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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL
AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Rwanda submitted by
Mr. René Degni-Séqui, Special Rapporteur, under paragraph 20
of resolution S-3/1 of 25 May 1994

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Introduction

1. In accordance with the mandate entrusted to him by the Commission on Human Rights in resolution S-3/1 of 25 May 1994, which was extended by resolution 1995/91 of 8 March 1995 (para. 19), the Special Rapporteur visited Rwanda from 27 March to 3 April 1995 and again from 25 to 28 May 1995. The first visit formed part of the follow-up to his mission, its purpose being to ascertain the progress made in the deployment of the human rights observers in the field and in the inquiry into the genocide during the period before the first anniversary of the beginning of the massacres and the war. The second visit was made in response to the need to gather information on the recent tragic events which occurred when the displaced persons' camp in Kibeho was forcibly closed by members of the Rwandan Patriotic Army.

2. The Special Rapporteur also travelled to Belgium, France, Canada and the United States.

3. During his visit to Rwanda and the four other countries, the Special Rapporteur was able to speak with members of the Rwandan Government, representatives of the various United Nations agencies working in Rwanda, foreign diplomats accredited to Rwanda, representatives of non-governmental organizations, judicial authorities and a number of witnesses of the massacres of April-June 1994, detainees, judges, officers, various foreign personalities, human rights activists and journalists.

4. Among the prominent persons whom the Special Rapporteur met, mention should be made of:

(a) Prominent persons (Rwandan)

Mr. Pasteur Bizimungu, President of the Republic;
Mr. Faustin Twangiramungu, Prime Minister; Mr. Seth Sendashonga,
Minister of the Interior; Mr. Alphonse-Marie Nkubito, Minister of Justice;
Mr. Anasthase Gasana, Minister for Foreign Affairs; the prefect of Kibuye.

(b) Prominent persons (non-Rwandan)

In Rwanda: Mr. Shaharyar Khan, Special Representative of the Secretary-General in Rwanda; Major-General Claude Toussigant, Force Commander of the United Nations Assistance Mission to Rwanda (UNAMIR); the Resident Representative of the United Nations Development Programme in Rwanda; the Chargé d'affaires of the Apostolic Nuncio in Rwanda, the Deputy Prosecutor of the International Tribunal for Rwanda, Judge Rakotomanana; the Ambassadors of Belgium and the United States; the chief of the delegation of the International Committee of the Red Cross in Kigali; the delegates of the Agency for Cultural and Technical Cooperation on mission in Rwanda.

In Belgium, France, Canada and the United States: Mr. Andries, Military Auditeur, and Mr. Van Winsen, former Military Auditeur in Brussels; General Dallaire, former Commander of UNAMIR; Mrs. Prudence Bushnell, United States Deputy Assistant Secretary for African Affairs; Mr. Reed Fendrick, Deputy Director of the Central Africa Office in the United States Department of State; members of the Canadian League of Human

Rights and several other leagues affiliated to the International Federation of Human Rights; Mrs. Iris Almeida, Programme Director in the Centre for the Rights of the Individual and Democratic Development in Montreal.

5. The Special Rapporteur would like to express his sincere thanks to all these persons who supported him in the preparation and conduct of his mission. He is particularly grateful to the Special Representative of the Secretary-General in Rwanda and the Commander of MINUAR for their assistance, logistical support and generous cooperation.

6. The conversations he held and the visits he made in the field and in prisons enabled the Special Rapporteur to assess the situation in Rwanda, stressing the progress of the inquiry into the genocide, the monitoring of the human rights situation and the problem of the return from the exodus.

I. THE INQUIRY INTO THE GENOCIDE

7. The Special Rapporteur wishes to place special emphasis on this crime against humanity, which has particularly affected the people of Rwanda. Notwithstanding the reference to genocide, the inquiry covers all violations of human rights. As a result of the field visit, it was possible to assess the deployment of the observers and the progress made in the inquiry.

A. The deployment of observers

8. In his third report (E/CN.4/1995/70 of 11 November 1994) the Special Rapporteur criticized the delay in the deployment of the observers. The situation at that time was characterized first by the absence of observers in the field, and later by the presence of a group of observers in Kigali who were unable to move into the field through lack of practical resources and logistics. Since then, substantial progress has been achieved, but the conduct of the human rights operation is beset with a number of difficulties.

1. The conduct of the human rights operation

9. This operation, which began in mid-August 1994 with four observers, has developed considerably, judging from the number of observers and their formation in teams and operational units.

(a) The number of observers

10. Following the Special Rapporteur's recommendations in his second report (E/CN.4/1995/12 of 12 August 1994) for the deployment of 150 to 200 observers, the Centre for Human Rights, by agreement with the Government of Rwanda, set a figure of 147. This figure roughly corresponded to the number of Rwandese communes (143). Having started with four observers, the operation slowly but steadily grew in size, increasing from 22 to 38 observers in October 1994, to 127 in April 1995, but falling to 122 in May. As at 22 June, the number of observers stood at 112.

11. This result was achieved thanks to various contributions: apart from the 51 observers recruited by the Centre for Human Rights, 27 were recruited by the United Nations Volunteers Programmes and 31 by the European Union.

It should be pointed out that the target figure of 147 observers has still not been achieved and that recruitment has had to be slowed down if not completely stopped at certain times through lack of resources. Thus, from 1 to 22 June 1995, the number of observers fell from 119 to 112. According to forecasts, it will drop again in the near future.

(b) The formation of teams

12. The observers are deployed in teams comprising some four to eight persons per unit. Eleven teams are assigned to regional offices in the various prefectures as follows: Butaré (9 members), Cyangungu (9), Gikongoro (8), Gisenyi (8), Gitarama (6), Kibungo (3), Kibuye (6), Kigali (7), Rilima (4), Ruhengeri (6) and Rwamagana (4). A sub-office has been opened in Nyamasheke in the prefecture of Cyangungu. Two human rights observers have been deployed in the north-east of the prefecture of Byumba to assess the possibility of opening an office in that region.

13. At the time of drafting the present report, all the prefectures in Rwanda, with the exception of Byumba, have a team of observers. Each team is headed by a team leader, who reports to the chief of the operation. In the light of their various activities, the observers are assigned to operational units.

(c) The operational units

14. The mission has set up three units: the legal analysis and coordination unit, the monitoring unit and the technical assistance unit.

(i) The legal analysis and coordination unit

15. In the context of the inquiries into the genocide and other serious violations of human rights, a special investigation unit was set up back in September 1994 to assist the Commission of Experts on Rwanda and the Special Rapporteur on Rwanda. The Commission of Experts having completed its work, this unit has continued to carry out inquiries as needed by the Special Rapporteur. As mentioned in the operational plan of the operation, experts from Finland, the Netherlands, Norway, Spain, Switzerland and the United States have undertaken far-reaching inquiries into the genocide (forensic examination of massacre sites and charnel-houses, interviews with survivors and witnesses) and compiled documents and other tangible evidence which have been transmitted, by agreement with the Special Rapporteur, to the International Tribunal for Rwanda. As a result of the establishment of an investigation unit of a judicial character within the Tribunal, the special investigation unit has been disbanded and replaced by the legal analysis and coordination unit. The latter unit is to continue inquiries into the genocide and other crimes against humanity in response to the needs of the Special Rapporteur.

(ii) The monitoring unit

16. The monitoring unit is undertaking the inquiry into past and present violations of human rights. The observers assigned to it and deployed in various regional offices report, in accordance with the above-mentioned operational plan, on the following:

- (i) Progress made towards national reconciliation;
 - (ii) The existence of courts or magistrates responsible for settling disputes between Rwandan nationals;
 - (iii) The availability of housing and other structures for persons returning to Rwanda;
 - (iv) Measures taken by the local authorities or the Rwandan Patriotic Army concerning Rwandan returnees and the administrative practices to which the latter are subjected;
 - (v) Security conditions in their zone;
 - (vi) The availability of basic foodstuffs and services; and
 - (vii) The formulation of education and information programmes on human rights intended for Rwandan officials and the population as a whole;
- (iii) The technical assistance unit

17. This unit deals with the assistance to be given to the Government in restoring the rule of law and confidence in civil society. It is participating in the efforts to rebuild the Rwandan judicial system, through the contribution of judicial personnel and through the training of magistrates and other court officers.

18. This unit, which is still very small in size (two members as of 2 April 1995), is due to expand, especially since on 22 February 1995 the Rwandan Minister of Justice addressed a letter to the Special Representative of the Secretary-General in Rwanda indicating the human resources needs of his Ministry, which were estimated at 678 persons (including magistrates and police investigators).

2. The difficulties encountered by the operation

19. The human rights operation in general and the Special Rapporteur in particular are encountering difficulties which are placing the mission in jeopardy. The difficulties are of two types: practical and political.

(a) The practical difficulties

20. The practical difficulties essentially amount to the shortage of financial resources. Apparently, the Centre for Human Rights receives the financial resources to be allocated to the operation in very small amounts at a time; consequently, there is constant uncertainty and anxiety about the survival of the mission beyond the following three months.

21. This has at least two unfortunate consequences. The first is the shortage of human rights observers; despite the increase in their number, they have not yet reached the target figure of 147, even though a period of more than six months has elapsed since the commencement of the operation. What is

more, the already inadequate number of observers is tending to decrease since, through lack of resources, the contracts of some observers are not being renewed. This situation is particularly regrettable because these people will have to leave at the very time when they are beginning to adapt to their socio-cultural environment and above all are gaining experience. The second consequence derives, despite the progress achieved, from the lack of certain equipment: thus some regional offices have neither telephones nor fax, which results in the disruption of communications between several offices and headquarters.

(b) The political difficulties

22. The human rights operation in general and the Special Rapporteur in particular are encountering difficulties that are preventing them from fulfilling their mission in the most effective manner possible.

23. As regards the operation, much criticism has been directed at its inefficient functioning, due notably to lack of experience, to the fact that it is directed from Geneva and to the contradictory orders given by the Geneva offices. Some of this criticism is very harsh and is in some cases poorly formulated, but the substance remains.

24. Not all the difficulties will be outlined. Reference will be made only to the political difficulties, those affecting relations between the operation and the Rwandan authorities, on the one hand, and the relations between the Special Rapporteur and the Special Procedures Branch of the Centre for Human Rights, on the other.

(i) Relations between the operation and the Rwandan authorities

25. The Rwandan authorities, both national and local, complain about the behaviour of the human rights observers. They accuse them of putting too much emphasis on the human rights violations being committed at present and accordingly neglecting the inquiry into the genocide. They maintain that the observers' action is "very police-oriented" and that the observers use legal terms such as "arbitrary arrests and detentions", the word "arbitrary" being, in the view of the authorities, equivalent to "unlawful".

26. Among the consequences of these complaints, which have been officially addressed to the chief of the operation, have been searches of the observers and their exclusion from certain detention centres, including solitary confinement cells, despite the headquarters agreement governing the activities of the operation in Rwanda and the authorizations duly issued by the Minister of Justice. The dialogue with the national authorities entered into by the United Nations High Commissioner for Human Rights and the Special Rapporteur has made it possible to assess the situation and to dispel certain misunderstandings, but certain obstacles remain, including those relating to access to solitary confinement cells.

(ii) Relations between the operation and the Special Rapporteur

27. The relations between the operation and the Special Rapporteur remain very theoretical and practically non-existent. They are filtered by the Special Procedures Branch, which forms a kind of screen blocking access to information needed by the Special Rapporteur.

28. The operation is planned and executed, without any participation by the Special Rapporteur, by the Special Procedures Branch, which directs all activities from Geneva. Moreover, the hierarchical system in the Centre requires that the observers and other investigators deployed in the field should address their reports not to the Special Rapporteur through the chief of mission, but along a chain which runs from the team leader to the High Commissioner and passes through the unit chiefs, the coordinators, the chief of mission and the chief of the Special Procedures Branch. In the other direction, the Special Rapporteur is obliged to transmit his instructions to the operation through the Office of the High Commissioner, who forwards them via the Special Procedures Branch, going down through the various levels of the hierarchy. The chief of mission is forbidden, even in urgent situations, to contact the Special Rapporteur directly.

29. This situation has three consequences. The first is the slow movement of information in both directions. This was the case with the distressing events which occurred at Kibeho on 22 April 1995; the written reports on those events remained in the files of the chief of the Special Procedures Branch, despite the Special Rapporteur's urgent request to see them. The Special Rapporteur was unable to obtain a copy of the report until 6 May, when he received it from the chief of the operation, bypassing the hierarchical procedure. The press release drafted by the Special Rapporteur on the events at Kibeho met with a similar fate. The second consequence is that there is a sifting of information within the Special Procedures Branch, which communicates to the Special Rapporteur only what it sees fit to give him. The documents transmitted amount to no more than insubstantial summaries of reports, which are accordingly of no interest to the Special Rapporteur. The third consequence is that the withholding of information has been accompanied by the disappearance of documents. Strangely, three sets of very important documents have disappeared in succession, and the Special Rapporteur's urgent appeals for proper investigations to find the documents have had no effect. It is as if there were a lack of willingness to cooperate with the Special Rapporteur, in breach of Commission on Human Rights resolution S-3/1 of 25 May 1994 on the situation of human rights in Rwanda. Under paragraph 25 of this resolution, the Commission "Requests the Secretary-General to provide all necessary assistance to the Special Rapporteur to fulfil his or her mandate".

B. Progress achieved

30. The progress made in the inquiry should be measured in terms of both fact-verification and the contribution of the International Tribunal.

1. Fact verification

31. The investigations conducted by observers deployed throughout Rwanda have verified, on the basis of eyewitness accounts and other evidence, the commission of acts constituting human rights violations.

(a) Eyewitness accounts

32. Human rights observers have gathered many eyewitness accounts from survivors and military observers present during the hostilities, from soldiers of the Rwandan Patriotic Army (APR), staff of non-governmental

organizations and members of the clergy. These accounts concern both the genocide and other violations of human rights and international humanitarian law.

(i) Genocide

33. Concurring eyewitness accounts of the massacres were gathered and systematically selected prefecture by prefecture. Incidents which occurred in a number of prefectures are described below by way of illustration.

34. In the prefecture of Butaré, eyewitnesses reported that almost 10,000 refugees were attacked with machetes in the stadium and massacred on 18 April. In Nyakibanda, 5,000 refugees were attacked over a four-day period beginning on 23 April. The survivors identified a number of individuals who had organized and carried out the massacres, including a senior political official of the former regime, who is thought by some eyewitnesses to have organized and coordinated the attacks.

35. In Cyangungu prefecture, more than 5,000 Tutsis were penned up in the stadium, without protection from the sun and rain. Many were struck with machetes. Soldiers came periodically to fetch persons to be massacred on the basis of pre-established lists. At 4 a.m. on Friday, 29 April, the terrorized hostages tried to break out of the stadium en masse and the soldiers fired into the crowd. Witnesses report having seen prisoners from Cyangungu burying three truckloads of bodies not far from the Hôtel des Chutes in the afternoon of 29 April.

36. In Gisenyi prefecture, from 7 April 1994 onwards the families of Tutsi teachers from various the schools in Myundo (small seminary, art school, etc.) began to take refuge in the seminary with the staff. At 5 p.m., a mob of assailants armed with machetes and clubs attacked the seminary, but were dispersed by gendarmes. However, they returned about 8 p.m. and attacked again, massacring everyone hiding in one of the seminary chapels. On 8 April, the gendarmes guarding a number of Bagogwe asked them and the survivors of the massacres to go into the cathedral where, they claimed, they would be safer. On 9 April, militiamen attacked the cathedral and killed everyone inside. More than 300 persons are reported to have been massacred. On 1 May, 218 survivors of the massacres of 9 April were themselves executed.

37. In Kibuye prefecture, on 15 April 1994 the population of Gitesi took refuge in the town stadium, the church and the Saint-Pierre Home, together with refugees from other communes. On the orders of the former mayor, the stadium was guarded by gendarmes. There were about 6,000 people in the stadium, 3,250 in the church and approximately 200 in the Home. On 16 or 17 April, massacres took place in the church and Saint-Pierre Home. Three days later, the massacres spread to the stadium. As the gendarmes who had been guarding the stadium had withdrawn, the massacres were carried out methodically and systematically, beginning with the most prominent individuals. Survivors who succeeded in escaping to the Karongi hills were also attacked. Many of them died and the few survivors fled to Bisegiro.

38. In Kigali prefecture, eyewitnesses reported seeing militiamen and gendarmes carrying out massacres of Tutsis between 9 and 13 April. A number

of Tutsi leaders were massacred by units of the Presidential Guard. Groups of militiamen belonging to the Coalition pour la défense de la République (CDR) armed militia were organized in each district of Kigali. In Cyahafi district, the massacres began in the morning of Thursday 7 April.

(ii) Other grave violations of humanitarian law

39. The genocide of the Tutsis, the massacres of moderate Hutus and the renewed fighting in the civil war which followed were marked by many grave violations of international humanitarian law. These ranged from the burning of houses and property of victims or fugitives, to the taking of women hostages, rape, torture of prisoners and summary executions. The massacres mentioned as examples in the section on genocide also involved, mutatis mutandis, instances of such violations.

40. It should also be mentioned that, as the hostilities extended over the whole of Rwanda, and despite the difficulty of establishing the exact nature of violations committed in the areas controlled by the Rwandan Patriotic Army (APR), eyewitnesses report seeing several instances of violations of humanitarian law committed by the APR. A few examples are worth mentioning here. The first concerns the massacres committed by APR soldiers in some districts of Kigali, including Kimihura, Kacyiru, Remera and Gikondo. Eyewitnesses gave the names of members of massacred families. The second example concerns the massacre of 250 of the 587 Batwa in Ntongwe commune by APR soldiers. These Batwa, together with a number of Hutu villagers, were said to have responded to an appeal by the Rwandan Patriotic Front at the end of the war to return to their homes. All these facts, together with the genocide of the Tutsis, should be investigated more thoroughly and, if necessary, prosecutions should be brought by the International Tribunal for Rwanda.

(b) Evidence

41. The evidence relates mainly to the identification of sites of mass graves and the discovery of government documents, weapons used in the massacres and tape recordings of genocide propaganda.

(i) Identification of mass grave sites

42. The special investigation unit succeeded in identifying several hundred mass graves throughout Rwanda. The list of these graves, established prefecture by prefecture, has been forwarded to the Office of the Prosecutor, who is responsible for ordering any exhumations.

43. However, the extent of the special unit's work was limited in two ways. Firstly, the identification was not exhaustive, giving only an indicative list of the largest graves. Secondly, it is difficult, if not impossible, to determine the exact location of many graves and the precise number of bodies they contain. The graves mentioned in this report merely give a rough idea of the scale of the massacres perpetrated in Rwanda from 6 April 1994 onwards.

44. In the prefecture of Butaré (Kigembe commune, Nyanza sector, Rugizo district), for example, several mass graves located between the cantonal court

and the offices of the commune are thought to contain almost 5,000 bodies. Similarly, in Cyangungu prefecture, a mass grave discovered between the church and the hospital is thought to contain most of the bodies of the 2,000 to 3,000 persons murdered in the church, and in Nyamasheke sector (Kagamo commune) 15 mass graves thought to contain 4,000 to 6,000 bodies were identified around the parish. In Gikongoro prefecture (Kivu commune, Nyabirondo sector and district), a number of mass graves was discovered in the grounds of the Catholic school and church. Also, in Kibuye prefecture (Gitesi commune), mass graves thought to contain about 8,000 bodies were discovered near the Catholic church, as well as other graves containing about 10,000 bodies.

(ii) Documents

45. The members of the special investigation unit also obtained and examined documents as numerous as they were varied. They can be grouped into five major categories: documents of the former Government and the Coalition pour la Défense de la République (CDR); documents of United Nations bodies, particularly UNAMIR (daily situation reports); documents of various States, particularly those with embassies in Rwanda: United States, Spain, France (Operation Turquoise); documents of non-governmental organizations, including those which witnessed the massacres at first hand; media documents, i.e. the foreign and national press, newspapers (Kangura) and audio cassettes of the Radio Télévision Libre des Mille Collines (RTLM).

46. One document, for example, showed the structure and functioning of the militias, as well as information on the training given to them by the Presidential Guard. It also shows that the interahamwe militias ("Those who attack together") were planning to eliminate moderate Hutu opponents as early as 1992. Another document contains the results of a 1992-1993 census of the inhabitants of each commune and gives their ethnic origin, sex and age. It also provides quite detailed information on the planning of massacres in areas with large Tutsi populations. Other documents contain lists of Tutsis and moderate Hutu opponents to be killed, beginning in May 1992. The Special Rapporteur also received lists of the main organizers of the genocide in certain prefectures: Butaré, Gisenyi, Kibungo (Kayanza and Rusumo communes), Kibuli-ville (Kicukiro and Nyarugenge communes). All these documents have been made available to the International Tribunal.

2. Contribution of the International Tribunal for Rwanda

47. The establishment of the International Tribunal will help to further the genocide investigation by virtue of the concurrent jurisdiction which it exercises with the national courts and the Special Rapporteur.

(a) The international tribunal and national courts

48. Under article 1 of its Statute, "The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute". This provision

defines the jurisdiction of the Tribunal in respect of subject matter, as well as its territorial, personal and temporal jurisdiction. With regard to subject matter, the Tribunal is competent to deal with the violations defined in article 2 (genocide), 3 (crimes against humanity) and 4 (violations of article 3 common to the Geneva Conventions and of Additional Protocol II). With regard to territorial jurisdiction, the Tribunal may prosecute persons responsible for crimes committed in Rwanda and Rwandan citizens responsible for crimes in neighbouring countries. In his report of 13 February 1995 to the Security Council on the implementation of resolution 955 (1994) (S/1995/134), the Secretary-General states: "In extending the territorial jurisdiction of the Tribunal beyond the territorial bounds of Rwanda, the Council envisaged mainly the refugee camps in Zaire and other neighbouring countries in which serious violations of international humanitarian law are alleged to have been committed in connection with the conflict in Rwanda". The temporal jurisdiction of the Tribunal is limited to the period between 1 January and 31 December 1994. The Secretary-General's report states in this regard: "Although the crash of the aircraft carrying the Presidents of Rwanda and Burundi on 6 April 1994 is considered to be the event that triggered the civil war and the acts of genocide that followed, the Council decided that the temporal jurisdiction of the Tribunal would commence on 1 January 1994, in order to capture the planning stage of the crimes". Finally, the personal jurisdiction of the Tribunal involves prosecuting those responsible for the violations referred to in articles 2, 3 and 4 of the Statute.

49. Thus, the International Tribunal may prosecute all persons responsible for the acts referred to above. But this is only a principle, or even an ideal, the implementation of which comes up against practical difficulties that considerably limit its scope. In view of the widespread participation of Rwandans in the acts in question, it will be virtually impossible for the International Tribunal to deal with all cases of persons responsible. Consequently, the national courts of Rwanda and other countries will be called on to deal with the cases referred to them. Concurrent jurisdiction is provided for explicitly in article 8, paragraph 1, of the Tribunal's Statute, as follows: "The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994".

50. The International Tribunal will certainly have jurisdiction to prosecute major criminals, i.e. those who planned, organized and gave the orders for crimes against humanity. The national courts, for their part, will prosecute persons responsible found in their national territory. Thus, contrary to an opinion which is widely held, particularly in Rwanda, the International Tribunal will not be the only court empowered to deal with all cases. In his report of 4 June 1995 to the Security Council (S/1995/457), the Secretary-General notes that "investigations will be carried out ... covering 400 identified suspects, most of whom have sought refuge abroad".

51. The shared wish of both the victims and those presumed responsible for the genocide that the International Tribunal should be accorded exclusive jurisdiction will thus not be fulfilled. Their only consolation may be the primacy of the International Tribunal over national courts. Under article 8,

paragraph 2 of its Statute, "The International Tribunal for Rwanda shall have primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure".

52. To the satisfaction produced by the primacy of the International Tribunal has been added its long-awaited establishment (see the Secretary-General's report to the Security Council pursuant to paragraph 5 of Council resolution 955 (1994) (S/1995/134 of 13 February 1995)). By resolution 977 (1995) of 22 February 1995, the Security Council established the seat of the Tribunal at Arusha; the Secretary-General has appointed the Prosecutor and Deputy Prosecutor of the Tribunal, and on 24 and 25 May 1995 the General Assembly elected the six judges of the Trial Chambers of the Tribunal (see A/49/889 of 26 May 1995), from a list of 12 candidates submitted by the Security Council (resolution 989 (1995) of 24 April 1995). They were formally invested on 27 June 1995 at The Hague. On 27 February 1995, the Security Council adopted resolution 978 (1995) concerning cooperation between States and the International Tribunal for Rwanda, in which it urged States to arrest and detain persons found within their territory against whom there is sufficient evidence of involvement in the genocide, pending prosecution by the International Tribunal. Although this resolution is non-binding, States are expected to cooperate in implementing it in good faith.

(b) The International Tribunal and the Special Rapporteur

53. Unlike the International Tribunal, the Special Rapporteur is not invested with legal powers but, as his mandate involves inquiries, both institutions are called upon to conduct investigations of the same events. This requires close cooperation between the Special Rapporteur and the Tribunal, which, after all, belong to the same organization, the United Nations.

54. In order to determine the terms of this cooperation, the Special Rapporteur met the Prosecutor of the International Tribunal at The Hague on 2 March 1995 and his Deputy in Kigali on 29 March. These meetings revealed a firm resolve on both sides to cooperate closely in establishing the facts and preparing reports, in particular by regular exchanges of data, information and documents.

55. However, while the Tribunal's contribution to the international investigation of the crimes is invaluable, it restricts the action of the Special Rapporteur, who has a political mandate and may, by holding public proceedings, compromise the judicial inquiry which, on the contrary, calls for confidential proceedings. He will thus be obliged to observe confidentiality regarding certain facts and information which, if published, could be detrimental to the inquiry and judicial proceedings and ultimately prevent the truth from coming out. Consequently, the Special Rapporteur should not be expected to publish all information brought to his attention. Information gathered regarding the present human rights situation is another matter.

II. THE MONITORING OF THE HUMAN RIGHTS SITUATION

56. The current human rights situation in Rwanda has barely changed and is still characterized by serious violations of property rights, personal security and the right to life.

A. Violations of property rights

57. In his third report (E/CN.4/1995/70 of 11 November 1994) the Special Rapporteur singled out the illegal occupation of property as one of the most frequent forms of violation of human rights in Rwanda. The Government had envisaged several solutions, the most noteworthy of which seems to be the establishment of a commission to settle property and land disputes. However, that commission has failed, and it cannot be compensated for by inadequate solutions.

1. The failure of the land dispute committee

58. The Inter-Ministerial Committee for urgent action on property and disputes over business establishments, set up in August 1994, is composed of nine ministers and presided over by the Minister of the Interior. It is assisted by a technical committee of experts under the orders of the Minister, who has the power to approve that committee's decisions, the Inter-Ministerial Committee intervening only in serious cases.

59. The Inter-Ministerial Committee has experienced many difficulties in enforcing its decisions. Its eviction measures come up against various obstacles, and several forms of resistance may be cited. Some of them are actually carried out by law enforcement officers entrusted with this task. Gendarmes and soldiers show preference for their families or friends who are illegal occupants by not carrying out the evictions. The strongest resistance comes from the occupants themselves, who use various stratagems, four of which bear mention: being absent on the day the eviction is to be carried out, thereby paralysing the action of the law enforcement officers; leaving older people on the property at the time eviction is due to be carried out, which is intended to prevent forcible eviction, given the respect for older people in Africa in general and Rwanda in particular; appealing to groups of friends to provide physical opposition to the eviction; and seeking the protection of army officers, who sometimes order the arrest of soldiers in charge of the evictions.

60. In total, the actual rate of implementation of evictions, which was initially four every Friday, scarcely exceeds 30 per cent. Furthermore, individuals relocated by the Committee have had to accept the idea of leaving their homes and living in hiding, after receiving threats from evicted occupants. Worse still, individuals who have been reinstated in their property have been arrested or have even disappeared or been murdered.

61. Some examples brought to the observers' attention may be cited. One individual, having been summoned by the head of the Gitega sector to settle the dispute regarding his brother's house, was apprehended between 22 and 24 February 1995 by gendarmes from the Nyamirambo station and accused of belonging to the extremist Democratic Republican Movement (MDR). However, there are reliable indications that he was arrested because he owned two houses and also managed his brother's house. This person is still being held at Nyamirambo gendarmerie station while his two houses have been illegally occupied by a colonel of the Rwandan Patriotic Army (APR) and a woman, both of whom allegedly took possession of the premises the day after his arrest.

A similar fate was met by a family who succeeded in getting the illegal occupants of their house at Kigali "evicted" but stood helplessly by when, at 6 a.m. on 25 August 1994, the head of the family ("husband and father") was taken away by two soldiers. His wife's attempts to find him have been unsuccessful. This is also the case of Gervais Birekeraho, a Hutu merchant from Kigali, whose story merits a brief summary. Accused of having taken part in the genocide, he was arrested but succeeded in proving, thanks to a number of pieces of evidence - including his passport, which contained stamped foreign visas - that he had been abroad at the time of the hostilities and massacres. He was released, but while he was trying to regain possession of his many properties, he was abducted. His wife notified the Human Rights Field Operation. Inquiries led to the discovery of his body a few days later.

62. Given the failure of the Committee, other solutions have been proposed within the framework of technical assistance to Rwanda.

2. Inadequate solutions

63. The proposed solutions consist basically of measures for building new housing. This project is part of the repatriated refugee resettlement plan and is managed by the United Nations Development Programme (UNDP). The Programme has provided short-term financing for the construction of 500 buildings with local materials near Kigali and a few more buildings at Mutara. Any increase in the number of housing units to be built will depend on the funds available. For the time being, the resources mobilized are still inadequate. As at 1 April 1995, UNDP had received only US\$ 40 million out of the US\$ 110 million needed to start up the community development programme focusing primarily on the housing sector.

64. Furthermore, this amount is totally inadequate to cope with the immense requirements of reintegrating the nearly 600,000 former refugees whose repatriation had been envisaged. International aid, therefore, remains far from sufficient. Unfortunately, this is just as true for housing construction as, generally, for national reconstruction. In the aforementioned report of 4 June 1995 (S/1995/457), the Secretary-General criticizes the slow delivery of the assistance already pledged. Regarding the economic assistance pledged at the round table held by UNDP at Geneva on 18 and 19 January 1995, he states: "Although US\$ 634 million was pledged on that occasion, only US\$ 69 million has actually been disbursed, of which US\$ 26 million has been utilized for debt repayment." The Secretary-General concludes: "It is important that these problems be addressed." This is all the more true since assistance by the international community remains indispensable to the national reconstruction programme, especially the construction of housing or refugee centres. Such assistance could encourage the refugees to return to their homes and help to reduce, if not put an end to, violations of personal security.

B. Violations of the right to personal security

65. Violations of personal security have unfortunately multiplied over recent months, often in direct relation to violations of property rights, of which they are the immediate cause. The violations consist of arbitrary arrests and detentions leading to distressing conditions of detention.

1. Arbitrary arrests and detentions

66. The arrests and detentions effected by the Rwandan authorities are arbitrary in so far as they blatantly flout both Rwandan legislation and the pertinent international provisions. According to Rwandan criminal procedure, the arrest of a person presumed to have committed an offence must be carried out with an arrest warrant issued by the government procurator. The lawful period of detention is 48 hours. This may be extended, but not beyond five days. Beyond that period, if the prosecutor wishes to keep the arrested person in detention, he must bring him before the court of first instance, which will decide, in chambers, on pre-trial custody, which may extend to one month, or order release on bail or unconditional release if the case is dismissed. Almost all arrests and detentions carried out since the end of the hostilities have flouted the above-mentioned provisions, which in fact reflect the Basic Principles for the Treatment of Prisoners adopted by the United Nations.

67. The number of people arrested and subsequently detained has been growing for several months. As at 29 May 1995, there were 29,403 detainees in the prisons and detention centres accessible to human rights observers. The total prison population throughout the country was estimated at the end of May 1995 at more than 42,000, as stated in the latest report of the Secretary-General on Rwanda (S/1995/457 of 4 June 1995). In late February 1995, the estimate was 25,000. Thus, between the end of February and the end of May, the number of detainees rose from 25,000 to 42,000, or an additional 17,000 in three months - nearly 6,000 new detainees per month or 1,500 per week. Given the conditions in which these arrests and detentions are carried out, the Rwandan authorities themselves, in particular the former public prosecutor in the Kigali court of first instance, acknowledge that more than 20 to 30 per cent of detainees are innocent.

68. There are several interrelated reasons for the resurgence of massive arrests and detentions. The first reason, which is the one given by the authorities, is the closure of the displaced persons camps, which, according to them, had become a haven for numerous militiamen and others accused of genocide. If the latter had been outside the camps, they would have been recognized and reported by witnesses or successors of the victims of the massacres. The second reason is the slanderous accusations, motivated by hate, jealousy and covetousness for the goods of the people being persecuted. This is illustrated by the above-mentioned examples of occupation of property. The third reason is the practice of blank warrants. The Special Rapporteur was informed of the existence of this illegal practice, which consists of prosecutors signing blank warrants, which are handed to mayors who have limited police powers - and enable them to make arrests. This practice, whose existence has been explicitly confirmed by public authorities, can only contribute to the resurgence of massive and arbitrary arrests. The former public prosecutor of Kigali, who was quick to protest against these arbitrary arrests resulting from slanderous accusations, added, at a press conference in Brussels on 11 May 1995, a fourth reason relating to a statement by the International Tribunal prosecutor, Judge Goldstone. He said: "I must stress the fact that there has been a disturbing increase in these arrests following the announcement on national radio that the International Tribunal would not begin prosecutions before the end of 1995." These massive arrests are even more disturbing given that the conditions of detention leave something to be desired.

2. Distressing conditions of detention

69. The situation in the prisons is one of the major concerns of the international community. It remains indescribable and unspeakable; the former public prosecutor of Kigali calls it "tragic". With reason: it is characterized by overcrowding and inhuman treatment of prisoners.

(a) Overcrowding of the prisons

70. The prison population at 29 May 1995 consisted of 29,403 persons packed into 13 small official detention centres. These centres do not include the isolation cells and other places of detention inaccessible to the human rights observers. At 10 June 1995 the total prison population was estimated at approximately 46,000 detainees, including 1,100 minors.

71. The Rwandan prisons consist of these overcrowded centres, and the extent of overcrowding far exceeds the threshold of tolerability. This is the case in Butaré prison, which has accommodation for 1,500 detainees but on 10 June contained 6,589, four times more than capacity. It is also the case in Kigali prison, which on 3 June housed 9,401 detainees in a space intended for 2,000, or five times more than capacity. Similarly, Gitarama prison housed 6,847 detainees in a space for 800, almost eight times more than capacity.

72. In most prisons the detainees are housed in cramped conditions, most of them barely able to sit down, much less lie down on a floor which is often roughcast. The few beds are sold to the highest bidder or occupied by the strongest. It is extremely difficult for visitors to make their way through this mass of humanity exposed to the sun and the elements. It was impossible for the Special Rapporteur, during his visit on 31 March 1995, to move around within Gitarama prison. Immobilized and at the mercy of bad weather, the detainees eat, drink and defecate on the spot. This "tragic" situation spares neither old people, women, nor even children. Some of the children are under 11 years of age. In Kigali prison, there are 278 minors and 70 children accompanied by their mothers; the Special Rapporteur was particularly moved by the sight of a seven-year-old boy accused of taking part in the genocide.

73. These distressing conditions of detention cause a number of illnesses and deaths are no less common. In Gitarama prison, for example, 48 people died in April 1995. On the day of the Special Rapporteur's visit, two bodies were removed in his presence. He was subsequently informed that the daily average from June 1994 to March 1995 had been four deaths a day. Deaths are also caused by maltreatment.

(b) Inhuman and degrading treatment

74. Although the detention centres do not have a monopoly on cruel, inhuman and degrading treatment, they are the prime site for such practices. Many cases of torture that have left after-effects on the victims have been reported to United Nations human rights observers. This inhuman treatment takes several forms, ranging from beatings to kandoya and suffocation.

75. The practice of beating, which consists of striking the detainees, is common in a large number of detention centres, including the prison in Gisenyi

prefecture, where human rights observers reported receiving 40 complaints from victims in January and February 1995. In several of these cases, the victims were taken to hospital. Two died as a result of their injuries. At Save police headquarters, several detainees who had arrived in early March showed signs of ill-treatment - either open wounds on the back or legs, swollen joints or head wounds. Another detainee had scars all over his back and arms. Observers from Butaré, during a routine visit to the prison in the week of 20 to 25 March, heard noises, shouting, threats and slaps coming from the interrogation room of the criminal police officer.

76. Various other types of blows are struck by means of instruments other than clubs. These include machete blows flat across the shoulders, kicks, screw driver stabs to the back and head, which cause gashes; blows with rifle butts, causing holes in the feet; bludgeoning, leaving marks on the head and back; blows with a chain attached to a padlock, causing lacerations; and blows to the buttocks, leaving open wounds.

77. Kandoya is another torture technique which consists in tying the victim's arms just above the elbows behind his back. It leaves clear marks in the form of wounds which eventually lead to the paralysis of the upper limbs.

78. Suffocation is a form of torture which caused the incident at Muhima police station during the night of 16-17 March 1995. The facts merit a brief description. On the afternoon of 16 March, 75 arrested persons were taken from Gikora community centre to Muhima police station, where they arrived at about 5 p.m. The local police authorities said that it was too late to book them and that they would have to stay in an improvised place of detention until the formalities could be undertaken the next day. The gendarmes forced all 75 people into a room measuring barely 16 square metres, with only one door and no windows. In the middle of the night, the detainees knocked on the door, but no one was able to open it for them. The next morning, 22 of them had suffocated to death; 2 others who had been taken to hospital also succumbed, bringing the death toll to 24. The observers' request to investigate this incident was turned down by the Rwandan authorities, who assured them that they had initiated their own inquiry.

79. To this non-exhaustive list of ill-treatment should be added the rape of women and the malnutrition of detainees.

2. The solutions envisaged

80. The Rwandan Government and the international community have taken a number of short-term measures to end the overcrowding of the prisons and medium-term measures to try those accused of genocide. These measures can be divided into two major categories. The first has to do with sorting the case files and the second with the rehabilitation of the judicial system.

(a) Sorting the case files

81. The first solution advocated and implemented by the Rwandan Government consisted in setting up, on 17 October 1994, a commission to sort the case files of detainees on a prefecture-by-prefecture basis. This sorting operation had two purposes: (a) to separate ordinary criminal cases from

those relating to the genocide, and (b) to separate the cases of people against whom sufficient charges of participation in the genocide had been brought from those of other persons. The purpose of this preliminary screening was clearly to arrange for the release of people for whom detention was not necessary so as to reduce the overcrowding of prisons.

82. The case file sorting commission is composed of the public prosecutor of the court of first instance (president), a representative of the gendarmerie, a representative of the army and a representative of the information services. The Kigali commission began its work on 10 January 1995 and, at its first meeting, ordered 5 releases out of the 12 case files considered. In mid-February, 50 detainees would have been released on its orders had it not been for the opposition of the military. The commission subsequently had to stop its work owing to lack of cooperation on the part of the army.

83. It should be stressed that, no matter how praiseworthy, the commissions none the less have limitations which considerably restrict their scope. The first limitation lies in the fact that the small number of releases which the commissions are able to order cannot significantly reduce the number of prisoners or even offset the number of incoming prisoners, which is between 1,300 and 1,500 per week. The second limitation is the lack of guaranteed safety upon leaving prison. The fear of reprisals or private vengeance has led Rwandans, especially Hutus, to give themselves up as prisoners. These persons, as some of the detainees in Butaré prison have told the Special Rapporteur, are not prepared to risk their lives by leaving prison until such time as effective measures are taken to ensure their safety.

84. Following the closure of the displaced persons camps, the Government decided to arrest only those persons against whom sufficient charges of participation in the genocide had been brought. This step does not seem to have produced the expected results, given the continuously mounting number of detentions.

85. The limitations and failure of the classification commissions have prompted the United Nations agencies and humanitarian aid organizations to call for the rehabilitation of the judicial system.

(b) Rehabilitation of the judicial system

86. The rehabilitation of the judicial system is aimed at both the prisons and the courts.

(i) The prisons

87. Since early February 1995, various international organizations working on Rwandan territory have recommended that the Ministers of Defence and Justice should take urgent steps to rehabilitate the prisons. They have themselves proposed at least three solutions.

88. The humanitarian agencies first of all suggested the construction of tents for housing the detainees on sites surrounded by barbed wire. The Government rejected this proposal for reasons both of "security", given the enormous risks of escape, and of "image", as the proposal evoked uncomfortable

memories of the Nazi concentration camps. The humanitarian agencies then proposed that the detainees should be transferred provisionally to stadiums. This solution was also rejected, as it brought to mind the fact that the stadiums had served as venues for assembling and massacring Tutsis during the hostilities. The agencies' third proposal was for a prison rehabilitation plan which involved refurbishing the existing detention centres and building new ones.

89. This last solution was selected but not without resistance, as there were two main objections to the idea of building new detention centres. The first was raised primarily by the embassies of Western nations, which are major funders. Without questioning the principle of the arrests and detentions necessitated by the duty to punish those accused of the genocide and other crimes against humanity, they pointed out that increasing prison accommodation might, in this case, encourage the Rwandan authorities to persist in their "arbitrary" activities and not bother trying to relieve the prison overcrowding by releasing the victims of slanderous accusations. In other words, what was being decried and denounced was not the arrests and detentions in themselves, but the way in which they are carried out. The second objection was that building prisons would at best create only a few hundred additional spaces, which would quickly prove inadequate for the growing needs created by the 1,500 weekly arrests and detentions. Nevertheless, given the inhuman conditions of detention and the daily number of deaths resulting therefrom, everyone, or almost everyone, agreed to consider these two latter solutions as the lesser of the evils. Accordingly, a number of sites have been selected for the construction of new detention centres. One such site is at Nsida (Kibungo prefecture), where there are plans to build a prison with a capacity of 5,000. Financing will come from a voluntary fund managed by UNDP.

90. Building new prisons is, however, no panacea for the grave problem of the overcrowding of prisons. The lasting solution to this problem lies in national reconstruction, which will require greater aid from the international community. In the immediate future, this aid should be earmarked for the rehabilitation of the courts.

(ii) The courts

91. The Minister of Justice of Rwanda, at a symposium held at Lille on 20 May 1995, described the situation of the courts in the following terms: "In Rwanda more than 1 million people have died ... Judges have not been spared. Most of them went with the former leaders, others were massacred during the genocide, while those few who managed to escape are attempting to organize a semblance of justice, a crippled justice in search of itself." In fact, the Rwandan judicial machinery is still defective, if not almost non-existent. It is characterized by a shortage of both human resources and material facilities.

92. Prior to the massacres of April-July 1994, there were 708 judges. A very small number of jurists was recorded, only 45. Today, Rwanda does not have more than about 210 judges, including only 60 trained jurists. These judges can be classified as follows: prosecutors' offices and courts of first

instance, 55; court of appeal, 2; and court of cassation, 3. The 150 other magistrates are with the cantonal courts. Thus, the fact that most of the jurisdictions are not functioning is largely due to the inadequate numbers of judicial personnel. The 55 judges in courts of first instance who deal with criminal matters will have to consider the 46,000 cases currently pending. Since it is not possible to cite all the cases, the example of Kigali will suffice: its prosecutor and his 4 assistants will together have to deal with more than 9,300 cases.

93. To this shortage of human resources must be added the destruction of the infrastructure of the courts themselves, which has entailed a dire shortage of material and logistical facilities. Owing to the lack of financial resources, it has not been possible to replace all of the furniture and buildings which were destroyed. However, it is the lack of basic technical resources for investigation, particularly liaison vehicles, office materials and even paper and ball-point pens, which should be stressed. In these circumstances the judges do not have appropriate working conditions; instead, the entire processing of the cases of those accused of the genocide is slowed down.

94. In order to rectify this situation, the Minister of Justice has sent to the United Nations authorities, including the Centre for Human Rights, a request for aid, particularly in the form of foreign judicial personnel, estimated at 678, including 303 judges, 300 prosecutors and 75 police officers (police investigators).

95. In response to this request from the Rwandan Government, a technical assistance programme for the Rwandan judicial system has been adopted and is now being implemented. The first phase has two parts: rehabilitation of court buildings and rehabilitation of the prisons, including the construction of new detention centres. The second phase comprises three activities: the priority initial recruitment of 50 foreign judges, the training of national judicial personnel and the establishment, within the Ministry of Justice, of a coordination structure for foreign technical assistance and project management. This project will be managed by the Ministry of Justice, with the Office of the High Commissioner for Human Rights in charge of recruitment and financing provided by UNDP. The Centre for Human Rights has already selected international jurists, whose personal history files have been sent for approval to the Minister of Justice. Their task will be to assist prosecutors in examining the case files.

96. The Human Rights Field Operation in Rwanda has been given the task of assisting the Ministry of Justice in carrying out the project for the rehabilitation of the judicial system. The objectives of this project are as follows: guidance and management of foreign judicial personnel; training of national personnel; deployment of foreign judges in the various prefectures and communes; purchase, distribution and maintenance of vehicles; and medical evacuation of foreign personnel. However, there is at the moment a legal obstacle preventing execution of the programme. For obvious reasons of national security, Rwandan law does not authorize foreign judges to exercise a jurisdictional function on Rwandan territory. It is in order to remove that obstacle, among other reasons, that the Government has submitted to Parliament a bill whose early adoption would undoubtedly help to revive the Rwandan judicial system. This is demonstrated to some extent by the failure of the

initiative of the Minister of Justice to start, if only symbolically, the trial of those accused of the genocide of 6 April 1995. The adoption of the bill by the Rwandan Parliament would certainly enable a start, and progress to be made, in the cases pending, not just those relating to the genocide, but also those involving offences currently being committed on Rwandan territory, including violations of the right to life.

C. Violations of the right to life

97. Violations of the right to life, which had decreased somewhat and given way to arbitrary arrests and detentions, are now unfortunately on the increase again, taking the form of summary executions, massacres, and abductions and enforced disappearances.

1. Summary executions

98. The human rights observers have received numerous testimonies of summary executions perpetrated by civilians and above all, by soldiers of the Rwandan Patriotic Army (APR) as acts of reprisal. Some examples may be cited merely by way of illustration. On 12 February 1995, two cyclists, Nteziyaremye and Buseruka, accidentally collided with an APR soldier in the Gakarara sector (Ruhengeri prefecture, Karago commune) and were immediately taken to the military camp at Mukamira. On 15 February, their families were informed that they had been shot by members of the APR while attempting to escape. The bodies, when recovered by the families, revealed marks and wounds which were far from consistent with the official account. On 30 April, three inhabitants of the Gasasa sector (Nyakizu commune, Butaré prefecture) discovered eight dead bodies in a small wood. They were identified as displaced persons who had recently returned from Kamana camp in Gikongoro prefecture. Witnesses said that, on the evening of 29 April - in other words, the previous evening, they had seen the eight victims alive being taken towards the wood by a group of persons, among whom were two soldiers in uniform. The victims died from blows to the head with sticks and stones. Their names were transmitted to the observers. Three persons suspected of having taken part in these executions were arrested. On 4 April, in Gitarama prefecture, a 16-year-old girl informed observers that her father had been killed the previous day in Ntenyo (Tambwe sector) by a group led by two brothers, whose first names were Vital and Aphrodis, and another four persons. This group was allegedly composed of Tutsis who had survived the war.

99. In Cyangungu prefecture, there were also several reports of summary executions. Three persons were killed by members of the APR in Nyamasheke on 24 March. The victims were identified by UNAMIR military observers. On 25 March, a further two persons were killed in Kirambo for resisting arrest. In the same town on the following day, i.e. 26 March, APR soldiers killed two women school teachers and a baby.

100. To this already lengthy list should be added the case of the murder, on 4 March 1995, of the former prefect of Butaré, Mr. Pierre-Claver Rwangabo, in circumstances which have still not been clarified. In addition to these individual killings there have been the massacres of displaced persons in Kibeho.

2. The Kibeho massacres

101. The tragedy of Kibeho constitutes the major event of the period covered by this report and therefore merits some attention. Following the failure of "Opération retour" (Operation Return), the Government of Rwanda decided, on 15 April 1995, to close the displaced persons camps which, owing to the infiltration of militiamen and soldiers from Rwanda's former armed forces, were becoming a "threat to the security of the region". The largest camp, Kibeho, still contained 120,000 persons out of a total of some 250,000 displaced persons. The Rwandan authorities gave orders to close it by force. APR soldiers took up positions round the camp as from 18 April. That day, two APR brigades, or more than 2,000 soldiers, surrounded the camps at Kibeho and Ndago in order, in their words, to carry out a search for criminals and weapons. The displaced persons panicked, and leaving their huts and abandoning all their possessions, they took refuge around the buildings controlled by UNAMIR. Following the jostling caused by the soldiers surrounding the camps and by shots fired into the air, 11 people, mostly children, were trampled to death by the panic-stricken crowd. Similar incidents, causing scores of deaths and many injured, occurred on 19, 20 and 21 April. Some 9,000 displaced persons were registered and evacuated during those three days. However, the operation was hampered by heavy rain, while groups of young civilians, armed with sticks and stones, attacked the displaced persons as they walked along the roads in large groups.

102. It seems that it was in the night of 22 April that the worst occurred; many shots were heard and, next morning, the road between the two UNAMIR posts was strewn with countless bodies. It should be made clear that some were killed by APR fire, others were trampled or crushed by the crowd in the general panic, and still others were executed by militiamen in reprisal against displaced persons who had expressed their intention of leaving the camp.

103. The number of victims of the Kibeho massacres is still undetermined. The Government of Rwanda recorded only 300 deaths, while other sources put the number at 8,000. UNAMIR, for its part, suggests a figure of between 1,500 and 2,000. The exact figure will never be known. What is important is thus to be condemned is not so much the number of deaths as the act perpetrated and the manner of its perpetration. Its unanimous condemnation by the international community is therefore readily understandable.

104. Following these massacres and their subsequent condemnations, the Government of Rwanda proposed that an international commission should be set up to inquire into the events at Kibeho. The commission, officially constituted in Kigali on 3 May, began work on 8 May and submitted its report on 18 May.

105. In its report, the commission drew a number of conclusions, of which we shall mention three. The first is that the Kibeho massacres were neither the result of a planned action to kill a specific group of people nor the result of an incident which could have been prevented. Secondly, there is sufficient evidence to establish the fact that serious human rights violations were perpetrated against unarmed displaced persons, causing their death or serious wounding. Thirdly these violations are attributable both to APR military

personnel and to armed individuals among the displaced persons themselves. The Government of Rwanda, in a statement on 26 May, took note of the conclusions and recommendations of the commission and reiterated its commitment to put them into practice.

3. Abductions and enforced disappearances

106. The human rights observers have also received a great many reports of persons abducted and missing whose families have neither news nor any trace of them. The abductions and enforced disappearances would seem to be mainly the work of members of the APR. A few cases will be mentioned as examples.

107. On 4 August 1994, between 10 and 11 p.m., Mr. Ladislas Benhimana (aged 47), an inspector of finances, was arrested along with his two children, Jean-Claude and Rosine, by three APR soldiers, apparently without a warrant. According to the information received, the representations made by his wife produced no results. On 25 August, at 6 a.m., Mr. Leodomir Baguliyoro (aged 47), a Ministry of Finance official, was abducted from his home in Kigali by two soldiers who bundled him into a vehicle. There again, the official steps taken by his wife to find him were unsuccessful. The same occurred with Mr. Ndagimana (aged 31), a driver and mechanic, who was abducted in the evening of 25 July 1994 while he was returning home from King Faisal Hospital. His car was found in front of Gikoro police station. A witness said he had seen him three days after his arrest, in handcuffs, in the compound of the national gendarmerie headquarters in Kimihurura. The investigations carried out by his family to find him yielded no results. This was also the case with Mr. Marcel Ntirenganya, who left his home on 20 October 1994 to take a soldier friend of the family back to his post. His car was found in front of Muhima police station, but he himself was never found.

108. During his most recent visit to Rwanda, the Special Rapporteur met a delegation of Rwandan women whose husbands and, in some cases, children had been missing since July 1994. They presented him with a file containing several items. The first was made up of five reports on cases of enforced disappearances. The second was a non-exhaustive list of 49 persons reported missing, abducted by APR soldiers. The list was sent to the Minister of Justice from the "Persons reported missing since July 1994 - wives' group" on 25 May 1995. To date, however, all the steps taken by these women vis-à-vis the competent authorities to find their husbands have been fruitless. The third contained a list of 149 men reported missing, addressed by the women's group in the Masoro sector (Rutongo commune, Kigali prefecture) to the chief of the human rights operation in Kigali. Their husbands have been reported missing since May 1994 in Byumba, when the Rwandan Patriotic Front (RPF) took them away to the zone it controlled for "their protection". They have been without news since then.

109. All these abductions and enforced disappearances, and particularly the events in Kibeho, can only create further obstacles to the return from the exodus.

III. THE PROBLEM OF THE RETURN FROM THE EXODUS

110. As to the problem of the return from the exodus, another major concern of the international community, there has been no obvious progress towards a solution. On the contrary, the situation of those concerned has deteriorated. However, this judgement is tempered by the fact that the problem of the return takes on different dimensions according to whether it involves displaced persons or refugees. The former have been subjected to enforced repatriation, while the latter remain blocked in the camps.

A. The forcible repatriation of displaced persons

111. It was to resolve the situation of displaced persons that "Operation Return" was launched; regrettably, it has ended in failure.

1. "Operation Return"

112. The problem of the return of the displaced persons, has fomented discord between the United Nations and the Government of Rwanda. The United Nations recommended the voluntary repatriation of displaced persons and the agreed closure of the camps, while the Government opted for their forcible closure. In support of its position, the Government invoked various arguments, including the violation of State sovereignty, the infiltration of the camps by militiamen who took refugees as hostages, and the frequent raids by militiamen on national territory. While regarding the Government's position as legitimate, the United Nations asked it to adopt the solution of the voluntary and peaceful return of the displaced population.

113. The agreement obtained from the Government to implement the strategy proposed by the United Nations made it possible to launch "Operation Return". The purpose of this operation, initiated by the United Nations Rwanda Emergency Office (UNREO), was to repatriate displaced persons from the camps to their habitual place of residence. The operation was accompanied by a food rehabilitation programme (including seed distribution) managed by ICRC. The operation began on 28 December 1994 and enabled nearly 150,000 displaced persons to be "repatriated". This solution did not prevail, however, and was implemented only from December 1994 to March 1995.

2. The failure of the operation

114. According to UNREO, some 170 families had arrived in Kibeho camp in March 1995, bringing the number of displaced persons in the camp to over 130,000. Some displaced persons left for Burundi by the Ntongwe road; others left for camps situated in the south of Gikongoro. The chief of Munini camp estimated in March 1995 that at least five families of displaced persons were leaving the camp every day to go not to Rwanda but to Burundi. According to UNAMIR the number of displaced who travelled from south-west Rwanda to Burundi between 13 and 19 March 1995 was approximately 510.

115. These observed movements arose from the fact that the repatriated persons were apprehensive and afraid of being arrested or killed. Some told officials of humanitarian agencies that they were ready to return home and be arrested

if they were accused of having taken part in the genocide, but not because they wanted to claim their property. The number of repatriations had thus considerably decreased by April 1995.

116. It was in this context that the Government decided to close the camps by force, particularly Kibeho camp; the result of this was the massacres described above. Following the brutal and forcible closure of the camps, large numbers of displaced persons were transported back to the communes from which they had come. Many others returned on foot, in difficult circumstances. Many of them were surrounded, harassed, stripped of their goods and beaten by gangs of civilians armed with sticks and stones. Thus, for example, on 21 April, five kilometres from Runyinya, over a 100 displaced persons could be seen running in terror, covered with wounds. Two youths beat to death a woman carrying a baby on her back.

117. By 25 April, with the exception of Kibeho where fewer than 2,000 persons still remained, all the camps had been evacuated and were deserted. The final movements of displaced persons took place in the south of Butaré prefecture, from Kamana towards the communes of Nyakizu, Gishamvu, Kigembe and Runyinya. On 25 April there were still a few hundred displaced persons who refused to leave the camps. On 26 April, the total number of displaced persons registered was 60,177.

118. From 19 to 28 April, when the camps were totally evacuated, the number of repatriated displaced persons was estimated to be 61,855. It should be pointed out, however, that many displaced persons did not register out of fear of the communal authority. During his visit to the Kibeho site, the Special Rapporteur observed that the camps were empty and under the supervision of APR soldiers, while the UNAMIR posts had been completely evacuated.

119. The enforced return of the displaced persons and, above all, the Kibeho massacres can only create further obstacles to the return of the refugees.

B. The Blocking of refugees

120. Despite the efforts of the United Nations and the humanitarian non-governmental organizations to improve the situation in the camps, and in spite of some progress which has been made, the refugees continue to exist in a state of permanent insecurity. They are the victims of a dilemma which, in fact, gives them no choice; on the one hand, they find their difficult life in the camps hard to bear and on the other, they cannot go home because of the lack of security in Rwanda and because they are held hostage in the camps. The various solutions envisaged to release them from this situation have not led to satisfactory results.

1. The solutions envisaged

121. The Secretary-General of the United Nations has envisaged several solutions not only to put an end to the insecurity, but also to encourage the refugees to return voluntarily and peacefully. Among these measures, mention may be made of the plan to set up a peace-keeping operation; this has failed and been replaced by the deployment of local troops.

(a) The failure of the planned peace-keeping operation

122. In his report of 25 January 1995 to the Security Council (S/1995/65), the Secretary-General proposed the setting-up of a peace-keeping operation composed of 5,000 men, to ensure that political and other refugees are kept separate.

123. This plan, which was based on an integrated approach to the various problems, was aimed at several objectives simultaneously. Its purpose was to put an end to the acts of banditry and the harassment of humanitarian personnel, to protect the storage and distribution of humanitarian aid, and to enable refugees who had applied to return to go back to Rwanda without being subjected to intimidation by the former rulers. However, the peace-keeping operation does not seem to have received the support of the States Members of the United Nations. Despite appeals by the Secretary-General, the States have almost unanimously refused to supply national contingents for the operation. In this connection, the Secretary-General reports that of the 60 States approached only one agreed to make a unit available for the operation. He therefore decided to turn towards alternative solutions - the setting-up of a group of police/military observers and contracting arrangements with private security agencies.

124. These proposals, too, have had to be dropped because they are too costly. The solution which finally prevailed was recourse to local security forces.

(b) The deployment of local troops

125. The Office of the United Nations High Commissioner for Refugees (UNHCR), in the context of the national solution, signed an agreement on 27 January 1995 with the Government of Zaire, under which this Government undertook to deploy 1,500 soldiers in order to ensure security in the refugee camps. To date, all the 1,500 Zairian soldiers have been deployed, mainly in Goma and Bukavu. According to UNHCR, a further contingent of 400 soldiers may be deployed in the camps located in Uvira.

126. The Zairian soldiers have the support of the international advisers who make up the Civil Liaison Group for security matters. This Group, currently composed of 45 officers, comprises 13 Netherlands, 2 Swiss, 10 Beninese, 10 Guineans and 10 Cameroonians. Their number should be increased to 50.

2. Unsatisfactory results

127. It is true that the deployment of local troops in the refugee camps has restored a degree of calm, following the improvement in the food and sanitary situation. In his report of 14 April 1995 to the Security Council (S/1995/304), the Secretary-General noted that the presence of local troops in the camps in Zaire had so far yielded positive results.

128. However, the overall picture is still clearly unsatisfactory, as the main objectives are far from having been attained. In fact, the situation remains virtually the same as in previous months, and is characterized both by the renewed flow of refugees and insecurity in the camps. The total number of Rwandan refugees is approximately 2 million.

(a) The return of refugees to the camps

129. According to UNHCR, on 28 June 1995 there were 1,100,400 Rwandan refugees in Zaire, 608,700 in the United Republic of Tanzania, 200,000 in Burundi and 4,000 in Uganda.

130. Since the Kibeho massacres, there has been a threefold phenomenon: the spontaneous and orderly return to Rwanda of a large number of former Tutsi refugees from Burundi and Zaire; the end of the voluntary repatriation, organized by UNHCR, of new Hutu refugees; the renewed flow of displaced persons into the refugee camps in Zaire and of Rwandan refugees from Burundi to Tanzania.

131. The latter phenomenon should be described in greater detail. In early May 1995, 27,000 displaced persons who had survived the Kibeho massacres found refuge in north-east Burundi. Some 16,000 of them, who were not accepted by the Burundi authorities, managed to reach Zaire across the Ruzizi plain and took refuge at Uvira. In addition, between 19 and 25 May, 1,166 Rwandans who had taken refuge in Burundi arrived at the Kitali camp in Tanzania. Only 248 refugees arrived between 26 May and 1 June, after the Tanzanian authorities decided to close Tanzania's borders with Burundi.

(b) Insecurity in the camps

132. The insecurity prevailing in the camps seems to have spread well beyond their boundaries, threatening the stability of Rwanda and the security of the local populations.

133. Rwanda's stability is jeopardized by increasingly numerous forays into Rwanda by militiamen and by members of the former Rwandan government forces. The situation in Rwanda is even more disturbing in view of the reports of the training and arms deliveries received by these groups. Amnesty International and Human Rights Watch, two distinguished humanitarian organizations, identify the countries providing military assistance by name. In its report published in May 1995, Human Rights Watch reveals that arms are being supplied from South Africa, China and France to the camps in Zaire. In the report referred to above on the United Nations Assistance Mission for Rwanda (S/1995/457 of 4 June 1995), the Secretary-General criticized the situation, which he described as one of the "causes of Rwanda's current tensions and frustrations"; echoing the Kigali Government, he said that the latter was "concerned that no effective limitations are seen to be placed on military training of, and delivery of arms supplies to, elements of the former Rwandan government forces, while the arms embargo continues to apply to Rwanda".

134. The problems of the renewed flow of refugees, the insecurity in the camps and the rejection of refugees by local authorities all require urgent measures.

135. Relations between Rwandan refugees and the local populations are little better. They remain tense on account of the constant attacks on the population by armed refugees. Consequently, in the host countries - Burundi, Tanzania and Zaire - Rwandan refugees are increasingly deemed undesirable by the local population, not only because of the insecurity they generate, but

also because of the environmental deterioration they cause. This accounts for the Tanzanian authorities' decision to close their country's borders to Rwandan refugees, particularly those from Burundi. This is also the case with the Zairian authorities, who have adopted a firmer stance vis-à-vis Rwandan refugees. Already in May 1995, the Supreme Council of the Republic (the transitional parliament) of Zaire adopted a resolution calling on the Government to send the refugees back to Rwanda. In a communiqué published on 24 June, the Government of Zaire issued a statement confirming the resolution.

IV. RECOMMENDATIONS

136. The recommendations made by the Special Rapporteur duly take account of the urgent short-term and medium-term problems. Essentially these are: the repression of genocide, the cessation of human rights violations, the fate of the victims of human rights violations, the fate of refugees and displaced persons, and reconstruction and social harmony.

A. The repression of genocide

137. As recommended in the third report of the Special Rapporteur (E/CN.4/1995/70 of 11 November 1994), the United Nations should ensure as quickly as possible:

The commencement of the proceedings of the International Tribunal for Rwanda;

Increased technical and financial assistance to rehabilitate the Rwandan justice system, in particular by providing personnel, rebuilding court-houses and constructing new prisons in order to alleviate overcrowding in existing prisons.

138. The United Nations should:

Induce Rwanda to adopt legislative and regulatory measures to facilitate the performance of judicial functions by foreign magistrates in order to rapidly and fairly prosecute and try the alleged perpetrators of genocide;

Demand that Member States give full effect to Security Council resolution 978 (1995) of 27 February 1995 concerning the arrest and detention of the alleged perpetrators of the crimes committed in Rwanda present on their territory, and that they cooperate in good faith with the International tribunal;

Help to ensure the defence of the alleged perpetrators of the genocide with a view to securing equitable justice.

B. The cessation of human rights violations

139. The United Nations should demand that the Rwandan authorities ensure the observance of the following:

The prerogatives and decisions of the judicial authorities, which is an essential condition for the sound administration of justice;

In particular, the forms and procedures laid down by national legislation, and the international standards regulating the arrest and detention of suspected criminals.

140. The United Nations should recommend the following to the Government of Rwanda:

The organization of wide-ranging campaigns to make the population aware of the need to respect the physical integrity and property of others, and to prepare for a life in common and on good terms;

The adoption, as advocated in the third report of the Special Rapporteur, of forceful administrative measures designed to deter acts of reprisal and at the same time to ensure respect for the fundamental rights of anyone who may commit such acts.

C. The fate of victims of human rights violations

141. The United Nations should take appropriate measures:

To identify the victims of the genocide and of other serious human rights violations, assess their needs, and promote and/or organize care for them;

To provide or strengthen protection for vulnerable groups, particularly unaccompanied children, widows and disabled persons. It is imperative to establish a legal framework.

142. The United Nations should:

Induce the Government of Rwanda to grant applications by individuals whose property is unlawfully occupied and punish the occupiers;

Assist the Government of Rwanda to build housing for the returnees, in particular the former refugees, precisely in order to avert the unlawful occupation of property.

D. The fate of refugees and displaced persons

143. As indicated above, the United Nations should recommend that the Governments of countries hosting Rwandan refugees, and particularly the Government of Zaire, which has accepted the greatest number, take appropriate action to ensure that:

(a) The voluntary repatriation of refugees is effectively assured and facilitated;

(b) The refugees are not unduly influenced in one way or another, i.e. either to leave or to remain in the receiving country;

(c) Systematic information campaigns are organized for this purpose so that the people concerned can take a fully informed decision.

144. The United Nations should demand that the Governments in question ensure:

- (a) That their territories are not used as a base for destabilizing Rwanda or committing acts of aggression against that State;
- (b) That they abide by their international commitments, particularly those deriving from the relevant provisions of international conventions on asylum and refugees.

145. The United Nations should take appropriate measures:

To verify, in particular by means of an international commission of inquiry, information concerning the rearming and training of the former Rwandan government forces;

To strengthen security measures in the refugee camps in order to prevent attacks by refugees against the local populations and forays into Rwandan territory;

To ensure, by agreement with the various States concerned, the repatriation of refugees under proper conditions of security and dignity.

E. Reconstruction and social harmony


146. The United Nations should make a formal and urgent appeal to Member States, particularly the major Powers and African States, to provide substantial assistance for the reconstruction of Rwanda as a matter of urgency.

147. The United Nations should increase the number of human rights observers in Rwanda from 147 (the figure initially planned) to 300.

148. By means of an integrated approach to the problems of the Great Lakes Region, the United Nations should:

- (a) Adopt a comprehensive strategy designed to prevent the disintegration of the subregion;

- (b) Convene, by agreement with the Organization of African Unity and the permanent members of the Security Council, an international conference to resolve the problems of the subregion, in view of their related, interdependent and transboundary nature, with a view to establishing a permanent peace.



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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL
AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Rwanda submitted by
Mr. René Degni-Ségui, Special Rapporteur of the Commission on
Human Rights, under paragraph 20 of resolution S-3/1 of
25 May 1994

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INTRODUCTION

1. In accordance with the mandate entrusted to him by the Commission on Human Rights in resolution S-3/1 of 25 May 1994, the Special Rapporteur made a third visit to Rwanda from 14 to 25 October 1994. The purpose of this visit was to update, supplement and clarify the information contained in the first two reports published on 20 June 1994 (E/CN.4/1995/7 and Corr.1) and on 12 August 1994 (E/CN.4/1995/12) respectively.

2. In the course of his visit, the Special Rapporteur:

(a) Travelled to Kigali, Kibungu, Butaré, Gisenyi and Cyangugu (Rwanda); to Goma and Bukavu (Zaire); to Benaco (United Republic of Tanzania); to Brussels and to Paris;

(b) Visited the refugee camps at Goma, Bukavu and Benaco, the camp for displaced persons at Kibeho in the former Turquoise zone, the Nyarubuye parish, the Bishopric, parish and small seminary of Nyundo, the Gisenyi cemetery, Chamvuzo village and Kigali prison;

(c) Held talks with:

(i) The following political personalities of Rwanda:

Mr. Paul Kagamé, Vice-President of the Republic and Minister of Defence, Mr. Faustin Twagiramungu, Prime Minister, Mr. Seth Sendashonga, Minister of the Interior and Mr. Alphonse-Marie Nkubito, Garde des Sceaux, Minister of Justice;

(ii) High-placed officials of bodies comprising the United Nations system, namely, Mr. Shahryar Khan, Special Representative of the Secretary-General in Rwanda, Major-General Claude Toussignant, Force Commander of the United Nations Assistance Mission to Rwanda (UNAMIR), and representatives of the United Nations High Commissioner for Refugees (UNHCR), of the United Nations Development Programme (UNDP) and of the United Nations Rwanda Emergency Office (UNREO);

(iii) Foreign personages: Mr. Vandenbroecke, Minister of Foreign Affairs of Belgium; the Apostolic Nuncio; the Ambassador of the United States in Kigali; the Conseil permanent de la Francophonie, a branch of the Cultural and Technical Cooperation Agency, Mr. Jean Gol, the Swiss Chargé d'affaires in Rwanda, Professor Filip Reyntjens, former Belgian Minister of State of Antwerp University (Belgium) and Mr. Eric Gillet and Mr. Bavo Cool, Belgian lawyers;

(iv) Representatives of non-governmental organizations, as well as Rwandese and foreign journalists (press conference).

3. The Special Rapporteur wishes to express his sincere thanks to all of the above and in particular his gratitude to the Special Representative of the Secretary-General and the Commander of UNAMIR who provided him with all necessary assistance and facilitated his visit through their logistical support. Thanks also go to Mr. William Clarence, Chief of the Human Rights Field Operation in Rwanda and his team of human rights observers who, internal contradictions and difficulties notwithstanding, displayed a spirit of devotion and dynamism.

4. This on-the-spot visit enabled the Special Rapporteur once again to take stock of the situation prevailing in Rwanda. The conclusion he reached was that the three basic concerns of this country are the problems of genocide, insecurity and the return of refugees and displaced persons.

I. GENOCIDE

5. The inhabitants of Rwandese towns are returning gradually and quite rapidly. Economic activity is also resuming. The dead are being mourned but there is rejoicing whenever a lost relative, a brother, a sister or a child is found. It would appear that the major concern of the Rwandese is knowing whether those responsible for the genocide - "génocidaires" as they are called in the country - will be tried and punished. They wonder what is keeping the United Nations from establishing an international tribunal, and in this context tongues become loosened. But although the existence of genocide has been confirmed, there is considerable delay in conducting the investigation.

A. Confirmation of the facts

6. The various elements constituting genocide appear to be increasingly confirmed by the on-the-spot investigation that has been carried out. Such elements include the discovery of mass graves, the existence of evidence and proof indicating that the massacre of the Tutsi was planned and the identification of those primarily responsible.

1. The discovery of mass graves

7. Several mass graves have been found throughout the country as a result of the various investigations carried out - there being one or two in each commune. A provisional list of about 50 mass graves has thus been drawn up, with more than 6 in towns such as Gitarama and Cyangungu. The Special Rapporteur and several members of the observer team were personally able to identify several mass graves, namely, at Chamvuzo, Nyundo, in the Gisenyi communal cemetery and in Cyangungu. At Nyundo, three septic tanks were later used to inter those massacred, who numbered over 300. The inhabitants of Nyarubuye and the surrounding area were not, however, entitled to burial. The bodies of some lie strewn about the courtyard and alleys of the parish and others are piled one upon the other in the classrooms of the parish school and in the church, while yet others were discovered in the neighbouring village, some having had their hands bound behind their backs before being executed. Skeletons of persons of all ages abound: women, men, old persons and even babies. The senses - sight, smell and touch - are all revolted by the spectacle.

2. Proof or evidence indicating that the genocide
of the Tutsi was planned

8. Since the question of genocide was discussed at sufficient length in the preliminary report it will not be dealt with in detail below. Attention is simply drawn to the following:

(a) The existence of several audio cassettes of broadcasts by Radio Rwanda and Radio Television des Mille Collines which are available and will be placed at the disposal of the courts and tribunals as proof of incitement to the extermination of the Tutsi;

(b) The issue by the authorities of unequivocal orders for the massacre of the Tutsi.

9. Concordant and reliable testimony indicate that these orders, carried out by the interahamwe ("those who attack together") and the inhabitants themselves can be traced back to the Government via local political and administrative authorities. A militiaman from Kibungo explained to a priest who tried to persuade him not to take part in the massacres that he liked his job as a taxi (moto) driver and did not want to be soldier. But, he added, "If I am told to kill, I kill the enemies of the people; they are bad". Another person, a Catholic from Kabgayi parish who was about to kill people in a church and who was asked by the priest what had happened to his "Christian way of life", replied: "You're not with it, Father. We're carrying out a plan". And in reply to the question what he would get out of the plan, he said without beating about the bush: "Salvation". The Prefect of Cyangungu, who was unable to provide protection for the Tutsi and who was asked by the Bishop of the Diocese to open up the frontiers, said that he could not allow the Tutsis to flee towards the frontier with Zaire since he had received "orders from above". The lieutenant who directed the attack against the Bishopric of Kibungo on 15 April 1994, following the massacre of over 1,200 Tutsi by militiamen and soldiers, reassured the Bishop and a few priests whom he had spared that "It's finished. We've sent a message to Kigali saying that the operation was a success". In other words, he had informed Kigali that everyone had been exterminated at Kibungo.

10. By far the most topical example is offered by the speech of Mr. Sindikubwabo, the President of the Interim Republic of Rwanda, on the occasion of the installation of the Prefect of Butaré on 19 April 1994. In this speech, which has been confirmed by a number of reliable sources, he addressed an appeal to the inhabitants of Butaré, stating that they should not act as they had in the past - a past characterized by apathy - and urged them to engage in a manhunt. "You, people of Butaré, you are adopting a 'its none of your business attitude'; the enemies are among you, get rid of them", he is said to have declared in kinyarwanda. And later on he added: "If you cultivate a field and then fail to weed it, what you have done is pointless". He is said to have concluded with "Analyse each one of my words and you will discover the meaning of the message I am conveying to you".

3. Identification and prosecution of persons
primarily responsible for the genocide

11. Although the identification and even the prosecution of those responsible for carrying out such orders raise difficulties owing to the number involved, this is not true of those who issued the orders, namely, those primarily responsible against whom "sufficient charges" have been brought. Abundant and concordant testimony is available on the part they played, and each witness possesses a list which sometimes classifies the perpetration of genocide in hierarchical order. Proof is also available. On the other hand the prosecution of those primarily responsible raises a problem namely, that of the tribunals before which they should be brought, and in particular the international tribunal. The victims, the wounded and those entitled to compensation, are becoming impatient. Apart from the actual establishment of the international tribunal, divergencies of views might well emerge between the United Nations and the Rwandese Government concerning its seat, the detention of the accused or those sentenced and the penalties imposed.

12. The Rwandese Government would like the tribunal to sit in the place where the massacres were perpetrated, namely, at Kigali in Rwanda. Will the United Nations accede to its wishes?

13. The same problem arises in connection with the place of detention which, in the case of those who carried out the orders, would probably be Rwanda and, in the case of those who issued the orders, outside the national territory. The Rwandese Government is questioning the justification of this kind of "double standard" discrimination.

14. Lastly, with respect to punishment, the Rwandese Government, under pressure from national public opinion, is in favour of the strict application of the Rwandese Criminal Code which provides for capital punishment, whereas the United Nations, following the example of the Statute of the International Tribunal for the former Yugoslavia (S/25704) adopted by the Security Council in resolution 827 (1993) of 25 May 1993 and in accordance with the Statute of the International Tribunal for Rwanda (S/1994/1168), contained in Council resolution 955 (1994) of 8 November prescribes life imprisonment as the maximum sentence. In this context and apart from the discrimination made between the two categories of persons, the paradox of punishing those who carried out the orders more severely than those who issued them is to be deplored. Nor is it out of the question, that, as a result of certain events, those who issued the orders might be released a few years later. It is no doubt because these various divergencies of views and contradictions have not been reconciled that the Rwandese Government has proposed to the Security Council, as reported in Le Monde of Tuesday, 1 November 1994, that international jurisdiction should be replaced by a national tribunal "enjoying international assistance and the death penalty instead of life imprisonment ...".

B. Delay in carrying out the investigation

15. The investigation, which should be conducted on the spot by human rights observers in accordance with paragraph 21 of Commission on Human Rights resolution S-3/1 of 25 May 1994, has not yet really begun. This is clear if a

distinction is made between two different periods. The first is characterized by the absence of observers and the second by the presence of undeployed observers.

1. Absence of observers in the field

16. The Special Rapporteur's first two visits, which took place from 9 to 20 June 1994 and from 29 to 31 July 1994 respectively, do not call for any particular comment, since at that time the investigation proper had not yet begun. The first two reports were prepared on the basis of documents and testimony provided by officials of intergovernmental and non-governmental organizations, as well as a few survivors of the massacres. Moreover, the Special Rapporteur refrained from questioning displaced persons or refugees in the camps for fear that reprisals would be taken against them. This period was that of the war and the cease-fire. It lasted for two months (June and July 1994) and observers had not yet been deployed, mainly because the war was still raging. It was at the end of the armed conflict that the deployment of observers was envisaged.

2. The presence of undeployed observers

17. Following his second visit, the Special Rapporteur proposed, in accordance with a strategy described in the second report, the deployment of 150 to 200 observers for the period of national reconstruction. The United Nations decided upon 147, a figure agreed with the Government and corresponding to the number of communes in the country.

18. On Saturday, 22 October 1994, 37 of the 147 agreed upon had taken up their duties at Kigali. The fact that the observers - the first four - began arriving at Kigali at the beginning of August 1994 gives an indication of the difficulties encountered in organizing this mission. On the same date, the observers present had not yet been deployed in the field.

19. It should, however, be mentioned that spot investigations have been conducted by human rights observers as well as by the specialized investigation team, although the general deployment plan will be embarked upon only on 22 October.

20. The reason usually given is the absence of material and logistical facilities, namely, the lack of liaison vehicles and particularly communication radios that are vital for the security of the observers. Moreover, according to the United Nations Centre for Human Rights, "only provisional instructions have been received in respect of the field operation during the initial phase, based on similar directives applied during United Nations operations in the former Yugoslavia, El Salvador and Haiti". And it will only be after the arrival of the chief of the operation at Kigali on 10 September 1994 and when the head of the specialized investigation team assumes his functions that "complete instructions for field personnel, based strictly on the experience acquired during the first few weeks of the operation" will be drawn up. However, to these reasons must be added others reflecting personality clashes and the vagueness of the instructions provided.

21. These various reasons may well explain why two observers have resigned and, in part, the failure of two other observers to renew their contracts. There is nothing to say that yet other observers may resign, although the Special Rapporteur, during his third visit, tried to persuade them not to do so. The delay in the deployment of observers is all the more unfortunate in view of the insecurity that is becoming increasingly apparent in Rwanda.

II. INSECURITY

22. Insecurity, which has already been condemned in the second report, is again on the increase. As a consequence of the armed conflict and particularly the massacres that have taken place, it is a source of human rights violations taking the form of serious violations of property rights, the right to personal safety and the right to life.

A. Violations of property rights

23. Violations of property rights consist in the illegal occupation of property - a problem to which the Government is trying in vain to find a solution.

1. Illegal occupation of property

24. On returning to Rwanda, many refugees illegally occupy houses - dwelling houses or business premises - as well as land abandoned by its owners or tenants who have fled. The situation is particularly complex in that this return flow is of an anarchical nature and that the majority of these refugees constituted the Diaspora of the 1960s. According to well-informed sources, it appears that over half of the property of the Hutu is occupied by the new repatriates. This is the case in Kigali as well as in Rusumo commune. The most telling example is offered by the Massaka sector in the vicinity of Kigali, where 4,000 of the 5,000 inhabitants, namely, 80 per cent of the total population, are new arrivals.

25. The new arrivals settle in without thinking that the owners might return, so that when they do and claim their property rights, conflicts arise and in many cases assume unexpected proportions. Since they belong to the Hutu ethnic group, they are reported to the military as having participated in the genocide or in cruel and inhuman treatment or summary executions. The Government has informed the Special Rapporteur that it is concerned by this delicate problem and the Prime Minister, who has pointed out that it is difficult to evict and rehouse the refugees, recognizes that conflicts "are being resolved in an increasingly violent manner".

2. Solutions to the problem

26. The Government of Rwanda has taken the following steps to solve the sensitive problem of the illegal occupation of the property of persons who fled by persons who have returned, which is primarily the result of the shortage of dwellings and the large-scale and spontaneous return of refugees:

(a) Only refugees who have been out of the country for less than 10 years may recover their right of ownership; they are the real owners of the property they abandoned during the armed conflict and the massacres; it is stressed that this principle is in keeping with the Arusha Agreements;

(b) Refugees who have been outside the country for more than 10 years may temporarily occupy abandoned and vacant houses, on the understanding that such occupation does not create any right of ownership; they are in a precarious and revocable situation;

(c) The property of persons responsible for the genocide will be seized and sold to establish a fund for the compensation of the victims;

(d) An Inter-Ministerial Committee presided over by the Minister of the Interior has been set up to implement these measures.

27. The Minister of the Interior recognizes that this Committee faces resistance by many persons served with eviction notices. This resistance is all the stronger in that, in some cases, it is put up by officers of the Rwandese Patriotic Army (APR). It explains why, according to the Minister, the Committee can be successful in only 30 per cent of cases. He therefore intends to use a gendarmerie unit to have "the notices served by force whenever the occupants have shown obvious signs of bad faith".

28. The measures adopted are still not enough because they simply shift problems instead of solving them. The eviction of illegal occupants whether they like it or not is tantamount to inviting them to take over other unoccupied houses, shops or plantations, where they can expect the same sequence of events to take place. In order to put an end to this awkward and uncertain situation, the Special Rapporteur proposed that a national policy to take care of former refugees should be adopted and implemented on the basis of the Arusha Agreements and under the auspices of the Government of Rwanda, the Office of the United Nations High Commissioner for Refugees and the Organization of African Unity. The formulation of a plan of this nature requires the international community's support within the shortest possible time in order to put an end to other violations of human rights.

B. Violations of personal safety

29. The arbitrary arrests and detentions committed in Rwandese territory are justified by the shortage of resources.

1. Arbitrary arrests and detentions

30. Insecurity is also reflected in violations of personal safety which primarily take the form of arbitrary arrests and detentions. The Special Rapporteur has been informed of several cases of searches and particularly of arbitrary arrests and detentions. He was able to confirm this information for himself when he visited Kigali prison, where he met several thousand prisoners, including men, women, children and elderly people. He counted about 40 children under 15 years of age, including several as young as 12.

31. These persons had been arrested and detained in violation of basic procedural rules. No arrest warrant is issued and the persons concerned are kept in places of detention, especially in police stations, for longer than the lawful period of police custody, which is 48 hours, renewable once. What is worse, persons released by the judicial authorities for lack of evidence are arrested again by soldiers and detained in police stations or barracks.

32. Conditions of detention are extremely rudimentary. Prisoners are piled in practically on top of one another. The hunt for the "génocidaires" has filled Rwanda's prisons. On 18 October 1994, ICRC counted over 7,000, including 800 in Gitarama, 2,000 in Butaré and 4,200 in Kigali. The result is overcrowding. For example, Kigali prison, which has room for 1,500 prisoners, had 4,305 on Friday, 21 October 1994. The situation is likely to get even worse because large numbers of persons are being admitted to prison, whereas few, if any, are leaving. In Kigali, an average of between 50 and 100 persons are admitted every day. The prison also does not have enough beds and many inmates therefore have to sleep on the floor. There is no open-air area. Prisoners have only one skimpy meal a day consisting of no more than maize and beans.

2. The lack of resources

33. The Government of Rwanda gives more or less connected reasons both to justify the arrests and detentions and to explain the irregularities that characterize them. There are three such reasons.

34. The first is the need to prosecute the persons responsible for the genocide so that they do not escape justice. We are told that the Government and the urban population are firmly determined to prosecute the perpetrators. The Government wants to punish those responsible for the massacres at any price and does not wish in any way to countenance impunity, which is a recurrent cause of the successive waves of massacres in Rwanda. This is why it informed the Special Rapporteur on several occasions that the "génocidaires" are being arrested pending the establishment of the international tribunal and the reorganization of Rwandese judicial machinery. Moreover, the urban population is putting strong pressure on the authorities to make sure that the crimes against humanity that have been committed will not go unpunished because otherwise they would have to take revenge themselves.

35. The second reason is the need to protect the persons concerned against reprisals by the victims. Prisons and other places of detention are, we are told, safe places for protecting the lives of persons who have been reported to be responsible for the massacres, but who do not seem to have been informed that this is the purpose of their detention and obviously do not have any choice in the matter.

36. The third reason is the lack of administrative structures and judicial personnel. The Government says that it is aware of violations of the right to personal safety and complains of the acute shortage of the basic elements needed to ensure the smooth operation of the criminal investigation police and the law. For example, it stresses that only 27 of the more than 150 persons employed by the Ministry of Justice are at their posts, after having escaped

death or exile. It also points out that the lack of training of military personnel and their ignorance of legal procedures are causes of human rights violations. These reasons also explain violations of the right to life.

C. Violations of the right to life

37. Violations of the right to life are the result of summary executions, which are said to be justified by revenge taken by the victims.

1. Summary executions

38. The Special Rapporteur has been informed of several cases of summary executions and even massacres and involuntary disappearances of persons for which civilians and, in particular, APR soldiers are alleged to be responsible. This information was supplied to him both by the relatives of victims and by humanitarian non-governmental organizations. They refer not only to thousands of anonymous deaths, but also to lists of persons who are few in number, but mentioned by name.

39. The Special Rapporteur personally went to Chamvuzo (Butaré prefecture) to identify a mass grave containing almost 50 bodies for which APR is alleged to be responsible. Many rumours bordering on disinformation are, of course, circulating in the refugee camps, to the effect that thousands of Hutu have been massacred. APR soldiers and civilians are indeed guilty of massacres of Hutu in various places in Rwanda. Investigations are being conducted.

40. Persons suspected of having taken part in the massacres have been executed either by the civilian population itself, by soldiers at the civilian population's request or on their own initiative. Concordant and reliable testimony describes nearly the same scenario. Men, children and elderly people have been accused of being traitors and massacred following so-called information meetings convened by APR elements. Massacres have allegedly taken place in various parts of the country, and particularly in the south. In addition to the mass graves for which APR is responsible we therefore have all those for which the militia and the Rwandese Armed Forces are responsible, so that it is now difficult to tell them apart. Investigations are under way to clarify the situation and determine where responsibility lies.

2. Private revenge

41. The Government presents reasons and describes the measures it has taken in explanation of recently reported massacres and thus relieves itself of responsibility. Two reasons are given.

42. The main reason is private revenge taken by Tutsi civilians and by soldiers. We are told that, in Rwanda, all those who live on the same hill know one another and, in many cases, the executioners operated openly and killed people in full view of everyone because they were convinced that they enjoyed impunity, which has become a tradition. Similarly, soldiers who had joined the ranks of the Rwandese Patriotic Front (RPF) saw their relatives executed simply because they had joined up. And they, in turn, carry out acts of reprisal.

43. The second, subsidiary, reason is that, in the second phase of the war, the RPF hastily recruited juvenile delinquents and even former militiamen on what was not a very selective basis. It is a great temptation for these young persons who have tasted victory and who are not receiving any pay to seize other people's property, killing them if necessary. Officers also abuse their powers by unlawfully occupying houses at gunpoint. The question is thus whether the RPF really controls all its APR elements.

44. In view of this situation, the Government has adopted a number of measures, including:

(a) The establishment of a military police force commanded by a colonel who is responsible for supervising and arresting delinquent military personnel;

(b) The quartering of undisciplined soldiers in a training camp;

(c) The adoption of a decree embodying the Code of Military Justice, which provides for the establishment of two competent courts to try military personnel: the Court Martial and the Military Court. The latter's decision may be appealed under the conditions provided for by Rwandese law. The Government of Rwanda has already arrested military personnel, including officers (majors and lieutenants). A fax sent to the Special Rapporteur by the Minister of Justice refers to 100 members of the military who have been arrested, and lists 20 cases in which "the investigation has been completed".

45. It may be added that the United Nations is helping the Government of Rwanda to organize a new national police force intended to guarantee security in the country. In a favourable response to an urgent request by the Government of Rwanda, UNAMIR has started a training programme for 103 police cadets who were chosen by the Government and who will be trained in normal police work and investigation procedures. There is a programme developed by the Secretary-General in his progress report of 6 October 1994 on the United Nations Assistance Mission for Rwanda (S/1994/1133).

46. It is obvious that these measures are not enough in themselves to establish security in Rwanda. They will therefore have to be expanded to provide comprehensive assistance covering both national reconstruction and legal assistance lato sensu. These measures, taken together, may also help to promote the return of refugees.

III. THE RETURN OF REFUGEES AND DISPLACED PERSONS

47. The return of refugees and displaced persons to Rwanda and the hills where they live continues to be the international community's main concern. Their return, which has been slowed down by considerable pressure on the part of the former authorities, nevertheless seems to imply new solutions.

A. The slow-down in the number of returns

48. The refugees' situation has persisted too long. What was temporary is becoming permanent despite difficult living conditions, which have improved only slightly (mainly in terms of health and nutrition).

49. Although the international community has been making untiring efforts to ensure the repatriation of refugees and displaced persons, the situation has hardly changed. In October 1994, UNHCR estimated that there were about 1.5 million Rwandese refugees in neighbouring countries, including 850,000 in North Kivu, 300,000 in South Kivu (Zaire) and 460,000 in the United Republic of Tanzania. It should be mentioned that at least 50,000 refugees have died of diseases and particularly the cholera epidemic that spread throughout the camps. In addition, the same number of persons was displaced inside Rwanda. The Kibeho and N'Dago camps for displaced persons had a population of 60,000 and 40,000 respectively.

50. These numbers are levelling off as a result of the slow-down in repatriations, in contrast to the large-scale repatriations that took place immediately after the cease-fire entered into force. For example, in the Prefecture of Giseny in UNAMIR sector No. 5, there were 3,368 returnees from Zaire on 27 July 1994. On 28 July, 4,233 persons returned by the same border posts. On 29 July, however, there was a sharp drop in the number of repatriations, to 1,592; and on 18 August it fell to 922 and then to 268 on 6 October. So that whereas the number of repatriations in the sector amounted to 12,433 for the last five days of July (an average of 2,486 a day), it dropped to 36,600 (an average of 1,180 a day) in August, to 32,925 (an average of 1,097 a day) in September and to 10,337 (a daily average of 607) in the first half of October. This decline in the number of returning refugees became noticeable and significant on 17 September and even sharper in October.

51. There are two factors pulling in opposite directions. The first is that most of the refugees who returned to Rwanda during the same period comprised the old Tutsi Diaspora and are probably not taken into account in the refugee figures. The second is that the figures do not include arrivals by dugouts or other clandestine means.

52. Moreover, there have also been far fewer arrivals than departures. UNHCR reports that, from 8 to 14 September 1994 in the Goma area, there were 15,662 returnees and no new arrivals in the camps; from 15 to 21 September, 11,728 returnees as against 1,868 arrivals; from 22 to 30 September, 6,477 returnees as against 1,868 arrivals; and from 1 to 17 October, 12,106 returnees and 1,731 arrivals. In general, there has been if not a halt at least a gradual slow-down in departures from the camps, largely attributable to action by the former leaders.

B. Taking refugees hostage

53. The slow-down in repatriations of refugees and displaced persons may be due to various reasons. The first, which is immediately apparent, is the insecurity prevailing in Rwanda and, in particular, the fear of reprisals by the Tutsi. The second, which is closely related, is the fear of those who took part in the massacres of being executed by the RPF Government. Yet other reasons include the reassuring presence of United Nations observers and soldiers and the improvement in nutritional and health conditions.

54. However, the decisive - or at least most important - reason is that the refugees and displaced persons are being held hostage by the former political authorities, if the strong pressure being exerted on them "in an appropriate framework" is anything to go by.

1. Strong pressure

55. The former leaders, with assistance from local officials and military personnel and militiamen, continue to wage a vigorous campaign against the return of refugees and displaced persons to Rwanda and their hills. These authorities have no qualms about going from camp to camp making political speeches conveying two messages: disinformation and threats.

56. The first message tells refugees and displaced persons to remain in the camps rather than return to Rwanda for fear of being massacred by the Tutsi and the FPR Government. Then there are also reports of thousands of Hutu being massacred by the latter, and many people are prepared to testify to the fact. This disinformation campaign is so forceful that it is no longer possible to establish the truth, particularly bearing in mind the climate of insecurity that does indeed prevail in Rwanda.

57. The second message is in the nature of a permanent threat to refugees or displaced persons who expressly or tacitly indicate a desire to be repatriated. It is clear from this campaign that return will be possible only as a result of political negotiations entailing a general amnesty or, otherwise, a resumption of civil war to reconquer power. Those who do not take the advice offered and return would be at risk of being the first targets in the event of a reconquest of power.

58. These campaigns are organized thanks to the freedom of action enjoyed by members of the former Government team to engage in political activities contrary to international norms on Zairian territory. On 18 October 1994, for example, Mr. Jean Kambanda, ex-Prime Minister of the former Rwandese Government, visited refugees at the Mugunga (Goma) camp. He talked for more than an hour and a half with representatives of the refugees and then with the refugees themselves, who turned out in large numbers to listen to him. In substance, the message he conveyed was that the Rwandese Government in exile would shortly be starting discussions with the Government of Kigali. If that Government refused or stood in the way of a prompt solution, military action would be taken. Echoing the "Prime Minister", General Bizimungu stated on Saturday, 22 October 1994, that, if there were no negotiations between the new and the former Governments with a view to power-sharing, his troops would attack Rwanda. Unfortunately, those were no vain threats, since the former Government still has the means to pursue its policy.

2. An appropriate framework

59. The former Government team has been able to devise and set up in the various refugee camps a framework that is ideally suited for maintaining its pressure on the refugees and displaced persons. This framework is both institutional, political and administrative.

60. The institutional framework involves reconstituting in the camps the political and administrative structures that exist in Rwanda. These structures are mainly prefectures and communes. In other camps, there are even sectors. For instance, in the Kibumba camp at Goma, 8 of the 10 Rwandese prefectures are represented, together with several communes and a few sectors. Sometimes these reconstituted local units are even headed by the same local

authorities, prefects or prefecture chiefs and burgomasters. Thus, at Benaco in the United Republic of Tanzania, the Prefect of Kibungo has reportedly resumed his functions at the head of the prefecture.

61. These reconstituted prefectures, sectors and communes are undoubtedly structures enabling the former Rwandese authorities to control the civilian population. This control is all the more effective in that, in several camps, it is in practice they who are responsible for conducting a census of refugees.

62. The system of control thus devised and put into effect confers substantial or political and administrative powers on the former Government team through the intermediary of prefects or heads of prefectures, burgomasters and militiamen, particularly the power over food and the power to punish.

63. The power over food is tacitly recognized to belong to these local authorities when aid organizations relinquish to them the responsibility of ensuring the distribution of foodstuffs and other relief supplies. These authorities do not hesitate to use and abuse the power over food, as thus recognized, to punish those who do not go along with their policy and to divert stocks of food which are sold on the markets of the host countries.

64. The second power, which they quickly and forcibly acquired, is that of executing all those who do not fall in with their policy of keeping people in the camps. However, capital punishment is not confined to the political sphere but is also applied in connection with mere domestic matters, or indeed acts of vandalism. There is permanent insecurity in the camps. Not a day passes without a refugee being killed. The militiamen and armed bandits impose their own law, the law of arms. There are even persistent rumours of soldiers and militiamen being trained to attack the Rwandese State and to regain power there. The growing insecurity in the camps is the reason why the staff of UNHCR and humanitarian organizations no longer sleep there and why some of them threaten to withdraw. This necessitates the adoption of further measures to ensure security in the camps.

C. New solutions

65. To cope with the situation in the camps for Rwandese refugees and displaced persons, the United Nations and its various partners have envisaged new solutions to supplement those which already exist. Among them, the two main solutions that should be adopted are the separation of refugees from politicians and their repatriation.

1. The separation of refugees from politicians

66. The policy of separating refugees or displaced persons from politicians is advocated by the United Nations Secretary-General in his report of 6 October 1994 (S/1994/1133). The final report of the United Nations Technical Mission on the state of security in the camps gives details of this operation. To sum up, two main points may be mentioned:

(a) The distinctions made in the Secretary-General's report between Rwandese refugees, particularly in Zaire:

- (i) The former leaders, comprising some 50 families lodged in villas at Bukavu;
- (ii) An estimated 16,000 military elements of the former RGF who, together with their families, form a group of 80,000 persons;
- (iii) The militiamen, who are difficult to enumerate, since they have mingled with ordinary refugees; and
- (iv) The ordinary refugees, estimated at more than 1 million.

(b) The aim of the operation is to separate the vast majority of refugees from those who yesterday masterminded or participated in the massacres and today are taking the Hutu survivors hostage. The latter fall into the first three categories. It is nevertheless difficult to identify the third category - the militiamen - in order to separate them from the general population. This operation will be conducted through the formation of an international isolation or interposition force estimated at some 2,000 to 3,000 policemen, the imminent establishment of which has been announced by the Secretary-General. However, this force will doubtless have to begin by exploring peaceful solutions and encouraging repatriation, force being used only in cases of extreme emergency.

2. Repatriation

67. Voluntary repatriation of refugees is covered by the relevant provisions of various United Nations conventions and the Protocol of Agreement concluded at Arusha on 9 June 1993 between the Government of the Rwandese Republic and the Rwandese Patriotic Front on the repatriation of Rwandese refugees and the resettlement of displaced persons. This was the basis for the tripartite Agreement on the repatriation of Rwandese refugees from Zaire which was concluded at Kinshasa, Zaire, on 24 October 1994 by the Government of the Rwandese Republic, the Government of the Republic of Zaire and the Office of the United Nations High Commissioner for Refugees.

68. The preamble to the Agreement defines "the procedures and specific modalities for the voluntary repatriation and definitive reintegration in Rwanda of Rwandese refugees at present in Zaire, with the assistance of the international community and through UNHCR and, if necessary, with the support of other United Nations agencies and intergovernmental and non-governmental organizations".

69. It imposes a number of obligations on the contracting parties, specifically:

(a) Zaire, the country of asylum, undertakes to respect the relevant clauses of various United Nations and OAU conventions on refugees and to take appropriate measures to ensure that the latter are not unduly influenced in their decisions;

(b) Rwanda, the country of origin, undertakes to adopt political, administrative and possibly customs measures to ensure and facilitate the return and reintegration of refugees in dignity and security, as well as social peace and national reconciliation;

(c) The Office of the United Nations High Commissioner for Refugees undertakes to monitor and supervise any repatriation operation from start to finish, placing particular emphasis on the voluntary nature of the returnees' decision, as well as on their security and dignity.

70. It is to be hoped that this Agreement, which refers to the communiqué of 26 July 1994 marking the meeting between the President of the Rwandese Republic and the President of the Republic of Zaire, will not experience the same fate as that communiqué and will be respected.

IV. RECOMMENDATIONS

71. The Special Rapporteur deplores the tendency to use the current insecurity in Rwanda as a pretext for suggesting that genocide is commonplace and justifying inaction. To do so is to confuse cause and effect. It overlooks the fact that genocide is to a great extent the cause of insecurity. A correct diagnosis is essential if the right medicine likely to heal the Rwandese sickness is to be found. Without in any way neglecting existing human rights violations, they must be viewed in context and their sources identified so that efforts can be made to eliminate them before it is too late. Rapid, indeed very rapid, action is required if we are not to be the powerless spectators of a second war and further massacres. It is in order to avoid a disaster of this nature that the following recommendations, addressed respectively to the Rwandese Government, the governments hosting refugees and the United Nations, are formulated.

A. Cessation of human rights violations

72. The United Nations should require the Rwandese Government to put an end to the serious violations of human rights which are being perpetrated in its territory and which comprise searches, arrests, arbitrary detentions, disappearances and summary executions.

73. The United Nations should recommend the following to the Rwandese Government:

(a) The organization of wide-ranging campaigns to make the population aware of the need to respect the physical integrity and property of others, as well as to prepare for a life in common and on good terms;

(b) The adoption, as advocated in the second report of the Special Rapporteur, of forceful administrative measures designed to deter acts of reprisal and at the same time to ensure respect for fundamental rights of anyone who may commit such acts;

(c) Observance of the prerogatives and decisions of the judicial authorities, which is an essential condition for the sound administration of justice.

B. The situation of refugees

74. The United Nations should recommend that the Governments of countries hosting Rwandese refugees, and particularly the Zairian Government which has accepted the greatest number, take appropriate action to ensure that:

- (a) The voluntary repatriation of refugees is effectively assured and facilitated;
- (b) The refugees are not unduly influenced in one way or another - i.e., either to leave or to remain in the host country;
- (c) Systematic information campaigns are organized for this purpose, so that the people concerned can take a fully informed decision;
- (d) These Governments abide by their international commitments, particularly those deriving from the relevant provisions of international conventions on asylum and refugees;
- (e) Their territories are not used as a base for destabilizing Rwanda or committing acts of aggression against that State.

75. The United Nations should assist in:

- (a) Compensating those States for the losses they have suffered as a result of the installation of refugees and the deterioration of their crops and land;
- (b) Financing refugee repatriation operations.

C. International assistance to Rwanda

76. The United Nations should formally appeal to Member States, particularly the great Powers and the African States, to provide substantial assistance for the reconstruction of the Rwandese State as a matter of urgency.

77. Such assistance, which should take various forms and be provided in all economic, political, social and cultural sectors, implies a prior overall assessment of needs.

78. In the immediate future, it appears especially urgent to provide the people concerned with food and health assistance designed to enable them to survive, as well as the means to save their crops, livestock and land and to produce the minimum needed to survive.

79. The United Nations should participate actively in this assistance operation and help to organize it. In particular, it should provide the Rwandese State with:

- (a) Financial or material assistance in reconstituting the infrastructure of the administrative police, the criminal police, the gendarmerie and the judiciary;

(b) Assistance in judicial and law-enforcement personnel, including the training of policemen, gendarmes and judges, while helping local judges to render justice. In this connection, the United Nations might expand the Special Rapporteur's mandate to embrace technical assistance. Under this proposal, a specialized team of observers would be responsible for training policemen, judges, lawyers and court officers and establishing a Bar with a view to safeguarding the independence of the judiciary.

80. The United Nations should take the initiative in ensuring improved coordination of activities in Rwandese territory, - not only measures to promote human rights or humanitarian law but also other activities such as those involving food or military operations. Such coordination is essential in view of the large number and diversity of field activities. It would have the advantage of providing an integrated view of problems and avoiding overlapping, duplication of effort and aid waste.

81. The United Nations should, as soon as possible:

(a) Increase the number of human rights experts and their actual deployment in the field, some of them acting as observers, investigators and instructors at one and the same time;

(b) Launching the International Court which has just been set up, as well as the local courts that are to be established to try persons responsible for genocide, in order to stop, or at least reduce, acts of reprisal;

(c) Establish an appropriate legal framework to ensure the protection of widows and unaccompanied children and guarantee their fundamental rights. For this purpose, it would be appropriate to provide compensation for damage attributable to the perpetrators of massacres or their accomplices;

(d) Create an international force responsible for ensuring security in camps for refugees and displaced persons, as well as arrangements for their repatriation in appropriate conditions of security and dignity.

82. In cooperation with OAU, the United Nations should take steps to:

(a) Create conditions and a framework for a dialogue between various Rwandese political groups both inside and outside the country. This dialogue might lay the basis for a political settlement of the conflict in place of a military settlement;

(b) Convene an international conference on Rwanda designed, as initially recommended in the interim report, to induce the parties to the conflict to negotiate in good faith, taking due account of the Arusha Agreements of 4 August 1993, the conditions for peace, democratic transition, and national reconciliation and unity.

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Security Council

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Argentina, France, New Zealand, Russian Federation, Spain,
United Kingdom of Great Britain and Northern Ireland and
United States of America: draft resolution

The Security Council,

Reaffirming all its previous resolutions on the situation in Rwanda,

Having considered the reports of the Secretary-General pursuant to paragraph 3 of resolution 935 (1994) of 1 July 1994 (S/1994/879 and S/1994/906), and having taken note of the reports of the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights (S/1994/1157, annex I and annex II),

Expressing appreciation for the work of the Commission of Experts established pursuant to resolution 935 (1994), in particular its preliminary report on violations of international humanitarian law in Rwanda transmitted by the Secretary-General's letter of 1 October 1994 (S/1994/1125),

Expressing once again its grave concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law have been committed in Rwanda,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal for the prosecution of persons responsible for genocide and the other above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Stressing also the need for international cooperation to strengthen the courts and judicial system of Rwanda, having regard in particular to the necessity for those courts to deal with large numbers of suspects,

Considering that the Commission of Experts established pursuant to resolution 935 (1994) should continue on an urgent basis the collection of information relating to evidence of grave violations of international humanitarian law committed in the territory of Rwanda and should submit its final report to the Secretary-General by 30 November 1994,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides hereby, having received the request of the Government of Rwanda (S/1994/1115), to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto;

2. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 28 of the Statute, and requests States to keep the Secretary-General informed of such measures;

3. Considers that the Government of Rwanda should be notified prior to the taking of decisions under articles 26 and 27 of the Statute;

4. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

5. Requests the Secretary-General to implement this resolution urgently and in particular to make practical arrangements for the effective functioning of the International Tribunal, including recommendations to the Council as to possible locations for the seat of the International Tribunal at the earliest time and to report periodically to the Council;

6. Decides that the seat of the International Tribunal shall be determined by the Council having regard to considerations of justice and fairness as well as administrative efficiency, including access to witnesses, and economy, and subject to the conclusion of appropriate arrangements between the United Nations and the State of the seat, acceptable to the Council, having regard to the fact that the International Tribunal may meet away from its seat when it considers it necessary for the efficient exercise of its functions; and decides that an office will be established and proceedings will be conducted in

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Rwanda, where feasible and appropriate, subject to the conclusion of similar appropriate arrangements;

7. Decides to consider increasing the number of judges and Trial Chambers of the International Tribunal if it becomes necessary;

8. Decides to remain actively seized of the matter.

Annex

Statute of the International Tribunal for Rwanda

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "the International Tribunal for Rwanda") shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute.

Article 2

Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;

/...

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

Article 3

Crimes against humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation;

(e) Imprisonment;

(f) Torture;

(g) Rape;

(h) Persecutions on political, racial and religious grounds;

(i) Other inhumane acts.

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Article 4

Violations of Article 3 common to the Geneva
Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

- (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- (h) Threats to commit any of the foregoing acts.

Article 5

Personal jurisdiction

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Article 6

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

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2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

Article 7

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994.

Article 8

Concurrent jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

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Article 9

Non bis in idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

(a) The act for which he or she was tried was characterized as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

Organization of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall consist of the following organs:

(a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;

(b) The Prosecutor; and

(c) A Registry.

Article 11

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

(a) Three judges shall serve in each of the Trial Chambers;

(b) Five judges shall serve in the Appeals Chamber.

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Article 12

Qualification and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. The members of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal for the Former Yugoslavia") shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

3. The judges of the Trial Chambers of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges of the Trial Chambers from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within thirty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge on the Appeals Chamber;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twelve and not more than eighteen candidates, taking due account of adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the six judges of the Trial Chambers. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

4. In the event of a vacancy in the Trial Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

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5. The judges of the Trial Chambers shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

Article 13

Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.
2. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign the judges to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.
3. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.

Article 14

Rules of procedure and evidence

The judges of the International Tribunal for Rwanda shall adopt, for the purpose of proceedings before the International Tribunal for Rwanda, the rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the International Tribunal for the Former Yugoslavia with such changes as they deem necessary.

Article 15

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.
2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any Government or from any other source.
3. The Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda. He or she shall have additional staff, including an additional Deputy Prosecutor, to assist with prosecutions before the International Tribunal for Rwanda. Such

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staff shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 16

The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.
2. The Registry shall consist of a Registrar and such other staff as may be required.
3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.
4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 17

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.
2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.
3. If questioned, the suspect shall be entitled to be assisted by counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as to necessary translation into and from a language he or she speaks and understands.
4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

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Article 18

Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 19

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 20

Rights of the accused

1. All persons shall be equal before the International Tribunal for Rwanda.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to article 21 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

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4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
- (b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
- (f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;
- (g) Not to be compelled to testify against himself or herself or to confess guilt.

Article 21

Protection of victims and witnesses

The International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 22

Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

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Article 23

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 24

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

- (a) An error on a question of law invalidating the decision; or
- (b) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 25

Review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgement.

Article 26

Enforcement of sentences

Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such

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imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

Article 27

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

Article 28

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

- (a) The identification and location of persons;
- (b) The taking of testimony and the production of evidence;
- (c) The service of documents;
- (d) The arrest or detention of persons;
- (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

Article 29

The status, privileges and immunities of the
International Tribunal for Rwanda

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

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2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.

Article 30

Expenses of the International Tribunal for Rwanda

The expenses of the International Tribunal for Rwanda shall be expenses of the Organization in accordance with Article 17 of the Charter of the United Nations.

Article 31

Working languages

The working languages of the International Tribunal shall be English and French.

Article 32

Annual report

The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly.



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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL
AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Rwanda submitted
by Mr. René Degni-Séqui, Special Rapporteur of the Commission
on Human Rights, under paragraph 20 of resolution S-3/1 of
25 May 1994

Introduction

1. In accordance with the mandate entrusted to him by the Commission on Human Rights in its resolution S-3/1 of 25 May 1994, the Special Rapporteur made a second visit to Rwanda from 29 to 31 July 1994. The purpose of this visit was to assess the situation of human rights in Rwanda since the finalization of the preliminary report which the Special Rapporteur had submitted to States members of the Commission on Human Rights on 28 June 1994 (E/CN.4/1995/7) and to establish contact with the new Rwandese authorities in order to discuss with them problems relating to human rights and, in particular, the situation of the refugees and displaced persons.

2. The Special Rapporteur was able to hold talks on 28 and 29 July 1994 in Nairobi, and from 29 to 31 July in Kigali and Gitarama, with representatives of the new Rwandese Government, senior officials of various United Nations agencies working in Rwanda and representatives of non-governmental organizations. The persons he met included: Mr. Paul Kagame, Vice-President of the Republic and Minister of Defence; Mr. Faustin Twagiramungu, Prime Minister; Mr. Alphonse-Marie Nkubito, Garde des Sceaux, Minister of Justice; Mr. Jean-Marie Vianney Ndagijimana, Minister for Foreign Affairs; Mr. Joseph Nsengumana, Minister of Higher Education and Scientific Research; Mr. Mugbo Rie, Minister of Labour and Social Affairs; Mr. Shahryar Khan, Special Representative of the Secretary-General for Rwanda; General Roméo Dallaire, Force Commander of the United Nations Assistance Mission to Rwanda (UNAMIR); Mr. Michel Moussalli, Special Envoy of the United Nations High Commissioner for Refugees (UNHCR); Mr. Arturo Hein, Humanitarian Coordinator of the United Nations Rwanda Emergency Office (UNREO), and his Executive Director; Mr. Bernard Kouchner; and the Liaison Committee of Human Rights Leagues and Associations in Rwanda (CLADHO).

3. The Special Rapporteur wishes to express his thanks to all these persons who assisted him and thus facilitated his visit, in particular to the Force Commander of UNAMIR for his logistic support.

4. As a result of the various talks held, it was possible to assess the situation prevailing in Rwanda, stress being laid on the insecurity and the return of refugees and displaced persons, and to reach agreement with the authorities on certain points.

I. THE INSECURITY IN RWANDA

5. The fundamental problem raised by the current situation in Rwanda is that of security. The end of the armed conflict has not put an end to insecurity. The hostilities have left in their train nothing but ruin and desolation: great loss of human life, considerable damage to property, bereaved families, towns emptied of their inhabitants, etc.

6. Admittedly, since the fall of Gisenyi on 15 July 1994 and the cease-fire, life is gradually beginning to reappear. In Kigali and Gitarama shops are being cleaned or are already open, small markets are opening here and there, and the large market in Kigali reopened on 27 July. The Special Representative of the Secretary-General for Rwanda remains fairly optimistic, taking the view that "a great change will occur" in two or three months' time, meaning that life will return to normal. But the chief concern of insecurity remains. It is characterized by three essential features: the illegal occupation of abandoned houses; banditry and summary executions; and the virtual non-existence of administration by the State.

A. The illegal occupation of abandoned houses

7. People are illegally occupying houses abandoned by their fleeing owners or tenants. The most difficult case seems to be that of former refugees, particularly those who fled the country after the massacres of recent years. On returning to Rwanda, they claim their land and settle in the houses of displaced persons or other refugees. The Government is thus confronted with

an awkward dispute, which is all the more serious since public buildings are in some cases also occupied illegally. The Public Prosecutor's Office in Kigali has thus been converted into a restaurant, with placards stating that fact, and legal files have been converted into charcoal for fires to make porridge and tea.

8. Admittedly, the Government has set up an inter-ministerial committee, headed by the Ministers of the Defence and the Interior, with the aim of restoring the rights of owners, considering that they have priority over the former refugees. However, the problem will be only partly resolved, not to say moved elsewhere, since it is necessary to find houses to accommodate the new arrivals and land available for building or the growing of crops. The difficulty here lies in the fact that Rwanda is only 26,338 square kilometres in area for a population estimated at roughly 8 million before the hostilities; in other words, it has a very high density of 350 inhabitants per square kilometre. The question arises whether the heavy losses caused by the massacres, and then the epidemics will be offset by the return of the former refugees. The difficulty can be grasped more clearly if one remembers that the overpopulation of Rwanda is one of the underlying causes of the armed conflict. In addition to this difficulty, there is the problem of banditry and summary executions.

B. Banditry and summary executions

9. In the towns in Rwanda banditry and robbery are rampant. Armed gangs ransack houses and huts. There are also reports of disappearances and abductions, as well as summary executions. The latter acts are, according to persistent rumour, the work of the Rwandese Patriotic Front (FPR). The members of the Government, who implicitly acknowledge the facts, do not attribute responsibility to the FPR. They do not, however, deny the fact that rogue elements of the FPR or the army may engage in such acts as reprisals. But responsibility for the disappearances and summary executions may also be attributed to victims' relatives taking vengeance on the murderers or members of their families. Mention is also made of members of militias in Kigali and certain other parts of Rwanda. They are reportedly threatening to continue their summary executions and have already killed a soldier and thrown him into a sewer. The new Government has apparently undertaken "immediate action against the troublemakers" to ensure the security of persons and property. But this initiative is jeopardized by the non-existence of a genuine administrative structure.

C. The virtual non-existence of administration by the State

10. The virtual non-existence of administration by the State constitutes the third element which, in fact, possibly accounts for the other two. The former political, judicial and administrative authorities, dominated by the Hutu ethnic group, fled the country at the same time as the members of the armed forces as the FPR army advanced. Many officials of the central and local administration, particularly prefects and mayors, thus deserted the country, as did magistrates and, above all, members of the security forces, the police force and the army. The media thus reported, on Tuesday, 2 August 1994, the presence in Goma of some 20,000 government troops. This could be a considerable underestimation.

11. The FPR, which has won a military victory, has only an embryonic administration, a war administration, which at the present time is fulfilling a transitional role; in fact, everything remains to be done. The country needs to be rebuilt virtually from nothing. The critical situation of insecurity in Rwanda is not reassuring for those who live there, and even less for the refugees whose return is earnestly desired by the international community.

II. THE RETURN OF THE REFUGEES AND DISPLACED PERSONS

12. The chief concern of the international community at the present time is the return of the refugees and displaced persons to Rwanda. These people are living in precarious conditions but are loath to return out of fear of reprisals by the new authorities - notwithstanding the measures taken to reassure them.

A. The distressing living conditions

13. The Rwandese refugees have been and still are living in distressing and tragic conditions as a result of their exodus and exile.

1. The exodus

14. Fleeing the victorious advance of FPR elements, millions of people burst across the borders of neighbouring States in search of refuge, particularly in Zaire. The number of these refugees is simply huge. One international weekly reported on 28 July 1994 that 12,000 refugees an hour were arriving in Goma. Other sources within United Nations agencies put the figure at 20,000 an hour. In addition to civilians, there were several thousand government soldiers, mingling with or following the throng.

15. This human tidal wave brought with it not only hunger, thirst and exhaustion due to the long walk and the weight of baggage, but also numerous accidental deaths (trampling underfoot, suffocation, etc.) and murders. Moreover, the arrival of the survivors brought no relief from their suffering, as their living conditions were equally distressing.

2. The refugees in exile

16. The exodus of Hutu served to deplete the population of Rwanda still further. At the end of July, the number of refugees created by the war and the massacres was estimated at approximately 2.5 million. The refugee population is distributed as follows: 1.2 million at Goma, 500,000 in Sud-Kivu, 300,000 to 400,000 in the United Republic of Tanzania, 150,000 in Burundi, and 10,000 to 12,000 in Uganda. Goma, which is the base for "Operation Turquoise", has thus become the leading refugee centre, ahead of the Bénaco camp in Tanzania. A tragic situation arose from the fact that Goma, which previously had only 300,000 inhabitants, experienced a sudden influx of an additional 1.2 million persons, thus quadrupling its population. The overpopulation of this Zairian city, in precarious living conditions, contained the seeds of a human tragedy which made it a case on its own. The consequences were predictable. Famine was followed by a cholera epidemic, which killed several thousand persons. The figures given are imprecise and in

dispute, varying from one source to another, but the number of deaths is estimated at between 20,000 and 50,000. The cholera epidemic was compounded by a recent outbreak of dysentery, which might perhaps be of epidemic proportions. Journalists have added to the list of Rwanda's ills the threat of a volcanic eruption (involving two volcanoes, the Nyiragongo and the Nyamuragira, situated a few dozen kilometres north of Goma, as reported in the international press of 24-25 July 1994).

17. Despite these sufferings, the refugees are hesitant to return to their country because they fear for their lives.

B. The fear of reprisals

18. The Hutu refugees in the various neighbouring States, and more particularly those at Goma, want to return home, but are afraid that the new, predominantly Tutsi political authorities may take vengeance and massacre them. They are thus caught in a difficult dilemma, the only available option being either to die of disease (cholera, dysentery, etc.) or to risk reprisals. Their fears, which originated in the genocide against the Tutsi, are nurtured and indeed exacerbated by Radio Télévision Libre des Mille Collines (RTLM) and by the former Government in exile.

1. The activities of the RTLM

19. The RTLM has continued its campaign of incitement to ethnic hatred and violence. It reportedly called on the Hutu to leave Rwanda and take refuge outside the country, particularly in Zaire, for fear of being massacred by the new authorities. The appeal itself is said to have been accompanied by barely concealed reprisals against recalcitrants. In this connection, the Special Rapporteur has been informed of one of the sayings going round in Goma: "The wolves sleep with the sheep". And the wolves tell the sheep "Don't go back, stay with us", implying that, should the sheep refuse, they would suffer the inevitable penalty of being eaten by the wolves.

20. The pressure exerted by the RTLM is made all the stronger and more effective by the fact that it is well known as the radio of the Rwandese and that the Rwandese have a "radio culture", with their radios turned on practically all the time. At one point public opinion was pleased to learn that "the radio that kills" had stopped broadcasting, and it was even reported that French troops had neutralized it. However, this proved to be untrue, since as soon as Monday, 1 August 1994, the international press was again deploring its existence and the campaign orchestrated by it.

2. The activities of the former Government

21. The campaign conducted by the RTLM backs up the activities of the former Rwandese authorities. Concordant and reliable testimony reveals that those authorities called upon the Hutu population to follow them into exile, raising fears that it would be massacred by the RPF and the Tutsi. This appeal reportedly formed the subject of a full-fledged campaign by the media, prefects, army and gendarmerie officers and mayors. It appears to have been seen much more as an order than as a mere recommendation, with those to whom the message was addressed not having a choice. Large numbers of Hutu

were forced to follow, thus becoming what can only be described as hostages, while those who refused were considered as collaborators with the Tutsi and were massacred as a result. In this connection, there are reports that a number of people, including a teacher, testified that they had gone to Goma against their will "in order not to risk their lives". All the signs are that this mass exodus of people to the States bordering Rwanda, and more especially Zaire (Goma), was not spontaneous and disorderly but forced and planned. The Hutu are afraid both of the massacres allegedly perpetrated by the new Tutsi authorities and of those actually committed by the former Hutu authorities. This situation has led the FPR, under pressure from the international community, to take measures to reassure the refugees and displaced persons.

C. Measures to reassure the refugees and displaced persons

22. Various measures have been taken by the new Government and the international community to encourage the refugees and displaced persons to return home.

1. The new Rwandese Government

23. The new Rwandese Government has basically done two things to encourage Rwandese to return to the country.

24. The first is the statements made by the highest authorities of the State. The President of the Republic, the Vice-President and the Prime Minister have all called upon the refugees to return, assuring them that they have nothing to fear either for their person or for their property. They have been told that they will recover what they left behind and that their rights will be given priority over those of earlier refugees. Such a commitment - admittedly given at the domestic level, but under the gaze of the international community - is not without genuine significance. However, some observers fear that the refugees do not have access to the information broadcast over Rwandese radio because the broadcasting range is limited to the Kigali region. Members of the Government have, however, said that this objection is only relative, and applies only to FM radio broadcasts. The important question here is whether the refugees listen or have the time to listen to Rwandese radio. Moreover, even supposing they do, might they not consider the Government's pledge as mere political rhetoric or even a trap, bearing in mind the whole campaign orchestrated by the former Rwandese authorities? Consequently, statements must be followed up as soon as possible by specific implementation measures in order to win over sceptical refugees.

25. The second Government act was the agreements concluded by the President of the Republic at the end of July 1994 with his four counterparts in the neighbouring States of Zaire, Tanzania, Burundi and Uganda. In these international instruments, the States concerned basically agree on four points:

- (a) The return of the refugees to Rwanda in complete freedom;
- (b) The non-use of the territories of the States of refuge as a base for destabilizing Rwanda;
- (c) The disarming of military personnel and other armed persons;
- (d) The immediate closing down of mobile radios, where they exist, that incite people to ethnic hatred.

26. Were they to be applied, these agreements would serve to encourage the return of the Hutu refugees to Rwanda. However, these measures are not enough in themselves and must be complemented by action on the part of the international community.

2. The international community

27. The term "international community" must be interpreted lato sensu as encompassing not only United Nations bodies but also member States and the various non-governmental organizations helping to safeguard human lives in the field.

28. The international community, in this broad meaning, has taken a whole series of measures designed to promote the return of the refugees and displaced persons in full security. Without listing them all, a few of the more recent ones may be mentioned by way of illustration:

- (a) the establishment of humanitarian staging posts along the routes taken by returning refugees is contemplated by UNHCR and UNAMIR. These "humanitarian routes" would, in particular, link Goma and Bukavu to Kigali and there would be water, food and medicine supply posts at regular intervals;

- (b) Technical and logistic support and delivery of provisions is envisaged, not in the refugee camps or on the "humanitarian routes", but directly in Rwanda. This is the strategy adopted by the United States of America to attract the refugees and thus promote their return to Rwanda. A start has already been made in implementing this policy, with the disembarkation of United States troops and equipment on Sunday, 31 July 1994;

- (c) The creation of radio stations broadcasting information to the refugees. Such information would relate to their security and would offset the alarmist rumours spread by Hutu extremists. Two radio stations have already been set up for this purpose. The first, run by the Swiss section of Reporters without Borders under the direction of the journalist Philippe Dahinden, has in principle begun broadcasting from Bukavu in Zaire, while the second, also run by Reporters without Borders, should broadcast from Goma. However, these measures are still not enough, and the Special Rapporteur has therefore put forward a number of proposals that have received the agreement of the Government.

III. PROPOSALS AND RECOMMENDATIONS

29. In his discussions with members of the Government, the Special Rapporteur made a number of suggestions or proposals which were favourably received. These proposals, some of which, it is true, already seemed to have been adopted, are designed essentially to encourage the return of the refugees and social peace in Rwanda. They relate to non-recourse to reprisals, additional measures of reassurance and deployment of United Nations human rights experts in the field.

A. Non-recourse to reprisals

30. The main aim of the Special Rapporteur's approach to the new authorities in Kigali was to make sure that they would not engage in summary executions. The Special Rapporteur was satisfied by the reply that he received from the various personalities he met, a reply which was in fact completely unambiguous. It may be summarized as follows: the new Government pledges not only to refrain from taking measures or acts of reprisal but also to punish any persons engaging in such acts. The Prime Minister stated: "I undertake not to permit any summary executions, and any persons guilty of such executions will be punished ... Impunity cannot be tolerated in this country."

31. Impunity being one of the sources of serious human rights violations, including genocide, in Rwanda, the Government asserts its firm determination to eliminate it. To this end, a rapid reorganization of the judicial machinery is being undertaken by the Minister of Justice. It was also asserted no less firmly that non-recourse to reprisals and the prosecution of those guilty of genocide, a question which is inextricably linked with it, are essential conditions for the national reconciliation and unity that are vitally necessary. The Special Rapporteur took note with satisfaction of these views, which coincide with those he expressed in his preliminary report.

32. Non-recourse to reprisals, as referred to in the aforementioned statements by the three leading political figures of the State and which does not exclude prosecution of persons guilty of genocide, has a twofold objective. Firstly, in the immediate future, the aim is to reassure refugees that they can return to their land and homes in complete peace of mind and security. The second goal, over the longer term, is to prevent individuals from taking the law into their own hands and thus bring lasting social peace back to Rwanda.

33. In the immediate future, however, this position, praiseworthy and commendable though it is, is nevertheless limited. The Special Rapporteur therefore proposed additional measures.

B. Additional measures of reassurance

34. The Special Rapporteur suggested that the political authorities should take a number of specific measures, in addition to those already adopted, in order to further reassure the refugees. Those suggestions concern both immediate and short-term measures.

1. Immediate measures

35. Immediate measures include:

(a) An information campaign aimed at the population within Rwanda, deploring and condemning the massacres, extending sympathy to victims and bereaved families, assuring them that the guilty will be tried and punished by the courts and urging them to refrain from taking the law into their own hands, on pain of severe penalties;

(b) Circulars, service notes and instructions addressed to all national or local authorities, calling on them not to tolerate any act of reprisal and to institute proceedings against any persons guilty of such acts;

(c) Regulations prohibiting and laying down heavy penalties for acts of incitement to ethnic hatred or violence. In this connection, the Special Rapporteur welcomed the fact that, according to members of the Government, the new identity cards no longer contain a reference to ethnic origin.

2. Short-term measures

36. The short-term measures recommended by the Special Rapporteur have to do mainly with education regarding human rights and strict respect for human dignity. This education would be provided both by schools and by radio broadcasts. It would be a matter simply of incorporating it into curricula and programmes. The short-term impact of such action can be gauged in terms of Rwanda's "radio culture" and its medium-term impact in terms of the school's role in educating future generations.

37. Long-term measures should be taken as soon as possible and supplemented by the deployment of United Nations human rights experts in the field.

C. Deployment of United Nations human rights experts

38. The Special Rapporteur finally secured the Rwandese authorities' acceptance of the idea of deploying United Nations human rights experts throughout the country. He emphasized the role of such experts and the plan of action for them.

1. The role of United Nations human rights experts

39. The presence of experts in the field presents definite advantages by virtue of the various roles which they can play: persuasion, deterrence, prevention and defence.

40. The first involves restoring the confidence of the refugees and displaced persons so that they can return with complete peace of mind; the presence of such experts is in itself reassuring in that it can provide them with a guarantee against further massacres. It is also a deterrent in that the new authorities will beware of carrying out reprisals in the presence of United Nations experts who, in addition, will ascertain the good faith of the authorities and their sincerity in not carrying out reprisals.

41. Deterrence leads to prevention in that it prevents further violations of human rights by virtue of the presence of United Nations experts who will monitor the return of the refugees, making sure of their safety and helping them to settle in again, with their rights being strictly observed. Finally, defence will purely and simply involve assisting with inquiries in the field in order to determine the facts regarding the various violations of human rights by the parties to the conflict and the perpetrators of massacres and genocide.

2. Plan of action

42. The action envisaged by the Special Rapporteur comprises three stages. Firstly, to take account of the limited resources of the Centre for Human Rights and the urgency of the matter, the number of United Nations experts would be restricted to 20 assigned as follows:

(a) Ten to monitor the refugees over the entire length of the "humanitarian routes" referred to above;

(b) Ten others, one in each of the following 10 major population centres: Kigali; Butare (136 km from Kigali); Byumba (75 km); Gitarama (53 km); Kibungo (108 km); Kibuye (139 km); Gisenyi (175 km); Gikongoro (165 km); Ruhengeri (116 km); Cyangugu (291 km). As the refugees and displaced persons reach their homes, the experts deployed along the "humanitarian routes" could reinforce those assigned to the above-mentioned locations.

43. In a second phase, as soon as resources allow, the United Nations should deploy between 150 and 200 experts throughout Rwanda for a period of not less than six months, in order to monitor not only the return, but also the reconstruction of Rwanda, and to conduct the necessary inquiries to ascertain the facts regarding the massacres. In this way, the plan will come into full operation during the difficult initial period of national reconstruction when human rights and fundamental freedoms could be open to serious violations.

44. Thirdly, at the end of the period of national reconstruction, the United Nations should begin to gradually withdraw its experts in the field, leaving only about 50 of them to conclude the inquiry by the end of the Special Rapporteur's mandate.

45. Collectively, these measures, if implemented, should overcome the reluctance of refugees and displaced persons, enable them to return en masse and guarantee their safety. At present, the United Nations escort operations have been interrupted in order to avoid importing the cholera epidemic into Rwanda. It is to be hoped that the epidemics will soon be halted and that the Rwandese refugees will be able to return to their lands and their homes without difficulty.

46. International assistance with the reconciliation and reconstruction efforts in Rwanda is vital. Accordingly, the Special Rapporteur associates himself with the urgent appeal made by the United Nations High Commissioner for Human Rights on 2 August 1994 to the international community for voluntary contributions to support the early deployment of human rights experts in the field, with the necessary logistical backup.

47. Inquiries are currently being conducted in south-western Rwanda by the team of human rights experts established by the High Commissioner for Human Rights. They will shortly be the subject of a report.



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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND
OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Rwanda submitted
by Mr. R. Degni-Séqui, Special Rapporteur of the Commission
on Human Rights, under paragraph 20 of Commission resolution
E/CN.4/S-3/1 of 25 May 1994

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INTRODUCTION

1. At its third special session, the Commission on Human Rights adopted resolution S-3/1, dated 25 May 1994, by which it requested its Chairman to appoint a special rapporteur 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, and to avail himself of the assistance of existing mechanisms of the Commission on Human Rights.
 2. The Commission requested the Special Rapporteur to visit Rwanda forthwith and to report on an urgent basis to the members of the Commission, no later than four weeks from the adoption of the resolution. In accordance with that provision, the Special Rapporteur visited Rwanda and some neighbouring States from 9 to 20 June 1994. During that mission, he was accompanied by Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, and Mr. Nigel Rodley, Special Rapporteur on matters relevant to torture, who accepted his invitation and placed at his disposal their experience and expertise.
 3. The Special Rapporteur would also like to thank the Rwandese "interim Government" and the Rwandese Patriotic Front (FPR) for their cooperation.
 4. He also wishes to thank all those who supported him in the preparation and realization of his mission. He is particularly grateful to the United Nations Rwanda Emergency Office (UNREO), the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC) for the logistic assistance they gave him. He also wishes to express his deep gratitude to the Force Commander of the United Nations Assistance Mission to Rwanda (UNAMIR) and his officers for their support and generous cooperation, in difficult circumstances, during his stay in Rwanda. Lastly, the Special Rapporteur thanks all those who sent him information on the situation of human rights in Rwanda, particularly the non-governmental organizations, and invites them to continue such cooperation in the future.
 5. It should be mentioned that the Special Rapporteur's mission was a follow-up to that of the High Commissioner for Human Rights on 11-12 May 1994 (E/CN.4/1994/S-3/3) and, to a certain extent, to that of the Special Rapporteur on extrajudicial, summary and arbitrary executions, Mr. Bacre Waly Ndiaye, in April 1993 (E/CN.4/1994/7/Add.1).
 6. This report, which is based upon information, testimony and documents received from various sources, cannot claim to be exhaustive, the time factor prohibiting this. It is simply a modest attempt to paint an overall picture of the human rights situation in Rwanda, a general view which will make it possible to guide future inquiries. This general view, designed to enlighten the Commission while meeting some of its concerns, relates to the preliminary measures adopted by the Special Rapporteur and to the reported events and resultant violations of human rights and, lastly, contains a series of recommendations.
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I. PRELIMINARY MEASURES

7. Before going into the field to carry out a preliminary investigation and report to the members of the Commission on the situation of human rights in Rwanda, the Special Rapporteur discussed with his team the mandate he had received and the methods to be used in carrying it out.

A. Mandate

8. The mandate entrusted to the Special Rapporteur contains two elements:

(a) To report to the Commission on Human Rights on the situation of human rights in Rwanda, including the root causes and responsibilities (a "horizontal" inquiry);

(b) To make available to the Secretary-General systematically compiled information on possible violations of human rights and of international humanitarian law.

The Commission has affirmed that all persons who committed or authorized such violations are individually responsible for them and that the international community would exert every effort to bring them to justice (a "vertical" inquiry).

9. These obligations to investigate and report are complementary and should be carried out within the framework of the same structure, in two stages which are interdependent and overlapping. The collection of information for the report to the Commission on Human Rights (and to other United Nations organs, as requested by resolution S-3/1) and the drafting of recommendations for concrete and immediate action to save lives, must be given priority.

10. In practice, the two stages are complementary in that the sources of the information are the same. Likewise, information collected for one aspect of the mandate clarifies the other. For example, an investigation of the structure of the armed forces of the two parties to the conflict is needed to formulate recommendations for ending the massacres while, at the same time, it will supply the basis for determining individual responsibilities, in the light of the chain of command. "Horizontal" investigations of the first stage will give a general picture of the information available and the most effective way of obtaining it, both of which are essential before beginning the in-depth investigation, in the second stage, of certain specific cases. The first stage will also make it possible to identify priorities in terms of investigations (e.g. an analysis of the broadcasts of the radio stations close to the Government and their link with the massacres of Tutsi and moderate Hutu, with a view to establishing individual responsibility and identifying particular massacres which could be examined in greater detail).

11. In order to ensure that the two stages are complementary, the information must be collected, recorded and analysed in a way such that it will be usable in the event of a trial by a national or, if appropriate, international court.

12. The way in which the two stages can be put into effect is influenced by the events in the field and, above all, by the need to ensure the safety of

the investigators in a situation of armed conflict. In view of the dangers incurred, particularly by the victims and witnesses, both in Rwanda and in the countries in which they have taken refuge, the collection of information should begin with the numerous international organizations and agencies active in the area, together with journalists, members of the clergy, etc., in Rwanda, in other countries of the region or in Europe. The vast majority of these have already shown great willingness to supply any useful information to the Special Rapporteur.

13. This in-depth investigation will be carried out by a team of human rights specialists, dispatched to the field by the High Commissioner for Human Rights, in accordance with resolution S-3/1 of the Commission on Human Rights. During his first visit to the region, the Special Rapporteur also endeavoured to prepare for the work of this team, the first two members of which are already in place.

B. Consultations and field visits

14. Following his appointment on 25 May 1994, the Special Rapporteur went to Geneva and Brussels - pending completion of the logistic and administrative preparations for his mission to Rwanda - for consultations with the Centre for Human Rights, representatives of States, and members of non-governmental organizations working for the defence of human rights.

15. Between 6 and 9 June 1994, he met representatives of the Governments of Rwanda, Burundi, Zaire, Canada, Cameroon, Nigeria, France and Belgium and of a large number of human rights organizations, who commented upon and gave him information concerning the situation of human rights in Rwanda. Having learned, during his stay in Geneva, of the murder of the Archbishop of Kigali, the Bishop of Kabgayi and 10 priests by the FPR and - probably as a reprisal - of the execution by the Rwandese Armed Forces (FAR) of 63 other persons, the Special Rapporteur sent letters on 9 June 1994 to both the FPR and the "interim Government" to condemn those actions, to ask that everything possible be done to prevent any recurrence of such incidents and to demand that the perpetrators of those crimes be prosecuted, with full defence guarantees. A letter was also sent to the Government of France requesting that the black box of the presidential aircraft be made available to the Special Rapporteur. The Government of France replied, on 17 June 1994, that it was not in possession of the black box and that the request should be addressed to the "interim Government". The same request having been addressed to the Rwandese General Staff, it replied that it knew nothing about it.

16. Between 9 and 15 June 1994, the Special Rapporteur met in Brussels, Nairobi, Bujumbura and the South Kivu area of Zaire, the Special Representatives of the Secretary-General for Rwanda and Burundi, the Force Commander of the United Nations Assistance Mission to Rwanda (UNAMIR), the UNREO Coordinator and several members of his staff, the UNHCR Special Envoy and several members of his staff, many representatives of the United Nations agencies, institutions and programmes currently active in Rwanda, representatives of the ICRC and of international non-governmental organizations supplying humanitarian assistance and of human rights

organizations, as well as a large number of individuals, both Rwandese and nationals of other countries, who supplied evidence on violations of human rights in Rwanda.

17. From 16 to 20 June, the Special Rapporteur visited Rwanda, where he met the UNAMIR Force Commander and several other officers, the Chief of Staff of the Rwandese Armed Forces, the Prefect of the City of Kigali and two members of the staff of the gendarmerie, as well as representatives of the FPR. During his stay in Rwanda, the Special Rapporteur visited several places sheltering persons displaced by the conflict, as well as the Amahoro Stadium, the King Fayçal Hospital and Kigali Airport. He also visited the ICRC Hospital in Kigali. These various visits have made it possible for him to try to reconstitute the events.

II. THE REPORTED EVENTS

18. The attack on the aircraft on 6 April 1994 which cost the lives of Juvénal Habyarimana, President of the Rwandese Republic, Cyprien Ntuyamira, President of the Republic of Burundi, several persons in their entourage and the crew, seems to have been the immediate cause of the grievous and tragic events which Rwanda is currently undergoing. That is probably why the Commission on Human Rights has requested the Special Rapporteur to "receive relevant, credible information on the human rights situation" in Rwanda "including on root causes and responsibilities for the recent atrocities". These atrocities consist mainly of massacres and other deeds related to them.

A. The massacres

19. At the moment when the presidential aircraft crashed to earth, the internal situation in Rwanda was tense and explosive for a number of reasons: frustration at the delays in implementing the Arusha Peace Agreement of 4 August 1993, the reign of terror by the militias, the murders of opposition leaders and human rights activists and persistent rumours that each of the two parties - the Government and the FPR - was preparing for war. The death of President Juvénal Habyarimana was the spark to the powder keg which set off the massacre of civilians. The next day, fighting resumed between the Government forces and the FPR. To date, that is until the moment of drafting this report, the acts of violence have not ceased. They are conspicuous both in their extent and in their characteristics.

1. The extent of the massacres

20. The Rwandese have indeed been the victims of a number of massacres in the past, notably in 1959, 1963, 1966, 1973, 1990, 1991, 1992 and 1993. However, those being perpetrated at present are unprecedented in the history of the country and even in that of the entire African continent. They have taken on an extent unequalled in space and in time.

21. The atrocities have extended over the entire national territory. A distinction must, however, be made between the governmental area and the area controlled by the FPR. In the first area, most of the massacres are carried out by the militias of the National Revolutionary Movement for Democracy and Development (MRND) - the interahamwe ("those who attack together") - and of

the Coalition for the Defence of the Republic (CDR) - impuzamugbmi ("those who have a single aim"), and are directed against the Tutsi in general and against Hutu who are considered moderate, i.e. against unarmed and defenceless people. Examples, supplied by trustworthy witnesses, are not lacking. A few may be mentioned: in Butare, several thousand persons have been massacred or mutilated; in Gisenyi, thousands of Tutsi have suffered the same fate, some of them having allegedly been buried alive in common graves in the town's cemetery; in the parish of Nyundo (prefecture of Kibuye), more than 560 persons have been killed including, 56 members of the clergy and nuns and 11 lay ministers; atrocities have also occurred in Kibuye itself, particularly in the stadium and the parish church; at Gikongo, a quarter of Kigali, on one day, Sunday 10 April, the street was covered with corpses for the length of a kilometre. At Kiziguro, a parish on the road between Kabiro and Murambi, a common grave was found containing several hundreds of corpses and a few survivors crying for help. In Cyangugu, the number of persons massacred to date is estimated at more than 25,000.

22. In the area controlled by the FPR, the cases of massacres reported are rather rare, indeed virtually non-existent, perhaps because little is known about them. The Government authorities accuse the FPR of having massacred several thousand civilians. According to a Rwandese "interim Government" statement made at Geneva on 24 May 1994, "FPR combatants have carried out systematic massacres of ethnic Hutu by making use in particular of their identity cards ... In the areas controlled by the FPR, thousands of people were savagely massacred and interred in common graves prepared well before the beginning of hostilities". There is no eyewitness evidence to confirm this information. At the request of the Special Rapporteur, senior officers of the Rwandese Armed Forces have promised to furnish documentary proof of those allegations. The FPR has been accused of removing persons from the displaced persons camps and executing them. This fact also, which might explain the absence of prisoners of war, has not been established or confirmed by other evidence. It should be noted that the FPR has promised to present prisoners of war to the human rights observers. What is certain, however, is that the FPR has been guilty of summary executions. For example, on 9 June 1994, FPR soldiers killed a number of members of the clergy, including two bishops and the Archbishop of Kigali. An operation carried out by the FPR on 16 June 1994 to evacuate Tutsi from the parish church of Saint Paul resulted in the deaths of several persons. According to the "interim Government", they were killed because they belonged to the Hutu ethnic group. The representatives of the FPR replied that some persons may well have been killed during the combat but that, in the heat of the action, there had been no time to sort out Hutu and Tutsi and any such acts were unintentional. The following day, an attack on a UNAMIR vehicle had killed one military observer and seriously wounded another. On 19 June 1994, despite three unfortunate precedents and the urgent appeal by the Special Rapporteur that humanitarian organizations should not be targeted, a shell had once again fallen in the compound of the ICRC hospital, killing one person and wounding several others.

23. The massacres had not begun on the same day throughout the territory of Rwanda. It was, of course, Kigali which started them on the night of 6 to 7 April with the massacre of Mrs. Agathe Uwilingiyimana, the Prime Minister, Joseph Kavaruganda, President of the Supreme Court, and several members of the Government, together with 10 Belgian members of UNAMIR. On the other hand,

Butare and Cyangugu remained calm for more than a week and were not caught up into the cycle of violence until their prefects had been dismissed and replaced by Hutu extremists. Concordant and reliable witnesses have stated that the new President of the Republic went to Butare to urge the Hutu population to engage in massacres. In Cyangugu, despite the delay, the number of persons massacred on 20 April reached, according to certain witnesses, some 15,000. It is alleged that the Armed Forces blocked all the roads leading to Zaire to prevent the survivors from escaping and the Prefect is alleged to have said that he had received "orders from above" to that effect. Those massacres are still continuing. Veritable manhunts have been carried out from house to house, from family to family, from village to village by members of the militias who, at the present time, are not hesitating to raid the so-called displaced persons' camps. Thus, on 14 June 1994, they carried off 40 young men and, on 17 June, had it not been for the firm intervention of UNAMIR, the "Mille Collines" Hotel would have witnessed a blood bath: a group of armed militiamen had already entered it.

24. In all, the number of persons killed throughout the territory is to be numbered in the hundreds of thousands, estimates ranging from 200,000 to 500,000. In fact, even the latter figure is probably less than the reality. Some observers think that the figure is close to a million. It is not sure that the exact number of victims will ever be known. What is absolutely certain, on the other hand, is that the international community is watching a human tragedy that appears to be well-orchestrated.

2. The nature of the massacres

25. The massacres are all the more horrible and terrifying in that they give the impression of being planned, systematic and atrocious.

26. The massacres do seem to have been planned. There are various pieces of evidence pointing to this conclusion. The first is the campaign of incitement to ethnic hatred and violence orchestrated by the media belonging to the Government, or close to it, such as Radio Rwanda, and above all Radio Télévision Libre des Mille Collines (RTLM). The second is the distribution of arms to the civilian population, and more particularly to members of the militias. Pastoral letters issued by the Bishop and priests of Nyundo diocese in December 1993 condemn this distribution of arms to the population. Furthermore, the members of the militias are reported to have undergone intensive training at military installations from November 1993 to March 1994. To this must be added the reign of terror carried out by the militias and the assassination of political figures. The third sign is the exceptional speed of events after the death of the President of Rwanda: the "provisional Government" was formed within only a few hours of the accident, according to a reliable international source. In addition, barricades were set up between 30 and 45 minutes after the crash of the aircraft, and even before the news of it had been announced on the national radio. A credible witness reports that, 45 minutes after the explosion, the road from the Hotel Méridien to Amahoro Stadium was blocked by soldiers and civilians and that he had been stopped twice by the latter. Senior officers of the General Staff whom the Special Rapporteur met acknowledge these facts, but assert that there was a justification for them: President Habyarimana was so popular that his murder by the FPR angered the people and elements in the armed forces. Finally, the

fourth indication is the existence of lists giving the names of persons to be executed. It seems to have been on the basis of these lists that various opposition leaders were murdered.

27. The massacres are systematic in nature. Whole families are exterminated - grandparents, parents and children. No one escapes, not even newborn babies. But what is even more symptomatic is that the victims are pursued to their very last refuge and killed there. This is true of ecclesiastical buildings, particularly churches, which once served as a refuge for the Tutsi, but have now become the scene of their holocaust. The same applies to hiding places in the roofs or other corners of houses and in the woods and forests, to which the attackers set fire to make sure that they leave no survivors behind them. The same applies also to the frontiers, which are blocked to prevent the Tutsi from escaping to neighbouring countries. At the third special session of the Commission on Human Rights, the representative of Médecins sans frontières gave a fairly typical example, which is worth quoting:

"At 700 metres from the frontier with Burundi, 80 persons were seen running towards it ('like cattle') chased by a group of militiamen with machetes. One person was hacked to death in front of us. The others succeeded in reaching the frontier, but unfortunately a group of militiamen was awaiting them there. Less than 10 persons got across the frontier, the others having been hacked to death." (end of April 1994)

28. The killings are carried out under atrocious, appallingly cruel, conditions. They are preceded by acts of torture or other cruel, inhuman and degrading treatment. Generally, the victims are attacked with machetes, axes, cudgels, clubs, sticks or iron bars. The killers sometimes go so far as to cut off their fingers, hands, arms and legs one after another before cutting off their heads or splitting their skulls. Witnesses report that it is not uncommon for the victims to plead with their executioners or offer them money to let them be shot rather than hacked to death. It has also been reported that, when the Tutsi have shut themselves in a room or a church which the militiamen cannot get into, the military come to their aid, breaking down doors, throwing in grenades and leaving it to the militia to finish things off. This barbarism does not spare either children in orphanages or patients in hospital, who are taken away and killed or finished off. Mothers have been forced to beat their children, while Hutu staff working for Médecins sans frontières (Butare, end of April 1994) were obliged to kill their Tutsi colleagues. Those who had the courage to refuse were killed. It has even been reported that the killers, after executing their victims in the open street, in front of everyone, cut them up into pieces, and some do not hesitate to sit on the bodies and drink beer while waiting for prisoners to come and take the bodies away.

B. Other facts

29. The facts described below are the direct result of the war and the massacres combined. They concern those who were lucky enough to survive the killing and who are still struggling to stay alive. They are reflected in insecurity and exodus.

1. Insecurity

30. The whole of Rwandese territory is in a state of total insecurity, which has three closely linked aspects.

31. The first aspect, immediately perceptible, is the physical and moral dimension, which means, for the few who escaped the massacres, an instinctive effort to preserve their physical and moral integrity. They are, of course, in danger of running into one party to the conflict or another - the Rwandese Armed Forces (FAR), the militias or, alternatively, the FPR. Membership of the right ethnic group or political party can ward off the danger, as when Hutu encounter the FAR or militiamen, or Tutsi or Hutu moderates meet FPR soldiers, but that does not mean that they have escaped once and for all. Shell and mortar fire into the centre of a town does not distinguish between military camps and civilians' houses. Worse still, no precautions seem to be taken to prevent installations belonging to humanitarian organizations from being hit. A striking example is the shell which hit the ICRC Hospital on 19 July 1994, killing a member of the staff and wounding several others. The FPR, which was responsible for that action, justified it on the grounds that members of the FAR were sheltering behind the hospital in order to attack its troops - such an attitude cannot but demoralize the survivors. Other organizations, such as UNAMIR, have been deliberately targeted.

32. The second aspect is food insecurity. Famine is at the gates of Rwanda. Large parts of the territory seem to be entirely abandoned. Along the roads from Kigali to Byumba or to the Ugandan frontier at Kagitumba, for example, most of the villages are deserted, and the crops are not being harvested. There is a real threat of famine, particularly in the southern areas of the country, which have also been suffering from drought. The Special Rapporteur has received information that, in the displaced persons' camps in Rwanda, there have been cases of death from malnutrition, despite all the efforts being made by international organizations to provide humanitarian assistance.

33. The third aspect is health insecurity, or more precisely unhealthy conditions. Many observers have emphasized the danger of epidemics due to bodies rotting in the open air or thrown into rivers, which are liable to pollute the water. Many people, both displaced persons and others, are eking out a precarious existence which leaves them weak and thus more vulnerable to disease. It should not be forgotten, either, that Rwanda has one of the world's highest rates of infection with the AIDS virus. Efforts are being made to vaccinate people in displaced persons' camps, but the medical facilities in operation are not adequate to provide the necessary care. The Special Rapporteur visited the ICRC Hospital in Kigali, where he was most impressed by the selfless devotion of the medical staff, and also by the immense amount that has been achieved.

2. Exodus

34. The conflict in Rwanda has led to an exodus without precedent in this small country's history. This exodus is particularly striking in that it has a twofold aspect, the movement of displaced persons within the country being combined with the flight of refugees abroad.

35. The hostilities between the forces of the "provisional Government" and those of the FPR, and particularly the fear of massacres, have led to mass movements of population within the country. There are said to be over 2 million people who have left their home villages for other regions where they feel more secure. With the development of the conflict and the advance of the FPR, a large part of the population is constantly on the move, fleeing the fighting. The FPR's military advance to the south-west and the wave of displaced persons it will undoubtedly set in motion could make the situation throughout the region particularly explosive. It is estimated that up to 2 million people are trapped at this moment between the front line and the frontiers with Burundi and Zaire, both of which are at present closed to Rwandese refugees. Others find themselves in places from which they no longer dare budge, for fear of massacres. Although they are not being kept there by force, they are, in fact, hostages of the conflict. They are in various places, both in the capital and in other towns and regions of the country. During his stay, the Special Rapporteur was able to visit several centres for displaced persons, including the Amahoro Stadium, the King Fayçal Hospital and a camp set up at Kigali Airport. These centres, and others, are being protected by UNAMIR, and the various humanitarian organizations are making immense efforts to improve their situation, which nevertheless remains extremely precarious.

36. The hostilities, and above all the massacres, have caused many other Rwandese to leave their country and take refuge in neighbouring States. Thus, Zaire has taken in more than 50,000 refugees in the regions of South Kivu and Bukavu. A considerable number of them are nationals of Burundi, who had taken refuge in Rwanda during the violence in Burundi in October-November 1993. Burundi has received more than 85,000 refugees, who are in camps situated mainly in the Ngozi and Kirundo regions. But it is Tanzania that is giving shelter to the greatest number of refugees, estimated at 410,000, 330,000 of them in the Benaco camp alone, which is thus the world's biggest refugee camp. The total number of refugees is close to a million. This huge flow of refugees is also creating serious problems for the host countries, which are incurring risks, not just because of the overpopulation and insecurity resulting from the presence of the newcomers, but also because the political and ethnic tensions between Tutsi and Hutu are spilling over into their territories. The danger is considerable in Zaire, but even more so in Burundi, whose population is made up of the same ethnic groups. In addition, these countries are coming up to elections.

37. The refugees themselves are not able to escape from the insecurity caused precisely by the way the problems have been carried over into their camps. During his visits to a number of camps in the South Kivu region of Zaire, the Special Rapporteur was informed that several of them were being used as training bases for members of the militias. Cases of murder, torture and disappearance had also been reported. At Luvundi camp, near the Rwandese frontier, he had been able to note the tension that existed between Hutu and Tutsi refugees, when two international civil servants, one from Mali and the other from Senegal, had been verbally attacked and accused of being Tutsi spies. The Special Rapporteur has himself been interrogated several times concerning his nationality.

38. The situation is even more explosive and disturbing at Benaco camp in Tanzania. Between 28 and 29 April 1994, some 250,000 persons crossed the Rwandese frontier into the Ngara district of Tanzania. The great majority of them were Rwandese of Hutu ethnic origin fleeing the FPR's advance in eastern Rwanda. It was following this unprecedented inflow that UNHCR set up the Benaco camp, which at present holds over 330,000 persons, at a distance of some 17 km from the Rwandese frontier.

39. It has been found that the same structures of authority prevail in this camp as in Rwanda, and it is to be feared that the parties' militias are active there. It very quickly became evident to the camp administrators that among the persons sheltered there were some who were accused of having organized, or at least taken part, in the massacres in Rwanda, witnesses having recognized them. Fourteen of them, who were suspected of having taken part in the massacres and seemed to be in fear of their lives, agreed to be taken into protective detention by the Tanzanian police. On 15 June 1994, however, these 14 suspected persons were released by the Tanzanian police on condition that they did not return to Benaco. They had not kept their word, and an attempt by UNHCR to make them leave the camp resulted in a disturbance involving some 5,000 persons, who engaged in violent demonstrations and threatened the staff of the humanitarian organizations, saying that they would deal with them in the same way as the 10 Belgian United Nations peace-keepers, who had been tortured and mutilated before being killed in Kigali. It is reported that murders have been committed at Benaco, some of which seem to have been politically motivated.

40. Several observers encountered by the Special Rapporteur considered that the human tidal wave which preceded the establishment of Benaco - because of its planned and organized nature - looked like a strategic withdrawal on the part of members of the militias responsible for the massacres in Rwanda and their associates. Fears have accordingly been expressed that the camp may be used by the militias as a rear base for incursions into Rwandese territory, thus enabling them to continue to perpetrate violations of human rights.

II. VIOLATIONS OF HUMAN RIGHTS

41. The events described above undoubtedly constitute grave and massive violations of human rights. The question is to determine what is the nature of these violations, what are their causes and who are the culprits.

A. Nature

42. The charges are three fold: genocide through the massacre of the Tutsi, political assassinations of a number of Hutu and various violations of human rights.

1. Genocide of Tutsi

43. Eminent persons, including the Secretary-General of the United Nations, have not hesitated to describe the massacre of the Tutsi as genocide. It is necessary to confirm by reference to the facts that this term is appropriate.

44. Article II of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 states: "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group."

45. It appears from this definition that the crime of genocide has three constituent elements, which might be summed up as follows:

- (i) A criminal act
- (ii) "With intent to destroy, in whole or in part"
- (iii) A particular group "as such".

46. There does not seem to be any doubt about the first condition, in view of the massacres perpetrated (II (a)), and even of the cruel, inhuman and degrading treatment (II (b)). The second is not difficult to establish, either, since such a clear and unambiguous intention is contained in the constant incitements to murder put out by the media (particularly RTLM) and reproduced in leaflets. And even if that were not so, the intention could have been deduced from the facts themselves, on the basis of a variety of concordant indications: preparations for the massacres (distribution of firearms and training of members of the militias), number of Tutsi killed and the result of a policy of destruction of the Tutsi. The third condition, on the other hand, requiring that the ethnic group should be targeted as such, raises a problem, because the Tutsi are not the only victims of the massacres, in which Hutu moderates have not been spared. But the problem is more apparent than real, for two reasons: firstly, many witnesses confirm that the vetting carried out at roadblocks to check identities was aimed essentially at the Tutsi. Secondly, and above all, the main enemy, identified with the FPR, is still the Tutsi, who is the inyenzi (cockroach), to be crushed at all costs. The Hutu moderate is merely a supporter of the main enemy, and is targeted only as a traitor to his ethnic group, which he dares to oppose.

47. There is a document put out by the General Staff of the Rwandese army, dated 21 September 1992, which distinguishes between the main enemy and his supporters and which instructs the military hierarchy to give it a wide circulation. According to the terms of this document, the former "is the Tutsi within the country or abroad, an extremist nostalgic for power, who has never accepted and still does not accept the reality of the Social Revolution of 1959 and who wants to gain power in Rwanda by any means, including arms". The latter "is any person who gives any support to the main enemy". The

supporter can be a Rwandese or a foreigner. There are a number of documents in existence confirming this distinction and testifying to the fact that Hutu moderates are massacred only as associates or supporters of the Tutsi.

48. The conditions laid down by the 1948 Convention are thus met, and Rwanda, having acceded to it on 16 April 1976, is required to respect its principles, which would be binding upon it even without any treaty obligation, since they have acquired the force of customary law. In the Special Rapporteur's view, the term "genocide" should henceforth be used as regards the Tutsi. The situation is different in the case of the assassination of Hutu.

2. Assassination of Hutu

49. Members of the Hutu ethnic group, as already stated, have also been the victims of massacres. But at this stage a distinction has to be made. On the one hand, there are Hutu moderates, with whom, by extension, certain foreigners, such as Belgians, are assimilated and who comprise essentially the political opposition and human rights activists. They form a ready target for elements of the government armed forces and members of the militias. On the other hand, there are Hutu extremists, comprising essentially members of the militias, who are said to be liable to execution, simply on the basis of a denunciation, in areas controlled by the FPR.

50. These acts constitute murders, and more specifically political assassinations, violating the right to life, which is a fundamental right contained in many international instruments.

51. Though all these conventions could be cited, two only will suffice, the relevant provisions of which are binding on the Rwandese State, which has acceded to them. They are, first, the International Covenant on Civil and Political Rights of 16 December 1966 and, secondly, the African Charter on Human and Peoples' Rights of 28 June 1981. The political assassinations represent a flagrant violation of these instruments. It should be pointed out that the right to life is a fundamental right, which exists independently of any treaty obligation and which must be respected in all circumstances.

3. Other violations

52. A number of other and no less important rights have also been the subject of serious violations by the parties to the conflict. These violations relate both to human rights stricto sensu and to international humanitarian law.

53. In conjunction with the right to life, the other rights violated cover a fairly wide range. The following examples will suffice: the right to physical and moral integrity, whereby torture and other cruel, inhuman and degrading treatment are forbidden, a right established in many international legal instruments, particularly the International Covenant on Civil and Political Rights and the African Charter of Human and Peoples' Rights (it is worth noting that this right is also a fundamental one that must be observed in all circumstances); the principle of non-discrimination or right to equal treatment, freedom of movement or travel, two rights established in the

Conventions mentioned above; and refugee law, which is governed by the international instruments relating to the status of refugees, including the Convention of 28 July 1951, to which Rwanda is party.

54. International humanitarian law is not being respected either. Many of the acts alleged, such as murder, political assassination, execution of hostages and other inhuman acts committed against the civilian population or unarmed soldiers by the armed forces of the two parties to the conflict constitute war crimes in direct violation of the four Geneva Conventions of 12 August 1949, which have been ratified by Rwanda, and their common article 3. It may be noted at this stage that the FPR has told the ICRC that it considers itself bound by the Geneva Conventions and their Additional Protocols. Furthermore, the assassinations and other inhuman acts committed against the civilian population, like the acts of persecution for political motives combined with the war crimes, constitute crimes against humanity.

B. The causes

55. The causes of human rights violations in Rwanda are of various kinds: economic, social, political, cultural, and so on, three of which are immediately apparent and indicative of the present situation, namely, the rejection of alternate political power, incitement to hatred and violence, and impunity.

1. Rejection of alternate political power

56. The rejection of alternate political power, which typifies French-speaking black Africa in general, takes on a special form in Rwanda, where it has strong ethnic overtones. The reason for what is taking place in Rwanda is not ethnic as such, but rather political, the aim being the seizure of political power, or rather the retention of power, by the representatives of one ethnic group, previously the underdogs, who are using every means, principally the elimination of the opposing ethnic group, but also the elimination of political opponents within their own group. From this standpoint, the portrayal of the main enemy and their supporters, as mentioned above, is quite revealing. The resistance to the Arusha Peace Agreement of 4 August 1993 is indicative of this and even of the rejection of simple power sharing or political coexistence.

57. The rejection of alternate political power implies the absence of the rule of law, for the rule of law guarantees political alternation and both are basic requirements of multi-party democracy. In Rwanda, the rule of law has thus been replaced by the rule of violence and confrontation. The rules of democratic legality based on respect for the law have been swept aside. Political democracy is being replaced by the law of the gun, and the peaceful transfer of political power through the ballot box has given way to the seizure of power by force of arms, with its inevitable killings and barbarism.

2. Incitement to ethnic hatred and violence

58. False rumours and tracts designed to inflame ethnic hatred and encourage violence are constantly circulating in Rwanda. The Tutsi are portrayed, for example, as "bloodthirsty, power-hungry and determined to impose their rule on

the people of Rwanda by means of the gun". They are even said to be preparing to exterminate the Rwandese people. Repeated appeals are made to the Hutu proclaiming the "ten commandments", which advocate an ideology of apartheid to keep the Tutsi from returning to power. This is a long-standing campaign, as pointed out in various reports, including those of the International Commission of Inquiry on gross violations of human rights since 1 October 1990 (7-21 January 1993), comprising representatives of several non-governmental organizations, or the report submitted by Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, on his mission to Rwanda from 8 to 17 April 1993 (E/CN.4/1994/7/Add.1).

59. One new and significant development, however, is the deep involvement of Radio Rwanda, the national broadcasting station controlled by the President, and in particular of Radio-Télévision Libre des Mille Collines (RTLM). A striking fact is that the broadcasts of these stations in French differ significantly from those in Kinyarwanda, the only language spoken by virtually all Rwandese. While broadcasts in French are inoffensive, those in Kinyarwanda are highly aggressive in tone. RTLM does not hesitate to call for the extermination of the Tutsi and it is notorious for the decisive role that it appears to have played in the massacres. It is known as the "killer radio station", and justifiably so. According to Reporters sans frontières, at the end of April this propaganda organ of the Hutu extremists proclaimed that "by 5 May, the cleansing of the Tutsi must be completed" and that "the grave is still only half full, who will help us to fill it?". This campaign is, as a senior United Nations official has pointed out, made more dangerous by the fact that the generally illiterate Rwandese rural population listens very attentively to broadcasts in Kinyarwanda; they hold their radio sets in one hand and their machetes in the other, ready to go into action.

3. Impunity

60. Impunity, like incitement to hatred and murder, is a recurrent cause of the massacres. The political party militias put up road blocks, check the identity of those passing through, arrest Tutsi and moderate Hutu and execute them in the street, in front of everyone and watched by members of the gendarmerie and FAR. The armed forces, far from bothering the militias, actually help them. This is also true of some local authorities, prefects or mayors, who have been personally involved in the slaughter.

61. No legal steps have been taken against those responsible for the earlier and present massacres, although they are known to the public and the authorities. On the contrary, they continue to live quietly and move about freely, quite undisturbed and with complete impunity. Worse still, many local officials who particularly distinguished themselves by their acts of cruelty, have been promoted, whereas those who managed to keep the peace and prevent massacres were quite simply dismissed. A case in point is that of the Mayor Jean-Baptiste Gatete, notorious for his crimes, who was made Chief of Cabinet to the Minister for Family Affairs in June 1993. The second category includes the Prefect of Butare, who was killed, and the Prefect of Kibungu, who was dismissed. As has been noted, the slaughter in the two prefectures began immediately they were replaced.

C. The perpetrators

62. At the current stage of his investigation, the Special Rapporteur is not in a position to identify by name all those responsible for the violations and abuses committed. He does, in fact, have lists of the names of individuals involved in the planning and execution of the atrocities. However, it will take time for him to establish the chain of responsibility and draw up a list of the perpetrators as they are identified.

63. As far as the organs or authorities involved in the recent atrocities are concerned, however, some responsibility can be apportioned immediately to:

The Rwandese State authorities and, in particular, senior national political figures, such as a number of ministers; various components of the government security forces, such as the Presidential Guard, the Rwandese Armed Forces (FAR) and the gendarmerie; and some local authorities, prefects and mayors;

FPR organs, particularly those in charge of its military activities;

Private individuals such as members of the militias, leaders of extremist political parties (MRND and CDR) and the founders and broadcasters of RTLM;

Some light needs also to be shed on the responsibility of certain foreign States and their interference in Rwandese politics;

Finally, the role of the international community and, in particular, the response of the United Nations to the urgent needs of the population, especially with regard to security and humanitarian assistance, calls for examination. In this connection, the Special Rapporteur wishes to associate himself with those who have deplored the reduction of UNAMIR personnel on 21 April 1994, which has seriously restricted its ability to protect persons in danger.

64. It is against this background that the attack on the presidential aircraft must be examined by the Special Rapporteur, to determine any links between those who ordered it and those responsible for the massacres. The precise circumstances of the murder of moderate members of the "interim Government", including the Prime Minister, and of 10 Belgian soldiers, must also be ascertained. The links between the political party militias, particularly the interahamwe, the Presidential Guard, the Rwandese Armed Forces and the gendarmerie, must also be investigated in order to determine the chains of command and individual responsibility. On the basis of that investigation, the Special Rapporteur will be in a position to make appropriate recommendations to the Commission on Human Rights.

65. The Rwandese "interim Government" also bears a full measure of responsibility for having refused to take effective steps to prevent the violations of human rights and international humanitarian law, including genocide. From the outset of the atrocities, the Rwandese leaders maintained that the massacres would cease only with the end of the armed conflict.

During his meeting with the Chief of Staff of the FAR, the Special Rapporteur was told that the Rwandese authorities could appeal to the general population to stop the massacres and would be heeded, but that the conclusion of a cease-fire agreement was a prerequisite for any such appeal.

IV. RECOMMENDATIONS

66. The Special Rapporteur's recommendations, which take due account of the emergency situation obtaining in Rwanda, are divided into immediate measures and short-term and medium-term measures.

A. Immediate measures

I

67. The United Nations should:

Demand that the parties to the conflict put an immediate end to the war and to the genocide and other gross violations of human rights perpetrated in Rwanda. The cessation of hostilities should be unconditional and should cover both massacres and acts of war; and

To this end, it should appeal to the consciences and individual sense of responsibility of the leaders of the parties to the conflict.

II

68. The United Nations should invite the leaders of the parties to the conflict:

To make an urgent and solemn appeal to their troops, to militias and to armed civilians to halt the massacres forthwith under pain of severe and effective punishment; and

To take specific measures to disarm the militias and armed civilians. This disarmament should take place under the supervision of a neutral international force which could consist of UNAMIR II reinforced by contingents from members of the Organization of African Unity (OAU), whose rapid and complete deployment should be made possible; and

To disband the armed militias and similar organizations.

III

69. The United Nations should demand that the government authorities:

Also make a solemn and urgent appeal to those in charge of the media, particularly Radio-Télévision Libre des Mille Collines, to cease immediately the broadcasting of war propaganda; and

Take appropriate steps to prohibit any campaign or rumour likely to give rise to racial hatred and violence, under pain of severe punishment.

IV

70. The United Nations should solemnly:

Condemn the genocide perpetrated in Rwanda and stress the horrifying, abominable and unacceptable nature of such acts;

Inform the perpetrators that, once identified, they will have to answer for their acts and omissions to the competent authorities, in whatever part of the world they happen to be;

Request States which have granted asylum or other refuge to persons involved in the massacres to take the necessary steps to ensure that they do not escape justice.

V

71. The United Nations, in cooperation with OAU, should take the necessary steps to ensure the protection of orphans, displaced persons and refugees by:

Establishing a reception centre or orphanage to receive orphans, so as to shelter them from any danger and to provide them with decent living conditions and schooling. The centre would be financed by a special "solidarity" fund, financed by the Member States and managed by a board whose status and procedures will have to be determined;

Ensuring that the rights of refugees and displaced persons are respected, particularly with regard to their safety and living conditions, while reminding them that they, too, have obligations, particularly towards the host States, and that they must refrain from any act likely to contravene national or international law;

Strengthening the resources of the Office of the High Commissioner for Refugees to enable it to undertake studies to determine the conditions for the return of refugees and displaced persons to their country or villages; and

Establishing without delay crossing areas which will enable the people of Rwanda to place themselves under the protection of the authorities of their choice.

B. Short-term and medium-term measures

I

72. The United Nations, in cooperation with OAU, should take appropriate steps to:

Induce the parties to the conflict to negotiate, in good faith and with due regard to the Arusha Agreement of 4 August 1993, the terms for peace, democratic transition and national reconciliation and unity; and

Call on the parties to implement in good faith the agreements thus reached. The agreements must not in any way provide, as part of a political settlement, for the impunity of those responsible for acts of genocide and other crimes against humanity. On the contrary, they must establish mechanisms for the effective punishment of those responsible. That is one of the prerequisites for national reconciliation and unity.

II

73. The United Nations should ensure that the transition to democracy leads to free and fair elections on the basis of a constitution establishing national democratic institutions which take due account of the legitimate interests of the two communities concerned, with a view to genuine national integration.

III

74. The United Nations should, within the framework of the peace negotiations:

Stress the need for national reconciliation and unity. In this regard, the new constitution should contain provisions for the prohibition and severe punishment of acts of incitement to ethnic hatred and violence. No official document, national identity card, driving licence, family registration book or the like should contain any reference to membership of an ethnic group. Any ethnically based party or association should be prohibited; and

Take measures to establish, or help to establish, a radio station broadcasting in both French and Kinyarwanda, to be responsible for providing education in human rights and in the scrupulous respect for human dignity. The funding and management arrangements would be the same as those for the orphanage referred to earlier.

IV

75. Pending the establishment of a permanent international criminal court, the United Nations should establish an ad hoc international tribunal to hear the evidence and judge the guilty parties or, alternatively, should extend the jurisdiction of the international tribunal on war crimes committed in the former Yugoslavia.

V

76. The United Nations should establish in Rwanda a reinforced team of human rights observers under a high-level coordinator responsible to the Special Rapporteur.

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the Coalition for the Defence of the Republic (CDR) - impuzamugbmi ("those who have a single aim"), and are directed against the Tutsi in general and against Hutu who are considered moderate, i.e. against unarmed and defenceless people. Examples, supplied by trustworthy witnesses, are not lacking. A few may be mentioned: in Butare, several thousand persons have been massacred or mutilated; in Gisenyi, thousands of Tutsi have suffered the same fate, some of them having allegedly been buried alive in common graves in the town's cemetery; in the parish of Nyundo (prefecture of Kibuye), more than 560 persons have been killed including, 56 members of the clergy and nuns and 11 lay ministers; atrocities have also occurred in Kibuye itself, particularly in the stadium and the parish church; at Gikongo, a quarter of Kigali, on one day, Sunday 10 April, the street was covered with corpses for the length of a kilometre. At Kiziguro, a parish on the road between Kabiro and Murambi, a common grave was found containing several hundreds of corpses and a few survivors crying for help. In Cyangugu, the number of persons massacred to date is estimated at more than 25,000.

22. In the area controlled by the FPR, the cases of massacres reported are rather rare, indeed virtually non-existent, perhaps because little is known about them. The Government authorities accuse the FPR of having massacred several thousand civilians. According to a Rwandese "interim Government" statement made at Geneva on 24 May 1994, "FPR combatants have carried out systematic massacres of ethnic Hutu by making use in particular of their identity cards ... In the areas controlled by the FPR, thousands of people were savagely massacred and interred in common graves prepared well before the beginning of hostilities". There is no eyewitness evidence to confirm this information. At the request of the Special Rapporteur, senior officers of the Rwandese Armed Forces have promised to furnish documentary proof of those allegations. The FPR has been accused of removing persons from the displaced persons camps and executing them. This fact also, which might explain the absence of prisoners of war, has not been established or confirmed by other evidence. It should be noted that the FPR has promised to present prisoners of war to the human rights observers. What is certain, however, is that the FPR has been guilty of summary executions. For example, on 9 June 1994, FPR soldiers killed a number of members of the clergy, including two bishops and the Archbishop of Kigali. An operation carried out by the FPR on 16 June 1994 to evacuate Tutsi from the parish church of Saint Paul resulted in the deaths of several persons. According to the "interim Government", they were killed because they belonged to the Hutu ethnic group. The representatives of the FPR replied that some persons may well have been killed during the combat but that, in the heat of the action, there had been no time to sort out Hutu and Tutsi and any such acts were unintentional. The following day, an attack on a UNAMIR vehicle had killed one military observer and seriously wounded another. On 19 June 1994, despite three unfortunate precedents and the urgent appeal by the Special Rapporteur that humanitarian organizations should not be targeted, a shell had once again fallen in the compound of the ICRC hospital, killing one person and wounding several others.

23. The massacres had not begun on the same day throughout the territory of Rwanda. It was, of course, Kigali which started them on the night of 6 to 7 April with the massacre of Mrs. Agathe Uwilingiyimana, the Prime Minister, Joseph Kavaruganda, President of the Supreme Court, and several members of the Government, together with 10 Belgian members of UNAMIR. On the other hand,

Butare and Cyangugu remained calm for more than a week and were not caught up into the cycle of violence until their prefects had been dismissed and replaced by Hutu extremists. Concordant and reliable witnesses have stated that the new President of the Republic went to Butare to urge the Hutu population to engage in massacres. In Cyangugu, despite the delay, the number of persons massacred on 20 April reached, according to certain witnesses, some 15,000. It is alleged that the Armed Forces blocked all the roads leading to Zaire to prevent the survivors from escaping and the Prefect is alleged to have said that he had received "orders from above" to that effect. Those massacres are still continuing. Veritable manhunts have been carried out from house to house, from family to family, from village to village by members of the militias who, at the present time, are not hesitating to raid the so-called displaced persons' camps. Thus, on 14 June 1994, they carried off 40 young men and, on 17 June, had it not been for the firm intervention of UNAMIR, the "Mille Collines" Hotel would have witnessed a blood bath: a group of armed militiamen had already entered it.

24. In all, the number of persons killed throughout the territory is to be numbered in the hundreds of thousands, estimates ranging from 200,000 to 500,000. In fact, even the latter figure is probably less than the reality. Some observers think that the figure is close to a million. It is not sure that the exact number of victims will ever be known. What is absolutely certain, on the other hand, is that the international community is watching a human tragedy that appears to be well-orchestrated.

2. The nature of the massacres

25. The massacres are all the more horrible and terrifying in that they give the impression of being planned, systematic and atrocious.

26. The massacres do seem to have been planned. There are various pieces of evidence pointing to this conclusion. The first is the campaign of incitement to ethnic hatred and violence orchestrated by the media belonging to the Government, or close to it, such as Radio Rwanda, and above all Radio Télévision Libre des Mille Collines (RTLM). The second is the distribution of arms to the civilian population, and more particularly to members of the militias. Pastoral letters issued by the Bishop and priests of Nyundo diocese in December 1993 condemn this distribution of arms to the population. Furthermore, the members of the militias are reported to have undergone intensive training at military installations from November 1993 to March 1994. To this must be added the reign of terror carried out by the militias and the assassination of political figures. The third sign is the exceptional speed of events after the death of the President of Rwanda: the "provisional Government" was formed within only a few hours of the accident, according to a reliable international source. In addition, barricades were set up between 30 and 45 minutes after the crash of the aircraft, and even before the news of it had been announced on the national radio. A credible witness reports that, 45 minutes after the explosion, the road from the Hotel Méridien to Amahoro Stadium was blocked by soldiers and civilians and that he had been stopped twice by the latter. Senior officers of the General Staff whom the Special Rapporteur met acknowledge these facts, but assert that there was a justification for them: President Habyarimana was so popular that his murder by the FPR angered the people and elements in the armed forces. Finally, the

fourth indication is the existence of lists giving the names of persons to be executed. It seems to have been on the basis of these lists that various opposition leaders were murdered.

27. The massacres are systematic in nature. Whole families are exterminated - grandparents, parents and children. No one escapes, not even newborn babies. But what is even more symptomatic is that the victims are pursued to their very last refuge and killed there. This is true of ecclesiastical buildings, particularly churches, which once served as a refuge for the Tutsi, but have now become the scene of their holocaust. The same applies to hiding places in the roofs or other corners of houses and in the woods and forests, to which the attackers set fire to make sure that they leave no survivors behind them. The same applies also to the frontiers, which are blocked to prevent the Tutsi from escaping to neighbouring countries. At the third special session of the Commission on Human Rights, the representative of Médecins sans frontières gave a fairly typical example, which is worth quoting:

"At 700 metres from the frontier with Burundi, 80 persons were seen running towards it ('like cattle') chased by a group of militiamen with machetes. One person was hacked to death in front of us. The others succeeded in reaching the frontier, but unfortunately a group of militiamen was awaiting them there. Less than 10 persons got across the frontier, the others having been hacked to death." (end of April 1994)

28. The killings are carried out under atrocious, appallingly cruel, conditions. They are preceded by acts of torture or other cruel, inhuman and degrading treatment. Generally, the victims are attacked with machetes, axes, cudgels, clubs, sticks or iron bars. The killers sometimes go so far as to cut off their fingers, hands, arms and legs one after another before cutting off their heads or splitting their skulls. Witnesses report that it is not uncommon for the victims to plead with their executioners or offer them money to let them be shot rather than hacked to death. It has also been reported that, when the Tutsi have shut themselves in a room or a church which the militiamen cannot get into, the military come to their aid, breaking down doors, throwing in grenades and leaving it to the militia to finish things off. This barbarism does not spare either children in orphanages or patients in hospital, who are taken away and killed or finished off. Mothers have been forced to beat their children, while Hutu staff working for Médecins sans frontières (Butare, end of April 1994) were obliged to kill their Tutsi colleagues. Those who had the courage to refuse were killed. It has even been reported that the killers, after executing their victims in the open street, in front of everyone, cut them up into pieces, and some do not hesitate to sit on the bodies and drink beer while waiting for prisoners to come and take the bodies away.

B. Other facts

29. The facts described below are the direct result of the war and the massacres combined. They concern those who were lucky enough to survive the killing and who are still struggling to stay alive. They are reflected in insecurity and exodus.

1. Insecurity

30. The whole of Rwandese territory is in a state of total insecurity, which has three closely linked aspects.

31. The first aspect, immediately perceptible, is the physical and moral dimension, which means, for the few who escaped the massacres, an instinctive effort to preserve their physical and moral integrity. They are, of course, in danger of running into one party to the conflict or another - the Rwandese Armed Forces (FAR), the militias or, alternatively, the FPR. Membership of the right ethnic group or political party can ward off the danger, as when Hutu encounter the FAR or militiamen, or Tutsi or Hutu moderates meet FPR soldiers, but that does not mean that they have escaped once and for all. Shell and mortar fire into the centre of a town does not distinguish between military camps and civilians' houses. Worse still, no precautions seem to be taken to prevent installations belonging to humanitarian organizations from being hit. A striking example is the shell which hit the ICRC Hospital on 19 July 1994, killing a member of the staff and wounding several others. The FPR, which was responsible for that action, justified it on the grounds that members of the FAR were sheltering behind the hospital in order to attack its troops - such an attitude cannot but demoralize the survivors. Other organizations, such as UNAMIR, have been deliberately targeted.

32. The second aspect is food insecurity. Famine is at the gates of Rwanda. Large parts of the territory seem to be entirely abandoned. Along the roads from Kigali to Byumba or to the Ugandan frontier at Kagitumba, for example, most of the villages are deserted, and the crops are not being harvested. There is a real threat of famine, particularly in the southern areas of the country, which have also been suffering from drought. The Special Rapporteur has received information that, in the displaced persons' camps in Rwanda, there have been cases of death from malnutrition, despite all the efforts being made by international organizations to provide humanitarian assistance.

33. The third aspect is health insecurity, or more precisely unhealthy conditions. Many observers have emphasized the danger of epidemics due to bodies rotting in the open air or thrown into rivers, which are liable to pollute the water. Many people, both displaced persons and others, are eking out a precarious existence which leaves them weak and thus more vulnerable to disease. It should not be forgotten, either, that Rwanda has one of the world's highest rates of infection with the AIDS virus. Efforts are being made to vaccinate people in displaced persons' camps, but the medical facilities in operation are not adequate to provide the necessary care. The Special Rapporteur visited the ICRC Hospital in Kigali, where he was most impressed by the selfless devotion of the medical staff, and also by the immense amount that has been achieved.

2. Exodus

34. The conflict in Rwanda has led to an exodus without precedent in this small country's history. This exodus is particularly striking in that it has a twofold aspect, the movement of displaced persons within the country being combined with the flight of refugees abroad.

35. The hostilities between the forces of the "provisional Government" and those of the FPR, and particularly the fear of massacres, have led to mass movements of population within the country. There are said to be over 2 million people who have left their home villages for other regions where they feel more secure. With the development of the conflict and the advance of the FPR, a large part of the population is constantly on the move, fleeing the fighting. The FPR's military advance to the south-west and the wave of displaced persons it will undoubtedly set in motion could make the situation throughout the region particularly explosive. It is estimated that up to 2 million people are trapped at this moment between the front line and the frontiers with Burundi and Zaire, both of which are at present closed to Rwandese refugees. Others find themselves in places from which they no longer dare budge, for fear of massacres. Although they are not being kept there by force, they are, in fact, hostages of the conflict. They are in various places, both in the capital and in other towns and regions of the country. During his stay, the Special Rapporteur was able to visit several centres for displaced persons, including the Amahoro Stadium, the King Fayçal Hospital and a camp set up at Kigali Airport. These centres, and others, are being protected by UNAMIR, and the various humanitarian organizations are making immense efforts to improve their situation, which nevertheless remains extremely precarious.

36. The hostilities, and above all the massacres, have caused many other Rwandese to leave their country and take refuge in neighbouring States. Thus, Zaire has taken in more than 50,000 refugees in the regions of South Kivu and Bukavu. A considerable number of them are nationals of Burundi, who had taken refuge in Rwanda during the violence in Burundi in October-November 1993. Burundi has received more than 85,000 refugees, who are in camps situated mainly in the Ngozi and Kirundo regions. But it is Tanzania that is giving shelter to the greatest number of refugees, estimated at 410,000, 330,000 of them in the Benaco camp alone, which is thus the world's biggest refugee camp. The total number of refugees is close to a million. This huge flow of refugees is also creating serious problems for the host countries, which are incurring risks, not just because of the overpopulation and insecurity resulting from the presence of the newcomers, but also because the political and ethnic tensions between Tutsi and Hutu are spilling over into their territories. The danger is considerable in Zaire, but even more so in Burundi, whose population is made up of the same ethnic groups. In addition, these countries are coming up to elections.

37. The refugees themselves are not able to escape from the insecurity caused precisely by the way the problems have been carried over into their camps. During his visits to a number of camps in the South Kivu region of Zaire, the Special Rapporteur was informed that several of them were being used as training bases for members of the militias. Cases of murder, torture and disappearance had also been reported. At Luvundi camp, near the Rwandese frontier, he had been able to note the tension that existed between Hutu and Tutsi refugees, when two international civil servants, one from Mali and the other from Senegal, had been verbally attacked and accused of being Tutsi spies. The Special Rapporteur has himself been interrogated several times concerning his nationality.

38. The situation is even more explosive and disturbing at Benaco camp in Tanzania. Between 28 and 29 April 1994, some 250,000 persons crossed the Rwandese frontier into the Ngara district of Tanzania. The great majority of them were Rwandese of Hutu ethnic origin fleeing the FPR's advance in eastern Rwanda. It was following this unprecedented inflow that UNHCR set up the Benaco camp, which at present holds over 330,000 persons, at a distance of some 17 km from the Rwandese frontier.

39. It has been found that the same structures of authority prevail in this camp as in Rwanda, and it is to be feared that the parties' militias are active there. It very quickly became evident to the camp administrators that among the persons sheltered there were some who were accused of having organized, or at least taken part, in the massacres in Rwanda, witnesses having recognized them. Fourteen of them, who were suspected of having taken part in the massacres and seemed to be in fear of their lives, agreed to be taken into protective detention by the Tanzanian police. On 15 June 1994, however, these 14 suspected persons were released by the Tanzanian police on condition that they did not return to Benaco. They had not kept their word, and an attempt by UNHCR to make them leave the camp resulted in a disturbance involving some 5,000 persons, who engaged in violent demonstrations and threatened the staff of the humanitarian organizations, saying that they would deal with them in the same way as the 10 Belgian United Nations peace-keepers, who had been tortured and mutilated before being killed in Kigali. It is reported that murders have been committed at Benaco, some of which seem to have been politically motivated.

40. Several observers encountered by the Special Rapporteur considered that the human tidal wave which preceded the establishment of Benaco - because of its planned and organized nature - looked like a strategic withdrawal on the part of members of the militias responsible for the massacres in Rwanda and their associates. Fears have accordingly been expressed that the camp may be used by the militias as a rear base for incursions into Rwandese territory, thus enabling them to continue to perpetrate violations of human rights.

II. VIOLATIONS OF HUMAN RIGHTS

41. The events described above undoubtedly constitute grave and massive violations of human rights. The question is to determine what is the nature of these violations, what are their causes and who are the culprits.

A. Nature

42. The charges are three fold: genocide through the massacre of the Tutsi, political assassinations of a number of Hutu and various violations of human rights.

1. Genocide of Tutsi

43. Eminent persons, including the Secretary-General of the United Nations, have not hesitated to describe the massacre of the Tutsi as genocide. It is necessary to confirm by reference to the facts that this term is appropriate.