nurtured by conditions in which people can readily express their will....To this end, the focus of the United Nations should be on the "field", the locations where economic, social and political decisions take effect.'

The Vienna Declaration and Programme of Action, adopted 25 June 1993 (UN document A/CONF.157/23), included the following recommendations:

'96. The World Conference on Human Rights recommends that the United Nations assume a more active role in the promotion and protection of human rights in ensuring full respect for international humanitarian law in all situations of armed conflict, in accordance with the purposes and principles of the Charter of the United Nations.

'97. The World Conference on Human Rights, recognizing the important role of the human rights components in specific arrangements concerning some peace-keeping operations by the United Nations, recommends that the Secretary-General take into account the reporting, experience and capabilities of the Centre for Human Rights and human rights mechanisms, in conformity with the Charter of the United Nations.'

³ The definitions and terminology used here are largely derived from a typology suggested by Marrack Goulding, formerly UN Under Secretary-General for Peace-Keeping and now Under Secretary-General for Political Affairs. See 'The Evolution of United Nations Peacekeeping', 69 *International Affairs* (July 1993), pp. 451-464.

⁴ These are, respectively: the UN Truce Supervision Organization (UNTSO), which was set up to supervise the 1949 armistice agreements after the Security Council called for an end to the Arab-Israeli war, and now numbers 224 observers; and the UN Military Observer Group in India and Pakistan (UNMOGIP), which monitors the cease-fires following hostilities between India and Pakistan over Jammu and Kashmir in 1965 and 1971, and currently has 38 observers.

⁵ These are, respectively: the UN Peace-Keeping Force in Cyprus (UNFICYP), established to prevent violence between the Greek-

Cypriot and Turkish-Cypriot Communities in Cyprus, now numbering 1,518; the UN Disengagement Observer Force (UNDOF), established to maintain cease-fire between Syria and Israel and supervise agreements on areas of separation, now numbering 1,120; the UN Interim Force in Lebanon (UNIFIL), mandated to help Lebanese Government restore authority in the Southern part of Lebanon, now numbering 5,857, and largely stymied since 1982 from operating due to the maintenance of the Israeli 'security zone'; and the UNPROFOR operation in Croatia, established in March 1992 as an interim arrangement to create conditions of peace and security required for the negotiation of an overall settlement of the conflict in the former Yugoslavia. UNPROFOR's mandate in Croatia has been gradually expanded to include demilitarization, verification and protection of three 'United Nations Protected Areas' in Croatia and currently has a strength of 14,000 personnel in Croatia. UNPROFOR troops deployed in Bosnia and Herzegovina and in the former Yugoslav republic of Macedonia are operating under different mandates, neither of which fall into the 'traditional peace-keeping' category (see below notes 57 and 14).

⁶ For a description of the considerable difficulties encountered by UNIFIL in implementing this aspect of its mandate since 1978 see, *inter alia*, *The Blue Helmets: A Review of United Nations Peace-Keeping*, United Nations, 2nd edition 1990, pp. 111-152.

⁷ *Ibid*, pp. 279-311.

⁸ The issue of missing persons in Cyprus (including Turkish Cypriots reported to have been taken prisoner by the Greek Cypriot authorities in 1962-63 and Greek Cypriots reported to have been taken by members of the Turkish armed forces during the 1974 conflict) has also been addressed by a United Nations Committee on Missing Persons in Cyprus, set up by the UN Secretary-General in 1981. This Committee's work is strictly confidential and Amnesty International is not aware of whether the Committee has been able to resolve any of the cases. Amnesty International has called on both sides in the Cyprus dispute, as well as on the United Nations, to ensure that the issue of the unresolved 'disappearances' will not be overlooked in ongoing talks or any proposed framework for a resolution of the conflict.

⁹ The agreement, which mandates the UN to oversee a referendum on independence, has foundered due to a dispute over electoral eligibility criteria. Once the terms of the referendum are agreed, the operation will become more like those which supervise a comprehensive settlement (see below) and the authorized strength of the operation will be expanded about fivefold.

¹⁰ The Security Council imposed sanctions against UNITA in Resolution 864 (1993), which went into effect in late September 1993. This was the first time the Council had ever taken such a measure against a non-governmental group. As the sanctions took effect and the Special Representative's efforts began to yield some progress on the political front with the restoration of the Bicesse Accords, the Secretary-General recommended an initially slight re-expansion of UNAVEM II's strength, with active contingency planning for full restoration, in a report submitted to the Security Council at the end of October: 'In the present atmosphere of cautious optimism and hope, I feel that the United Nations should be prepared to respond rapidly and decisively to consolidate any progress that might be achieved in coming days' (UN document S/26644, 27 October 1993).

¹¹ 'Peace enforcement' is generally defined and discussed in note 12, and elsewhere in this paper. Article 8 of the Cotonou Agreement states that 'ECOMOG shall have the right to self-defence where it has been physically attacked'. The article also establishes a Violations Committee, composed of members of the Liberian factions and chaired by a member of UNOMIL, which is empowered to receive and investigate alleged cease-fire violations. In the event violating parties do not take corrective

measures recommended and overseen by the UN observers. 'ECOMOG shall be informed thereof and shall thereupon report to the use of its peace-enforcement powers against the violator.' The full text of the Cotonou Agreement is in UN document S/26272, 9 August 1993.

¹² Goulding (*op cit*) includes UNIKOM as an example of post peace-enforcement peace-keeping. Although such follow-up operations would themselves be deployed under Chapter VII of the UN Charter and so do not require the consent of the parties, the received wisdom is that they can only work if the relevant party agrees. Chapter VII is the section of the UN Charter which regulates the application of sanctions and the authorization by the Security Council of the use of armed force to maintain or restore international peace and security in situations where other measures fail. The resort to military force under Chapter VII is now sometimes called peace-enforcement.

¹³ In *Agenda for Peace* (*op cit*), the Secretary-General recommended that, 'In inter-state disputes, when both parties agree...that if the Security Council concludes that the likelihood of hostilities between neighbouring countries could be removed by the preventive deployment of a United Nations presence on the territory of each state, such action should be taken' (para 31). However, even where the danger of conflict is strictly internal, preventive deployment remains an option. 'In conditions of crisis within a country, when the Government requests or all parties consent, preventive deployment could help in a number of ways to alleviate suffering and to limit or control violence. Humanitarian assistance, impartially provided, could be of critical importance; assistance in maintaining security, whether through military, police or civilian personnel, could save lives and develop conditions of safety in which negotiations can be held' (para. 29).

¹⁴ The Security Council originally requested UNPROFOR to establish a presence in the former Yugoslav Republic of Macedonia with about 700 infantry soldiers, 35 military observers and 26 civilian police in Resolution 795 (1992) of December 1992. In June 1993, the United States augmented this number with about 300 of its own troops, sent to 'reinforce the presence of UNPROFOR' (see Security Council Resolution 842 (1993)).

¹⁵ See *The Blue Helmets*, *op cit*, pp. 341-388, for a description of the original settlement plan for Namibia, endorsed in Security Council Resolution 435 (1978), and the eventual establishment and mandate of the UN Transition Assistance Group in Namibia (UNTAG). This is generally referred to by UN representatives as the first comprehensive settlement, involving a large number of UN military and civilian staff in a wide range of transitional tasks, including creating political conditions for free and fair elections, and ensuring the repeal of discriminatory laws, an amnesty and the release of prisoners and detainees, as well as the return of refugees. UNTAG is also generally considered a success, in contrast to later troubled operations in Angola and elsewhere. For a general assessment by UN officials of the beginning of the comprehensive settlement era of UN peace-keeping, see *The Singapore Symposium: The Changing Role of the United Nations in Conflict Resolution and Peace-Keeping, 13-15 March 1991*, United Nations document DPI/1141, September 1991.

¹⁶ The United Nations Transitional Authority in Cambodia (UNTAC), established in March 1992, had 9,354 military and civilian personnel in October 1993. The operation which began winding up in September 1993, had fully withdrawn by the end of the year. The United Nations Observer Mission in El Salvador (ONUSAL), established in July 1991, has a current strength of 363 staff, now mostly civilians including the fully civilian human rights division. ONUSAL's civilian staff should be expanded in 1994 when electoral observers will be sent to observe the March 1994 elections. The United Nations Opera-

tion in Mozambique (ONUMOZ) was established in December 1992 with a current strength of 6,517. These are mostly military personnel so far but the operation is to include large refugee repatriation and humanitarian assistance components, also leading up to elections, which are to be observed by UN staff. UNAVEM II is the second United Nations Angola Verification Mission, and was established in June 1991. At its peak, UNAVEM II comprised over 1,000 personnel up to the observation of the September 1992 elections. The Security Council authorized the establishment of the UN Assistance Mission in Rwanda (UNAMIR) in Resolution 872 (1993) on 5 October 1993. UNAMIR is projected to have a full strength of over 2,500 military and civilian staff.

¹⁷ The operation in the Western Sahara is somewhat different, as MINURSO's role is to prepare the ground for and oversee a referendum on the status of the territory.

¹⁸ UN document A/47/912-S/25521, 5 April 1993, para 41.

¹⁹ See *Agreements on Comprehensive Political Settlement of the Cambodia Conflict, Paris, 23 October 1991*, published by the UN Department of Public Information in DPI/1180, January 1992.

²⁰ *Ibid.* See the Paris Agreement's Annex 1 (UNTAC mandate), which authorizes UNTAC to reassign and remove offending administrative personnel (section B, para. 4b) or take other 'corrective steps' where administrative actions are shown to be 'inconsistent with or work against the objectives of this comprehensive agreement' (section B, para 6). The Annex also provides for 'corrective action' in human rights cases (section E).

²¹ Directive 93/1 issued by the Special Representative of the Secretary-General. The directive was issued in accordance with powers delegated to UNTAC pursuant to Articles 6 and 16 of the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, and Sections B and E of Annex I, regarding direct control or supervision by UNTAC of the maintenance of law and order, law enforcement, judicial processes, and protection of human rights. Directive 93/2 authorized UNTAC to detain suspects until a competent court becomes available.

²² According to Alvaro de Soto, the UN's mediator in the Salvadorian peace process: '...the principles laid down in the constitutional reform were fleshed out so that the portion of the Chapultepec Peace Agreement on the National Civil Police is one of the most detailed, covering not only the new Police but also the new National Public Security Academy as well as a new doctrine for the Police. According to the latter the Police is placed at the service of the community and integrated with it, lightly armed and providing security and the defense of citizen's rights rather than instilling fear in the them. The Army may only be used for public security purposes in extraordinary circumstances, if the police is overwhelmed, and subject to checks by the Legislative branch clearly specified in the Constitution.' Alvaro de Soto and Graciana del Castillo, 'An Integrated International Approach to Human Security - El Salvador: A Case Study', mimeograph, April 1993.

By May 1993, some of the security units which had been accused of systematic human rights violations in the past, including the Atlacatl Battalion, civil defence patrols, the Treasury Police and the National Guard had been dismantled, while the existing National Police was to be gradually dismantled as the new National Civil Police moved towards becoming fully operational. However, the Salvadorian Government has been criticized for boosting the ranks of the National Police with members of the abolished security forces and demobilized soldiers, instead of taking steps towards its disbandment. (See Amnesty International, *El Salvador: Peace without Justice*, AI Index AMR 29/12/93, June 1993.)

²³ The January 1992 New York Agreement, which was the final

accord in the series making up the comprehensive peace agreement for El Salvador, included the following provision: 'The Parties recognize the need to clarify and put an end to any indication of impunity on the part of officers of the armed forces, particularly in cases where respect for human rights is jeopardized. To that end, the Parties refer this issue to the Commission on the Truth for consideration and resolution. All of this shall be without prejudice to the principle, which the Parties also recognize, that acts of this nature, regardless of the sector to which the perpetrators belong, must be the object of exemplary action by the law courts so that the punishment prescribed by law is meted out to those found responsible.' *El Salvador Agreements: The Path to Peace*, published by the UN Department of Public Information in DPI/1208, May 1992, p. 53.

²⁴ Amnesty International presented its own recommendations to the Truth Commission regarding the interpretation of its investigative scope, functions and methodology. (See *El Salvador: Observations and recommendations regarding the Commission of Truth*, AI Index AMR 29/06/92, June 1992.) Amnesty International also transmitted to the Commission information about the hundreds of cases of killings, torture and 'disappearances' which it had documented during the period under investigation.

²⁵ The Commission's report confirmed what many Salvadorian and international organizations had denounced throughout the course of the civil war: that the armed forces, security forces, and paramilitary groups were responsible for massacres, killings, torture and 'disappearances' on a massive scale. Many of the killings, it said, were preceded by torture, 'disappearance' or rape. It concluded that 'death squads' linked to state structures became 'an instrument of terror responsible for the systematic physical elimination of political opponents', and cited the judiciary as bearing a great responsibility for the impunity with which the abuses had been committed. Ninety-five percent of the abuses reported to the Commission were attributed to the military, security forces or 'death squads' linked to them, but the FMLN was also held responsible for a number of killings and abductions.

The Truth Commission's recommendations fell into four categories: remedy of the Commission's findings in specific cases; eradication of structural causes directly connected with the incidents investigated; institutional reforms to prevent the repetition of such events; and measures for national reconciliation. More specifically, the recommendations included: removal from office of all military and judicial officials named in the report; banning of all such officials from public office for ten years, including FMLN members held responsible for abuses; establishment of a compensation fund for victims of past human rights abuses; an urgent investigation into 'death squads', including individual cases, as the Commission perceived these groups still posed a threat to society; extensive judicial reforms; establishment of a special legislative commission to ensure the armed forces would fulfil their new roles and remain under civilian control; derogation of army regulations obliging subordinates to obey orders of superiors even in violation of international human rights standards; implementation of the recommendations made by the human rights division of ONUSAL including numerous institutional reforms. The Truth Commission's report, *De la locura a la esperanza* ('From Madness to Hope'), is published in the annex to UN document S/25500, March 1993.

²⁶ Indeed, the main official response to the report has been the promulgation just a few days later of a sweeping amnesty law, which shields the perpetrators of massacres, killings, torture and 'disappearances' from prosecution. The UN Secretary-General issued a statement after the promulgation of this law expressing concern because 'it is related to the report of the Commission on the Truth which was, and remains, an integral part of the

Peace Settlement in El Salvador.' (UN Press Release SG/SM 4950, 24 March 1993). Amnesty International has called on the Salvadorian Government to take a number of measures in compliance with its obligations under the peace agreements and in response to the Truth Commission's report. Amnesty International's recommendations included: the immediate repeal of the amnesty law, full investigations into past human rights abuses and the bringing to justice of those responsible, removal of all military and judicial personnel named in the Truth Commission's report, compensation for victims, an immediate and full investigation into 'death squads', much stricter control over the possession and use of weapons by active military and police personnel, reform of the judiciary into a genuinely independent and impartial body which can carry out full and effective investigations into human rights violations and bring to justice those responsible, and recognition by the Government of the jurisdiction of the Inter-American Court of Human Rights, as well as adherence to other international human rights instruments to which El Salvador is not yet a party. See *El Salvador: Peace without Justice*, *op cit*.

Amnesty International has also called upon members of the UN Security Council and other governments closely involved in the peace negotiations to actively follow up the matter of compliance with the recommendations of the Truth Commission, as required in the peace agreement. In Resolution 832 (1993) of 27 May 1993, the Security Council urged the Government and FMLN 'to respect and implement fully all commitments they assumed under the Peace Accords, including, *inter alia*,...the recommendations of the *Ad Hoc* Commission on the purification of the Armed Forces and the Commission on the Truth'. In an October 1993 report to the Security Council on the implementation of the Truth Commission's recommendations, the Secretary-General concluded that only partial implementation had been effected, and that there had been no action at all on the most crucial recommendations (UN document S/26581, 14 October 1993).

²⁷ In response to the 'death squad'-style killings of two FMLN leaders in late October 1993, the Secretary-General stated that these acts substantiated ONUSAL reports that there was evidence of the continued and resurgent paramilitary and 'death squad' activity in El Salvador. The Secretary-General's statement called for vigorous investigation of the recent killings, which were said to 'confirm the need for immediate investigation of illegal groups...[as well as] the need to accelerate the implementation of other recommendations of the Commission on the Truth relating to the eradication of structural causes linked to human rights violations that occurred during the civil war and also to institutional reforms to prevent the repetition of such acts'. The Secretary-General said he had instructed ONUSAL's human rights division to assist the Government with a thorough and immediate investigation into the death squads. In the same statement, the Secretary-General also observed that 'ONUSAL has met with persistent difficulties in carrying out its task of verifying that only individuals meeting certain criteria are recruited to the National Civil Police' and he stated that 'ONUSAL must be allowed to carry out its verification mandate unimpeded' (UN document S/26689, 3 November 1993). The formation of the Joint Group was announced in ONUSAL Press Release No. 225, San Salvador, 8 December 1993.

²⁸ *The Blue Helmets*, *op cit*, p. 353.

²⁹ However, the South African authorities increased their numbers by incorporating members of a disbanded paramilitary police unit known as *Koevoet* (crowbar) which had been responsible for gross human rights violations.

³⁰ UN document S/21360, 18 June 1990, para. 59.

³¹ *Ibid*, paras. 70-71.

³² The referendum implementation plan states that the terms of reference for the civilian police 'will define the circumstances under which members of the Civil Police Unit may in the course of their duties take offenders into custody, and the procedures to be followed thereafter.' *Ibid*, para. 80.

³³ Amnesty International remains concerned about over 260 former 'disappeared' Sahrawis who were released in June 1991, but continue to suffer restrictions on movement and freedom of speech. Although the reappearance of these detainees itself proved the fact that large numbers of Sahrawis have been held in secret detention by Moroccan security forces after their arrests between 1975 and 1988, no inquiry has been made into how they were held in unacknowledged and incommunicado detention for up to 16 years without charge or trial and they have been denied the relief, rehabilitation and compensation which is their due. Some have reportedly been rearrested. Amnesty International furthermore believes there may be hundreds more 'disappeared' prisoners, also arrested between 1975 and 1988, still held in secret detention.

³⁴ See Amnesty International, *Morocco: Continuing arrests, 'disappearances' and restrictions on freedom of expression and movement in Western Sahara* (AI Index MDE 29/03/93, February 1993). In May 1993, the Secretary-General announced that 30 civilian police would be sent to the territory (see S/25818, 21 May 1993 para. 7), and by January there were 25 deployed, and the Identification Commission was partially deployed sometime around July 1993.

³⁵ S/25140, 21 January 1993, para 33.

³⁶ See Amnesty International, *Angola: Assault on the right to life* (AI Index AFR 12/04/93, August 1993).

³⁷ See UN documents S/24892 (3 December 1992) and S/26666 (1 November 1993), respectively.

³⁸ UN document A/47/969/Corr.1 (27 July 1993), Annex VIII.B.

³⁹ The Liberian constitution, which was adopted in 1985 under President Samuel Doe, contains an extensive list of human rights guarantees, however most of these are subject to restrictions at any time and, in case of emergency, all of them—including rights considered non-derogable at all times under international human rights law—may be completely suspended.

⁴⁰ The agreement specifies that, upon signing, 'all prisoners-of-war and detainees shall be immediately released to the Red Cross authority in an area where such prisoners or detainees are detained, for onward transmission to encampment sites or the authority of the prisoner-of-war or detainee [*sic*]. Common criminals are not covered by this provision.' UN document S/26272, Section I, Article 10.

⁴¹ *Executive Summary - The Carter Camp Massacre: Results of an Investigation by the Panel of Inquiry appointed by the Secretary-General into the Massacre near Harbel, Liberia, on the Night of June 5/6, 1993*, New York, September 10, 1993, para. 112.

The incident in question was an attack by armed soldiers who killed and mutilated the bodies of nearly 600 displaced civilians, mostly women, children and elderly people, in two encampments near Harbel, Liberia, on 5 and 6 June 1993. ECOMOG had assigned the Liberian armed forces (those serving under the interim government of Amos Sawyer) to maintain security in the area. ECOMOG and the armed forces blamed Charles Taylor's group, the National Patriotic Front of Liberia (NPFL), for the killings. Taylor denied responsibility and demanded that the UN conduct an investigation. In a 9 June statement, the Security Council strongly condemned the massacre and requested the Secretary-General to commence an investigation.

The three-person panel of inquiry appointed by the Secre-

tary-General (S. Amos Wako, Robert Gersony and Mahmoud Kassem), which lacked a forensic expert or pathologist, concluded that the killings had been 'planned and executed' by the armed forces. Although it concluded that there was 'no evidence that ECOMOG personnel had advance knowledge of the massacre', ECOMOG 'may have suspected soon after learning of the incident what had actually happened and treated the matter as if it were not its responsibility' (paras. 97-98 and 101). The panel called for further inquiry, including proper criminal investigations and prosecution of those found responsible. Amnesty International is not aware of any further investigation undertaken by the UN, ECOMOG, the armed forces or the Interim Government.

⁴² Initially there will be a Joint Cease-fire Monitoring Committee (JCMC), composed of an equal number of representatives from each of the parties and ECOMOG, and the UN acting as chair. After UNOMIL and ECOMOG are fully deployed, a Violations Committee of the same composition will take over from the JCMC.

⁴³ UN document S/26488 (24 September 1993), para. 66. The military observers in the UN Observer Mission Uganda-Rwanda (UNOMUR) now come under the command of the UN Assistance Mission in Rwanda (UNAMIR) even though the mandate of that former mission continues in order to ensure that no military assistance reaches Rwanda.

⁴⁴ MICIVIH was established jointly by the United Nations and the Organization of American States in March 1993. Originally intended to comprise over 300 international observers provided by the two organizations, only 240 observers had been deployed by the time MICIVIH was withdrawn from Haiti in October 1993. As was the case in El Salvador, the human rights observers began their work before a political agreement had been reached. The agreement signed in Governors Island, New York, on 3 July 1993 by President Aristide and Gen. Raoul Cedras, commander of the Haitian Armed Forces, established a framework for the *de facto* military authorities to step down, President's Aristide return to Haiti and the reconstitution of his government. One of the provisions of the Governors Island Agreement was that the United Nations should dispatch to Haiti UN military and civilian police monitors, with the mandate of assisting in modernizing the Haitian military and establishing a new police force. This military training force, called the UN Mission in Haiti (UNMIH), was to be deployed beginning in October 1993. However this plan was scrapped after a series of threats and violent incidents against UN personnel were carried out in the face of the run-up to the projected arrival both of President Aristide and the UN military trainers. New economic sanctions against Haiti were imposed by the UN and OAS in mid-October and the human rights observers in MICIVIH were withdrawn a few days later in view of the high level of violence and the demise of the Governors Island Agreement. At the time of writing the status of the MICIVIH observers remains in limbo, as they wait out events in the Dominican Republic. It should be noted that MICIVIH, as a purely civilian mission, was established under the joint authority of the UN General Assembly and the OAS, while UNMIH was authorized by the UN Security Council (resolution 867 of 23 September 1993). Despite the fact that UNMIH are not deployed in Haiti or even elsewhere, their mandate has been authorized until March 1994 (S/26864, 11 December 1993).

UNOMSA, the United Nations Observer Mission in South Africa, was deployed under the authorization of the Secretary-General in September 1992, with about 50 observers initially. A UN publication noted that UNOMSA signaled for the United Nations 'a new exercise in preventive diplomacy. The mission falls squarely within the long-established UN functions of fact-finding, preventive diplomacy and good offices. But in addition to observing developments and regularly reporting to the Secre-

tary-General, UNOMSA actively supports indigenous efforts to resolve disputes and promote reconciliation....Through their presence as impartial witnesses, the observers facilitate communication among various parties and intervene when appropriate, most often informally and quietly, by offering suggestions and options.' (UN Department of Public Information, *United Nations Focus: South Africa*, DPI/1391, August 1993.) See also Angela King (Chief-of-Mission, UNOMSA) 'The aim is to help open channels of communication between communities, reduce political intolerance and create a spirit of reconciliation among South Africans of all races and ethnic backgrounds.... While UNOMSA's objectives remain unchanged, the range of its activities has broadened in order to carry out more effectively its mandate in addressing the issue of public violence and other related matters.' *UN Chronicle*, September 1993, p.31.

⁴⁵ For example, in Eritrea, the General Assembly authorized a UN Observer Mission to Verify the Referendum (UNOVER). Although not a human rights mission as in Haiti, this mission did have to verify that there existed complete freedom of organization, movement, assembly and expression without intimidation. This included observing rallies and other referendum-related activities. The mission established a special relationship as observer to the Referendum Commission so that human rights complaints could be taken up to the extent that they related to the referendum. More problematic were cases of human rights violations unrelated to the referendum but detracting from the confidence-building measures being established.

⁴⁶ During the 1940s and 1950s, the United States answered the Russian veto in the Security Council by getting approval from the General Assembly for operations to investigate communist infiltration into Greece by neighbouring Balkan states (UNSCOB) as well as during the Korea war. At this time the West dominated the General Assembly. Later, the UN's first peace-keeping operation, UNEF I (the first United Nations Emergency Force, which lasted from 1956-1967 with a mandate to supervise withdrawal of invading British, French and Israeli forces in Suez) was set up following an emergency meeting of the General Assembly. Another exception was the United Nations Security Force in West New Guinea (West Irian)—UNSF—where the General Assembly authorized a force to maintain peace and security following an agreement between Indonesia and the Netherlands. The United States successfully side-stepped the Security Council in the context of Korea in the 1950s with the so-called 'Uniting for Peace' resolution. More recently, there have been attempts to shift the focus to the General Assembly, where Muslim Member States have a stronger voice, to again address blockage in the Council in order to deal with the crisis in Bosnia and Herzegovina. The General Assembly has issued more than one resolution urging the Council to consider exempting Bosnia and Herzegovina from the arms embargo imposed on the former Yugoslavia and urging Member States to extend cooperation to Bosnia and Herzegovina in the exercise of its inherent right to self defence under the Charter. See most recently A/48/88 adopted 20 December 1993.

⁴⁷ President Aristide originally requested the joint deployment by the UN and the Organization of American States of a civilian human rights monitoring mission in January 1993. Both organizations were already involved in the situation in Haiti. The UN had monitored the elections which had originally brought President Aristide to power. For its part, only four months before the September 1991 Haitian coup d'état, the OAS had passed a resolution establishing a mechanism by which the OAS Permanent Council would be convened in the event of a coup in an OAS member state, in order to take measures to counteract the effects of the coup. The first monitors to arrive in Haiti were from the OAS, with a mandate to re-establish and strengthen constitutional democracy. This civilian mission was first known as OEA/DEMOC and later as the 'OAS civilian mission

in Haiti' when 18 observers had been deployed in September 1992. Only in February 1993 did a group of 40 UN observers arrive in Haiti with a clear human rights mandate, and the joint mission was formally established.

⁴⁸ For MICIVIH's terms of reference see UN document A/47/908 (27 March 1993) and General Assembly Resolutions 47/20A of 24 November 1992 and 47/20B of 23 April 1993. The Mission is generally charged with obtaining information on the human rights situation in Haiti and making appropriate recommendations to promote and protect human rights. It is to pay particular attention to respect for the rights to life, personal integrity and security, and freedoms of expression and association. The terms of reference provided, *inter alia*, that the Mission may 'go immediately to any place or establishment where possible human rights violations have been reported' and may 'speak freely and confidentially with any person, group or member of any organization or institution'. The Haitian military and *de facto* authorities are to guarantee the security both of MICIVIH staff and people who communicate with the Mission. See also the three reports issued on MICIVIH's work to date, in UN documents A/47/960 (3 June 1993) and A/48/532 (25 October 1993), A/48/532/Add.1 (18 November 1993) as well as the 'Rapport sur l'assassinat d'Antoine Izmerly' attached to A/48/532/Add.1.

⁴⁹ UN document A/48/532, 25 October 1993, para. 12.

⁵⁰ One MICIVIH report noted: 'The investigation of such reports in Haiti presents great difficulties. In most cases there is no active judicial investigation after the death is recorded by the local justice of the peace, and no efforts by the police to undertake a criminal investigation. Witnesses are frightened to come forward, and those interviewed by the Mission have often not been interviewed by the relevant authorities. The Mission has no access to any information coming from an official investigation, and in most cases it is clear that no such information exists. No autopsies are carried out....' The report also noted that there are no detention registers. (A/48/532, para. 21).

⁵¹ The October report on MICIVIH (UN document A/48/532) gives a number of cautious examples of areas where the presence of the Mission appears to have reduced the potential for human rights violations or even remedied some cases. For example, where it gained access to some places of detention, the mission was able to record the identity of over 640 detainees, most of whom had been held illegally and without proper judicial procedures or legal representation, and in some cases for more than a year. Some illegally detained prisoners were released after the mission's intervention, however there was 'only a small alleviation of the situation of others' (para. 62).

While reporting that some peaceful demonstrators had been beaten and arrested in front of MICIVIH observers, it was noted that the Mission's 'presence has probably limited the extent of human rights violations associated with the demonstrations, and the Mission has intervened immediately after demonstrations to seek release and respect for the physical integrity of those arrested, with some success' (para. 50). MICIVIH also reports: 'Beatings in military custody appear to have become less frequent in some places since the Mission has been present, with some detainees being released without having been beaten; elsewhere, however, severe beatings in custody continue to be reported regularly. There are indications that in some areas beating by *attachés* without the victim being taken into custody may have been substituted for beating in custody as an adaptation to the presence of the Mission' (para. 38).

With regard to the judiciary, the report notes: 'Despite such intimidation, several judges and prosecutors have shown great courage and integrity in the face of threats and possible reprisals. Some judges...have ordered detainees to be released because their arrests or continued detention were illegal. Many of these releases have been ordered when observers of the Mission have been present in court. Through its constant insistence that the

requirements of Haitian law be followed, the Mission has seen an increased willingness by judges to apply the law on arrest and detention, and a marked increase in granting provisional liberty to detainees. Prisoners have been processed through the system faster and some now even receive a hearing within 48 hours after arrest, as is required by the Constitution but was exceedingly rare before the presence of the Mission....For the most part, however, members of the judiciary remain extremely reluctant to investigate cases involving the FAD'H [Haitian armed forces]' (paras. 68-69).

⁵² See *Refugee Protection at risk: Amnesty International's recommendations to the 44th session of the Executive Committee of UNHCR* (POL 33/06/93, September 1993)

⁵³ The Governors Island Agreement provided that an amnesty would be granted by the President of the Republic within the framework of Article 147 of the Haitian constitution. This Article provides that the President can accord amnesties only with respect to political matters, and only in accordance with the law. The final terms of any eventual amnesty have never been made clear.

⁵⁴ According to Security Council Resolution 772 (1992) the 'areas of concern' to serve as guidelines for the work of UNOMSA include: hostels and related security problems; dangerous weapons; security forces and other armed groups; investigation and prosecution of criminal conduct; and conduct of political parties.

Angela King, Chief-of-Mission of UNOMSA, has described the essence of their mandate as follows: 'to help bring an effective end to public violence and intimidation, to assist in creating a conducive climate for negotiations leading towards a peaceful transition to a democratic, non-racial, non-sexist and united South Africa and to support the peace structures—the Goldstone Commission, the National Peace Committee, the National Peace Secretariat, and the 100 local peace committees throughout the country.' In its first ten months, UNOMSA observers witnessed over 8,500 'events'. (UN Centre against Apartheid, *Notes and Documents*, No. 6/93, August 1993.)

⁵⁵ 'Opening statement by Ambassador Madeleine K. Albright before the US Senate Foreign Relations Committee, October 20, 1993', United States Mission to the United Nations Press Release USUN 164-(93).

⁵⁶ See note 12 regarding Chapter VII of the Charter.

⁵⁷ See note 5 for an explanation of UNPROFOR's mandate in Croatia. In Bosnia and Herzegovina, UNPROFOR's mandate was enlarged in June 1992 to assure the security and functioning of the Sarajevo airport, and the secure delivery of humanitarian assistance in and around Sarajevo. In September 1992, the mandate was further expanded to assure the safe delivery of humanitarian assistance throughout Bosnia and Herzegovina, and to protect convoys of released civilian detainees if so requested by the International Committee of the Red Cross (ICRC). Since November 1992, UNPROFOR has been monitoring compliance with the ban on military flights over Bosnia, and since April and May 1993 UNPROFOR has been mandated to protect and monitor the humanitarian situation in the six regions declared as 'safe areas' by the Security Council (Srebrenica, Sarajevo, Tuzla, Zepa, Gorazde and Bihac). The total number of UN civilian and military personnel in UNPROFOR in Bosnia and Herzegovina is 9,200.

⁵⁸ The issue of the observance of human rights and international humanitarian law by UN forces is dealt with in Part II of this paper. It should be noted here, however, that in the context of the delivery of humanitarian assistance the authority of the Security Council cannot take UN forces outside the ambit of the laws of war. According to Yves Sandoz, a member of the Executive Board of the International Committee for the Red

Cross (ICRC) and Director of the ICRC Department for Principles, Law and Relations with the Movement: 'The theoretical possibility of relying on Article 103 of the Charter to tolerate a derogation from treaties as universally recognized as the Geneva Conventions would warrant in-depth consideration at least. But it can be affirmed already that a decision of this nature would, in any event, have to be based at least on a conscious, reasoned decision on the part of those responsible for taking it.' He stressed that even on the basis of United Nations resolutions, the use of armed force to impose the passage and delivery of relief supplies could on no account be justified by international humanitarian law: 'firstly they would deprive their intervention of all credibility by refusing to accept this "island of humanity" which even the worst aggressor is bound to accept; secondly they would give the opposing combatants a pretext not to respect humanitarian law either, to the detriment of the wounded and prisoners of war of their own armed forces.' Yves Sandoz, "'Droit" or "devoir d'ingérence" and the right to assistance: the issues involved', *International Review of the Red Cross*, No. 288 (May-June 1992), pp. 12-22 at p.17.

⁵⁹ Marrack Goulding (*op cit*) suggests the first UN peace-keeping operation deployed in a country where the institutions of state had largely collapsed was in the Congo in the 1960s (the United Nations Operation in the Congo—ONUC).

⁶⁰ UN document S/25354, 3 March 1993 para. 91.

⁶¹ See Brian Urquhart 'For a UN Volunteer Military Force', *New York Review of Books*, 10 June 1993, pp. 3-4; 'A UN Volunteer Military Force - Four Views' *Ibid*, 24 June 1993, pages 58-60; 'A UN Volunteer Force - The Prospects' *Ibid*, 15 July 1993, pp. 52-56; 'Can blue helmets keep the peace?', *Observer*, 20 June 1993, p.13; Monique Chemillier-Gendreau 'Comment les Nations unies auraient pu dénouer la crise du Golfe en 1990', *Le Monde Diplomatique*, July 1993 pp. 16-17; Laurence Martin, 'Peacekeeping as a Growth Industry', *The National Interest*, Summer 1993, pp. 3-11; 'A Volunteer UN Army? The Case Against' Stephen John Stedman, *International Herald Tribune*, 28 July 1993, (letter) p. 7; J.F.O. McAllister, 'Pity the Peacemakers', *Time*, June 28 1993, pp. 46-48, who ends by saying 'Making peace against determined foes still demands a willingness to see soldiers, no matter what colour their helmets, come home in body bags.'

⁶² The first United Nations Operation in Somalia (UNOSOM I) was established in April 1992 to monitor the cease-fire in Mogadishu, to provide security for UN personnel and equipment and to protect the delivery of humanitarian assistance in and around Mogadishu. In August 1992, the humanitarian assistance protection mandate was expanded to cover all of Somalia. Continued hostilities prompted the UN to pull most of its humanitarian personnel out of Somalia and in December 1992, the Security Council authorized the US-led Unified Task Force (UNITAF) to use 'all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia' (Resolution 794 (1992)). Although the Security Council authorized the use of force, it should be noted that UNITAF was organized and commanded by the US military, not the UN. It was intended that UNITAF would lay the groundwork for the resumption of 'normal' UN peace-keeping functions and, in March 1993, the Security Council authorized under Chapter VII of the Charter a second UNISOM operation, known as UNOSOM II, to complete the task begun by UNITAF and 'assume responsibility for the consolidation, expansion and maintenance of a secure environment throughout Somalia' (Resolution 814 (1993), para. 14). US troops remained in Somalia participating as a tactical 'Quick Reaction Force' to give support to UNOSOM II, but they were still operationally separate from the UN force.

⁶³ Security Council Resolution 814 (1993), 26 March 1993, para. 13.

⁶⁴ *Ibid.*, para. 4(d).

⁶⁵ Speech to a meeting of troop contributing countries at United Nations Headquarters, New York. UN Press Release SOM/31, 21 July 1993.

⁶⁶ UN spokesman Joe Sills, speaking at a press briefing at UN Headquarters in New York, 4 October 1993.

⁶⁷ S/26317, 17 August 1993, the report explains that the 'UNOSOM Office for Human Rights will be staffed by a six-person investigation team from Member States and will, among other things, assist in the establishment of a local Somali human rights committee' (para 54). The report also suggests that the Independent Expert, in addition to his functions with regard to human rights, 'act as Ombudsman for police, judicial and prison issues' (para 55). There were also to be prison advisers and police advisers to give assistance to local officials, as well as civilian judicial advisers to provide advice and assistance in the re-establishment of the Somali judicial system. In any eventual settlement the recommendations relating to comprehensive settlements would be relevant. Note also the recent Resolution of the General Assembly (48/146) which requests the Commission on Human Rights to consider the establishment of a group of international human rights monitors.

⁶⁸ UN document S/25170, 26 January 1993, para. 25 (emphasis added). The report continues: 'Hence MINURSO patrols were alerted to possible unrest. Their reports did not corroborate the allegations made by the Frente POLISARIO.'

⁶⁹ Such mechanisms include the Special Rapporteur on Torture, the Special Rapporteur on Summary, Arbitrary and Extra-judicial Executions, the Working Group on Enforced or Involuntary Disappearances, the Working Group on Arbitrary Detention, and the country rapporteurs as appropriate.

⁷⁰ This can be a danger even where human rights components do exist. One member of the human rights division of ONUSAL, Dr Reinhard Jung-Hecker, was prompted to write an open letter to the UN Secretary-General stating that his perception was that the autonomy of the human rights component had been unduly limited by diplomatic and political considerations. He was supported in a letter signed in the name of a name of a number of Salvadorian legal and human rights institutions (*La Prensa Gráfica*, 17 July 1992).

⁷¹ In a letter to the Security Council dated 3 November 1993, shortly after the late October killings of two FMLN leaders, Secretary-General Boutros-Ghali expressed the view that 'Recent developments have also brought out the need to accelerate the implementation of other recommendations of the Commission on the Truth relating to the eradication of structural causes linked to human rights violations that occurred during the civil war and also to institutional reforms to prevent the repetition of such acts....[The] recent murders have brought into sharper focus the need to accelerate the implementation of the Accords in order to set the stage for a genuinely free and fair electoral process. At a high-level meeting on 8 September 1993,...the Government and the FMLN agreed on the need to step up the implementation process with a view to "sweeping the table clean" before 20 November 1993, when the electoral campaign will begin. I fully share that sense of urgency...' (UN document S/26689, 3 November 1993).

⁷² See *Iraq: The need for further United Nations action to protect human rights* (AI Index MDE 14/06/91, July 1991) and 'Iraq: Marsh Arabs still persecuted, UN should monitor human rights on-site' (Amnesty International weekly update service MDE 14/WU 02/92, November 1992).

⁷³ See especially 'Report on the situation of human rights in Iraq, prepared by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights, in accordance with Commis-

sion resolution 1991/74', UN document E/CN.4/1992/31, and also circulated to the Security Council as UN document S/23685/Add.1, 9 March 1992, paras. 156-157.

⁷⁴ UN document A/47/908, annex III, para 16; reprinted in A/48/532, para. 71.

⁷⁵ In this respect, MICIVIH observed: 'There have throughout its presence been fears that if progress did not continue to be made towards a peaceful political settlement, more generalized violence would break out....Violence exercised against agents of the State by the civilian population has been almost non-existent....This does not of course mean that fears of more generalized violence can be disregarded. The fact that serious human rights violations have continued to be committed, overwhelmingly without any sanctions against the perpetrators and without the prospect of those responsible being brought to justice, has increased the risk of such violence' (UN document A/48/532, para. 16).

⁷⁶ In a statement to the Economic and Social Council in July 1993, Mr Eliasson said:

'Due to security needs, the international community is spending ten dollars on military protection for every dollar of humanitarian assistance in Somalia, even if the 1993 Relief and Rehabilitation Programmes were to be fully funded. Unless sufficient funds are provided for rehabilitation activities, there is a risk that the military operation can be perceived as an end in itself, rather than as a means of ensuring security for rehabilitating the country's infrastructure and forging national reconciliation.'

'Clearly, the impact and the aftermath of the recent escalation of violence cannot be allowed to wreck the transition to peace, security and reconstruction. Nor can one disregard the vicious attacks on United Nations peacekeepers or the use of civilians as "human shields". At the same time we are noting genuine concern, not least in the relief and NGO community, that continued military actions in Mogadishu can result in the marginalization of the humanitarian dimension of the United Nations' mission in Somalia.'

⁷⁷ According to the UN Spokesman's Office, over 22% of all UN peace-keeping fatalities since the first UN peace-keeping operations occurred in the first nine months of 1993 alone. 754 UN peace-keepers were killed in the period between 1948 and 1988; 269 were killed between 1989 and October 1993; and from January to October 1993, there were 170 fatalities, 81 of these in Somalia alone. (Citation from H. Purola, 12 October 1993).

⁷⁸ See, for example, Julia Preston, 'U.N. Officials Scale Back Peacemaking Ambitions: Planned U.S. Withdrawal from Somalia Demonstrates World Body's Limitations', *Washington Post*, 28 October 1993, A40.

⁷⁹ UN document S/25493, 31 March 1993.

⁸⁰ UN document A/48/349-S/26358, 27 August 1993, para 35(e).

⁸¹ Professor Tom Farer, 'Report of an inquiry conducted pursuant to Security Council resolution 837 into the 5 June 1993 attack on UN forces in Somalia' (12 August 1993) p.12 fn.3. An executive summary of the report is reprinted in UN document S/26351, 24 August 1993.

⁸² The Security Council authorized the *ad hoc* tribunal for Yugoslavia in February 1993, and in May it adopted the tribunal's statute. The eleven judges who will sit on the tribunal were elected by the UN General Assembly in September 1993 and the Council appointed the chief prosecutor in October. The tribunal, which is based in The Hague, held its inaugural meeting on 17 November 1993 and began to formulate its rules of procedure.

When UN legal advisers first began working on the draft statute, Amnesty International submitted to the UN detailed

recommendations aimed at ensuring the tribunal would be just, effective and fair, in accordance with international human rights and criminal justice standards. (See *Memorandum to the United Nations: The question of justice and fairness in the international war crimes tribunal for the former Yugoslavia*, AI Index EUR 48/02/93, April 1993. Following the adoption of the statute Amnesty International published *Moving forward to set up the war crimes tribunal for the former Yugoslavia*, AI Index, EUR 48/03/93, May 1993.

⁸³ The comments of the New Zealand Government are contained in 'Report of the Secretary-General: Comprehensive review of the whole question of peace-keeping operations in all their aspects, Addendum', UN document A/AC.121/40/Add.2, 28 April 1993. See also S/25493, *op cit*, S/25667, 26 April 1993, A/48/144, 25 June 1993.

⁸⁴ New Zealand's proposal is in UN document A/C.6/48/L.2 (6 October 1993) and the Ukrainian proposal is in A/C.6/48/L.3 (12 October 1993). See also UN documents S/25667, 26 April 1993 submitted by New Zealand and A/48/349-S/26358 (Report of the Secretary-General: Security of United Nations operations, 27 August 1993). Lastly see the statement of the chairman of the working group of the Sixth Committee of the General Assembly, A/C.6/48/SR.29, and resolution A/48/37.

The International Law Commission, an expert UN body working for the progressive development and codification of international law, submitted to the General Assembly in 1993 a revised draft statute for a permanent International Criminal Tribunal. A final draft is expected in 1994. According to the latest draft (contained in A/48/10 p.255 ff) the court would have jurisdiction over war crimes and crimes against humanity, but only if states parties to the Statute consented—except in cases submitted by the Security Council (Art. 25). The draft contains a number of important safeguards for defendants, such as the right not to testify and, like the tribunal for the former Yugoslavia, a prohibition on the use of the death penalty. However, Amnesty International is concerned that current proposals still fall short of international standards for fair trial in a number of other respects.

⁸⁵ UN document A/AC.121/40/Add.2, *op cit*, para. 15.

⁸⁶ Adopted by the General Assembly in Resolution 34/169 of 17 December 1979.

⁸⁷ Adopted in September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba.

⁸⁸ See S/26351, *op cit*, para. 9.

⁸⁹ See the resolutions of the Institut de Droit International in 1971 stating that rules of a humanitarian nature must be respected by UN forces where they are engaged in hostilities (Zagreb, *Annuaire*, vol. 54 II, pp. 449-454), and in 1975 adding that all rules of armed conflict apply to hostilities in which UN forces are engaged (Weisbaden, *Annuaire*, vol. 56, pp. 541-544).

⁹⁰ Judith Gail Gardam, 'Proportionality and Force in International Law', 87 *American Journal of International Law* (1993), pp. 391-413; John Mackinlay and Jarat Chopra have attempted to set out principles for the use of force by peace-keepers in 'A Draft Concept of Second Generation Multinational Operations 1993', (available from the Thomas J Watson Institute for International Studies, Brown University). They state that force may not be used to 'punish an aggressor or as a long term deterrent. The response must be proportional to the threat.' (pp. 33-34).

⁹¹ See the Memorandum of 10 November 1961 referred to by Umesh Palwankar, formerly a member of ICRC's legal division, who states that:

'Since the UN as such, is not a party to the Conventions, the ICRC considers that each State remains individually responsible

for the application of these treaties whenever it provides a contingent for a PKF [peace-keeping force]. In consequence, the State should do what is necessary, especially by issuing appropriate instructions to the troops before they are posted abroad.

'The memorandum also stressed that by virtue of Article 1 common to the four Conventions, which also requires the High Contracting Parties to ensure respect for the Conventions, the States providing contingents "should each, where necessary, use their influence to ensure that the provisions of humanitarian law are applied by all the contingents concerned as well as by the unified command".'

'Applicability of international humanitarian law to United Nations peace-keeping forces', *International Review of the Red Cross*, May-June 1993, p. 230.

⁹² 'Report to the International Conference for the Protection of War Victims, Geneva, August 30 to September 1, 1993', p. 35. See also the statement by the ICRC to the Fourth Committee of the UN General Assembly, 29 November 1993, where the ICRC states that the rules relating to the method and means of combat apply to UN forces, and that the UN should incorporate into various status of forces agreements and instructions to its forces specific rules such as the prohibition of attacks on the civilian population.

⁹³ In full, para. 17 of the Final Declaration reads: 'We demand that measures be taken at the national, regional and international level to allow assistance and relief personnel to carry out in all safety their mandate in favour of the victims of an armed conflict. Stressing that peace-keeping forces are bound to act in accordance with international humanitarian law, we also demand that the members of peace-keeping forces be permitted to fulfil their mandate without hinderance and that their physical integrity be respected.'

⁹⁴ On the background to this debate and the legal methods whereby the UN could either accede to treaties or make declarations, see D. Schindler, 'United Nations Forces and International Humanitarian Law', in *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, C. Swinarski (ed), 1984, pp. 520-530.

⁹⁵ See Part III of this paper for a list of the standards and treaties which are among those which Amnesty International considers essential for the full protection against human rights violations and for proper inquiries into allegations.

⁹⁶ See the model status-of-forces agreement for peace-keeping operations in UN document A/45/594, 9 October 1990, para. 47(b), and *The Blue Helmets*, *op cit*, p.54.

⁹⁷ After accusations that members of the Belgian parachute regiment in UNOSOM II had been responsible for extrajudicial killings, torture, ill-treatment and racial abuse of Somali citizens, the Belgian military judicial authorities initiated an inquiry. It is interesting to note that the Belgian military has military inspectors attached to the armed forces for this purpose. These inspectors were sent to Somalia in August 1993 to investigate the allegations. Preliminary investigations were reported to have confirmed accusations of deliberate murder of Somali citizens during military operations, leading the Belgian military inspectors to state their belief that the soldiers had not acted in legitimate self-defence (*La Stampa*, 27 August 1993). In Canada, a military board of inquiry has conducted investigations into alleged extrajudicial killings and fatal beatings by Canadian soldiers during the UNITAF phase, leading to charges against some soldiers, although others had charges against them dropped. Amnesty International has requested further information on the results of national investigations into alleged human rights violations by UNOSOM contingents from Belgium, Canada and the US, but has not received responses from the relevant national authorities of these three countries.

⁹⁸ UNRISD workshop, Geneva, 29-30 April 1993, p. 3.

⁹⁹ UN document S/26317, 17 August 1993, para 53.

¹⁰⁰ *Ibid.*, paras. 29-63.

¹⁰¹ Security Council Resolution 885 (1993), 16 November 1993. It should be noted that the investigation undertaken by a UN-appointed expert into the 5 June 1993 armed attacks in Mogadishu against UNOSOM troops (S/26351, *op cit*) was apparently not considered adequate by the Security Council. Amnesty International had also been concerned that that report, which had also made some preliminary conclusions regarding UNOSOM killings of Somalis on 13 June, did not fulfil the requirements for a thorough and impartial investigation into acts by the UN, and has therefore expressed its hope that the new commission of inquiry will also address acts by UNOSOM troops.

¹⁰² Adopted by the Economic and Social Council in Resolution 1989/65 of 24 May 1989.

¹⁰³ UNPROFOR Press Release, Zagreb, 7 November 1993.

¹⁰⁴ For example, allegations of summary executions could be taken up by the Commission's Special Rapporteur on Summary and Arbitrary and Extra-Judicial Executions and conditions of detention examined by its Working Group on Arbitrary Detention.

¹⁰⁵ See Amnesty International, *A High Commissioner for Human Rights: Time for Action* (1 October 1993); the General Assembly has now created the post of High Commissioner for Human Rights whose Office is to be located in Geneva with a liaison office in New York, resolution 48/141, 20 December 1993.

¹⁰⁶ In resolution 47/147, adopted 18 December 1992, para. 17 the General Assembly 'Calls upon all United Nations bodies, including the United Nations Protection Force and the specialized agencies, and invites Governments and informed intergovernmental and non-governmental organizations to cooperate fully with the Special Rapporteur and in particular to provide him on a continuing basis with all relevant and accurate information in their possession on the situation of human rights in the former Yugoslavia'.

¹⁰⁷ Adopted by the UN Commission on Human Rights in Resolution 1992/54 in March 1992. See also Amnesty International's own recommended guidelines for such bodies: *Proposed Standards for National Human Rights Commissions* (AI Index IOR 40/01/93, January 1993).

¹⁰⁸ From quite an early stage the peace plan for the Former Yugoslavia envisaged the establishment of a number of human rights institutions including: four ombudsmen, one for each of the recognized groups, a constitutional court and a human rights court (with provisions linking these to the International Court of Justice and the European Commission and Court of Human Rights), an international commission for human rights and a human rights monitoring mission as well as an Interim Commissioner for Human Rights for Bosnia and Herzegovina. See UN docs: S/24795, 11 November 1992, S/25221, 2 Feb. 1993, S/25403, 12 March 1993, S/25479, 26 March 1993 and reproduced again in S/26260, 6 August 1993.

¹⁰⁹ For recommendations concerning the situation of women in detention and in situations of armed conflict, see the following Amnesty International reports: *Women in the Front Line* (AI Index ACT 77/01/91, March 1991), *Rape and Sexual Abuse: Torture and Ill-Treatment of Women in Detention* (AI Index ACT 77/11/91, December 1991) and *Bosnia-Herzegovina: Rape and Sexual Abuse by Armed Forces* (AI Index EUR 63/01/93, January 1993).

¹¹⁰ There is some discussion over the feasibility of turning the

UN field offices of UNDP, UNICEF, DPI, etc., in different countries around the world into UN integrated or interim offices. UN Information Centres already present themselves in their publicity leaflet as participating in an electronic network linking UN Headquarters with 68 cities thus providing 'a unique source of information on such topics as peace-keeping, peace-making, human rights, economic and social development'

The Secretary-General's recent report of the future of the UN Interim Offices in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Ukraine and Uzbekistan states that these offices provide a framework for the UN and all its programs, funds and offices including UNDP, UNFPA, UNHCR, UNICEF and WFP carry out their activities. In devising a new model with the interim offices the Secretary-General suggests a human rights role which seems to go beyond the mere provision of information. A/48/146/Add.1, 20 July 1993, para. 7. He states that the 'principle duty of the United Nations is to devise and apply an integrated approach to human security in all its aspects'. (para 17.) The new breed of 'United Nations integrated offices' should adapt to the broader functions which will be expected of them. Although UNDP already carries out a number of human rights projects in conflict situations (see A/Conf.157/PC/61/Add.13, 8 June 1993) it has been pointed out that UNDP officers are uneasy about working with armed opposition groups yet their cooperation is essential for new police and human rights training (see 'Human Rights, Development and Democracy: Experience of the UN in Post-Conflict El Salvador', Margaret Popkin, available from UNDP). Clearly the UNDP in cooperation with the peacekeeping operations such as ONUSAL and UNTAC as well as working with the Centre for Human Rights can achieve lasting changes in the human rights situation in a country. It is hoped that the combination of UNICs, UNDP and the concept of the Interim/Integrated Offices will become real contributions to the UN's in-country human rights work. See also 'Operational activities for development: field offices of the United Nations development system', A/48/733 and resolution 48/209. On the idea of an 'integrated office', post-UNTAC, which would, *inter alia*, 'foster respect for human rights in Cambodia', see S/26360, 26 August 1993.

¹¹¹ Amnesty International considers the following treaties to be particularly relevant to the protection of human rights in UN peace-keeping operations: the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; the two Optional Protocols to the International Covenant on Civil and Political Rights, the first of which allows individual petitions and the second of which aims at the abolition of the death penalty; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Conventions on the Elimination of Racial Discrimination and the Elimination of all Forms of Discrimination against Women; and the Convention on the Rights of the Child.

¹¹² In 'Report of the Secretary-General: Implementation of the recommendations contained in "An Agenda for Peace"', there is scarcely any mention of efforts in the field of either training or human rights (UN document A/47/965-S/25944, 15 June 1993). In the Secretary-General's most recent 'Report on the Work of the Organization', there is a mention of training manuals being prepared for troops, military observers and civilian police, as well as a code of conduct for peace-keeping personnel (UN document A/48/1, 10 September 1992, para. 306). In resolution 48/42 on the comprehensive review of peace-keeping the Secretary-General is asked to include a clause in agreements with troop contributing states so that those states would ensure that members of their contingents are fully acquainted with the principles and rules of relevant international law, in particular international humanitarian law and the purposes and principles of the Charter (para 40).

KEYWORDS: UN1 / ARMED CONFLICT1 / EL SALVADOR / CAMBODIA / NAMIBIA / MOROCCO / ANGOLA / MOZAMBIQUE / LIBERIA / RWANDA / HAITI / SOUTH AFRICA / SOMALIA / KUWAIT / MACEDONIA / LEBANON / IMPUNITY / REFUGEES / DISAPPEARANCES / REFERENDA / AMESTIES FOR VIOLATORS / EXTRAJUDICIAL EXECUTION / CONSTITUTIONAL CHANGE / INDEPENDENCE OF JUDICIARY / ARBITRARY ARREST / WAR CRIMES / OAS / OAU / ICRC/

amnesty international



BURUNDI



**Time for
international action to end
a cycle of mass murder**

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—*ensure fair and prompt trials for political prisoners*;

—*abolish the death penalty, torture and other cruel treatment of prisoners*;

—*end extrajudicial executions and "disappearances"*.

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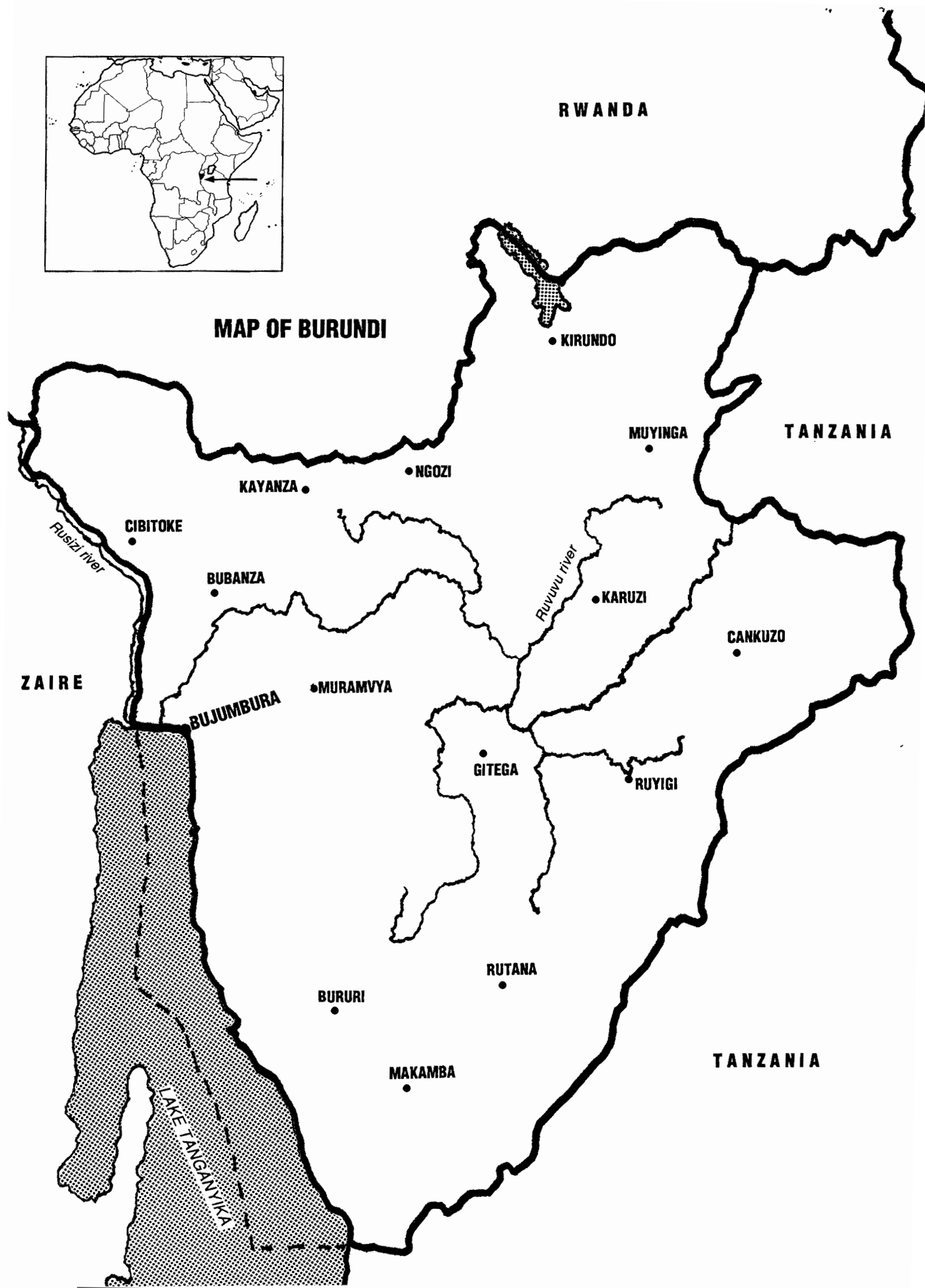
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Cover photo: A man who has recently returned from the refugee camps in Rwanda walks past a dead body in his village on the banks of lake Rweru. © Mike Goldwater/Network



MAP OF BURUNDI



CONTENTS

1.	INTRODUCTION	1
2.	COUNTRYWIDE MASSACRES	3
2.1	Killings of Tutsi by Hutu gangs	4
2.2	Extrajudicial executions by the armed forces	5
2.3	Killings of Hutu by Tutsi civilians	6
3.	RESPONSIBILITY FOR THE COUP ATTEMPT	7
4.	RESPONSE TO THE COUP ATTEMPT	8
4.1	Government reaction	8
4.2	Action by the UN and OAU	8
4.3	Inquiry by human rights groups	9
5.	APPEAL TO THE INTERNATIONAL COMMUNITY	10
	ENDNOTES	11

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17 May 1994
AI Index: AFR 16/08/94

BURUNDI

Time for international action to end a cycle of mass murder

1. INTRODUCTION

On 21 October 1993 soldiers seize **President Melchior Ndadaye**, take him to a military barracks and execute him eight hours later. The soldiers also kill four other senior government and National Assembly officials. Gangs belonging to the majority Hutu ethnic group attack and kill members of the minority Tutsi ethnic group to which most soldiers belong. A local government official in Muruta district, Kayanza province, reportedly organizes the killing of 90 Tutsi and one Hutu belonging to an opposition party. Soldiers go on the rampage to avenge the killing of Tutsi civilians. At the end of October 1993 soldiers in Gitega town kill at least 100 Hutu after being helped by Tutsi civilians to identify the homes of Hutu. Around 22 October 1993 Tutsi students are armed by a local gendarmerie commander in Ruyigi town and they lead the killing of at least 70 Hutu taking refuge at Ruyigi Roman Catholic church. Victims include babies, pregnant women and the elderly.

This is just a snapshot of the human rights tragedy which engulfed most of Burundi when members of the Burundi army from the 11th paratroopers and 2nd armoured battalions in the capital, Bujumbura, tried to overthrow Burundi's first democratically elected government. President Ndadaye and most of the supporters of the 102-day-old *Front pour la démocratie au Burundi* (FRODEBU), Front for Democracy in Burundi, government were Hutu. Although the killings had abated by the end of 1993, sporadic killings of up to 200 or more at a time by civilians and soldiers continued into early 1994, casting doubts on a quick return to peace.

Humanitarian organizations working in Burundi estimated that by December 1993 more than 100,000 people had been killed and tens of thousands more injured. An inquiry by foreign human rights organizations estimated that between 25,000 and 50,000 had been killed. The actual numbers may never be known. More than 700,000 people

fled to neighbouring countries and about 250,000 were displaced inside Burundi. By the end of 1993 humanitarian organizations reported that about 180 refugees were dying daily from exposure, disease and malnutrition. Many had returned clandestinely to Burundi by March 1994, amidst reports of a looming famine and further sporadic violence which forced some to flee again to Rwanda.

The scale and ferocity of the killings are virtually unprecedented in other parts of the world. The killings are a result of a persistent struggle between



Mokindo camp in Rwanda which holds over 50,000
Burundian refugees.

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the Hutu and Tutsi elite for control of state institutions and the privileges that accrue from them. Before the elections in June 1993 Tutsi had dominated political life since the first military coup in 1965. While the elections changed the political balance, Tutsi remained in control of the armed forces. Hutu challenges to Tutsi domination have each time been swiftly followed by indiscriminate armed force reprisals against Hutu civilians. Killings of varying magnitudes occurred in Burundi in 1965, 1969, 1972, 1988 and 1991. In April and May 1972 more than 80,000 people, most of them Hutu, were massacred by the armed forces.

Amnesty International believes that the main reason for these periodic mass killings is the fact that those responsible have never been identified by any formal investigation or brought to justice. Hutu and Tutsi elite have repeatedly triggered, incited, encouraged or condoned violence between a predominantly rural Hutu and Tutsi population in times of political crisis. Prominent members of both ethnic groups were invariably quick to blame all the violence on each other. The armed forces, ostensibly sent to flash points to quell the violence, have each time carried out systematic reprisal attacks and killings of the Hutu.

Previous Tutsi-dominated governments refused to allow any independent and impartial investigation of massacres, arguing that this would prevent national reconciliation. Amnesty International believes that the real reason for the governments' stance was to protect themselves and the armed forces from being identified as having been responsible in various ways for massacres. Government and the security force authorities who had ordered, carried out or condoned the massacres have remained largely unidentified and certainly unpunished. This impunity appears to have encouraged the Hutu to take the law into their own hands and carry out reprisals against innocent Tutsi, even though the two communities otherwise live together peacefully. Tutsi civilians also carried out reprisals, often supported by the armed forces. This has over the last three decades bred a false sense of security among the Tutsi and total mistrust and fear of the security forces by the Hutu. In early 1994 there were reports of a proliferation of firearms among the civilian population in Bujumbura. For example, firearms were being used in Hutu-dominated zones of Kamenge and Kinama to kill and displace Tutsi, while in Tutsi-dominated Musaga and Nyakabiga zones Hutu were being killed and driven out of the areas.

A commission of inquiry set up by the government in December 1993 failed to begin any investigations. Virtually nothing has been done to ensure that the armed forces are impartial and are held to account for their actions. Virtually nothing has

been done to prevent Hutu and Tutsi in official or unofficial positions of responsibility from encouraging and exploiting tensions between the two communities.

The massacres which occurred since 1988 received worldwide publicity. But as soon as journalists left the country or refugee camps in neighbouring countries the international community seemed to turn a blind eye. Inside Burundi itself successive governments have glossed over the killings, have failed to set up public commissions of inquiry to establish the causes of the violence, identify those responsible and make recommendations on how similar killings could be prevented.

Amnesty International is concerned that international action to prevent a recurrence of the massacres has been alarmingly inadequate. The organization is publishing this report to urge the international community to follow up their condemnation of the October 1993 attempted coup and the massacres which followed with action to ensure that everything possible is done to stop the violence and prevent its recurrence. Measures are urgently required to make the armed forces impartial and to ensure that members of the armed forces and others who violate human rights are brought to justice.



2. COUNTRYWIDE MASSACRES

In the early hours of 21 October 1993 members of the armed forces, led by soldiers from the 11th paratroopers battalion who were later supported by those from the 2nd armoured battalion in Bujumbura, attacked the presidential palace and took control of key installations. Two Amnesty International representatives were then in Bujumbura to hold talks with the newly-elected authorities on the protection and promotion of human rights. Within the first eight hours of the coup attempt the soldiers killed five senior government and National Assembly officials: President Ndadaye, the minister of the Interior, the President and Vice-President of the National Assembly and the head of the security police. The soldiers also killed two women, one the wife of the then Minister of Foreign Affairs and the other married to a member of the National Assembly. Many members of the armed forces and their civilian supporters were clearly jubilant during the first few days of the coup attempt. However, the atmosphere quickly changed when it became evident that the coup attempt had been condemned worldwide and that it had triggered widespread killings of Tutsi by Hutu government supporters.

Before he was executed President Ndadaye reportedly addressed the soldiers with the following words:

Mes chers militaires, pensez à ce que vous allez faire. Il faut qu'on s'entende sur vos souhaits. Pensez à votre peuple, à votre famille. Ne versez pas le sang. (My dear soldiers, consider what you are about to do. We should agree on your wishes. Think about your people, your family. Do not spill blood.)

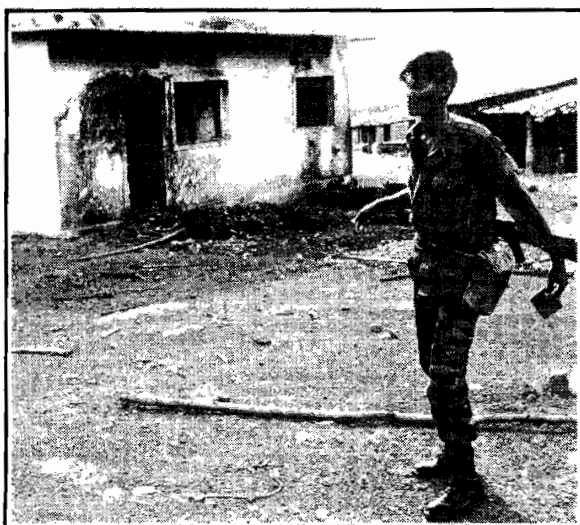
Despite his implied warning of bloodletting, they killed him. Soldiers reportedly used bayonets to kill President Ndadaye and shot or bayoneted to death the other victims. Members of the armed forces have frequently used bayonets to kill unarmed civilians, apparently because they allow them to get close to their unarmed, are re-usable and do not attract the attention of potential victims or witnesses as guns would.

Most people in the provinces first learned about the coup attempt from radio broadcasts from neighbouring Rwanda¹. Burundi government ministers in exile called for resistance to the coup. Government opponents and critics alleged that this call for resistance was an incitement to Hutu to attack innocent Tutsi civilians. The ministers have denied that they advocated violence. In many parts of the country Hutu organized themselves into gangs which took Tutsi villagers hostage and killed them when the death of President Ndadaye became



Funeral of assassinated President Ndadaye.
The widow and children of President Ndadaye at his funeral.

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A soldier outside the Kibimba petrol station where as many as 70 Tutsi school children were burnt to death.

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known. Observers believe that this is the first time in Burundi's bloody post-independence history that Tutsi have been killed in such large numbers. Most of those killed in previous massacres were Hutu, usually extrajudicially executed by the armed forces. Hutu blocked roads and destroyed bridges. This slowed the progress of the army and over many days thousands of defenceless Tutsi were slaughtered. The killings were widespread and indiscriminate. In some areas killings of Tutsi only stopped when the army arrived and began its own round of reprisal killings. The Tutsi were killed solely because they belonged to the same ethnic group as the soldiers. Some Hutu who belonged to Tutsi-dominated political parties or opposed the killing of Tutsi were also killed.

2.1 Killings of Tutsi by Hutu gangs

In many cases local Hutu leaders reportedly participated in, or condoned the killings of unarmed Tutsi civilians. On 22 October a local government official in Muruta district (*commune*), Kayanza province, reportedly organized the killing of 90 Tutsi and one Hutu who was a member of the former ruling *Union pour le progrès national* (UPRONA), Union for National Progress. The previous day the official had reportedly ordered the arrest of 43 Tutsi aged between 15 and 80 years. On 22 October 47 other Tutsi and one Hutu were reportedly arrested and assembled at Murangara trading centre. The same official allegedly urged other Hutu to kill those arrested after he had decapitated three of them using a machete. The killers reportedly escaped to Rwanda when the army arrived in the area to protect Tutsi survivors.

In Muramvya, the slain president's home province, a local government official reportedly separated Tutsi from Hutu and ordered the former to cut trees and block roads. The Tutsi, including **Father (Abbé) Basile Samoya**, a Roman Catholic priest of Munanira parish, who tried to prevent the killings, were killed. At Ntita in Gitega province a Hutu gang reportedly attacked a local medical centre, killing a doctor. They then attacked Tutsi sheltering at a nearby church, killing at least 30.

The most widely reported incident of Hutu excesses against the Tutsi was the burning to death of as many as 70 Tutsi students from Kibimba secondary school on 21 October 1993 in Gitega province. The students were first severely beaten and some injured with machetes and other weapons. They were then herded into a room in a dis-used petrol station, doused with petrol and set on fire. A Hutu gang blocked and guarded the exits to ensure that the victims did not escape. Few of the victims survived.

Further killings of Tutsi were reported in early



Victims of army killings in Kamenge, a Hutu populated suburb of Bujumbura. March 1994.

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Most of the victims were employees of a local secondary school and a medical centre. A witness said that several soldiers and a civilian came to the church compound and took away about 10 people who they accused of killing Tutsi. Moments later the witness heard several shots and two teachers were killed. The soldiers reportedly tied the hands of a local government official and tortured him to death. A local judicial official was among those killed. The school headmaster reportedly escaped.

On 28 December soldiers attacked Bugarama, a suburb of Bujumbura, and killed five Hutu. Many other people fled the area. On 6 March 1994 armed men, believed by many to be soldiers, massacred more than 200 unarmed Hutu during a night-time raid on Bujumbura's Kamenge zone. The victims included women and children. Among those killed was former President Ndadaye's driver, his two brothers and a nephew. The army denied responsibility but witnesses pointed to the use of bayonets and the swiftness and skill with which the killings were perpetrated as evidence. An identity card of an army warrant officer was reportedly recovered at the scene of the killings. The killings were reported to be a show of strength orchestrated by the army following the refusal by some Hutu civilians in Kamenge to be disarmed, following an exchange of fire with gendarmes. Army commanders were reported to have subsequently announced that they would use the army to disarm the civilians. They reportedly ignored calls made by the government on 5 March for the security forces to leave the area and stop attacks on civilians.

Many of those killed in Kamenge were reportedly transported in military trucks and dumped by soldiers on the banks of, and into the Ntakangwa and Rusizi rivers in Bujumbura. An 18-year-old survivor, **Zabulon Nkuzimana**, pretended to be dead when a soldier shot him in the shoulder. He and about 50 adults and children had been gathered in a compound by soldiers who subsequently opened fire and used bayonets on the group. He was taken along with many bodies and dumped in the River Rusizi. He reportedly managed to swim out of the river and sought medical care at Bujumbura's *Prince Regent Charles* hospital. Army officers reportedly came looking for him at the hospital after he told his ordeal to some staff there. Sympathizers reportedly helped him to leave the hospital and hide.

2.3 Killings of Hutu by Tutsi civilians

Tutsi civilians were also responsible for killing unarmed Hutu civilians, many times to avenge Hutu attacks on Tutsi. On numerous occasions members of the armed forces protected or assisted Tutsi civilians who carried out the attacks, and in

1994. At least 30 Tutsi villagers were reportedly killed on the night of 7-8 March in Tangara district, Ngozi province. The authorities reported several days later that more than 30 Hutu had been arrested in connection with the killings, although it was unclear whether any were formally charged with any offences.

2.2 Extrajudicial executions by the armed forces

When the killing of Tutsi civilians began, Tutsi members of the armed forces used military weapons against armed and unarmed Hutu civilians both to prevent, but often to avenge, killings of Tutsi. Reprisals were often carried out in areas where no violence had occurred. Soldiers used bayonets, grenades, light and heavy automatic weapons, armoured cars and helicopters to carry out their attacks. Their victims, including babies, pregnant women and children were shot in the back and killed or injured as they tried to flee. There were many reports of soldiers mutilating pregnant women. On 31 October soldiers in Ngozi reportedly crucified a woman and mutilated her. Soldiers executed Hutu sheltering in churches, schools or medical centres, especially in Gitega, Karuzi and Ruyigi provinces. In other cases they protected or armed Tutsi gangs to attack Hutu.

At the end of October 1993 soldiers went on the rampage in several zones of Gitega town. They were reportedly helped by Tutsi civilians to identify the homes of Hutu, who were then killed. One hundred or more Hutu, mostly members of FRODEBU, were killed by soldiers using guns, grenades and light armoured cars. Among those extrajudicially executed in Nyamugari zone was **Bruno Bashingwa**, an employee of a cooperative society. A protestant pastor, **Bonaventure Ndorimana**, was among those extrajudicially executed in Nyabugogo zone.

A few days after the attempted coup members of the armed forces in Cankuzo province beat to death at least seven villagers at Kamuna hill, Cankuzo district. It was reported that prior to the attack no Tutsi had been attacked or killed in the area. Witnesses said that members of the armed forces, thought to be gendarmes or soldiers, found the villagers at a barricade. An argument apparently ensued and the soldiers attacked and beat the seven people to death. The soldiers apparently made no attempt to arrest their victims, as they were empowered to if any offence had been committed. A local chief (*chef de secteur*), **Benoit Mbonerane**, was among those killed. One other victim apparently survived with severe injuries.

Several days after the coup attempt soldiers shot dead at least seven Hutu taking refuge at Kiremba Roman Catholic church in Gitega province.



Roget, 18, with his father. The army asked Roget and two Hutu friends to negotiate with the Tutsi community three days before this picture was taken. They were attacked by soldiers, two were killed, Roget fled to a swamp where he was caught and stabbed.

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some cases supplied them with firearms.

Around 22 October Tutsi students from Rusengo secondary school (*lycée*) went on rampage around Ruyigi town, killing at least 70 unarmed Hutu civilians including women and children. In an apparent attempt to ensure that they would not be vulnerable to counter attacks the Gendarmerie district commander for Ruyigi province reportedly distributed arms to the students. For three days the students and other Tutsi attacked Hutu civilians, including those who had taken refuge in the Ruyigi cathedral compound (*évêché*). Some of those killed were members of the local clergy such as a Roman Catholic priest and a seminarian, **Albert Rukarambuzi**. The governor of Ruyigi reportedly tried to stop the killings but was arrested by the commander and detained for one week. The only action known to have been taken by the military command was the transfer of the commander to Bujumbura where he was reportedly given responsibility for a mobile intervention unit (*unité d'intervention*) whose personnel and weapons he could again use to perpetrate or facilitate human rights violations.

In a separate wave of violence, between 31 January and 5 February 1994 Tutsi civilians killed more than 50 Hutu in Bujumbura. The violence started when Tutsi opposition leaders called on their supporters to take action to force the government to reverse its decision to dissolve the Tutsi-dominated Constitutional Court. Their supporters set up barricades and used violence to enforce a general strike declared by opposition parties. The violence later degenerated when Tutsi attacked and killed Hutu simply on account of their ethnic origin or political affiliation. Members of the armed forces were deployed to stop the violence but they failed to stop the violence in residential areas. The violence stopped when FRODEBU leaders agreed to give ministerial posts to opposition leaders whose supporters had carried out the violence.

3. RESPONSIBILITY FOR THE COUP ATTEMPT

Top army commanders have denied involvement in the coup attempt saying that only a minority of low ranking soldiers were responsible for carrying it out. However, some of the top commanders were present when soldiers from the 11th paratroopers battalion seized President Ndadaye, and failed to protect him.

Surviving members of the government in Bujumbura took refuge in the French Embassy. After the soldiers failed to establish a grip on power, they re-emerged as the country's government. Government ministers then moved from the Embassy in November 1993 to a hotel where they continued to be protected by some French soldiers. The government said it could not trust the army for protection, despite assurances by army commanders.

There have been reports that the October 1993 coup attempt was a follow-up to an attempt to seize power on 3 July 1993 when seven soldiers were arrested. One of these soldiers who had been freed on 21 October and seven others were arrested at the end of the month on the orders of the military procurator (*Auditeur militaire*) in connection with the October 1993 attempted coup. The soldiers had not been formally charged with any specific offence by March 1994.

Other soldiers suspected of involvement in the coup attempt are reported to have fled the country. At the end of December 1993 the Burundi Government asked the Uganda Government to extradite two Burundi army officers, Major Bernard Busokozwa and Lieutenant Paul Kamana, accused of carrying out the attempted coup. In early 1994 there were reports that at least two other Burundi army officers suspected of involvement in the coup attempt had been seen in the Ugandan capital, Kampala, travelling in an official vehicle with Ugandan army officer. Ugandan intelligence officials denied knowledge of the presence in Uganda of the Burundi army officers. At the end of January 1994 Ugandan President Yoweri Museveni announced that he had ordered the arrest of the suspects and their deportation to a country other than Burundi. By March 1993 it was still unclear whether they had been arrested or deported.

4. RESPONSE TO THE COUP

The world media reacted promptly to the coup attempt and many foreign governments and inter-governmental organizations such as the UN and the OAU condemned it. Western aid donors suspended cooperation with Burundi until the army returned power to the democratically elected government. The coup attempt crumbled when its perpetrators and their civilian supporters realised that their action had been condemned worldwide and that it had triggered countrywide massacres. However, the government has failed to exercise effective control over the armed forces which continue to violate human rights with impunity. It has also failed to restrain its own supporters. Crucially, the international community has also failed to take effective action to ensure that the Burundi civilian and military authorities end the violence, identify its perpetrators and bring them to justice.

The Burundi armed forces continue to use the equipment obtained from foreign countries against the civilians they are supposed to protect. France and Germany are among countries which have provided military training and equipment to the 18,000-strong Burundi army and Gendarmerie. Amnesty International is concerned that the training has certainly failed to change the character of the armed forces which continue to violate human rights with impunity. France has supplied weapons including armoured cars, helicopters and artillery pieces. The army is also equipped with armoured cars from the former Soviet Union.

4.1 Government reaction

When the coup attempt took place the government asked the UN and the OAU to send a military force to Burundi to protect remaining members of the government and prevent further killings. In November 1993 the government also asked the UN to set up an international commission of inquiry to investigate the coup attempt and the killings which followed².

At the start of December 1993 the government, which insisted that those responsible for the coup attempt and the subsequent killings must be brought to justice, set up a commission of inquiry, with the Procurator General as its president. By March 1994 the commission had failed to begin its work following the refusal of government opponents to cooperate. They claimed that it was "pro-government" and lacked expertise to carry out investigations. The opposition demanded an international commission of inquiry.

In November 1993 the FRODEBU-dominated National Assembly elected the former Minister of Foreign Affairs, Sylvestre Ntibantunganya, as its

President. Opposition parties, represented in the National Assembly by UPRONA, protested against the election. On 3 January 1994 the National Assembly elected former Minister of Agriculture and Animal Husbandry, Cyprien Ntaryamira, as head of state. Opposition leaders organized strikes and demonstrations to protest against his appointment and contested the appointment before the Constitutional Court. After several days Hutu members of the Court (in which Tutsi judges had a clear majority) resigned their posts amidst reports that the court was about to rule that the appointment of the head of state was unconstitutional. On 29 January the government dissolved the Court, leading to violent protests and killings by opposition supporters.

President Ntaryamira was sworn in on 5 February. On 7 February Prime Minister Sylvie Kinigi was replaced by her Minister of Public Works, Anatole Kanyenkiko. Both are Tutsi members of UPRONA.

4.2 Action by the UN and OAU

The UN declined to get involved militarily, but agreed to send civilian observers, including a five-person team to investigate responsibility for the coup attempt and work with the government commission of inquiry. The UN Secretary General appointed Ahmedou Ould Abdallah, a Mauritanian former Minister of Foreign Affairs, as his special representative to Burundi. By March 1994 the UN had not published any information about the representative's activities. In mid-March 1994 the UN Secretary General sent a three-person fact-finding mission, led by Siméon Aké, former Foreign Minister of Côte d'Ivoire, to investigate the coup attempt and the massacres of October 1993. The mission was also mandated to examine with the Secretary General's special representative and the Burundi Government what other activities might be undertaken by the United Nations in exercise of the Secretary General's good offices. The UN did not publish any information about the terms of reference or powers of this mission and it was consequently not possible to determine whether it would be consistent with international standards for inquiries into human rights violations.

In early March 1994 the UN Commission on Human Rights expressed its deep concern at the loss of life and other violations of human rights in Burundi. It condemned the brutal and violent break in the democratic process initiated in Burundi and demanded an immediate end to acts of violence and military coercion. It invited the Burundi authorities to conduct a prompt inquiry into the killings and bring those responsible to justice. However, the Commission did not recommend any specific measures by the UN to help end the vio-

lence and bring those responsible to justice; nor did it appoint a Special Rapporteur (as it did in relation to neighbouring Zaire) to monitor the human rights situation or engage the Burundi authorities in discussions about measures to prevent further killings.

In late 1993 the OAU Secretary General appointed a Senegalese Ambassador, Papa Louis Fall, as his representative in Burundi. The OAU announced that it would send 180 soldiers and 20 civilians to assist the country return to stability. The OAU team was named *Mission de protection et d'observation pour le rétablissement de la confiance au Burundi* (MIPROBU), Protection and Observation Mission to Re-establish Confidence in Burundi. In December Burundi opposition parties, which apparently believe that the arrival of the OAU force would strengthen the government and weaken the army, organized demonstrations to oppose the arrival of the OAU force. The OAU Secretary General's representative was in Bujumbura at the time. A 15-person OAU team arrived in Burundi to try to build "bridges of peace" between different sectors of society and a technical mission of military officers visited Burundi to examine the practical problems which the OAU peace-keeping force would face. By March 1994 the OAU had not issued any public reports about the activities of the special representative or the military contingent. It consequently remained unclear whether the OAU force would be deployed and, if so, what role it would play in preventing further killings.

4.3 Inquiry by human rights groups

At the end of 1993 foreign non-governmental human rights organizations formed their own international commission of inquiry to investigate the October 1993 coup attempt and the massacres which followed. The commission carried out investigations from 27 January to 10 February 1994. In a press release issued in February 1994 the commission concluded that:

- the armed forces were directly or indirectly responsible for the massacres.
- most members of the armed forces actively or passively participated in the assassination of President Ndadaye.
- the violence was a direct consequence of the coup attempt and particularly the death of the President.
- in some parts of Burundi, Hutu, at times guided by local authorities, systematically killed Tutsi and their Hutu allies.
- the armed forces, at times collaborating with Tutsi civilians, systematically killed Hutu during reprisal attacks, but at times with no appar-

ent pretext, using disproportionate force for the needs of maintaining law and order.

- total impunity for perpetrators was likely to encourage a recurrence of the massacres.
- between 25,000 and 50,000 people had been killed, but the actual number may never be known.

The press release did not include recommendations to the Burundi authorities or the international community. The commission was expected to publish a full report in April 1994.



5. APPEAL TO THE INTERNATIONAL COMMUNITY

The government has not been able to exercise control over the armed forces whose loyalty is in doubt as most of the army failed to defend the government on 21 October 1993. The government's own commission of inquiry has failed to carry out any investigations. It is unclear whether the government will have the confidence and resources to implement recommendations of the inquiry carried out by foreign non-governmental organizations. Many Tutsi hold the government responsible for massacring members of their ethnic group. The Tutsi-dominated judiciary is viewed by Hutu as neither independent nor impartial. In such a situation, where virtually no institutions have the confidence of the population as a whole, where virtually all aspects of public life are affected by the partisan interests of either the Tutsi or the Hutu community, the country evidently needs to embark on a long process of reconstruction and confidence-building, in which awareness and respect for human rights are promoted and the rule of law established.

Amnesty International is appealing to international opinion to urge governments throughout the world and intergovernmental organizations to respond to the call of the people of Burundi for their assistance in bringing an end to the killings. This must include identifying those responsible for the killings and bringing them to justice; unless this happens, others who expect similar impunity are likely to order, encourage or perpetrate further killings. Amnesty International believes that the moment has come to end impunity and break the cycle of violence.

With so much polarization between the government on the one hand and the army on the other, indeed between the entire Hutu and Tutsi communities, there is a need for neutral intermediaries to facilitate the building of a base for the rule of law and respect for the most fundamental right to life. Amnesty International urges governments and international organizations to:

- Urge the government, political parties and the security forces to stop perpetrating or condoning human rights abuses and instead to condemn them publicly and energetically.
- Urge countries which provide training, weapons or other facilities to the Burundi armed forces to use their contacts and influence to obtain guarantees from civilian and military authorities that these armed forces will be transformed from a partisan killing machine into an impartial and humane protector of all Burundi's citizens and institutions.
- Appoint legal and human rights experts to assist

the Burundi authorities to study the report and recommendations of the inquiry carried out by foreign non-governmental human rights organizations, with a view to drawing up an appropriate follow-up.

- Assist the government to consider whether there still remain any aspects of Burundi's post-independence political violence which require further investigation and, if so, set up a public commission of inquiry, which satisfies all relevant international standards, composed of people known in Burundi for their independence and impartiality. The commission should have full powers to investigate all aspects of the coup attempt and the abuses that ensued and to oblige all witnesses — both members of security force and civilians — to give evidence. The commission's terms of reference should include making prompt recommendations to the government, the armed forces, political leaders and society as a whole on measures required to prevent a recurrence of massacres. The findings of the inquiry by foreign human rights organizations and any other subsequent inquiry should be used in criminal investigations with a view to bringing to justice members of the security forces or civilians alleged to be responsible for human rights abuses.
- Second legal and other experts to assist the government and the judiciary to ensure that the judiciary is both competent and impartial and that trials of those accused of human rights violations or other crimes are given a fair trial in accordance with international standards.
- Assist the people of Burundi and their government to implement recommendations of the commission of inquiry on measures to prevent killings in the future, including training for the security forces and civilians regarding respect for human rights, particularly the right to life.
- Urge the UN to ensure that any international fact-finding mission's investigation be consistent with the UN's own standards and that if the fact-finding mission's mandate is not to be that broad, to urge the UN to request the Burundi authorities to invite the UN Commission on Human Rights' Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Burundi.
- Urge the OAU to ensure that if deployed, the Protection and Observation Mission to Re-establish Confidence in Burundi is encouraged to implement Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations in *Peace-keeping and human rights*³ (AI Index: 1OR 40/01/94).

ENDNOTES

¹ Ethnic tensions in Rwanda have also resulted in human rights violations. Since October 1990 officials of the Hutu-dominated government have ordered or condoned the killing of several thousand Rwandese minority Tutsi.

² The UN also played a role in relation to Burundi in the past. From the mid-1920s until independence in July 1962 the kingdoms of Burundi and Rwanda (its northern neighbour) were placed under the control of Belgium by the League of Nations and its successor, the United Nations.

³ In January 1994 Amnesty International published a paper containing a 15-Point Program for Implementing Human Rights violations in International Peace-keeping Operations, aimed at the incorporation into all peace-keeping and other relevant UN field operations essential measures to ensure respect for human rights as well as monitoring, investigation and corrective action in respect of violations. The 15-Point Program is addressed to all those involved in the establishment of such operations - the parties to the conflict, observer governments involved in the process and other UN Member States as well as the UN secretariat and other UN bodies and specialized agencies.

KEYWORDS: COUPS¹ / ETHNIC GROUPS¹ / EXTRAJUDICIAL EXECUTION¹ / COMMUNAL VIOLENCE¹ / POLITICIANS / WOMEN / RELIGIOUS OFFICIALS - CATHOLIC / DOCTORS / STUDENTS / INFANTS / CHILDREN / PREGNANCY / RELIGIOUS OFFICIALS - PROTESTANT / DRIVERS / FAMILIES / IMPUNITY / MEC / UN / OAU / INVESTIGATION OF ABUSES / MILITARY¹ / ARMED CIVILIANS¹ /

AI Index : TG AFR 47/91.23/F
Novembre 1991

MÉ MORANDUM
AU GOUVERNEMENT DE LA RÉPUBLIQUE RWANDAISE

Préoccupations et recommandations d'Amnesty International
relatives à la protection des droits de l'homme

(à la suite de la visite de délégués d'Amnesty International à Kigali en juin 1991)



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TABLE DES MATIERES

1.	INTRODUCTION	1
2.	PRÉOCCUPATIONS ACTUELLES D'AMNESTY INTERNATIONAL AU RWANDA . . .	2
2.1	Procès devant la Cour de sûreté de l'Etat	2
2.2	Arrestations et détentions arbitraires	5
2.3	Allégations de torture et autres formes de mauvais traitements	7
2.4	Informations faisant état d'exécutions extrajudiciaires . .	9
3.	RÉPONSE DU GOUVERNEMENT RWANDAIS AUX SUJETS DE PRÉOCCUPATIONS EXPOSES PAR AMNESTY INTERNATIONAL	11
4.	QUELQUES PRÉOCCUPATIONS ET RECOMMANDATIONS EXPOSÉES AU GOUVERNEMENT RWANDAIS EN 1986	13
4.1	Législation restreignant la liberté d'expression	14
4.2	Torture	15
4.3	Détention de prisonniers dans des cachots noirs	16
5.	RECOMMANDATIONS D'AMNESTY INTERNATIONAL RELATIVES À LA PROTECTION DES DROITS DE L'HOMME	16
5.1	Garanties d'un procès équitable	16
5.2	Protection des citoyens contre les arrestations et la détention arbitraires	17
5.3	Prévention de la torture	18
5.4	Mettre fin aux exécutions extrajudiciaires	20
	Appendice 1	24

1. INTRODUCTION

Depuis 1980, Amnesty International a, à maintes reprises, demandé aux autorités rwandaises de prendre des mesures visant à empêcher les violations des droits de l'homme. Or, si des prisonniers d'opinion ont été libérés et des condamnations à mort commuées, il semble bien que rien n'a été fait pour s'attaquer aux causes de ces violations. Les délégués d'Amnesty International qui se sont rendus à Kigali en juin 1991 ont noté qu'à bien des niveaux, les autorités n'avaient pas engagé de réformes significatives, malgré les graves violations des droits de l'homme commises après les arrestations massives d'octobre 1990 et de la période suivante.

Le système juridique adopté en 1962, au moment de l'indépendance, avait été instauré par l'administration coloniale belge et, à l'instar de nombreux systèmes juridiques institués par des gouvernements coloniaux, ne comporte pas de garanties suffisantes du respect des droits de l'individu face à l'Etat. S'il est vrai, au regard du droit, que toute personne arrêtée ou accusée d'un crime est présumée innocente tant que sa culpabilité n'a pas été établie, en pratique, la structure et l'application du système juridique vient, dès le départ, conforter la présomption de culpabilité - et non d'innocence - des suspects en général, et des détenus attendant de passer en jugement en particulier.

La pénurie de juristes qualifiés et, par voie de conséquence, l'absence quasi-totale d'avocats de la défense dans la plupart des procès, a contribué au maintien de cette orientation. Il semble que l'absence d'une défense solidement argumentée ait amené les juges à croire que les accusations du ministère public ne seraient pas contestées - et certainement pas sur des points de droit - et le public en général à s'attendre à un verdict de culpabilité à l'encontre des accusés. Ce même système, hérité du passé colonial, prévoit, pour des infractions pénales similaires, des peines relativement plus sévères que celles prévues dans bien d'autres pays.

Il n'est donc pas étonnant, dans de telles conditions, que les deux premiers avocats à avoir accepté, cette année, d'assurer la défense de prisonniers accusés d'avoir eu des liens avec des opposants armés, les Inkotanyi, [appellation locale des membres du Front patriotique rwandais (FPR)] aient dû se retirer après avoir fait l'objet de menaces et avoir, à leur tour, été accusés par de nombreuses personnes, y compris des journalistes et un juge de la Cour de sûreté de l'Etat, d'être des sympathisants des opposants. Le procès, qui a eu lieu malgré le retrait des avocats, a été manifestement inéquitable et s'est déroulé dans un climat de crise politique et d'incitations à la vengeance. Plusieurs accusés ont été déclarés coupables sur la foi de déclarations faites sous la torture et, alors qu'il était établi qu'aucune des 12 personnes traduites en justice n'avait directement participé à la rébellion, sept d'entre elles ont été condamnées à mort le 1er février 1991. Dans ce genre de situation, où un gouvernement et ses juges se laissent influencer par des manifestations d'hystérie collective, le droit et les institutions judiciaires se trouvent finalement dévoyés par l'esprit de revanche et d'étroits intérêts sectaires, au mépris d'une authentique justice.

.../...

A l'issue de la visite d'une délégation d'Amnesty International au Rwanda il y a cinq ans, en mai 1986, l'organisation avait présenté au gouvernement un mémorandum exposant neuf recommandations principales en faveur de mesures visant à prévenir des violations des droits de l'homme précises ou à y mettre fin. Si elles avaient été suivies d'effet, ces recommandations auraient pu empêcher quelques-unes des pires violations de la fin de l'année 1990 et du début de 1991. Elles préconisaient en particulier la modification de la législation (notamment de l'article 166 du Code pénal) autorisant l'emprisonnement pour délit d'opinion, la fin de la détention prolongée au secret, la levée de l'interdiction de recevoir des visites de leur famille frappant pendant des mois, voire des années, les détenus attendant d'être traduits en justice, et la fin de la détention dans des cachots noirs ou "kamironko".

Bon nombre des mesures qu'Amnesty International recommande actuellement pour mettre fin aux violations des droits de l'homme sont essentiellement les mêmes que par le passé, à l'exception des mesures qui, à l'évidence, s'imposent dorénavant pour mettre un terme à la torture et aux exécutions extrajudiciaires.

2. PRÉOCCUPATIONS ACTUELLES D'AMNESTY INTERNATIONAL AU RWANDA

2.1 Procès devant la Cour de sûreté de l'Etat

Aux termes de l'article 147 du Code de procédure pénale, la Cour de sécurité de l'Etat a qualité pour juger les personnes accusées de porter atteinte à la sûreté intérieure et extérieure de l'Etat en temps de paix ou en cas d'état de siège déclaré. Les premiers procès devant la Cour de personnes arrêtées à la suite de l'invasion d'octobre 1990 ont eu lieu au début du mois de janvier 1991.

Près de 30 personnes accusées de crimes ou délits pour avoir exercé leurs droit à la liberté d'expression et d'association ont été jugées au Rwanda entre mars et octobre 1990. Plus de 20 d'entre elles, dont des journalistes et des membres de la secte religieuse des témoins de Jéhovah, ont comparu entre mars et août 1990 devant la Cour de sûreté de l'Etat de Kigali, la capitale, et ont été condamnées à des peines de cinq à 10 ans d'emprisonnement.

Rwabukwisi Vincent, rédacteur en chef du journal Kanguka, est l'un des journalistes jugés par la Cour de sûreté de l'Etat en 1990. Arrêté en juillet de la même année il était inculpé d'atteinte à la sûreté de l'Etat pour avoir rencontré des exilés rwandais à Nairobi, capitale du Kenya, notamment Kigeri Ndahindurwa, l'ancien mwami du Rwanda. A deux reprises, la Cour de sûreté de

¹ Pour une liste complète des recommandations présentées en août 1986 voir l'Appendice 1.

l'Etat a refusé de statuer pour insuffisance de preuves. Mais en octobre 1990, après l'invasion rebelle, cette même Cour l'a condamné à 15 ans d'emprisonnement, apparemment sans éléments de preuve nouveaux. Il semblait donc être un prisonnier d'opinion incarcéré pour avoir exercé sa profession de journaliste. En mai 1991, il a été à nouveau arrêté avec quatre autres journalistes à la suite de la publication d'articles qui auraient déplu aux autorités. Mais il semble être le seul inculpé d'atteinte à la sûreté de l'Etat, apparemment pour avoir publié un article qui, de l'avis des autorités, soutenait la cause des rebelles. Deux autres journalistes du Kanguka, arrêtés en mai 1991, ont été relâchés en août 1991 sans que l'on sache très bien si les poursuites ont été abandonnées. Rwabukwisi Vincent a lui-même bénéficié en septembre 1991 d'une libération provisoire dont les conditions n'ont pas encore été rendues publiques.

Deux journalistes accusés d'avoir diffamé des membres du gouvernement sont passés en jugement devant le tribunal de première instance de Kigali en juillet 1991 ; l'un d'eux, qui n'avait pas fait l'objet d'une arrestation, a été déclaré coupable et condamné à un an d'emprisonnement, mais n'a pas purgé sa peine à la suite d'une action en recours. Le deuxième, Hangimana François-Xavier, a été condamné en août 1991 à deux ans d'emprisonnement. Le tribunal l'a reconnu coupable de diffamation envers l'actuel ministre de la Justice et son prédécesseur. Lui aussi a été libéré en septembre dernier.

La Cour de sûreté de l'Etat saisie des affaires en 1990 et au début de janvier 1991 était composée de cinq juges. Trois d'entre eux, deux militaires et un membre du Cabinet du Président, n'avaient pas la formation juridique nécessaire. Aussi est-on naturellement amené à douter de l'indépendance et de l'impartialité d'un tribunal ainsi composé, et le problème est resté entier avec la nomination en janvier 1991 de nouveaux juges choisis parmi de hauts fonctionnaires et des officiers de l'armée active.

Un représentant d'Amnesty International qui a assisté au procès de 13 personnes le 3 janvier 1991 en a constaté le caractère sommaire et inéquitable. Le procès s'est déroulé dans un climat de vengeance, débutant et se terminant par des enregistrements de chants de victoire des troupes gouvernementales sur les rebelles. L'audience a duré à peine cinq heures. Aucun des accusés n'était assisté d'un avocat, alors que 12 d'entre eux, dont un garçon de 16 ans, étaient passibles de la peine capitale. Ils ont, pour la plupart, déclaré avoir avoué leur culpabilité sous la menace ou les coups alors qu'ils étaient en détention préventive ; or la Cour n'a pas ouvert d'enquête sur ces allégations ni déclaré leurs aveux irrecevables. Elle a, à maintes reprises, refusé dans le passé d'enquêter au sujet d'allégations de torture. Aucun témoin n'a comparu devant la Cour de sûreté de l'Etat. Aucun élément de preuve sérieux n'est venu étayer les accusations portées par le représentant du ministère public contre le principal accusé Karuranga Jean-Chrysostome ; en particulier l'arme à feu que ce dernier aurait cachée n'a pas été retrouvée à l'endroit où elle était censée être enterrée. Karuranga Jean-Chrysostome a été condamné à mort le 7 janvier 1991, neuf autres accusés à des peines de 15 à 20 ans d'emprisonnement, deux autres à un emprisonnement de plus courte durée, un seul d'entre eux a été acquitté.

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Dans un deuxième procès qui s'est terminé le 1er février 1991, les 12 accusés étaient bien assistés d'avocats. Mais ces derniers n'ont pas eu le droit d'appeler des témoins à la barre, ni même de procéder à l'interrogatoire d'autres accusés qui s'étaient avoués coupables et avaient impliqué certains de leurs coaccusés dans des dépositions faites alors qu'ils étaient en détention. En particulier, les accusés, qui avaient déclaré que les dépositions invoquées par le ministère public comme élément de preuve de leur culpabilité avaient été obtenues par la torture ou la contrainte, n'ont pu faire témoigner un médecin à l'appui de leurs affirmations. La Cour, arguant du fait que les prisonniers avaient reçu la visite de diplomates en poste dans les ambassades étrangères de Kigali, lesquels n'avaient pas remarqué de traces de torture, n'a pas jugé bon d'entendre ce témoignage. Or, la visite de la prison de Ruhengeri, où étaient incarcérés les accusés, avait eu lieu en octobre 1990, et ce n'est qu'après cette date que certains des accusés auraient été torturés.

Pendant tout le procès, les juges ne sont jamais intervenus pour rétablir l'ordre lorsque le public applaudissait l'accusation et conspuait la défense. L'un d'eux a censuré un avocat, alléguant que le public pensait qu'il était partisan des Inkotanyi. Cet avocat et l'un de ses confrères se sont alors retirés de l'affaire après avoir reçu des menaces de mort anonymes. Sur les 12 accusés, sept ont été condamnés à mort, un à 10 ans d'emprisonnement, trois ont été acquittés et un a été mis en détention préventive pour permettre un complément d'enquête. Ce procès, par la présence d'avocats - encore que deux d'entre eux aient abandonné et qu'un troisième n'ait pu présenter la défense de ses clients - tranche avec de nombreux procès des années 80, où les accusés avaient été jugés en l'absence d'un avocat. Même lorsqu'ils encourent la peine de mort, les accusés sont généralement jugés sans bénéficier de l'assistance d'un défenseur.

Les accusés condamnés par la Cour de sûreté de l'Etat n'ont pas le droit d'interjeter appel auprès d'une juridiction supérieure, bien qu'ils puissent former un recours sur des points de droit devant la Cour de cassation dans un délai de dix jours à compter du prononcé du jugement. Le recours leur permet de contester le jugement en alléguant que la procédure n'a pas respecté les formes prescrites par la loi, sans toutefois leur permettre d'obtenir révision de leur sentence ou des témoignages à charge. Dans le passé, les accusés ont rarement exercé ce droit, mais les personnes condamnées le 1er février 1991 ont décidé de se pourvoir en cassation. Celles condamnées le 7 janvier ne l'auraient pas fait parce qu'elles n'avaient pas été représentées par un avocat lors de leur procès et n'avaient donc pas été conseillées quant à leurs droits. Les personnes condamnées le 1er février ont bénéficié d'un délai de pourvoi de 30 jours - plus long que le délai ordinaire - et toutes semblent s'être prévaluées de leur droit de recours. Mais leur demande a été rejetée. Les huit condamnations à mort prononcées au cours des deux procès ont été commuées mais les 20 personnes condamnées à des peines d'emprisonnement sont toujours incarcérées.

Dans la quasi-totalité des cas portés à la connaissance d'Amnesty International dans les années 80, les prévenus condamnés par la Cour de sûreté de l'Etat n'avaient pas reçu copie du jugement dans le délai légal de 10 jours à compter du prononcé de la peine ni été assistés par un avocat qui aurait pu

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les conseiller sur des points de droit. Ainsi donc le droit d'appel prévu par la loi n'a pu être effectivement exercé dans la pratique. Par ailleurs, certains accusés semblaient penser qu'invoquer ce droit réduirait leurs chances de grâce présidentielle. Mais d'autre part, lorsque des prisonniers, invoquant des raisons humanitaires, ont sollicité leur mise en liberté auprès du Président, cette démarche a parfois été interprétée comme un aveu de culpabilité : telle a été l'interprétation de la Cour de sûreté de l'Etat à l'égard d'un des accusé qui avait sollicité sa remise en liberté à la fin de l'un des procès de janvier 1991. On voit par là que les personnes inculpées d'infraction pénale au Rwanda se heurtent à un système juridique quasiment perverti à tous les niveaux.

2.2 Arrestations et détentions arbitraires

Selon ce qu'on avait déjà dit aux délégués d'Amnesty International en 1986, les noms de tous les suspects mis en état d'arrestation et gardés à vue par la gendarmerie nationale sont inscrits sur un registre que compulse chaque jour un représentant du ministère public ainsi tenu au courant de toute nouvelle affaire. La gendarmerie nationale a également déclaré que seul le ministère public pouvait, en délivrant un mandat d'arrêt provisoire, ordonner la détention au delà de 48 heures. De plus, a-t-on dit aux délégués, le ministère public est tenu, conformément à l'article 38 du Code de procédure pénale, de présenter les détenus à un juge dans les cinq jours qui suivent la délivrance du mandat d'arrêt provisoire. Les détenus peuvent alors être remis en détention préventive pour de nouvelles périodes successives de 30 jours mais, a-t-on indiqué aux délégués, dans les affaires pénales ordinaires, la détention préventive dépasse rarement les 90 jours.

En pratique, les mandats d'arrêt et de détention requis par la loi ne sont pas délivrés ou le sont rétroactivement pour parer les cas de détention illégale d'un semblant de légalité. Comme les procédures relatives à la détention préventive ne sont pas respectées - ordonnance de mise en détention préventive contre laquelle l'inculpé peut former un pourvoi - les détenus ne peuvent se prévaloir de la faculté de faire appel de leur maintien en détention. En conséquence, la détention ordonnée par les forces de sécurité sans en référer au ministère public (telle que la garde à vue) et la détention préventive ordonnée par le ministère public peuvent être prolongées indéfiniment sans qu'il soit possible de former un pourvoi. Par exemple, un étudiant arrêté en 1986 pour atteinte à la sûreté de l'Etat n'a été jugé qu'en 1990. Il a alors été reconnu coupable d'avoir créé un parti politique (dont il aurait été l'unique membre) et condamné à cinq ans d'emprisonnement. Il n'a pas eu l'assistance d'un avocat et la cour n'a pas critiqué la longueur de sa détention préventive. Il a été libéré en avril 1991 après avoir passé quatre ans et demi en prison, à la suite d'un décret du président réduisant la durée des peines.

Plus récemment, Amnesty International a appris que les procédures légales n'avaient pas été observées lors des arrestations de militaires et de civils opérées au moment de l'attaque des rebelles. Par exemple, le lieutenant-colonel Uwihoreye Charles, qui commandait Ruhengeri au moment de l'attaque, le 23 janvier 1991, a été arrêté peu après les combats, mais son

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mandat d'arrêt n'a été délivré que le 21 février 1991. Son interrogatoire par des magistrats n'a eu lieu que le 4 mai et l'ordonnance de mise en détention préventive, dont il n'a pas été avisé, a été délivrée le 13 mai. A la fin de juillet 1991 le conseil de guerre l'a déclaré coupable d'insubordination et condamné à huit ans d'emprisonnement.

Un autre officier, **Munyagatanga François-Xavier**, arrêté le 21 octobre 1990, aurait subi son premier interrogatoire en janvier 1991. Son ordonnance de mise en détention a été délivrée fin avril ; il a donc été maintenu en détention illégale pendant près de six mois. Le pourvoi formé le 6 mai 1991 contre cette détention n'a pas été examiné : la raison invoquée était l'absence de magistrats militaires (la cour militaire est saisie des pourvois émanant des tribunaux militaires ; son président - un civil - siège avec les magistrats militaires). En juillet 1991, le conseil de guerre l'a déclaré coupable d'avoir abandonné des positions à l'ennemi (les rebelles) en octobre 1990 et condamné à sept ans d'emprisonnement.

Il semble que le conseil de guerre ait suspendu ses travaux au début d'août 1991 sans indiquer la date à laquelle il les reprendrait. Parmi les affaires en suspens, celle du major **Sabakunzi François** qui avait comparu devant le conseil de guerre le 22 juillet 1991. Le major avait été arrêté en octobre 1990. Dans son cas, comme dans celui des deux officiers évoqués plus haut, il y avait eu inobservation des procédures prescrites. Les procès s'étaient tenus à huis clos, dans une salle d'audience proche de la prison de Kigali où le public n'avait pas été admis, si bien que l'on sait peu de choses sur leur déroulement. Il y avait donc peu de chances, selon les observateurs, que les procès aient été équitables.

Il est rare que les fonctionnaires de l'ordre judiciaire critiquent ou relèvent le fait que les forces de sécurité et le ministère public n'ont pas observé les règles de procédure : les tribunaux ne prennent aucune mesure lorsqu'il est manifeste que les prévenus ont été illégalement maintenus en détention pendant de longues périodes. Peut-être cet état de choses s'explique-t-il par le nombre, très faible, des avocats de la défense et leur absence quasi-totale lors des procès politiques. Il est aussi facilité par le fait qu'aucune sanction ne semble prévue en cas de détention illégale. Il n'y a, par exemple, aucun mécanisme de libération d'office lorsque les délais prévus par la loi n'ont pas été respectés, et il n'est nulle part indiqué que la sanction de la violation des règles de procédure doit être la nullité absolue de l'acte illégal et de toute la procédure subséquente - sanction prévue dans d'autres pays.

Pendant la crise d'octobre 1990, les autorités ont explicitement décidé que les procédures normales de détention ne leur permettraient pas d'engager des poursuites contre les milliers de personnes détenues. Elles ont créé une commission de triage composée de membres des forces de sécurité et du ministère public, apparemment sans base légale. En pratique, la commission a fait fonction de comité de révision dans le cadre d'un système d'internement administratif. Car bien que l'internement administratif de longue durée (détention sans inculpation ni jugement au-delà de quelques jours autorisée par des membres des forces de sécurité ou de hauts fonctionnaires et non par une autorité judiciaire) ne soit pas autorisé par le droit rwandais, les

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détentions en masse constituaient en fait une forme d'internement administratif puisque, sur les quelque 8 000 personnes détenues, seules quelques douzaines ont été inculpées et jugées. La Commission de triage a ordonné de nombreuses libérations, mettant ainsi un terme à nombre de cas d'incarcération arbitraire ou sans objet. Ses critères de choix n'ont pas été divulgués. Les libérations de personnes détenues à Kigali ont été suspendues en novembre 1990, apparemment en raison de l'opposition que ces mesures avaient rencontrée parmi la population et certains responsables gouvernementaux et chefs des forces de sécurité. L'examen par la Commission du cas des détenus, parfois en leur présence, mais le plus souvent en leur absence, était la seule forme de garantie contre la détention arbitraire. Avec la suspension, sur ordre des autorités politiques, des activités de la Commission, plus rien ne s'est opposé au maintien en détention jusqu'en mars 1991, date à laquelle les autorités sont une nouvelle fois intervenues pour ordonner la libération de tous les détenus contre lesquels n'existaient pas de preuves suffisantes.

2.3 Allégations de torture et autres formes de mauvais traitements

Amnesty International a reçu de nombreux récits de torture qui concordent avec des informations émanant d'autres sources, parfois preuves médicales à l'appui, et semblent crédibles. L'organisation en a conclu qu'avec le début des arrestations en masse d'octobre 1990, la torture était rapidement devenue un problème majeur en matière de droits de l'homme : outre les nombreux sévices exercés sur les prisonniers lors des rafles massives d'octobre 1990, les agents du service central de renseignement et la gendarmerie ont eu recours à la torture pendant les interrogatoires afin de forcer les détenus à fournir des informations, à s'avouer coupables et à signer des dépositions dont bien souvent ils n'avaient même pas pris connaissance. On a signalé des cas de torture non seulement au plus fort de la crise de la fin de l'année 1990, mais en 1991 également.

Différentes méthodes de torture auraient été utilisées - parfois les victimes ont été frappées, avec des instruments aussi divers que fils électriques ou manches de houe. Dans certains cas elles ont subi des décharges électriques. L'une d'elles aurait été contrainte de boire de l'urine et d'absorber des matières vomies. Fin 1990 un certain nombre de prisonniers ont été torturés dans une prison du nord-ouest du Rwanda. Mais la plupart des cas de mauvais traitements signalés à Amnesty International se sont produits dans les centres de détention de Kigali - au Fichier central de la Gendarmerie (également appelé "Service de criminologie"), dans les centres de détention de Gikondo et Muhima et à l'état-major des forces armées.

A titre d'exemple, un prisonnier, Mukuralinda Charles, a d'abord été détenu au centre de détention de Gikondo de la gendarmerie nationale à Kigali, au début d'octobre 1990. Par la suite, il a été transféré à la prison principale de Ruhengeri, ville du nord-ouest du pays, et incarcéré avec d'autres détenus dans le quartier des femmes de la prison déjà surpeuplé. Le 28 octobre 1990, des membres du service central de renseignement et un soldat de la gendarmerie nationale lui ont fait subir un interrogatoire de six heures au cours duquel des agents de la sécurité l'auraient fouetté et frappé à coups de pied. Des fils électriques auraient été attachés à sa main droite.

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Périodiquement, pendant l'interrogatoire, on lui donnait lecture de noms de sympathisants présumés des rebelles et on lui demandait s'il les connaissait.

Après l'interrogatoire, il a été détenu quelques jours dans une cellule obscure, "le cachot noir". Aucune inculpation n'a été formellement prononcée contre lui. Le 16 novembre 1990, les mêmes agents de la sécurité l'ont soumis à un interrogatoire toute une journée et l'ont à nouveau battu, frappé à coups de pied et contraint de signer des dépositions écrites. Il ignorait tout de l'accusation d'atteinte à la sûreté de l'Etat portée contre lui jusqu'à sa comparution devant la Cour fin décembre 1990 et son premier entretien avec un avocat.

Un autre prisonnier arrêté en même temps, Rugema Donatien, a été détenu dans les mêmes conditions. Le 16 novembre 1990, il a été interrogé pendant plus de quatre heures par des agents du service central de renseignement, qui l'ont accusé de collaborer avec les rebelles et l'ont frappé avec un câble électrique lorsqu'il a nié les faits reprochés. Après l'avoir battu, les agents lui ont dicté une déposition où il aurait reconnu sa collaboration avec les rebelles. Après son interrogatoire, il a été menotté et détenu plusieurs jours dans un cachot noir.

Le 6 décembre 1991, Rugema Donatien a été transféré à la prison centrale de Kigali en attendant de passer en jugement. Il a été interrogé à nouveau le 8 décembre 1990 par des représentants du ministère public, et à cette occasion est revenu sur la déposition qu'il avait faite le 16 novembre. Quand son procès s'est ouvert le 28 décembre il n'avait pas été autorisé à prendre connaissance de son dossier. Condamné à mort à l'issue du procès, le 1er février 1991, avec Mukuralinda Charles et cinq autres coinceulps, les prisonniers ont bénéficié en avril 1991 d'une commutation de peine capitale en emprisonnement à perpétuité.

La torture et les mauvais traitements semblent facilités par le manque de garanties contre les détentions arbitraires - en particulier l'impossibilité pour les détenus de communiquer avec leur famille ou leur avocat et de bénéficier de soins médicaux indépendants -, par la quasi-absence de supervision judiciaire des affaires dans les semaines ou les mois qui suivent l'arrestation ; et par le fait que la Cour de sûreté de l'Etat s'abstient, lorsque les affaires viennent en jugement, d'ordonner l'ouverture d'une enquête approfondie et indépendante sur les allégations de torture faites par les accusés.

D'autres informations faisant état de mauvais traitements concernent les prisonniers détenus par les militaires. Ceux-ci auraient ligoté des prisonniers, les bras derrière le dos étroitement liés au-dessus du coude, position douloureuse pouvant entraîner des troubles physiques ; dans certains cas les jambes des victimes sont attachées aux poignets. Au Zaïre voisin, ce procédé est aussi utilisé par les soldats et dénommé en langue lingala "maloba ya mokonzi" (l'ordre du chef), tandis qu'en Ouganda, où on l'appelait "kandooya" (ligotage en trois), il est interdit depuis 1987. Dans la plupart des cas, attacher solidement les bras de la victime avec des ficelles ou des cordes est cause de lésions de l'organisme, cela arrête la circulation du sang dans la partie inférieure des bras et affecte les nerfs, entraînant la paralysie.

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Cette forme de contrainte physique des prisonniers, qui semble admise par les forces armées, et que l'on enseigne aux soldats, constitue une forme de traitement cruel, voire même de torture ; elle semble contraire aux normes relatives aux droits de l'homme et aux dispositions de l'Article 3 des Conventions de Genève qui a trait aux conflits armés n'ayant pas un caractère international et stipule les normes minima que doivent respecter les forces armées et qui interdisent toutes formes de traitement cruel et de torture. Les forces armées rwandaises devraient interdire de ligoter ainsi les prisonniers et adopter des méthodes plus humaines de contrainte physique.

2.4 Informations faisant état d'exécutions extrajudiciaires

De nombreux cas d'exécutions extrajudiciaires ont été signalés aux délégués d'Amnesty International qui se sont rendus à Kigali en juin 1991. Il s'agissait de combattants tombés aux mains des forces armées fin 1990 et début 1991 ou de prisonniers civils "disparus" pendant leur détention en octobre 1990, dans le nord du pays et à Kigali. Avant cette visite, Amnesty International avait fait part de ses préoccupations aux autorités rwandaises au sujet d'un certain nombre de meurtres commis à Kigali et au nord-ouest du pays, dans la région de Ruhengeri, respectivement en octobre 1990, fin janvier et début février 1991.

Dès le début de l'incursion rebelle dans le nord-est du Rwanda, des personnes fuyant la zone des combats ont signalé qu'environ 300 civils auraient été tués par les troupes gouvernementales. Un ministre a déclaré en octobre 1990 que les personnes tuées étaient des rebelles en tenue civile. Selon des informations de sources rwandaises, il semblerait que 20 personnes au moins - dont des femmes et des enfants - vivant dans des ranchs, aient été délibérément tuées par l'armée régulière. Les douilles des balles trouvées près des corps des victimes auraient été analogues à celles utilisées par l'armée. Des militaires auraient affirmé que des femmes avaient aidé les rebelles à transporter des armes.

Au début du mois d'octobre 1990 également, des civils initialement détenus à la prison de Byumba auraient "disparu" lors de leur transfert à Kigali et l'on craint qu'ils aient été tués. Il y aurait eu parmi eux deux hommes nommés Gasumati et Sendabye. Les raisons de ces meurtres ne sont pas connues mais les victimes appartiendraient à l'ethnie tutsi. Elles auraient été enterrées dans une fosse collective près de la caserne de Byumba.

Karambizi Michel, frère de Majyambere Silas, un important homme d'affaire rwandais, sa femme et leur fils de 10 ans ont été exécutés extrajudiciairement à leur domicile près de Kigali, le 4 octobre 1990, par des membres des forces de sécurité. On ne sait si Majyambere Silas soutenait les rebelles du Front patriotique rwandais.

Selon la version officielle de cet incident, Karambizi Michel aurait tiré sur des soldats de l'armée régulière qui essayaient de l'arrêter, et sa famille aurait été tuée lorsque les militaires ont riposté. Selon les informations reçues par Amnesty International, rien ne permet de penser que des rebelles aient trouvé asile dans la maison, ni que Karambizi Michel ou les

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autres occupants de la maison aient été armés et que la vie des membres des forces de sécurité ait été menacée. Comme les autorités avaient affirmé que la maison était une position des rebelles qui avaient tiré au mortier sur un poste de l'armée, et que Michel Karambizi avait attaqué les soldats à coups de mitraillette UZO, les délégués d'Amnesty International se sont rendus sur les lieux. Ils ont constaté des trous causés par des balles tirées de l'extérieur et non de l'intérieur de la maison et on leur a affirmé à Kigali que Karambizi Michel et sa femme avaient été exécutés sous un avocatier devant leur maison. Amnesty International est préoccupée de ce que Karambizi Michel et sa famille ont pu être tués délibérément en représailles du soutien présumé apporté par son frère à la cause des rebelles.

A la suite de l'attaque de la ville de Ruhengeri, dans le nord-ouest du pays, lancée par des rebelles armés le 23 janvier 1991, des membres des forces de sécurité et des milices locales ont arrêté, et dans de nombreux cas tué, des personnes soupçonnées de collaboration avec les rebelles. Au début de 1991, Amnesty International a reçu des informations faisant état de l'exécution extrajudiciaire de 14 résidents de la cellule Kibuye dans le secteur de Bizizi (commune de Kanama) relevant de la préfecture de Gisenyi dans le nord-ouest. Les 14 victimes étaient membres de quatre familles dont les chefs s'appelleraient respectivement Rukingamubiri, Gahutu, Ndatira et Munyampame. Parmi les personnes tuées se trouvait un certain Nkinzingabo Phocas, technicien d'une société de Gisenyi - la BCEOM.

Ces 14 personnes auraient été exécutées le 4 février 1991 par des membres des forces de sécurité du camp militaire de Gisenyi. Il s'agirait, semble-t-il, du meurtre délibéré de civils non armés qui n'avaient peut-être pas le moindre lien avec l'opposition, mais étaient des cibles toutes désignées puisqu'ils appartenaient à l'ethnie tutsi (ainsi que nombre des rebelles ayant participé à l'attaque de Ruhengeri), peut-être au clan des Bagogwe. En avril 1991, Amnesty International a reçu une liste de plus de 100 personnes tuées par des civils hutu et des membres des forces de sécurité dans les préfectures de Ruhengeri et Gisenyi. De sources non confirmées, le nombre de Tutsi tués entre le 23 janvier et la mi-février 1991, membres pour la plupart du clan des Bagogwe de la commune de Kinigi s'établirait entre 500 et 1 000. Au cours des mois qui ont suivi, les autorités n'auraient pas ouvert d'enquête pour établir les faits et éventuellement traduire les responsables en justice. En juin 1991, lors d'un entretien avec les délégués d'Amnesty International, un ministre a tourné en dérision l'idée que des centaines, ou même des douzaines de personnes aient été exécutées. Selon lui, les forces rebelles auraient tué tout au plus trois ou quatre Bagogwe.

Les 14 personnes tuées le 4 février 1991 auraient été enterrées dans une fosse collective dans le camp militaire de Gisenyi ou à proximité. Les autorités rwandaises n'ont pas reconnu les faits. A la fin du mois de mai 1991, Amnesty International, dans une lettre adressée au ministre de la Justice, a attiré leur attention sur ces affaires. En août 1991, le ministre, dans sa réponse, a indiqué que le parquet avait ouvert des enquêtes sur certains cas sans préciser si celles-ci avaient abouti et si les responsables seraient poursuivis.

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Il semble que de nombreux cas n'ont fait l'objet d'aucune enquête officielle permettant d'établir les circonstances des massacres et d'engager des poursuites contre les responsables. Les autorités semblent avoir accepté les rapports non corroborés des forces de sécurité invoquant la légitime défense pour justifier ces meurtres. L'organisation est aussi préoccupée par le fait qu'aucune enquête n'a été ouverte au sujet d'exécutions extrajudiciaires qui auraient été perpétrées par l'armée dans d'autres parties du pays contrôlées par le gouvernement, ce qui pourrait amener les forces armées à croire qu'elles peuvent continuer à se livrer à d'autres atrocités en toute impunité.

3. RÉPONSE DU GOUVERNEMENT RWANDAIS AUX SUJETS DE PRÉOCCUPATIONS EXPOSES PAR AMNESTY INTERNATIONAL

Les responsables gouvernementaux ont affirmé aux délégués d'Amnesty International, lors de la visite effectuée par ces derniers en juin 1991, que la torture n'existait pas au Rwanda et que les lois et règlements régissant les procédures de détention et de traitement des prisonniers permettaient de prévenir tous sévices. Un prisonnier, le pasteur Chafubire Alfred, mort en détention en décembre 1990 à la suite, semble-t-il, des coups reçus, et dont le cas avait déjà été soulevé, aurait été, selon les autorités, victime des civils présents au moment de son arrestation, et non des forces de sécurité ; il était d'autre part soupçonné d'avoir des liens avec les Inkotanyi.

A ces dénégations officielles est venu s'ajouter le fait que, depuis octobre 1990, aucun membre des forces de sécurité n'a été, à la connaissance d'Amnesty International, poursuivi en justice ni sanctionné administrativement, pour avoir soumis un détenu à la torture ou à toute autre forme de peine ou de traitement cruel, inhumain ou dégradant. En 1985, toutefois, les autorités ont reconnu qu'il y avait bien eu des cas de torture au milieu des années 70, qui avaient entraîné la mort dans des circonstances atroces de plus de 50 prisonniers politiques, dont d'anciens ministres. Mais elles en ont rejeté la responsabilité sur le chef du service central de renseignement de l'époque, le major Lizinde Théoneste et quelques-uns de ses collaborateurs, tout en continuant à soutenir qu'il n'y avait pas lieu de modifier les lois et règlements en vigueur pour prévenir la torture. Le major Lizinde Théoneste et les autres personnes tenues pour responsables de ces morts ont été jugés à huis clos par la Cour de sûreté de l'Etat et condamnés à mort. Mais il n'y a pas eu d'enquête indépendante pour établir les circonstances de ces morts, la culpabilité éventuelle d'autres personnes et les moyens d'empêcher que de tels actes ne se reproduisent à l'avenir. Les familles des victimes n'auraient pas été indemnisées.

Dès octobre 1990, selon certaines informations, des combattants capturés et des prisonniers civils auraient été massacrés. Les responsables gouvernementaux ont reconnu certains de ces faits, mais les ont imputés à la population civile et ont nié toute participation de membres des forces de sécurité. Dans nombre de cas individuels, Amnesty International n'a pu obtenir confirmation de source indépendante des informations faisant état de

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massacres de prisonniers par des membres des forces de sécurité, mais les informations dont elle dispose émanent de sources si diverses et se recoupent si minutieusement que l'organisation en a conclu qu'elles étaient dignes de foi. A titre d'exemple, elle a appris que des prisonniers libérés par le Front patriotique rwandais de la prison de Ruhengeri, le 23 janvier 1991, avaient été repris par les forces de sécurité des préfectures de Gisenyi et Ruhengeri et exécutés extrajudiciairement. Parmi les anciens prisonniers tués peu après leur libération fin février 1991 figurent deux personnes arrêtées lors de l'attaque d'octobre 1990 et relâchées le 27 février 1991 : Munyakazi Jean, chauffeur au camp militaire de Kanombe près de Kigali, et Niyonzima Appolinaire, agronome ; ils auraient été à nouveau arrêtés par des membres de la gendarmerie nationale dans ce même camp. Les deux hommes auraient par la suite été exécutés et enterrés dans le champ de tir du camp. Aucune enquête officielle n'aurait été ouverte pour établir ce qu'il était advenu d'eux et il ne semble pas que l'on ait cherché à faire la lumière sur les faits et, éventuellement, à traduire les responsables en justice. Les autorités se sont bornées à nier qu'il y ait eu des exécutions extrajudiciaires sans présenter de conclusions d'enquêtes officielles ni de précisions sur les circonstances dans lesquelles les victimes ont trouvé la mort.

En juin 1991, de hauts magistrats du parquet ont indiqué aux délégués d'Amnesty International qu'ils n'avaient pas ouvert d'enquêtes au sujet de violations présumées des droits de l'homme ou du droit humanitaire depuis octobre 1990, parce qu'ils n'avaient été saisis d'aucune affaire. Même les cas portés à l'attention des autorités par Amnesty International n'avaient pas fait l'objet d'enquête approfondie. Toutefois ces mêmes magistrats ont ajouté qu'ils pouvaient ouvrir une enquête de leur propre initiative, quand bien même aucune plainte n'aurait été officiellement déposée, s'il y avait de bonnes raisons de croire à l'existence d'une infraction. Le fait qu'aucune enquête n'ait été ouverte, malgré les informations faisant état de "disparitions" de prisonniers lors des arrestations en masse d'octobre 1990, d'assassinats de combattants capturés, et autres prisonniers, et de tueries consécutives à l'occupation de Ruhengeri par les rebelles en janvier 1991, parues dans la presse ou émanant d'autres sources, semble indiquer de graves réticences, voir une certaine répugnance, de la part du ministère public, à enquêter sur certains meurtres - exécutions perpétrées par l'armée ou d'autres services des forces de sécurité (enquêtes qui seraient considérées "antipatriotiques" ou comme "sapant" le moral de l'unité en question) ou massacres intervenus dans le cadre du conflit intercommunautaire.

En août 1991, le ministre de la Justice a adressé une lettre à Amnesty International en réponse aux demandes d'informations de l'organisation au sujet d'exécutions extrajudiciaires qui auraient été perpétrées par les forces de sécurité ou avec leur complicité. Le ministre indiquait que le parquet avait ouvert des enquêtes sur ces allégations afin d'établir les faits et de poursuivre les responsables en justice. Bien qu'il n'ait pas précisé la date d'ouverture de ces enquêtes, il semble qu'il y ait quelque contradiction entre ses affirmations et celles des hauts magistrats du parquet qui, deux mois auparavant, avaient assuré n'avoir reçu aucune plainte concernant des violations des droits de l'homme par les forces de sécurité. Les enquêtes auraient débuté, non à la suite de massacres, mais seulement lorsque des organisations comme Amnesty International avaient soulevé la question, des

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mois après les faits. Aucune d'entre elles ne semble avoir abouti, ni avoir confirmé à ce jour que des membres des forces de sécurité étaient impliqués dans ces massacres.

Le ministre de la Justice a avancé que les massacres avaient été causés par "la panique de la population..." et "la provocation des Tutsi". Amnesty International veut bien croire que cette explication soit valable dans certains cas, mais le fait de l'invoquer constamment semble procéder d'une volonté systématique de la part des autorités rwandaises de soustraire les forces de sécurité à toute critique. Les cas de violation des droits de l'homme cités plus haut dans le deuxième chapitre montrent à l'évidence que certains responsables gouvernementaux et des membres des forces de sécurité ont fermé les yeux sur les meurtres et la torture de civils qui n'avaient pas pris part aux combats et, dans certains cas, y ont été impliqués. Dans sa lettre, le ministre de la Justice a signalé que deux fonctionnaires de la sous-préfecture de Ngororero avaient été arrêtés en octobre 1990, puis révoqués à la suite de troubles intercommunautaires.

Amnesty International se félicite des assurances données par le ministre quant à l'ouverture d'enquêtes au sujet de violations présumées de droits de l'homme. Mais elle ignore si les autorités ont pris des mesures pour en assurer l'impartialité et l'indépendance. De telles mesures semblent s'imposer, vu ce qui s'est produit dans le passé, notamment lors des procès devant la Cour de sûreté de l'Etat de janvier 1991 où les autorités n'ont pas assumé les responsabilités qui étaient les leurs dans ce domaine. Bien souvent les autorités rwandaises ont invoqué la provocation des Tutsi à l'égard des Hutu, sans entrer dans d'autres détails ni établir les responsabilités individuelles. Le gouvernement devrait donc désigner des enquêteurs connus pour leur impartialité et leur compétence, et peut-être confier l'enquête à une juridiction spéciale au lieu de s'appuyer uniquement sur la procédure pénale habituelle.

Le ministre n'a pas indiqué les dates de début et de fin probable des enquêtes, ni précisé si les enquêteurs avaient recueilli des témoignages de la population concernant des violations présumées des droits de l'homme. On ignore également si les résultats des enquêtes seront rendus publics afin d'assurer aux familles des victimes que les autorités ne cherchent pas à camoufler des actions des forces de sécurité.

4. QUELQUES PRÉOCCUPATIONS ET RECOMMANDATIONS EXPOSÉES AU GOUVERNEMENT RWANDAIS EN 1986

Amnesty International estime que si les recommandations présentées au Gouvernement rwandais à la suite de la visite des délégués de l'organisation avaient été appliquées, la plupart des violations des droits de l'homme commises notamment lors de la crise d'octobre 1990 auraient pu être évitées. L'organisation souhaite réitérer quelques-uns des motifs de préoccupation qu'elle avait exposés en 1986 et qui ont continué de la préoccuper en 1990 et 1991 ; elle demande aux autorités de veiller à ce que ses recommandations soient appliquées.

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4.1 Législation restreignant la liberté d'expression

A l'issue de divers procès portés devant la Cour de sûreté de l'Etat dans les années 80, Amnesty International a demandé aux autorités d'abroger l'article 166 du Code pénal. Or, celui-ci est toujours en vigueur et est invoqué pour justifier l'emprisonnement de journalistes dont les écrits, publiés ou non, déplaisent aux autorités. A ce jour, ses dispositions ne semblent avoir été confirmées que dans le cas de Rwabukwisi Vincent, directeur du journal Kanguka. Ce dernier n'avait pas encore été traduit en justice en septembre 1991, bien qu'il ait bénéficié d'une mise en liberté provisoire dont les conditions ne sont pas encore connues d'Amnesty International.

En avril 1983, Amnesty International avait écrit au ministre de la Justice au sujet de 15 personnes déclarées coupables en novembre 1981 d'avoir distribué des documents séditeux et avait exprimé ses préoccupations en ces termes :

"Amnesty International se préoccupe vivement de ce qu'une législation éditée pour proscrire les atteintes à la sûreté intérieure de l'Etat ait été invoquée pour punir d'emprisonnement des activités liées à l'exercice non violent des droits de l'homme, notamment le droit d'expression. L'organisation s'inquiète en particulier de ce que les termes "... aura soit excité ou tenté d'exciter les populations contre les pouvoirs établis..." et "... soit alarmé les populations et cherché ainsi à porter les troubles sur le territoire de la République..." aient été interprétés, au titre de l'article 166 du Code pénal, comme couvrant les critiques, écrites ou verbales, de hauts fonctionnaires de l'Etat."

Dans le mémorandum présenté au Gouvernement rwandais en septembre 1986, Amnesty International a soulevé le même point. L'organisation y déclarait :

"... Amnesty International est préoccupée par le fait que la législation rwandaise peut être interprétée de telle façon que des activités qui constituent manifestement un exercice non violent des droits de l'homme sont passibles d'une peine d'emprisonnement. Cela vaut particulièrement pour l'article 166 du Code pénal qui ne précise pas quelles sortes d'activités doivent être interprétées comme ayant "excité ou tenté d'exciter les populations contre les pouvoirs établis" ou "alarmé les populations et cherché ainsi à porter des troubles sur le territoire de la République" et constituent de ce fait un délit. Amnesty International a constaté à travers le monde qu'il est possible d'utiliser des textes législatifs qui interdisent les déclarations publiques ou la distribution de documents susceptibles d'inciter les populations à agir contre les pouvoirs établis, s'ils sont rédigés en termes généraux comme cela est le cas pour l'article 166 du Code pénal du Rwanda, pour mettre en prison des personnes qui critiquent le gouvernement ou exercent leurs droits à la libre expression de façon non violente. Par ailleurs, dans le cas de détenus soupçonnés d'avoir commis des délits bien définis contre l'Etat, il peut être relati-

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vement plus facile de les faire condamner en application d'un texte aussi imprécis que l'article en question que pour des chefs d'accusation plus précis, si bien que les détenus en question risquent de passer pour des prisonniers d'opinion.

"Amnesty International fonde son action sur la Déclaration universelle des droits de l'homme et sur le Pacte international relatif aux droits civils et politiques, auquel le Rwanda a adhéré en 1975. L'exercice des libertés d'expression et d'association prévues par le Pacte n'est soumis qu'aux seules restrictions nécessaires : a) au respect des droits ou des libertés d'autrui ; b) à la sauvegarde de la sécurité et de la sûreté nationales, de l'ordre public, de la santé et de la moralité publiques. Selon le Pacte, ces restrictions doivent être fixées par la législation nationale. Or, les termes utilisés dans l'article 166 du Code pénal sont imprécis et par trop généraux, ce qui fait craindre que certaines des personnes détenues en application dudit article risquent d'avoir été emprisonnées pour avoir exercé leurs droits en toute légalité. Lorsqu'elles n'ont pas usé de la violence ni préconisé le recours à la violence, Amnesty International les considère comme des prisonniers d'opinion."

A plusieurs reprises ces dernières années la Cour de sûreté de l'Etat a déclaré coupables et puni de peines d'emprisonnement des personnes pour des activités liées à l'exercice non violent de droits de l'homme fondamentaux. En octobre 1986, par exemple, la Cour de sûreté de l'Etat a déclaré coupables près de 300 personnes qui avaient manifesté pacifiquement leurs convictions religieuses et les a condamnées à des peines pouvant aller jusqu'à 12 ans d'emprisonnement. Tous les condamnés étaient des prisonniers d'opinion. Ils ont tous été graciés par les autorités et libérés à la mi-1987.

Après avoir étudié certaines des procédures suivies lors des procès d'octobre 1986 devant la Cour de sûreté de l'Etat, Amnesty International a abouti à la conclusion que plusieurs aspects de ces procès n'étaient pas conformes aux normes internationales établies et qu'il y avait nécessité urgente de réviser les jugements prononcés et de réexaminer l'ensemble des procédures de la Cour de sûreté de l'Etat.

4.2 Torture

Après avoir reçu des informations sur la torture et le meurtre de plus de 50 prisonniers politiques au milieu des années 70 ainsi que sur de nouveaux cas de torture et de détention prolongée dans des cachots noirs au début des années 80, la délégation d'Amnesty International qui s'est rendue au Rwanda en 1986 a fait part de ses préoccupations au sujet de ces allégations à de nombreux hauts fonctionnaires et s'est enquis des mesures de protection prises. On lui a répondu qu'il n'y avait pas de cas de torture et qu'il existait des procédures de prévention adéquates. Le Procureur général de la cour d'appel de Kigali, par exemple, a affirmé qu'aucun des détenus renvoyés devant la cour ne portait de traces de torture. Le secrétaire général du service national de sécurité, le service central de renseignement (SCR), a

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déclaré que son service ne gardait plus les prisonniers. Les personnes arrêtées par le SCR étaient détenues par la gendarmerie. Le commandant du groupement de gendarmerie de Kigali a assuré qu'aucune forme de mauvais traitement physique n'était autorisée. Ces hauts fonctionnaires ont invoqué les procédures de prévention de détention arbitraires prescrites dans le Code de procédure pénale qui, d'après eux, étaient généralement respectées et qui, prévoyant des visites périodiques des détenus par des représentants du ministère public, permettaient de veiller à ce que les prisonniers ne soient pas torturés par des membres des forces de sécurité. Mais, selon les informations reçues par Amnesty International et faisant état de tortures infligées aux détenus arrêtés lors de l'attaque des rebelles d'octobre 1990, l'application de ces procédures semble rien moins qu'assurée.

4.3 Détention de prisonniers dans des cachots noirs

Dans son mémorandum adressé au gouvernement en 1986, Amnesty International faisait observer qu'il est interdit en vertu des normes internationales établies par l'Organisation des Nations Unies de placer des prisonniers dans des cellules disciplinaires obscures. Elle déclarait notamment :

"Amnesty International est préoccupée par le fait que l'incarcération prolongée dans des cachots noirs constitue une forme de traitement cruel, inhumain ou dégradant. De surcroît, l'existence même de cellules d'isolement auxquelles le jour n'accède pas permet le recours arbitraire à cette forme de châtiment. L'organisation recommande en conséquence que des mesures - percement de fenêtres et autres dispositions visant à assurer un éclairage suffisant dans les cellules d'isolement - soient prises pour mettre un terme à cette forme de châtiment."

5. RECOMMANDATIONS D'AMNESTY INTERNATIONAL RELATIVES À LA PROTECTION DES DROITS DE L'HOMME

5.1 Garanties d'un procès équitable

Amnesty International exhorte une nouvelle fois les autorités rwandaises à veiller à ce que les procès de personnes accusées d'infractions ayant un caractère politique se déroulent conformément aux normes internationales visant à garantir un procès équitable. L'organisation souhaite vivement, en particulier, que la méthode de sélection des juges nommés à la Cour de sûreté de l'Etat comporte des garanties contre les nominations abusives (conformément au principe 10 des *Principes fondamentaux relatifs à l'indépendance de la magistrature* adoptés par le *Septième Congrès des Nations Unies pour la prévention du crime et le traitement des délinquants* en 1985 et par l'Assemblée générale des Nations Unies la même année), que les juges choisis soient inamovibles et impartiaux, et ne se laissent influencer par aucune considération autres que les dépositions faites devant la cour. Tous les

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accusés doivent être informés de leur droit à avoir l'assistance d'un défenseur indépendant et compétent et, s'ils n'ont pas les moyens de le rémunérer, pouvoir être assistés par l'Etat. L'assistance d'un avocat doit être considérée comme obligatoire lorsque les accusés encourrent une longue peine d'emprisonnement ou la peine capitale. Il faudrait prendre des mesures analogues pour assurer l'équité des procès portés devant les tribunaux militaires.

Compte tenu des carences de la Cour de sûreté de l'Etat depuis sa création - notamment, la limitation du droit de recours des condamnés et le manque d'indépendance des juges - les autorités devraient envisager de dissoudre la Cour et de renvoyer les affaires politiques devant les juridictions pénales ordinaires, en accordant aux inculpés de crimes contre la sûreté de l'Etat les mêmes droits au moins qu'aux autres prisonniers.

5.2 Protection des citoyens contre les arrestations et la détention arbitraires

Les lois du Rwanda régissant les procédures de détention stipulent que tout détenu doit comparaître devant une autorité judiciaire dans un délai de quelques jours à compter de son arrestation et avoir la possibilité de contester les raisons et le bien-fondé de sa détention. En pratique les procédures prévues dans le Code de procédure pénale ne sont plus appliquées depuis plusieurs années dans le cas des prisonniers politiques et il n'y a pas de garanties contre la détention arbitraire et illégale. Il faut donc que les autorités prennent d'urgence des mesures visant à modifier les pratiques de détention (par opposition aux procédures prescrites par la loi) afin de prévenir la détention arbitraire.

En ce qui concerne la détention arbitraire, le Pacte international relatif aux droits civils et politiques, que la République Rwandaise a ratifié en 1975, est explicite:

"Tout individu a droit à la liberté et à la sécurité de sa personne. Nul ne peut faire l'objet d'une arrestation et d'une détention arbitraires..." (art. 9, par. 1)

Toute mise en détention qui n'est pas effectuée conformément à la procédure prévue par la loi doit être considérée comme arbitraire. C'est pour empêcher des cas de détention arbitraire et illégale à long terme qu'Amnesty International estime que les autorités rwandaises devraient introduire une procédure ou un mécanisme offrant plus de garanties effectives contre la détention arbitraire.

L'un des objectifs des garanties contre la détention arbitraire et la garde à vue prolongée est de protéger les détenus contre la torture et autres traitements cruels, inhumains ou dégradants. Par exemple, s'assurer que chaque détenu comparaît devant un magistrat après le délai légal de la garde à vue pourrait diminuer considérablement les risques de torture. Le délai légal de la garde à vue ainsi que la limite au-delà de laquelle les détenus ne peuvent être privés du droit de communiquer avec leurs avocats ou leurs

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familles devraient être fixés par la loi. Selon l'expérience d'Amnesty International, la détention au secret est la période pendant laquelle la torture et les mauvais traitements sont infligés aux détenus.

Le principe vital de comparution des détenus devant l'autorité judiciaire dans les délais prévus par le Code de procédure pénale a rarement été respecté au Rwanda dans le passé, notamment dans le cas de détenus politiques. Il est extrêmement important de souligner que toute personne arrêtée et détenue doit être promptement déférée à une autorité judiciaire, comme l'article 38 du Code de procédure pénale le stipule, ainsi que le Pacte international relatif aux droits civils et politiques et l'Ensemble de principes pour la protection de toutes les personnes soumises à une forme quelconque de détention ou d'emprisonnement, normes relatives à tous les cas d'emprisonnement, adoptées en décembre 1988 par l'Assemblée générale des Nations Unies.

Offrir la possibilité aux détenus ou à leurs familles de porter plainte contre les autorités responsables de cette détention - qu'il s'agisse de garde à vue ou de détention préventive - serait une sauvegarde importante contre les détentions arbitraires. Dans le passé, les familles des détenus n'ont pratiquement jamais osé contester la détention de cette manière. Néanmoins, partout dans le monde, des pays aux systèmes judiciaires très différents ont des mécanismes qui autorisent les familles de détenus, ou leurs représentants en justice, à exiger la comparution du détenu devant un magistrat et à solliciter des autorités chargées de la détention de préciser le fondement en droit de l'arrestation et de la détention.

L'autorité judiciaire devant laquelle est traduit le détenu doit bénéficier du pouvoir de libérer quiconque dont la détention semble illégale ou sans objet. Exercer ce pouvoir exige naturellement que l'autorité judiciaire en question ne subisse aucune pression extérieure pour ordonner ou autoriser la détention de personnes non inculpées ni reconnues coupables d'un délit de droit commun caractérisé.

Dans les pays d'expression anglaise et portugaise, ce mécanisme existe sous le nom d'habeas corpus. Dans les pays hispanophones, il est connu sous le nom d'amparo. Il est utilisé non seulement pour empêcher la détention arbitraire, mais aussi pour combattre la torture et les "disparitions" : les forces de sécurité responsables de la détention et de l'interrogatoire auront moins facilement recours à la torture si elles peuvent être obligées, à tout moment, d'amener un détenu devant le tribunal ; et dans les pays où des prisonniers "disparaissent" ou sont tués en secret, cette procédure permet dans une certaine mesure aux familles d'obliger les forces de sécurité à fournir des informations au juge, indiquant si telle ou telle personne est ou a été détenue par les forces de sécurité.

5.3 Prévention de la torture

La prévention de la torture exige d'importantes modifications des pratiques de détention et d'interrogatoire au Rwanda. Elle exige l'adoption de garanties effectivement appliquées et non simplement stipulées dans le Code de procédure pénale. En juin 1991, les délégués d'Amnesty International ont remis aux

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hauts fonctionnaires rwandais des exemplaires du "Programme en 12 points" contre la torture établi par l'organisation, en leur demandant instamment de le mettre en application. A court terme, les autorités devraient, de l'avis d'Amnesty International, donner la priorité aux mesures ci-après, fondées sur les normes minima internationalement reconnues :

1. Faire savoir clairement, par des déclarations des plus hauts responsables gouvernementaux, à tout le personnel chargé de l'application des lois, que la torture ne sera tolérée en aucune circonstance.
2. Mettre fin à la pratique de la détention au secret des suspects, en leur permettant d'être vus par leur famille, par du personnel médical indépendant et par des avocats, immédiatement après leur arrestation, de manière à permettre à ces témoins de s'assurer que le détenu n'a pas été torturé. Ainsi les autorités pénitentiaires ne pourraient, comme c'est actuellement le cas, priver les prisonniers des visites de leur famille à titre de châtiment disciplinaire ; ni interdire les visites pendant les semaines ou les mois où le ministère public instruit l'affaire, ou la période pendant laquelle le prisonnier attend que la cour statue sur son recours.
3. Exiger des autorités habilitées à interpellier et garder à vue les personnes (la gendarmerie ou le service central de renseignement) et de l'administration pénitentiaire (service carcéral) qu'elles informent tout nouveau prisonnier de certains droits fondamentaux, en particulier le droit de demander un examen médical et de voir un avocat. Bien qu'en l'état actuel de la procédure pénale, les détenus aient le droit d'être examinés par un médecin, il est évident que la plupart d'entre eux l'ignorent et n'en sont pas avisés, et que rares sont ceux qui sont examinés par un médecin qualifié dès leur mise en détention ; ainsi donc les examens médicaux ultérieurs de détenus alléguant avoir été soumis à la torture ne peuvent établir la date des blessures constatées, et en particulier déterminer si elle proviennent de sévices infligés pendant la détention.
4. Astreindre les autorités compétentes à dresser les procès-verbaux exacts des interrogatoires de toute personne détenue mentionnant la durée, le jour et l'heure des sessions, le nom des interrogateurs, des gardes et autres personnes présentes et le résultat des examens médicaux. Une autre garantie consisterait à confier tous les interrogatoires au ministère public et non aux responsables de la garde des détenus.
5. Instituer des visites d'inspection périodiques de tous les lieux de détention par des personnes indépendantes.
6. Ouvrir des enquêtes indépendantes et impartiales sur toute information faisant état de tortures, pour établir les faits. Pour que ces enquêtes trouvent créance auprès de la population, et des victimes individuelles de la torture, il importe de rendre publics les procédures utilisées, les critères retenus pour établir s'il y a eu torture ou non, et les résultats de l'investigation. Des mesures doivent être prises pour assurer la protection du plaignant et des témoins contre toute intimidation.

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tion. S'il est prouvé que des actes de torture ont été commis, les autorités chargées de l'enquête doivent établir les responsabilités et les circonstances dans lesquelles ces actes de torture ont été commis.

7. Donner pour instructions à toute autorité chargée de l'enquête de faire des recommandations au sujet de l'engagement de poursuites judiciaires et de la prise de mesures disciplinaires, ainsi que des modifications de procédure nécessaires pour empêcher que des actes de torture ne se reproduisent. L'autorité veillera à ce que toute déclaration faite sous contrainte ne puisse être invoquée dans une procédure comme un élément de preuve contre la victime ou d'autres personnes, si ne n'est contre la personne accusée de torture.
8. Traduire en justice les responsables d'actes de torture.
9. Assurer l'indemnisation des victimes et des personnes à leur charge. Garantir aux victimes des soins médicaux adéquats et les moyens nécessaires à leur réadaptation.
10. Adhérer à la *Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants*, adoptée par l'Assemblée générale des Nations Unies le 10 décembre 1984. L'adhésion à la Convention fait obligation aux Etats parties non seulement d'interdire la torture, mais aussi de veiller à ce que les autorités compétentes procèdent à une enquête lorsqu'un acte de torture est signalé. Le gouvernement s'engage à ce que ces garanties soient respectées et que les dispositions de la Convention puissent être invoquées devant les tribunaux.

En outre, les autorités devraient prendre des mesures pour interdire les méthodes cruelles, utilisées, en particulier, par les forces armées pour ligoter et maîtriser les prisonniers et prendre d'autres mesures pour empêcher la mise en cellule de punition ou d'isolement (cachots).

La recommandation qu'Amnesty International avait faite au sujet des cachots noirs n'a pas été appliquée et ces cachots étaient toujours utilisés à la fin de l'année 1990. L'organisation estime que la détention de prisonniers dans des cachots noirs constitue un traitement cruel, inhumain ou dégradant et que l'utilisation de ces cellules devrait être immédiatement interdite. Cette interdiction devrait être officiellement proclamée et portée à la connaissance des avocats et des prisonniers, ainsi qu'à l'ensemble du personnel de l'administration pénitentiaire.

5.4 Mettre fin aux exécutions extrajudiciaires

Dans un conflit si profondément marqué par des tensions intercommunautaires, il est vraisemblablement difficile d'établir les circonstances exactes dans lesquelles de nombreuses personnes ont trouvé la mort. Il est également évident que les autorités rwandaises ont essayé de prendre des mesures pour empêcher que ces tensions ne dégénèrent en conflit généralisé. Afin de conforter les efforts entrepris, il faudrait que les autorités gouvernemen-

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tales elles-mêmes fassent la preuve de l'impartialité des fonctionnaires et des membres des forces de sécurité ainsi que des procédures d'enquête criminelle. A cette fin, il faut que tout fonctionnaire ou membre des forces de sécurité impliqué dans des exécutions extrajudiciaires ou autre meurtre ou acte illégal soit traduit en justice, et que tous les meurtres fassent l'objet d'une enquête approfondie pour découvrir les responsables, et les poursuivre en justice.

Les responsables gouvernementaux ont toujours nié que les forces de sécurité aient jamais procédé à des exécutions extrajudiciaires, et aient été impliquées dans les morts illégales qui ont suivi les arrestations massives d'octobre 1990. Amnesty International, cependant, a reçu des informations inquiétantes signalant qu'au cours de cette période des prisonniers ont été délibérément tués par des membres des forces de sécurité, et elle pense que les autorités doivent, de toute urgence, ouvrir une enquête impartiale sur ces informations et traduire en justice les membres des forces de sécurité responsables de ces crimes.

Outre les diverses garanties de procédure qu'Amnesty International demande instamment aux autorités de prendre pour prévenir la détention arbitraire et la torture, le meilleur moyen d'empêcher les exécutions extrajudiciaires est d'indiquer sans équivoque à tous les membres des forces armées et des forces de sécurité, quel que soit leur grade, que le meurtre de prisonniers est interdit et ne sera toléré en aucune circonstance. Le 5 octobre 1990, quelques jours à peine après l'ouverture des combats au nord du Rwanda, Amnesty International a lancé un appel au président HABYARIMANA Juvénal lui demandant "de prendre des mesures pour veiller à ce que les diverses unités des forces de sécurité ne commettent pas d'abus". Pour faire en sorte que des exécutions extrajudiciaires ne se produisent pas, l'organisation a exhorté les autorités à :

"faire savoir clairement aux membres des forces de sécurité rwandaises que l'usage de la force est injustifié sauf dans des situations exceptionnelles où la vie est menacée et qu'user d'armes militaires ou autres contre des civils non armés en d'autres circonstances est considéré comme une violation des droits fondamentaux et que les responsables seront traduits en justice".

L'Organisation des Nations Unies a récemment fourni aux Etats Membres des lignes directrices sur les procédures à suivre pour répondre aux informations faisant état d'"exécutions extra-légales, arbitraires et sommaires".

Dans sa résolution 1989/65 du 24 mai 1989 relative à la "prévention efficace des exécutions extra-légales, arbitraires et sommaires", le Conseil économique et social de l'Organisation des Nations Unies (ECOSOC) recommande que les *Principes relatifs à la prévention efficace des exécutions extra-légales, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions* soient pris en considération et respectés par les gouvernements. Ces Principes conseillent sur les procédures à suivre pour mener une enquête et proposent que les pouvoirs publics fassent poursuivre l'enquête par

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une commission indépendante lorsque les procédures établies (par exemple celles du parquet) sont inadéquates, notamment lorsque l'indépendance ou l'impartialité font défaut.

Le principe 9 stipule :

"Une enquête approfondie et impartiale sera promptement ouverte dans tous les cas où l'on soupçonnera des exécutions extra-légales, arbitraires et sommaires, y compris ceux où des plaintes déposées par la famille ou des informations dignes de foi donneront à penser qu'il s'agit d'un décès non naturel dans les circonstances données². Il existera à cette fin des procédures et des services officiels d'enquête dans les pays. L'enquête aura pour objet de déterminer la cause, les circonstances et le jour et l'heure du décès, le responsable et toute pratique pouvant avoir entraîné le décès, ainsi que tout ensemble de faits se répétant systématiquement. Toute enquête devra comporter une autopsie adéquate, le rassemblement et l'analyse de toutes les preuves physiques ou écrites et l'audition des témoins. L'enquête distinguera entre les morts naturelles, les morts accidentelles, les suicides et les homicides."

Le principe 11 stipule :

"Lorsque les procédures d'enquête établies seront inadéquates, soit que les compétences techniques ou l'impartialité nécessaires fassent défaut, soit que la question soit trop importante, soit encore que l'on se trouve en présence manifestement d'abus systématiques, lorsque la famille de la victime se plaint de ces insuffisances ou pour toute autre raison sérieuse, les pouvoirs publics feront poursuivre l'enquête par une commission d'enquête indépendante ou par un organe similaire. Les membres de cette commission seront choisis pour leur impartialité, leur compétence et leur indépendance personnelle. Ils seront, en particulier, indépendants à l'égard de toute institution ou personne qui peut faire l'objet de l'enquête. La commission aura tout pouvoir pour obtenir tout renseignement nécessaire à l'enquête et elle mènera l'enquête en application des Principes ci-dessus."

Les autorités ont manifestement reconnu qu'il fallait ouvrir des enquêtes sur certains incidents, mais il est loin d'être prouvé que le ministère public soit en mesure de procéder aux enquêtes demandées dans le principe 9. Conformément au principe 11, qui prévoit une autre procédure -

² Le principe 1 fait référence à ces circonstances en ces termes : "De telles exécutions, [extra-légales, arbitraires et sommaires] ne devront pas avoir lieu, quelles que soient les circonstances, notamment en cas de conflit armé interne, par suite de l'emploi excessif ou illégal de la force par un agent de l'Etat ou toute autre personne agissant à titre officiel ou sur l'instigation ou avec le consentement explicite ou tacite d'une telle personne ou pendant la détention préventive."

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établissement d'une commission d'enquête - Amnesty International recommande de s'efforcer de déterminer en priorité s'il y a eu des violations plutôt que d'établir la responsabilité individuelle de membres des forces de sécurité. Les normes en matière d'éléments de preuves seraient alors différentes. Une fois établie l'existence de violations, il faut évidemment traduire les coupables en justice, mais il importe aussi que la commission d'enquête réfléchisse aux réformes nécessaires, par exemple des pouvoirs d'arrestation et des procédures de détention, pour empêcher la répétition de tels abus.

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Appendice 1 :

On trouvera ci-après les recommandations présentées au Gouvernement rwandais par Amnesty International en 1986 :

1. Modifier la législation en vigueur de façon que des activités qui représentent l'exercice non violent des droits de l'homme, tels que la liberté d'expression et la liberté d'association, ne puissent pas être punies d'une peine d'emprisonnement et que les articles du Code pénal ne soient pas rédigés en termes assez généraux pour pouvoir être interprétés comme autorisant la détention de personnes qui exercent de façon non violente leurs droits de l'homme.
2. Libérer les six personnes qu'Amnesty International a adoptées comme prisonniers d'opinion et qui ont manifestement été condamnées en raison d'activités qui représentent l'exercice non violent de leurs droits de l'homme.
3. Etablir une inspection indépendante des prisons et des centres de détention pour effectuer des contrôles ponctuels dans les prisons et les centres de détention des forces de sécurité et pour s'entretenir en privé avec les détenus. Amnesty International recommande aussi respectueusement aux autorités d'autoriser les représentants des organisations humanitaires indépendantes à entrer en relation avec les détenus et à s'entretenir avec eux en tête à tête.
4. Faire en sorte que les médecins et le personnel médical, les avocats et les membres de la famille entrent rapidement en contact avec les détenus après leur arrestation. L'organisation suggère aussi aux autorités de modifier la pratique qui consiste à suspendre, pendant des semaines ou des mois, les visites des familles de façon que tous les détenus puissent recevoir des visiteurs dans un délai aussi court que possible après leur arrestation.
5. Adhérer à la Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants. Amnesty International suggère aussi respectueusement que la République Rwandaise ratifie le Protocole facultatif se rapportant au Pacte international relatif aux droits civils et politiques.
6. Mettre fin à l'emprisonnement des détenus dans les cachots noirs pour les punir et prendre les mesures nécessaires pour que toutes les cellules, y compris les cellules d'isolement ou cellules disciplinaires, soient suffisamment éclairées.
7. Exiger de tout le personnel pénitentiaire qu'il applique les normes relatives à l'exercice physique fixées à l'article 21 de l'Ensemble de règles minima pour le traitement des détenus de l'ONU, à savoir que les détenus qui sont normalement confinés dans leurs cellules doivent "avoir, si le temps le permet, une heure au moins par jour d'exercices physique approprié en plein air".

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8. Etudier les moyens de réduire l'usage de la peine de mort. L'organisation recommande en particulier aux autorités de passer en revue les crimes passibles de la peine de mort en vue d'en réduire le nombre dans un premier temps et d'abolir ce châtiment ultérieurement.
9. Faire bénéficier les personnes accusées de crimes passibles de la peine de mort de l'assistance d'un avocat pour préparer leur défense et pour se défendre devant le tribunal.

[EMBARGOED FOR 2 FEBRUARY 1994]

amnesty international

ZAIRE

Collapsing under crisis

2 FEBRUARY 1994

SUMMARY

AI INDEX: AFR 62/01/94

DISTR: SC/CC/CO/PG

In September 1993 Amnesty International published a report drawing the international community's attention to the deteriorating human rights situation in Zaire. However, President Mobutu and his supporters continue to ignore appeals by Amnesty International and other human rights organizations to respect human rights. Moreover, further human rights violations, including imprisonment and killing of people known or suspected of opposing President Mobutu, continued to be reported at the end of 1993. Extrajudicial executions by the security forces have continued to go unchecked and unpunished. Members of opposition political parties have been forced into hiding, fearing for their lives.

Amnesty International appealed to the international community in September to take action to prevent the human rights situation from deteriorating further and to press President Mobutu and his supporters who exercise authority over the security forces to adopt safeguards that promote respect for human rights. It seems so far that not enough has been done by the international community and the government under President Mobutu has failed to prevent a complete breakdown of law and order and to establish the rule of law. There have been no investigations into human rights violations.

Although most political detainees arrested before September 1993 have since been released, others including soldiers detained since early 1992 in life threatening conditions continue to be held without trial. Some have been charged with political or public order offences simply to justify their unlawful detention. As in late 1992 and early 1993 members of political parties were arrested in October and November 1993 for their opposition to President Mobutu's monetary reforms. **Ferdinand Chimanuka**, a member of the *Parti démocrate et social chrétien*, Democratic and Social Christian Party, was arrested in October and accused of inciting people to reject the new zaire currency. By mid-December he was still believed to be held, despite a magistrate's ruling that he should be provisionally released. Disagreements over the change of currency appear to be one reason for an attack in late November by soldiers on the bishopric of Kananga.

At least 6 people, including a Roman Catholic priest, **Father Mukoma**, were killed, trying to resist the attack.

Journalists and members of political parties opposed to President Mobutu continue to be arrested and detained. All those detained in late 1993 were prisoners of conscience who had not used or advocated violence against the President or his supporters. Some of those detained were ill-treated. **Kalala Mbenga Kalao**, a newspaper editor, was arrested in August 1993 and reportedly subjected to beatings by members of the *Garde civile*, Civil Guard, because his newspaper published statistics suggesting that 70 per cent of high ranking officers of the security forces, belong to the same ethnic group as the President. **Déo Kambale**, a leader of the *Union pour la Démocratie et le Progrès social*, Union for Democracy and Social Progress, an opposition party, in Butembo, North-Kivu, was arrested in November by members of the *Division spéciale présidentielle*, Special Presidential Division, apparently because he was reading a copy of *Umoja* newspaper, which contained articles critical of President Mobutu. By early December, his legal status, conditions and place of detention were still unclear.

Amnesty International is urging governments to consider having their representatives in Zaire visit areas where human rights violations have occurred in order to ensure that they and others in the international community have accurate and first hand information about the human rights situation. Such information could be used to condemn human rights violations in Zaire and to put pressure on President Mobutu and others who order or condone these violations to take steps to bring them to an end. Amnesty International is also urging that the UN and the OAU consider appointing official representatives to monitor human rights violations in Zaire, who could make recommendations to these organizations and to the Zairian authorities on ways to bring about the rule of law in Zaire, promote guarantees for the respect of human rights and ensure that these are built into any political settlement.

KEYWORDS: EXTRAJUDICIAL EXECUTION1 / DETENTION WITHOUT TRIAL1 / PRISONERS OF CONSCIENCE / HARASSMENT / TORTURE/ILL-TREATMENT / JOURNALISTS1 / CENSORSHIP1 / EDITORS / RELIGIOUS OFFICIALS - CATHOLIC1 / POLITICAL ACTIVISTS1 / MILITARY AS VICTIMS / AI AND GOVERNMENTS / AMNESTIES / MILITARY / POLITICAL BACKGROUND /

This report summarizes a 9-page document (3689 words), *Zaire: Collapsing under crisis* (AI Index: 62/01/94), issued by Amnesty International on 2 February 1994. Anyone wanting further details or to take action on this issue should consult the full document. **INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM**



Conseil Economique
et Social

Distr.
GENERALE

E/CN.4/1995/70
11 novembre 1994

Original : FRANCAIS

COMMISSION DES DROITS DE L'HOMME
Cinquante et unième session
Point 12 de l'ordre du jour provisoire

QUESTION DE LA VIOLATION DES DROITS DE L'HOMME ET DES LIBERTES FONDAMENTALES,
OU QU'ELLE SE PRODUISE DANS LE MONDE, EN PARTICULIER DANS
LES PAYS ET TERRITOIRES COLONIAUX ET DEPENDANTS

Rapport sur la situation des droits de l'homme au Rwanda soumis par
M. René Degni-Séqui, Rapporteur spécial de la Commission des droits de
l'homme, en application du paragraphe 20 de la résolution S-3/1
du 25 mai 1994

TABLE DES MATIERES

	<u>Paragraphe</u>	<u>Page</u>
INTRODUCTION.....	1 - 4	2 - 3
I. GENOCIDE.....	5 - 21	3 - 6
A. La confirmation des faits.....	6 - 14	3 - 5
B. Le retard accusé par l'enquête.....	15 - 21	5 - 6
II. L'INSECURITE.....	22 - 46	6 - 10
A. Les atteintes au droit de propriété.....	23 - 28	6 - 7
B. Les atteintes à la sûreté personnelle.....	29 - 36	7 - 9
C. Les atteintes au droit à la vie.....	37 - 46	9 - 10
III. LE RETOUR DES REFUGIES ET DES DEPLACES.....	47 - 70	10 - 14
A. Le ralentissement du mouvement de retour.....	48 - 52	10 - 11
B. La prise en otage des réfugiés.....	53 - 64	11 - 13
C. Les nouvelles solutions.....	65 - 70	13 - 14
IV. RECOMMANDATIONS.....	71 - 81	14 - 17
A. La cessation des violations des droits de l'homme.....	72 - 73	15
B. La situation des réfugiés.....	74 - 75	15 - 16
C. L'aide internationale au Rwanda.....	76 - 81	16 - 17

INTRODUCTION

1. Conformément au mandat qui lui a été confié par la Commission des droits de l'homme dans sa résolution S-3/1 du 25 mai 1994, le Rapporteur spécial s'est rendu au Rwanda pour une troisième visite, du 14 au 25 octobre 1994. Le but de cette visite était d'actualiser, de compléter et de préciser les renseignements contenus dans les deux premiers rapports publiés respectivement le 28 juin 1994 (E/CN.4/1995/7 et Corr.1) et le 12 août 1994 (E/CN.4/1995/12).

2. Au cours de cette visite, le Rapporteur spécial a pu :

- a) Se rendre à Kigali, à Kibungo, à Butaré, à Gisenyi et à Cyangugu (Rwanda); à Goma et à Bukavu (Zaïre); à Benaco (République-unie de Tanzanie); à Bruxelles et à Paris;
- b) Visiter les camps de réfugiés à Goma, à Bukavu et à Benaco, les camps des personnes déplacées à Kibeho, dans l'ex-zone turquoise, la paroisse de Nyarubuye, l'évêché, la paroisse et le petit séminaire de Nyundo, le cimetière de Gisenyi, le village de Chamvuzo et la prison de Kigali;
- c) S'entretenir avec :
 - i) Des personnalités politiques du Rwanda : M. Paul Kagamé, Vice-Président de la République et Ministre de la défense, M. Faustin Twagiramungu, Premier Ministre, M. Seth Sendashonga, Ministre de l'intérieur, et M. Alphonse-Marie Nkubito, Garde des Sceaux, Ministre de la justice;
 - ii) Des personnalités des organismes du système des Nations Unies : M. Shahryar Khan, Représentant spécial du Secrétaire général au Rwanda, le Général-Major Claude Toussignant, Commandant de la Mission des Nations Unies pour l'Assistance au Rwanda (MINUAR), des représentants du Haut Commissaire des Nations Unies pour les Réfugiés (HCR), du Programme des Nations Unies pour le développement (PNUD), et du Bureau des Nations Unies pour la situation d'urgence au Rwanda (UNREO);
 - iii) Des personnalités étrangères : M. Vandenbroecke, Ministre des affaires étrangères de la Belgique; le Nonce Apostolique; l'Ambassadeur des Etats-Unis à Kigali; le Conseil permanent de la Francophonie, organe de l'Agence de Coopération culturelle et technique, le Chargé d'affaires de Suisse au Rwanda, M. Jean Gol, ancien Ministre d'Etat belge, le professeur Filip Reyntjens, de l'Université d'Anvers (Belgique), maîtres Eric Gillet et Bavo Cool, avocats en Belgique ;
 - iv) Des représentants des organisations non gouvernementales et des journalistes rwandais et étrangers (conférence de presse).

3. Le Rapporteur spécial voudrait ici adresser ses sincères remerciements à ces éminentes personnalités. Il voudrait exprimer tout particulièrement sa gratitude au Représentant spécial du Secrétaire général et au Commandant de la MINUAR qui lui ont fourni toute l'assistance nécessaire et facilité ainsi sa visite grâce à leur appui logistique. Il associe à ces remerciements M. William Clarence, Chef de l'Opération droits de l'homme au Rwanda et son équipe d'observateurs des droits de l'homme qui, en dépit des contradictions internes et des difficultés, ont fait preuve de dévouement et de dynamisme.

4. Cette visite sur le terrain a permis au Rapporteur spécial de faire à nouveau le point sur la situation qui prévaut au Rwanda. Il en ressort que ce pays connaît trois préoccupations fondamentales se rapportant au problème du génocide, à celui de l'insécurité et à la question du retour des réfugiés et des déplacés.

I. LE GENOCIDE

5. Les villes du Rwanda retrouvent progressivement, et assez rapidement leurs populations. Elles recouvrent également leurs activités. On pleure les morts, tout en se réjouissant de retrouver un parent, un frère, une soeur, un enfant. La première préoccupation des Rwandais semble être de loin celle de savoir si les auteurs du génocide, ceux qu'on appelle là-bas les "génocidaires", seront jugés et punis. L'on se demande ce que l'Organisation des Nations Unies attend pour mettre sur pied le Tribunal international. Dans cette logique, les langues se délient. Mais si le génocide se confirme, l'enquête, elle, accuse un retard considérable.

A. La confirmation des faits

6. L'enquête effectuée sur le terrain semble de plus en plus confirmer les éléments constitutifs du génocide. Il en va ainsi de la découverte de fosses communes, de l'existence d'indices et de preuves attestant la programmation du massacre des Tutsis et l'identification des principaux responsables.

1. La découverte de fosses communes

7. Les différentes enquêtes ont permis de découvrir plusieurs sites de fosses communes à travers tout le pays. On en trouve une ou deux dans chaque commune. On a pu ainsi dresser une liste provisoire de près d'une cinquantaine de fosses communes. Des villes comme Gitarama et Cyangungu en comptent plus de six. Le Rapporteur spécial et quelques membres de l'équipe d'observateurs ont pu ainsi identifier eux-mêmes plusieurs fosses communes, notamment à Chamvuzo, à Nyundo, au cimetière communal de Gisenyi et à Cyangungu. A Nyundo, ce sont plus tard trois fosses septiques qui ont servi de tombes aux victimes des massacres, au nombre de plus de 300. Quant aux habitants de Nyarubuye et des environs, ils n'ont eu droit à aucune sépulture. Leurs corps, pour certains, jonchent la cour et les allées de la paroisse et, pour d'autres, gisent entassés les uns sur les autres dans les salles de l'école paroissiale et dans l'église, sans compter ceux découverts dans le village voisin, dont certains ont eu les mains liées au dos avant d'être exécutés. On y trouve des squelettes de personnes de tout âge : femmes, hommes, vieillards, voire des bébés. Le spectacle est intenable pour les sens : autant pour la vue, l'odorat que pour le toucher.

2. Les preuves ou indices attestant la programmation du génocide des Tutsis

8. Dans le rapport préliminaire, la question du génocide a été suffisamment traitée pour qu'on s'y attarde. On se bornera simplement à indiquer ici :

a) L'existence de plusieurs cassettes audios portant sur les émissions de Radio Rwanda et de la Radio Télévision des Mille Collines, qui sont disponibles et seront mises à la disposition des cours et tribunaux en vue de démontrer l'incitation à l'extermination des Tutsis;

b) L'émission par les pouvoirs publics d'ordres non équivoques pour la perpétration des massacres des Tutsis.

9. Des témoignages concordants et dignes de foi font remonter ces ordres, exécutés par les interahamwe ("ceux qui attaquent ensemble") et les populations, jusqu'au gouvernement en passant par les autorités politico-administratives locales. Un milicien de Kibungo déclare à un prêtre venu le dissuader de participer aux massacres qu'il aime son métier de conducteur de taxi (moto) et ne veut pas être soldat. Mais, ajoute-t-il, "si on me dit de tuer, je tue les ennemis du peuple, ils sont mauvais". Un autre, catholique de la paroisse de Kabgayi, qui s'apprêtait à tuer dans une église et à qui le curé demandait ce qu'il faisait de sa "vie de chrétien", répond : "Mon père, vous êtes déphasé. Nous sommes en train de réaliser un programme". Et à la question de savoir ce que lui apportera le programme, il répond sans ambages : "le salut". Le préfet de Cyangungu, qui n'arrivait pas à assurer la protection des Tutsis et à qui l'évêque du diocèse demandait d'ouvrir les frontières, répond qu'il ne peut laisser les Tutsis fuir vers la frontière du Zaïre, ayant reçu "les ordres d'en-haut". Le lieutenant qui dirigeait l'attaque de l'évêché de Kibungo le 15 avril 1994, après le massacre de plus de 1 200 Tutsis par des miliciens et des soldats, rassure l'évêque et quelques prêtres par lui épargnés en ces termes : "C'est terminé. Nous avons envoyé un message à Kigali pour signaler que l'opération a été réussie". Il faut entendre par là qu'il a informé Kigali de ce que tout le monde avait été exterminé à Kibungo.

10. L'exemple de loin le plus topique nous est fourni par le discours du Président de la République intérimaire du Rwanda, M. Sindikubwabo, lors de l'installation du préfet de Butaré le 19 avril 1994. Dans ce discours confirmé par plusieurs sources dignes de foi, il lance un appel en direction des populations de Butaré en leur signifiant de ne pas agir comme par le passé, passé d'apathie, et les exhorte à se livrer à la chasse à l'homme. "Vous, gens de Butaré, vous faites 'les ça ne vous regarde pas'; les ennemis sont parmi vous, débarrassez-nous en", aurait-il déclaré en kinyarwanda. Et plus loin, il ajoutait : "Si vous cultivez un champ et que vous n'y retournerez pas après pour enlever les mauvaises herbes, vous n'avez rien fait". Il aurait conclu en ces termes : "Analysez chacun de mes mots et vous trouverez vous-mêmes le sens de ce message que je vous donne".

3. L'identification et la poursuite des principaux responsables du génocide

11. Si l'identification et même la poursuite des exécutants soulèvent des difficultés en raison de leur nombre, il en va différemment des commanditaires, des principaux responsables sur qui pèsent des "charges suffisantes". Les témoignages sont nombreux et concordants sur leur rôle et chaque témoin possède une liste quelquefois avec un classement par ordre de hiérarchie dans la perpétration du génocide. Des preuves existent également. Ce qui en revanche pose problème vis-à-vis de ces principaux responsables, c'est leur poursuite. Et, dans ce sens, la grande question est celle relative aux tribunaux devant lesquels ils devraient comparaître, tout particulièrement le Tribunal international. Les victimes, blessés et ayant-droits, s'impatientent. Au-delà de la création du Tribunal international, des divergences risquent de surgir entre l'ONU et le Gouvernement rwandais relativement à son siège, à la détention des prévenus ou des condamnés et à la sanction prononcée.

12. Le Gouvernement rwandais souhaiterait voir le Tribunal siéger au lieu des massacres, c'est-à-dire à Kigali au Rwanda. L'ONU répondra-t-elle favorablement à ce vœu?

13. Il en va de même de la détention qui, pour les exécutants, aurait probablement lieu au Rwanda et, pour les commanditaires, en dehors du territoire national. Le Gouvernement rwandais s'interroge sur le fondement d'une telle politique discriminatoire dite de "deux poids, deux mesures".

14. Enfin, s'agissant de la sanction, le Gouvernement rwandais, poussé par l'opinion publique nationale, opte pour l'application stricte du Code pénal rwandais qui prévoit la peine capitale, alors que, l'ONU, à l'instar du Statut du Tribunal pénal international pour l'ex-Yougoslavie (S/25704) adopté par le Conseil de sécurité dans sa résolution 827 (1993) du 25 mai 1993 et conformément au Statut du Tribunal international pour le Rwanda (S/1994/1168), contenu dans la résolution 955 (1994) du 8 novembre du Conseil, prescrit la détention perpétuelle comme sanction suprême. Dans cette hypothèse, au delà de la discrimination établie entre les deux catégories de personnes, on déplore le paradoxe qui consisterait à punir plus sévèrement les exécutants que les commanditaires. Il n'est d'ailleurs pas exclu, fait-on remarquer, qu'à la faveur de certains événements, les commanditaires recouvrent la liberté quelques années plus tard. C'est sans doute faute d'avoir résolu toutes ces divergences et contradictions que le Gouvernement rwandais a proposé au Conseil de sécurité, comme le rapporte Le Monde du mardi 1er novembre 1994, que la juridiction internationale soit remplacée par un tribunal national "avec l'assistance internationale et l'instauration de la peine de mort et non pas la prison à vie...".

B. Le retard accusé par l'enquête

15. L'enquête, qui doit être menée sur le terrain par les observateurs des droits de l'homme, conformément au paragraphe 21 de la résolution S-3/1 du 25 mai 1994 de la Commission des droits de l'homme, n'a pas, à ce jour, véritablement commencé. Il importe cependant, pour s'en rendre compte, de distinguer deux périodes. La première se caractérise par l'absence d'observateurs et la seconde par la présence d'observateurs non déployés.

1. L'absence d'observateurs sur le terrain

16. Les deux premières visites du Rapporteur spécial, qui ont eu lieu respectivement du 9 au 20 juin 1994, et du 29 au 31 juillet 1994, n'appellent pas de commentaires particuliers, en raison de ce qu'à cette époque, l'enquête à proprement parler n'avait pas commencé. Les deux premiers rapports ont été établis sur la base des documents et des témoignages reçus des responsables des organisations intergouvernementales et non gouvernementales, ainsi que de quelques rescapés des massacres. Le Rapporteur spécial s'est d'ailleurs interdit d'interroger des déplacés ou des réfugiés dans les camps, de peur qu'ils ne fassent l'objet de représailles. Cette période est celle de la guerre et du cessez-le-feu. Elle s'étend sur deux mois (juin et juillet 1994) et ne connaît pas encore de déploiement des observateurs. Cela s'explique en grande partie par le fait que la guerre sévissait encore. C'est à la fin du conflit armé que l'on envisagera le déploiement des observateurs.

2. La présence d'observateurs non déployés

17. A la suite de sa seconde visite, le Rapporteur spécial a proposé, selon une stratégie contenue dans le deuxième rapport, un déploiement de 150 à 200 observateurs pour la période de reconstruction nationale. L'ONU en a retenu 147, chiffre arrêté d'un commun accord avec le gouvernement et qui correspondrait au nombre des communes existant dans le pays.

18. A la date du samedi 22 octobre 1994, les observateurs en poste à Kigali étaient au nombre de 37 sur les 147 prévus. Si on retient que les observateurs ont commencé à arriver à Kigali, pour les premiers au nombre de 4 à partir du début du mois d'août 1994, l'on prendra la mesure des difficultés rencontrées pour la mise sur pied de cette mission. A cette même date, les observateurs sur place n'étaient pas encore déployés sur le terrain.

19. Il importe cependant de souligner que des enquêtes ponctuelles ont été effectuées par les observateurs des droits de l'homme autant que par l'unité spécialisée dans les enquêtes. Mais le plan d'ensemble du déploiement ne connaîtra un début d'exécution qu'à compter du 22 octobre.

20. La raison, principalement invoquée, se ramène à l'absence de moyens matériels et logistiques, notamment le manque de véhicules de liaison et surtout de radios de communications indispensables à la sécurité des observateurs. L'on relève en plus que, d'après le Centre des Nations Unies pour les droits de l'homme, "l'Opération sur le terrain n'a reçu que des instructions provisoires, durant la phase initiale, inspirées de directives similaires appliquées dans les opérations des Nations Unies en ex-Yougoslavie, en El Salvador et en Haïti". Et c'est seulement à la suite de l'arrivée du Chef de l'Opération à Kigali, en date du 10 septembre 1994 et à l'entrée en service du Chef de l'Unité spécialisée dans les enquêtes que l'on élaborera "des directives complètes à l'attention du personnel engagé sur le terrain, inspirées étroitement de l'expérience accumulée durant les premières semaines de l'Opération". Mais il faut ajouter à ces raisons d'autres tenant à des conflits de personnes et au flottement dans les instructions données.

21. Ces différentes raisons peuvent expliquer les démissions au nombre de deux et en partie le non-renouvellement par deux autres observateurs de leurs contrats. La mission n'est pas à l'abri d'autres démissions d'observateurs, que le Rapporteur spécial a tenté de dissuader, lors de sa troisième visite. Le retard dans le déploiement des observateurs est d'autant plus à déplorer que l'insécurité sévit de plus en plus au Rwanda.

II. L'INSECURITE

22. L'insécurité, déjà stigmatisée dans le deuxième rapport, connaît une recrudescence. Conséquence du conflit armé et surtout des massacres, elle est source des violations des droits de l'homme. Celles-ci s'analysent en des atteintes graves au droit de propriété, à la sûreté personnelle et au droit à la vie.

A. Les atteintes au droit de propriété

23. Les atteintes au droit de propriété consistent en des occupations illégales de propriétés, auxquelles le gouvernement tente vainement de trouver une solution.

1. Les occupations illégales de propriétés

24. De retour au Rwanda, de nombreux réfugiés occupent illégalement des maisons, d'habitation ou de commerce, et des terres abandonnées par leurs propriétaires ou leurs locataires en fuite. La situation est d'autant plus complexe que ce retour est anarchique et que la majorité de ces réfugiés appartiennent à la diaspora de la décennie soixante. De sources bien informées, il semble que plus de la moitié des propriétés des Hutus sont occupées par des nouveaux rapatriés. Cela est vrai pour Kigali comme pour la commune de Rusumo. L'exemple le plus illustratif est celui du secteur de Massaka, aux environs de Kigali, où sur les 5 000 habitants, 4 000 sont de nouveaux arrivants, soit 80 % de la population totale.

25. Les nouveaux arrivants s'installent sans idée de retour des propriétaires. Et, lorsque ceux-ci reviennent et revendiquent leur droit de propriété, un conflit naît qui prend souvent des proportions inattendues. En raison de leur appartenance à l'ethnie hutue, ils font en effet l'objet soit de dénonciations aux militaires comme ayant participé au génocide soit de traitements cruels et inhumains ou d'exécutions sommaires. Le gouvernement a dit au Rapporteur spécial être préoccupé par ce délicat problème. C'est ainsi

que le Premier Ministre, qui fait observer qu'il est difficile de déguerpir et de reloger les réfugiés, reconnaît que les conflits se "résolvent de plus en plus violemment".

2. Les solutions au problème

26. Pour résoudre le délicat problème des occupations illégales des propriétés des fugitifs par les rapatriés, occupations provoquées notamment par l'absence de logements et le retour massif et spontané des réfugiés, le Gouvernement rwandais a pris un certain nombre de mesures dont les suivantes :

a) Ne peuvent rentrer dans leur droit de propriété que les réfugiés exilés depuis moins de 10 ans. Ceux-ci sont les véritables propriétaires de leurs biens abandonnés pendant le conflit armé et les massacres. Ce principe, souligne-t-on, est conforme aux Accords d'Arusha;

b) Les réfugiés ayant vécu plus de 10 ans en exil peuvent occuper provisoirement les maisons abandonnées et vacantes, étant informés de ce que cette occupation ne peut faire l'objet d'un quelconque droit de propriété. Ils sont dans une situation précaire et révocable;

c) Les biens des auteurs du génocide seront saisis et vendus pour constituer un Fonds destiné à l'indemnisation des victimes;

d) Il est créé un comité interministériel présidé par le Ministre de l'intérieur et chargé de l'exécution des mesures précédentes.

27. Le Ministre de l'intérieur reconnaît que le comité se heurte à la résistance de beaucoup de personnes frappées par des mesures de déguerpissement. Cette résistance est d'autant plus forte qu'elle émane quelquefois d'officiers de l'Armée Patriotique Rwandaise (APR). Elle explique le fait que le comité ne puisse réussir, précise le Ministre, que dans 30 % des cas. Aussi envisage-t-il de s'appuyer désormais sur une section de la gendarmerie pour faire "exécuter de force les ordonnances, là où les occupants ont démontré des signes évidents de mauvaise foi".

28. Les mesures prises en vue de régler les problèmes restent encore insuffisantes, car loin de résoudre ceux-ci, elles ne font que les déplacer. Les occupants illégaux délogés, de gré ou de force, sont en effet invités à réintégrer d'autres maisons, commerces ou plantations inoccupés. Ils doivent en conséquence s'attendre à la même opération. C'est pour mettre fin à cette situation inconfortable et incertaine que le Rapporteur spécial a proposé qu'une politique nationale de prise en charge des anciens réfugiés soit adoptée et mise en oeuvre, tout en tenant dûment compte des Accords d'Arusha, sous les auspices du Gouvernement rwandais, du Haut Commissaire des Nations Unies pour les réfugiés et de l'Organisation de l'unité africaine. La mise en place d'un tel plan suppose l'appui de la communauté internationale et ce dans les plus brefs délais, en vue de mettre fin aux autres violations des droits de l'homme.

B. Les atteintes à la sûreté personnelle

29. Les arrestations et détentions arbitraires commises sur le territoire rwandais sont justifiées par le manque de moyens.

1. Les arrestations et détentions arbitraires

30. L'insécurité se traduit également par les atteintes à la sûreté personnelle, se manifestant principalement par des arrestations et des détentions arbitraires. Le Rapporteur spécial a été informé de plusieurs cas de perquisitions et surtout d'arrestations et de détentions arbitraires. Il a

pu lui-même s'en rendre compte lorsqu'il a visité la prison de Kigali où il a pu rencontrer plusieurs milliers de prisonniers comprenant des hommes, des femmes, des enfants et des vieillards. Il a pu dénombrer une quarantaine d'enfants de moins de 15 ans dont plusieurs de 12 ans.

31. Ces personnes sont arrêtées et détenues en violation des règles élémentaires de procédure. Il n'est pas décerné de mandat d'arrêt ou d'amener et les personnes restent dans les lieux de détention, tout particulièrement dans les brigades, au-delà du délai légal de la garde à vue, qui est de 48 heures renouvelable une seule fois. Pis encore, des personnes élargies par l'autorité judiciaire, faute de preuves suffisantes, sont arrêtées de nouveau par des militaires et détenues dans les brigades ou casernes.

32. Les conditions de détention sont des plus précaires. Les prisonniers vivent entassés presque les uns sur les autres. La chasse aux "génocidaires" a rempli les prisons du Rwanda. Le 18 octobre 1994, le CICR en dénombrait plus de 7 000 dont 800 à Gitarama, 2 000 à Butaré et 4 200 à Kigali. Il s'ensuit une surpopulation carcérale. Pour ne citer qu'un exemple, la prison de Kigali, qui a une capacité de 1 500 places, comptait, le vendredi 21 octobre 1994, 4 305 prisonniers. La situation risque d'autant plus de s'aggraver que les entrées en prison sont massives alors que les sorties sont rares, sinon inexistantes. A Kigali, les entrées journalières oscillent en moyenne entre 50 et 100 personnes. Par ailleurs, la prison ne dispose pas d'assez de lits de sorte qu'un grand nombre de personnes dorment à même le sol, sur le pavé. Il n'y a aucun espace aéré. Ils n'ont qu'un maigre repas par jour, composé uniquement de maïs et de haricots.

2. Le manque de moyens

33. Le Gouvernement rwandais invoque à la vérité des raisons plus ou moins liées à la fois pour justifier les arrestations et les détentions et pour expliquer les irrégularités qui les entachent. Les raisons sont au nombre de trois.

34. La première, c'est la nécessité de poursuivre les auteurs du génocide afin qu'ils n'échappent pas à la justice. Le gouvernement et les populations des villes, nous dit-on, sont animés d'une volonté déterminée de poursuivre les coupables. Le premier tient à tout prix à châtier les auteurs des massacres et ne veut en aucune manière consacrer l'impunité, qui est une cause rémanente des vagues successives de massacres au Rwanda. C'est la raison pour laquelle il a été répété à plusieurs reprises au Rapporteur spécial que les "génocidaires" sont arrêtés dans l'attente du Tribunal international et de la reconstitution de l'appareil judiciaire rwandais. Les secondes exercent une forte pression sur les pouvoirs publics pour que les différents crimes du droit des gens ne restent pas impunis, faute de quoi elles se verraient dans l'obligation de se venger elles-mêmes.

35. La seconde, c'est précisément la nécessité d'assurer la protection des intéressés eux-mêmes contre les représailles que pourraient exercer les victimes. La prison et les autres lieux de détention, nous dit-on, sont des lieux sûrs pour la préservation de la vie des personnes dénoncées comme auteurs des massacres. Mais celles-ci ne semblent pas informées de l'objectif visé et n'ont visiblement pas le choix.

36. La troisième se ramène au manque de structures administratives et de personnel judiciaire. Le gouvernement se dit conscient des violations du droit à la sûreté et se plaint de manquer cruellement du minimum nécessaire au bon fonctionnement de la police judiciaire et de la justice. Il souligne, à titre d'exemple, que sur plus de 150 agents du Ministère de la justice, seuls 27 sont en place, ayant échappé à la mort ou à l'exil. Par ailleurs, il met en avant l'absence de formation des militaires voire leur ignorance de la

procédure judiciaire comme causes des violations des droits de l'homme. Ces raisons expliquent également les atteintes au droit à la vie.

C. Les atteintes au droit à la vie

37. Les atteintes au droit à la vie procèdent des exécutions sommaires, que l'on tente de justifier par la vengeance des victimes.

1. Les exécutions sommaires

38. Le Rapporteur spécial a été également saisi de plusieurs cas d'exécutions sommaires voire de massacres et de disparitions involontaires de personnes, dont des civils et surtout des soldats de l'APR seraient responsables. Ces informations lui sont parvenues aussi bien des parents des victimes que des organisations non gouvernementales humanitaires. Elles font tantôt état de milliers de morts anonymes tantôt de listes de personnes en nombre limité mais nommément désignées.

39. Le Rapporteur spécial a pu lui-même se rendre à Chamvuzo (préfecture de Butaré) pour identifier une fosse commune de près d'une cinquantaine de personnes, dont l'APR serait à l'origine. Certes, beaucoup de rumeurs tendant à la désinformation circulent dans les camps des réfugiés, faisant état de massacres des milliers de Hutus. Mais des soldats de l'APR et des populations civiles se sont bel et bien rendus coupables de massacres de Hutus à différents endroits du Rwanda. Les enquêtes sur ce point sont en cours.

40. Des personnes soupçonnées d'avoir participé aux massacres sont exécutées soit par des populations civiles elles-mêmes soit par des militaires à la demande de celles-ci ou à leur propre initiative. Des témoignages concordants et dignes de foi révèlent presque le même scénario. C'est à la suite des réunions dites d'information, convoquées par les éléments de l'APR, que des hommes, des enfants et des vieillards sont pris en traîtres et massacrés. Des massacres auraient eu lieu en différents endroits du pays, plus particulièrement dans le sud. Il s'ensuit qu'aux fosses communes déjà nombreuses dues aux miliciens et aux Forces armées rwandaises sont venues s'ajouter celles de l'APR, de sorte qu'il paraît à l'heure actuelle difficile de les distinguer. Les enquêtes sont en cours, destinées à clarifier la situation et à établir les responsabilités.

2. La vengeance privée

41. Pour expliquer les massacres récemment dénoncés et dégager ainsi sa responsabilité, le gouvernement avance des raisons et énonce des mesures qu'il a prises. Les raisons invoquées sont en réalité au nombre de deux.

42. La raison principale, c'est la vengeance privée des civils Tutsis autant que des militaires. Au Rwanda, nous dit-on, tous ceux qui habitent la même colline se connaissent et, très souvent, les bourreaux ont agi à découvert et ont exécuté au vu et au su de tous, assurés qu'ils étaient de l'impunité, devenue une tradition. De même, des soldats qui avaient rejoint les rangs du Front patriotique rwandais (FPR), du fait même de leur engagement, ont vu leurs parents exécutés. Ils se livrent, à leur tour, à des actes de représailles.

43. La seconde, subsidiaire, se ramène au fait que le FPR a procédé, dans la dernière phase de la guerre, à des recrutements hâtifs et peu sélectifs de jeunes délinquants et même d'anciens miliciens. La tentation est grande pour ces jeunes qui viennent d'obtenir la victoire et qui ne disposent d'aucun salaire, de s'emparer du bien d'autrui, au besoin en recourant au meurtre. Il faut ajouter à cela l'abus de pouvoir des officiers qui occupent

illégalement des maisons en s'appuyant sur la force des armes. Le problème se pose alors de savoir si le FPR contrôle vraiment tous ses éléments de l'APR.

44. Face à cette situation, le Gouvernement a adopté un certain nombre de mesures dont les suivantes :

- a) La création d'une police militaire, placée sous le commandement d'un colonel. Celle-ci est chargée de surveiller et d'arrêter les militaires délinquants;
- b) Le casernement des militaires indisciplinés dans un camp d'entraînement;
- c) L'adoption d'un décret portant code de justice militaire. Celui-ci prescrit la création de deux juridictions compétentes pour juger les militaires : le Conseil de guerre et la Cour militaire. Les décisions de cette dernière sont susceptibles de pourvoi en cassation dans les conditions prévues par la loi rwandaise. D'ores et déjà, le Gouvernement rwandais a procédé à l'arrestation de militaires dont des officiers (majors et lieutenants). Dans un fax adressé au Rapporteur spécial par le Ministre de la justice, il est fait état de 100 militaires arrêtés avec une liste de 20 cas dont "l'instruction est terminée".

45. Il convient d'ajouter que l'ONU assiste le Gouvernement rwandais pour la mise en place d'une nouvelle police nationale destinée à assurer la sécurité au Rwanda. C'est dans ce cadre que, répondant favorablement à une demande urgente du Gouvernement rwandais, la MINUAR a commencé un programme de formation de 103 étudiants policiers choisis par ce dernier. Ces jeunes auront pour rôle de se familiariser avec les tâches courantes et le travail d'enquête de la police. Il existe un programme développé par le Secrétaire général dans son rapport intérimaire du 6 octobre 1994 sur la Mission d'assistance des Nations Unies au Rwanda (S/1994/1133).

46. Il est évident que ces solutions ne suffisent pas pour établir la sécurité au Rwanda. Aussi convient-il de les élargir en une assistance globale qui comprendrait aussi bien la reconstruction nationale que l'assistance juridique lato sensu. L'ensemble de ces mesures peuvent également contribuer au retour des réfugiés.

III. LE RETOUR DES REFUGIES ET DES DEPLACES

47. Le retour au Rwanda et dans leurs collines respectives des personnes réfugiées et déplacées continue également d'être la grande préoccupation de la communauté internationale. Mais ce mouvement de retour, ralenti par une forte pression des anciennes autorités, semble s'orienter vers des solutions nouvelles.

A. Le ralentissement du mouvement de retour

48. La situation des réfugiés n'a que trop duré. Le provisoire tend à s'éterniser malgré les conditions pénibles d'existence, qui n'ont connu qu'une légère amélioration (notamment sanitaire et alimentaire).

49. En dépit d'efforts inlassables fournis par la communauté internationale pour assurer le rapatriement des réfugiés et des déplacés, la situation n'a guère évolué. Au mois d'octobre 1994, le HCR estimait approximativement à plus d'un million et demi le nombre de réfugiés rwandais dans les pays voisins, dont 850 000 au Nord-Kivu, 300 000 au Sud-Kivu (Zaire) et 460 000 en République-unie de Tanzanie. Il convient de mentionner qu'au moins 50 000 réfugiés sont morts de maladies, en particulier à la suite de l'épidémie de choléra qui a sévi dans les camps. A la même époque, on comptait un nombre

similaire de personnes déplacées à l'intérieur du Rwanda. Les deux camps de déplacés de Kibeho et de N'Dago abritaient respectivement 60 000 et 40 000 déplacés.

50. Ces chiffres tendent à se stabiliser, eu égard au ralentissement des rapatriements qui contraste avec les mouvements massifs de rapatriements observés immédiatement après l'instauration du cessez-le-feu. A titre d'exemple, dans la préfecture de Gisenyi se trouvant dans le secteur 5 de la MINUAR, on a enregistré dès le 27 juillet 1994, 3 368 rapatriés de retour du Zaïre. Le 28, le nombre de ceux qui retournaient par les mêmes postes-frontières était de 4 233. Mais dès le 29, on enregistre une chute brutale des rapatriements avec un chiffre de 1 592 et le 18 août un chiffre de 922 pour tomber ensuite à 268 le 6 octobre. Ainsi, alors que le nombre des rapatriements était, dans ce secteur, de 12 433 sur les cinq derniers jours de juillet (soit une moyenne de 2 486 par jour), il s'élevait pour le mois d'août à 36 600 (soit une moyenne de 1 180 par jour), pour le mois de septembre à 32 925 (une moyenne de 1 097 par jour) et pour la première moitié d'octobre à 10 337 (une moyenne quotidienne de 607). Cette baisse dans le mouvement de retour des réfugiés est devenue sensible et significative à partir du 17 septembre pour s'aggraver durant le mois d'octobre.

51. Il importe de souligner deux paramètres agissant en sens contraires. Le premier, c'est que la plupart des réfugiés qui sont rentrés dans la même période au Rwanda appartiennent à l'ancienne diaspora des Tutsis et ne sont probablement pas pris en compte dans le calcul des réfugiés. Le second, c'est que les chiffres n'incluent pas les entrées par pirogues ou par d'autres moyens clandestins.

52. Par ailleurs, les entrées sont de loin moins importantes que les sorties. Ainsi le HCR rapporte que dans la zone de Goma, il y a eu, du 8 au 14 septembre 1994, 15 662 rapatriés et aucune rentrée dans les camps; du 15 au 21 septembre, 11 728 rapatriés contre 1 868 rentrées; du 22 au 30 septembre, 6 477 rapatriés contre 1 868 rentrées; du 1er au 17 octobre, 12 106 rapatriés contre 1 731 rentrées. Dans l'ensemble, on constate sinon un blocage, du moins un ralentissement des sorties des camps. Celui-ci est en grande partie dû à l'action des anciens dirigeants.

B. La prise en otage des réfugiés

53. Le ralentissement des rapatriements des réfugiés et déplacés peut s'expliquer par diverses raisons. La première, immédiatement perceptible, c'est l'insécurité qui prévaut au Rwanda et tout particulièrement la crainte de représailles des Tutsis. La seconde, qui lui est étroitement liée, c'est la peur pour ceux qui ont participé aux massacres de se voir exécutés par le gouvernement du FPR. Il en existe d'autres, telles que la présence sécurisante des observateurs ou de militaires des Nations Unies, l'amélioration des conditions alimentaires et sanitaires.

54. Mais la raison déterminante, à tout le moins la plus importante, c'est que les réfugiés et les déplacés sont retenus en otage par les anciennes autorités politiques, à en juger par la forte pression exercée sur eux "dans un cadre approprié".

1. La forte pression

55. L'ancienne équipe dirigeante, aidée par ses agents locaux ainsi que par des militaires et des miliciens, continue de mener une forte campagne contre le retour des réfugiés et des déplacés au Rwanda ou dans leurs collines. Ces différentes autorités n'hésitent pas à parcourir les camps afin d'y tenir des discours politiques. Les messages contenus dans ces discours sont au nombre de deux : la désinformation et la menace.

56. La première consiste à inviter les réfugiés et les déplacés à demeurer dans les camps et à ne pas se rendre au Rwanda de peur de se faire massacrer par les Tutsis et le gouvernement du FPR. Il est alors fait état de milliers de Hutus massacrés par ceux-ci. Et de nombreuses personnes sont prêtes à témoigner en ce sens. Cette campagne de désinformation est si forte que l'on ne parvient plus à établir la vérité quand on sait, par ailleurs, qu'effectivement l'insécurité règne au Rwanda.

57. La seconde, c'est la menace permanente qui pèse sur les réfugiés ou déplacés qui expriment expressément ou tacitement le désir de se faire rapatrier. Il ressort en effet de cette campagne que le retour ne pourra se faire que seulement à la suite d'une négociation politique, impliquant l'amnistie générale ou, à défaut, la reprise de la guerre civile pour reconquérir le pouvoir. Ceux qui ne respecteraient pas les consignes données et qui rentreraient, prendraient le risque d'être les premières cibles en cas de reconquête du pouvoir.

58. Ces campagnes sont organisées grâce à la liberté d'action dont bénéficient les membres de l'ancienne équipe gouvernementale pour mener, sur le territoire zaïrois, des activités politiques contraires aux normes internationales. C'est ainsi que le 18 octobre 1994, l'ex-premier ministre de l'ancien Gouvernement rwandais, M. Jean Kambanda, a rendu visite aux réfugiés du camp de Mugunga (Goma). Il a discuté plus d'une heure trente successivement avec les représentants des réfugiés et les réfugiés eux-mêmes, regroupés en grand nombre pour l'écouter. Le message adressé était en substance le suivant : le gouvernement rwandais en exil va entamer très rapidement des pourparlers avec le gouvernement de Kigali. Si ce dernier refuse ou empêche de trouver une solution rapide, alors une action sur le plan militaire sera entreprise. Faisant écho au "premier ministre", le général Bizimungu devait déclarer le samedi 22 octobre 1994 que, s'il n'y avait pas de négociation entre le nouveau et l'ancien gouvernements en vue du partage du pouvoir, ses troupes allaient attaquer le Rwanda. Ces menaces ne sont pas hélas vaines car, l'ancien gouvernement a conservé les moyens de sa politique.

2. Un cadre approprié

59. L'ancienne équipe gouvernementale a pu concevoir et mettre en place dans les différents camps de réfugiés un cadre tout à fait approprié pour maintenir sa pression sur les réfugiés et les déplacés. Ce cadre est à la fois institutionnel, politique et administratif.

60. Le cadre institutionnel se ramène à la reconstitution telles quelles des structures politiques et administratives du Rwanda dans les camps. Ces structures sont principalement les préfectures et les communes. D'autres camps y ajoutent même les secteurs. C'est ainsi que dans le camp de Kibumba à Goma, huit des dix préfectures rwandaises sont représentées avec plusieurs communes et quelques secteurs. Quelquefois, à la tête des collectivités locales ainsi reconstituées, on retrouve les mêmes autorités locales, préfets ou chefs de préfecture et bourgmestres. C'est ainsi qu'à Benaco en République-unie de Tanzanie, l'on signale que le préfet de Kibungo a repris ses fonctions à la tête de la préfecture.

61. Ces préfectures, secteurs et communes reconstitués sont incontestablement des structures d'encadrement des populations civiles par les anciennes autorités rwandaises. Ce contrôle est d'autant plus efficace que dans plusieurs camps, c'est pratiquement à elles qu'incombe le recensement des réfugiés.

62. L'encadrement ainsi conçu et réalisé confère à l'ancienne équipe gouvernementale, par l'intermédiaire des préfets ou chefs de préfectures, des bourgmestres et des miliciens, d'importants pouvoirs politiques et administratifs. Parmi ceux-ci l'on retiendra essentiellement le pouvoir alimentaire et le pouvoir de sanction.

63. Le premier est tacitement reconnu à ces autorités locales par les organismes d'aide qui s'abandonnent à elles en leur confiant le soin d'assurer la distribution des vivres et autres secours. Ces autorités n'hésitent pas à user et à abuser du pouvoir alimentaire ainsi reconnu pour punir ceux qui ne se conforment pas à leur politique et détourner des stocks d'aliments que l'on retrouve en vente sur les marchés du pays d'accueil.

64. Le second pouvoir, très tôt conquis de force par elles, consiste à exécuter tous ceux qui ne se conforment pas à leur politique de maintien dans les camps. Mais la sanction capitale va au-delà du politique pour s'étendre aux simples affaires domestiques voire aux actes de vandalisme. L'insécurité règne en permanence dans les camps. Il ne se passe pas un jour sans qu'un réfugié se fasse tuer. Les miliciens et des bandits armés y font la loi, celle des armes. Des rumeurs persistantes font même état d'entraînements de soldats et de miliciens en vue d'attaquer l'Etat rwandais et d'y reconquérir le pouvoir. L'insécurité croissante dans les camps explique que le personnel du HCR et des organismes humanitaires n'y dorme plus et que certains d'entre eux menacent de se retirer. Il s'ensuit la nécessité de mesures nouvelles destinées à assurer la sécurité dans lesdits camps.

C. Les nouvelles solutions

65. Face à la situation qui prévaut dans les camps de réfugiés et de déplacés autant qu'à l'intérieur du Rwanda, les Nations Unies et les différents partenaires ont envisagé de nouvelles solutions qui viendront s'adjoindre à celles déjà existantes. Parmi ces solutions, les deux principales à retenir sont la séparation des réfugiés des politiques et leur rapatriement.

1. La séparation des réfugiés et des politiques

66. La politique de la séparation des réfugiés ou des déplacés et des politiques est préconisée par le Secrétaire général des Nations Unies dans son rapport S/1994/1133 du 6 octobre 1994. Le rapport final de la mission technique des Nations Unies sur l'état de la sécurité dans les camps donne les détails de cette opération. Pour en faire l'économie, l'on retiendra essentiellement deux points :

a) La distinction opérée par le rapport du Secrétaire général parmi les réfugiés rwandais, en particulier au Zaïre :

- i) Les anciens dirigeants comptant une cinquantaine de familles, logées dans des villas à Bukavu;
- ii) Les militaires des ex-FAR, évalués à 16 000 et qui forment, avec leurs familles, un groupe de 80 000 personnes;
- iii) Les miliciens, difficiles à compter, tant ils se confondent avec les réfugiés ordinaires; et
- iv) Les réfugiés ordinaires, dont le nombre est évalué à plus d'un million.

b) Le but de l'opération consiste à séparer la grande masse des réfugiés de ceux qui, hier, avaient commandité ou participé aux massacres et aujourd'hui prennent les survivants hutus en otage. Ces derniers sont ceux qui rentrent dans les trois premières catégories. Il existe néanmoins une difficulté résidant dans la possibilité d'identifier la troisième catégorie, les miliciens, pour parvenir à la séparer des populations. Cette opération se réalisera par la mise en place d'une force internationale d'isolement ou d'interposition, qui est évaluée à environ 2 000 à 3 000 policiers, et dont le Secrétaire général a annoncé la création imminente. Mais celle-ci devra sans doute commencer par des solutions pacifiques d'explication pour encourager le rapatriement, le recours à la force n'intervenant qu'en cas d'extrême urgence.

2. Le rapatriement

67. Le rapatriement librement consenti des réfugiés se réfère aux dispositions pertinentes des différentes Conventions des Nations Unies et du Protocole d'accord conclu à Arusha le 9 juin 1993, entre le Gouvernement de la République rwandaise et le Front patriotique rwandais sur le rapatriement des réfugiés rwandais et la réinstallation des personnes déplacées. C'est sur cette base qu'a été conclu le 24 octobre 1994 à Kinshasa, au Zaïre, l'Accord tripartite sur le rapatriement des réfugiés rwandais du Zaïre par le Gouvernement de la République rwandaise, le Gouvernement de la République du Zaïre et le Haut Commissariat des Nations Unies pour les réfugiés.

68. L'Accord définit, aux termes de son préambule, "les procédures et les modalités spécifiques du rapatriement librement consenti et de la réintégration définitive au Rwanda des réfugiés rwandais au Zaïre avec l'assistance de la communauté internationale par le biais du HCR, ce dernier pouvant recevoir, le cas échéant, l'appui d'autres institutions des Nations Unies et des organisations intergouvernementales et non gouvernementales".

69. Il met en effet à la charge des parties contractantes un certain nombre d'obligations. Celles-ci s'engagent :

a) Le Zaïre, pays d'asile, à respecter les clauses pertinentes des différentes Conventions de l'ONU et de l'OUA sur les réfugiés et à prendre les mesures appropriées afin que ceux-ci ne soient pas indûment influencés dans leurs décisions;

b) Le Rwanda, pays d'origine, à prendre des mesures politiques, administratives, voire douanières pour assurer et faciliter, dans la dignité et la sécurité, le retour et la réintégration des réfugiés ainsi que la paix sociale et la réconciliation nationale;

c) Le Haut Commissariat des Nations Unies pour les réfugiés, à surveiller et superviser toute l'opération de rapatriement du départ à l'arrivée en mettant tout particulièrement l'accent sur le caractère volontaire de la décision des personnes ainsi que leur sécurité et leur dignité.

70. Il convient d'espérer que cette Convention, qui se réfère au communiqué du 26 juillet 1994 sanctionnant la rencontre entre le Président de la République rwandaise et le Président de la République zaïroise, ne connaîtra pas le même sort que celui-ci et sera respectée.

IV. RECOMMANDATIONS

71. Le Rapporteur spécial déplore la tendance à prendre prétexte de l'insécurité actuelle au Rwanda pour "banaliser" le génocide et justifier l'inaction. Se comporter ainsi, c'est prendre l'effet pour la cause. C'est oublier que le génocide est, en grande partie, la cause de l'insécurité.

Pour apporter la médication appropriée au mal rwandais, il paraît indispensable d'établir un diagnostic correct. Sans négliger, loin s'en faut, les violations des droits de l'homme actuelles, il importe de les situer dans leur contexte et de rechercher leurs sources pour tenter de les "tarir" avant qu'il ne soit trop tard. Il convient, en effet, d'agir vite et même très vite, faute de quoi, l'on risque d'assister impuissant à une seconde guerre et à de nouveaux massacres. C'est pour éviter une telle catastrophe que les recommandations sont formulées, s'adressant respectivement au Gouvernement rwandais, aux gouvernements d'accueil des réfugiés et aux Nations Unies.

A. La cessation des violations des droits de l'homme

72. L'Organisation des Nations Unies devrait exiger du Gouvernement rwandais que cessent les violations graves des droits de l'homme qui sont perpétrées sur le territoire et qui s'analysent en des perquisitions, arrestations et détentions arbitraires; des disparitions et exécutions sommaires.

73. L'ONU devrait recommander au Gouvernement rwandais que soient :

- a) Organisées de vastes campagnes de sensibilisation des populations au respect de la personne humaine et des biens d'autrui, ainsi que de préparation à une vie commune et en bonne intelligence;
- b) Adoptées, comme préconisé dans le second rapport du Rapporteur spécial, des mesures administratives énergiques de nature à dissuader les actes de représailles tout en respectant les droits fondamentaux des auteurs desdits actes;
- c) Respecter les prérogatives et les décisions de l'autorité judiciaire, condition indispensable à une bonne administration de la justice.

B. La situation des réfugiés

74. L'ONU devrait recommander aux gouvernements sur les territoires desquels sont réfugiés les rwandais, tout particulièrement le Gouvernement zaïrois, qui a accueilli le plus grand nombre, qu'ils prennent les mesures appropriées pour que :

- a) Le rapatriement librement consenti des réfugiés soit effectivement assuré et facilité;
- b) Les réfugiés ne soient indûment influencés dans un sens comme dans l'autre, c'est-à-dire à quitter le territoire d'accueil ou à y demeurer;
- c) Des campagnes d'information systématiques soient organisées à cet effet afin que les intéressés puissent décider en pleine connaissance de cause;
- d) Ils respectent leurs engagements internationaux, tout particulièrement ceux découlant des dispositions pertinentes des Conventions internationales relatives à l'asile et aux réfugiés;
- e) Leurs territoires ne soient pas utilisés comme base de déstabilisation du Rwanda ou d'agression contre cet Etat.

75. L'ONU devrait aider à :

- a) L'indemnisation de ces Etats pour le préjudice par eux subi du fait de l'installation des réfugiés et de la détérioration de leurs cultures et de leur sol;

- b) Financer les opérations de rapatriement des réfugiés.

C. L'aide internationale au Rwanda

76. L'ONU devrait lancer un appel solennel aux Etats Membres, tout particulièrement aux grandes puissances et aux Etats africains, pour qu'ils apportent une aide substantielle et urgente à la reconstruction de l'Etat rwandais.

77. L'aide, qui doit revêtir diverses formes et intervenir dans tous les secteurs de l'activité économique, politique, sociale et culturelle, suppose que soit préalablement effectuée une évaluation globale des besoins.

78. Dans l'immédiat, il apparaît plus qu'urgent d'apporter aux populations l'aide alimentaire et sanitaire destinée à leur permettre de survivre d'une part et d'autre part, les moyens de sauver leurs récoltes, leurs cheptels et leur sol et de produire le minimum nécessaire pour vivre.

79. L'ONU devrait prendre une part active à l'aide et contribuer à son organisation. Elle devrait notamment apporter à l'Etat rwandais :

a) L'aide pécuniaire ou matérielle en vue de reconstituer les infrastructures de la police administrative, de la police judiciaire, de la gendarmerie et de la justice;

b) L'assistance en personnel de justice et de maintien de l'ordre qui comportera la formation des policiers, gendarmes et magistrats, tout en aidant les magistrats locaux à rendre la justice. Les Nations Unies pourraient, à cet effet, élargir le mandat du Rapporteur spécial à l'assistance technique. Ainsi, une équipe spécialisée d'observateurs aurait en charge la formation des policiers, des magistrats, des avocats et autres auxiliaires de justice et la création d'un barreau en vue de garantir l'indépendance de la magistrature.

80. L'ONU devrait prendre l'initiative d'assurer une meilleure coordination des actions menées sur le territoire rwandais, que ce soient les actions en faveur des droits de l'homme ou du droit humanitaire ou les autres actions telles que alimentaires ou militaires. Une telle coordination s'avère indispensable eu égard à la multiplicité et à la diversité des actions engagées sur le terrain. Elle aurait l'avantage d'envisager une conception intégrée des problèmes et éviter les doubles emplois, la duplication des efforts et le gaspillage de l'aide.

81. L'ONU devrait procéder, dans les meilleurs délais à :

a) L'augmentation du nombre des spécialistes des droits de l'homme et à leur déploiement effectif sur le terrain, avec la triple qualité, pour certains, d'observateurs, d'enquêteurs et de formateurs;

b) L'entrée en exercice du tribunal international qui vient d'être institué, ainsi que des tribunaux locaux à créer pour juger les auteurs du génocide afin d'arrêter, à tout le moins réduire, les actes de représailles;

c) La mise sur pied d'un cadre juridique approprié pour assurer la protection des veuves et des enfants non accompagnés et les garantir dans leurs droits fondamentaux. Il conviendrait, à cet effet, de prévoir l'indemnisation des préjudices subis et imputables au fait des auteurs des massacres autant que de leurs complices;

d) La mise sur pied d'une force internationale chargée d'assurer la sécurité dans les camps des réfugiés et des déplacés, ainsi que des

dispositifs de leur rapatriement dans des conditions idoines de sécurité et de dignité.

82. L'ONU devrait, en collaboration avec l'OUA, prendre des initiatives en vue de :

- a) Créer les conditions et le cadre d'un dialogue entre les différentes composantes politiques rwandaises de l'intérieur et de l'extérieur. Ce dialogue pourrait jeter les bases d'un règlement politique du conflit qui viendrait se substituer au règlement militaire;
- b) Convoquer une conférence internationale sur le Rwanda qui aurait pour but, comme initialement recommandé dans le rapport préliminaire, d'amener les parties au conflit à négocier, de bonne foi et en tenant dûment compte des Accords d'Arusha du 4 août 1993, les conditions de la paix, de la transition démocratique, de la réconciliation et de l'unité nationales.

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SUJETS D'INQUIÉTUDE AU RWANDA EN OCTOBRE 1994

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Working Paper

3 novembre 1994

SUJETS D'INQUIETUDE AU RWANDA EN OCTOBRE 1994

par
Filip Reyntjens

De retour d'une brève mission de recherche, menée au Rwanda du 15 au 22 octobre 1994, j'estime devoir attirer l'attention sur un certain nombre de problèmes très graves, qui risquent d'hypothéquer lourdement l'avenir de ce pays. Il ne s'agit pas de juger les performances du régime après trois mois d'existence. Ce serait prématuré, et, de toute façon, il est dépourvu de moyens. Ce qui est envisagé ici, ce sont les perspectives -sur base de phénomènes qu'on perçoit aujourd'hui- dans les domaines politique et des droits de l'homme.

Ayant cru avant cette mission que le problème essentiel était la menace d'une reprise de la guerre de la part des anciennes forces gouvernementales et des milices réfugiées dans des pays limitrophes, je constate aujourd'hui qu'à l'intérieur du pays même se dessinent des phénomènes inquiétants et potentiellement déstabilisateurs. Ces problèmes intérieurs, conjugués avec la menace extérieure qui se trouve renforcée par l'étroitesse de la base politique et sociale du pouvoir en place à Kigali, inspirent un profond pessimisme quant aux perspectives de stabilité du pays et de la sous-région.

1. Un premier problème a trait à l'insécurité, qui est due à plusieurs facteurs. L'Armée patriotique rwandaise (A.P.R., aile militaire du F.P.R.), devenue la nouvelle armée nationale, n'est plus l'armée disciplinée des années de la guérilla. De l'aveu de son chef même, le général Paul Kagame, le problème est réel. On observe le début de phénomènes analogues à ceux qu'on a vus il y a dix ans au sein de l'ancienne armée: affairisme (certains officiers A.P.R. occupent plusieurs maisons à Kigali), barrages routiers occupés par des militaires qui ont manifestement bu de la bière, militaires qui "se servent"... Le contact avec la ville a ouvert l'appétit du gain matériel, d'autant plus dangereux que les militaires ne sont pas payés. En outre, après les années de brousse, le maintien de leurs familles constitue pour ces militaires une pression nouvelle. D'après le général Kagame, "les éléments de l'A.P.R. estiment qu'étant la nouvelle armée gouvernementale, le gouvernement devrait les prendre en charge", ce que, faute de moyens, il n'est pas en mesure de faire. Toujours selon le général Kagame, les recrues récentes n'ont pas de formation politique adéquate; en outre, tout comme l'avait fait l'ancienne armée gouvernementale depuis octobre 1990, l'A.P.R. a procédé à des recrutements peu sélectifs, incluant des délinquants et même des anciens membres de milice "interahamwe". Enfin, le "code de conduite" du F.P.R., qui était très sévère (il prévoyait la peine de mort notamment pour meurtre et viol), ne semble plus être applicable en temps de paix. Dans ces conditions, l'A.P.R. devient progressivement un facteur d'insécurité, d'autant plus que des civils font parfois appel à des amis en son sein pour effectuer des basses besognes, notamment dans le contexte de litiges en matière d'occupation immobilière (voir infra).

propriétaires ont le droit de réintégrer leurs biens et que les occupants illégaux doivent les libérer en faveur des propriétaires, cela risque de devenir pratiquement impossible. Il va de soi que cette situation n'est pas seulement génératrice de violations des droits de l'homme (assassinats, arrestations, "disparitions" de propriétaires), mais qu'elle constitue également un obstacle important au retour des "nouveaux" réfugiés.

3. On constate un nombre inquiétant de "disparitions", d'assassinats, voire même de massacres. Quasiment chaque jour, des personnes disparaissent, arrêtées par des éléments de l'A.P.R. et emmenées à des destinations inconnues. Pratiquement toutes les personnes rencontrées connaissent personnellement des cas de ce genre. Par ailleurs, d'autres personnes sont tuées. Ces cas individuels ne sont par ailleurs pas niés par les autorités. Celles-ci les expliquent en indiquant qu'il s'agit soit de vengeances de militaires ou de civils ayant perdu des leurs au cours du génocide, soit d'éliminations de propriétaires réclamant leurs biens, soit encore d'actes criminels commis dans le contexte d'une situation chaotique.

Si cette explication est acceptable dans un grand nombre de cas, elle ne l'est pas dans certains (notamment la "disparition", le 5 octobre 1994, du président du tribunal de première instance de Kigali, voir infra). En outre et surtout, on observe également des cas de massacres à des échelles plus importantes, qui ne s'expliquent pas si aisément. N'ayant pas effectué une mission d'enquête, qui exige le respect de normes rigides, je peux toutefois signaler quelques cas dûment attestés soit par des témoins oculaires étrangers, soit par des sources officielles:

- D'après une personne rescapée entendue par un officier du ministère public, environ 60 personnes rentrant de la zone "Turquoise" ont été exécutées au début du mois d'août à l'école agro-vétérinaire de Butare; d'après d'autres témoins, de nombreuses personnes ont été tuées et enterrées dans la vallée entre le groupe scolaire de Butare et l'arboretum, zones interdites d'accès par l'A.P.R.
- Le 29 août, une coopérante d'une O.N.G. internationale a vu plusieurs milliers de cadavres récents autour et dans une église à Mbiyo, entre Gako et Nyamata dans le Bugesera.
- Suite à des informations reçues, des observateurs militaires MINUAR australiens ont effectué, au cours de la première semaine de septembre, une visite à Save (près de Butare). Arrivé au centre, ils ont vu une cinquantaine de cadavres, couverts de branches et de feuilles, dans un boisement communal. L'accès au boisement leur a été interdit par des éléments de l'A.P.R., qui ont argué qu'il s'agissait d'une "zone militaire". Lorsqu'ils sont retournés deux semaines plus tard, les corps avaient disparu. Des membres de la population locale affirment qu'environ 1750 personnes auraient été tuées à cet endroit par l'A.P.R.
- Au milieu du mois de septembre, une équipe de la MINUAR a dénombré une centaine de cadavres à Kayumba, au nord de Nyama-

D'autres éléments contribuent à l'insécurité. D'abord, le fait que la justice est quasi-inexistante, sauf à Kigali, et encore... De nombreux officiers de police judiciaire, officiers du ministère public et magistrats sont morts, d'autres sont en exil à l'étranger. Sur les 150 agents du ministère de la justice, seuls 27 sont en place. Les agents du système judiciaire ne sont pas payés et les infrastructures font défaut. Les prisons sont surpeuplées; à titre d'exemple, la prison de Kigali, qui peut en accueillir 1500, abrite plus de 4000 prisonniers, et il s'en ajoute une moyenne de cinquante par jour, alors que personne n'en sort (pour les raisons, voir infra). Ensuite, tout aussi inexistante: l'administration territoriale, aujourd'hui exercée en grande partie soit par des militaires, soit par des autorités intérimaires nommées par le F.P.R. qui ne jouissent pas toujours de la confiance de leurs administrés. Le sentiment d'être abandonnée à elle-même augmente le sentiment d'insécurité de la population, qui a historiquement l'habitude d'être très "administrée".

2. Un deuxième problème est celui du retour anarchique de l'ancienne diaspora et de l'occupation illégale de propriétés. Alors que le protocole d'accord sur le rapatriement des réfugiés, signé à Arusha le 9 juin 1993, prévoyait un retour ordonné et soutenu logistiquement, le retour à la guerre au début avril et la victoire militaire du F.P.R. a provoqué un véritable raz-de-marée, qui a même constitué un problème de sécurité pour l'A.P.R. Cependant, le F.P.R. a contribué à la naissance de ce problème, puisqu'il a activement encouragé ce retour massif. Surtout l'ancienne diaspora au Burundi, confrontée à une situation très tendue dans son pays d'accueil, s'est ruée sur le Rwanda. D'après diverses sources gouvernementales, plus de 400.000 personnes sont déjà rentrées. Ces rapatriés ont occupé les champs, maisons et commerces abandonnés par les Hutu qui ont fui le pays. L'envergure de ce phénomène est énorme: on estime que plus de la moitié des propriétés à Kigali et dans certains chefs-lieu de préfecture ont de nouveaux occupants; à titre d'exemple, en milieu rural, dans le secteur de Masaka près de Kigali, 4000 sur les 5000 administrés actuels sont des nouveaux habitants.

Ce phénomène donne lieu à deux problèmes importants. D'abord, le retour du propriétaire provoque souvent des conflits, lorsque l'occupant illégal est confronté à la demande de libérer les lieux. Des personnes rentrées revendiquant leur propriété ont fait l'objet de violences, d'assassinats et de "disparitions", parfois de la part de militaires de l'A.P.R. agissant pour le compte de l'occupant; certaines personnes désirant récupérer leur propriété se font taxer d'"interahamwe" et sont arrêtées ou "disparaissent". Ensuite, et c'est plus grave, la voie de fait empruntée aujourd'hui est en passe de créer une situation insoluble: le plus élevé le nombre d'occupants illégaux, le plus difficile il sera de libérer ces propriétés en faveur de ceux qui désireraient éventuellement rentrer. En effet, si la population originale de Kigali rentrerait, que ferait-on de ceux qui occupent actuellement le terrain? Même si le gouvernement a annoncé que les véritables

ta dans le Bugesera.

- Deux témoins faisant partie d'une organisation humanitaire internationale ont vu autour du 10 octobre que des prisonniers ont été transférés de la prison de Cyangugu vers des destinations inconnues; autour du 15 octobre, ces mêmes témoins ont vu un camion transportant une cinquantaine de personnes, gardées par des militaires de l'A.P.R. en armes, partir pour une destination inconnue. Le fait que ces transferts s'opèrent de nuit les rendent encore plus inquiétants.

- Un témoin tutsi affirme qu'un grand nombre de Hutu, qualifiés d'"interahamwe", ont fait et font l'objet d'exécutions sommaires à Sake, près de Kibungo.

Il n'est pas possible de dire si ces pratiques sont systématiques, ni à quel niveau elles sont cautionnées par le commandement de l'A.P.R., mais cet échantillon est suffisamment éloquent pour justifier une réelle inquiétude, qui devrait inciter au déploiement d'observateurs et à l'organisation d'enquêtes sérieuses et objectives. Cette inquiétude est renforcée par la pratique de l'A.P.R. de refuser l'accès à des zones où des exécutions sommaires se seraient produites, sous prétexte qu'il s'agit de "zones militaires". Même si les massacres commis par l'A.P.R. sont sans commune mesure avec le génocide d'avril-juin 1994, cela ne diminue en rien l'urgente nécessité de combattre les pratiques actuelles, qui risquent de perpétuer le cycle des violences et qui, de toute façon, paraissent suffisamment graves pour mériter l'intérêt de la communauté internationale.

4. Toujours dans le domaine des droits de l'homme, l'attention doit être attirée sur la situation des milliers de personnes détenues pour complicité dans le génocide. Du moins en partie, on retrouve ici une situation que le Rwanda avait déjà connue d'octobre 1990 à avril 1991. Les rôles étaient alors inversés: étaient détenus à l'époque des milliers d'"ibytso" (soi-disant complices du F.P.R.), tous considérés coupables même si dans la plupart des cas les indices sérieux de culpabilité faisaient défaut. Aujourd'hui, ces détenus s'appellent "interahamwe" et ils sont tous présumés coupables. Tout comme en 1990-91, nombreux sont ceux arrêtés soit sur simple dénonciation, soit dans le cadre de règlements de compte (notamment dans le contexte de contentieux immobiliers, cf. supra), soit encore à cause de leur appartenance politique. Nombre de "dossiers" que j'ai pu consulter ne contiennent pas les éléments nécessaires pouvant justifier une détention prolongée. Cependant, ni le parquet, ni le tribunal n'osent leur accorder une libération, fût-elle provisoire. Un officier du ministère public confirme qu'il ne peut se permettre d'ordonner la libération de ceux dont il estime lui-même que les "indices sérieux de culpabilité" font défaut.

La mésaventure de M. Gratien Ruhorahoza, président du tribunal de première instance de Kigali, sert d'avertissement à l'appareil judiciaire. Ayant décidé en chambre du conseil de libérer une quarantaine de détenus, il a été arrêté dans la nuit du 10 octobre par des militaires de l'A.P.R. et il a disparu.

depuis; la rumeur veut qu'il soit détenu au camp KAMI à Kigali, mais ni le ministre de la Justice ni le procureur de la République ne sont officiellement informés de son sort. Par ailleurs, aucune de la quarantaine de personnes qu'il avait libérées ne sont en liberté: certains ont été empêchés de quitter l'enceinte de la prison, d'autres ont été réarrêtés et ont depuis "disparu". Cette atmosphère répressive et la "présomption de culpabilité" qui l'accompagne explique que les lieux de détention ne font que se remplir et que tant l'appareil judiciaire que les détenus estiment aujourd'hui qu'une fois arrêtée, une personne ne peut être relaxée, même si elle est innocente. Ce phénomène explique le nombre très élevé de détenus dans les prisons civiles (où la situation alimentaire et sanitaire est très préoccupante), mais également -rait plus inquiétant encore- dans des lieux de détention militaires, où il n'existe ni registre d'écrou ni contrôle par les autorités judiciaires.

5. Un autre phénomène qui mérite d'être signalé est l'injection rapide de radicalisme ethnique. On observe ici une différence marquée entre la diaspora venue d'Ouganda et celle venue du Burundi, et, dès lors, entre l'"ancien" et le "nouveau" F.P.R. C'est surtout des "Burundais" (c'est ainsi qu'ils sont appelés à Kigali) que provient cette crispation ethnique, qui s'explique à la lumière du vécu de ces réfugiés ces trente dernières années au Burundi: d'une part, ils ont souvent été les premiers boucs émissaires lors de sautes de tension ethnique au Burundi; d'autre part, dans le cadre de leurs stratégies de survie certains d'entre eux se sont alliés aux éléments les plus extrémistes de la classe politico-militaire du Burundi. En revanche, ceux venus d'Ouganda vivent beaucoup moins ces complexes ethniques: en effet, les "Banyarwanda" y ont fait l'objet de discriminations et de persécutions en tant que Rwandais, Hutu et Tutsi confondus, et ils ont eu à faire face ensemble.

Le radicalisme des "Burundais" est un phénomène extrêmement inquiétant: d'après un observateur tutsi avisé de l'intérieur, rescapé du génocide, les "Burundais" affichent des attitudes qu'il qualifie de "pire que les interahamwe". L'importance de ce phénomène est amplifié par le fait que de très nombreux "Burundais" ont choisi de s'établir en ville, à Kigali en particulier, où ils occupent une partie considérable du terrain, y compris le terrain politique. L'idéologie qu'ils véhiculent n'est pas seulement contraire à celle du F.P.R. original, mais elle constituerait -si elle perçait- également un obstacle à la solution politique du problème rwandais. En outre, l'injection de cette idéologie ethnisante et revanchiste contribue au danger d'éclatement du F.P.R., dont il sera question plus loin. Alors que les hautes autorités du pays se rendent bien compte de ce phénomène, personne ne semble savoir comment y faire face concrètement.

6. L'hétérogénéité, voire le morcellement tant du gouvernement que du F.P.R. constitue une autre source d'inquiétude. D'une part, le F.P.R. se trouve soudainement confronté à une situa-

tion qu'il n'avait pas prévu: il a conquis le pouvoir; cet objectif commun atteint et l'ennemi commun défait (du moins provisoirement), les contradictions au sein de l'organisation font surface. Ce phénomène classique est d'autant plus compréhensible dans le cas du F.P.R., mouvement dont l'idéologie et les grandes options politiques n'ont jamais fait l'objet d'une formulation claire et cohérente (le programme en huit points, publié en octobre 1990, est moins qu'original et profilé). Les contradictions sont d'ordre politique (les dirigeants et militants couvrent un large éventail entre la "gauche" et la "droite"), idéologique (notamment concernant l'attitude à adopter par rapport à l'ethnicité, cf. supra), culturel (les cultures "modernes" sont très diverses, et en partie influencées par celles des différents pays d'accueil de la diaspora) et, enfin, plus basiquement matériel (certains ont découvert le "pot-aux-roses", alors que d'autres sont demeurés des "idéalistes").

D'autre part, il existe au gouvernement une différence assez nette entre la composante F.P.R. et les autres partis. En soi, cela n'est pas mauvais et cela tend à démontrer que les ministres non F.P.R. ne sont pas des "marionnettes"; au contraire, ces derniers assument leurs positions et n'hésitent pas à se battre pour faire prévaloir leurs points de vue. Cependant, ce débat est largement faussé par la position dominante du F.P.R. sur les plans tant politique que militaire. Les autres partis opèrent dans un contexte extrêmement contrôlé et assez intimidant. Il est à ce titre révélateur que les seuls journaux qui paraissent à nouveau (Le Messager-Intumwa; Le Tribun du peuple; Kiberinka; L'ère de liberté) font tous partie de la "mou-
viance F.P.R.". On reviendra sur le phénomène de l'intimidation, réelle ou imaginaire, qui frappe la composante non F.P.R. du gouvernement.

7. On observe un phénomène paradoxal, qui est celui de la marginalisation des Tutsi de l'intérieur. Ceux-ci sont deux fois victimes. Ces trop rares rescapés ont d'abord perdu de nombreux membres de leurs familles lors du génocide. Aujourd'hui, ils ont en outre le sentiment de devenir des citoyens de seconde zone, et ce pour deux raisons. Economiquement, ils ont tout perdu, alors que ceux de l'ancienne diaspora qui rentrent sont souvent aisés et disposent de moyens considérables d'investir. Politiquement, c'est à peine si on ne leur reproche pas d'avoir survécu l'holocauste; les rapatriés estiment en outre qu'ayant cotisé en faveur du F.P.R., tout leur est permis. Une fois de plus, ceux rentrés du Burundi en particulier se comportent comme s'ils étaient en pays conquis.

8. De nombreux Hutu, les intellectuels en particulier, vivent dans la peur. On est frappé par le désenchantement qui touche même ceux qui avaient mis leur espoir dans la victoire du F.P.R. et qui avaient cherché refuge dans les zones contrôlées par ce dernier. Pratiquement tous connaissent personnellement des cas de personnes arrêtées, "disparues" ou assassinées par des éléments de l'A.P.R. Jusqu'aux plus hauts niveaux de l'administration, voire même à l'intérieur du gouvernement,

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des Hutu expriment cette peur de la menace pesant sur eux. Plusieurs ont indiqué qu'ils envisageaient de quitter le pays si l'insécurité ne diminuait pas.

9. Dans le domaine des droits de l'homme, l'action, ou plutôt la non-action, de l'ONU sur place est frappante. La coordination entre la MINUAR et la mission d'observation du Centre des droits de l'homme de l'ONU est quasi-inexistante. Cette dernière ne dispose toujours que d'une bonne trentaine des 147 observateurs prévus. La plupart de ces observateurs manquent cruellement d'expérience et ne sont pas prêts à s'engager réellement, préférant le confort relatif de Kigali à l'action sur le terrain. Même s'il est vrai que la logistique, notamment en moyens de déplacement et de communication, est loin d'être optimale, on a la nette impression que cette carence sert également de prétexte à un manque de mobilité et à une inertie déconcertants. Par ailleurs, tout comme d'autres organisations sur place (ONG internationales et instances de l'ONU), cette mission fonctionne de façon paternaliste, sans collaborer avec des acteurs locaux, qui pourtant font un travail remarquable avec les moyens du bord. Ainsi, le chef de la mission d'observation n'est pas en contact avec le Cladho (Collectif des ligues et associations des droits de l'homme).

Quant à la MINUAR, elle n'enquête manifestement pas sérieusement les rapports de massacres et autres violations des droits de l'homme qui lui parviennent. A titre d'exemple, l'incident de Mbiyo (cf. supra), que le témoin a rapporté à la MINUAR, était "inconnu" lorsque j'ai tenté d'en obtenir confirmation auprès de l'officier G2 (renseignements); l'incident de Save (cf. supra), bien que connu de la MINUAR, n'a pas fait l'objet d'une enquête. En réalité, la MINUAR et la mission d'observation se renvoient la balle; d'après des sources à l'intérieur de la mission d'observation, la MINUAR "ne veut pas savoir" lorsqu'il est fait état de violations des droits de l'homme par l'A.P.R. Pourtant, on l'a vu, ces phénomènes sont suffisamment inquiétants pour mériter un intérêt suivi.

Suite à ces constatations, on peut formuler les conclusions et recommandations suivantes.

La communauté internationale devrait:

- être plus attentive à la situation des droits de l'homme, en insistant sur le déploiement effectif de la mission d'observateurs, en organisant des enquêtes sérieuses et objectives et en insistant auprès du gouvernement rwandais que le génocide ne constitue pas une excuse pour une nouvelle pratique de violences et pour l'impunité;

- assister le Rwanda dans la mise en place d'un minimum de justice et d'administration locale. L'appareil judiciaire devra s'atteler tant aux poursuites des auteurs et complices du génocide qu'à celles des personnes responsables de nouvelles violations des droits de l'homme, voire de crimes contre

l'humanité. L'appareil administratif devra contribuer au retour de la sécurité, ainsi facilitant le rapatriement des réfugiés;

- soutenir les forces modérées au sein du gouvernement et de l'armée. Cela suppose notamment la facilitation des contacts entre les autorités de Kigali et les éléments de la classe politique en exil qui n'ont pas trempé dans le génocide, ainsi que les contacts entre les composantes de la société civile aujourd'hui géographiquement et politiquement dispersées. L'élargissement de la base politique et sociale des institutions permettrait de marginaliser les extrémismes de part et d'autre.

Le gouvernement rwandais devrait:

- engager un dialogue avec les forces démocratiques et modérées aujourd'hui exclues (parfois de leur propre volonté) du processus politique;

- encaserner dans la mesure du possible l'A.P.R. et confier le maintien de l'ordre intérieur à la gendarmerie en formation et à la MINUAR. Si le gouvernement craint une invasion de l'extérieur, cet encasernement pourrait s'effectuer dans les camps aux frontières (Kibungu, Gako, Butare, Nyungwe, Cyangugu, Kibuye, Gisenyi, Bigogwe);

- créer une situation claire dans le domaine de la propriété immobilière. Le gouvernement pourrait envisager la solution suivante: les propriétés n'ayant pas encore été reprises par le propriétaire ou un ayant droit seraient gérées par l'Etat, qui percevrait un loyer de la part des occupants, considérés comme possédant un bail précaire. Les propriétaires auraient une créance envers l'Etat, qui les remboursera lorsqu'il en aura les moyens après déduction des frais de gestion;

- ne plus détenir des personnes dans des installations ne dépendant pas de l'administration pénitentiaire. Si le nombre de détenus exige leur détention en dehors des prisons civiles, un registre d'écrou doit être établi. Le ministère de la justice et le chef de parquet compétent territorialement doivent être informés de tout mouvement de détenus. Le parquet doit en outre disposer d'un dossier pour chaque détenu;

- libérer, au moins provisoirement, les personnes contre lesquelles il n'y a pas d'indices sérieux de culpabilité. Le gouvernement doit mener une campagne d'information tendant à rétablir au sein de l'opinion publique la présomption d'innocence. Les personnes libérées doivent être protégées;

- entamer, avec l'aide de la communauté internationale, la poursuite et le jugement des personnes présumées auteurs ou complices du génocide;

- poursuivre et juger les personnes qui se rendent coupables d'assassinats, de "disparitions" et de massacres.

Par rapport tant au danger de la reprise de la guerre qu'à la situation intérieure, le Rwanda se trouve, une fois de plus, à la croisée des chemins. Le potentiel d'une implosion du pays et de la sous-région est malheureusement tout à fait réel. Les forces modérées et démocratiques à l'intérieur et à l'extérieur du pays, ainsi que la communauté internationale doivent faire preuve d'initiative et d'imagination avant qu'il ne soit trop tard. Faute d'action rapide, les tragiques événements d'avril-juin 1994 risquent de n'être que le début d'une longue déstabilisation de la région des grands lacs.

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RWANDA

**Reports of killings and
abductions by the Rwandese
Patriotic Army, April - August
1994**



20 October 1994
AI Index: AFR 47/16/94
Distr: SC/CC/CG/GR

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

[EMBARGOED FOR 20 OCTOBER 1994]

amnesty international

RWANDA

Reports of killings and abductions by the Rwandese Patriotic Army, April - August 1994

20 OCTOBER 1994

SUMMARY

AI INDEX: AFR 47/16/94

DISTR: SC/CC/CO/GR

Amnesty International has received numerous reports of human rights violations committed by the Rwandese Patriotic Army since armed conflict began in Rwanda in 1990 and particularly since April 1994. Although it is not appropriate to make any comparison between the horrendous scale of massacres committed by forces loyal to the former government between April and July 1994 with those committed by the Rwandese Patriotic Army (RPA), Rwanda's new national army which until July 1994 was the armed wing of the Rwandese Patriotic Front (RPF), hundreds, possibly thousands, of defenceless people have been killed by the RPA and its supporters.

These violations have included hundreds of deliberate executions, as well as abductions or "disappearances" of captured combatants and unarmed civilians suspected of supporting the former government. Many of the killings took place in a series of arbitrary reprisals on civilian members of the majority Hutu ethnic group, some before widespread massacres started in areas under the former government's control on 6 April 1994. There were also sporadic deliberate and arbitrary killings as the RPA took control of new areas and uncovered evidence of genocide, committed mostly against members of the minority Tutsi ethnic group whose members form the majority of the RPA, and took revenge on Hutu. Some of the killings by the RPA occurred during or after a process of "screening" people returning to their homes. There have also been reports of civilian supporters of the RPF being allowed to kill opponents. In addition to these killings, many prisoners held by the RPA have been subjected to a particularly painful form of tying with the victims arms tied above the elbows behind the back sometimes resulting in permanent injury.

These violations appear to have gone largely unreported. The Rwandese Patriotic Front (RPF) has closely monitored and controlled movements of foreigners in areas

20-OCT-1994 16:23

AMNESTY INTERNATIONAL

44 71 956 1157 P.04

under its control. Journalists and representatives of humanitarian organizations rarely talked to Rwandese citizens under RPF control without an RPF official being present. This meant that before the new government came to power in mid-July 1994 very limited information about abuses by the RPA could be gathered or made public by independent observers.

In August 1994, a month after the RPF and others proclaimed a new government, Amnesty International representatives visited Rwanda to hold talks with government and security officials, and to collect information about human rights violations which have occurred before and after the new government came to power. President Pasteur Bizimungu and other government officials assured the organization's representatives that the government was determined to bring an end to impunity for human rights violators in Rwanda. During their visit, Amnesty International's representatives received reports of serious human rights violations by the RPA, particularly those committed since April 1994. Amnesty International representatives have also interviewed Rwandese asylum-seekers in neighbouring countries, and found substantial evidence of killings and other abuses by the RPA.

Amnesty International is concerned that the authorities are not known to have conducted independent and impartial inquiries to establish the full truth about these allegations with a view to identifying those responsible and bringing them to justice.

Immediate action is required so as to ensure that members of the security forces and government supporters are not led to believe that they can continue to violate human rights with impunity. This will ensure that the cycle of violence and other human rights abuses is broken. Amnesty International is calling on the international community to assist the Rwandese authorities to accomplish this urgent task. Amnesty International has made ten specific recommendations to the Rwandese Government, calling for independent and impartial inquiries into all reports and allegations of human rights abuses by the RPA and for perpetrators to be brought to justice. The Rwandese Government should also implement United Nations and other safeguards to prevent a recurrence of human rights violations.

KEYWORDS: EXTRAJUDICIAL EXECUTION / DISAPPEARANCES / IMPUNITY / ETHNIC GROUPS / RELIGIOUS OFFICIALS - CATHOLICS / TORTURE / ILL-TREATMENT / RESTRAINTS / DOCTORS / TEACHERS / MILITARY AS VICTIMS / PRISONERS OF WAR / DISPLACED PEOPLE / WOMEN / CHILDREN / JUVENILES / FAMILIES / MILITARY / ARMED CIVILIANS / ARMED CONFLICT / GOVERNMENT CHANGE / MISSIONS / UN / PRISONERS' TESTIMONIES /

This report summarizes an 13-page document (5,649 words), *Rwanda: Reports of killings and abductions by the Rwandese Patriotic Army, April - August 1994* (AI Index: AFR 47/16/94), issued by Amnesty International on 20 October 1994. Anyone wanting further details or to take action on this issue should consult the full document.

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

TABLE OF CONTENTS

1. Introduction	1
2. Deliberate and arbitrary killings by the RPA	3
2.1 Deliberate and arbitrary killings in northeastern Rwanda	4
2.2 Deliberate and arbitrary killings in southern Rwanda	6
2.3 Deliberate and arbitrary killings in western Rwanda	7
3. Abductions and "disappearances" by the RPA	9
4. Recommendations to the Rwandese Government	10

RWANDA

Reports of killings and abductions by the Rwandese Patriotic Army, April - August 1994

1. Introduction

The Rwandese Patriotic Army (RPA), Rwanda's new national army which until July 1994 was the armed wing of the Rwandese Patriotic Front (RPF), has the reputation of being much better organized and disciplined than the security forces of the former government² it overthrew in July 1994. Soldiers and militia of the former government are reported to have killed 500,000 or more members of the minority Tutsi ethnic group and its opponents from the majority Hutu ethnic group between April and July 1994. Given the horrendous scale of massacres committed by forces loyal to the former government, there could never be any comparison between those massacres and other human rights abuses committed by the RPA³. Nevertheless, this fact should not be allowed to prevent the truth about alleged RPA abuses from being uncovered and, where appropriate, action being immediately taken to bring those responsible to justice and to prevent such abuses from recurring. Although it is generally unclear whether human rights abuses by the RPA are ordered or condoned by top government and security officials, it is incumbent on them to take action to prevent the abuses and to ensure that those responsible are brought to justice.

Reports of abuses by the RPA have already been exploited as political propaganda by supporters of the former government. This report may also be exploited for partisan

¹ The RPF/RPA was formed and is dominated by exiled members of the minority Tutsi ethnic group. They and, or their parents fled to neighbouring countries such as Uganda in the wake of massacres of Tutsi by Hutu before and after independence in 1962.

² The former government and its security forces were dominated by members of the majority Hutu ethnic group.

³ Former government security forces and militia are believed to have carried out massacres of 500,000 or more members of the Tutsi ethnic group and members of the Hutu ethnic group opposed to the government and the killing of Tutsi since 6 April 1994 when the plane carrying Rwanda's President Juvénal Habyarimana and Burundi's President Cyprien Ntaryamira was shot down. Amnesty International has published numerous reports of the massacres and other human rights abuses which have occurred in Rwanda since the war in Rwanda began on 1 October 1990. More recently, on 23 May 1994, the organization published a report about the massacres which began on 6 April 1994 entitled, *Rwanda: Mass murder by government supporters and troops in April and May 1994*, AI Index: AFR 47/11/94.

propaganda by some of the very people who were responsible for genocide between April and July 1994. However, Amnesty International considers it unacceptable to allow killings and other human rights violations by the RPA to pass in silence with the risk that they could escalate and continue unchecked.

Amnesty International has known for several years that the RPF closely monitored and controlled movements of foreigners in areas under its control. Journalists and representatives of humanitarian organizations rarely talked to Rwandese citizens under RPF control without an RPF official being present. This ensured that before the new government came to power on 19 July 1994 very limited information about abuses by the RPA could be gathered or made public by independent observers. However, Amnesty International has received numerous reports of human rights abuses committed by the RPA since the war in Rwanda began in October 1990. These have included hundreds of deliberate and arbitrary killings⁴ or possible extrajudicial executions⁵, and "disappearances" of captured combatants and unarmed civilians suspected of supporting the former government. There have also been reports of civilian supporters of the RPF being allowed to kill opponents. In addition to these killings, many prisoners held by the RPA have been subjected to a particularly painful form of tying known in Uganda as *kandoya*⁶ or "three-piece-tying", with the victim's arms tied above the elbows behind the back. *Kandoya* sometimes results in permanent injury and constitutes a form of cruel, inhuman or degrading treatment, prohibited under the terms of international human rights agreements.

In August 1994, several weeks after the RPF and others proclaimed a new government, Amnesty International representatives visited Rwanda to hold talks with government and security officials, and to collect information about human rights abuses which have occurred before and after the new government came to power. President Pasteur Bizimungu and other government officials assured the organization's representatives that the government was determined to bring an end to impunity for

⁴ "Deliberate and arbitrary killings" are those committed by armed opposition groups in violation of the internationally recognized norms of humanitarian law, including executions and other killings of prisoners and non-combatants.

⁵ An extrajudicial execution is an unlawful and deliberate killing carried out by order of a government or with its acquiescence. In the case of Rwanda, killings by the RPA are considered as extrajudicial executions from the time RPF members became government officials on 19 July 1994.

⁶ This manner of tying can be used as a method of restraint, but also be used deliberately to inflict pain and coerce prisoners during interrogation. After protests against its use in Uganda in 1980, Uganda President Yoweri Museveni banned the practice by Uganda's National Resistance Army (NRA) in 1982. Its use by NRA soldiers nevertheless continued to be reported subsequently.

20-OCT-1994 16:26

AMNESTY INTERNATIONAL

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Rwanda: Killings and abductions by the RPA

3

human rights violators in Rwanda. During their visit, Amnesty International's representatives collected testimonies regarding allegations of serious human rights violations by the RPA, particularly those committed since April 1994. Amnesty International also interviewed Rwandese asylum-seekers in neighbouring countries and found substantial evidence of severe ill-treatment and attempted execution by the RPA, in addition to numerous testimonies about killings and other abuses which were so consistent in dates, places and names of victims as not to be dismissed as anti-RPA/RPF propaganda. Amnesty International is concerned that the authorities are not known to have conducted independent and impartial inquiries to establish the full truth about these allegations with a view to identifying those responsible and bringing them to justice.

Amnesty International is now making public some of the information it has collected in order to draw the attention of the Rwandese authorities and the international community to them. These allegations are very grave and require immediate action so as to ensure that members of the security forces and government supporters are not led to believe that they can continue to violate human rights with impunity. This will significantly contribute to ensuring that the cycle of violence and other human rights abuses is broken. Amnesty International is calling on the international community to assist the Rwandese authorities to accomplish this urgent task. Amnesty International is also urging the international community to deploy human rights monitors in Rwanda who could investigate any further reports of abuse over the coming months. Evidently it is also vital that objective information be available on the public record about the human rights situation in Rwanda so that refugees can make an assessment based on sound information of whether their safety will be guaranteed or not when they return home.

Amnesty International submitted the concerns contained in this report to the Rwandese authorities at the start of October 1994.

2. Deliberate and arbitrary killings by the RPA

Reports received from Rwandese eye-witnesses and others suggest that hundreds - possibly thousands - of unarmed civilians and captured armed opponents of the RPF have been summarily executed or otherwise deliberately and arbitrarily killed since countrywide massacres and other acts of violence flared up after the death of former President Juvénal Habyarimana on 6 April 1994. Many of the killings took place in a series of arbitrary reprisals mainly against groups of Hutu civilians, some of which occurred in some cases before 6 April, but mainly afterwards in the northeast. There were also sporadic deliberate and arbitrary killings in the RPA with intent to uncovering evidence of genocide, took indiscriminate revenge on unarmed Hutu civilians. There were also deliberate executions carried out in the course of "screening"

Amnesty International 20 October 1994

AI Index: AFR 47/16/94

process⁷. There have also been reports of revenge killings by Tutsi supporters of the RPF.

Many of these killings by the RPA, which appear to have gone largely unreported, appear to have taken place in northeastern Rwanda in mid-April 1994. Others have occurred in southern and western Rwanda once the RPA took control of these areas in May and June 1994. There are also reports that the RPA, as well as RPF supporters, were responsible for numerous killings of unarmed civilians in August and September 1994 in southeastern Rwanda. Some corpses of the victims were reported to have been dumped in the Akagera river which flows along the border between Rwanda and Tanzania. The floating of corpses in the Akagera river is reminiscent of the hundreds or even thousands of bodies of people reportedly massacred by former government forces and militia in May and June 1994, which floated downstream to Lake Victoria.

In mid-September the United Nations High Commissioner for Refugees (UNHCR) said that it had received dozens of testimonies from refugees who had fled from the area, alleging that the RPA had carried out numerous killings, forcing many people who had returned to the area to flee. The UNHCR suspended repatriation of refugees from neighbouring countries. A controversy soon arose when some other UN agencies expressed or implied doubt over UNHCR findings. The United Nations Assistance Mission for Rwanda (UNAMIR) sent several dozen soldiers to monitor the situation. The Rwandese Government denied that its soldiers had been involved in any massacres and agreed to cooperate with a UN investigation team which was reported to have begun its work in early October 1994.

2.1 Deliberate and arbitrary killings in northeastern Rwanda

Amnesty International representatives received numerous disturbing reports of deliberate and arbitrary killings in April and May 1994 of unarmed civilians by units of the RPA in northeastern Rwanda. Witnesses reported that such killings took place at Nyabwishongwezi and Kagitumba in Byumba prefecture's Ngarama district (*commune*). At both locations the killings reportedly took place at public meetings to which local people had been summoned by the RPA. RPA soldiers were reported by eye-witnesses to have used guns, grenades, bayonets and hoes to kill their unarmed victims. Accounts by the eye-witnesses portray a striking consistency of dates and places of the killings.

⁷ The RPA has been recording the identities and places of origin of people returning from places inside Rwanda or from neighbouring countries where they had fled as a result of the war. There have been reports that returnees suspected of involvement in the massacres of RPA supporters or sympathizers have been arrested or even killed during or after the screening process.

20-OCT-1994 16:28

AMNESTY INTERNATIONAL

44 71 958 1157 P.10

Rwanda: Killings and abductions by the RPA

5

Several dozen witnesses reported that members of the RPA arrived in Kagitumba on 12 April 1994. At first the fighters were reportedly very friendly to the local population and promised that the RPA was determined to protect the local people who were then summoned to a public meeting at Gishara. On 13 April unarmed civilian men, women and children gathered at Gishara in Kagitumba. RPA officials reportedly began addressing the crowd and suddenly, without provocation or warning they opened fire on the crowd and threw grenades at the crowd. It is unclear how many people were killed. However, from accounts of eye-witnesses, dozens are likely to have been killed in the incident.

One 36-year-old man present told Amnesty International representatives that RPA fighters seemed friendly at first, only to open fire on civilians without warning or provocation. He said most of the people in Nyabwishongwezi had only arrived there recently, having fled from other parts of Rwanda. Other inhabitants of Nyabwishongwezi were Rwandese nationals who had recently been expelled from Tanzania where they had been living for some years. Government soldiers had withdrawn from the area several weeks earlier. When RPA forces occupied the area in February 1994 the local population first fled but was convinced by the RPA to return. The witness explained that in March the RPA called the first public meetings during which RPF officials told people that they had nothing to fear. At one such meeting in April the RPA fired a rocket and threw grenades into the crowd. Others were shot and killed, while others sustained severe injuries. The RPF continued to deny that any killings had occurred in Kagitumba. But people did not believe them and continued to flee from Nyabwishongwezi. RPA fighters reportedly started a man-hunt for the Hutu, killing many using bayonets and guns. More extensive killings reportedly occurred on 15 April. The witness said he saw RPF soldiers hunting for civilians in the fields. He said that among those killed were his 30-year-old wife, **Jovans Nakabonye**, who was shot. The others, including his 12-year-old daughter, **Felicita Busingye**, were bayoneted to death. Those killed included a four-year-old child known as **Yankunda**.

One 56-year-old survivor of the killings at Gishara in Kagitumba and in Nyabwishongwezi narrated how his family and friends were slaughtered by the RPA. He said he and others were summoned to a public meeting on 13 April 1994 at Gishara. He said, "We had been told that men, women and children must attend. They said they would kill hippos for us and needed some representatives from among us to go hunting with the soldiers. Twelve of us were taken behind a house of 'tailleur' (tailor) Muziga and they said they wanted to talk to us. They asked us to indicate who among us knew how to shoot or was a soldier. We said none of us knew how to shoot and that all soldiers had left. All of a sudden we heard a grenade explosion". He said many people were killed including his wife, **Anastasia Mukamurigo**, his 10-year-old son **Nkwaya**, and 20-year-old daughter **Mukazaza**. Others killed by the grenade and gunshots included

Amnesty International: 20 October 1994

AI Index: AFR 47/16/94

Azaria Ukuyemuye, a director of Nyabwishongwezi primary school, and his wife, Anne Maria, and a Roman Catholic nun known as Helene from Muyanza parish in Byumba.

The witness then fled from Kagitumba to Nyabwishongwezi. On 16 April 1994 RPA forces came to the area while he was at the home of Sinamenye, in Rwantanga village in Nyabwishongwezi. Sinamenye's house was surrounded by six RPA soldiers, two of whom entered the house asking for the home owner and identity papers. They confiscated the papers and told Sinamenye to go to a soldier at the entrance to collect valid papers. The soldier assaulted him with a bayonet and he fell. They then shot and killed him. The soldiers told Sinamenye's son, Bampora, to walk away and shot him in the back. The survivor said he was one of the few who managed to run away from the scene of these killings.

2.2 Deliberate and arbitrary killings in southern Rwanda

Amnesty International representatives who visited Burundi in July 1994 received reports of both deliberate executions and cases of cruel, inhuman or degrading treatment to which civilians from southern Rwanda said they had been subjected by RPA soldiers after they took control of Bugesera in southeastern Rwanda. The witnesses, some of whom had themselves narrowly survived execution and bore the marks of blows to their heads, had fled to northern Burundi from the area of Mututu in Butare prefecture's Muyira district and from parts of rural Kigali prefecture.

Towards the end of May 1994 RPA soldiers were reported to have carried out numerous arrests of Hutu who had returned to their homes in the Mututu area from Burundi. Virtually all those arrested were subjected to "three-piece-tying"^{*}. In one incident a unit of about 10 soldiers and armed Tutsi civilians who had recently returned from exile are reported to have arrested and tied up all adult men and teenage boys in Mututu. They were first held in the compound of one Rutakeleza before being killed. Those executed included Leodomir Kazadi whose head was reportedly smashed with a blunt weapon, possibly a hoe. Other victims were reportedly killed in the same way. These and other killings caused many people in the area to flee to Burundi. There were claims that some of those who tried to escape were shot as they tried to cross River Akanyaru on the border with Burundi.

^{*} In August 1994 the Rwandese Vice-President and Minister of Defence, Major General Paul Kagame (a former senior officer of Uganda's NRA), told Amnesty International representatives that "three-piece-tying" had been abolished and those found responsible would be punished. However, this form of tying was reported to be still in evidence in August with detainees bearing wounds around the elbows caused by ropes or flex used.

20-OCT-1994 16:30

AMNESTY INTERNATIONAL

44 71 956 1157 P.12

Rwanda: Killings and abductions by the RPA

7

Around early June 1994 about 100 men, women and children were reportedly arrested by the RPA in the same area and detained in a compound for about a day. They were then moved towards Muyira district when the eye-witness who spoke to Amnesty International representatives and at least six of his close relatives managed to escape. All bore scars caused by "three-piece-tying". The witness and others returned to the area after the RPA had left only to find that dozens of those who had remained in the custody of the RPA had been killed. Bodies were still tied and heaped in an open pit in the compound of one Gakwayiro, near the Mahwa river. All the victims, including the witness' neighbours, Senama and Kareje, were male adults and youths.

A woman formerly resident in Burenge, in rural Kigali prefecture's Ngenda district, testified that she and many others had been hiding in sorghum fields after the RPA took control of the area, only returning home when they heard that the RPA had stopped killings. They handed themselves over to the RPA and were taken to a "screening" centre at Rutonde. On the second day young men were taken away and her husband was taken away on the third day. A man who had been taken away with her husband reportedly returned and reported that those taken away, including her husband, had been tied up, hit on the head and killed, and that their corpses were being thrown into the river. She alleged that some of the women detainees were taken away by RPA soldiers and raped; she thought they were killed afterwards. She tried to escape with her child strapped to her back but was subsequently recaptured with several other women escapees by RPA soldiers. The soldiers killed two other women with blows to the head and also killed her child. She was hit on the head with a nail-studded club but survived. The scars caused by blows, in particular by nails, were clearly visible.

2.3 Deliberate and arbitrary killings in western Rwanda

Around 5 June 1994 four members of the RPA killed 13 Roman Catholic priests, including the Archbishop of Kigali, Vincent Nsengiyumva, and three other bishops, at Byimana, a few kilometres south of Kabgayi Roman Catholic church near Gitarama. The RPF subsequently declared that the combatants had been assigned to the bishops as their bodyguards. On 9 June RPF leaders announced that one of the killers had been shot dead by fellow soldiers as he fled and that the other three had escaped. RPF leaders explained that the combatants seemed to have carried out the killings because they suspected the priests of complicity in the killing of members of their families, including some of the Tutsi who had fled to Kabgayi.

A priest who survived the killings gave a different version of the incident. He said that the RPF took control of Kabgayi on 2 June, arrested the priests and took them to a mission at Byimana. On 5 June some of the soldiers who had been guarding the priests entered the room where the priests were being held and opened fire. The surviving priest

20-OCT-1994 16:31

AMNESTY INTERNATIONAL

44 71 956 1157 P.12

8

Rwanda: Killings and abductions by the RPA

escaped through a door at the end of the room. The next day he was found by RPA soldiers who told him that the killings had been an accident. The soldiers reportedly detained him, insisting that he accepted the soldiers' version of the killings. He was released when he said he would agree to the RPA's version and he escaped.

Members of the government told Amnesty International representatives in August that the three escapees had never been found. The RPF's explanation that its soldiers had killed the priests to avenge the killing of their relatives appeared to be guess-work rather than based on any statement made by any of those involved. It is not clear whether any formal investigation or judicial inquiry had been carried out: indeed, the priest's testimony above suggests that evidence was deliberately suppressed.

People suspected of killing RPF supporters appear to have been deliberately executed by the RPA. For example, a returning refugee was killed on 27 August 1994 at a checkpoint at the edge of the United Nations (UN) "safe zone" by RPA soldiers. The circumstances suggest that returning refugees may have been extrajudicially executed or that the soldiers may have used excessive lethal force in breach of international human rights standards. According to the report, the RPF soldiers stopped a convoy of five British army trucks carrying approximately 200 returning Hutu refugees at a checkpoint 40 kilometres east of the border town of Kibuye as they were crossing from the UN "safe zone" into territory controlled by the Government of Rwanda. One of the passengers fled and was reportedly pursued by approximately 15 RPA fighters. Witnesses heard five bursts of automatic gunfire and said that when the soldiers returned they said that they had killed the man who fled. Three other men in the convoy were detained.

Amnesty International subsequently wrote to the Rwandese authorities seeking clarification about the circumstances of this killing and the identities and whereabouts of those detained and called on the RPA to issue standing orders about the circumstances in which soldiers could use firearms, which would prevent such killings. Amnesty International also wrote to the United Nations seeking clarification about a statement reportedly made by the spokesman of the UNAMIR suggesting that RPA soldiers were justified to shoot the fleeing man. The organization expressed concern that if correctly reported, the spokesman's statement was inconsistent with the UN's own fundamental international standards on the intentional use of lethal force. The organization had not received a response from the Rwandese Government by the start of October 1994. A senior UN official replied in early September 1994, saying that the UNAMIR spokesman had been misquoted, and that his exact words were: "This man was fleeing and, in these situations, if one runs, he can expect that someone will shoot". However, the UN official did not explain whether UNAMIR had investigated the killing to determine whether the man had been extrajudicially executed or not. The official added that:

UNAMIR had initiated an investigation concerning the other three persons arrested, but had not obtained any specific information about their whereabouts.

3. Abductions and "disappearances" by the RPA

There have been numerous reports of abductions and "disappearances" carried out by the RPF since April 1994. There are fears that those who were abducted or "disappeared" may have been killed and their bodies secretly disposed of.

Amnesty International has received reports that a medical doctor known as Dr Canisius, and former head of Byumba Hospital was abducted in May 1994 by the RPF. He was apparently accused of being a member of the *Interahamwe* (predominantly Hutu militia loyal to the former government) and had expressed his fear for his life to some of his friends prior to his abduction. He and his wife and children were allegedly taken away by the RPF and they were never seen again. There have been unconfirmed reports that Dr Canisius and his family were killed and buried in a mass grave in Byumba. Some of his colleagues have inquired about him from the RPF but the authorities have not revealed any information about the fate of the doctor and his family.

Amnesty International representatives visiting Rwanda in August 1994 were informed that several hundred soldiers who were left at a school complex known as *Groupe scolaire* in Butare "disappeared" soon after the town fell to the RPA at the start of July 1994. Part of the complex had been turned into a make-shift hospital by former government forces. The representatives learned that former government soldiers had been severely wounded or disabled in battle and were left behind by their retreating colleagues. Amnesty International found in the abandoned make-shift hospital one decomposed body of a soldier whose head had been smashed allegedly by RPA soldiers before death.

There were further reports of "disappearances" in July 1994 of about 600 people from a camp for the displaced at Rango, several kilometres south of Butare. Amnesty International representatives were told that the RPA was thought to have killed and buried those who had "disappeared" in mass graves in a valley next to the *Groupe scolaire* in Butare. However, Amnesty International's representatives were prevented from going to the valley by RPA soldiers manning a roadblock on the road leading to the valley on the grounds that it was a military security zone. As a result, neither the "disappearances" nor the mass graves could be confirmed by Amnesty International.

4. Recommendations to the Rwandese Government

The RPF and the new Rwandese Government have usually denied that their combatants have carried out serious human rights violations. In some instances they have acknowledged that abuses have occurred but explained that they were not committed as part of RPF or government policy. Government officials told Amnesty International representatives visiting Rwanda in August 1994 that two RPA soldiers had been executed by official order in mid-1994, one for murder and another for rape. The authorities said the soldiers were tried by the RPA military court in accordance with the RPA Operation Code of Conduct. The authorities said they were holding in custody more than 60 RPA soldiers accused of criminal offences.

While welcoming government action to bring those responsible for human rights abuses to justice, Amnesty International is concerned that the RPA violated the ultimate fundamental right to life in order to punish persons accused of human rights abuses. It is unclear whether their offences had been the subject of any independent and impartial investigations. Furthermore, those convicted had, according to RPA officials, no right of appeal, although the decision to carry out the sentence had to be made by the RPA High Command.

For government action and statements to be taken seriously by the people of Rwanda, particularly members of the security forces, it is essential that immediate action be taken in response to the allegations of human rights violations by the RPA described in this report. To this effect Amnesty International is recommending the implementation of its 14-Point Program for the Prevention of Extrajudicial Executions and for the Prevention of "Disappearances". It is also recommending:

4.1 In addition to accepting responsibility for carrying out impartial investigations into past killings of civilians and captured armed opponents, it is urgent that the new government set up a commission of inquiry with specific responsibility to investigate reports of human rights violations both in areas under the RPF's control before July 1994 and in the whole country since then. The commission of inquiry should be composed of people known for their independence and impartiality and should be asked

* Amnesty International has developed a 14-Point Program for the Prevention of Extrajudicial Executions, published in March 1993, AI Index: POL 36/02/93, and another one for the Prevention of "Disappearances", adopted by Amnesty International in December 1992, to call attention to the official steps needed to end these abhorrent human rights violations. The programs consist of a series of detailed measures which should be taken by all governments. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to stop extrajudicial executions and "disappearances" and to work for their eradication.

to investigate the allegations mentioned in this report and those reported elsewhere, either published by other organizations or the media, or made by private individuals. The commission could also ask United Nations investigators to assist in carrying the inquiries. All investigations should be consistent with the standards set forth in the UN Principles on the Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions and the UN Manual on their implementation¹⁰.

4.2 The investigating body should be given powers to summon any witnesses, regardless of their position in the government or the security forces, to testify. Its terms of reference should include making recommendations on any action to be taken against those responsible and prevent a recurrence of the abuses. The findings of the inquiry should be made public as soon as it has been completed. The findings should then be submitted to a competent, independent and impartial court of law to try those found by the inquiry to have been involved in perpetrating the abuses.

4.3 The international community, particularly governments and the United Nations, should assist the Rwandese Government with the human and material resources the Rwandese authorities require to carry out these investigations in accordance with international standards, just as it should be assisting with investigations into the crimes against humanity committed before July 1994 mostly by soldiers and supporters of the former government. Furthermore, the international community should assist the Rwandese Government to build a competent, independent and impartial judiciary to protect and promote human rights. The international community must not make excuses for or turn a blind eye to human rights violations committed by the RPA or other institutions or officials of the new government on the grounds that they are not "as serious" as those committed by its predecessor.

4.4 The government should take immediate steps to avoid a recurrence of the killings of civilians and captured armed opponents in which members of the security forces have been implicated. These steps should include training in international standards and explicit instructions made publicly to all security personnel to the effect that firearms may only be used with lethal intent when strictly unavoidable and in order to protect life. All killings by the security forces must be the subject of an inquiry to establish if this standard has been respected or violated. Members of the security forces responsible for

¹⁰ By Resolution 1989/65 on 21 May 1989 on "Effective prevention and investigation of extra-legal, arbitrary and summary executions", the UN's ECOSOC called on all governments to take into account and respect a series of Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. The Principles give some guidance on procedures for investigation and suggest that if the established investigative procedures (for example of the Procurator) are inadequate, governments should establish independent commissions of inquiry.

unlawful killings should be brought to justice in legal proceedings which satisfy international minimum standards.

Amnesty International is requesting the Rwandese Government to make public the identities of RPA soldiers in custody and details of their cases. Amnesty International demands that the soldiers be given prompt and fair trials and that in no case should anyone of them be sentenced to death or executed. The organization also requests the Rwandese authorities to reveal the identities of those of its combatants and others who have been executed and the offences of which they were convicted.

4.5 All allegations of extrajudicial executions and of similar deliberate and arbitrary killings before July 1994 by security personnel should, as a matter of course, be the subject of an impartial, independent and thorough inquiry. The inquiry should establish the reasons for and circumstances of the killings, make its conclusions public, and recommend action to be taken against the security personnel who have either ordered or carried out the killings. Failure by the authorities to open an inquiry into killings of this sort is likely to be interpreted by observers and other members of the security forces as indicating government approval or condonement of violence by security personnel against civilians.

4.6 The names of all those taken into custody and any subsequent transfers or releases should be recorded and the Ministry of Justice notified. In the absence of any functioning court or legal procedures similar to habeas corpus, this will bring an end the current practice whereby government officials or private individuals must at present simply request the Minister of Defence for information about their whereabouts and wait indefinitely for a response. This provides no effective safeguard for detainees who may be at risk of "disappearance" or ill-treatment.

4.7 The Rwandese Government should use the United Nations Code of Conduct for Law Enforcement Officials and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials as basic texts for the training of security personnel in human rights, in addition to training about the basic humanitarian standards contained in the Geneva Conventions. The Code of Conduct for Law Enforcement Officials stipulates that law enforcement officials (whether police or military) should respect and protect human dignity and defend and safeguard human rights. In addition, members of the security forces should receive training in international human rights standards and in the provisions of national legislation both concerning the use of firearms and force, and concerning detention procedures and the treatment of prisoners.

4.8 The authorities should prohibit the security forces from ill-treating any citizen including political opponents, and should investigate all allegations of such behaviour.

including the use of *kandoya* and nail-studded clubs. Official silence on the brutality to which suspected opponents of the government have been subjected has led some to believe that the authorities are implicated, there being no other explanation for their refusal to pursue the reports published by human rights groups and the media. Those who have committed such violations should be brought to justice.

4.9 The Rwandese authorities should not deny or explain away, without thorough independent investigation, allegations of serious human rights violations by their security forces.

4.10 The security forces which have responsibility for arrests and detentions should as a matter of priority be placed under effective judicial and administrative control to comply with national and international law and accountable for their actions not only to the RPA internal hierarchies, but to the courts under the rule of law.

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September 15, 1994

THE AFTERMATH OF GENOCIDE IN RWANDA

Absence of Prosecution, Continued Killings

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Devastated by a genocide that cost the lives of at least half a million Tutsi, Rwanda continues to suffer from the aftermath of these catastrophic killings. According to Human Rights Watch/Africa, whose representative just completed a ten day mission to Rwanda:

-The present government lacks the resources to even begin prosecuting the thousands accused of massacres.

-The international community, despite its infinitely greater resources, has done little to gather the evidence necessary for judicial proceedings.

-With the prospect of actual trials still distant, persons accused, rightly or wrongly, of participation in the massacres are being killed or are disappearing from their communities, frequently at the hands of government soldiers. A small number of those taken by soldiers have been handed over to civilian authorities for trial but many are presumed dead.

-The government has denounced killings for vengeance, but has not acted effectively to stop them.

-Soldiers of the Rwandan Patriot Front also killed numerous civilians during the war against the then government of Rwanda, thus violating the Geneva conventions. Sixty-four soldiers are now under arrest, but not all are charged with killing civilians.

THE INTERNATIONAL TRIBUNAL

The international community, shamefully absent during the genocide itself, has insisted that the guilty must be brought to justice. To this end, the United Nations Security Council established a Commission of Experts to examine the case and advise on the desirability of further proceedings through an international tribunal. The Commission visited Rwanda in early September, but does not plan to issue its interim report before the end of the month. The establishment of an international tribunal, with the necessary prosecutorial staff, would take place some time after that date with actual trials still further in the future. Human Rights Watch/ Africa strongly supports expanding the

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Human Rights Watch is a not-for-profit corporation monitoring and promoting human rights in Europe, the Americas, Asia, the Middle East, and among the signatories of the Helsinki accords.

*Ms. Roth
for your attention
PL
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chamber and separate prosecutor to the existing Tribunal would require less time and resources than creating a completely new court. At least one member of the Commission of Experts has already expressed the opinion, however, that a new and autonomous tribunal is necessary. Should his opinion prevail, the start of the trials would be further delayed.

The United Nations Human Rights Commission has also named a Special Rapporteur to investigate the Rwandan massacres. His representative in Rwanda is charged with gathering evidence about the genocide, but is severely hampered by inadequate resources. She lacks the basic necessities for effective research, such as a vehicle for travel outside the capital. Human Rights Watch/Africa was able to locate tapes of broadcast by the Radio Mille Collines, a private Radio station that incited people to genocide. When an offer was made to the United Nations representative to make the copies, she was unable to come up with the blank cassettes needed to make copies of these broadcasts for use in eventual prosecution of charges of genocide, she was unable to come up with the blank cassettes needed to make the copies. She had requested such cassettes some weeks ago, but was told that the request to Geneva would have to be processed through New York. It has not yet resulted in the delivery of the needed cassettes. The cassettes could be bought locally at a cost of \$2.00 each.

Struggles within and between various branches of the United Nations bureaucracy seem to be responsible for some of the delay that are hindering the investigation of genocide.

Among the signatories to the Convention for the Prevention and Suppression of Genocide, France is one of the few to have incorporated adequate provisions against genocide in its domestic penal code. Belgium has made provisions for charges of crimes against humanity in its laws. Despite having the legal authority to try those accused of these crimes regardless of where committed, neither France nor Belgium has moved to arrest persons who are presumably guilty and who are currently residing within their national frontiers.

PROSECUTION OF THOSE ACCUSED OF GENOCIDE

The new government of Rwanda has informed the Secretary General of the United Nations that it will agree to prosecution of some of those accused of genocide by an International Tribunal. It has also announced that it will itself prosecute all others accused of killings, even if the number runs to the thousands.

Rwandan authorities readily admit, however, that they lack the resources to carry out this large-scale undertaking. The Minister of Justice, Alphonse-Marie Nkubito, has at most forty judges and prosecutors at his disposal and estimates that he will need at least eighty to carry out trials throughout the country. He has virtually no police investigators to amass the evidence needed for trials. His ministry has no vehicles, communications equipment, or even basic office supplies to carry out investigations. He has been running the ministry largely from his hotel room.

Approximately fifteen hundred persons accused of killings are now housed in the central prison of Kigali, but the single prosecutor, with a staff of five, can hardly begin to examine their cases. The ministry of Justice has no funds to provide food and supplies for the prisoners and has had to arrange for the World Food Program to feed them. At the time of a visit to the prison by Human Rights Watch, the supply of beans had been exhausted and only corn meal was available to feed the prisoners. Hundreds of other accused persons are still in military camps awaiting transfer to prison. The ministry hopes to open the prison at Gitarama, but is unsure that it will have the resources to do so.

Civilian administration has been established in about one half of the country, with most lower level local officials (conseillers, responsables) elected by the population and burgomasters appointed by the local military commander. Even in communities with civilian administration, the army continues to be responsible for keeping order. A civilian police force has not yet been established.

KILLINGS, ARRESTS AND DISAPPEARANCES OF THE ACCUSED

In the absence of any effective movement toward orderly prosecutions by either national or international authorities, soldiers of the Rwandan Patriotic Front and victims of the genocide have been killing, arresting and causing to disappear persons who are accused, rightly or wrongly, of having participated in the massacres. In communities in the northwest, throughout the center and in the south and east of the country, Human Rights Watch collected testimony about these killings and disappearances. The earliest testimonies date from the first arrival of the RPF in the region and the most recent took place on September 2, the final day when information was gathered.

Among the more dramatic cases were the following:

-At Kivumu parish, north of Gitarama, the priests were evacuated when RPF soldiers arrived to make camp on the grounds. When the priests returned at the end of July, they found a considerable number of bodies. Apparently the victims, whose arms had been bound, had been assembled for interrogation by the soldiers and had been beaten to death. The priests organized the burial of the bodies in three large mass graves which were located and photographed by Human Rights Watch/Africa.

-On July 13, in the southern town of Butare, RPF soldiers gathered several hundred displaced persons from Ntyazo, Ngeda, and Vumbi communes and told them they were going to be transported either to the stadium in Butare or back to their own homes. Instead they were confined at the Groupe Scolaire, a complex of buildings in the town. Women were separated from the men, who were interrogated. Some of the women were eventually released, but most or all of the men have not been heard from since. The men were detained in the veterinary school, which has since been guarded by soldiers. Journalists and the representative of the

United Nations Special Rapporteur have sought to visit the site but have been refused.

• Witnesses related that for a period of two days there were sounds of people being killed in the woods next to the school.

-On July 22, hundreds of displaced persons at the parish of Save were gathered for a final meeting before they were dispersed to their homes. The soldiers running the meeting asked families of those killed to point out the presumed killers. The two hundred or so persons indicated were taken away for interrogation. A dozen or so of these people were later released. Some who were freed, including one man named Mugiraneza, were taken away a few days later by soldiers.

The burgomaster (local government official) of Shyanda commune, a man named Theophile, was taken away in early August, as were five people from the family of Pedro Niyitegeka.

- At the commune of Rango, south of Butare, RPF soldiers called a meeting on Friday, July 8, of several hundred people displaced from the communes of Gashore, Ngoma and Runyinya. People with certain given names, such as Emmanuel or Charles, were asked to step forward. They were taken and locked up that night in the Rango health center and have not been seen since. When one family member inquired of soldiers about where her relative might be, she was told that he had been taken for interrogation and that she did not need to provide food for him. In the past, families ordinarily provided food for relatives who were detained at local jails.

At a subsequent meeting at Rango on July 11, survivors of the massacres were asked by soldiers to identify presumed killers. Those who were pointed out were taken away in vehicles and have not been seen since.

In the same region, eight persons were taken away by soldiers on August 24. They were men named Habiyakare; Noheli Nduwayezu; Venuste Ntakirutimana; Anniyasi, Cyriaque; Martin Rwandegye; Lambert and Pascal.

- In late July or early August, in the commune of Kayenzi, sector Cubi, cell Ntwale, widows of Tutsi men killed during the genocide asked RPF soldiers to arrest four men who they said were guilty of the killings. In the arrest attempt the soldiers killed one man, named Hitimana, who was trying to get away. Another, Azarias Mukekeyimana, subsequently escaped, but the other two, Vedaste Munyakinami and Ntahonderera, have not been seen since. The RPF returned two days later and severely beat the elderly father of Mukekeyimana and Munyakinami while questioning him about the whereabouts of one of his sons.

At about the same date, another man named Ruhitamu was also taken from Ntwale, commune Kayenzi. On August 16, Didace, a hospital worker at Kigali and the son of Atanasi Ugirawabo, was arrested at the barrier near the Kayenzi military camp and has not been heard

from since.

-An estimated 20 persons have disappeared from Munyuzwe parish in the commune of Masango. They include Wisengimana of Kirwa and the trader S. Ivan Bakondakwita and his son Laurent. The latter may have been accused by commercial rivals.

-After the RPF established their camp at Kabgayi, the large Catholic bishopric in central Rwanda, six bodies of persons who had been bound were found in the adjacent woods.

-Damien, who worked at the Nursing School at Kabgayi, was reportedly killed by the RPF at his home at Mpanda, in the commune of Mukingi.

-Chantal, a woman married to a man from Burundi, her children and visitors at her home were killed in the Gahogo sector of the commune of Nyamabuye in late July or early August.

Other disappearances have been recorded in the communes of Ruhengeri town, Taba, Kigoma, and Runyinya, and in several communes of Kibungo prefecture. In the most recent case recorded, a man was taken by soldiers from the road in front of the Groupe Scolaire in Butare just after noon on Friday, September 2. In the absence of any official notification to relatives that persons taken away have in fact been arrested, their families assume them to be dead. In such cases, Human Rights Watch/Africa counts them as victims who have disappeared.

In some cases of killings or disappearances, the RPF appears to have targeted lineages of smaller family groups, such as the Abakomba lineage in the region of Butare.

According to Justice Minister Nkubito, some of the persons listed as disappeared are currently in prison or are still being detained in military camps. Since there is as yet no reliable list of the prisoners and detained persons, it is impossible to know how many of those who have been taken away by soldiers are still alive and in the hands of the authorities. It is the responsibility of the public authorities to prepare immediately a listing of all those detained and to make the list public.

THE RPF KILLING OF CIVILIANS DURING THE WAR

Refugees who fled the advance of RPF troops south and west through Rwanda often recounted that soldiers killed large number of civilians when they entered their communities. Some of these accounts were clearly rumor or deliberate propaganda spread by the former Rwandan government. Other accounts have subsequently been substantiated. Refugees reported, for example, that civilians were gathered in a mosque in the region of Bugesera and were then executed by grenade. Soldiers now attempt to keep outsiders from approaching the mosque, but one visitor was able to note damage to the building that appeared to result from grenade attack.

In another incident, a credible witness has reported that RPF soldiers killed a large number of civilians when they arrived at Kayove, in northwestern Rwanda.

Human Rights Watch/Africa investigated one incident that took place in the commune of Mukingi, sector Rugogwe, cell Nyagakombe on June 19. The site is now called Kwi cumi n'icyenda, or nineteen, in kinyarwanda. A number of witnesses relate that RPF forces arrived from the direction of the hill Sarubeshi and assembled both local people and refugees who were in neighboring camps. They explained that they wanted to talk about transporting people to Rwabusoro in Bugesera. The soldiers first killed a woman named Sara and a man named Bihibindi. Then half an hour later, they opened fire on the crowd of hundreds of people gathered in a field. Gunfire continued throughout the day. Those who survived the hail of bullets were killed by hammers or hoes. The soldiers killed others on June 20 and 21, when they attacked refugees who had taken shelter in the cabaret of a man named Laurent. People were killed without regard to age, sex, or ethnic group. Among local Tutsi killed was a woman identified as the daughter-in-law of a man named Gahizi. Victims of the attack included the wife, three children and daughter-in-law of Karenaningo and ten people of the family of Rwabigwi.

The bodies of victims were hastily buried by survivors in three mass graves which were located and photographed by Human Rights Watch/Africa. One shallow grave measured about one meter by twenty meters and held approximately 70 victims, mostly women and children. The two others were said to be much deeper because they had been holes previously excavated for sand or clay. It is likely that these graves held hundreds of victims. In addition, the body of a baby was visible floating in the water of an adjacent stream.

A number of victims had been shot apparently when fleeing. Their bodies were located on either side of the road that stretches up the hill from the original killing field. The Human Rights Watch/Africa representative counted and photographed the remains of about twenty people in these scattered sites. Approximately half of them were either women or children.

Witnesses had no explanation for the RPF attack but they did relate that many Tutsi had been killed in the area before the RPF arrival.

On August 15, the RPF soldiers came back to take away a number of people, including Kayitare Theoneste, his five children, his wife, three of his brothers and three of his sisters; Rwamasasa Sekumonyo, his wife and five children; Barima; Gakwaya; his son of Bwanakweri; Nubaha; Come; Fabien Schadrack and Barihima, all resident of the sector Rugogwe.

THE RESPONSE OF THE RWANDAN GOVERNMENT

Leading authorities, including General Paul Kagame, Prime Minister Faustin Twagiramungu and Justice Minister Nkubito admit that RPF soldiers have been guilty of killing civilians and

insist that they are doing their best to halt these reprisals. On August 25, General Kagame and Prime Minister Twagiramungu made speeches in Ruhengeri admonishing the population not to appeal to soldiers to kill or otherwise abuse people whom they presume to be guilty. Authorities assert that enormous pressure for reprisals will continue so long as no orderly proceedings exist to deal with accusations against presumed killers. In a speech to representatives of the European Economic Community, President Pasteur Bizimungu appealed to other nations to send judges, magistrates and investigators to help speed these proceedings.

Given the tight discipline which apparently exists within the Rwandan Patriotic Army, Human Rights Watch/Africa would expect any strict order to halt reprisals to be immediately executed. In fact, it was able to document only two cases of attempts to control abuses. In the case described above that took place in Ntwale cell, Cumbi sector, Kayenzi commune, one soldier apparently told the others that party membership in the MRND, the party of former President Habyarimana that was involved in the genocide, was not sufficient grounds for arresting someone. He wanted to search the house of the accused person to see if there was any evidence to substantiate the charges against him. The other soldiers apparently overruled him and the suspect was taken away. In a second case that happened in mid-August, a man named Athanasi of the commune Musango was arrested near the Butare airport, tied up and beaten by soldiers. A Major Karenzi intervened and had the man freed. The Major apparently refused Athanasi's request that the soldiers involved be punished and told Athanasi that in case of any future problems, he should tell soldiers that Major Karenzi was aware of his case.

According to authorities, sixty-four soldiers are under arrest, some of them charged with the killing of civilians. This number, originally reported nearly a month ago, has not increased since, although more killings are being reported everyday. Human Rights Watch/Africa was told that those facing the most serious charges were detained at Kibungo prison. The Human Rights Watch/Africa representative was permitted to visit the prison to interview the detained soldiers. None was an officer. One said he was arrested after he had killed a member of the Interahamwe militia who had just thrown a grenade at him. Another recounted a similar story.

In an interview the next day, General Kagame told Human Rights Watch/Africa that a Major Sam Bigabiro was under arrest for having killed civilians. He indicated that he thought Major Bigabiro may have been in command at Mukingi commune where a large number of civilians had been killed. His staff said that Major Bigabiro was detained at Kibungo prison but they could not explain why he had not been present the previous day when other soldiers had been made available for interview by Human Rights Watch/Africa.

Military authorities have also said that two soldiers have been tried in courts martial and subsequently executed. Details of their crimes and the kinds of proceedings involved have not been made public.

PROPERTY RIGHTS

Soldiers have taken over residential and commercial property in Kigali, Butare and other urban locations. In some cases they have occupied the property themselves, in others they have allocated the holdings to persons coming from Burundi, Zaire or Uganda. Authorities have announced that the original owners will be automatically reinstated in their property when they return but that they should give the temporary occupants a few days to find new lodgings. In some cases the original owners have been able to reclaim their dwellings, but only to find that all their furnishings have been removed. In other cases, those attempting to reclaim their property have been driven away by crowds accusing them of being genocidal killers or have met actual violence at the hands of the temporary occupants.

INSECURITY AND FEAR

Rwandan authorities report that soldiers of the former Rwandan government army and members of the militia that supported that government have made incursions across the southern border to kill people. One such group apparently infiltrated into Ruhengeri and killed several people, wounded two children and took away several others on August 24 or 25. In some cases, such as one in the western region of Kibuye in mid-August, infiltrators aiming to destabilize the new government have passed themselves off as members of the RPF army. In early August, armed men in military uniform attacked refugees returning from Zaire at the hill Ndiza, northern Ruhengeri. The victims blamed the incident on the RPF but a Zairian lawyer known to be a reliable human rights investigator questioned a number of witnesses and concluded that the perpetrators were in fact militia members who had passed themselves off as members of the RPF.

Casual rumor and deliberate propaganda both cloud and exaggerate accounts of attacks and disappearances, raising the level of fear among the population.

On one level, authorities have shown great openness to outsiders and have even expressed their gratitude at being informed of reported executions. But, out on the hills densely occupied by soldiers, many people are afraid to talk about abuses. When the Human Rights Watch/Africa representative was investigating the killing of civilians at Kwi cumi n'icyenda (see above), she was stopped and questioned by a RPF officer who was accompanied by about twenty-five soldiers in full battle dress and armed with rocket-propelled grenade launchers as well as machine guns. They arrived very fast in two vehicles at the location, which was some distance from the main highway, along a little-used dirt road. They wanted to know with whom she had been speaking in the area. One Rwandan who talked at length on a public street with a foreign journalist was approached on the spot by a RPF officer who reproached him for talking so long with an outsider.

THE NEED FOR MONITORS

The United Nations Human Rights Commission recommended that a number of monitors be sent to keep track of the human rights situation in Rwanda. Rwandan authorities agreed to their presence in the country. The representative of the Special Rapporteur, who was to coordinate the establishment of the monitoring network, has encountered as much difficulty in implementing this system as she has in trying to obtain resources for investigating the genocide. She was promised twenty monitors by the end of August but in fact received only four. Once guaranteed 150, enough to place one in every commune, she may have to make do with fewer than a dozen. As with other aspects of the international effort in Rwanda, much of the difficulty seems to stem from trivial bureaucratic conflicts.

Given the slow and inadequate response of the United Nations to the pressing need for monitoring the situation, a number of international human rights nongovernmental organizations are exploring the possibility of creating a monitoring network in collaboration with local associations.

RWANDAN HUMAN RIGHTS ASSOCIATION

The various Rwandan human rights groups have suffered serious losses as a result of the killings of the Tutsi and members of the political opposition. They have begun courageously to rebuild themselves and have organized a group of teams who have begun assembling documentation on the genocide.

CONCLUSIONS

The lack of progress toward orderly prosecution of those accused of genocide has left the way open to demands for and execution of reprisal killings. In the absence of a police, the maintenance of order remains in the hands of the army, a situation which creates widespread fear, particularly out on the hills. The practice of keeping prisoners in military camps, with no adequate system for reporting their whereabouts, contributes to the widespread conviction that all those taken by the military have been killed. This is not always the case, but substantial numbers -- at least hundreds -- of persons taken by soldiers have been killed, as is demonstrated by the mass graves at Kivumu parish, which served briefly as a military camp.

In addition, Human Rights Watch/Africa documented one case where hundreds of civilians were killed in the course of the RPF advance into the region south of Gitarama.

The government has denounced killings for vengeance, but has not punished the soldiers responsible for them quickly and consistently enough to bring an end to the practice.

RECOMMENDATIONS

The Government of Rwanda:

Must act immediately and forcefully to end reprisal killings and other abuses by the military;

Must create a civilian police force to replace the army in keeping order and must withdraw the soldiers to their barracks;

Must arrest and prosecute all soldiers accused of killings and other executions of civilians; specifically it should hold an immediate and public court martial of Major Sam Bigabiro and any other officer accused of ordering attacks against civilians such as that which occurred at Mukingi commune on June 19-21;

Must order all soldiers who arrest suspects to immediately notify their families of their arrest and their place of detention;

Must maintain and make public an up-to-date list of all persons arrested or otherwise detained by legitimate authorities;

Must promptly open prisons to house civilian detainees and move all civilian detainees out of military camps;

Must formulate specific, practical proposals for how expatriate jurists and investigators could be efficiently used to speed prosecution of the accused;

Should encourage punishment appropriate to the degree of guilt of the accused, with attention to extenuating circumstances and to the willingness of the defendant to cooperate with investigations and to offer evidence of crimes committed by others, provided that his/her own participation is readily and truthfully confessed and is secondary to the crime. Such defendants should be offered a choice of obligatory community service instead of prison terms. Such special consideration must be given and announced in advance of the applicability of extenuating circumstances. Lesser punishments should be given to defendants who acted under threat of death. The possibility of pleading extenuating circumstances should not be available to those who gave orders or were in control of events so that they could have prevented loss of life and failed to do so;

Should continue and implement thoroughly its policy of openness, including its willingness to permit the installation of human rights monitors.

To the international community:

Those governments that have persons apparently guilty of genocide residing within their borders must extradite them to Rwanda for trial, bring them promptly to trial themselves or deliver them to an appropriate authority for trial before an international tribunal, if one is created;

Those governments whose legal systems are like that of Rwanda should offer to provide jurists and investigators, either by seconding them from present government service or by aiding in their recruitment through other channels. All governments should assist the investigations needed to bring the guilty to trial for genocide, either through financial support or by providing needed personnel;

All governments should insist upon immediate establishment of an international tribunal, preferably by expanding the existing International Tribunal for War Crimes in the Former Yugoslavia through the addition of another chamber and prosecutor;

Through the Security Council, the international community should request all countries to cooperate with Rwandan authorities and with the International Tribunal in bringing those guilty of genocide to justice, specifically by arresting suspects wherever found, as long as probable cause of their guilt is established and as long as the suspects are afforded the means in the domestic legal system to challenge their arrest.

Human Rights Watch/Africa (formerly Africa Watch)

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director, Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Africa division was established in 1988 to monitor and promote the observance of internationally recognized human rights in sub-Saharan Africa. Abdullahi An-Na'im is the executive director; Janet Fleischman is the Washington representative; Karen Sorensen, Alex Vines and Berhane Woldegabriel are research associates; Kimberly Mazyck and Urmi Shah are associates; Bronwen Manby and Alison DesForges are consultants. William Carmichael is the chair of the advisory committee and Alice Brown is the vice chair.



Economic and Social
Council

Distr.
GENERAL

E/CN.4/S-3/4
30 May 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Third special session
24-25 May 1994

REPORT OF THE COMMISSION ON HUMAN RIGHTS ON ITS
THIRD SPECIAL SESSION

(Geneva, 24 and 25 May 1994)

CONTENTS

<u>Chapter</u>	<u>Paragraphs</u>	<u>Page</u>
I. DRAFT DECISION RECOMMENDED FOR ADOPTION BY THE ECONOMIC AND SOCIAL COUNCIL		3
II. RESOLUTION ADOPTED BY THE COMMISSION AT ITS THIRD SPECIAL SESSION		4
III. ORGANIZATION OF THE SESSION	1 - 37	9
A. Opening and duration of the session	6 - 8	9
B. Attendance	9	9
C. Officers	10	10
D. Agenda	11 - 12	10
E. Organization of work	13 - 14	10
F. Meetings, resolution and documentation	15 - 16	10

CONTENTS (continued)

<u>Chapter</u>		<u>Paragraphs</u>	<u>Page</u>
IV.	LETTER DATED 9 MAY 1994 FROM THE ACTING PERMANENT REPRESENTATIVE OF CANADA TO THE UNITED NATIONS OFFICE AT GENEVA ADDRESSED TO THE HIGH COMMISSIONER FOR HUMAN RIGHTS	17 - 36	11
V.	REPORT TO THE ECONOMIC AND SOCIAL COUNCIL ON THE THIRD SPECIAL SESSION OF THE COMMISSION . .	37	14
<u>Annexes</u>			
I.	Attendance		15
II.	Agenda		21
III.	List of documents issued for the third special session		22

I. DRAFT DECISION RECOMMENDED FOR ADOPTION BY
THE ECONOMIC AND SOCIAL COUNCIL

The situation of human rights in Rwanda

The Economic and Social Council endorses resolution S-3/1 of 25 May 1994,
adopted by the Commission on Human Rights at its third special session.

II. RESOLUTION ADOPTED BY THE COMMISSION AT ITS
THIRD SPECIAL SESSION

S-3/1. The situation of human rights in Rwanda

The Commission on Human Rights,

Meeting in special session,

Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and the Punishment of the Crime of Genocide, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Convention on the Rights of the Child, international humanitarian law, including the Geneva Conventions of 12 August 1949 for the protection of war victims and the Additional Protocols thereto of 1977, the African Charter of Human and Peoples' Rights, and other relevant international human rights instruments,

Conscious of its responsibility to promote and encourage respect for human rights and fundamental freedoms for all, and resolved to remain vigilant with regard to violations of human rights wherever they may occur and to prevent such violations,

Noting with deep concern that a situation of ethnic and political armed conflict, systematic slaughter and massacres continues to exist in Rwanda, resulting in grave violations and abuses of human rights, including massive loss of lives, which may exceed five hundred thousand, and destruction of property,

Recalling that the killing of members of an ethnic group, with the intention of destroying such a group in whole or in part, constitutes the crime of genocide,

Believing that genocidal acts may have occurred in Rwanda,

Expressing its grave concern at the failure to date of the Rwandan authorities to condemn the ongoing massacres in the country,

Expressing its solidarity with the families of the victims of the conflict, the people of Rwanda and neighbouring countries which are receiving refugees,

Recalling the request of the Security Council to the Secretary-General to collect information on the responsibility for the tragic incident that resulted in the death of the Presidents of Rwanda and Burundi,

Commending the initiative taken by the High Commissioner for Human Rights and his timely visit to Rwanda,

Noting with appreciation the efforts of the Secretary-General of the United Nations, the Secretary-General's Special Representative on Rwanda, the United Nations High Commissioner for Refugees and the Department of Humanitarian Affairs of the Secretariat, as well as of the existing mechanisms of the Commission on Human Rights, particularly the Special Rapporteur on extrajudicial, summary or arbitrary executions, and of non-governmental organizations,

Noting also with appreciation the efforts of the Chairman and Secretary-General of the Organization of African Unity, the President of the United Republic of Tanzania, His Excellency Mr. Ali Hassan Mwinyi, in his capacity as the Facilitator of the Arusha Peace Process, and the Organization of African Unity Mechanism for Conflict Prevention, Management and Resolution,

Stressing the need for the full implementation of the Arusha Peace Agreement by all parties to the conflict,

Alarmed at the report of the High Commissioner for Human Rights (E/CN.4/S-3/3) and the information provided by the United Nations High Commissioner for Refugees and non-governmental organizations concerning the deteriorating human rights situation in Rwanda, in particular the massacre of innocent persons,

Alarmed also at the reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions, concerning a deliberate policy which advocates ethnic and political intolerance, hatred and violence,

Underlining the need for the international community to move with speed to protect innocent civilians and deliver humanitarian assistance, a task which can be most effectively accomplished within the framework of the United Nations,

Conscious of the fact that the magnitude of the tragedy in Rwanda requires the kind of coordination and resources which can only be effectively sustained by the United Nations,

Convinced that the operation in Rwanda will continue to be a United Nations undertaking, and supporting the Secretary-General's encouragement to States Members of the United Nations to provide the needed troops and equipment to the United Nations Assistance Mission to Rwanda (UNAMIR),

Recalling the recent Security Council resolution (918 (1994) of 17 May 1994), in which the Council authorized the expansion of the UNAMIR force level up to five thousand five hundred troops,

Recognizing that effective action to prevent further violations of human rights must be a central and integral element of the overall United Nations response to the situation in Rwanda,

Recognizing also that a strong human rights component will be indispensable to the political peace process and the post-conflict reconstruction of Rwanda,

1. Condemns in the strongest terms all breaches of international humanitarian law and all violations and abuses of human rights in Rwanda, and calls upon all the parties involved to cease immediately these breaches, violations and abuses and to take all necessary steps to ensure full respect for human rights and fundamental freedoms and for humanitarian law;

* 2. Also condemns in the strongest terms the kidnapping and killing of military peace-keeping personnel attached to the United Nations Assistance Mission to Rwanda (UNAMIR), which constitutes a blatant violation of international humanitarian law;

3. Condemns equally the killing of personnel attached to humanitarian organizations operating in the country;

4. Further condemns in the strongest terms the kidnapping and murder of the Prime Minister, Ms. Agathe Uwilingiyimana, and some of her cabinet ministers and government officials, as well as the wanton killings of innocent civilians and the destruction of property;

5. Commends the High Commissioner for Human Rights on his recent mission to Rwanda, welcomes his report on the situation of human rights in the country and endorses the conclusions and recommendations contained therein;

6. Calls upon the Government of Rwanda to condemn publicly and take measures to put an end to all violations of human rights and international humanitarian law by all persons within its jurisdiction or under its control and to ensure that the human rights of all individuals within its jurisdiction, irrespective of their ethnic origin, are fully respected;

7. Calls upon the Rwandese Patriotic Front (RPF) to prevent persons under its command from committing human rights abuses and violations of international humanitarian law;

8. Strongly urges all parties to cease immediately any incitement to violence or ethnic hatred;

9. Commends the Secretary-General of the United Nations and his Special Representative on Rwanda, the President of the United Republic of Tanzania in his capacity as the Facilitator of the Arusha Peace Process, the Chairman and the Secretary-General of the Organization of African Unity, the United Nations High Commissioner for Refugees, all countries contributing troops and other support, the Department of Humanitarian Affairs of the Secretariat and all neighbouring countries hosting refugees from Rwanda, as well as the International Committee of the Red Cross and non-governmental organizations, for their efforts in alleviating the suffering of innocent victims of this tragedy;

10. Calls for an immediate cessation of hostilities and for the parties to the Arusha Peace Agreement to cooperate fully with the Special Representative of the Secretary-General and with UNAMIR in order to create the necessary conditions conducive to the immediate resumption of the implementation of the Agreement, which constitutes the framework for peace, national reconciliation and unity in the country;

11. Welcomes the Security Council's decision to authorize expansion of the UNAMIR mandate under resolution 912 (1994) to include the following additional responsibilities within the limits of the resources available to it:

(a) To contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, including through the establishment and maintenance, where feasible, of secure humanitarian areas;

(b) To provide security and support for the distribution of relief supplies and humanitarian relief operations;

12. Calls upon the responsible authorities, groups and individuals in Rwanda to facilitate the access of humanitarian relief to all in need;

13. Expresses its alarm at all repressive policies and policies directed against members of particular ethnic groups, and also calls upon all parties concerned to ensure the protection of the rights of all persons regardless of their national or ethnic, religious or linguistic background;

14. Calls upon the parties to the conflict to ensure safe passage for those fleeing from the conflict areas including, where necessary, to asylum countries and to ensure the right to return under safe conditions;

15. Calls for the immediate and unconditional release of all persons being held illegally against their will in camps, prisons or other places and for them to be permitted to be moved to safety;

16. Demands that all parties immediately notify the appropriate humanitarian organizations of the location of all camps, prisons or other places of detention, and that the parties concerned ensure immediate and unimpeded access to such places;

17. Affirms that all persons who commit or authorize violations of human rights or international humanitarian law are individually responsible and accountable for those violations and that the international community will exert every effort to bring those responsible to justice, while affirming that the primary responsibility for bringing perpetrators to justice rests with national judicial systems;

18. Requests the Chairman to appoint a special rapporteur, for an initial period of one year, to investigate at first-hand the human rights situation in Rwanda and to receive relevant, credible information on the human rights situation there from Governments, individuals and intergovernmental and non-governmental organizations, including on root causes and responsibilities for the recent atrocities, on a continuing basis, and to avail himself or herself of the assistance of existing mechanisms of the Commission on Human Rights;

19. Requests the existing mechanisms of the Commission on Human Rights, including the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture, the Representative of the Secretary-General on internally displaced persons, the

Working Group on Enforced or Involuntary Disappearances and the Working Group on Arbitrary Detention, as well as human rights treaty bodies, where appropriate, to give urgent attention to the situation in Rwanda and to provide, on a continuing basis, their full cooperation, assistance and findings to the Special Rapporteur and to accompany the Special Rapporteur in visiting Rwanda whenever necessary;

20. Requests the Special Rapporteur to visit Rwanda forthwith and to report on an urgent basis to the members of the Commission on Human Rights on the situation of human rights in the country, including his or her recommendations for bringing violations and abuses to an end and preventing future violations and abuses, providing a preliminary report no later than four weeks from the adoption of the present resolution, and requests the Secretary-General to make the report of the Special Rapporteur available to the Economic and Social Council, the General Assembly and the Security Council;

21. Also requests the Special Rapporteur to gather and compile systematically information on possible violations of human rights and acts which may constitute breaches of international humanitarian law and crimes against humanity, including acts of genocide, in Rwanda and to make this information available to the Secretary-General;

22. Calls upon all parties to the conflict to give their full cooperation to the Special Rapporteur, in order to ensure the fulfilment of his or her mandate;

23. Requests the High Commissioner for Human Rights to make the necessary arrangements for the Special Rapporteur to be assisted by a team of human rights field officers acting in close cooperation with UNAMIR and other United Nations agencies and programmes operating in Rwanda;

24. Also requests the High Commissioner for Human Rights to take the necessary steps to ensure that future efforts of the United Nations aimed at conflict resolution and peace-building in Rwanda are accompanied by a strong human rights component and that this process is effectively supported by a comprehensive programme of human rights assistance;

25. Requests the Secretary-General to provide all necessary assistance to the Special Rapporteur to fulfil his or her mandate;

26. Decides to remain seized of the issue.

4th meeting
25 May 1994

[Adopted without a vote. See chap. IV.]

III. ORGANIZATION OF THE SESSION

1. The Economic and Social Council, in its resolution 1990/48 of 25 May 1990, authorized the Commission on Human Rights to meet exceptionally between its regular sessions, provided that a majority of States members of the Commission so agreed. *
2. The Economic and Social Council, at its substantive session of 1993, adopted decision 1993/286 of 28 July 1993, entitled "Procedure for special sessions of the Commission on Human Rights".
3. By a letter dated 9 May 1994, addressed to the High Commissioner for Human Rights, the Acting Permanent Representative of Canada to the United Nations Office at Geneva on behalf of the Government of Canada, requested that a special session of the Commission be convened to discuss the situation in Rwanda.
4. Pursuant to Economic and Social Council decision 1993/286, the States members of the Commission were requested, by a note verbale dated 9 May 1994, to indicate their wishes by 16 May 1994, in regard to the request of the Government of Canada, with a view to ascertaining whether the majority of the members agreed to the holding of a special session. By that time, the following members of the Commission had indicated that they were in agreement: Australia, Austria, Bangladesh, Barbados, Brazil, Bulgaria, Cameroon, Canada, Chile, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, Ecuador, Finland, France, Germany, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Kenya, Lesotho, Malaysia, Mauritania, Mauritius, Mexico, Netherlands, Nigeria, Pakistan, Peru, Poland, Republic of Korea, Romania, Russian Federation, Sri Lanka, Togo, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.
5. As the majority of the States members were in agreement, the Assistant Secretary-General for Human Rights convened the third special session of the Commission on Human Rights on 24 and 25 May 1994.

A. Opening and duration of the session

6. The Commission on Human Rights held its third special session at the United Nations Office at Geneva on 24 and 25 May 1994. It held four meetings (E/CN.4/1994/S-3/SR.1-4) 1/ during the session.
7. The third special session was opened by Mr. Peter Paul van Wulfften Palthe (Netherlands), Chairman of the Commission at its fiftieth session.
8. At the 1st meeting, on 24 May 1994, the Assistant Secretary-General for Human Rights made a statement.

B. Attendance

9. The session was attended by representatives of States members of the Commission, by observers from other States Members of the United Nations and

from non-member States, by representatives of United Nations bodies, regional intergovernmental organizations and non-governmental organizations. An attendance list is given in annex I to the present report.

C. Officers

10. At its fiftieth session the Commission had elected the following officers, who again served as the officers of the third special session of the Commission:

<u>Chairman:</u>	Mr. Peter Paul van Wulfften Palthe (Netherlands)
<u>Vice Chairmen:</u>	Mr. José Urrutia (Peru)
	Mr. Romulus Neagu (Romania)
	Mr. Minoru Endo (Japan)
<u>Rapporteur:</u>	Mr. François Xavier Ngoubeyou (Cameroon)

D. Agenda

11. At its 1st meeting, on 24 May 1994, the Commission had before it the provisional agenda for the third special session (E/CN.4/S-3/1 and Add.1), drawn up in accordance with rule 5 of the rules of procedure of the functional commissions of the Economic and Social Council.

12. The agenda was adopted without a vote. For the text of the agenda as adopted, see annex II to the present report.

E. Organization of work

13. At its 1st meeting, the Commission considered the organization of its work.

14. The Commission agreed that the requirement stipulated in rule 52 of the rules of procedure of the functional commissions of the Economic and Social Council, that proposals and substantive amendments be discussed or put to the vote no earlier than 24 hours after copies had been circulated to all members, should be waived.

F. Meetings, resolution and documentation

15. Four meetings were held by the Commission, of which two were extended to the equivalent of four.

16. The resolution adopted by the Commission at its third session is contained in chapter II of the present report. A draft decision for action by the Economic and Social Council is set out in chapter I.

IV. LETTER DATED 9 MAY 1994 FROM THE ACTING PERMANENT REPRESENTATIVE
OF CANADA TO THE UNITED NATIONS OFFICE AT GENEVA ADDRESSED TO
THE HIGH COMMISSIONER FOR HUMAN RIGHTS

17. The Commission considered agenda item 3 at its 1st to 4th meetings,
on 24 and 25 May 1994.

18. The Commission had before it the following documents:

Letter dated 9 May 1994 from the Acting Permanent Representative of
Canada to the United Nations Office at Geneva addressed to the High
Commissioner for Human Rights (E/CN.4/S-3/2);

Report of the United Nations High Commissioner for Human Rights,
Mr. José Ayala Lasso, on his mission to Rwanda, 11 and 12 May 1994
(E/CN.4/S-3/3).

19. At the 1st meeting, on 24 May 1994, the representative of Canada made a
statement with regard to the request contained in the letter dated 9 May 1994
(E/CN.4/S-3/2).

20. At the same meeting, the High Commissioner for Human Rights made a
statement introducing his report (E/CN.4/S-3/3).

21. In the general debate on item 3, statements 2/ were made by the
following members of the Commission: Australia (1st), Austria (2nd), Brazil
(2nd), Bulgaria (2nd), Cameroon (2nd), Chile (2nd), China (2nd), Colombia
(2nd), Ecuador (2nd), France (1st), Finland (on behalf of Denmark, Finland,
Iceland, Norway and Sweden) (1st), Germany (1st), Hungary (2nd), India (2nd),
Indonesia (2nd), Iran (Islamic Republic of) (2nd), Japan (2nd), Mauritania
(4th), Mauritius (2nd), Mexico (3rd), Nigeria (2nd), Pakistan (1st), Peru
(2nd), Poland (2nd), Republic of Korea (4th), Romania (1st),
Russian Federation (2nd), Sri Lanka (2nd), Sudan (2nd), Tunisia (2nd),
United States of America (1st), Venezuela (3rd).

22. The Commission also heard statements by the following observers: Belgium
(3rd), Egypt (3rd), Ethiopia (4th), Ghana (3rd), Greece (on behalf of the
European Union) (1st), Malta (2nd), New Zealand (2nd), Rwanda (2nd), Senegal
(2nd), South Africa (2nd), United Republic of Tanzania (3rd), Zambia (on
behalf of the African Group) (1st).

23. The observers for the Holy See (2nd) and Switzerland (2nd) made
statements.

24. A statement was made by the observer for the Organization of African
Unity (1st).

25. At the 1st meeting, on 24 May 1994, the United Nations High Commissioner
for Refugees made a statement.

26. The Commission also heard statements by representatives of the following
United Nations bodies: Department of Humanitarian Affairs (2nd),
United Nations Children's Fund (2nd).

27. Statements were made by representatives of the following non-governmental organizations: American Association of Jurists (3rd), Amnesty International (3rd), Caritas Internationalis (4th), Centre Europe-Tiers Monde (4th), Human Rights Advocates (3rd), Human Rights Watch (3rd), International Association of Democratic Lawyers (4th), International Catholic Child Bureau (3rd), International Commission of Jurists (3rd), International Confederation of Free Trade Unions (4th), International Federation of ACAT (Action of Christians for the Abolition of Torture) (4th), International Federation of Human Rights (3rd), International Fellowship of Reconciliation (4th), International Service for Human Rights (3rd), Latin American Federation of Associations of Relatives of Disappeared Detainees (3rd), Médecins sans frontières (International) (3rd), Minority Rights Group (3rd), Movement against Racism and for Friendship among Peoples (4th), OXFAM (4th), Pax Christi International (4th), Recontre Africaine pour la Défense des Droits de l'Homme 3/ (4th), Reporters Sans Frontières (4th), War Resisters International (3rd), Women's International League for Peace and Freedom (3rd), World Jewish Congress (4th), World Organization against Torture (3rd).

28. A statement in exercise of the right of reply was made by the representative of France (4th).

29. At the 4th meeting, on 25 May 1994, the representative of Cameroon introduced draft resolution E/CN.4/S-3/L.2, sponsored by: Algeria, Argentina, Australia, Austria, Barbados, Belgium, Brazil, Bulgaria, Cameroon, Canada, Chile, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Kenya, Luxembourg, Madagascar, Malta, Mauritania, Mauritius, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Slovakia, Spain, Sweden, Switzerland, Togo, Tunisia, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Zambia, Zimbabwe. Albania, Guatemala, Nicaragua, the Philippines and Slovenia subsequently joined the sponsors.

30. At the same meeting, the observer for Rwanda made a statement with regard to the draft resolution.

31. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to an estimate of the administrative and programme budget implications of draft resolution E/CN.4/S-3/L.2. The estimate will be submitted to the Economic and Social Council at its substantive session of July 1994.

32. Before the adoption of the draft resolution, the representative of Cuba made a statement in explanation of his delegation's position.

33. The draft resolution was adopted without a vote.

34. After the adoption of the resolution, statements in explanation of their delegation's position were made by the representatives of the Islamic Republic of Iran, Malaysia, Sri Lanka and the Syrian Arab Republic.

35. For the text of the resolution as adopted, see chapter II, resolution S-3/1.

36. At the same meeting, the Chairman announced the appointment of Mr. René Degni Segui (Côte d'Ivoire) as the Special Rapporteur to investigate at first hand the human rights situation in Rwanda.

V. REPORT TO THE ECONOMIC AND SOCIAL COUNCIL
ON THE THIRD SPECIAL SESSION

(Agenda item 4)

37. At its 4th meeting, on 25 May 1994, the Commission considered and adopted the draft report on its third special session.

Notes

1/ Summary records of each of the meetings are subject to correction. They are considered as final with the issuance of a consolidated corrigendum (E/CN.4/S-3/SR.1-4/Corrigendum).

2/ The number in parenthesis following the name of a State or organization indicates the meeting at which the statement was made.

3/ Subsequently, it was confirmed that this non-governmental organization does not have consultative status with the Economic and Social Council.

ANNEXES

Annex I

ATTENDANCE

*
Members

Australia

Ms. Penelope Wensley, Mr. Colin Willis,* Ms. Corinne Tomkinson,
Ms. Janice Mulleneux

Austria

Mr. Winfried Lang, Mr. Christian Strohal,* Mr. Andreas Herdina,
Mr. Michael Desser

Bangladesh

Mr. M. Anwar Hashim, Mr. Iftikharul Karim, Mr. Nazmul Quaunine

Barbados

Mr. David Blackman

Brazil

Mr. Gilberto Vergne Saboia, Mr. Almir Franco de Sá Barbuda,
Mrs. Ana Cândida Perez, Mr. Antonio Luis Espinola Salgado

Bulgaria

Mr. Valentin Dobrev, Mr. Vesselin Petrov*

Cameroon

Mr. François-Xavier Ngoubeyou, Mr. Pierre Sob*

Canada

Ms. Anne Park, Mr. Alan H. Kessel, Mr. Ross G. Hynes

Chile

Mr. Roberto Garretón, Mr. Ernesto Tironi, Mr. Pedro Oyarce,
Mr. Luis Lillo

* Alternate

China

Mr. Jin Yongjian, Mr. Pang Sen, Mr. Wang Min, Mr. Zhou Xikang,
Mr. Lu Kang

Colombia

Mr. Guillermo Alberto González, Mrs. María Carrizosa de Lopez

Costa Rica

Mr. Jorge Rhenan Segura, Mr. Javier Rodriguez

Côte d'Ivoire

Mr. Marc G. Sery

Cuba

Mr. José Pérez Novoa, Mr. Jorge Lago Silva,* Mr. Adolfo Curbelo,*
Mrs. María González

Cyprus

Mr. Nicolas D. Macris, Mrs. Loria Markides

Ecuador

Mr. Francisco Riofrio, Mr. Gustavo Anda,

Finland

Mr. Antti Hynninen, Mr. Risto Veltheim, Mr. Klaus Korhonen

France

Mrs. Lucette Michaux-Chevry, Mr. Michel de Bonnecorse,
Mr. Jean-Michel Marlaud, Mr. Jacques Manent, Mr. Didier Talpain,
Mrs. Maryse Daviet, Mrs. Brigitte Collet, Mrs. Marion Paradas-Bouveau,
Mrs. Béatrice le Fraper du Hellen, Mr. Philippe Imbert,
Mrs. Minata Samate, Mrs. Renata Carcelen, Ms. Nathalie Belmas

Gabon

Mr. Corentin Hervo-Akendengue

Germany

Mr. Gerhart Baum, Mr. Alois Jelonek,* Mr. Werner Daum, Mr. Peter Schoof,
Mr. Michael Flügger, Mr. Gunther Rottler, Ms. Gaby Buchs,
Mr. Thomas Richter, Mrs. Karsten Hammer

Hungary

Mr. György Bóytha, Mr. Endre Lontai, Mr. Sándor Szapora

India

Mr. Satish Chandra, Mrs. Neelam D. Sabharwal, Mr. D. Chakravarti,
Mr. D.K. Patnaik

Indonesia

Mr. Soemadi Brotodiningrat, Mr. Adian Silalahi,* Mr. Makmur Widodo,
Mr. Eddy Pratomo, Mr. Havas Oegroseno

Iran (Islamic Republic of)

Mr. Sirous Nassen, Mr. Mostapha Alaee

Italy

Mr. Paolo Torella di Romagnano, Mr. Daniele Verga, Mrs. Barbara Schiavo

Japan

Mr. Minoru Endo, Ms. Mari Miyoshi,* Mr. Keiichi Aizawa, Ms. Mari Tomita

Kenya

Mr. N. Ngunjiri, Mr. C.K. Mburu, Mr. A.K. Chepsiror

Libyan Arab Jamahiriya

Mrs. Najat El Hajjaji

Malaysia

Mr. Haron Siraj, Mr. A. Ganapathy, Mr. Abdullah Faiz Zain,
Ms. Rohana Ramli

Mauritania

Mr. Mohamed Saleck Ould Mohamed Lemine, Mr. Sidney Sokhona

Mauritius

Mr. Dhurma Gian Nath, Mr. P. Curé

Mexico

Mrs. Eréndira Paz-Campos

Netherlands

Mr. J.F. Boddens-Hosang, Mr. P.P. van Wulfften Palthe, Mr. L.L. Stokris,*
Mr. W. van Reenen,** Mrs. P. Sastrowijoto

Nigeria

Mr. O. Fasehun, Mr. B.I.D. Oladeji

Pakistan

Mr. Ahmad Kamal, Mr. Khalil Aziz Babar, Ms. Fauzia Abbas,
Mr. Syed Ibne Abbas, Mr. Irfan Baloch, Mr. A.S. Babar Hashmi

Peru

Mr. Antonio García, Mr. Eduardo Pérez del Solar

Poland

Mr. Ludwik Dembiński, Mr. Jan Woroniecki, Mr. Zdzislaw Kedzia

Republic of Korea

Mr. Seung Ho, Mr. Lee Joon Hee,* Mr. Kim Ghee Whan

Romania

Mr. Romulus Neagu, Mr. Alexandru Niculescu, Mr. Tudor Mircea,
Mr. Sergiu Margineanu, Mr. Toni Grebla

Russian Federation

Mr. Andrei I. Kolossovsky, Mr. Anatoliy P. Smironov,* Mr. Valeriy
V. Lochtchinine,* Mr. Boris G. Khabirov, Mr. Valeriy A. Verdiev,
Mr. Youri A. Boitchenko, Mr. Gennadiy S. Diatlov

Sri Lanka

Mr. Bernard A.B. Goonetilleke, Mr. W.P.R.B. Wickremasinghe,
Mr. A.L. Abdul Azeez

Sudan

Mr. Ali Ahmed Sahloul, Mr. Abdelmonein Hassan, Mr. Mohamed Elkarib,
Mr. Alier Deng, Mr. Mohamed Yousif Hassan, Mr. Osman Rudwan,
Mr. Mustafa Abu Bakr

** Adviser

Syrian Arab Republic

Mr. Clovis Khoury, Miss Chaghaf Kayali

Togo

Mr. Roland Y. Kpotsra

Tunisia

Mr. Mohamed Ennaceur, Mr. Moncef Baati, Mr. Mohamed Samir Koubaa,
Mr. Ali Ben Malek

United Kingdom of Great Britain and Northern Ireland

Mr. N.C.R. Williams, Mr. E.G.M. Chaplin, Ms. S. Foulds, Mr. J. Rankin,
Mr. G. Perry, Mr. I. Barnard, Ms. E. Doherty, Mr. R. Gladwin

United States of America

Mrs. Geraldine Ferraro, Mr. Daniel L. Spiegel,* Mr. David Rawson,**
Mr. John R. Crook, Mr. Steven Wagenseil, Mr. Leon Weintraub,
Mr. John E. Lange, Mr. Gamal R. Graiss, Mr. Sheridan W. Bell, III

Uruguay

Mr. Miguel Berthet, Mrs. Susana Rivero, Mr. Nelson Y. Chabén

Venezuela

Mr. Alfredo Tarre Murzi, Mr. Wilmer Méndez, Ms. Janeth Arocha

States Members of the United Nations represented by observers

Albania, Algeria, Argentina, Belgium, Bhutan, Brunei Darussalam, Burundi,
Croatia, Czech Republic, Democratic People's Republic of Korea, Denmark,
Egypt, El Salvador, Ethiopia, Federal Republic of Yugoslavia, Former Yugoslav
Republic of Macedonia, Ghana, Greece, Guatemala, Honduras, Iceland, Ireland,
Israel, Kuwait, Liechtenstein, Luxembourg, Madagascar, Malta, Morocco,
Myanmar, Nepal, New Zealand, Nicaragua, Norway, Oman, Philippines, Portugal,
Rwanda, Senegal, Somalia, South Africa, Spain, Sweden, United Republic of
Tanzania, Turkey, Ukraine, Zaire, Zambia, Zimbabwe

Non-member States represented by observers

Holy See, Switzerland

United Nations bodies

Department of Humanitarian Affairs, Office of the United Nations High
Commissioner for Refugees, United Nations Children's Fund

Intergovernmental organizations

European Union, League of Arab States, Organisation of the Islamic Conference,
Organization of African Unity

National liberation movement

Palestine

Other organizations

International Committee of the Red Cross

Specialized agencies

International Labour Organisation

Non-governmental organizations

Category I

International Confederation of Free Trade Unions, Inter-Parliamentary Union,

Category II

African Association of Education for Development, American Association of Jurists, Amnesty International, Caritas Internationalis, Baha'i International Community, Commission of the Churches on International Affairs of the World Council of Churches, Friends World Committee for Consultation, Human Rights Advocates, Human Rights Internet, Human Rights Watch, International Catholic Child Bureau, International Commission of Jurists, International Federation of Human Rights, International Fellowship of Reconciliation, International League for Human Rights, International League for the Rights and Liberation of Peoples, International Movement for Fraternal Union among Races and Peoples, International Service for Human Rights, Latin American Federation of Associations of Relatives of Disappeared Detainees, Médecins sans frontières (International), Oxfam, Pax Christi International, Reporters Sans Frontières, Women's International League for Peace and Freedom

Roster

Centre Europe-Tiers Monde, International Educational Development, Inc., International Federation of ACAT, Minority Rights Group, Movement against Racism and for Friendship among Peoples, World Organization against Torture

Rencontre africaine pour la défense des droits de l'homme*

* Subsequently, it was confirmed that this non-governmental organization does not have consultative status with the Economic and Social Council.

Annex II

AGENDA

1. Adoption of the agenda.
2. Organization of work.
3. Letter dated 9 May 1994 from the Acting Permanent Representative of Canada to the United Nations Office at Geneva, addressed to the High Commissioner for Human Rights.
4. Report to the Economic and Social Council on the third special session.

Annex III

LIST OF DOCUMENTS ISSUED FOR THE THIRD SPECIAL SESSION

Documents issued in the general series

<u>Symbol</u>	<u>Agenda item</u>	
E/CN.4/S-3/1		Provisional agenda: note by the secretariat
E/CN.4/S-3/1/Add.1		Annotations to the provisional agenda: note by the secretariat
E/CN.4/S-3/2	3	Letter dated 9 May 1994 from the Acting Permanent Representative of Canada to the United Nations Office at Geneva addressed to the High Commissioner for Human Rights
E/CN.4/S-3/3	3	Report of the United Nations High Commissioner for Human Rights, Mr. José Ayala Lasso, on his mission to Rwanda, 11 and 12 May 1994
E/CN.4/S-3/4	4	Report of the Commission on its third special session

Documents issued in the limited series

<u>Symbol</u>	<u>Agenda item</u>	
E/CN.4/S-3/L.1	4	Draft report of the Commission on Human Rights on its third special session
E/CN.4/S-3/L.2	3	Algeria, Argentina, Australia, Austria, Barbados, Belgium, Brazil, Bulgaria, Cameroon, Canada, Chile, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Kenya, Luxembourg, Madagascar, Malta, Mauritania, Mauritius, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Slovak Republic,

Spain, Sweden, Switzerland, Togo,
Tunisia, United Kingdom of
Great Britain and Northern Ireland,
United States of America, United
Republic of Tanzania, Uruguay,
Venezuela, Zambia, Zimbabwe: draft
resolution

Documents issued in the non-governmental organizations series

<u>Symbol</u>	<u>Agenda item</u>	
E/CN.4/S-3/NGO/1	3	Written statement submitted by Caritas Internationalis, a non-governmental organization in consultative status (category II)
E/CN.4/S-3/NGO/2	3	Written statement submitted by Pax Christi International, a non-governmental organization in consultative status (category II)
E/CN.4/S-3/NGO/3	3	Written statement submitted by Centre Europe-Tiers Monde, a non-governmental organization on the Roster
E/CN.4/S-3/NGO/4	3	Written statement submitted by the International Human Rights Law Group, a non-governmental organization in consultative status (category II)

receive information on local cultural traditions and should respect the inherent rights and dignity of women at all times. Human rights components should include experts in the area of violence against women, including rape and sexual abuse.

13. Adherence of international peace-keeping forces to human rights and humanitarian law standards. The UN should declare its formal adherence to international humanitarian law and human rights and criminal justice standards, including in relation to the detention of prisoners and the use of force. The UN should ensure all troops participating in international peace-keeping operations are fully trained in those standards and understand their obligation to adhere to them. There should be specific mechanisms at the international level for monitoring, investigating and reporting on any violations of international norms by peace-keeping personnel and to ensure that personnel responsible for serious violations are brought to justice in accordance with international standards.

14. Prosecution of war crimes and attacks on international peace-keeping personnel. The investigation and prosecution of violations of humanitarian and human rights law or attacks against international peace-keeping personnel should be undertaken by appropriate national authorities or under international jurisdiction. Any international mechanisms must conform to international fair trial standards and the creation of a permanent institution for the prosecution of international crimes should be encouraged.

15. Continued promotion and protection of human rights in the post-settlement phase. Effective international human rights monitoring and assistance should be continued for as long as necessary, until it is clear that the government concerned is implementing international human rights guarantees effectively. The UN's human rights bodies should develop a more effective and comprehensive role in the post-settlement phase.

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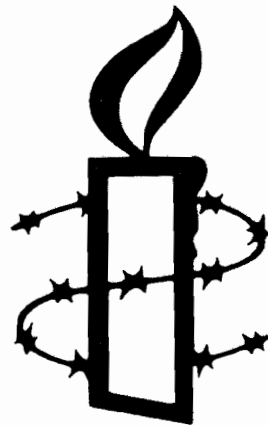
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ZAIRE

Collapsing under crisis



2 February 1994
AI Index: AFR 62/01/94
Distr: SC/CC/CO/PG

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

TABLE OF CONTENTS

- 1. Introduction 1
- 2. The political stalemate continues 2
- 3. Extrajudicial executions and attempted assassinations 4
- 4. Detention of journalists and President Mobutu’s opponents 5
 - 4.1 Detention of journalists and attempts to silence critical newspapers 6
 - 4.2 Detention of members of opposition political parties 7
- 5. Amnesty for common-law prisoners 8
- 6. Recommendations to governments, the OAU and the UN 8

ZAIRE

Collapsing under crisis

1. Introduction

At the end of November 1993 government troops in Kananga, the capital of West Kasai (*Kasai Occidental*) region, extrajudicially executed six unarmed civilians, including a Roman Catholic priest, and injured many others. The victims had tried to stop soldiers from looting and destroying property at Kananga bishopric and other parts of the town. In September 1993 gunmen believed to be members of the security forces in the Zairian capital, Kinshasa, shot and wounded an aide of an opponent of President Mobutu Sese Seko, two months after he had been released from custody.

These and other human rights violations occurred two-and-a-half months after Amnesty International published a report¹ on 16 September 1993 drawing the international community's attention to the deteriorating human rights situation in Zaire. The organization highlighted hundreds of extrajudicial executions, dozens of "disappearances", torture, unlawful detentions and politically-motivated ethnic or regional persecution which have been carried out since 1991 by members of the security forces and supporters or allies of President Mobutu Sese Seko. Amnesty International urged the international community -- including international and regional political or human rights bodies -- to take action to prevent the human rights crisis in Zaire from deteriorating further. Since the publication of the report human rights violations have continued which President Mobutu has failed to denounce or take measures to bring to an end. Those who have carried out politically-motivated killings and other human rights abuses before and after the publication of the September 1993 Amnesty International report have remained unpunished.

President Mobutu's office reacted to the report by issuing a statement accusing Amnesty International of attempting to destabilise Zaire. The statement claimed that Amnesty International was throwing oil on fire by publishing what it called "manifestly tendentious theses only aiming to sabotage political negotiations (*concertations*) with the purpose of destabilizing Zaire". The President's office claimed that a military unit criticized by Amnesty International, the elite *Division spéciale présidentielle* (DSP), Special Presidential Division, had played a determining role in quelling the mutiny in Kinshasa in January 1993 and re-establishing peace in North-Kivu region. The DSP is directly responsible to President Mobutu. The statement claimed that a United Nations (UN) humanitarian mission which visited Shaba and North-Kivu regions in August 1993 had acknowledged the importance of the role played by the DSP to re-establish and maintain social peace in the regions, and that local people had demanded the continued presence of the DSP in the areas affected by disturbances.

¹ *Zaire: Violence against democracy*, AI Index: AFR 62/11/93

pillaging, humiliation, kidnapping, forced displacement, massacres by the thousands and violence of every kind, which aims to subjugate and destroy it.

The pillaging, ethnic conflicts, kidnapping and carnage which we lament across the whole country, are unmistakable signs. They attest madness and moral death of the Zairian state unleashed against its own population, privatised and deliberately rendered inefficient. It has become incapable of:

- *administering justice, which is according to our traditions, one of the essential functions of our political leaders;*
- *disciplining its army, and thus give security to all its citizens;...*

In a memorandum to President Mobutu on 24 September 1993 the bishops repeated the concerns in their 8 September message, including inciting hatred and ethnic discrimination by political authorities. Concerning President Mobutu himself, the bishops said:

By concentrating in his hands all power and an unlimited right over the country's resources and keeping supreme control over the armed forces, the Head of State plays a determining and capital role. His personal responsibility is heavy and great, in the current catastrophic situation of the country, as well as in the future, in the quest for ways and means to bring about a viable and durable solution.

The bishops concluded that those opposed to political reform did so to prevent themselves being held to account or punished. They said:

... But the only way to guarantee to everyone the protection of the law is to go to great lengths to install in our country the rule of law.

President Mobutu and his supporters or allies are not known to have responded to the concerns raised by the bishops in their message or the memorandum to the President.

Sources from Kananga said at the end of November that the attack was carried out to punish leaders of the Roman Catholic church in Kananga for their opposition to the new zaïre currency introduced in October 1993. The bishopric was accused by supporters of President Mobutu of undermining the president's authority by offering social and economic services which the state had failed to offer the people of Kananga. Prior to the attack there were reports that several officials appointed by President Mobutu had visited Kananga and asked Kananga's Roman Catholic bishop to appeal to the people of Kananga to accept the new currency. The Archbishop was reported to have rejected the request on the grounds that he was not involved in political activities.

In early November there were reports that several hundred soldiers had arrived in Kananga from Kinshasa. People in Kananga apparently believe the soldiers were members of the DSP sent there to carry out attacks on President Mobutu's opponents.

Félix Mbayi Kalombo, a former army Colonel and security advisor to Etienne Tshisekedi, was shot and wounded in the right leg at his home in Kinshasa on the night of 20 to 21 September by men in civilian clothes thought to be members of the security forces. Some of the attackers kept watch on neighbouring homes to prevent the occupants from responding to calls for help. He was hospitalized for several weeks at *Clinique Ngaliema* hospital in Kinshasa. He reportedly went into hiding fearing for his life after he left hospital.

The shooting occurred exactly two months after he had been released untried from detention at the headquarters of the civilian security police known as the *Service national d'intelligence et de protection* (SNIP). He had been arrested on 26 March 1993 and accused of involvement in plotting to overthrow President Mobutu and carry out acts of sabotage and assassination of the President's supporters.

Lambert Tshitshimbi Katombe, another former army colonel and security advisor to Etienne Tshisekedi who had been detained in previous months, was also reported to have gone into hiding fearing for his life after being trailed by security agents in Kinshasa.

4. Detention of journalists and President Mobutu's opponents

Journalists and members of political parties opposed to President Mobutu continued to be arrested and detained between September and December 1993. All those detained were prisoners of conscience who had not used or advocated violence against the President or his supporters. Some were charged with offences related to the security of the state but none were brought to trial. Some were given provisional release, but at the end of 1993 many remained in custody without trial.

On 27 October 1993 the government appointed in March 1993 by President Mobutu issued an order preventing the publication of *Umoja* newspaper for three months because it had published a USOR statement rejecting the issuing of the new zaire currency. The government had earlier warned that anyone opposing the monetary reform would face the "rigours of the law". It was unclear whether the temporary ban had been lifted when *Umoja* reappeared on 11 November 1993. *Salongo*, *La Renaissance* and *Elima* newspapers were also temporarily banned on 9 November because of their criticism of the monetary reform. The ban against *Salongo* and *Elima* were lifted two days later, although it remained unclear whether it remained in force against *La Renaissance*.

4.2 Detention of members of opposition political parties

Most of the arrests in late 1993 of members of political parties opposed to President Mobutu appear to have occurred in eastern Zaire's North and South-Kivu regions. They were arrested because they opposed the monetary reforms introduced in October or criticized President Mobutu's economic mismanagement.

At least two local leaders of the UDPS in Goma, the capital of North-Kivu region, were arrested on 15 November. **Denis Kiriza** and **Amisi Molisho** were arrested following a UDPS demonstration to protest against spiralling inflation which they blamed on the new zaire currency. They were held for five days without charge or trial in a detention centre, reported to be underground, belonging to the Civil Guard in Goma and then released apparently uncharged. There were reports that they were tortured while in Civil Guard custody. Prior to these arrests local military commanders in Goma had reportedly ordered soldiers on 27 September 1993 to loot a local UDPS office.

On 15 November members of the DSP arrested **Déo Kambale**, a leader of the UDPS in North-Kivu's northern town of Butembo, apparently because he was seen reading a copy of *Umoja* newspaper which contained articles critical of President Mobutu. He was subsequently transferred to Goma and held at the headquarters of the Gendarmerie in Goma, known as the "CIRCO" (*circonscription militaire*). He was transferred to a detention centre in Kinshasa. By mid-December his legal status, conditions and place of detention were still unclear.

A Roman Catholic priest and at least two other people were arrested in Bukavu, the capital of South-Kivu region at the end of October 1993. One of those arrested was **Ferdinand Chimanku**, a member of the *Parti démocrate et social chrétien* (PDSC), Christian Democratic and Social Party, and President of an umbrella organization in Kivu for political parties opposed to President Mobutu, known as *Plateforme des parties politiques de l'opposition au Kivu*. He was arrested on 23 October and accused of

areas where human rights violations have occurred in order to ensure that they and others in the international community have accurate and first hand information about the human rights situation. These governments should, on the basis of such information, condemn human rights violations in Zaire and put pressure on President Mobutu and others who order or condone these violations to take steps to bring them to an end.

Recently the OAU set up a new Mechanism for the Prevention, Management and Resolution of Conflicts. Amnesty International has welcomed the recent statement of the Secretary General of the OAU on 1 December 1993 in an address to the African Commission on Human and Peoples' Rights recognizing the close link between the resolution of conflict and respect for human rights. The organization is urging the OAU to ensure that the new conflict resolution mechanism addresses the human rights situation as an essential component of its work to resolve the current crisis. The OAU should consider appointing representatives to monitor, investigate and report human rights violations in Zaire and make recommendations to these organizations and the Zairian authorities on ways to bring about respect for human rights in Zaire.

In July 1993 the UN Secretary General appointed a special representative to Zaire. The special representative, Lakhdar Brahimi, held talks with Zairian leaders in July, September and October 1993. The content of the talks was not made public. In August a UN humanitarian mission visited Zaire to assess humanitarian requirements in Shaba, North-Kivu, West and East Kasai and Kinshasa regions, and identify ways by which those needs could be effectively addressed. In early December the UN launched an appeal for 84.2 million US dollars in emergency humanitarian assistance for the areas visited by the humanitarian mission. Amnesty International is calling on the UN to use its contacts with Zairian leaders to promote guarantees for the respect of human rights and ensure that these are built into any political settlement.

The UN Secretary General's representative does not seem to have an express mandate to monitor, investigate and report on human rights violations or to make recommendations to address these violations. The UN Secretary General has recognized, however, on other occasions that respect for human rights is an essential component of conflict resolution. For example, he stressed in his 25 May 1993 report on the UN Angola Verification Mission II (UNAVEM II) that "respect for human rights constitutes a vital, indeed a critical component, among measures to resolve, on a long-term basis, conflicts of this nature, including efforts to promote enduring conditions of peace, national reconciliation and democracy" (S/25840, paragraph 26).

Amnesty International urges the UN Secretary General's special representative to take effective steps to monitor, investigate and report on human rights violations and make recommendations to address these violations.

force. The UN should ensure all troops participating in international peace-keeping operations are fully trained in those standards and understand their obligation to adhere to them. There should be specific mechanisms at the international level for monitoring, investigating and reporting on any violations of international norms by peace-keeping personnel and to ensure that personnel responsible for serious violations are brought to justice in accordance with international standards.

14. Prosecution of war crimes and attacks on international peace-keeping personnel.

The investigation and prosecution of violations of humanitarian and human rights law or attacks against international peace-keeping personnel

should be undertaken by appropriate national authorities or under international jurisdiction. Any international mechanisms must conform to international fair trial standards and the creation of a permanent institution for the prosecution of international crimes should be encouraged.

15. Continued promotion and protection of human rights in the post-settlement phase.

Effective international human rights monitoring and assistance should be continued for as long as necessary, until it is clear that the government concerned is implementing international human rights guarantees effectively. The UN's human rights bodies should develop a more effective and comprehensive role in the post-settlement phase.

ACRONYMS & ABBREVIATIONS

Arusha accords	Peace agreement signed between the Government of Rwanda and the RPF, 4 August 1993		
CIVPOLs	UN civilian police monitoring components within peace-keeping operations	RENAMO	Oro (party to 1988 agreement with the Government of Morocco to a plan for a referendum in the disputed territory of Western Sahara)
Cotonou agreement	Agreement signed in July 1993 by warring parties in Liberia	RPF	Resistência Nacional Moçambicana
CSC	Supervisory and Monitoring Commission (Mozambique)	Rome agreement	Rwandese Patriotic Front
ECOMOG	Economic Commission of West African States Cease-fire Monitoring Group (Liberia)		Peace Agreement signed between the Government of Mozambique and RENAMO (October 1992)
FMLN	<i>Frente Farabundo Martí para la Liberación Nacional</i> (Farabundo Martí National Liberation Front—opposition party in El Salvador agreement)	San José agreement	San José agreement on human rights signed between the Government of El Salvador and the FMLN on 26 July 1990
Governors Island agreement	Agreement signed by President Jean-Bertrand Aristide and Lieutenant-General Raoul Cedras on 3 July 1993	SMC	Supervisory and Monitoring Commission (Mozambique)
ICRC	International Committee of the Red Cross	SNA	Somali National Alliance (forces loyal to General Aidid)
JCMC	Joint Cease-fire Monitoring Committee (Liberia)	SPLA	Sudan People's Liberation Army (armed opposition group)
MICIVIH	International Civilian Mission in Haiti (Joint UN/OAS human rights monitors)	SWAPO	South-West African People's Organization
MINURSO	UN Mission for the Referendum in Western Sahara	UNAMIR	United Nations Assistance Mission for Rwanda
NATO	North Atlantic Treaty Organization	UNAVEM I/II	United Nations Angola Verification Mission
New York agreement	Final peace agreement in the accords relating to El Salvador	UNHCR	Office of the United Nations High Commissioner for Refugees
OAS	Organization of American States	UNIKOM	United Nations Iraq-Kuwait Observer Mission
ONUMOZ	United Nations Operation in Mozambique	UNITA	União Nacional para a Independência Total de Angola (armed opposition party in Angola)
UNOMUR	United Nations Observer Mission Uganda-Rwanda	UNMIH	United Nations Mission in Haiti
ONUSAL	United Nations Observer Mission in El Salvador	UNOMIL	United Nations Observer Mission in Liberia
Paris agreements	Agreements on Comprehensive Political Settlement of the Cambodia Conflict, signed by all four warring parties, 23 October 1991	UNOMSA	United Nations Observer Mission in South Africa
POLISARIO	Frente Popular para la Liberación de Saguia El Hamra y de Río de	UNOSOM I/II	United Nations Operation in Somalia
		UNOVER	United Nations Operation to Verify the Referendum (Eritrea)
		UNPROFOR	United Nations Protection Force (Croatia, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia)
		UNTAC	United Nations Transitional Authority in Cambodia
		UNTAG	United Nations Transition Assistance Group (Namibia)

CONTENTS

Acronyms and Abbreviations

INTRODUCTION	1
1: HUMAN RIGHTS IN UNITED NATIONS FIELD OPERATIONS	1
A. Historical Overview	2
1. Traditional peace-keeping adapts to new situations	2
2. The new wave: implementation of comprehensive settlements (peace-keeping meets peace-building)	3
CASE STUDIES 1: Human rights verification (El Salvador & Cambodia)	4
CASE STUDIES 2: Decolonization settlements (Namibia & Western Sahara)	5
CASE STUDIES 3: Structural weaknesses in verification (Angola, Mozambique & Liberia)	6
3. Civilian observer missions: peace-keeping and peace-building without the military?	9
CASE STUDIES 4: Civilian monitoring missions (Haiti & South Africa)	10
4. The UN's new quandary: enforced peace?	11
CASE STUDIES 5: Peace enforcement in Somalia (UNOSOM II)	12
B. Amnesty International's Observations on Human Rights in UN Field Operations	14
1. Traditional peace-keeping	14
2. Implementation of comprehensive settlements	14
3. Civilian Human Rights Observer Missions	17
4. Enforcement Operations/Securing Humanitarian Relief	18
2: ATTACKS ON PEACE-KEEPERS AND INDISCRIMINATE USE OF FORCE BY PEACE-KEEPERS	19
1. Attacks on UN peace-keepers: investigations and jurisdiction	19
2. Disproportionate use of force and other abuses by UN peace-keeping troops	20
3. Ways for the UN to address and prevent abuses by UN personnel	21
3: AMNESTY INTERNATIONAL'S RECOMMENDATIONS: IMPLEMENTING HUMAN RIGHTS IN INTERNATIONAL PEACE-KEEPING OPERATIONS	23
Concluding Remarks	30
End notes	31
ANNEX: Relevant Amnesty International external documents	

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'Amnesty International calls on UN Security Council to halt massacre of Kurds by Iraqi armed forces' (press release MDE 14/08/88, 8 September 1988)

NAMIBIA: Human Rights Promotion in the Training of Police and Military Personnel (AFR 42/03/90, May 1990)

NAMIBIA: The Human Rights Situation at Independence (AFR 42/04/90, August 1990)

ANGOLA: Human Rights Guarantees in the Revised Constitution (AFR 12/04/91, June 1991)

GUINEA-BISSAU: Human rights guarantees in the new constitution (AFR 30/06/91, July 1991)

IRAQ: The Need for Further United Nations Action to Protect Human Rights in Iraq (MDE 14/06/91, July 1991)

STATE OF CAMBODIA: Human rights development: 1 October 1991 to 31 January 1992 (ASA 23/02/92, April 1992)

ANGOLA: An appeal for prompt action to protect human rights (AFR 12/01/92, May 1992)

EL SALVADOR: Observations and recommendations regarding the Commission of Truth (AMR 29/06/92, June 1992)

ANGOLA: Will the new government protect human rights? (AFR 12/09/92, August 1992)

ANGOLA: Oral statement by Amnesty International to a UN conference on human rights in Angola (AFR 12/10/92, September 1992)

STATE OF CAMBODIA: Update on human rights concerns (ASA 23/04/92, October 1992)

FORMER YUGOSLAVIA: Intergovernmental initiatives to protect human rights in the former Yugoslavia - text of an open letter (EUR 48/27/92, 23 October 1992)

IRAQ: Marsh Arabs still persecuted, UN should monitor human rights on-site (MDE 14/WU 02/92, 30 November 1992)

WORLD CONFERENCE ON HUMAN RIGHTS - Facing up to the Failures: Proposals for improving the protection of human rights by the United Nations (IOR 41/16/92, December 1992)

MOZAMBIQUE: The role of the United Nations in the protection of human rights under the General Peace Agreement (AFR 41/01/93, January 1993)

WESTERN SAHARA: Morocco: Continuing arrests, 'disappearances' and restrictions on freedom of movement in Western Sahara (MDE 29/03/93, February 1993) - issued with weekly update advice to editors, 'Morocco: Amnesty International de-

nounces neglect of human rights concerns in Western Sahara' (MDE 29/WU 01/93, 23 February 1993)

FORMER YUGOSLAVIA: Statements to the UN Commission on Human Rights, August 1992, November 1992 and February 1993

CAMBODIA: Human rights concerns July to December 1992 (ASA 23/01/93, February 1993)

FORMER YUGOSLAVIA: Memorandum to the United Nations - The question of justice and fairness in the international war crimes tribunal for the former Yugoslavia (EUR 48/02/93, April 1993)

SOMALIA: Update on a disaster - proposal for human rights (AFR 52/01/93, April 1993)

AZERBAIDZHAN - Hostages in the Karabakh conflict: civilians continue to pay the price (EUR 55/08/93, May 1993)

TADZHIKISTAN - Hidden Terror: Political killings, 'disappearances' and torture since December 1992 (EUR 60/04/93, May 1993)

GUATEMALA: Impunity - A question of political will (AMR 34/17/93, May 1993)

Appeal by Secretary General of Amnesty International to Organization of African Unity to protect human rights in Africa (IOR 63/04/93, June 1993)

BOSNIAN REFUGEES: A continuing need for protection in European countries (EUR 48/05/93, July 1993)

GEORGIA: Alleged human rights violations during the conflict in Abkhazia (EUR 56/07/93, July 1993)

ANGOLA: Assault on the right to life (AFR 12/04/93, August 1993)

HAITI: Human Rights gagged - attacks on freedom of expression (AMR 36/25/93, October 1993)

Refugee Protection at Risk: Amnesty International's recommendations to the 44th session of the Executive Committee of UNHCR (POL 33/06/93, September 1993)

SUDAN: The Ravages of war - political killings and humanitarian disaster (AFR 54/29/93, September 1993)

A High Commissioner for Human Rights: Time for Action (IOR 41/35/93, October 1993)

LIBERIA: No chance for lasting peace without effective human rights guarantees (AFR 34/01/93, December 1993)

BOSNIA-HERZEGOVINA: Central and South-west Bosnia-Herzegovina: Civilian population trapped in a cycle of violence (EUR 63/01/94, January 1994)

DISTURBING DEVELOPMENTS IN RWANDA IN OCTOBER 1994

by
Filip Reyntjens

After returning from a short research mission in Rwanda from 15 to 22 October 1994, I felt I should highlight a number of very serious problems which may jeopardize the very future of this country. It is not my intention to judge the performance of the new three-month old regime. Such a critique would be premature, and besides, the government is without any means. What I intend to do here is present perspectives - based on presents events - in the areas of politics and human rights.

Before I went on this mission, I thought that the main issue was the renewed threat of war from the former government forces and the militia who sought refuge in neighboring countries. What I see arising from within the country itself are a series of worrisome and potentially destabilizing phenomena. In addition to outside threats, such internal problems are further compounded by the very narrow political and social path of the present government. In other words, I am very pessimistic when it comes to the prospects of stability in both the country and the sub-region.

1. The first issue is that of insecurity which is due to several factors. The new national army, the Rwandan Patriotic Army (R.P.A., i.e., military wing of the R.P.F), has now lost the discipline of its guerilla years. The leader himself, General Paul Kagame, contends that it is a genuine problem. What you see now is the emergence of similar phenomena that plagued the former army ten years ago: corruption (some R.P.A. officers occupy several houses in Kigali), road blocks manned by soldiers who have obviously been drinking beer, military "helping themselves", etc. Their arrival in the city has bolstered their appetites for material belongings, which is all the more dangerous as the military has not been paid. Moreover, after years in the bush, supporting their families has put additional pressure on these soldiers. According to General Kagame, " R.P.A. elements feel that, as members of the new government army, the government should provide for them", which , for lack of means, the government is unable to do. Kagame further stated that new recruits do not have adequate training. And as was the case of the former government, the R.P.A. has not been very selective in its recruitment practice since October 1990. As a result it has enrolled delinquents and even former "Interahamwe" militia. Lastly, the "code of conduct" of the R.P.F., which used to be very severe (e.g. the death penalty was applicable in case of a rape), no longer seems applicable in times of peace. Under these conditions, the R.P.A. is gradually becoming a contributing factor to the insecurity, especially when civilians call upon their friends in the army to do their dirty work, like settling property disputes (see below).

Insecurity is also linked to other factors, the greatest of which is that the judicial system is virtually non-existent, except in Kigali, and only just. Many criminal investigations police, members of the prosecutor's office, judges and lawyers are dead, others are in exile. Out of the 150 officers in the Prosecutor's office, only 27 are left. People have not been paid and there is a shortage of infrastructure. Prisons are overcrowded. For instance, the Kigali jail which was designed for 1,500 prisoners now houses over 4,000. This number increases by fifty persons a day on average while no one is getting out (for reasons, see below). The next shortage is in

administrative officers. The country is, to a great extent, managed by either the military or by interim authorities appointed by the R.P.F. and are not always trusted by their constituents. People, who historically have grown used to having a strong administrative power backing them, feel they have been abandoned and left on their own, which increases the climate of insecurity.

2. The second issue is that of the haphazard return of the first wave of immigrants and the illegal occupation of property. The letter of understanding regarding the repatriation of refugees signed in Arusha on June 9, 1993, anticipated an orderly return with logistic support. But the outbreak of the war in early April and the military victory of the R.P.F. caused such a flow of refugees that it almost became a threat to the R.P.A., although the R.P.F. itself had contributed to this problem as it actively encouraged the massive return of refugees. The former Diaspora in Burundi, faced with increasing tension in its host country, rushed back to Rwanda. According to various Government sources, over 400,000 people have already returned. These returnees have been occupying the fields, houses, and shops vacated by the Hutus who fled the country. The magnitude of the problem is enormous: it is estimated that over half of properties in Kigali and in some major cities house new residents. In the rural areas of Masaka sector for example, 4,000 of the 5,000 residents in the area are new inhabitants.

This phenomenon gives rise to two major problems. First, the return of the owners leads to many cases of disputes, when the illegal occupant is requested to vacate the premises. People who returned to claim their property have been reported missing. Others have been victims of violence and murder, at times at the hands of the R.P.A. acting on behalf of the occupant. Some people trying to recuperate their property are labelled "Interahamwe" and are arrested or go missing. What is more and may become a nightmare scenario, the more commonplace the infringements on other people's properties, the more difficult it will become to restore properties to those who may want to come back. If the original Kigali population came back, what would happen to those presently occupying their homes and land? Even though the Government has assured that the lawful owners are entitled to recover their property which must be vacated by unlawful occupants, it may become practically impossible. It goes without saying that this situation leads not only to human rights abuses (murders, arrests, landlords reported missing), but is also a major deterrent to the new wave of refugees coming back.

3. There is a worrisome number of people reported missing, murders and even massacres. Almost every day, people are reported missing, arrested by R.P.A. soldiers and brought to unknown places. Almost all the people I talked to have had stories of this kind happen to them or their families. Other people are killed. Authorities do not deny the existence of such individual cases, but say they are either revenge acts by military or civilians who have lost loved ones during the genocide, or elimination of landlords claiming their property back, or even criminal acts perpetrated in the midst of the general confusion.

This explanation is acceptable in many cases but not in all of them (especially in the case of the President of the Lower Court in Kigali who was reported missing on October 5, 1994, see below). Moreover, there are more widespread massacres which cannot be accounted for so easily. Although I was not on an investigative mission, I can report a few cases which were either witnessed by foreigners, or confirmed by official sources:

-According to a survivor who was heard by a prosecutor, about 60 people returning from the "Turquoise" area were "executed" early in August at the agro-veterinary school of Butare; other witnesses claim that many people were killed and buried in the valley between the school of Butare and the arboretum, an area to which the R.P.A. has exclusive access.

-On August 29, an international NGO worker saw several thousand fresh corpses in and around a church in Mbiyo, between Gako and Nyamata in Bugesera.

-On the basis of information received, Australian UNAMIR military observers visited Save, near Butare, in the first week of September. They saw about 50 bodies downtown in a city square, covered with branches and leaves. R.P.A. soldiers prohibited them from going into the square, claiming that it was a "military zone". When they came back two weeks later, the bodies had been removed. According to locals, about 1,750 people have allegedly been killed on that spot by the R.P.A.

-In mid-September, a UNAMIR team counted about one hundred corpses in Kayumba, North of Nyamata in Bugesera.

-Two witnesses who work for an international humanitarian organization saw prisoners being transferred from the Cyangugu jail to an unknown destination around October 10. Around October 15, the same witnesses saw about fifty people being transported to an unknown destination under armed guard. These transfers took place at night, which makes them even more concerning.

-A Tutsi witness claims that many Hutus, accused of being "Interahamwe", have been and are currently subjected to summary execution in Sake, near Kibungo.

It is impossible to say whether these acts are systematic, or whether they are endorsed by the R.P.A. command, but the examples listed above speak for themselves, constitute genuine causes for concern and be ample reasons to deploy observers and carry out serious and unbiased investigations. This concern is compounded by the fact that R.P.A. denies access to areas where summary executions have allegedly taken place under the pretense that they are "military zones". Even if massacres committed by the R.P.A. do not match the extent of the genocide from April to June 1994, it should not prevent us from urgently fighting the current practices which otherwise may perpetuate the cycle of violence. The latter is serious enough to deserve the attention of the international community.

4. Another human rights issue that needs to be brought to light is the situation of thousands of persons detained for being accomplices in the genocide. To some degree, this resembles a situation already experienced in Rwanda from October 1990 to April 1991. This time however the roles are reversed. In the earlier scenario, thousands of "ibytso" (alleged R.P.F. accomplices) were detained, all of whom were considered guilty despite the lack of any substantial evidence. Today, those who are detained are called "interahamwe" and are all presumed guilty. As in 1990-91, many have been arrested either because they were turned in,

because they were victims of people trying to even the score (especially in the framework of property disputes, see above), or because of their political affiliation. Many of the cases I have been able to look into are not sufficiently solid to justify an extended detention. However, neither the prosecution, nor the courts dare release them, even temporarily. An administrator from the prosecution's office confirmed that he could not possibly order the release of the detainees though he himself believes that substantial proof of their culpability is lacking.

The misfortune experienced by Mr. Gratien Ruhorahoza, Chief Prosecutor for Kigali's Lower Court, is an alarm being sounded to the justice system. After he decided to release some forty prisoners during a cabinet meeting, the R.P.A. arrested him in the middle of the night of October 5. He has been missing ever since. Rumor has it that he is being detained at the KAMI camp in Kigali but neither the Minister of Justice, nor the Prosecutor have any official news of what has become of him. Moreover, none of the forty or so people he freed have been released: while some were prevented from leaving the prison compound, others were re-apprehended and have since been reported missing. Given this repressive atmosphere and the "presumption of guilt" that goes along with it, it is no wonder that detention centers continue to fill up. Such a situation fuels the impressions, shared by detainees and the judicial system alike, that once arrested, a person will not be released, even if innocent. This phenomenon explains the large number of prisoners held not only in civilian jails (where the hygienic and food situation is appalling), but also in military detention centers, which is even more worrisome, since here no record is kept of the prison population and these centers are kept outside the control of judicial officials.

5. Another phenomenon worth mentioning is the rapid growth of ethnic radicalism. There is a marked difference between the diaspora originating from Uganda - the "old RPF" - and that from Burundi - "the new RPF". This ethnic tension comes mainly from the 'Burundese' (as they are referred to in Kigali) as a consequence of their experiences as refugees in Burundi for the past thirty years. On the one hand, they were often the primary scape goats during increases in ethnic tensions in Burundi. On the other hand, as a strategy for survival, some of them joined forces with the most extremist political and military class in Burundi. However, those coming from Uganda have suffered far less from these ethnic complexes. In fact, the "Banyarwanda", Tutsi and Hutu alike, were discriminated against on the basis of their Rwandese citizenship, and thus have had to stand together.

'Burundese' radicalism is quite disturbing. According to a well-informed Tutsi who survived the genocide, the 'Burundese' have attitudes which he labels 'worse as that of Interahamwe'. This phenomenon is further compounded by the fact that many 'Burundese' have chosen to settle down in cities, especially in Kigali, where they hold a considerable amount of land, including on the political scene. Not only is their ideology contrary to those embraced by the R.P.F., but if it continues to grow, it may present an obstacle to a finding a political solution to the Rwandese problem. Moreover, this violent ethnic-based ideology of retribution contributes to divisions within the R.P.F. - a topic which is addressed later in this report. While authorities in the country are fully aware of the problem, nobody seems to know what concrete measures are needed to address it.

6. Heterogeneity and divisions within both the government and the R.P.F. is another source of concern. On the one hand, the R.P.F. is suddenly facing an unexpected situation: It seized power. Once this common objective was attained and the common enemy defeated (at least temporarily), contradictions within the organization resurfaced. This classical phenomenon is even more understandable in the case of the R.P.F. since there never was a clear and coherent definition of its political platform (the 8-point program released in October 1990 falls short of breaking new ground and is rather superficial). There are numerous contradictions of various types: political (with leaders and activists covering a wide political spectrum from left to right, ideological (notably different opinions as to how to define ethnicity, see above), cultural (there is a diversity of 'modern' cultures, as the diaspora was influenced by the cultures of host countries), as well as material contradictions (some are very 'materialist' as opposed to others who have remained very idealistic).

Moreover, there is a clear split within the government between the R.P.F. component and the other parties which is not so bad since it proves that non-R.P.F. Ministers are far from 'puppets'. Indeed, Ministers take a stand and do not hesitate to fight for their views. However, any genuine debate is thwarted by the dominant position of the R.P.F. on political and military matters. The other parties operate in a very controlled and intimidating environment. The fact that the only published newspapers in existence - Le Messenger-Intumwa, Le Tribun du Peuple, Kiberinka, L'Ere de la Liberté - are mainstream R.P.F. is telling enough. The subject of intimidation, real or imaginary, regarding the non-R.P.F. components of the government will be discussed later in this report.

7. It is ironic that Tutsi are being marginalized from within. They have become double victims. First of all, the few survivors have lost many members of their families to the genocide. Today, they feel they are becoming second-class citizens for two reasons. The first is economic. They have lost everything, unlike the persons of the returned diaspora who often return wealthy and with plenty of money with which to invest. The second is political, they are nearly faulted for having survived the holocaust. Moreover, returnees, who funded the R.P.F., feel that they are entitled to just about anything. And again, those who came back from Burundi in particular act as if they conquered the land.

8. Many Hutus, intellectuals in particular, live in fear. One is struck by the disillusionment even among those who placed so much hope in a R.P.F. victory and who sought refuge in R.P.F. controlled territory. Almost all of them are personally aware of cases in which someone was "missing", arrested, or killed by the R.P.A. Hutus are voicing these fears all the way up to the highest levels of the government, even within the cabinet. Several of them have said they were thinking of leaving the country if the threats did not diminish.

9. With regards to human rights, the action taken by the UN, or rather the lack of it, is striking. Coordination between UNAMIR and the Center for Human Rights Observer Mission is virtually non-existent. Out of the 147 monitors due to work for the latter, only about thirty are in the field. Most do not have the experience required and are not ready to commit themselves completely and prefer the relative comfort of life in Kigali rather than field work. While

logistically speaking the conditions are certainly not optimal, especially regarding the means of transport and communication, one feels that this shortfall is an excuse for what boils down to a disturbing lack of energy and action. Moreover, as is the case of other missions in Rwanda (international NGOs and UN agencies alike), it operates in a very paternalistic fashion and fails to cooperate with local players although the latter do a remarkable job with very few means. For instance, the head of the observer mission is not in touch with Cladho (Collectif des ligues et associations des droits de l'homme)¹.

UNAMIR is obviously not serious in its investigations of the massacres and other reports of human rights abuses which are brought to its attention. A case in point is the Mbiyo incident (see above) which, although reported to UNAMIR by a witness, remained 'unknown' when I tried to get confirmation from a G2 intelligence officer. Another example is provided in the Save incident (see above), which was not investigated UNAMIR although the latter knew about it. In fact, UNAMIR and the [Human Rights] Observer Mission keep passing the buck to one another party. According to internal sources, UNAMIR 'does not want to know' when the R.P.A. is blamed for committing human rights violations. Yet, as we have seen, such occurrences are severe enough to warrant continued interest.

These observations have yielded the following conclusions and recommendations:

The international community should:

- monitor the human rights situation more closely, by focusing on the effective deployment of human rights monitors, by conducting serious and unbiased investigative work, and by putting pressure on the Rwandan government so that the genocide will not become an excuse for a renewed violence and impunity;
- assist Rwanda in setting up a minimal justice and administration system at the local level. The judiciary will have to prosecute not only the leaders and accomplices of the genocide but also the perpetrators of new human rights violations or even crimes against humanity. The administration must help restore security, and thus facilitate the repatriation of refugees.
- support moderate forces within the government and the army. This implies promoting dialogue between Kigali authorities and those politicians in exile with no ties to the genocide, as well as encouraging dialogue between all civilian forces who are still today geographically and politically spread out. Widening the political and social base of institutions should help marginalize extremism on both sides.

The Rwandan government should:

- initiate talks with democratic and moderate forces who have thus far been excluded from the

¹ CLADHO In English: The Coalition of Human Right Leagues and Associations

political forum (sometimes by choice);

- Return the R.P.A. to the barracks if possible, and entrust the gendarmerie, currently being trained by UNAMIR, with law enforcement. If the government fears an invasion from abroad, barracks could be established in border camp (Kibungo, Gako, Butare, Nyungwe, Cyangugu, Kibuye, Gisenyi, Bigogwe);

- clarify the land ownership situation. The following solution could be envisioned by the government: property which has not yet been reclaimed by its owner or eligible tenants would be managed by the state. The state in turn would receive rent payments from the occupants who would be considered as tenants under a provisional lease. Owners would be reimbursed by the government when the latter is able and only after operating costs are deducted;

- stop detaining persons in facilities which are not part of the penitentiary system. If the sheer number of prisoners requires that they be kept in places other than civilian jails, a record of detainees must be kept. The Minister of Justice and the Chief Prosecutor must be informed of all movement of prisoners. The prosecution office must also open a file for each prisoner.;

- release, at least temporarily, those people against whom there is no serious evidence of guilt. The government must launch an information campaign to restore presumption of innocence in public opinion. Those persons freed must be protected;

- with the help of the international community, begin prosecuting the presumed leaders or accomplices in the genocide;

- prosecute and try those who committed murders, abductions, and massacres.

The impending dangers of a renewed war and the current internal situation has once again placed Rwanda at a crossroad. The potential for an implosion in the country and the entire sub-region is unfortunately all too real. It is up to democratic and moderate forces within and outside the country, as well as to the international community, to apply initiative and imagination before it is too late. Unless rapid action is taken, the tragic events that unfolded between April and June 1994 may have only signaled the beginning of a long period of destabilisation in the Great Lakes region.